

OVERVIEW

The attorneys in our Appellate & 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 a Fellow elected to the American Academy of Appellate Lawyers 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

- *Designworks Homes, Inc. v. Thomson Sailors Homes, L.L.C.*, 9 F.4th 961 (8th Cir. 2021) (triangular atrium design did not infringe on copyright held by another home builder)
- *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272 (10th Cir. 2021) (federal law preempts negligence per se and failure-to-warn claims against breast implant manufacturer)
- *Pieczonka v. Progressive Select Ins. Co.*, 840 F. App'x 856 (6th Cir. 2021) (total loss auto claims settled on actual cash value basis need not include payment of title, registration, and license plate fees)
- *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation*, 953 F.3d 890 (6th Cir. 2020) (claims against medical device manufacturer dismissed for lack of diversity jurisdiction)
- *North Canton Bd. of Educ. v. Am. Telephone & Telegraph, Inc.*, 822 F. App'x 324 (6th Cir. 2020) (no revenue sharing owed under cellular tower lease agreement)
- *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)

State

- *Fuller v. University Hospitals Medical Group, Inc.*, 175 N.E.3d 962, 2021-Ohio-2518 (8th Dist.) (itemized billing records generated for law firm not “medical records” governed by R.C. 3701.741 price requirements)
- *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 160 Ohio St.3d 32, 2020-Ohio-1056 (adopting *Perdue v. Kenny A.*, 559 U.S. 542 (2010), as standard for enhancing attorney fees under Ohio law)
- *Penniman v. University Hospitals Health Sys., Inc.*, 130 N.E.3d 333, 2019-Ohio-1673 (8th Dist.) (resolving question of first impression by holding that cryopreserved embryos lack the rights of persons under Ohio law)
- *Satterfield v. Ameritech Mobile Communications, Inc.*, 155 Ohio St.3d 463, 2018-Ohio-5023 (vacating class certification and ordering judgment for cellular service provider because retail cellular subscriber class lacked standing to sue for treble damages)
- *World Harvest Church v. Grange Mut. Cas. Co.*, 148 Ohio St.3d 11, 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 for helipad and clarifying standard of review in zoning appeals)
- *JNT Properties, L.L.C. v. KeyBank Nat'l Ass'n*, 134 Ohio St.3d 209, 2012-Ohio-5369 (reversing court of appeals 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 judgment for employer in case of first impression on scope of employment intentional tort)
- *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027 (upholding workplace intentional tort statute against constitutional challenges)
- *Kootenai Elec. Co-op., Inc. v. Lamar Corp.*, 219 P.3d 440 (Idaho 2009) (utility’s \$10 million indemnity claim under state high voltage act barred by *res judicata*)
- *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948 (upholding tort reform damage caps against constitutional challenges)

AMICUS EXPERIENCE

- *Wilson v. Durrani*, 164 Ohio St.3d 419, 2020-Ohio-6827 (savings statute does not allow patients to refile a medical malpractice claim after the medical claim statute of repose expires) (amicus brief filed on behalf of Academy of Medicine of Cleveland & Northern Ohio)
- *Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526 (healthcare apology statute protects acknowledgement that patient’s medical care fell below the standard of care) (amicus brief filed on behalf of Academy of Medicine of Cleveland & Northern Ohio)
- *Linert v. Foutz*, 149 Ohio St.3d 469, 2016-Ohio-8445 (plaintiff not entitled to jury instruction on post-marketing duty to warn under Ohio statute) (amicus brief filed on behalf of Product Liability Advisory Council)
- *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), et al.)
- *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)
- *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)