

## David P. Muth

### Partner

David Muth is the chair of the firm's Real Estate and Construction Litigation Group. He has substantial experience in lender workout claims; real estate disputes, construction defect claims, and insurance coverage litigation. His recent experience includes:

- Assisting various national lending institutions in obtaining the appointment of a receiver and assignment of rents while ultimately obtaining title for the lender of its collateral in a multimillion-dollar commercial dispute.
- Assisting a manufacturing company in a lease dispute to obtain judicial declaration of its rights to enforce an option to purchase.
- Assisting various national lending institutions in resolving a condemnation dispute of their collateral.
- Representing automotive company in a commercial lease dispute where government ordered client's leasehold razed due to landlord's failure to maintain property.
- Representation of a client involving insurance and scope of repair issues for a defective concrete floor of an approximately 200,000-square-foot warehouse structure.
- Assisting contractors, owners, and developers in resolving construction liens and theft-by-contractor claims.
- Representation of client through jury trial involving professional negligence claims on the sale of purchase of a daycare center.
- Representation of a client involving employee misconduct/misrepresentation claims involving more than 10 consolidated appeals on the issue and scope of applicable insurance.



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### Milwaukee Office

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### Legal Services

- [Real Estate and Construction Litigation](#)
- [Banking & Financial Institutions](#)
- [Insurance Coverage Litigation](#)
- [Litigation & Dispute Resolution](#)
- [Financial Institutions Litigation](#)

### Education and Honors

- University of Wisconsin Law School (J.D., *cum laude*, 1996)
  - Order of the Coif
  - Phi Alpha Delta (Justice)
  - Wisconsin Environmental Law Journal (Articles Editor)
- Marquette University (B.A., *cum laude*, 1993)

## Bar Admissions

- Wisconsin

## Court Admissions

- U.S. District Court, Eastern District of Wisconsin, 1996
- U.S. District Court, Western District of Wisconsin, 1996
- U.S. Court of Appeals, 7th Circuit, 1996

## Professional and Civic Activities

- State Bar of Wisconsin (Member)
- American Bar Association (Member)
- Milwaukee Bar Association (Member)
- Waukesha Bar Association (Member)
  - Board of Directors (2017-present)
- United Way Emerging Leaders Council (2006–2014; Co-chair, 2009–2012)
- United Way Leadership Division Co-Chair (2015-present)
- Big Brothers Big Sisters of Metro Milwaukee (2010–2017; Secretary, 2013–2017)

## Professional Recognition

- Selected for inclusion in Wisconsin Super Lawyers®–Rising Stars (Business Litigation)
- Listed in The Best Lawyers in America® (2019: Commercial Litigation)

## Success Stories

### If Your Work Was Part of the Problem...

A developer hired a general contractor to construct four apartment complexes in Wisconsin. The general contractor and some of the subcontractors made a number of serious errors during the construction that caused significant water penetration and mold. Quarles & Brady, working with one of its construction experts, worked quickly to identify the defects, the scope of repairs, and total cost to repair. The general contractor, the subcontractors, and their insurers were joined in a lawsuit. Based upon our analysis of the law and the problems at issue, the defendants contributed their percentage of fault during mediation and our client received a seven-figure settlement to repair the buildings without the expense of a trial.

### It Is Not a Warehouse Without a Floor

Our client's new 200,000-square-foot warehouse had a defective concrete

floor. We moved quickly to assemble the right team to assess the situation, confirm workplace safety for the client's employees, and identify where and how the construction defects occurred. While navigating the complexities of the economic waste doctrine, we coordinated the correct scope of repair and convinced the general contractor and its insurer as to a reasonable settlement early in the litigation to reduce the client's costs and potential downtime—so the client could go back to focusing on its business.

### **If You Can't Obtain a Fair Settlement, We're Fully Prepared to Take the Case to a Jury**

Our client purchased an interest, via a §1031 exchange, in a building that was to be used as a daycare. Unfortunately, errors occurred in the lease and option to purchase negotiations by the client's former counsel. As a result, our client lost its valuable, exclusive option to purchase the remaining 50-percent interest in the daycare. That error led ultimately to our client selling its interest and losing the significant equity that would have come had it been able to exercise its option.

When the parties were unable to settle the claim, Quarles & Brady tried the case to a jury in Wisconsin. After a five-day trial, the jury awarded our client a verdict to reimburse them for their losses.

### **Trial and Appellate Decisions**

- *Green Tree Servicing, LLC v. Marcia M. Lorang*, 2015 AP 1015 (Wis. App. Ct. January 14, 2016).
- *Drexel Commercial Limited Partnership v. Rebecca R. De Marb*, 2015 AP 143 (Wis. App. Ct. September 29, 2015).
- *LNV Corporation v. Willock*, 2013 AP 2867 (Wis. App. Ct. March 17, 2015)
- *Bank of America v. Rau*, 2014 AP 694 (Wis. App. Ct. March 9, 2015)
- *Bank of America v. Gerlach*, 2014 AP 647 (Wis. App. Ct. December 9, 2014).
- *Bank of America v. Prissell, et. al.*, 2014 AP 642 (Wis. App. Ct. December 9, 2014).
- *Patricia Ripp v. McMillan Mortgage, LLC* 2013 AP 1124 (Wis. App. Ct. December 19, 2013).
- *Bank of New York v. Cano*, 2012 AP 1836 (Wis. App. Ct., November 14, 2013).
- *Bank of America v. Neis*, 2013 Wis. App. 89.
- *Pecha v. Miers*, 2011 AP 2227. (Wis. App. Ct., March 19, 2013).
- *Marr v. Bank of America*, 662 F.3d 963 (7th Cir. Dec. 6, 2011).
- *Hornback v. Archdiocese of Milwaukee*, 2008 WI 98
- *John Doe v. Archdiocese of Milwaukee*, 2007 WI 95.
- *Hornback v. Archdiocese of Milwaukee*, 2006 WL 3408464 (Nov. 28, 2006).

- *John Doe 1, et al. v. Archdiocese of Milwaukee*, 2006 WL 2472821 (Aug. 29, 2006).
- *Interwave Technology, Inc. v. Rockwell Automation, Inc.*, 2006 WL 401843 (E.D. Pa. Feb. 16, 2006), 2005 WL 3605272 (Dec. 30, 2005), 2005 WL 1667591 (July 14, 2005).
- *Doe v. Archdiocese of Milwaukee*, 284 Wis. 2d 307, 700 N.W.2d 180, 2005 WI 123 (2005).
- *DaimlerChrysler Svcs. NA, LLC v. Zurich American Ins. Co.*, 2005 WL 1460587 (June 22, 2005), 2005 WL 1208961 (May 23, 2005).
- *Delonga v. Diocese of Sioux Falls*, 329 F.Supp.2d 1092 (D.S.D. 2004).
- *Archdiocese of Milwaukee v. Superior Court of Orange County*, 112 Cal. App. 4th 423 (2003), denied 542 U.S. 919, 124 S.Ct. 2874, 159 L. Ed. 2d 777 (June 21, 2004).
- *J.G. Wentworth SSC Ltd. Partnership v. Callahan*, 256 Wis. 2d 807, 649 N.W.2d 694, 2002 WI App. 183 (Wis. App. 2002).
- *Susan Shoemaker v. Hearst Corporation*, 2001 WL 694715 (June 21, 2001).
- *Steichschulte v. First Federal Savings Bank of Wisconsin*, 1999 WL 1240912 (Dec. 22, 1999).
- *Weeden v. Bank of America*, 2013 AP 2411 (Wis. App. Ct July 9, 2015).

## Publications and Presentations

02/27/19

### **2018 Year in Review: Recent Midwest Legal Decisions Impacting Real Estate and Construction Law**

*Quarles & Brady Seminar*

03/09/18

### **2017 Year in Review: Recent Midwest Legal Decisions Impacting Real Estate and Construction Law**

*Quarles & Brady Seminar*

01/01/18

### **"2018 AGC/ABA Forum on Construction Law State Law Matrix Project – WI"**

*Quarles & Brady LLP*

03/23/17

### **"2016 Year in Review: Recent Midwest Legal Decisions Impacting Real Estate and Construction Law"**

*Webinar - Quarles & Brady LLP*

03/30/16

### **"2015 Year in Review – Recent Midwest Legal Decisions Impacting Real Estate and Construction Law"**

Webinar - Quarles & Brady LLP

01/01/16

**"2016 Construction Law Update (Midwest Section)"**

*Wolters Kluwer*

03/31/15

**"Everything You Don't Know About the CFPB - But Wish You Did"**

01/14/15

**"Midwest Real Estate and Construction - Year in Review"**

01/01/15

**"2015 Construction Law Update (Midwest Section)"**

*Wolters Kluwer*

07/22/14

**Forbearance Agreements - The Good, Bad and Ugly**

*Quarles & Brady Financial Institutions Seminar*

01/01/14

**"2014 Construction Law Update (Midwest Section)"**

*Wolters Kluwer*

11/07/13

**"Wisconsin Harassment Injunctions in School Settings"**

*WCTC*

08/28/13

**"Mind What You Say, Puffery Has Its Limits"**

*Law360*

08/09/13

**The Economic Loss Doctrine Strikes Again: Supreme Court of Wisconsin Holds Property Owners Have No Tort Claims Against Concrete Supplier**

*Real Estate Law Update*

08/08/13

**Wisconsin Supreme Court Requires Abatement if a Municipal Entity Had Notice that a Private Nuisance Was Maintained Negligently by the Municipal Entity**

*Real Estate Law Update*

08/07/13

**Wisconsin Supreme Court Limits the Ability of Government Contractors to Qualify for Governmental Immunity**

*Real Estate Law Update*

08/05/13

**Be Careful What you Say: Limits on Statements of Puffery and Determination of Puffery as a Matter of Law**

*Real Estate Law Update*

08/01/13

**New Consumer Financial Protection Bureau Bulletins on Collection Practices**

*Financial Institutions Law Update*

07/03/13

**Wisconsin Court of Appeals Decision Upholds Admissibility of Financial Institution's Business Records; Confirms Note and Mortgage Are Not Hearsay**

*Financial Institutions Law Update*

05/09/13

**"Traps for the Unwary: Land Acquisition, Construction and Renovation Projects"**

*Wisconsin Association of School Business Officials*

02/07/11

**Recent Developments in Arbitration**

*Construction Litigation Law Update*

10/01/09

**"Green Buildings and the Revolutionary LEED 2009 Changes"**

*Messenger, Milwaukee Bar Association (Winter 2008, Spring 2009, Summer 2009, Fall 2009)*

01/01/08

**"Emerging Issues Involving Green Building"**

*BVR Comprehensive Construction Defects Litigation and Insurance Coverage Superconference*