

ATTORNEY BIOGRAPHY



Thomas J. (T.J.) Conte

Partner

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Practice Groups and Specialty Areas

Business and General Litigation

Construction Law

Land Use and Environmental Litigation

Intellectual Property

Education

JD, American University Washington College of Law (1993); American University Law Review

BA, College of the Holy Cross (1987)

Bar and Court Admissions

Massachusetts

U.S. District Court for Massachusetts

U.S. Court of Appeals for the First Circuit

Professional/Community Affiliations

Make-A-Wish Foundation, director Golf Committee

Tris Speaker Little League, former coach and director

Worcester County Bar Association

Boston Bar Association

Massachusetts Bar Association

Massachusetts Bar Foundation, fellow

T.J. is a trial lawyer who has tried over 30 jury and bench trials. T.J. is an aggressive advocate with substantial trial and dispute resolution experience. T.J. has been named a Massachusetts “Super Lawyer” by Boston Magazine and Law & Politics in 2004, 2006, and every year since 2010. T.J. was appointed to the Judicial Nominating Commission by Governor Charlie Baker, where he served from 2015 to 2022. T.J. also was appointed by the U.S. District Court in Boston to serve on the ten-person panel for the selection of U.S. magistrate judges in Massachusetts. Prior to joining Mirick O’Connell, T.J. was a partner at another firm and he served on active duty as a trial lawyer in the U.S. Army Judge Advocate General’s Corps. (JAGC).

T.J.’s practice includes leading a highly-skilled business litigation team centered on sophisticated business disputes within various industries, including shareholder derivative suits, real estate development and construction, employment claims (including allegations of constitutional violations), healthcare (involving False Claims Act “FCA” claims), technology, intellectual property, public utilities, and insurance coverage. T.J.’s team has extensive appellate experience – including victories before the Supreme Judicial Court of Massachusetts – and works on highly visible matters involving both closely-held and publicly-traded corporations. Regardless of the nature of the specific dispute, T.J.’s team’s focus on contract interpretation, understanding of business issues, ability to dive into the particular facts of the relevant dispute and field, and formidable talent for trial law drive their cases to success. T.J. also is known as a trusted business advisor and has extensive experience consulting businesses – before, during, and after litigation – with a focus on the needs of the company and an eye toward practical solutions.

Representative Matters

- Represented fiberoptics contractor in an employment dispute wherein T.J. prevailed in a decision issued by the Supreme Judicial Court (SJC) on July 11, 2023, in favor of his client, finding that the SJC’s COVID rules did not toll the statute of limitations of 300 days for filing an action in the MCAD, an executive branch agency, and affirming the decision of the Superior Court on T.J.’s motion to dismiss.
- Plaintiff employee, the president of the union, asserted claims against defendant corporation (T.J.’s client) for violation of his Civil Rights (First Amendment) under 42 U.S.C. § 1983, violation of the Massachusetts Civil Rights Act and tortious interference with employment relationship, arising from the corporation’s termination of the employee. The case was one of first impression involving whether or not one could waive constitutional claims – namely, First Amendment Claims – pursuant to a return-to-work agreement, which issue was addressed by the First Circuit and remanded to the U.S. District Court. The case was settled on the eve of trial on terms favorable to T.J.’s client.

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Representative Matters (continued)

- Successfully staved off preliminary injunction against shopping center client sought by upscale food chain tenant alleging that the center was violating the terms of its lease, which contained an exclusive use provision, by allowing a competitor to sell “sandwiches.” This case was widely reported nationally in the media, including under the heading: “Is a Burrito a Sandwich?” The Court ruled that it was not, as T.J. had maintained, based on the rules of construction for contracts in Massachusetts and that the definition of the word “sandwich” was not ambiguous. This case was referred to in U.S. Supreme Court Justice Scalia’s book, entitled “Reading Law: The Legal Interpretation of Texts,” in which he opined that the trial judge properly interpreted the lease at issue in adopting T.J.’s position.
- Represented healthcare services company in lawsuit brought by large healthcare insurer alleging billing fraud, false claims, and numerous other claims. Asserted counterclaims, including a claim for unfair or deceptive business practices under Massachusetts General Laws, Chapter 93A, based on insurer being in the business of insurance, which survived motion for summary judgment where judge in the Business Litigation Session of the Superior Court adopted T.J.’s arguments that healthcare insurer was in business of insurance and thus in trade or commerce.
- Represented public utility company in a wrongful death suit that was brought by the family of a man who died by electrocution while raising a ladder near high-voltage wires. Plaintiff alleged that there was a defect or malfunction in Defendant’s electrical equipment that allowed primary voltage to enter the secondary system, which caused Plaintiff’s death. After a three-week trial, the jury found in favor of Defendant, T.J.’s client.
- Successfully defended claims in excess of \$2 million brought by a design-builder against the owner of a senior living facility, in connection with a \$14 million construction project. The arbitration was a multi-party, complex case that spanned over 40 days of hearings.
- Represented large healthcare provider in a declaratory judgment action against a local hospital in which T.J. obtained a judgment after a jury-waived trial in Superior Court, in favor of his client, on the proper construction of a 99-year ground lease. If the healthcare provider had not prevailed, it would have owed in excess of \$21 million in damages under the ground lease. Based on the evidence presented by T.J. at trial, the Court both adopted the construction of the ground lease advanced by T.J. and, to the extent that the lease could properly be construed to include the medical office building, reformed the contract based on mutual mistake. The judgment was affirmed by the Appeals Court.
- Won summary judgment for Defendant public utility client. Plaintiff alleged that Defendant negligently placed and maintained a utility pole and supporting guy wire adjacent to a public bike path and caused a dangerous condition. Plaintiff rode into the guy wire, which struck his face and chest, resulting in significant personal injuries, including a cardiac condition, with damages totaling in excess of \$1 million. T.J. argued that the utility pole and guy wire were installed several years before the construction of the bike path by the municipality and that Defendant never received notice of the construction or any problems with the guy wire and, as such, did not owe Plaintiff a duty of care. T.J. also argued that the Massachusetts Statute of Repose, G.L. c. 260, § 2B, barred the Plaintiff’s claims.
- Won summary judgment on behalf of landowner client against developer who claimed that the parties had reached an agreement concerning the sale of land valued in excess of \$5 million.
- After a two-week jury trial in Superior Court, jury returned a verdict in favor of T.J.’s construction contractor client, including the award of substantial damages.
- Successfully litigated and mediated a derivative-shareholder lawsuit or “freeze out” claim, arising from a dispute between the owners of a closely-held corporation, on terms favorable to his client.
- Successfully represented client in a binding arbitration, resulting in his clients being awarded specific performance of a high-value waterfront property.
- Successfully defended a decision of the zoning board of appeals granting a variance and special permit to his corporate client.
- Represented a technology company against a Fortune 100 company in a litigation matter regarding contractual obligations and the performance of solid state drives integrated into industrial server farms, which resulted in a favorable resolution after mediation.
- Represented substantial shareholder in a direct and derivative shareholder lawsuit in which shareholder was allegedly frozen out of the close corporation. Negotiated resolution for client to continue in business, and for business to buy out adverse shareholder.
- Represented holder of a federally registered trademark in an infringement lawsuit, including a request for injunctive relief, under the Lanham Act against Fortune 500 company resulting in favorable outcome for client.
- Represented manufacturing client facing allegations of patent infringement made to its customers by a competitor which held a U.S. patent, whereby client filed a lawsuit in U.S. District Court to invalidate the competitor’s patent, resulting in competitor agreeing to disclaim/abandon the patent.
- Represented substantial shareholder and property manager in shareholder dispute involving multi-company structure which owned and managed tens of millions of dollars of real estate, in Court and in arbitration, and crafted settlement to facilitate sale of properties for favorable resolution.

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Representative Matters (continued)

- Represented corporation against insurer in declaratory judgment action in U.S. District Court for coverage for computer fraud claim arising from unauthorized entry into the corporation's computer system, resulting in favorable resolution for client.
- Represented corporation in multiple lawsuits involving claims of copyright infringement, resulting in judgments in favor of client.
- T.J.'s client, a regional transit authority, was sued by a general contractor for millions of dollars in damages in connection with construction of a commuter rail garage, where T.J.'s client filed a counterclaim, and following a lengthy arbitration at JAMS, his client prevailed. When the contractor was rendered insolvent, T.J. moved to amend against the contractor's surety which claims were denied by the Superior Court, subsequently reversed on appeal, and remanded to the Superior Court for further proceedings.