

## INDUSTRY

## Manufacturing

## KEY CONTACTS

Rory Z. Fazendeiro

T. 617-757-6507

E. rfazendeiro@bowditch.com

## PARTNERS

Paul C. Bauer

Peter F. Cifichiello

Danielle Jurema Lederman

Julie K. O'Neill

Timothy P. Van Dyck

Robert G. Young

## OF COUNSEL

Robert D. Cox, Jr.

Raymond M. Ripple

## PARALEGALS

Kristin M. Pavao

## OVERVIEW

## MANUFACTURING

Manufacturers and distributors throughout Massachusetts have relied on Bowditch for over 100 years. Over that time, the landscape for our clients has changed...and we have changed with it. Our Manufacturing Industry group is a team from across the spectrum of legal disciplines, assembled with a single purpose: to provide our manufacturing and distribution clients with the guidance they need to grow and prosper.

Clients regularly turn to our team members for help with financing, corporate structure, managing human assets, protecting and commercializing intellectual assets, corporate structure, operations and compliance, expansion or disposition and wealth management services for owners and senior managers.

Our focus is on helping clients solve problems and take advantage of opportunities. To do that, we take the time to get to know your business and your industry, allowing us to give you not only the right legal answer to your problem, but the best advice for your business.

## Developing and Managing Real Estate Assets

- Business formations and reorganizations
- Shareholder agreements
- LLC operating agreements
- Owner disputes
- Joint ventures
- Corporate and LLC governance
- Formation and management of stock option plans, ESOPs and LLC incentive plans
- Family business issues
- Reorganizations and recapitalizations

## Financing

- Bank and other debt financing
- Equity financings
- Raising capital through public finance vehicles, including Industrial Development Bonds
- Equipment leasing involving multiple parties and locations
- Workout arrangements with lenders

## Managing Human Assets

- Employment audits, compliance, advice and counseling
- Defense of all employment related disputes
- Protection of intellectual capital from employee misuse
- Defense and prosecution of non-compete, non-disclosure and non-solicit agreements
- Affordable Care Act compliance
- Draft employment policies, handbooks, offer letters, employment agreements and other employment related documents
- Union organizing drives
- Grievance arbitration
- NLRB actions regarding elections and unfair practices
- Labor contract negotiations
- Employee benefits
- OSHA proceedings

## Protecting and Commercializing Intellectual Assets

- Patenting technology
- Draft non-disclosure, non-solicit and non-compete agreements
- Non-compete, trade secret and non-solicit litigation
- Patent and trademark litigation
- Research & development contracts
- Licensing & technology transfer
- Trademark & copyright registrations
- Marketing agreements

## Developing and Managing Real Estate Assets

- Leasing
- Permitting and developing new facilities

- Brownfields development
- Real estate finance
- Construction contracts
- Construction litigation
- Environmental and land-use litigation
- Energy efficiency initiatives, including solar installations
- Energy purchase contracts

## Operations and Compliance

- Product and supply distribution contracts
- Commercial transactions
- Toxic torts and other environmental litigation
- Antitrust issues
- Creditor bankruptcy issues

## Expansion or Disposition

- Expansion financing
- Business succession planning
- Mergers and acquisitions
- Sale of business assets or stock
- Bankruptcy and alternative liquidations

## Wealth Management Services for Owners and Senior Managers

- Estate and gift planning
- Financial and tax planning
- Insurance planning
- Investment management

## EXPERIENCE

### An invoicing investigation uncovers widespread fraud

We were hired by a Massachusetts manufacturer when the HR director of the company realized that invoices were being padded. This was typical of a lot of cases we've handled. We investigated who was involved and determined how we were going to prove it. As we proceeded to investigate the client's allegation of fraudulent invoice and expense practices, we began to unravel a widespread scheme involving several employees. Our report to the client could have served as an indictment. It resulted in several employees being terminated with cause and saved our client hundreds of thousands of dollars annually.

### Helping a manufacturer sell his business

The founder and owner of a 20-year-old-plus manufacturing company in New England received an attractive, unsolicited offer to buy his business. We helped with due diligence and negotiation of the terms of the stock sale. We worked opposite Chicago counsel in handling the seller's needs. In the process, we formed and quarterbacked a team of trusted advisors for the client.

### An aggressive litigation strategy succeeds

Our client, a world-wide manufacturer of high-tech devices, was sued by one of its foreign distributors after entering into an agreement abroad. The distributor claimed breach of contract, implied covenant of good faith and fair dealing along with violations of Mass. G.L. c. 93a for failing to honor the exclusivity provisions of its distribution agreement and failing to deliver marketable goods. The distributor sought over \$2.3 million dollars in single damages, in addition to double or treble damages. We helped the client prevail, successfully defending against the claim and winning its counter claim. The client obtained an arbitration award, with the arbitrator ruling in its favor on all counts and awarding \$300,000 for its counter claims along with a declaratory order terminating any further claims or rights of the distributor. This victory came at a time when the client was unwinding a prior growth strategy. We took the matter all the way to a decision, an approach that best suited the client's business strategy.

### Winning with a “skillful defense” at the trial and appeals level

After we won at the trial level before a jury, our client – a national lighting manufacturer – faced an appeal to the First Circuit involving a \$2.5 million claim for sexual harassment. The trial court decision was upheld on appeal where, in a published opinion, the court commented on the firm's “skillful defense.”

### OTHER EXPERIENCE

- High-end pump manufacturer in connection with all of its labor and employment needs. We also represent this client on all of its corporate and products liability matters.
- Global manufacturer of aerogel insulation on labor and employment issues, including non-compete and non-solicit matters.
- Manufacturer of stainless steel needles and tubes on all of its non-compete and employment matters.
- Working hand-in-hand with clients, such as a cutting tool manufacturer, a global supplier of high-value, engineered systems, a printed paperboard packaging vendor, and a supplier of mechanical accessories, to address personnel issues related to leaves of absence, discipline, reorganizations, reductions-in-force and disability accommodation issues so that clients can satisfy their legitimate business needs, while minimizing their legal exposure.
- Cutting tool manufacturer, as well as a global supplier of high-value, engineered systems, both of which were facing significant legal exposure and potential damages related to corporate reorganizations, reductions-in-force, senior executive terminations and leave and accommodation issues, as well as alleged OSHA violation claims.
- Non-compete and non-solicitation claims involving critical senior executives in state court. In both types of situations, we were able to protect the significant business interests of our clients.
- Collective bargaining agreement with the United Steelworkers that relaxed work rules and reduced overtime costs, thereby increasing our client's ability to be competitive in its market.
- In-house training for senior executives and managers from a cutting tool manufacturer, a global supplier of high-value, engineered systems, and a printed paperboard packaging vendor on cutting-

edge employment law issues.

- Grievances for a cutting tool manufacturer and an office furniture manufacturer involving outsourcing of work, alleged violation of work rules and terminations of employees for disciplinary reasons.
- Drafted employment agreements, employee handbooks, policies, and other employment documents for a global supplier of high-value, engineered systems and a printed paperboard packaging vendor.
- Privately-owned frozen food distributor in minority shareholder litigation.
- Cutlery manufacturer in product liability action involving alleged faulty packaging.
- Specialty chemical manufacturer in the transfer of the ownership of U.S. and foreign trademarks.
- Manufacturer of saws and tools for processing wood, paper, and metal in the transfer of the ownership of U.S. and foreign trademarks following corporate reorganization.
- Distributor of specialty yarns in the acquisition of trademark protection for branding new products.
- Multi-state training for supervisors and managers on employment laws, including identifying and responding to harassment and discrimination, workplace bullying, accommodations of individuals with disabilities and leaves of absence.
- Implement personnel policies and procedures, including reporting of workplace injuries and illnesses and compliance with safety regulations.
- Lack of probable cause finding from the MCAD in age discrimination and disability claim brought by long-term worker terminated for performance issues.
- Temporary working visas for engineers.