

OVERVIEW

The attorneys in our Appellate and Legal Issues Group have long understood the importance of an appellate perspective in achieving reversals in state and federal appellate courts—the group’s members include the first Ohio fellow elected to the American Academy of Appellate attorneys and a member of the first class of appellate specialists certified by the Ohio Supreme Court. For that reason, our attorneys are regularly called upon to appeal cases handled by other firms, and/or to ensure that legal issues are properly framed and preserved for appeal through participation at trial or in post-trial proceedings. That experience and those skills are also brought to bear on behalf of our own trial attorneys. Members of the group are integrated into trial teams and participate at all phases of litigation, from jurisdictional challenges immediately following the filing of a complaint, to marshaling broad amicus support in a successful bid to uphold tort reform laws, to a successful certiorari petition and merit brief in a landmark United States Supreme Court case holding claims against generic drug manufacturers to be preempted. Finally, our attorneys understand that every appeal has a cost-benefit analysis. They not only can provide a fresh eye for analyzing appellate prospects, but are willing to back up that analysis with flexible fee structures under which we win when you win.

AREAS OF EMPHASIS

- All areas of firm practice involving appeals from litigation and administrative proceedings
- Amicus briefs for individual clients, community organizations and trade associations
- Consultation or joint effort with, or taking over from, trial counsel at another law firm at the appellate or supreme court level

REPRESENTATIVE DECISIONS

Federal

- *McIndoe v. Huntington Ingalls, Inc.*, 817 F.3d 1170 (9th Cir. 2016) (a naval warship is not a “product” for purposes of strict products liability)
- *Yates v. Ortho-McNeil-Janssen Pharm., Inc.*, 808 F.3d 281 (6th Cir. 2015) (pre-approval and post-approval design defect claims against brand-name drug manufacturer are preempted)
- *Curtis v. Mentor Worldwide, LLC*, 543 F. App’x 901 (11th Cir. 2013) (affirming summary judgment in products liability case on statute of limitations grounds)
- *White v. Hon Co.*, 520 F. App’x 93 (3d Cir. 2013) (affirming dismissal of UCC warranty claim on statute of limitations grounds)
- *Pliva, Inc. v. Mensing*, 131 S. Ct. 2567 (2011) (failure to warn claims against generic drug manufacturers are preempted)
- *Myers-Armstrong v. Actavis Totowa, LLC*, 382 F. App’x 545 (9th Cir. 2010) (affirming dismissal of consumer action based on allegation that “adulterated” drugs were worth less than what she paid for them)

State

- *World Harvest Church v. Grange Mut. Cas. Co.*, ___ Ohio St. 3d ___, 2016-Ohio-2913 (reversing judgment in insurance coverage dispute based on erroneous interpretation of an abuse or molestation exclusion)
- *Cleveland Clinic Found. v. Bd. of Zoning Appeals*, 141 Ohio St. 3d 318, 2014-Ohio-4809 (reinstating trial court decision granting permit and clarifying the applicable standard of review in administrative appeals from zoning decisions)

REPRESENTATIVE DECISIONS: STATE (CONTINUED)

- *JNT Properties, L.L.C. v. KeyBank Nat'l Ass'n*, 134 Ohio St. 3d 209, 2012-Ohio-5369 (reversing judgment and upholding the use of the 365/360 method of interest accrual in commercial mortgage notes)
- *Hewitt v. L.E. Myers Co.*, 134 Ohio St. 3d 199, 2012-Ohio-5317 (ordering entry of judgment in favor of employer in case of first impression construing employment intentional tort statute)
- *Zamora v. Textron, Inc.*, Nos. A124923, A124992, 2011 WL 576572 (Cal. Ct. App. Feb. 28, 2011) (reversing judgment in product liability action based on erroneous exclusion of federal standards and a key fact witness)
- *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St. 3d 250, 2010-Ohio-1027 (upholding workplace intentional tort statute against constitutional challenges in case of first impression)
- *Kootenai Elec. Co-op., Inc. v. Lamar Corp.*, 219 P.3d 440 (2009) (utility's \$10 million indemnity claim under state high voltage act barred by *res judicata*)
- *Burdette v. Carrier Corp.*, 158 Cal. App. 4th 883 (2008) (reversing judgment on \$3.5 million verdict in employment defamation case)
- *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 (upholding tort reform damage caps against constitutional challenges in case of first impression certified by federal district court)

AMICUS EXPERIENCE

- *Winn v. Pioneer Med. Group, Inc.*, 63 Cal. 4th 148 (2016) (Elder Abuse Act's heightened remedies require proof of a caretaking or custodial relationship) (amicus brief filed on behalf of California Medical Association (CMA), California Dental Association (CDA), California Hospital Association (CHA), and American Medical Association (AMA))
- *Chan v. Curran*, 237 Cal. App. 4th 601 (2015) (upholding noneconomic damages cap against constitutional challenges) (amicus brief filed on behalf of CMA, CDA, CHA, and AMA)
- *Ruther v. Kaiser*, 134 Ohio St. 3d 408, 2012-Ohio-5686 (upholding medical-malpractice statute of repose against constitutional challenge) (amicus brief filed on behalf of the Ohio Association of Civil Trial Attorneys)
- *Houdek v. ThyssenKrupp Materials N.A., Inc.*, 134 Ohio St. 3d 491, 2012-Ohio-5685 (reinstating judgment in favor of employer in case of first impression construing employment intentional tort statute) (amicus brief filed on behalf of the Ohio Association of Civil Trial Attorneys)
- *Ruiz v. Podolsky*, 50 Cal. 4th 838 (2010) (holding that MICRA arbitration provision binds family members in wrongful death actions) (amicus brief filed on behalf of the CMA, CDA, and CHA)
- *Environmental Network Corp. v. Goodman Weiss Miller, L.L.P.*, 119 Ohio St. 3d 209, 2008-Ohio-3833 (legal malpractice plaintiff who alleges that he would have received a better outcome absent settlement must prove "case within a case") (amicus brief filed on behalf of the Defense Research Institute)