Supreme Court and Appellate Litigation

Skadden

Appeals often involve novel or high-stakes legal questions — issues that can't be resolved through settlement. Clients turn to Skadden's Supreme Court and Appellate Practice for our deep strategic thinking, persuasive briefs, and forceful oral advocacy. Led by one of the nation's most accomplished Supreme Court and appellate advocates, the attorneys in our group routinely argue before the U.S. Supreme Court and have extensive experience practicing before every U.S. Court of Appeals, as well as state appellate courts nationwide. Skadden's Supreme Court and Appellate Practice briefed and argued four merits cases in the Court's 2022 Term, more than almost any other firm. The Practice is handling two more merits cases in the Court's current Term.

No matter the subject area, we embrace the challenge of distilling complicated cases to their essence and presenting them in clear, meticulous briefs and compelling oral arguments. Whether we are defending a favorable decision or working to overturn a loss, we bring a fresh perspective to cases and insights into what moves generalist judges. Our ranks include former law clerks to federal appellate judges, including several U.S. Supreme Court Justices.

As appellate generalists, we don't work alone. We join forces with Skadden's market-leading trial attorneys, drawing on their wealth of substantive knowledge in particular areas and their experiences in specific courts. When called upon to do so, we also collaborate seamlessly with co-counsel at other firms who first tried the case. At the trial level, we leverage our appellate experience to counsel clients on key strategic issues and to brief and argue dispositive motions with an eye toward appeal.

Our efforts have resulted in precedent-setting victories for clients in cases spanning the legal spectrum, including matters of constitutional law, administrative law, antitrust, arbitration, bankruptcy, labor and employment, ERISA, tax, telecommunications, securities, preemption, energy, intellectual property, criminal defense, and complex statutory interpretation. Our attorneys also maintain an active pro bono practice, regularly representing clients in both the U.S. Supreme Court and the federal courts of appeal.

Skadden's Supreme Court and appellate litigation lawyers have been ranked by *Chambers* and *The Legal 500*, and recognized as *Law360* Appellate MVPs, *The American Lawyer* Litigators of the Year, *The National Law Journal* D.C. Rising Stars, and *Bloomberg Law* Pro Bono Innovators. The firm was recently named to *The National Law Journal*'s 2023 Appellate Hot List. In addition, we have been named to BTI Consulting Group's Fearsome Opponents list and recognized repeatedly among BTI's Fearsome Foursome — the elite law firm litigation practices that general counsel would "least want to face across the table in litigation." The firm was also selected as the *New York Law Journal*'s 2021 Litigation Department of the Year and a finalist in the general litigation category of the *NYLJ*'s 2023 and 2022 Litigation Department of the Year competitions, and recognized as a 2021 Litigation Department of the Year finalist by *The American Lawyer*.

U.S. Supreme Court

The head of our Supreme Court and Appellate Practice has argued 19 cases in the U.S. Supreme Court. He argued three cases during the Court's 2022 Term, in which Skadden's Supreme Court and Appellate Practice briefed and argued more merits cases than almost any other firm. The Practice is handling two more merits cases in the Court's current Term. Attorneys on our team have drafted numerous Supreme Court merits briefs, as well as dozens of petitions for certiorari, briefs in opposition, and amicus briefs in cases involving everything from international arbitration and federal preemption to statutory interpretation and the Fourth Amendment.

Notable representations and victories by attorneys working in our group include:

- *Caniglia v. Strom*, in which the Court unanimously held that the so-called "community caretaking" exception to the Fourth Amendment's warrant requirement does not extend to the home.
- *Merck v. Albrecht*, in which the Court unanimously held that a judge, not a jury, should assess a federal preemption defense, and should do so using ordinary, not heightened, legal standards.
- *GE Energy v. Outokumpu*, in which the Court held that international arbitration agreements under the New York Convention should be treated on an equal footing with domestic ones under the Federal Arbitration Act (including as to enforcement by nonsignatories).
- *Rotkiske v. Klemm*, in which the Court unanimously rejected a presumption applying the discovery rule to federal statutes of limitations.
- *NLRB v. SW General*, in which our attorneys persuaded the Court to invalidate the interpretation of the Federal Vacancies Reform Act followed by every president of both parties since the statute was passed in 1998.
- *Town of Chester v. Laroe*, in which the Court considered whether intervenors must independently demonstrate Article III standing. Attorneys in our group represented Laroe, who argued that intervenors need standing only if they raise new claims or seek different relief from that sought by an existing party. The Court remanded the case for the Second Circuit to apply Laroe's test.
- *Husky International Electronics v. Ritz*, in which the Court held, 7-1, that the "actual fraud" bar to discharge under section 523(a)(2)(A) of the Bankruptcy Code does not require a false representation.
- *Air & Liquid Systems Corp. v. DeVries*, in which an attorney in our group persuaded the Court to reject the Third Circuit's rule that products-liability defendants can be held liable under maritime law for injuries caused by asbestos that they did not make, sell, or distribute, as long as the use of their products with third-party asbestos was foreseeable.
- *Merrill Lynch v. Dabit*, in which the U.S. Supreme Court held that the Securities Litigation Uniform Standards Act preempts private securities class actions brought under state law by individuals who assert claims as "holders" of securities and who do not allege that they purchased or sold securities during the period in question.
- In keeping with our beliefs that pro bono work is a lawyer's social responsibility and that we all benefit when the legal system is accessible to everyone, we successfully petitioned for certiorari and presented arguments on behalf of clients pressing Double Jeopardy Clause challenges and seeking exculpatory DNA evidence.

Federal Courts of Appeals

Our attorneys practice before every United States Court of Appeals, where we have secured important legal rulings in cases of first impression in a variety of areas of law — including telecommunications, securities, labor and employment, antitrust, administrative, white collar, constitutional, and bankruptcy law. Noteworthy representations and victories by attorneys working in our group include:

- *Airlines for America v. City and County of San Francisco*, in which the Ninth Circuit, in a precedent-setting victory for Airlines for America (A4A), held that civil penalties can make government action regulatory and subject it to federal preemption, and remanded the case for the district court to consider A4A's preemption arguments under the Airline Deregulation Act, Employee Retirement Income Security Act, and Railway Labor Act.
- *ACA International v. FCC*, in which the D.C. Circuit vacated the Federal Communications Commission's order interpreting the Telephone Consumer Protection Act.
- *Glasser v. Hilton Grand Vacations*, in which the Eleventh Circuit rejected a putative class's claims arising from calls they received from an "automatic telephone dialing system." In doing so, the court rejected the Ninth Circuit's understanding of an "automatic dialing system," thus creating a circuit split implicating billions of dollars in liability.
- *Peabody v. San Mateo*, in which the Eighth Circuit unanimously upheld a bankruptcy court order holding that three California municipalities' global warming claims against Peabody Energy Corporation had been discharged by Peabody's successful chapter 11 plan of reorganization, and that the claims therefore must be dismissed.
- *Sirius XM v. Andrews*, in which the Ninth Circuit unanimously affirmed the district court's dismissal of a putative class action alleging violations of the Driver's Privacy Protection Act.
- *Medical Center at Elizabeth Place v. Atrium Health System*, in which the Sixth Circuit upheld the district court's rejection of antitrust claims arising from Premier Health Partners' use of managed care contracts with insurers. The Sixth Circuit was one of the first courts to evaluate how to apply the Supreme Court's holding in *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006), that the "core activity" of a legitimate joint venture is not subject to antitrust's per se rule.
- *Fidelity v. AER*, in which the First Circuit agreed that 13 claims brought by customers and advisors against Fidelity Brokerage Services, LLC, must be dismissed under the Bank Secrecy Act. Resolving a question of first impression in the First Circuit, the court further held that a district court applies the federal-law interpretations of the circuit in which it sits, even if a case was transferred to it from another circuit.

- *California Public Employees' Retirement System v. WorldCom, Inc.*, in which the Second Circuit's opinion represented a precedent-setting victory for major underwriter defendants on an issue of first impression at the intersection of bankruptcy and securities laws.
- *SEC v. Tambone*, in which the *en banc* First Circuit issued a favorable decision for our clients regarding the appropriate scope of liability for "making a statement" under the securities laws.