

## Supreme Court & Appellate Litigation

Our Supreme Court and Appellate Litigation team has represented clients in scores of complex civil and criminal appeals in all federal courts of appeals. We honed our experience in some of the most complex areas of the law, including federal and state taxation, employee benefits and ERISA, international business, criminal defense, and federal preemption. The breadth of our representations has made us sensitive to the issues facing appellate judges with wide-ranging case loads and equipped us to get up to speed quickly and to handle effectively any kind of issue at the appellate level.

Our clients include some of the world's largest U.S. and foreign-based corporations, trade associations, industry coalitions, individuals, and public interest groups. Clients hire us for our experience, our ability to handle the most sophisticated matters, and our record of achievement in court. In addition to serving as lead counsel in appeals, our team is also regularly engaged to revise appellate briefs prepared initially by other counsel and to provide skilled advice on Supreme Court or appellate strategy and procedure in important cases. We often provide advice to counsel at the trial level, including strategic guidance at the early stages of a case. Our team advises in framing legal theories, shaping important statutory or constitutional issues, and preserving issues for appeal with an eye to subsequent appellate consideration.

## Representative Engagements

### Recent Supreme Court Engagements

- *Bruce v. Samuels*, 136 S. Ct. 627 (2015) (merits brief on behalf of federal prisoner regarding payment of filing fees under the Prison Litigation Reform Act).
- *Comptroller of the Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015) (amicus brief on behalf of the National Association of Publicly Traded Partnerships in support of the taxpayers position, which prevailed in the Court, that Maryland's income tax system violated the U.S. Constitution in failing to afford a credit for income tax paid to another state on the same income).
- *Evans v. Michigan*, 133 S. Ct. 1069 (2013) (successful merits brief on whether erroneous bench dismissal for failure to prove an element of the offense was an "acquittal" and retrial was barred by the Double Jeopardy Clause).
- *PPL v. Comm'r*, 133 S. Ct. 1897 (2013) (amicus brief on behalf of American Electric Power Co. on foreign tax credit issue).
- *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702 (2012) (won unanimous decision holding that corporations and other organizational defendants cannot be sued for international human rights violations under the Torture Victim Protection Act).
- *Empire HealthChoice Assurance, Inc. v. McVeigh*, 547 U.S. 677 (2006) (briefing and arguing on the merits on issues of federal vs. state court jurisdiction in connection with the Federal Employees Health Benefits Act).

### ERISA and Fiduciary Litigation

- *Pennsylvania Chiropractic Ass'n v. Independence Hospital Indemnity Plan, Inc.*, 802 F.3d 926 (7th Cir. 2015) (holding that providers were not "beneficiaries" empowered to bring suit against insurance plan under ERISA).
- *Fossen v. Blue Cross & Blue Shield of Mont., Inc.*, 660 F.3d 1102, 1114 (9th Cir. 2011), cert. denied, 133 S. Ct. 979 (2013) (whether ERISA preempts enforcement of Montana "Little HIPAA" statute).
- *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224 (8th Cir. 2012) (holding that suit for benefits under the Federal Employee Health Benefits Act could be removed to federal court under federal officer removal statute)

### Tax

- *PPL v. Comm'r*, 665 F.3d 60 (3d Cir. 2011), rev'd, 133 S. Ct. 1897 (2013) (amicus briefs in Third Circuit and in Supreme Court on foreign tax credit issue).
- *Exxon Mobil Corp. v. Comm'r*, 689 F.3d 191 (2d Cir. 2012) (upholding taxpayer's claim for interest netting).
- *DeNaples v. Comm'r*, 674 F.3d 172 (3d Cir. 2012) (reversing the Tax Court and upholding the taxpayer's claim that certain interest income was tax exempt under Code section 103).
- *Wash. Mut., Inc. v. United States*, 636 F.3d 1207 (9th Cir. 2011) (reversing the district court and upholding the taxpayer's claim of basis in the right to operate interstate savings and loan branches following a supervisory merger).
- *United States v. Textron Inc.*, 577 F.3d 21 (1st Cir. 2009), cert. denied, 130 S. Ct. 3320 (2010) (amicus brief in First Circuit and in support of certiorari petition on question of work product protection for tax accrual workpapers).

## Federal Courts/Federal Civil Procedure

- *ENSCO Offshore Co. v. Salazar*, No. 11-30491, 2012 U.S. App. LEXIS 10301 (5th Cir. May 22, 2012) (dismissing for lack of standing environmental groups' appeal of district court's order requiring the Department of the Interior to process offshore drilling permits within 30 days).
- *Ungar v. PLO*, 599 F.3d 79 (1st Cir. 2010) (obtained vacatur of district court decision denying Rule 60(b)(6) relief from final judgment).
- *COSVI v. FAC*, 563 F.3d 1 (1st Cir. 2009) (successfully appealed a sanctions award imposed under the district court's inherent power).

## Criminal Defense

- *United States v. Ring*, 706 F.3d 460 (D.C. Cir. 2013) (interplay of honest services fraud statute and elements of bribery).
- *United States v. Allmendinger*, 706 F.3d 330 (4th Cir. 2013) (briefed and argued issues related to a constructive amendment of the indictment and sentencing errors, including miscalculation of the amount of loss and inadequate consideration of all sentencing factors set forth in 18 U.S.C. § 3553).
- *Smith v. United States*, 133 S. Ct. 714 (2013) (amicus brief on behalf of the NACDL on burden of proving withdrawal from a conspiracy).
- *Perry v. New Hampshire*, 132 S.Ct. 716 (2012) (amicus brief for the National Innocence Network on whether the due process clause requires exclusion of unreliable eyewitness testimony, even if it was not the product of unnecessary police suggestion).
- *United States v. Lequire*, 672 F.3d 724 (9th Cir. 2012) (won reversal of conviction for embezzlement because it was legally and factually impossible for client to have committed embezzlement when he never held applicable funds "in trust").
- *United States v. Sterling*, 724 F.3d 482 (4th Cir. 2013) (briefed and argued that district court correctly excluded the testimony of two government witnesses prior to trial after the government's belated disclosure of Giglio material).
- *Matsa v. United States*, No. 12-4353, 540 Fed. Appx. 520; 2013 U.S. App. LEXIS 21930(6th Cir. Oct. 25, 2013) (represented appellant in appeal from tax fraud conviction).

## Government Experience

- Assistant to the Solicitor General, U.S. Department of Justice
- Tax Assistant to the Solicitor General, U.S. Department of Justice
- Chief, Special Litigation Division, Public Defender Service for the District of Columbia

## Rankings and Recognition

- *Chambers USA*: ERISA Litigation (Nationwide), 2015 - 2022