



## **ANDREW TAUBER**

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## **BIOGRAPHY**

Andy is a counsel in the firm's Appellate and Class Actions and Mass Torts Practice Groups. One of the country's leading preemption authorities, he represents medical-device and pharmaceutical manufacturers, railroads, and other heavily regulated entities. Known for his powerful written and oral advocacy, Andy is often called on to litigate cutting-edge issues of industry-wide significance.

Andy regularly represents clients in the Supreme Court of the United States, the various U.S. Courts of Appeals, and state appellate courts throughout the country. A versatile practitioner and quick study, Andy has led product-liability, antitrust, employment, and regulatory appeals.

In addition to his appellate work, Andy works closely with trial lawyers to craft and preserve legal arguments for later appellate review by drafting motions to dismiss, motions for summary judgment, motions in limine, proposed jury instructions, and post-trial motions. Recognizing the

importance of issue preservation, clients frequently ask Andy to brief and argue motions to dismiss and other critical motions.

Clients confronting important recurring issues, especially those implicating unsettled questions of law, have repeatedly tapped Andy to serve as national coordinating counsel. In that role, Andy works closely with the clients' other outside counsel, preparing model briefs and other guidance to ensure a consistent strategy across the client's entire litigation portfolio.

Andy has secured precedent-setting victories across a range of cases, obtaining decisions that are routinely cited by other courts when dismissing claims against his clients and others in the same industry. In one notable example among several, Andy, overcoming seemingly adverse case law at the start of multi-jurisdictional litigation, conceived and presented the arguments that ultimately produced what one judge described as a "national consensus" that federal law preempts state-law claims predicated on alleged off-label promotion of medical devices.

In the product-liability space, Andy has successfully briefed and argued a wide variety of issues ranging from federal preemption, personal jurisdiction, and appellate jurisdiction to pleading standards, the viability of negligence-per-se claims, and the application of Restatement (Second) of Torts § 402A cmt. k to medical devices.

In the railroad sector, Andy has successfully litigated myriad issues under FELA, the LIA, the FRSA, and ICCTA, including the preemption of state-law requirements, the preclusion of FELA claims, and the apportionment of damages. Most recently, he persuaded the Ohio Supreme Court that federal law preempts state anti-blocking statutes—and then persuaded the U.S. Supreme Court to not disturb that ruling.

Prior to joining BCLP, Andy was a partner at Winston & Strawn LLP and Mayer Brown LLP. Earlier, he clerked for the Hon. John G. Koeltl in the Southern District of New York. Andy graduated from Yale Law School, where he was an editor of the *Yale Law Journal*. Before law school, Andy received a Ph.D. from M.I.T. He lived in Germany for four years and is fluent in German.

## CIVIC INVOLVEMENT & HONORS

"Key Lawyer" in Product Liability, Mass Tort and Class Action-Defense: Pharmaceuticals and Medical Devices, *The Legal 500* (2014-present)

"Key Lawyer" in Appellate: Courts of Appeals/Appellate: Supreme Courts (States and Federal), *The Legal 500* (2023)

"Key Lawyer" in Rail and Road: Litigation and Regulation, *The Legal 500* (2023)

Ranked in Product Liability and Mass Torts, *Chambers USA* (2016-present)

“Noted Practitioner” in Rail Transportation, *Chambers USA* (2020)

“Litigation Star” in Appellate Litigation, *Benchmark Litigation* (2016-present)

“Life Sciences Stars” in Product Liability, Euromoney’s Legal Media Group (2018-present)

Best Lawyers in America: Railroad Law (2023)

Duffield Smith Outstanding Publication Award, *Defense Research Institute* (2013)

## ADMISSIONS

- District of Columbia, 2021
- New York, 2000

## EDUCATION

- Yale University, J.D., 1999
- Massachusetts Institute of Technology, Ph.D., 1997
- Wesleyan University, B.A., 1984

## RELATED PRACTICE AREAS

- Class Actions & Mass Torts
- Appellate
- Business & Commercial Disputes
- Litigation & Dispute Resolution

## EXPERIENCE

- *Ohio v. CSX Transp., Inc.*, 200 N.E.3d 215 (Ohio Sup. Ct. 2022), cert. denied — S.Ct. — 2024 WL 71898 (Mem) (2024). Won reversal of adverse appellate decision in case with national implications for railroad operations, persuading state supreme court that federal law preempts state regulatory statute, and persuading U.S. Supreme Court to deny review of that decision.

- *Garey v. Abbott Labs.*, No. 19STCV27376 (Cal. Super. Ct. 2023). Secured dismissal of product-liability claims on jurisdictional and limitations grounds.
- *Regwan v. Ronald Reagan Med. Ctr.*, No. BC611263 (Cal. Super. Ct. 2023). Won dismissal of all claims, convincing court that state law did not recognize one purported tort duty and that federal law preempted another.
- *In Re: Ethiopian Airlines Flight ET 302 Crash*, No. 1:19-cv-2170 (N.D. Ill. 2023). Briefed motions in limine securing exclusion of expert testimony, lay testimony, and theory of liability.
- *Cont'l Auto. Sys., Inc. v. Avanci, L.L.C.*, 2022 WL 2205469 (5th Cir. 2022). Co-authored brief that convinced appellate court to affirm dismissal of antitrust claims involving standard-essential patents.
- *Miller v. Vilsack*, 2022 WL 851782 (5th Cir. 2022). Persuaded court that membership organization is entitled to intervene in litigation challenging the constitutionality of a federal program.
- *Ayres v. Indirect Purchaser Plaintiffs*, 142 S. Ct. 2813 (2022). Co-authored brief that convinced Supreme Court to deny review in multidistrict, class-action antitrust litigation.
- *Fed. Trade Comm'n v. Hackensack Meridian Health, Inc.*, 30 F.4th 160 (3d Cir. 2022). Defended proposed hospital merger against antitrust challenge.
- *Reddick v. Medtronic, Inc.*, 2022 WL 715494 (5th Cir. 2022). Won appellate decision affirming dismissal of, and summary judgment on, various product-liability and breach-of-contract claims.
- *EJ MGT LLC v. Zillow Grp., Inc.*, 2021 WL 5754901 (3d Cir. 2021). Convinced court that plaintiff lacked Article III standing to assert antitrust claim.
- *Funderburk v. CSX Transp., Inc.*, 834 Fed. App'x 807 (4th Cir. 2021). Successfully defended grant of summary judgment dismissing tort claims arising from hurricane-induced flooding.
- *Jovanovich v. Indiana Harbor Belt R.R.*, 2020 IL App (1st) 192550-U (Ill. Ct. App. 2020). Convinced court to grant interlocutory appeal and to then dismiss FELA case for lack of personal jurisdiction.
- *California Trucking Ass'n v. Becerra*, 20-55106 (9th Cir. 2020). Persuaded court to deny motion to stay preliminary injunction that bars enforcement of AB-5, newly enacted legislation distinguishing between employees and independent contractors for purposes of California law.
- *In re: Asbestos Prods. Liab. Litig.*, 806 Fed. App'x 106 (3d Cir. 2020). Persuaded court to dismiss appeal for lack of appellate jurisdiction, bringing an end to 32-year-long asbestos

litigation.

- *Delor v. CSX Transp., Inc.*, No. S20C0086 (Ga. 2020). Successfully opposed petition for discretionary review, thereby preserving intermediate appellate victory in case involving the interaction of state tort and regulatory law.
- *Mayard v. St. Jude Med. Inc.*, 2020 WL 54111 (W.D. La. 2020). Obtained dismissal of all claims against medical device manufacturer on various state-law grounds.
- *Sharp v. St. Jude Med., S.C., Inc.*, 396 F. Supp. 3d 1250 (N.D. Ga. 2019). Won dismissal of product-liability claims on preemption and pleading grounds.
- *MD Mall Assocs. v. CSX Transp., Inc.*, 777 Fed. App'x 43 (3d Cir. 2019). Persuaded court that freight railroad was entitled to summary judgment on claims arising from the flooding of property adjacent to the railroad's tracks.
- *Taggart v. Lorenzen*, 139 U.S. 1795 (2019). Co-authored merits brief that helped persuade the Supreme Court that a creditor in a bankruptcy proceeding may be held in civil contempt for violating the discharge order if, but only if, there is no fair ground of doubt as to whether the order barred the creditor's conduct.
- *City of Seabee v. CSX, Transp., Inc.*, 924 F.3d 276 (6th Cir. 2019). Convinced court that the ICC Termination Act and the Federal Railroad Safety Act preempt a local ordinance and subsequent consent decree purporting to regulate how a freight railroad maintains grade crossings.
- *Delfino v. Medtronic, Inc.*, 2019 WL 2415049 (Minn. Ct. App. 2019). Successfully defended grant of summary judgment in bell-weather product-liability case, persuading court that the questions of what constitutes a federal requirement for Class III medical devices and what constitutes a violation of a federal requirement are questions of law to be resolved by the court rather than questions of fact to be resolved by a jury.
- *Wagner v. Terumo Med. Corp.*, 2019 WL 857965 (S.D. Cal. 2019). Obtained dismissal for want of personal jurisdiction of complaint asserting product-liability claims.
- *Conklin v. Medtronic, Inc.*, 431 P.3d 571 (Ariz. 2018). In what the American Lawyer's Litigation Daily described as a "a big win" for the medical-device industry, persuaded state supreme court that—contrary to *Stengel v. Medtronic*, 704 F.3d 1224 (9th Cir. 2013) (en banc)—Arizona law does not recognize, and federal law preempts, failure-to-warn claims predicated on a manufacturer's purported failure to submit adverse-event reports to the FDA.
- *Wagner v. Terumo Med. Corp.*, 2018 WL 6075951 (S.D. Cal. 2018). Won dismissal of product-liability suit on jurisdictional grounds.

- *North Coast Railroad Authority v. Friends of the Eel River*, 138 S. Ct. 1696 (2018). Retained to seek U.S. Supreme Court review of a California Supreme Court decision holding that the ICC Termination Act does not preempt application of the California Environmental Quality Act to a publicly owned railroad.
- *Cervený v. Aventis, Inc.*, 855 F.3d 1091 (10th Cir. 2017). Authored *amicus* brief on behalf of industry group which helped persuade court that failure-to-warn claims against a pharmaceutical manufacturer were impliedly preempted by federal law.
- *Norabuena v. Medtronic, Inc.*, 86 N.E.3d 1198 (Ill. Ct. App. 2017). Convinced appellate court that a state-law failure-to-warn claim predicated on a manufacturer's alleged failure to submit adverse-event reports to the FDA is expressly preempted by federal law, and that the plaintiff's complaint had failed to adequately state any cognizable claim.