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Features:

Brian Sund
of Morrison Sund PLLC
○ **Attorney of the Month**

Larson King
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“Sund at his desk practicing his mantra, “if you don’t laugh once in awhile in this business, you’ll be wiped out in a year!”

BRIAN SUND *of* MORRISON SUND PLLC

Built to Serve; Designed for Local, National and International Success

By Lynette Carrington

The entire team at Morrison Sund PLLC brings a focused dedication to its clientele. With the breadth of experience and legal expertise to match the most challenging of legal issues, the strength of Morrison Sund as a whole becomes a valuable asset to its clients. Brian Sund, principal at Morrison Sund, practices in the areas of construction law (AIA/AGC contracts), title litigation and real estate litigation. Armed with a proven track record, a wicked arsenal of legal experience and a can-do attitude, he continuously proves why he is a highly sought-after attorney.

Beginning with his early interest in law, Brian Sund was influenced by his father, a CPA, and those business associates with whom he was associated. An acquaintance of Sund’s father in the then-burgeoning town of Tomah, Wis., was an attorney and, as a young boy, Sund was impressed. It may have helped that the attorney had confidence and the cool swagger of Steve McQueen. “When I saw ‘And Justice for All’ with Al Pacino in 1977, I ran out of the theater and said, “That’s it. I want to be like Al Pacino,” said Sund. “Looking back, I probably wanted to be

an actor....Ha!” Now, his dedication to serve his clients “come hell or high water” mimics even the toughest legal battles ever captured on screen.

Construction And Real Estate Litigation

“We represent title underwriters across the country. There are only four underwriters in title insurance,” stated Sund. “Fidelity, First American, Old Republic and Stewart, and we were lucky enough to get into that area of practice back in the early ‘90s, and we just slowly developed a reputation for title defense in Minnesota.” Much of the work Morrison Sund does is related to construction or real estate and is often retained by one of those specific underwriters to defend a client’s position. Mechanic’s liens, boundary disputes and foreclosures are all common issues that Sund and his team handle. “That’s a good 70 percent of my practice,” noted the attorney.

Class Action

In 2002, Sund received a case that would prove to be a game-changer for the firm. He received information that involved

test results from a local lawnmower manufacturer and the horsepower of its engines. The test results showed a glaring discrepancy between the horsepower listed on the mower at the retail level and the horsepower that was actually being produced vis-à-vis a dynamometer. Sund worked the case for almost a year and then joined forces with the pre-eminent class action firm in Minneapolis, Heins Mills & Olson, to file a class action case against multiple small engine producers and manufacturers across the United States. The case essentially claimed a conspiracy to artificially inflate and label horsepower in order to sell more lawnmowers or other small machines from original equipment manufacturers. Although the case lasted more than eight years and produced a significant strain on the financial wherewithal of the firm, Sund ultimately prevailed and the case settled for tens of millions of dollars. “The case was a once-in-a-lifetime opportunity for me,” said Sund, looking back on the experience. “I’m proud of the result, and because of that case we now have a thriving class action practice that I never dreamed would be the case when I first started practicing here.”

Minnesota Supreme Court Cases

“We’ve been fortunate over the last several years to argue three cases at the Minnesota Supreme Court,” Sund stated. “We were even more fortunate to *win* in those three cases, which is an amazing achievement by itself. Those cases all related in some respect to a mechanic’s lien.” In those types of cases, the priority of a lien is often not as cut and dry as it seems. The underlying issue in all of those cases was borne out of some type of construction issue. Sund also handles cases dealing with nearly anything related to AIA or AGC contracts “We’ll often litigate issues that arise out of something going wrong on a construction project,” said Sund.

One particular case that went to the Supreme Court dealt with Torrens property, a particular manner in which real estate in



Sund conferring with Kerry Trapp and Stacy Kabele, two of five associates that comprise the litigation team at Morrison Sund.



Morrison Sund partners, Jane Welch, Brad Ayers, Jim Clay, Jim Morrison and Sund (Michael Murphy missing from photo).

Minnesota is indexed and identified (Minnesota is one of just a handful of states that recognizes Torrens property, but the method dates back to the 1800s). Sund’s client was a bank lender on a multimillion dollar construction project that went south because the owner ran out of money. The contractors that had been working on the project started filing mechanic’s liens, and eventually foreclosed on their liens, claiming priority over the lender’s mortgage.

The lender was competing with those mechanic’s liens for priority position. Initially, the developer sold off one particular piece of land to an owner. Sund’s client, the lender, took a mortgage and filed it with the Registrar of Title’s Office as a Torrens property. “A year went by and for reasons unknown to this day, the Torrens office failed to place the mortgage on the certificate,” Sund explained. When the property went south and the liens started getting filed, the lender was concerned because there was no “official record” of Sund’s client having a lien. “The essence of the issue was, what does ‘recording’ mean in a Torrens context? My client argued that once the bank has done all it can do to ensure the priority of its mortgage by filing the mortgage with the Registrar of Titles, it is done. It can’t force the Torrens people to physically enter the time-stamped mortgage onto the certificate of title,” Sund said. It was a massive public policy argument.

The parcel at issue under the original certificate of title was never sold to a third party. But that could have yielded a different result if the certificate had “flipped.” In the end, the date/time stamp of the recording of the lien won out, regardless of the fact that the lender’s mortgage never made it onto the certificate of title. Sund won on a summary judgment at the district court level. An appeal was filed, which reversed the initial decision.

"I tell my construction clients not to worry about coming into my office; let's meet on site. Heck, I'll set up shop there if it makes sense!"



Sund then took the case to the Supreme Court, which reversed the appellate court decision. That case is a victory for lenders because it clarifies their responsibility to obtain priority of their mortgages in a Torrens context.

Another case Sund's firm handled that recently went up to the Supreme Court involved the mechanic's lien of an architect. Upon the closing of the sale of the property, the lender believed everyone was paid off, including the particular architect at issue. The architect had performed work on the project, however, that was unknown to the lender at the time of closing and later filed a substantial mechanic's lien against the property, claiming priority over the lender's mortgage. But an architect's lien differs slightly from other mechanic's liens because there is no discernible "visible improvement" to the property. The priority was decided in favor of the lender. "The Supreme Court likely agreed to hear the case because the issue was one of first impression under an ever-evolving mechanic's lien statute," Sund noted. "These types of lien priority cases are often of interest to the Supreme Court as they help to establish workable precedent." Obtaining clarity of a statute's language is extremely important, especially given a recovering economy in terms of the real estate market.

The Morrison Sund Team

When Sund first came to the firm in 1999, it was known as Morrison & Fenske and he helped to grow the firm from 5 attorneys to 20. Part of that success is because of the partners with whom they've aligned. As Sund jokes, "One of my partners says to her colleagues that we're the best-kept secret in the West. That's a really nice compliment." The firm has built up slowly and has more associates than partners, as they have been very selective with those partners.

Jim Morrison heads the real estate department, primarily dealing with commercial real estate transactions. He is a certified real estate specialist, which is a unique stamp of approval in Minnesota for real estate lawyers. "He's highly regarded and I've never seen a more competent lawyer than Jim when it comes to complex real estate transactions. It's relaxing to know that when you have a client that has a difficult problem or need in that area, you can take it over to Jim and it's completely handled," Sund stated.

Another principal at Morrison Sund came from a large firm. Jim Clay focuses his practice on trust and estates law. He also has a master's in tax law. "Because of that unique area of his practice, we represent clients all over the United States. We have professional athletes that come in for Jim's expertise in protecting their estates," notes Sund. Seeing a pro in the halls at Morrison Sund happens with some frequency. Numerous sports agents are aware of Jim Clay's expertise and refer their clients to him. "The more complicated the issue, the more money at stake, the better Jim gets. He is scary-smart with estate tax issues and says things that make my eyes gloss over. I feel very blessed that we have a partner like that. He raises the bar on our 'best kept secret' out here in the suburbs," stated the attorney.

Principal Jane Welch also came from a large firm. "She's the bankruptcy expert. She clerked for one of the smartest and most respected bankruptcy judges in the Twin Cities. Anyone who gets in front of that judge, well, your knees are knocking even if you've been practicing for 30 years," noted Sund. Part of Jane's success is no doubt rooted to her experience with that judge. Welch represents Fortune 500 companies that hire her for work-outs and other bankruptcy matters because of her in-depth experience in that arena. On the flip side, Jane focuses a substantial amount of time and energy on women entrepreneurs.

Principal Brad Ayers, also a lateral from an established downtown Minneapolis firm, brings more than 25 years of insurance defense experience and a truckload of insurance carriers with him. Together, Ayers and Sund have grown the firm's insurance

defense practice into a recognized commodity. “Brad and I went to law school together, too, which makes this aspect of the firm’s growth that much more exciting to me,” says Sund.

Principal Mike Murphy, the most recent addition to the partner group, practiced law in Germany for 12 years and speaks fluent German. He is an expert in government and international contracts. Referrals come to Mike from Fortune 500 companies because of his unique practice and specialized skill set.

The firm didn’t set out to have such an all-encompassing practice. It wasn’t the original intent to grow the firm back in 1999. “We never started out to grow, actually, but it just sort of happened by accident. Fenske and Morrison did not truly appreciate how talented they were. I guess I zeroed in on that,” Sund explained. “It took off from there, from my perspective, because quickly I realized that Jim and Dave were not aware of how marketable they really were. I came from a different perspective and had been with large firms before joining Morrison & Fenske. I understood the importance of marketing and, because we got along so well, I just decided to run with it and not worry about how big or fast we grew. It was the greatest decision I ever made...marketing *their* talents. It has always been my belief that it’s exponentially easier to market someone else’s skills than sitting in a room talking about yourself all day. So I started talking about my partners. All of a sudden, we had clients coming out of the woodwork,” Sund reflected. This marketing philosophy for success is shared among all the principals.

Morrison Sund also has a burgeoning team of associates who fit the mold at Morrison Sund of team play. “Our associates are smarter and more talented than I could have ever imagined,” Sund said. “The running joke is that now I could never get hired here in a hundred tries.” The firm has little turnover, usually with attorneys who do leave joining in-house opportunities rather than other firms. “We think that’s a reflection of the professional environment we try to cultivate,” Sund stated.

Now running like a well-oiled machine, the staff at Morrison Sund prides themselves not only on their legal experience, but on their customer care and response time. The firm goes to great lengths to ensure they get back to clients promptly and to have their clients engaged during every step of the legal process. The first rule of taking care of clients is to listen. “The second rule,” Sund said, “is to never forget the first rule.” Morrison Sund may no longer be the Twin Cities’ “best-kept secret.” The cat’s out of the bag.

At A Glance

Morrison Sund, PLLC

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Bar Admissions:

- Minnesota, 1988
- U.S. Federal District Court, 1988
- U.S. Court of Appeals, 8th Circuit, 1988

Practice Areas:

- Construction Law
- Title Litigation
- Real Estate Litigation

Education:

- B.A., University of Wisconsin-Eau Claire, 1983
- J.D., William Mitchell College of Law, 1988

Clerkship:

The Honorable Patrick W. Fitzgerald, Hennepin County District Court

Professional Memberships:

- Minnesota State Bar Association, 1988-present
- Hennepin County Bar Association, 1988-present

Professional Awards:

Minnesota Law and Politics Super Lawyer, 2011-12

Hobbies:

Golf, Boating, Music, Movies, Travel, Raptors anything!

Favorite Quote:

“Hey, how come Andrew gets to get up? If he gets up, we’ll all get up. It’ll be anarchy.”

John Bender, “The Breakfast Club”

Favorite Inspirational Person:

John Adams