



BASSFORD REMELE

Michael A. Klutho
ATTORNEY



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PRACTICE GROUPS

Class Action/Multidistrict Litigation
Consumer Law Defense
Professional Liability/
Claim Prevention

INDUSTRY GROUPS

Credit and Collection
Financial Services
Law Firms and Lawyers

OVERVIEW

Mr. Klutho has more than 30 years of experience defending clients and helping them prevent consumer law, professional liability, and products liability disputes.

Mr. Klutho represents creditors, financial institutions, collection agencies, attorneys, hospitals, and other businesses facing state and federal consumer-protection statutory lawsuits, defending thousands of consumer related lawsuits during the course of his career. He also defends clients against claims brought by governmental regulators overseeing entities involved in the credit and collection industry.

With extensive experience in the professional defense arena, Mr. Klutho represents lawyers and other professionals in alleged malpractice litigation. He has defended clients in a range of board proceedings, investigations, and related lawsuits for decades. Mr. Klutho also handles products liability and construction law disputes.

Mr. Klutho serves as Treasurer on the Board of Directors for ACA International, Inc. and is a past president of the Great Lakes Credit and Collection Association.

EDUCATION & ADMISSIONS

Education

William Mitchell College of Law, J.D., *cum laude*, 1987
Southern Illinois University, M.A., 1983
University of Missouri, B.S., 1980

Bar Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Eighth Circuit
- U.S. District Court, District of Colorado
- U.S. District Court, Northern District of Illinois
- U.S. District Court, Southern District of Illinois
- U.S. District Court, District of Kansas
- U.S. District Court, District of Minnesota
- U.S. District Court, District of Nebraska
- U.S. District Court, District of North Dakota
- U.S. District Court, Eastern District of Arkansas
- U.S. District Court, Western District of Arkansas
- U.S. District Court, Eastern District of Missouri
- U.S. District Court, Western District of Missouri
- U.S. District Court, Eastern District of Wisconsin
- U.S. District Court, Western District of Wisconsin
- Minnesota
- Iowa
- Missouri
- Wisconsin

Certifications

Minnesota State Bar Association Certified Senior Civil Trial Law Specialist

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EXPERIENCE

Representative Cases

- Represented agency in appeal on two consolidated claims based on the allegation that language in letters was false or misleading and successfully affirmed dismissal at the Seventh Circuit on grounds that consumers lacked Article III standing because they failed to present any evidence of claimed harm.
- Secured dismissal of putative FDCPA class action where challenged letters listed an account with a zero balance because even the unsophisticated consumer is capable of performing simple math.
- Court granted dismissal to collection agency in FDCPA action premised on alleged misidentification of creditor.
- Represented a collection agency, securing a dismissal of a consumer's claim that the FDCPA prohibited a collection agency from informing the consumer that the collection agency may submit a negative tradeline to the Credit Reporting Agencies. Plaintiff claimed that a prior collection agency's reporting on the same account prohibited the subsequent agency from reporting. The Court agreed that the new collection agency had the right to submit a negative tradeline of its own, regardless of whether another party has previously reported a tradeline for the same obligation.
- Represented a law firm, obtaining a judgment on the pleadings establishing that the FDCPA, in relevant part, does not apply to attorneys representing landlords in eviction actions.
- Represented a collection agency in district court, ultimately obtaining an affirmance of the district court's order dismissing the plaintiff's FDCPA claims; the Eighth Circuit Court of Appeals held in a matter of first impression that a materiality standard applies to claims of deception under the FDCPA; *Hill*, 888 F.3d 343 (8th Cir. 2018).
- Represented a law firm and one of its attorneys in district court and on appeal, obtaining a decision affirming summary judgment in a legal malpractice case involving but-for causation claims.
- Represented a collection agency on appeal, obtaining a decision reversing a federal district court order granting class certification on claims involving the Fair Debt Collection Practices Act; *Powers*, 776 F.3d 567 (8th Cir. 2015).
- Represented a collection agency in district court and on appeal, obtaining a motion to dismiss in a case involving the alleged failure to advise of the possible tax consequences of accepting a reduced offer of a delinquent account; *Altman*, 786 F.3d 191 (2d Cir. 2015).
- Represented a collection agency, obtaining summary judgment in a case alleging the agency's voicemail was a third-party communication in violation of the Fair Debt Collection Practices Act; *Zortman*, 870 F. Supp. 2d 694 (D. Minn. 2012).
- Represented a collection agency in district court and on appeal, winning summary judgment when the creditor did not relay that the debtor was represented by a lawyer, establishing a creditor's knowledge is not imputed to a collection agency. This was the first case to address this issue in the Eighth Circuit; *Schmitt*, 398 F.3d 995 (8th Cir. 2005).
- Represented a collection agency in district court and on appeal, obtaining dismissal of claims alleging the language and/or symbols on transmitting collection notices violated the Fair Debt Collection Practices Act; *Strand*, 380 F.3d 316 (8th Cir. 2004).

Additional Representative Cases

- Represented a law firm in district court and on appeal, winning summary judgment and judgment on the pleadings in an alleged unlawful attorney-fee collection and unlawful levy/garnishment practices claim.

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- *Adams*, 777 F. Supp. 2d 1193 (D. Minn. 2011).
- *Savig*, 781 N.W.2d 335 (Minn. 2010). (*Amicus Curiae*)
- *Rahr Malting Co.*, 150 F.3d 835 (8th Cir. 1998).
- *Fletcher*, 105 F.3d 662 (8th Cir. 1997).

Publications

Mr. Klutho has published many scholarly articles, columns, and other materials on topics relating to the areas of consumer law defense, legal ethics, trial and litigation strategies, and more throughout his career.

- *Managing Risk: How to Sidestep These 11 Common Collection Letter Claims and Protect Your Business*, author, ACA Collector, Apr. 2019
- *TCPA 'Clarifications' Likely Lead to Flood of Lawsuits*, author, Minnesota Lawyer, Nov. 24, 2015
- *The Fair Debt Collection Practices Act: A Discussion of Compliance Issues, Legal education Material for the Debtor and Creditor Conference*, author, Minnesota CLE, Oct. 15, 2012, and Oct. 11, 2011
- *Potential Liabilities and Risk Management for Home Inspectors*, author, Heartland Chapter, American Society of Home Inspectors, Jan. 18, 2011

Seminars

During his 30+ year career, Mr. Klutho has presented nationally and regionally on topics relating to the areas of consumer law defense, legal ethics, trial and litigation strategies, and more.

- *Win for the Industry – 11th Circuit Court of Appeals Rules in Hunstein*, presenter, ACA International Hot Topics Webinar, September 9, 2022
- *Meet the New ACA President and Officers*, presenter, ACA International Huddle Webinar, September 7, 2022
- *Legal and Compliance Trends*, presenter, AccountsRecovery.net Webinar, September 1, 2022
- *The Talk-Off*, presenter, AccountsRecovery.net Webinar, June 17, 2022
- *Don't Get Stranded On The [Courthouse] Roadside Due to a "Letter Breakdown,"* presenter, ACA International Hot Topics Webinar, June 9, 2022
- *Reg F: Best Practices Around Compliance and Compliance Litigation*, moderator, Great Lakes Credit and Collection Association 6th Annual Conference, Chicago, Ill., May 12, 2022
- *Debt Collection, Foreclosures, Regulations and the Pandemic*, presenter, National Creditors Bar Association, Nashville, Tenn., May 4, 2022
- *Everything You Always Wanted to Know About Reg F – But Were Afraid to Ask!* presenter, Midwest Collection Conference, St. Louis, MO, April 24-26, 2022
- *What a Chief Compliance Officer Needs to be Responsible For*, presenter, AccountsRecovery.net Webinar, March 25, 2022
- *The Talk-Off*, presenter, AccountsRecovery.net Webinar, March 24, 2022
- *Risk Management Under Reg F For Collection Attorneys*, presenter, Kansas Collectors Association, February 21, 2022

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- *What You Need to Have Ready to Defend Reg F Lawsuits*, presenter, AccountsRecovery.net Webinar, January 17, 2022
- *What's Going to Happen on November 30?*, presenter, AccountsRecovery.net Webinar, November 24, 2021
- *Hunstein and Reg F Walk Into a Bar . . . Unfortunately, It's Not a Joke*, presenter, Hennepin County Bar Association Debtor/Creditor Section, October 20, 2021
- *Reg F Top Issues*, presenter ACA International Huddle Webinar, October 13, 2021
- *Everything You Need to Know About the Model Validation Notice*, presenter, AccountsRecovery.net Webinar, September 23, 2021
- *Is Your Validation Notice Ready for Reg F?*, presenter, Bassford Remele Alphabet Soup Webinar, September 8, 2021
- *Leaving Messages is a Good Idea for Collectors*, presenter, AccountsRecovery.net Webinar, August 24, 2021
- *Tracking Consent Under Regulation F*, presenter, AccountsRecovery.net Webinar, August 5, 2021
- *What Does a Good Anti-Hunstein Case Look Like?*, presenter, AccountsRecovery.net Webinar, July 8, 2021
- *Vicarious Liability in Debt Collections: Holding Creditors and Debt Buyers Liable for the Actions of Collectors*, presenter, AccountsRecovery.net Webinar, June 24, 2021
- *Discussion / Q&A About the New Democrat Majority, with U.S. Senator Gary Peters and Representative Vicente Gonzalez*, panel moderator, 2021 Washington Insights Virtual Fly-In, ACA International, Inc., April 22, 2021
- *Why Regulation F is Going to Result in More "Substantially Similar" Litigation*, presenter, AccountsRecovery.net Webinar, April 16, 2021
- *The Recent Rulings on Standing and What they Mean When Defending FDCPA Suits*, presenter, AccountsRecovery.net Webinar, February 3, 2021
- *Top 5 Errors and Omissions Claim Trends*, presenter, ACA International Hot Topics Webinar, January 20, 2021
- *Avoiding Potential Payment Portal Pitfalls*, presenter, ACA International Hot Topics Webinar, January 14, 2021
- *Lessons Learned Defending Debt Collectors in Court*, presenter, Collector.Live! 2021 Virtual Seminar, January 12, 2021
- *The Biggest FDCPA Mistakes That Collectors Make*, presenter, AccountsRecovery.net Webinar, July 20, 2020
- *Class Action Letter Claims and How to Avoid Them*, presenter, ACA International Virtual Convention, July 15, 2020
- *Prepare Now for a New Wave of Pandemic-Related Litigation Against the Collection Industry*, presenter, ACA International, Inc. Hot Topic Webinar, April 22, 2020
- *The Importance of Working From Home Today to Set The Industry Up For Tomorrow*, presenter, Collector.Live! Home Edition Webinar, April 21, 2020

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- *A Guide to How States are Regulating Debt Collection In the Time of Coronavirus*, presenter, AccountsRecovery.net Webinar, April 15, 2020
- *Legal Panel*, panelist, Collector.Live! 2020, Atlanta, Ga., January 22, 2020
- *Answering Your Dispute Questions*, presenter, AccountsRecovery.net Webinar, December 11, 2019
- *Change Is In The Air: How the Compliance Officer Role in Collections is Evolving*, presenter, AccountsRecovery.net Webinar, October 9, 2019
- *Class Representative Deposition – A Unique Perspective*, presenter, ACA International, Inc. Annual Convention & Expo, San Diego, Cal., July 14-16, 2019
- *Notice of Proposed Debt Collection Rulemaking Deep-Dive Webinar Series: Other Collection Practices*, presenter, ACA International Hot Topics Webinar, June 13, 2019
- *How to Know Which Pre-Litigation Demand Letters to Fight and Which to Settle*, presenter, WebRecon Webinar, May 29, 2019
- *Attorney Panel*, panelist, Great Lakes Credit and Collectors Association Annual Meeting, Wisconsin Dells, Wis., May 21, 2019
- *Lessons Learned in the Trenches – How to Avoid Risks & Win Battles*, presenter, National Healthcare Collector's Association 49th Annual Spring Conference, Myrtle Beach, S.C., April 9, 2019
- *Lessons Learned in the Trenches – How to Avoid Risks & Win Battles*, presenter, Northeast Debt Collection Conference, Atlantic City, N.J., September 18, 2018
- *Lessons Learned in the Trenches – How to Avoid Risks and Win Battles*, presenter, Minnesota Lawyers Mutual Insurance Company, Minneapolis, Minn., September 5, 2018
- *Lessons Learned in the Trenches – How to Avoid Risks & Win Battles*, presenter, ACA International, Inc. Annual Convention & Expo, Nashville, Tenn., July 25, 2018
- *Ethical Issues for In-House Counsel and The Lawyers They Hire (Including Ethical Conflicts)*, panel moderator, Bassford Remele 2018 Spring Seminar, Minneapolis, Minn., June 20, 2018
- *Attorney Panel*, panelist, Great Lakes Credit and Collectors Association Annual Meeting, Delavan, Wis., May 23, 2018
- *The Good, The Bad and The Ugly: Recent Compliance Audits*, presenter, Midwest Collection Conference, Excelsior Springs, Mo., April 26, 2018
- *Compliance, Compliance, Compliance: Collection Processes and Collectors and Risk Management Strategies for Agency Owners/Managers*, presenter, Hawaiian Collectors Association, Honolulu, Hawaii, March 10, 2018
- *Strategies for Attacking Serial Litigators and Baseless Class Actions*, presenter, ACA International, Inc. Fall Forum & Expo, Chicago, Ill., November 2, 2017
- *Considerations for Interstate Collections*, presenter, ACA International, Inc. Annual Convention & Expo, Seattle, Wash., July 18, 2017
- *Attorney Panel - Litigation and Risk Management*, panelist, Great Lakes Credit and Collectors Association Annual Meeting, Delavan, Wis., May 24, 2017
- *Fair Debt Collection Practices Act Panel Discussion*, panelist, Hennepin County Bar Association Continuing Legal Education, Minneapolis, Minn., May 17, 2017

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- *The Aftermath of Spokeo - Where Do We Stand Now?*, presenter, ACA International, Inc. Fall Forum & Expo, Chicago, Ill, November 10, 2016
- *ACA Training: Duties of Data Furnishers under the FCRA*, presenter, California Association of Collectors Annual Conference and Expo, Carlsbad, Cal., October 18, 2016
- *Recent Developments and Hot Tips in Collection Law*, presenter, Bar Wars: Ethics and Debt Collection Seminar, Maryland State Bar Association, August 9, 2016
- *What Have those State Regulators been Doing this Past Year?*, presenter, ACA International, Inc. Annual Convention, Denver, Colo., June 18, 2016
- *Recent Consumer Claims Analysis, Current Hot Claims and What is Next on the Litigation Horizon*, presenter, ACA International, Inc. Annual Convention, Denver, Colo., June 17, 2016
- *Controlling Costs in High Exposure Cases*, presenter, International Association of Defense Counsel Roundtable, Chicago, Ill., May 12, 2016
- *Bias: A Look at the Everyday Impacts*, presenter, Bassford Remele 2016 Spring Seminar, Minneapolis, Minn., May 5, 2016
- *Flying Under the Radar: Complying with UDAAP Under a Time of Heightened Scrutiny*, presenter, ACA International, Inc. Spring Forum & Expo, Las Vegas, Nev., March 10, 2016
- *Where is the Class Action?*, presenter, ACA International, Inc. Fall Forum & Expo, Chicago, Ill., November 6, 2015
- *Hot Topics in Consumer Litigation: What's Happening Now and What's on the Horizon*, presenter, ACA International, Inc. Annual Convention, Boston, Mass., July 21, 2015
- *Bankruptcy/Debtor-Creditor: FDCPA*, presenter, Minnesota CLE, Minneapolis, Minn., January 22, 2015
- *Ethical Debt Collection*, presenter, ACA International, Inc. Fall Forum & Expo, San Francisco, Cal., November 6, 2014
- *Attorney Debt Collection: Hazards and Pitfalls*, presenter, Minnesota CLE, Minneapolis, Minn., October 30, 2014
- *Attorney Panel, Minnesota Association of Collectors Annual Fall Conference*, presenter, Oakdale, Minn., September 30, 2014
- *FDCPA and Consequences of Non-Compliance*, presenter, Maryland State Bar Association, Columbia, Md., August 14, 2014
- *Fair Debt Collection Practices Act: The Latest Trends and Developments*, presenter, Minnesota State Bar Association, Minneapolis, Minn., May 30, 2014
- *Attorney Panel*, panelist, Illinois Collectors Association, Wisconsin Collectors Association and Minnesota Association of Collectors Joint Chapter Conference, Delavan, Wis., May 14, 2014
- *Telephone Consumer Protection Act (TCPA) - A Primer*, presenter, National Healthcare Collectors Association Spring Conference, Miami, Fla., April 29, 2014
- *Common Ethical Pitfalls Facing New Lawyers*, presenter, Minnesota Defense Lawyers Association, Minneapolis, Minn., April 3, 2014

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- *UDAAP and the CFPB: What It Is and How It Applies*, presenter, ACA International, Inc. Webinar, February 18, 2014
- *Attorney Panel*, presenter, Minnesota Association of Collectors Annual Fall Conference, Oakdale, Minn., September 17, 2013
- *Attorney Panel, Bankruptcy, Chicago Licensing, Garnishments, and Other Hot Topics*, presenter, Minnesota Association of Collectors, Wisconsin Collectors Association, Illinois Collectors Association and Iowa Collectors Association, Spring Conference, Wisconsin Dells, Wis., May 8, 2013
- *Defense Litigation Strategies for the Collection Industry*, presenter, ACA International, Inc., Gulf States Unit, Biloxi, Miss. April 9, 2013
- *Defense Litigation Strategies for the Collection Industry*, presenter, ACA International, Inc., Honolulu, Hawaii, February 23, 2013
- *Essential Collection Skills and Techniques*, presenter, ACA International, Honolulu, Hawaii, February 23, 2013
- *Attorney Debt Collection: Hazards and Pitfalls*, presenter, Minnesota CLE, Minneapolis, Minn., January 31, 2013

PROFESSIONAL & CIVIC

Professional Achievements

- ACA International, Inc., Fellow and Scholar

Bar Associations

- Federal Bar Association
- Minnesota State Bar Association
 - Civil Trial Certification Board, past member
 - Consumer Law Section, past Co-Chair
- Iowa State Bar Association
- The Missouri Bar
- State Bar of Wisconsin
- Hennepin County Bar Association
 - Environmental Law Committee
 - Fourth Judicial District Ethics Committee, past investigator

Professional Associations

- ACA International, Inc.
 - Board of Directors, 2002-2004; 2020-present
 - Treasurer, 2022-present
 - Judicial Committee, 2018-present
 - Certified Instructor, 1997-present
 - Board of Directors, 2002-2004
 - CNR Committee, Co-Chair
 - Members' Attorney Program
 - QBE North America Regional Defense Panel
 - Travelers Insurance Companies Regional Defense Panel
 - Northland/Gulf Insurance Company Regional Defense Panel, 2000-2003
 - AIG Claim Advisory Panel, member, 1998-2000

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- Great Lakes Credit and Collection Association
 - Past President, 2021-2022
 - President, 2020-2021
 - President-Elect, 2019-2020
 - Treasurer, 2018-2019
- Association of Defense Trial Attorneys
- International Association of Defense Counsel
- Maritime Law Association, past member
- Minnesota Defense Lawyers Association
 - Products Liability Committee
 - Toxic Tort/Environmental Law Committee
 - Technology Committee
- Minnesota Supreme Court Pro Se Implementation Committee, past member
- Professional Liability Defense Federation
- The National Creditors Bar Association

ACCOLADES

Honors & Awards

- *The Best Lawyers in America*®, Consumer Law, 2022-present
- Minnesota Super Lawyers list, *Super Lawyers*, 1998-present
- Minnesota Super Lawyers Top 100 list, *Super Lawyers*, 2013-2014
- Rated AV Preeminent® by Martindale-Hubbell®
- Unit Leader of the Year, ACA International, Inc., 2022
- Jonathan Elliot Judicial Advocacy Award, ACA International, Inc., 2021
(the award recognizes an individual attorney who has been an outstanding advocate on behalf of the credit and collection industry)
- Fred Kirschner Instructor Achievement Award, ACA International, Inc., 2012
- Foundation Fellow Award, ACA International, Inc., 2002
- Receivables Professional of the Year, *Receivables Advisor*, 2019
- Top Attorneys in Collections list, *Collection Advisor*, 2018
(selected by peers for efforts to improve collections through legal collections, creditor defense and legal consultation)