

# Mark C. Laughlin

Partner

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**Mark's practice focuses on litigation and includes class action, complex commercial, trademark, and other litigation.**

Mark has been appointed Special Attorney General on various occasions, including representing Governor Heineman and other State of Nebraska defendants in major education funding litigation. Mark has argued cases before the Eighth Circuit, Nebraska Supreme Court, and Nebraska Court of Appeals. Mark's class action representation has included cases in the insurance, telecommunications, securities, power generation, retail, concrete, and other industries.

## Experience

### Highlights

- Appointed by Nebraska Attorney General Jon Bruning, with input from Nebraska's Governor as lead counsel in four cases to represent Nebraska's Governor and other State officials in education funding litigation
- Specialization in class actions. Successfully represented clients, including State Farm Mutual Automobile Insurance Company; Level 3 Communications; LLC (NASD:LVLT); infoUSA, Inc.; (NASD:IUSA); Walgreens Co.; Omaha Public Power District; Asarco, LLC; and Acceptance Ins. Cos. Inc. Sec. Litig.
- Tried over 40 jury trials in addition to various bench trials

## Legal Services

Litigation  
Appellate  
Business & Commercial  
Litigation  
Class Action  
Insurance Defense  
Professional Negligence  
Defense  
Personal Injury/Wrongful Death  
Medical Malpractice

## Who I Serve

Healthcare & Pharmacies  
Individuals & Families  
Insurance & Financial Services  
Nonprofit Organizations  
Professional Service Providers  
Public/Private Partnerships

## Admissions

Nebraska  
U.S. District Court for the  
District of Nebraska  
Various pro hac vice admissions  
throughout the country



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### Lead Attorney Representing Nebraska's Governor and Other State Officials in Education Funding Litigation

- *Douglas County School District 0001 a/k/a Omaha Public Schools (OPS), The Nebraska Schools Trust, et al., v. Michael O.Johanns, in his official capacity as Governor of the State of Nebraska, et al.*, Doc. 1028, No. 017 (Douglas County, Nebraska). **Plaintiffs voluntarily dismiss all claims after five years of discovery with trial approaching.** Appointed Special Assistant Attorney General and lead attorney for the State of Nebraska to defend then Nebraska Governor Michael Johanns and all other defendants in a lawsuit filed by the Omaha Public Schools and others challenging the constitutionality of Nebraska's system of funding public elementary and secondary schools. Plaintiffs' experts allege that at least an additional \$750 million per year must be spent on K-12 public education in Nebraska. District Court dismissed plaintiffs' adequacy claims. In 2008, with trial approaching, plaintiffs voluntarily dismissed their case.
- [\*Nebraska Coalition for Educational Equity and Adequacy, et al. v. Michael O. Johanns, et al.\*](#), 273 Neb. 531, 731 N.W.2d 164 (2007). Case dismissed by District Court. Dismissal affirmed by Nebraska Supreme Court. Appointed Special Assistant Attorney General and lead attorney to defend then Nebraska Governor Michael Johanns and all other defendants. Plaintiffs were 34 rural school districts and other individuals challenging the constitutionality of Nebraska's system of funding public elementary and secondary schools. Defendants' Motion to Dismiss was sustained. The Nebraska Supreme Court affirmed, holding that decisions concerning school funding are best left to the Legislature.
- *National Association for the Advancement of Colored People ("NAACP"), et al. v. David Heineman, in his official capacity as Governor of the State of Nebraska, et al.*, Case No. 06cv371 (United States District Court, District of Nebraska). Appointed Special Assistant Attorney General and lead attorney to represent Nebraska Governor and other State officials in lawsuit challenging the constitutionality of parts of L.B. 1024, a landmark piece of legislation addressing education in the Omaha area. The case

### Education

J.D., University of Texas at Austin School of Law, 1991

B.A., University of Notre Dame, 1988



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was dismissed after the passage of subsequent legislation.

- *Chicano Awareness Center v. David Heineman, et al.*, Doc. 1063, No. 959 (District Court of Douglas County, Nebraska). Appointed Special Assistant Attorney General and lead attorney to represent Nebraska Governor and other State officials in lawsuit of L.B. 1024. The case was dismissed after the passage of subsequent legislation.

### Class Action Litigation

- *Mary Lynch, et al. v. State Farm Mutual Automobile Insurance Company*, Doc. 980, No. 654 (Douglas County, Nebraska). **Class certification denied and case dismissed on summary judgment.** Represents State Farm. Plaintiffs filed a nationwide class action alleging State Farm had a scheme to defraud millions of medical payment coverage policyholders by denying valid claims causing millions of dollars in damages. The trial court sustained defendant's Motion to Dismiss the nationwide class allegations but allowed discovery on a Nebraska class to proceed. Subsequently, the District Court denied class certification and dismissed the case on summary judgment. This case is currently pending before the Nebraska Supreme Court.
- [\*McGinn v. State Farm Mutual Automobile Insurance Company\*](#), S-03-597, 268 Neb. 843. **Individual and related class action claims dismissed at pleadings stage.** Part of Lynch case above. Represented State Farm. Plaintiff was a State Farm medical payments policyholder who filed a purported class action for millions of dollars alleging State Farm had a scheme to defraud its policyholders. The trial court sustained defendant's Motion to Dismiss, and on November 29, 2004, the Nebraska Supreme Court affirmed holding that plaintiff had failed to state a cause of action. [\*Lynch, et al. v. State Farm\*](#), 268 Neb. 843 (2004).
- [\*Wayne L. Reinbrecht v. Walgreen Co. d/b/a Walgreen\*](#), Case No. A-05-01317 (Nebraska Court of Appeals). **Class action dismissed with minimal discovery on summary judgment and affirmed by the Nebraska Court of Appeals.** Represented Walgreens. Plaintiff filed a class action alleging Walgreens used deceptive trade practices relating to the sale of various



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products. The District Court converted defendant's Motion to Dismiss into a Motion for Summary Judgment and then dismissed the case in full. The Nebraska Court of Appeals affirmed this decision and denied plaintiff's Motion for Rehearing. *Reinbrecht v. Walgreen Co.*, A-05-1317, 16 Neb. App. 108.

- *Eileen Tyrrell v. infoUSA, Inc., et al.*, Doc. 1050, No. 961 (Douglas County, Nebraska) and *Robert Bartow v. infoUSA, Inc., et al.*, Doc. 1051, No. 861 (Douglas County, Nebraska.) (Shareholders class actions dismissed without prejudice.) Plaintiff shareholders filed class action related to offer to purchase infoUSA by its CEO. The case was dismissed without prejudice.
- *In re Acceptance Ins. Cos. Inc. Sec. Litig.*, No. 8:99CV547 (United States District Court for the District of Nebraska). **Securities fraud class action dismissed on summary judgment and affirmed by the Eighth Circuit.** Represented Acceptance Insurance Company and other defendants. Plaintiff shareholders filed a class action alleging Acceptance has defrauded its shareholders by failing to disclose certain information regarding its property and casualty business causing millions of dollars in damages. The District Court sustained defendant's Motion for Summary Judgment and the Eighth Circuit affirmed. [\*In re Acceptance Ins. Cos. Inc. Sec. Litig.\*](#), 423 F.3d 899 (Neb. 2005).
- *In re Telecommunications Providers' Fiber Optic Cable Installation Litigation*, MDL No. 1452 (Judicial Panel of Multidistrict Litigation) (United States District Court, Northern District of Illinois). Represents Level 3. Over 34 class action lawsuits against Level 3 and other telecommunications companies were consolidated. Plaintiffs allege that Level 3 and others trespassed on adjoining property by laying underground fiber optic cable next to railroad right of way causing billions of dollars in damages. Discovery is ongoing.
- *Thomas G. Stratham, et al. v. Plantation Pipeline, Level 3 Communications, et al.*, No. CV-00-1022 (Circuit Court of Shelby County, Alabama filed October 2000). **Dismissal of seven state class action affirmed by Alabama Supreme Court.** Represented Level 3. Plaintiffs alleged defendants trespassed by installing fiber optic cable within pipeline



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easements in seven states. The trial court sustained defendant's Motion to Dismiss and the Alabama Supreme Court affirmed. *Stratham, et al. v. Plantation Pipeline, et al.*, 876 So.2d 516 (Ala. 2002).

- *James Driver, et al. v. Level 3 Communications, LLC, et al.*, No. CV-01-694 (Circuit Court of Baldwin County, Alabama). **Alabama statewide class action dismissed on Motion for Summary Judgment.** Represented Level 3. Plaintiffs alleged Level 3 trespassed by installing fiber optic cable within public road rights of way causing millions of dollars in damages. Defendants' Motion for Summary Judgment was sustained and the case dismissed.
- *Jerry L. Ostler, et al. v. Level 3 Communications, Inc., et al.*, No. IP00-0718 C H/G (United States District Court for the Southern District of Indiana). **Class certification denied. Represented Level 3.** Plaintiffs filed a class action alleging that Level 3 had trespassed on adjoining landowner's property by laying its fiber optic cable near Indiana highways causing millions of dollars in damages. Plaintiffs filed a motion to certify the class, which was denied by the trial court on August 27, 2002. The individual claims were subsequently settled and the case dismissed.
- *Kenneth J. Schweizer, et al. v. Level 3 Communications, Inc., et al.*, No. 03CA0310, 2006 WL 561802 (Colo. App. Mar. 9, 2006) cert. denied No. 06SC256, 2006 WL 2467929 (Colo. Aug. 28, 2006). **District Court denied class certification and the Colorado Court of Appeals affirmed.** Represented Level 3. Plaintiffs filed a nationwide class action alleging Level 3 trespassed on adjoining landowner's property by laying underground fiber optic cable next to railroad rights of way. Plaintiffs limited their class definition to a Colorado state class only and filed a Motion for Class Certification. On November 25, 2002, the trial court denied plaintiff's motion and the Colorado Court of Appeals affirmed.

#### Sample of Nationwide infoUSA, Inc. Cases

- *The Dun & Bradstreet Corporation v. infoUSA, Inc.*, Doc. ESX-C-235-03 (Superior Court of New Jersey Chancery Division: Essex County). Represented infoUSA, Inc. Plaintiff alleges that infoUSA, Inc. posted



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- misleading articles on its website and asserts Lanham Act and other claims. Discovery occurred for over 2-1/2 years before the case settled.
- *David Prickett and Jodie Linton-Prickett v. infoUSA, Inc., and SBC Internet Services and Yahoo!, Inc.*, No. 2004-61605-393 (393rd Judicial District, Denton County, Texas). **Case dismissed on summary judgment.** Represented infoUSA, Inc. Plaintiffs alleged defendants posted erroneous information about them on the Internet and asserted defamation, invasion of privacy, and other claims. After limited discovery, defendant filed a Motion for Summary Judgment under the Communications Decency Act, which was sustained by the District Court in Texas and the case was dismissed.
  - *Charles E. Frigon, et al. v. infoUSA, Inc. v. Paul Goldner, et al.*, No. L-7554-03 (Superior Court of New Jersey Law Division: Bergen County). Represented infoUSA, Inc. Plaintiff sued infoUSA to collect a judgment in the approximate amount of \$1.5 million plus interest. infoUSA filed a Third-Party Complaint against Paul Goldner and others for indemnification and other relief. District Court granted summary judgment for infoUSA, which has been fully paid.

### Sample of Other Cases

- *Everest Capital Limited v. Everest Investment Management, LLC; Everest Funds Management; Everest Funds; & Vinod Gupta*, No. 8:02cv34 (United States District Court for the District of Nebraska). **Favorable jury verdict and Eighth Circuit opinion obtained in multimillion-dollar trademark infringement lawsuit.** Represented defendants who provided certain investment services and ran two mutual funds. Plaintiff was a multi-billion dollar Bermuda-based hedge fund which filed a trademark infringement lawsuit. Trial lasted one week and plaintiff was represented by counsel from both New York City and Omaha and hired national survey and damage experts. Plaintiff requested damages in excess of \$4 million. The jury returned a judgment for defendant. On January 4, 2005, the Eighth Circuit affirmed. [\*Everest Capital Ltd. v. Everest Funds Management\*](#), 393 F.3d 755 (Neb. 2005).



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- [\*Eicher, et al. v. MidAmerica Financial Investment Corp.\*](#), Doc. 1004, No. 521 (Douglas County, Nebraska). **Multiple clients recover their homes and money damages from company who defrauded them out of their homes.** Represented various homeowners alleging they were defrauded out of their homes. After a five-week trial, the Court returned title to various houses and awarded other damages, costs, and fees. The total verdict was in excess of \$800,000. The Nebraska Supreme Court affirmed. [\*Ivan Eicher and Delores Eicher, et al. v. Mid America Financial Investment Corporation, et al.\*](#), 270 Neb. 370, 702 N.W.2d 792 (2005).
- *Jack Hickstein and Sandra Hickstein v. Omaha Public Power District*, a political subdivision, Doc. 946 No. 001 (Douglas County, Nebraska). **Favorable judgment in house explosion case.** Represented Omaha Public Power District. In January 1994, a power outage occurred near Waterloo, Iowa. OPPD responded to the outage and when the power line was reenergized, an explosion occurred in plaintiffs' house causing a total loss. Plaintiffs claimed OPPD was negligent and retained three experts from around the country. The case was tried to the bench which, on December 3, 2004, entered judgment in favor of OPPD and against plaintiffs.
- [\*Austin v. State Farm Mut. Auto. Ins. Co.\*](#), 261 Neb. 697, 625 N.W.2d 213 (2001), Doc. 940, No. 479 (District Court of Douglas County, Nebraska). **Favorable jury verdict affirmed by Nebraska Supreme Court.** Represented State Farm. Insured plaintiff brought breach of contract action against insurer State Farm alleging that, after a verbal and physical altercation, an uninsured motorist struck plaintiff with her car, causing significant injuries. State Farm's policy provided coverage only for "accidents." The jury returned a verdict for State Farm, which verdict was affirmed by the Nebraska Supreme Court.
- [\*Pleiss v. Barnes\*](#), 260 Neb. 770, 619 N.W.2d 825 (2000), Doc. 9571, No. 1881 (District Court of Sarpy County, Nebraska). **Favorable jury verdict affirmed by Nebraska Supreme Court.** Represented defendant. Plaintiff brought a negligence action against defendant for injuries plaintiff suffered as a result of a fall from a ladder while assisting defendant in shingling his roof. The jury returned a verdict for the defendant, which



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verdict was affirmed by the Nebraska Supreme Court.

### Honors & Awards

- Rated AV® Preeminent by [Martindale-Hubbell®](#)
- Included in [The Best Lawyers in America®](#) in the fields of Litigation-Insurance (since 2015), Mass Tort Litigation / Class Actions-Defendants (since 2018), and Professional Malpractice Law-Defendants (since 2018) (peer nominations)
- Listed in Madison Who's Who Among Executives and Professionals, "Honors Edition"
- Listed in *Chambers USA, America's Leading Business Lawyers* (Litigation: Insurance) (peer review)
- Selected to the 2009-2023 Great Plains Super Lawyers® list
- Listed in Omaha Magazine's "Top Lawyers in Omaha" for Litigation-Insurance (July/August 2021 Edition)
- University of Texas Law School Academic Scholarship (1989-1990)
- Recipient, Best Law Review Note – Administrative/Educational Law (1990)

### Professional Associations

- Nebraska State Bar Association
- Omaha State Bar Association
- Professional Liability Defense Federation
- Fellow – Litigation Counsel of America (2015-present)

### Community Involvement

- Member – Nebraska Arts Council (2011-present); Vice President (2015-2017) (Appointed by Governor Heineman; Appointed Vice President by Governor Ricketts)
- Coach – Duchesne Mock Trial Team; National Champion (2015); State of Nebraska Champion (2014-2015); State of Nebraska Runner-Up (2013)
- Omaha Community Playhouse; Board of Trustees (1998-present);





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Treasurer and Executive Committee (2000-present); Executive Committee Board Member (2006-present); Foundation Board Member (2008-present); President (2008-2010); President-Elect (2007-2008); Vice President (2006-2007); Steering Committee for Capital Campaign (2002); Playhouse Producers – President (1996-1997)

- Musician – St. Margaret Mary’s (2004-present); Lector (1994-2006)
- Board of Directors – Little Brothers-Friends of the Elderly (2004-2007)
- Executive Committee Vice President – Unit 241 (Omaha Duplicate Bridge) (1998-2002)
- Member – University of Texas Law Review (1989-1991)
- Phi Delta Phi – University of Notre Dame