



RETAIL, FOOD, BEVERAGE & HOSPITALITY

GROUP CHAIR



Dennis J. Brady

Our team has specific retail and hospitality industry experience. We also bring a deep bench of lawyers in other practice areas to provide the full array of legal services to owners, developers, and managers of retailers, hotels, resorts, restaurants, and private clubs as well as rental car companies, travel agencies, amusement parks, casinos, cruise lines and related companies. Our group offers a wide range of litigation solutions focused on preventative services designed to minimize the client's risk of involvement in expensive litigation. When litigation cannot be avoided, our team is able to mobilize with extensive trial experience in both state and federal courts.

AMERICAN WITH DISABILITIES ACT COMPLIANCE AND DISPUTES

Retail and hospitality property owners and tenants often misunderstand their legal obligation to make their premises accessible to individuals with disabilities. Many business operators mistakenly believe that if they have owned or leased their premises since before accessibility laws were enacted, or if they have not made substantial physical changes to their premises during that time, then they have no obligation to make their businesses accessible to individuals with disabilities. In other words, they believe they are "grandfathered in," making them exempt from laws that now require businesses that are open to the public to be fully accessible to individuals with disabilities. The reality is that most business owners welcome disabled customers and offer assistance if it is needed. Yet, both federal and state laws require businesses to do significantly more. Our lawyers are experienced in advising clients on all aspects of the ADA. We also represent clients in suits brought against them for ADA non-compliance. Often, "career plaintiffs" look for violations of ADA in order to seek some form of cash settlement. We fight these claims and win.

APPELLATE ADVOCACY

The appellate outcome of retail, food, beverage and hospitality matters is equally important to

the outcome of a trial or lower court proceeding. Appeals often have precedent setting significance with impact far beyond a single matter. Success at the appellate level requires different skills than those applied at trial. It is important to understand the appellate bench, and the perfection of the record.

Our lawyers' analytical, writing, and oral advocacy skills are honed for success on appeal. Our lawyers have served as judicial law clerks to trial and appellate court judges, providing insight into the working of the priorities and decision-making of the bench.

Our Retail, Food, Beverage and Hospitality lawyers work closely with our Appellate Practice Group - teaming together to often parachute into matters handled by separate trial counsel. We are regularly sought in this regard to serve as appellate monitoring counsel during trial. Clients also engage us to write amicus curiae briefs, and to work with other trial counsel to ensure that retail, food, beverage and hospitality matters are properly postured for appeal.

CLASS ACTION DEFENSE

Achieving success in class action arising from retail, food, beverage and hospitality matters requires strategy for early dismissal, defeating class certification, Rule 23(f) appeals of class certification decisions, and precluding plaintiffs' expert witnesses. This strategy must work backwards from the desired result to be successful. We understand the constantly evolving standards for class certification in the retail, food, beverage and hospitality arena. We have been able to convince parties and courts that certification must be denied. In this regard, we understand that class actions can often be favorably resolved with a comprehensive and irrevocable settlement. Often, carefully negotiated settlements of class actions are true "wins" in that they avoid years of litigation cost, uncertain risk and potential reputational harm. We also recognize the need for coordinated strategy against the setting of regulatory inquiry, government action, or criminal prosecutions. Our team comprehends that a major lawsuit and media exposure can be distressing and can adversely impact public perception and future revenues. We work with our clients from day one to mitigate brand and reputational harm.

CONSTRUCTION

Our team litigates all types of actions that can arise from the development of a retail property, including delay and disruption claims, defect claims, and mold claims. Our construction, design and premises liability litigation experience includes the defense of hotels, restaurants, developers, and retailers in cases arising out of alleged inadequate security, falls by guests, alleged improper design of guest rooms, and food service.

Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on construction issues work closely with team members in our Construction Practice Group.

COMMERCIAL LITIGATION

Our lawyers have defended retail and hospitality clients in breach of contract claims; violations of non-compete, non-disclosure, and non-solicitation agreements; misappropriation of trade secrets; and unfair and deceptive trade practices.

Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on commercial issues work closely with team members in our Commercial and Corporate Practice Group.

DEVELOPMENT, ACQUISITION, AND SALES

We have thorough experience providing a comprehensive range of legal services to the retail and hospitality industry on matters involving the development, acquisition, and sale of retail, restaurant, hotel and golf properties, including:

- Contract review, drafting and negotiation with standard form agreements from AIA, AGC and DBIA, as well as contracts specifically crafted for individual client needs
- The formation of corporations, partnerships, limited liability entities, and compliance with securities laws
- Preparation of strategic alliance/joint venture agreements
- Bid protests
- Stop notices and mechanics liens
- Architectural copyright claims

DRAM SHOP LITIGATION

When injuries have resulted from the careless or intentional actions of an intoxicated person, the retail establishment that served the intoxicated individual may be liable for damages. There are two types of liability claims that can arise against bars and taverns: (1) Dram Shop liability, or claims based on applicable statute; and (2) tavern keeper/innkeeper liability claims, or negligence claims which are based on the common law.

We are the counsel of choice for the some of the largest and most sophisticated property owners and managers throughout the country. The firm successfully defends bars, taverns, hotels and other social organizations against claims from third-parties for injury or death arising from the sale of alcohol to intoxicated patrons or to minors. We regularly represent liquor license holders who have dram shop coverage, as well as license holders without dram shop coverage.

E-DISCOVERY

Our lawyers advise our retail, food, beverage and hospitality clients in developing pre-litigation policies and procedures. We counsel clients on implementing effective technologies to manage and dispose of data defensibly and consistently with emerging best practices. Our team also advises on preserving documents and data effectively where there is a duty to preserve. We work with clients to explain defensible disposal before a duty to preserve arises. Once a duty to preserve arises, we work hand-in-glove with clients on legal holds and their scope. Our managing partner, John Jablonski, is nationally recognized in this arena. He is the Editor of Arkfield's Best Practices Guide for Legal Holds, and the former chair of the Defense Research Institute's E-Discovery Committee.

EMPLOYMENT AND LABOR

As counsel for many retail and hospitality businesses, we guide employers in employment structuring and documentation - with the goal of minimizing claims and litigation. We believe in well-crafted and designed employer/employee relationships that are memorialized in clear and fair employment agreements and other employment-related documents. We also counsel clients in connection with decisions related to disciplining and terminating employees. When an employee alleges harassment or discrimination, we guard our clients' interests. When disputes arise, we team with clients on a strategy that resolves the dispute before litigation ensues. However, we recognize that certain cases are especially difficult to resolve and must therefore be aggressively defended. We have a proven record of success in litigation and arbitration.

Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on employment and labor issues work closely with team members in our Employment and Labor Practice Group.

FOOD LIABILITY

We have a deep understanding of the issues surrounding the defense of food liability, including food-borne illness claims. Our lawyers have defended food and water borne illness litigation both in individual claims and mass outbreaks. Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on food liability issues work closely with team members in our Product

Liability, Fire and Life Science Practice Group.

PREMISES LIABILITY

Our retail and hospitality premises liability experience includes slip and falls; security and trespassing negligence; and injuries from falling items. There are many occurrences that create liability concerns related to the ownership of property. As a business owner or property owner, one can expect someone to claim that property is not reasonably safe. Our lawyers have years of experience defending property owners from claims arising from their premises.

INSURANCE SOLUTIONS

The retail and hospitality industry faces unique risks from dram shop to premises liability. Retailers, restaurants and hotels are often charged with safekeeping of customer data and therefore exposed to cyber risks. Unpredictable circumstances may cause a disruption in the supply chain, a need for a recall of product, or the inability to utilize premises resulting in an interruption of business. Often businesses in this space have a host of overlapping insurance coverage. Our lawyers appreciate which policies are triggered by a set of circumstance and bring decades of experience in successful insurance determination.

Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on insurance issues work closely with team members in our Insurance Solutions Practice Group.

PRIVACY AND DATA SECURITY

The retail & hospitality industry has faced the unique challenge of being the prime target of computer hackers and information breaches over the last several years. Whether our clients require assistance in the creation, implementation, or maintenance of sound practices and compliance procedures, risk assessment and management, responses to data breaches, notification requirements, or litigation including class actions, we are well qualified to lead clients toward positive solutions.

Our Retail, Food, Beverage & Hospitality Practice Group lawyers who focus on privacy and data security issues work closely with team members in our Cyber, Technology and Social Media Practice Group.

REGULATORY

In the food and beverage industry, we counsel clients in food and beverage safety. This includes performance, labeling and potential allergens. We advise on the distribution and sale of food and beverage, and compliance with industry regulation by state, FDA, USDA and other food safety entities, including the Food Safety Modernization Act of 2011 ("FSMA") and the Hazard Analysis & Critical Control Points ("HACCP") regulations. Our lawyers remain current and engaged on the FSMA and HACCP set standards for food safety from raw material production and procurement to manufacturing, distribution and consumption.

RISK MANAGEMENT

Recognizing the high cost of litigation, our lawyers work closely with our retail, hospitality, food and beverage clients to address problems during development, design and implementation so a project can continue in a timely manner and litigation can be avoided. We look to address problems quickly and confidentially with a minimum amount of impact on the ongoing operations.

TRANSACTIONS

We regularly represent retail, food, beverage and hospitality, clients in the negotiation of commercial agreements ranging from simple leases to complex construction contracts to the complex agreements such as the purchase and sale of multi-million dollar resorts or of national

chains.