



HERBERT R. GIORGIO, JR.

Partner

St. Louis

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BIOGRAPHY

Herb Giorgio is an accomplished trial attorney whose practice focuses on complex business disputes, M&A litigation, and unfair competition for clients. He has arbitrated and tried cases in state and federal trial and appellate courts and arbitral bodies throughout the country for clients around the world.

As co-leader of the Firm's M&A Disputes team, Herb counsels clients through all cycles of a transaction. He supports the contract negotiation and diligence process to mitigate litigation risk, and when disputes arise, is prepared to see them through trial when necessary. He has litigated a wide variety of M&A disputes to conclusion, including earnouts, working capital disputes, rep & warranty claims, indemnities, and other purchase price adjustment claims.

Herb's complex business litigation experience includes trying contract and commercial disputes; supply and distribution agreements; UCC claims; veil-piercing, shareholder dilution, successor liability, and corporate continuation issues; and various consumer protection statutes and compliance issues. Herb also regularly handles trade secret misappropriation actions, as well as unfair competition and false advertising claims.

Herb's clients and experience are drawn from a wide variety of industries, including consumer goods, technology, manufacturing, food and agriculture, construction, financial services, pharma, healthcare, media, sports and entertainment, and life sciences.

Herb has maintained an active *pro bono* practice throughout his career, including trying numerous international child abduction cases for the National Center for Missing and Exploited Children and the United States State Department. He also gives back to the community through a variety of charitable endeavors and community organizations.

In addition to working as a summer associate with the firm, Herb interned with the United States Attorney's Office for the Eastern District of Missouri and the Honorable Catherine D. Perry, Chief United States District Judge for the Eastern District of Missouri, while in law school. Prior to attending law school, he worked for Gannett Company, Inc. in Phoenix, Arizona.

CIVIC INVOLVEMENT & HONORS

- Legal 500 US, M&A Litigation: Defense, 2024
- Federal Bar Association, St. Louis Chapter, Board Member (past President, Vice-President, Treasurer, and Secretary)
- United Way of Saint Louis, Men's Leadership Society
- FOCUS Leadership St. Louis, Class of 2017-18
- Downtown Children's Center, Board of Directors
- Legal Services of Eastern Missouri
- Young Friends of St. Patrick Center, Charter Member
- Theodore McMillian American Inn of Court at Saint Louis University School of Law

ADMISSIONS

- Illinois, 2007
- Missouri, 2006

EDUCATION

Saint Louis University, J.D., *cum laude*, Order of the Woolsack, 2006

University of Notre Dame, B.A., *cum laude*, 2001

RELATED CAPABILITIES

- Business & Commercial Disputes
- M&A Disputes
- Sports & Event Financing
- Real Estate
- Real Estate Disputes
- Healthcare & Life Sciences
- Trade Secrets
- Regulation, Compliance & Advisory
- Patents: Litigation
- Trademarks: Litigation
- Contract, Endorsement & Celebrity Representation
- Anti-Doping
- Sports & Event Venue Real Estate Infrastructure & Operation
- Naming Rights & Sponsorship
- Sports & Entertainment M&A
- Sports, Media & Entertainment Litigation
- Collegiate Sports
- Sports, Media & Entertainment
- Entertainment Industry
- Olympic & National Governing Bodies
- Professional Sports Team Representation
- Corporate
- Litigation & Dispute Resolution
- Start-Up & Venture Capital Practice
- Intellectual Property and Technology

EXPERIENCE

M&A Litigation

- *Confidential ICC Arbitration*, London, England. Represented leading nuclear medicine company in series of indemnification and rep and warranty claims involving tens of millions of dollars in claimed damages.
- *Confidential Purchase Price Adjustment Arbitration*, Administered by JAMS, San Francisco. Complete defense verdict in earnout claim of approximately \$48 million brought against publicly-traded, leading clean energy projects developer by former shareholders of an acquired business asserting amounts due under an earn-out provision in merger agreement.
- *Confidential Purchase Agreement Arbitration*, Chicago, IL. Represented global crane manufacturer in confidential AAA arbitration defending against fraud and rep and warranty claims in connection with sale of business.
- *Confidential Purchase Price Adjustment Arbitration*, St. Louis, MO. Secured award of \$2.3 million for seller of business in working capital adjustment arbitration where buyer had claimed it was entitled to a \$42 million downward adjustment of working capital – what was more than 30% of the deal purchase price.
- *Smith and Summa LLC v. Karl Bissinger LLC*, St. Louis County. Defended client against allegations of breach of contract and obtained complete defense ruling, including award of attorneys' fees.
- *Confidential Purchase Price Adjustment Arbitration*, St. Louis, MO. Represented seller of business in working capital adjustment arbitration involving claim of nearly \$10 million dollar downward adjustment of working capital
- *Confidential Arbitration*. Represented NHL club in confidential arbitration concerning ownership dispute.

Complex Commercial Disputes and Unfair Competition

- *Curium v. RLS Holdings, Inc.*, Northern District of Illinois, Central District of Florida. Represented Curium in multimillion dollar breach of contract action.
- *Curium v. Heartlight*, Northern District of Ohio. Represented Curium in breach of contract and Sherman Act litigation.
- *Guerbet v. SpecGx*, Wilmington, DE. Represented SpecGx in multimillion dollar breach of contract action for Guerbet's wrongful termination of a supply agreement.
- *Genus Lifesciences Inc. v. Mallinckrodt*, Eastern District of Pennsylvania. Defended Mallinckrodt against claims for breach of contract, trade secret misappropriation, unfair

competition.

- Represent Courthouse News Services in various actions across the country seeking First Amendment access to state court litigation filings.
- Represent leading mainframe and cloud-computing technology company in variety of commercial disputes.
- *ECIMOS, et al. v. Nortek Global HVAC*, Western District Tennessee. Defended client against allegations of misappropriation of trade secrets, copyright infringement, and breach of contract. Complete defense findings on summary judgment.
- *Dairy Queen Operators' Cooperative, Inc. vs BoDeans Cone Co., et al.* Action for breach of contract and tortious interference relating to termination of supply agreement.
- *City Of Rockford v. Mallinckrodt ARD, Inc., et al.; MSP Recovery Claims, Series LLC et al. v. Mallinckrodt ARD Inc., et al.* Defended Mallinckrodt in several federal class actions against allegations of state and federal antitrust violations, RICO, unjust enrichment, fraud, and various common law claims regarding specialty pharmaceutical pricing and distribution.
- *Energizer Brands LLC v. The Procter & Gamble Company, The Gillette Company, and Duracell U.S. Operations, Inc.*, Eastern District of Missouri. Action for trademark infringement, trademark dilution, unfair competition, and breach of contract.
- *Energizer Brands LLC v. Everlast World's Boxing Headquarters Corporation and Everlast Worldwide, Inc.*, St. Louis County. Action for breach of contract and in related TTAB proceeding.
- *Energizer Brands, LLC v. TREF I 555 Maryville LLC*. Represented client in injunction action involving commercial lease dispute.
- *Aguilar et al. v. PNC Bank, N.A.*, United States District Court, Eastern District of Missouri. Defended client in \$90 million civil action brought by more than ninety individual plaintiffs arising out of a Ponzi scheme, including claims of civil conspiracy, RICO, and violations of Missouri's Uniform Fiduciaries Law. Obtained complete defense ruling on summary judgment shortly before trial. Affirmed at the Eighth Circuit Court of Appeals.
- *Simmons Bedding Co., et al. v. Creative Vinyl Fabrics, Inc., et al.*, Superior Court of New Jersey, Essex County. Defended Spartech Plastics in \$15 million action for fraud, consumer fraud, negligence, and violation of UCC warranties in connection with the presence of phthalates in Simmons Bedding products that triggered a nationwide product recall. Obtained complete defense verdict for Spartech on summary judgment shortly before trial.

- *Lektron v. Tulsa Plastics et al*, Tulsa County. Defended Spartech Plastics in breach of contract and defective product action.
- *MEMC Electronic Materials, Inc., et al. v. Balakrishnan*, Southern District of Ohio. Represented client in preliminary injunction hearing regarding trade secrets and breach of restrictive covenant in employment agreement regarding manufacture of polysilicon, resulting in favorable case resolution.
- *Build-A-Bear Retail Management Inc. v. Cepia LLC*, St. Louis County. Defended Build-A-Bear against breach of contract claim.
- *Houlihan's Restaurants Inc. v. Runfido Inc.*, District of Kansas. Represented Houlihan's in action for violation of Kansas Uniform Trade Secrets Act, breach of fiduciary duty, copyright infringement, violation of the Computer Fraud and Abuse Act, and unfair competition.
- *Stolthaven New Orleans LLC v. MEMC Electronic Materials, Inc.*, Eastern District of Louisiana. Defended client in multimillion dollar claim for negligence and breach of contract.
- *Pippin v. Hill-Rom Corporation*, Eastern District of Missouri, Eighth Circuit Court of Appeals. Defended client in negligence action, resulting in complete defense ruling on summary judgment that was upheld by the Eighth Circuit Court of Appeals.
- Represented Pam Labs in several Lanham Act false labeling claims in Louisiana and New York.

Food and Agriculture

- Represent leading privately-held pork production company in variety of commercial and anti-competition disputes.
- Represented leading soybean technology innovator in confidential commercial contract dispute arising out of development agreement.
- Represent global pet food company in variety of commercial matters.
- Advise and defend privately-held candy manufacturer on various consumer protection matters in California, including Proposition 65 and "all natural" claims.
- Represent privately-held food conglomerate in various commercial matters.
- Represented leading global agribusiness company in various commercial matters.

RESOURCES

SPEAKING ENGAGEMENTS

- "Arbitration vs. Litigation for Resolving M&A Disputes: Food for Thought," March 1, 2023, Atlanta, GA
- "Attorney Client Privilege for In-House Lawyers," June 16, 2021, Denver, CO
- "Attorney Client Privilege for In-House Lawyers," November 29, 2018, St. Louis, MO
- "Legal Ethics In Film: Don't Be the Bad Guy," Bryan Cave Public Companies Update, December 13, 2017, St. Louis, MO
- "Beware of the Boilerplate: Litigation Considerations for Some Common "Miscellaneous" Provisions in Your Purchase Agreement," Denver CLE Institute, December 8, 2016, Denver, CO
- "Working Capital Adjustments: A Uniquely Different Form of Dispute Resolution; Earn-Outs: Avoiding the Most Common Pitfalls," Bryan Cave Public Companies Update, December 3, 2015, St. Louis, MO
- "Litigation Arising Out of M&A Transactions (And How to Plan for And Avoid It)," October 21, 2015, St. Louis, MO

RELATED INSIGHTS

Awards

Aug 17, 2023

The Best Lawyers in America® 2024

Awards

Aug 18, 2022

The Best Lawyers in America© 2023

Awards

Mar 26, 2021

Acritas Stars recognizes 55 BCLP lawyers for outstanding client service