

## Rise in breach-of-contract disputes amid Rochester's economic uncertainty

■ CAURIE PUTNAM

Economic uncertainty and shifting business dynamics are driving a rise in breach-of-contract disputes across industries, according to area attorneys who practice commercial litigation. And, while financial pressures play a role, a renewed willingness to enforce contractual rights is also fueling the trend.

"Litigation happens when expectations aren't being met," said Chad W. Flansburg, a partner in the litigation practice group at Phillips Lytle. "Ultimately, I believe that's what's feeding into more and more litigation."



Chad Flansburg

Flansburg said he has seen an uptick in contract-related disputes driven by a combination of economic volatility and increasingly complex commercial relationships. Supply chain disruptions, cost overruns and resource scarcity can make performance under long-term agreements more difficult, particularly in industries like construction.

"There seems to be always litigation involving cost overruns, delays, supply chain issues and performance issues," he said, noting increased disputes tied to large projects. He is also seeing more claims involving commercial vendor and service agreements, particularly around performance metrics and payment obligations.

As contracts grow more detailed and risk management tools become more sophisticated, expectations on both sides rise accordingly. When market conditions shift, those expectations can quickly fall out of alignment.

To reduce risk, Flansburg emphasizes being proactive.

"The best risk management still happens on the front end," he said, adding that companies should regularly review and update standard contract terms in response to evolving market conditions.

He notes that clear drafting remains one of the strongest defenses against future disputes and says businesses should use precise language around obligations, timing and remedies and avoid vague standards that invite competing interpretations.

Increasingly, contracts also include dispute resolution mechanisms like escalation clauses, mediation and arbitration provisions that are designed to resolve disagreements before they escalate into full-scale litigation.

Jeffrey A. Wadsworth, a partner at Harter Secrest & Emery who leads the firm's antitrust practice group, sees similar trends and emphasizes that the rise in contract disputes is not driven by economics alone.



Jeffrey Wadsworth

"I think there's been a psychological shift and a mood shift," said Wadsworth, who observed that during the height of the COVID-19 pandemic, many businesses took a wait-and-see approach to breach of contract claims.

That reluctance, he said, has largely faded.

"If businesses have a valid breach of contract claim, they're more likely to bring it today than they seemed to be four or five years ago," Wadsworth said. "The other thing that I think is rele-

vant is that, particularly during COVID, lots of businesses took a fresh look at their agreements and I think businesses are paying more attention.”

Wadsworth said business leaders across industries are looking more closely at the language of their agreements and thinking carefully about what their rights and remedies may be.

“There’s a little closer watch on holding contracting parties to the terms of the agreement,” he said. “I think that’s maybe because of COVID and the kind of situation where lots of companies were thinking about force majeure and those types of clauses.”

Economic pressures are also playing a role in contract disputes, with higher interest rates, supply chain challenges and tighter margins creating an environment where performance under certain agreements is more difficult.

“When there are economic difficulties, you’re more likely to see breaches of agreements,” Wadsworth said, particularly in complex manufacturing and supply relationships where one missed delivery can have cascading effects.

But the increased willingness to assert claims, Wadsworth suggested, reflects a broader shift in posture. Companies that spent years navigating uncertainty are now returning to stricter enforcement of negotiated obligations.

He advises businesses to revisit long-term agreements period-

ically and dust off standard form contracts to ensure they reflect current law, technological developments and market realities.

“Consult lawyers at the front end of entering a contract,” Wadsworth said. “And revisit those agreements from time to time.”

Julian B. Modesti, co-leader of the business litigation practice group at Harris Beach Murtha, said the increase in disputes reflects both economic pressures and internal business dynamics.



Julian Modesti

“Every case is different, every industry is different,” Modesti said. “But there seems to be an increase in business litigation issues, and within that, there’s almost always a breach of contract element.”

He is seeing heightened activity in the finance sector, including defaults on promissory notes and other payment obligations, as well as in so-called “business divorce” disputes among owners of closely held companies, partnerships and LLCs.

“You’ll get into a case and find that there was an interest rate reset, or a key customer was lost, or inventory delivery times were disrupted,” he said. “Then you add in the parties’ own contributions, business strategy decisions, judgment calls, or simply bad feelings between owners, and that’s often where the conflict grows.”

Modesti said enforcement strategies are also evolving. Courts and parties alike are increasingly focused on resolving disputes earlier to control costs.

“There’s a continuing trend for the parties and the courts to try to resolve the dispute as soon as possible without incurring significant legal fees,” he said.

Early negotiations, mediation and arbitration are frequently used to avoid prolonged litigation. In some cases, arbitration is mandated by contract; in others, parties voluntarily opt for alternative dispute resolution to obtain faster, more specialized decision-making. Many contracts now include escalation clauses requiring business-level discussions before litigation begins.

“These strategies can result in earlier resolution with significant savings in litigation costs and attorneys’ fees,” Modesti said.

For businesses, the most effective risk reduction remains proactive drafting and disciplined enforcement. Well-drafted agreements that are tailored to the applicable law and industry can provide incredible dividends later, said Modesti, who cautioned against overreliance on generic or AI-generated contract language.

“Parties really need to invest in drafting the best contract they can right from the start rather than trying to fix it later or litigate about it later,” Modesti said.