

JOHN FORDELL LEONE

Principal – LEONE LAW Associates, PLLC
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SUMMARY

32-Year Career Civil Law Litigation Specialist

Eleven years private practice and over twenty-one years as Michigan Assistant Attorney General. Lead trial and appellate counsel in state and federal courts on a wide range of civil practice: administrative law, environmental law enforcement, government permits, corporate entity disputes (corporate veil piercing and officer liability), property disputes, contract disputes, personal injury, medical malpractice, complex litigation, bankruptcy. Responsible for all aspects of case management and execution: evidence compilation, litigation/settlement strategy, expert witness preparation, motion practice, lead trial counsel and appellate counsel.

EDUCATION

University of Michigan – Ann Arbor, Michigan
BGS (History, Political Science) – May 1980

Thomas M. Cooley Law School – Lansing, Michigan
Juris Doctor – January 1986

PROFESSIONAL HISTORY

Principal Counsel 2018 – Present

Leone Law Associates, PLLC – East Lansing, Michigan

Lead counsel for legal team representing individual and commercial clients on all civil matters.

Assistant Attorney General 1997–2018

State of Michigan – Lansing, Michigan

Environmental Negotiations/Litigation Specialist: Extensive experience with settlement negotiations, litigation, trial, and appellate practice for broad range of air, water, and solid/ hazardous waste matters under federal statutes/regulations and Michigan's Natural Resources and Environmental Protection Act (NREPA); with Tribal law and corporate officer liability experience:

Federal Clean Air Act

- Renewable Operating Permits
- Class I Redesignation
- Air Quality Related Values (AQRVs)
- Federal Land Managers

Air Pollution Control (NREPA Part 55)

Pollution Control Tax Exemptions (NREPA Part 59)

Federal Clean Water Act

- NPDES Permits
- TMDLs (federal vs state authority)
- CDFs (federal vs state authority)

Water Resources Protection (NREPA Part 31)

- Rule 98 'Antidegradation' (R 323.1098)

Sewerage Systems (NREPA Part 41)

- Public and private wastewater treatment and storm water sewerage systems

Safe Drinking Water Act (MCL 325.1001 *et seq.*)

Wetland Protection (NREPA Part 303)

Inland Lakes and Stream (NREPA Part 301)

Natural Rivers (NREPA Part 305)

Federal Superfund Act (CERCLA)

Federal Resource Conservation Recover Act (RCRA)

Environmental Remediation (NREPA Part 201)

Hazardous Waste Management (NREPA Part 115)	Environmental Justice (class discrimination and environmental regulatory matters)
Solid Waste Remediation (NREPA Part 111)	
Scrap Tires (NREPA Part 169)	
	Native American Law (Air, Water, Treaty Rights)
Septage Waste Services (NREPA Part 117)	– ‘Tribes as States’ (TAS) Issues
Soil Erosion and Sedimentation (NREPA Part 91)	– ‘Tribal Authority Rule’ (TAR) Issues
Great Lakes Submerged Lands (NREPA Part 325)	– Tribal vs state government enforcement jurisdiction
Submerged Logs Recovery (NREPA Part 326)	– Member of state negotiation team producing
Sand Dune Protection and Management (NREPA Part 353)	Consent Decree (2000) determining Great
Farmland and Open Space Preservation (NREPA Part 361)	Lakes fishing rights of state and five northern
	Michigan Tribes in the 1836 Treaty Waters

Principal Counsel 1989–1997

Law Offices of John Fordell Leone – Dearborn, Michigan (various partners)

Personal injury plaintiff trial counsel: primarily medical malpractice, also highway and general negligence; General corporate and civil litigation, criminal defense, and family law.

Associate Counsel 1987–1989

Kitch, Saurbier, Drutchas, Wagner & Kenney, P.C. – Detroit, Michigan

Environmental insurance coverage defense (specialty: “pollution exclusion,” “sudden and accidental” provisions); Medical malpractice defense, representing physicians and hospitals; Large-scale complex discovery and motion practice; Appellate brief writing.

Corporation Counsel 1986–1987

Environmental Pollution Control, Inc. – New Boston, Michigan

Contract project development and regulatory compliance for hazardous waste remediation and transport services; Corporate risk management, field procedure liability, contract negotiations.

Law Clerk/Associate Counsel 1985–1986

Brown, Wincler & Soifer – Lansing, Michigan

Compilation of personal injury and property damage evidence profiles of 60+ class-action plaintiffs; Assisting trial experts with hydrogeological and biological evidence investigation to develop liability theory; USEPA remediation progress tracking; Responsible Party remedial strategy tracking and insurance claim maintenance; Extensive class-action client contact.

SIGNIFICANT CASES

United States Supreme Court:

Lead author on petition for Writ of Certiorari on behalf of Michigan and numerous industry parties, challenging EPA-favorable ruling by U.S. Court of Appeals, D.C. Circuit; and defending energy industry’s rights of contract and State’s rights to regulate air quality on privately-owned fee land within tribal reservations. *Arizona Public Service Co., et al. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied sub nom., Michigan, et al. v. EPA*, 00-746 (U.S. Sup Ct., Apr. 16, 2001).

United States Court of Appeals, D.C. Circuit:

Lead author for Michigan on appeal, successfully defending superior rights of States and Tribes to enforce Clean Air Act, limiting EPA to subordinate enforcement authority premised on state’s “lead role” to consider industry’s “costs of compliance” under the Act’s Best Available Retrofit

Technology (BART) regulations for controlling “Regional Haze” visibility within Class I national parks and wilderness areas. *American Corn Growers Ass’n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002).

Lead author for Michigan on appeal, successfully defending superior rights of States and Tribes to implement Clean Air Act operating permits program, limiting EPA to subordinate permitting authority premised on EPA establishing failure of state or tribe to implement permit program. *Michigan v. EPA*, 268 F.3d 1075 (D.C. Cir. 2001).

United States Court of Appeals, Sixth Circuit:

Lead defense counsel for Michigan on successful *en banc* petition and successful *en banc* proceedings, prevailing against U.S. Army Corps of Engineers’ “arbitrary and capricious” demand for unnecessary environmental impact statements in attempt to deny Michigan managerial control of its Detroit River Confined Disposal Facility (CDF) at Pointe Mouillee, and to accept disposal of non-navigational dredge hazardous wastes. *U.S. Army Corps of Engineers v. City of Detroit and State of Michigan*, 329 F.3d 515 (6th Cir. 2003) (*en banc*) and 288 F. Supp. 2d 836 (2003) (on remand).

United States Court of Appeals, Seventh Circuit:

Lead plaintiff counsel challenging EPA’s procedure imposing stricter air emission standards under the Clean Air Act by approving redesignation of tribal lands to Class I status, without requiring a Tribal Implementation Plan (TIP) as required under the Tribal Authority Rule (TAR) and Tribes as States (TAS) provisions of the Act. *Michigan v. EPA*, 581 F.3d 524 (7th Cir. 2009).

United States District Court, Eastern District of Michigan:

Lead defense counsel negotiating “Stipulated Settlement Order” requiring Detroit Edison to convert its Conner Creek power plant from coal combustion to natural gas and pay a \$450,000 civil penalty/“settlement amount” due to the coal plant reactivation without proper authorization. *Detroit Edison v MDEQ, et al.*, USDC Case Nos. 98-CV-74129 and 99-CV-70171 (order entered Jan. 3, 2001).

Lead plaintiff counsel negotiating Consent Decree resolving Clean Air Act violations at four Ford Motor Company facilities, requiring termination of remaining operations at its Dearborn Assembly Plant, construction of a waterborne (rather than a solvent-based) primer paint coating system at its new Dearborn Assembly Facility, termination of volatile organic compound (VOC) emission/production limit violations at its Fort Wayne Assembly Facility and Michigan Truck Facility, and payment of \$1.1 million civil penalty. *United States, MDEQ, and Wayne County v. Ford Motor Co.*, U.S.D.C. Case No. 98-CV-60670-AA (decree entered March 16, 2000).

Lead counsel/acting trustee for Attorney General on Trustee Board overseeing implementation of \$28.2 million Consent Judgment resolving Natural Resources Damage claims and requiring extensive dredging of PCB-contaminated sediments from lower Saginaw River, acquisition/restoration of wetland areas, funding of monitoring fisheries, construction of public environmental learning centers and boat launches for recreational access. *Frank J. Kelley et al. v. General Motors*, U.S.D.C. Case No. 98-10368-BC (judgment entered June 4, 1999).

U.S. District Court, Western District of Michigan:

Lead defense counsel obtaining pre-answer voluntary dismissal (filed by Dickinson Wright firm) of complaint (filed by Honigman firm) against Michigan and its MDEQ Director, personally, alleging federal civil rights, due process, equal protection, and First Amendment violations. *Hart Enterprises v. Wyant*, USDC Case No. 1:11-cv-00259 (dismissal filed June 6, 2011).

Lead counsel obtaining TRO and Preliminary Injunction (“continued indefinitely”) prohibiting tribal “research” fishery for being in fact a commercial fishery in violation of 1985 fishing allocation agreement under the 1836 Treaty of Washington, *USA, et al. v. Michigan, et al.*, USDC Case No. 2:73-cv-00026 (order entered May 7, 1998; injunction entered Aug. 28, 1998) .

United States Bankruptcy Court, Eastern District of Michigan:

Lead plaintiff counsel successfully “piercing corporate veil,” establishing via summary disposition the personal liability of principal corporate officer to satisfy state court Consent Judgment resolving housing complex wastewater/drinking water treatment system violations. Judgment requires groundwater investigation, wastewater and drinking water system compliance, and payment of civil fine/costs and stipulated penalties for Consent Judgment noncompliance that presently totals \$3.9 million. Mediation produced settlement including “piercing corporate veil” finding and personal liability to pay \$500,000 penalty within 180 days, with \$3 million failure-to-pay trigger. *MDEQ v. Great Lakes Properties of Fenton, LLC*, Ingham County Case No. 08-281-CE (judgment entered Oct. 21, 2009); and *In Re Great Lakes Properties of Fenton, LLC*, U.S. Bankruptcy Court, Eastern District of Michigan, Case No.14-303332-dof (Adversarial Proceeding No. 14-03172-dof) (summary disposition order entered June 7, 2017).

Michigan Supreme Court:

Lead counsel on pending Application for Leave to Appeal, challenging lower courts’ rulings that 1998 Consent Judgment was unambiguous (mooting review of extrinsic evidence) as to duration of defendant’s duties to prevent contamination of the Iron River in the Upper Peninsula by neutralize chronically upwelling acidic water from dormant iron mine. *MDEQ v PolyOne Corporation* (Michigan Supreme Court Case No. 158360; briefing not completed and decision pending, 2018).

Lead counsel successfully defending state’s statutory interpretation limiting air pollution control tax exemptions to equipment both installed for the “primary purpose of controlling” and operated “for the control, capture and removal” of air pollutants, denying \$500 million tax exemption sought collectively by major engine and automobile manufacturers. *DaimlerChrysler Corp, et al. v. State Tax Comm’n*, 482 Mich 220 (2008).

Lead counsel successfully defending state’s first issuance of permits for commercial harvesting of “submerged logs” from the Great Lakes. *Keweenaw Bay Indian Community v. MDEQ*, Supreme Court No. 126673 (order denying leave entered July 14, 2005).

Michigan Court of Appeals:

Lead plaintiff counsel on successful appellate affirmation of trial court award of enforcement costs, attorney fees, and a sanction against opposing law firm for “intentional misrepresentation

[that] was frivolous,” supporting public nuisance liability for accumulation of 4.2 million scrap tires. *MDEQ v Cole Tire Co.*, unpublished opinion, entered Jan. 17, 2013 (Docket No. 309509).

Circuit Court of Michigan:

Lead plaintiff counsel for evidentiary hearing on “disobedient corporate officer” liability theory to satisfy Consent Judgment resolving remediation costs for discharge of 1,000 gallons of waste motor oil into residential storm water collection system. Judgment requires remediation of waste oil remaining in storm water detention pond and payment of civil fine/costs and stipulated penalties for Consent Judgment noncompliance that presently totals \$700,000. *MDEQ v. Michigan Properties, LLC*, Wayne County Case No. 11-2675-CE (judgment entered Sept. 16, 2013) (evidentiary hearing conducted June 29-30, July 2, 2017).

Lead plaintiff counsel negotiating Consent Judgment requiring design and installation of entirely new wastewater treatment system serving Southwest Detroit mobile home community, and payment of \$315,000 for civil fine/costs. *MDEQ v. Jackson and Arbor Americana*, Ingham County Case No. 14-629-CK (judgment entered Nov. 24, 2015.)

Lead plaintiff counsel negotiating Consent Judgment requiring nation's largest municipal waste incinerator to re-engineer its air ducting system feeding into the incineration process to end chronic odors affecting Midtown Detroit residents, and payment of \$350,000 civil fine for past odor violations. *MDEQ v. Michigan Waste Energy and Detroit Renewable Power*, Ingham County Case No. 14-1184-CE (judgment entered Oct. 20, 2014.)

Lead defense counsel on successful appellate affirmation of final administrative ruling reversing precedent trend by establishing dictionary-based definition of “structure” under NREPA Part 353 (Sand Dune Protection and Management). *Dune Harbor Estates v. MDEQ*, Ingham County Case No. 06-81-AA-C30 (order entered Aug. 9, 2006.)

Lead plaintiff counsel negotiating Consent Judgment requiring re-engineered Basis of Design and Final Plans and Specifications (to meet 25-year/24-hour storm event standard) for city-wide wastewater treatment system serving 10,000 residents, and payment of \$315,000 for civil fine/costs. *MDEQ v. Buena Vista Tsp.*, Ingham County Case No. 06-702-CE (judgment entered June 7, 2006.)

Lead plaintiff counsel negotiating Consent Judgment resolving Wetlands Protection (NREPA Part 303) violations, requiring 30 acres of newly-created wetlands as mitigation and a \$200,000 “settlement payment.” *Cox and MDEQ v. Lakeside Oakland Development*, Oakland County Case No. 01-35946-CE (judgment entered April 23, 2004).

Administrative Cases

Lead defense counsel for MDEQ for scheduled administrative trial involving extensive experts-battle challenges to issued permit authorizing Nestle to increase commercial groundwater withdrawals from 250 to 400 MGD. Allegations also include violations of Native American tribal rights. *In Re: Michigan Citizens for Water Conservation and Grand Traverse Band of Ottawa and Chippewa Indians on the permit issued to Nestle’ Waters North America, Inc. (Consolidated Cases)*, Michigan Administrative Hearing System, Dep’t of Licensing and Regulatory Affairs. Case No. 18-011549 (MDEQ’s direct trial testimony scheduled to be filed Nov. 14, 2018).

Lead “Environmental Justice” counsel for MDEQ obtaining from USEPA/Office of General Counsel its final disposition “resolving and closing” 24-year unresolved Genesee Power complaint alleging civil rights violations for improperly siting and conducting public participation process when permitting new coal-burning power plant located in their community. *USEPA/OCR File No. 01R-94-R5* (closure letter issued Jan. 19, 2017). Also, counsel for MDEQ responding to USEPA/Office of General Counsel’s review of environmental justice allegation regarding drinking water to residents in Flint, MI. *USEPA/OCR File No. 17RD-16-R5* (matter pending, 2018). Also lead counsel currently establishing new MDEQ non-discrimination policies/practices and statewide Environmental Justice policies/practices to accomplish goals set out by Governor Rick Snyder’s Environmental Justice Interagency Work Group and his Executive Directive 2018-3.

Lead counsel at 5-day administrative trial (conducted Oct. 19-23, 2015) involving experts battle over proper Clean Water Act scientific methodologies for establishing phosphorus limits in USEPA-approved Total Maximum Daily Load (TMDL) regulations and enforcing those limits in NPDES permits issued to four municipal wastewater treatment plants. *In Re City of Ann Arbor, Village of Dexter, Chelsea, and Loch Alpine Sewer Authority*, Michigan Administrative Hearing System, Dep’t of Licensing and Regulatory Affairs. Appealed to Washtenaw County Circuit Court (No. 17-001291-AA; Appeal briefing completed, appellate decision pending, 2018).

Lead counsel at 15-day administrative trial (conducted Feb. 8-March 22, 2016) involving nineteen experts in extensive battle over proper scientific methodologies for issuance of NPDES permit for Au Sable River “in-flow” commercial fish hatchery. *In Re: Sierra Club and Anglers of the Au Sable on the permit issued to Harrietta-Grayling Fish Hatch (Consolidated Cases)*, Michigan Administrative Hearing System, Dep’t of Licensing and Regulatory Affairs. Appealed to Crawford County Circuit Court (No. 17-10016-CE; appeal briefing and appellate decision pending, 2018).

Lead counsel negotiating Administrative Consent Agreements to remove approximately 100,000 cu/yds of PCB-contaminated sediments from the Detroit River; whereby Ford Motor Company and MDEQ exchanged in-kind services, \$1.6M cash, and covenants not to sue, to complete USEPA Great Lakes Legacy Act project at the River Raisin Area of Concern. *In Re: Exchanged Considerations* (entered March 27, 2012; amended December 20, 2012).

Lead counsel obtaining Director’s final administrative ruling establishing new “net impacts” interpretation of “important social and economic development” standards in R 323.1098 (“Rule 98”) under NREPA Part 31 (Water Resources Protection) for issuance of NPDES permits. *In Re Petition of York Township*, Michigan Department of Environmental Quality (Opinion and Order entered Aug. 7, 2007).

Lead counsel negotiating administrative Consent Order requiring Lansing Board of Water and Light to remediate coal ash groundwater contamination and payment of \$125,000 for civil fine/ costs. *In re: LBWL, North Lansing Landfill*, WMD Order No. 115-01-98 (order entered April 28, 1998).

MEMBERSHIPS

United States Supreme Court (2000)

U.S. Court of Appeals, Sixth Circuit and D.C. Circuit (1990/1999)

U.S. District Court, Michigan, Eastern District and Western District (1987/1988)

U.S. Bankruptcy Court, Eastern and Western Districts of Michigan (1987/1988)
State Bar of Michigan (Environmental Law Section, American Indian Law Section) (1986)

PRESENTATIONS, PUBLICATIONS, AWARDS

“Clean Air” career recognition award for having “tirelessly worked to protect Michigan’s air quality” and having “made Michigan an easier place to breathe,” Air Quality Division, Michigan Department of Environmental Quality (2016).

“Water Resources Protection” career recognition award for being “instrumental” toward “maintaining a strong compliance and enforcement presence and protecting the state’s water,” Water Resources Division, Michigan Department of Environmental Quality (2016).

Speaker/Mock Trial Trainer: “Deposition and Trial Testimony,” Water Resources Division, Michigan Department of Environmental Quality, Lansing and Marquette, MI (2014).

“Excellence” award for “outstanding effort,” Michigan Department of Environmental Quality (2008).

Panel Speaker: University of Michigan Law School, American Indian Law Day, “Tribes as Protectors of the Environment” (2001).

Co-Author/Speaker: *Common Medical Problems – Blood & Guts for Lawyers*, Professional Education Systems, Inc., Eau Claire, WI (Co-author: Mikel A. Rothenberg, M.D.) (1996).

Author: *The "Truth" About Lawyers and Lawsuits*, The Community Review, Ann Arbor, MI (1995).

Co-Author: *Public Rights on Michigan Waters*, Michigan Department of Natural Resources (Co-author: Frank Opolka, Chief, Law Enforcement Division, MDNR) (1985).

National Representative: 44th Biennial conference, Delta Theta Phi Law Fraternity (1985).

Founding Member/President: Thomas M. Cooley Environmental Law Society (1984-1985).

Congressional Record Investigator: PBS documentary film production team winning National Academy of Television Arts and Sciences (EMMY) Award (Category: Background and Research) for *Chrysler: Once Upon a Time and Now* (1982).

Volunteer: PBS news researcher/production assistant, WTVS Channel 56, Detroit, Michigan (1982).

State of Michigan Consumers Council Volunteer Commemorative Award (1981).

Chair: State Board of Directors, Public Interest Research Group in Michigan (PIRGIM) (1979-1980).

Contributing Writer: *The Michigan Daily*, University of Michigan, Ann Arbor, Michigan (1979-1980).

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(Ver: 01-24-2019)