

# PHILIP J. KAPLAN

Attorney, Shareholder

Phil Kaplan is a pragmatic advocate who recognizes that litigation is a means to an end — not an end in itself. From the beginning of each case, Phil works with clients to determine their ultimate business objectives and formulate strategies to effectively and efficiently meet those objectives. Phil has achieved favorable results for clients by keeping their individual goals in mind, rather than taking a one-size-fits-all approach to litigation.

Phil represents both plaintiffs and defendants in a wide range of disputes, with an emphasis on commercial real estate litigation, shareholder litigation, and business-related appeals.



## CLIENT TESTIMONIAL

Litigation is difficult and stressful, even when the law is on your side. Phil led our case with the highest level of expertise and professionalism. He is particularly skilled in persuasively arguing complex issues in a succinct manner. Engaging Phil Kaplan led to the finest outcome for which we could have hoped.

— Cindy and Tim Monahan, client, 1800 Baxter County Road LLC

## EDUCATION

J.D., magna cum laude, University of Minnesota Law School  
B.B.A. in Finance and Investment Banking, University of Wisconsin – Madison

## ADMISSIONS

State of Minnesota  
State of North Dakota  
U.S. District of Minnesota  
8th Circuit Court of Appeals  
10th Circuit Court of Appeals

## PROFESSIONAL AFFILIATIONS

- Member, National Association for Industrial and Office Parks (NAIOP)
- Co-Chair, Hennepin County Bar Association Landlord-Tenant Section
- Member, Minnesota State Bar Association – Appellate Practice Section
- Member, Federal Bar Association

## COMMUNITY INVOLVEMENT

- Volunteer, Children’s Law Center
- Volunteer, Metropolitan Economic Development Association (MEDA)
- Volunteer, University of Minnesota Business Law Clinic

## PUBLICATIONS

### HEARSAY BY DEFINITION: THE FIRST STEP

of

### THE HEARSAY ANALYSIS

- , Minnesota Lawyer and Finance & Commerce – Partner Content, May 2022

## CONTACT

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## AWARDS & HONORS

- Selected to the “Minnesota Rising Stars” list by Super Lawyers, 2014–2021
- Selected to the “Minnesota Super Lawyers” list by Super Lawyers, 2022

- Unsettled: When Fraud Defeats The Effect of a Release, Minnesota Lawyer and Finance & Commerce – Partner Content, May 2021
- Closing Time: The Impact of Covid-19 on Bar and Restaurant Leases, Minnesota Lawyer and Finance & Commerce – Partner Content, March 2020
- I Want it All and I Want it Now: The Enforceability of Rent Acceleration Clauses, Minnesota Lawyer and Finance & Commerce – Partner Content, July 2019
- Get Out: How to Force a Non-Statutory Buyout From a Company, Attorney At Law Magazine – Minnesota Edition, October 2018
- Great, Now How Am I Supposed to Value an S Corp? Minnesota Lawyer — Partner Content, May 2018
- Getting Credits (And Debits): Accounting Basics for Lawyers, Attorney at Law Magazine – Minnesota Edition, November 2017
- Broker Beware: Get Your Commission Agreements in Writing, Minnesota Lawyer – Partner Content, April 2017
- Of Landlords and Tenants: How Commercial Leases Can Go Awry, Attorney at Law Magazine Minnesota Edition, August 2016
- Developing Stories: A Primer on Building Height Restrictions, Attorney at Law Magazine – Minnesota Edition, May 2015
- In Defense of Appraisers: Strategies for Minimizing Appraiser Liability Risk, Attorney at Law Magazine Minnesota Edition, October 2014

## RESULTS

### APPELLATE

#### WINS

#### **KELLOGG V. WATTS GUERRA LLP, 41 F.4TH 1246 (10TH CIR. 2022)**

Affirmed the trial court's dismissal of all claims against Anthony Ostlund's clients in a complex malpractice lawsuit stemming from the Syngenta class action.

#### **HEIGHTS APARTMENTS, LLC V. WALZ, 39 F.4TH 479 (8TH CIR. 2022)**

Submitted an amicus brief for Minnesota Multi Housing Association in support of the appellant's winning argument that it pled a valid constitutional challenge to a 2020 eviction moratorium.

#### **NCJC, INC. V. WMG, L.C., 960 N.W.2D 58 (IOWA 2021)**

Affirmed Anthony Ostlund's client's right to recover attorneys' fees in a case that resolved multiple important legal issues related to fee awards in Iowa.

#### **HALVA V. MINNESOTA STATE COLLEGES AND UNIVERSITIES, 953 N.W.2D 496 (MINN.**

#### **2021)**

Submitted an amicus brief for Public Record Media in support of the appellant's winning argument to the Minnesota Supreme Court about pleading damages for a Minnesota Government Data Practices Act claim.

#### **GREAT PLAINS EDUCATIONAL FOUNDATION, INC. V. STUDENT LOAN FINANCE**

#### **CORPORATION, 954 N.W.2D 844 (MINN. CT.**

#### **APP. 2020), REVIEW DENIED (MAR. 30,**

#### **2021)**

Reversed the trial court's dismissal of fraud claims made by Anthony Ostlund's client; after taking discovery and winning a motion to plead punitive damages, negotiated a \$3.5 million settlement payment for the client.

#### **RABBE V. FARMERS STATE BANK OF TRIMONT, 2020 WL 2312931 (MINN. CT. APP. MAY**

#### **11, 2020), REVIEW DENIED (JULY 21, 2020)**

Affirmed the trial court's dismissal of all lender liability claims asserted against Anthony Ostlund's client.

**FLATTUM V. PRO TECH RESTORATION, INC., 2019 WL 6837003 (MINN. CT. APP. DEC.**

**16, 2019), REVIEW DENIED (FEB. 26, 2020)**

Affirmed a jury verdict in favor of Anthony Ostlund's client on his claim for breach of a pre-incorporation agreement to share profits in a new business.

**ADHERENT LABORATORIES, INC. V. DIPIETRO, 2018 WL 3520843 (MINN. CT. APP. JULY**

**23, 2018), REVIEW DENIED (OCT. 16, 2018)**

Affirmed the trial court's decision to deny the defendants' motion to compel arbitration of claims made by Anthony Ostlund's client.

**MARTIN V. MARQUEE PACIFIC, LLC, 906 N.W.2D 65 (N.D. 2018)**

Reversed the trial court's dismissal of claims Anthony Ostlund's client made for fraudulent transfer of real estate.

**CAMELOT LLC V. AMC SHOWPLACE THEATRES, INC., 665 F.3D 1008 (8TH CIR. 2012)**

Affirmed summary judgment for Anthony Ostlund's client that a purported option to extend a lease was unenforceable.

**BRENNY V. BOARD OF REGENTS OF THE UNIVERSITY OF MINNESOTA, 813 N.W.2D 417 (MINN. CT. APP. 2012)**

Affirmed the trial court's dismissal of all claims made by the University of Minnesota's former associate women's golf coach against Anthony Ostlund's client, the former headgolf coach.

**HOUSEMAN V. WHITTINGTON, 2012 WL 4052896 (MINN. CT. APP. SEPT. 17, 2012),**

**REVIEW DENIED (NOV. 27, 2012)**

Affirmed the trial court's dismissal of shareholder claims asserted against Anthony Ostlund's client.

**NORTH VALLEY, INC. V. VALLEY PAVING, INC., 2011 WL 1546489 (MINN. CT. APP. APR.**

**26, 2011)**

Reversed the trial court's dismissal of claims by Anthony Ostlund's client that his co-shareholder was unfairly competing.

**TRIAL COURT AND ARBITRATION WINS AND SETTLEMENTS**

**1800 BAXTER COUNTY ROAD LLC V. PORTILLO'S HOT DOGS, LLC, 2021 WL 1588745 (MINN. DIST. CT. MAR. 30, 2021)**

Represented a commercial landlord in a lawsuit to collect rent from a chain restaurant that continued to operate but refused to pay rent during the COVID-19 pandemic. Anthony Ostlund won summary judgment in one of the few judicial orders across the country – and possibly the first decision in Minnesota – determining a commercial tenant's obligation to pay rent during the pandemic.

**CEDAR POINT SC, LLC V. PEI WEI ASIAN DINER, LLC, STATE OF MINNESOTA, HENNEPIN COUNTY COURT FILE NO. 27-CV-18-17250 (2019)**

Represented a commercial landlord in a breach-of-lease case and obtained over \$1 million in awards for accelerated rent, late fees, interest, attorneys' fees and costs against the defaulting tenant.

**RAITZ ENTERPRISES, INC. D/B/A U.S. SAND & GRAVEL V. BLATTNER ENERGY, INC., AAA ARBITRATION (2019)**

Represented a subcontractor in an arbitration under the AAA Construction Rules to recover hundreds of thousands of dollars in payments that the general contractor was withholding. After an evidentiary hearing, the arbitrator awarded Anthony Ostlund's client nearly all of the damages it was seeking, plus interest and all of the attorneys' fees it paid for the case.

**FAMILY BUSINESS DISPUTE IN WISCONSIN (2018)**

Represented the majority owners of a large agricultural company in Wisconsin in a shareholder dispute, which settled on a confidential basis after trial.

**TWIN CITY FAN COMPANIES AND BARRY FAMILY LITIGATION (2018)**

Represented Melanie Barry and Twin City Fan Companies in well-publicized, multi-faceted litigation against Charles Barry, including a divorce proceeding in Florida, an arbitration in Minnesota regarding Mr. Barry's employment agreement, and multiple shareholder lawsuits in Minnesota state court. The parties reached a settlement agreement after months of discovery and motion practice and the issuance of a favorable special litigation committee report.

**KIERAN'S IRISH PUB FIRST AVENUE LLC V. CAMELOT LLC, STATE OF MINNESOTA, HENNEPIN COUNTY DISTRICT COURT FILE NO. 27-CV-14-17485 (2016)**

Defended the owner and developer of Mayo Clinic Square (formerly Block E) in Downtown Minneapolis in a lease dispute regarding our client's redevelopment of the building and calculation of a tenant's share of water bills. The parties reached a settlement agreement shortly before trial.

**CONFIDENTIAL AAA ARBITRATION (2015)**

Pursued accounting malpractice claims against a Big Four accounting firm on behalf of a group of individual clients. Anthony Ostlund negotiated a favorable settlement for its clients after a two-week arbitration hearing.

**MINNEAPOLIS VENTURE, LLC V. MINNESOTA SPORTS FACILITIES AUTHORITY, STATE OF MINNESOTA, HENNEPIN COUNTY DISTRICT COURT FILE NO. 27-CV-13-15247 (2013)**

Represented the owner of the Downtown East property across from the Metrodome, which included a Plaza used for Vikings game-day concessions and events. To resolve a dispute over the Minnesota Sports Facilities Authority's current and future use of the property, Anthony Ostlund negotiated a purchase agreement that required the Authority to buy the property for \$17.1 million, \$12.6 million more than its tax-assessed value.

**ST. PAUL PIONEER HOLDINGS, INC. V. U.S. BANK NATIONAL ASSOCIATION, STATE OF MINNESOTA, RAMSEY COUNTY DISTRICT COURT FILE NO. 62-CV-08-2265 (2010)**

Represented the owner of the historic Pioneer-Endicott building in Downtown St. Paul in a dispute over damages a long-time tenant had caused to the building. The case settled after the trial court entered a key ruling in favor of Anthony Ostlund's client on the proper measure of its damages.

**SPEAKING**

- Wild West 2.0 – How Attorneys are Solving Commercial Leasing Problems During the COVID-19 Pandemic, Hennepin County Bar Association, November 16, 2020
- Representing a Landowner in the Context of a Stadium Development, Hennepin County Bar Association, December 12, 2013