

James K. O'Brien

Jim O'Brien, Chairman of the Real Estate and Environmental Practice Groups, concentrates his practice in the areas of environmental and insurance law and litigation. He has extensive experience in trial and appellate courts and administrative proceedings on all aspects of environmental law, from the defense of toxic tort and Superfund cases, to the appeal of contested wetlands permits. Jim has counseled commercial and industrial clients on the environmental aspects of the purchase and sale of real estate, on numerous compliance issues, and on air, water (NPDES) and hazardous waste permits. Through his work on the ASTM E-50 Committee (Environmental Assessment, Risk Management and Corrective Action) and as an adjunct professor in the Chemical Engineering Department at Wayne State University, he has been extensively involved in the legal and practical aspects of environmental audits and assessments. Jim has contributed as a regional editor to several ABA publications on environmental and insurance law. He also counsels clients on digital privacy and security risks and legal requirements under state, federal and international law.

Jim has broad litigation experience, in addition to his focus on environmental matters, and has tried business, contract, real estate, insurance coverage and personal injury cases in the state and federal courts. His experience as a mediator, arbitrator, and Oakland County Case Evaluation panel member, and his completion of the 40-hour Supreme Court approved Alternate Dispute Resolution course of training make him well qualified to resolve disputes in the most practical cost-effective manner, whether that involves trial, or a negotiated resolution.

EXPERIENCE

- National coordinating counsel for a worldwide environmental impairment liability insurance program.
- Directing environmental aspects of the sale and decommissioning of manufacturing facilities: advice on state (Michigan, Ohio, New Jersey, and Indiana) and federal closure requirements, demolition, asbestos, lead-based paint, PCBs, and underground storage tanks.
- Preparation, submission, negotiation and legal advice concerning state and federal permits involving:
 - air emissions,
 - water and wetlands,
 - solid and hazardous waste and waste transportation,
 - liquid industrial waste,
 - landfill closure and expansion,
 - SWP3 and SPCC Plans, and
 - Transportation (Hazmat) Security Plans.
- Conducting, and furnishing legal analysis of environmental audits and site assessments, investigation of the environmental history of properties and facilities, and locating and obtaining contribution to clean up costs from



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legally responsible prior owners and operators.

- Directing environmental due diligence, negotiating contract terms, especially those concerning liability and allocation of risk for transactions involving the sale, purchase, or stock transfer of national and international companies.
- Trials of environmental, real estate, insurance, and general business disputes in the federal courts, Wayne, Oakland and Macomb circuit courts, and numerous state and federal appeals. Served as a legal and technical consultant (co-counsel) on Indoor Air Quality cases, analyzing liability issues, and deposing expert witnesses.
- Draft, submit, negotiate and advise clients concerning:
 - Brownfield tax incentive proposals;
 - Remedial Action Plans, and Interim Responses Designed to meet Government requirements (IRDC) for contaminated properties; and
 - Investigation, reporting and closure requirements for Leaking Underground Storage Tank sites.
- Serve as a privately retained mediator for the successful resolution of an environmental (toxic tort, professional malpractice) case.
- Advising commercial real estate developers on all aspects of the purchase of property for commercial development, obtaining municipal and administrative approvals (zoning, wetlands, site plan, etc.) tenant leases, and financing and tax incentives.
- Advising corporate clients on issues involving ISO 14001, all aspects of pollution prevention, and LEED certification for new and refurbished buildings, and importation of new products and hazardous substances.

REPRESENTATIVE MATTERS

Jim O'Brien has been involved in numerous cases in which state and federal liability under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") was asserted, either by the state or federal government, or by private parties seeking contribution for amounts they were required to pay to the government under such environmental liability statutes. He has represented the owners of contaminated sites, as well as the generators and transporters of hazardous substances disposed of at contaminated sites.

He represents several hazardous waste transporters in Michigan in connection with attempts to impose liability for releases of hazardous substances in transit, and has frequently been called upon to provide legal and technical advice on an emergency basis, while emergency response activities are still underway. He has represented Canadian transporters in Homeland Security (Customs and Border Protection) proceedings attempting to impose fines and penalties for the alleged improper transport of municipal waste containing radioactive materials.

He has negotiated a fair, acceptable allocation of response costs on behalf of his clients at numerous "Superfund" sites around the country:

- LWD, Inc., Superfund Site, Calvert City, Kentucky
- Seven Out Tank Site, Waycross, Georgia
- I. Jones Recycling, Covington Road site, Fort Wayne, Indiana
- Main Street Wellfield, Elkhart, Indiana

and has litigated such matters, when necessary, to obtain a fair result:

- Great Lakes Container Corporation, et al. v. Columbus Steel Drum Company, Inc., et al.
- U.S. District Court, Eastern District Michigan, Case No. 85-CV-73556-DT Hon. Patrick J. Duggan

HONORS & AWARDS

- Named a 2016 Leading Lawyer in Michigan in Environmental Law by Leading Lawyers Magazine.
- Selected by his peers for inclusion in The Best Lawyers in America® 2018 & 2019 editions in the following practice areas: Environmental Law, and Litigation – Environmental.
- Listed as "Top Lawyer" in DBusiness magazine (2014-2015)
- Named Michigan "Super Lawyer Business Edition" by Law & Politics® for Environmental Law (2012-2018).
- Named Michigan "Super Lawyer" by Law & Politics® for Environmental Law (2006-2018).
- Listed in Super Lawyers, Corporate Counsel Edition, in its 2009 and 2010 nationwide list of leading lawyers in environmental law.
- Named one of The Best Lawyers in America (2009-2019), as a top Michigan environmental attorney
- Listed as one of the "Best Lawyers in Metro Detroit in 2009?" and "Top Lawyer in 2010" by dbusiness Business Journal
- AV-rated, Martindale Hubbell Law Directory. For over 100 years, Martindale Hubbell has published peer review ratings for attorneys. An AV rating is a combination of the Legal Ability Rating ("A" from very high to preeminent) and the General Ethical Standards Rating ("V" very high).

COMMUNITY & SOCIAL ACTIVITIES

- Avid long-distance runner (Boston Marathon, Detroit Free Press Marathon, Bayshore Marathon)
- Frequent Red Cross blood donor
- Committee Chair, Oakland County Bar Association Annual Race Judicata

EDUCATION

- University of Michigan, B.S.
- Wayne State University Law School, J.D.
- Wayne State University, Hazardous Waste Management Certificate

BAR ADMISSIONS

- Michigan

COURT ADMISSIONS

- All Michigan courts
- Sixth (Federal) Circuit
- Eastern District of Michigan
- Western District of Michigan
- Northern District of Indiana
- Northern District of Ohio

PROFESSIONAL ACTIVITIES

- Council Member, State Bar of Michigan (Environmental Law Section)
- American Bar Association
- Oakland County Bar Association
- Defense Research Institute
- Environmental Law Institute
- Air and Waste Management Association
- Michigan/National Association of Environmental Professionals
- Automation Alley
- Member, ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action

- Canada - U.S. Business Association (CUSBA)

PRACTICE AREAS

- Environmental Law
- Litigation and Dispute Resolution
- Real Estate Development
- Business Law
- E-Business Law
- Insurance Coverage and Defense