BCLP. Client Intelligent

APPELLATE

OVERVIEW

The Appellate and Supreme Court Group handles appeals and extraordinary proceedings in federal and state appellate courts across the country. We also work with trial counsel, advising on the preservation of defenses and constitutional arguments; assisting with dispositive motions; preparing jury instructions, evidentiary motions, and post-judgment pleadings; and consulting throughout the pre-trial, trial, and post-trial stages. Our goal is to achieve the best possible result for our clients at trial or, in the event of an adverse ruling or verdict, to preserve potential error for review on appeal.

Our members also have experience in a wide range of substantive areas, including antitrust, bankruptcy, class actions, intellectual property, labor and employment, product liability, and securities.

MEET THE TEAM

Jean-Claude André

Partner and Co-Chair, Appellate and Supreme Court Group, Los Angeles

jc.andre@bclplaw.com
+1 310 576 2148

Barbara A. Smith Tyson

Partner and Co-Chair, Appellate and Supreme Court Group, St. Louis

barbara.smith@bclplaw.com
+1 314 259 2367

RELATED CAPABILITIES

- Business & Commercial Disputes

EXPERIENCE

The combination of appellate and subject-matter experience has produced a significant track record of success, including the following representative cases:

- *Sun Aviation, Inc. v. L-3 Communications Avionics Systems, Inc.*, 2017 WL 4930870, ___ S.W.3d ___ (Mo. banc 2017) – Reversing trial court's judgment totaling more than $8,500,000 in actual damages and attorney's fees against aircraft instrument manufacturer on statutory and tort claims arising from termination of distributorship.

- *BNSF Railway Co. v. Alstom Trans., Inc.*, 777 F. 3d 785 (5th 2015) – Reversing district court's vacatur of arbitration award and remanding with directions to reinstate the award under the Federal Arbitration Act. The decision is the Fifth Circuit's first published decision applying the Supreme Court's *Oxford Health* standard of review of arbitration awards.

- *Ruiz v. Mortgage Electronic Registration Systems, Inc.*, 130 A.D.3d 1000 (2d Dep't 2015) – Affirming the dismissal of borrower's RPAPL Art. 15 quiet title action which claimed that the MERS mortgage was void *ab initio* having been "split" at inception from the debt. The supreme court had termed this a case of "first impression" and though its holding was implicit in the case law, this decision provided much needed clarity on the claim. Borrower's motion to reargue was denied.

- *George K. Baum & Co. v. Twin City Ins. Co.*, 760 F.3d 795 (8th Cir. 2014) – Affirming summary judgment in favor of policyholder in coverage lawsuit against its professional liability insurer, holding that the insurer had improperly denied coverage for antitrust class actions based on untimely notice.

- *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn.2d 759 (Wash. 2014) – Reversing a series of trial and appellate decisions interpreting the State of Washington's Race-Notice Act, Redemption Act, and Condominium Act, and holding that primary lenders were entitled to redeem properties sold in condominium association foreclosures that otherwise had extinguished the lenders' security interests.

- *Rolwing v. Nestle Holdings, Inc.*, 437 S.W.3d 180 (Mo. banc 2014) – Affirming dismissal of class action brought by shareholder to recover accrued interest on shares converted to cash during corporate merger. Holding that statute of limitations was not tolled for plaintiff shareholder despite membership in putative class action filed in another state.

- *The Renco Group, Inc. v. Certain Underwriters at Lloyd's, London*, 362 S.W.3d 472 (Mo. App. 2012) – Reversing summary judgment against successor corporation and its officers in action seeking coverage under defendant insurers' occurrence-based liability insurance policies.

- *United States v. Chemical & Metal Industries, Inc.*, 677 F.3d 750 (5th Cir. 2012) – Vacating a restitution award and reducing a criminal fine in half, reducing the total sentence by $2,500,000 to $500,000.

- *First National Bank v. Ricon*, 311 S.W.3d 857 (Mo. App. 2010) – Reversing judgment totaling almost $800,000 in actual and punitive damages and attorney's fees in favor of Bank's former customer on slander-of-title claim.
- *Gregory v. Dillard's, Inc.*, 566 F.3d 464 (8th Cir. 2009) (en banc) — After granting a rare rehearing en banc, affirming the district court's dismissal of claims brought under 42 U.S.C. §1981 by African-American shoppers against defendant retailer.
- *Union Pacific Railroad v. Vickers*, 2009 Ark. 259, 308 S.W.3d 573 (Ark. 2009) — Reversing decision certifying plaintiff class of persons who had settled claims arising from train-crossing accidents; plaintiffs alleged that Union Pacific claims representatives had engaged in the unauthorized practice of law in obtaining settlements.
- *Corey v. Clear Channel Outdoor, Inc.*, 299 Ga. App. 487, 683 S.E.2d 27 (Ga. App. 2009) — Affirming $4.9 million judgment on jury award in favor of client on claim for violation of non-compete clause in sales agreement.
- *First American Title Co. v. Raffone*, 975 So.2d 1169 (Fla. 1st DCA 2008) – Granting writ proceeding against trial court order allowing classwide merits discovery prior to class certification (opinion written in companion case of Commonwealth Land Title Ins. Co. v. Higgins, 975 So.2d 1169 (Fla. 1st DCA 2008)).
- *Structural Polymer Group, Ltd. v. Zoltek Corp.*, 543 F.3d 987 (8th Cir. 2008) — Affirming $21,138,518 judgment in favor of client on claim for breach of a requirements contract for the sale of carbon fiber.
- *Davis International, LLC v. New Start Group Corp.*, 488 F.3d 597 (3d Cir. 2007) — Affirming dismissal of RICO claims based on alleged misconduct in Russia.
- *Washington University v. Catalona*, 490 F.3d 667 (8th Cir. 2007) — Affirming grant of summary judgment in favor of university in its declaratory judgment action against former professor and participants in cancer research; Court agreed that university owned biological materials donated by research participants.
- *Kelly v. State Farm Mutual Automobile Insurance Co.*, 218 S.W.3d 517 (Mo. App. 2007) — Reversing judgment totaling more than $19 million in actual and punitive damages on claims brought by terminated insurance agents for breach of contract, breach of implied covenant of good faith and fair dealing, and tortious interference.
- *Philippine American Lace Corp. v. 236 West 40th Street Corp.*, 822 N.Y.S.2d 25 (1st Dept. 2007) — Reversing grant of specific performance of first right of refusal, based on failure to record grant of right and laches.

- *Atlanta Journal Constitution v. City of Atlanta*, 442 F.3d 1283 (11th Cir. 2006) — Affirming award of attorneys' fees to client USA TODAY for successfully challenging newsrack plan on First Amendment grounds.

- *Day v. Taylor*, 400 F.3d 1272 (11th Cir. 2005) — Affirming district court's dismissal of multi-district class action alleging that U-Haul's methods of business violated antitrust laws; Court concluded that, given the nature of the relationship between U-Haul and its dealers, they could not violate the antitrust laws.

- *Biomedical Systems Corp. v. GE Marquette Medical Systems, Inc.*, 287 F.3d 707 (8th Cir. 2002) — Affirming the $75 million judgment in favor of our client on its claim for breach of contract.

- *Duncan v. General Motors Corp.*, 300 F.3d 928 (8th Cir. 2002) — Reversing outright a $1 million judgment against automobile manufacturer on sexual harassment and constructive discharge claims.

In addition to our successful representation of parties on appeal, members of the Appellate Group have prepared amicus briefs on behalf of various organizations in several appeals, including the following:

- *Smith v. Baptiste*, 287 Ga. 23, 694 S.E.2d 83 (Ga. 2010) — Filed brief for the Georgia Chamber of Commerce in support of the constitutionality of OCGA 9-11-68, which provides that if either party's written demand or offer to settle a tort claim is rejected, that party may be entitled to recover its attorney's fees; Court upheld statute as constitutional.

- *Iannacchino v. Ford Motor Co.*, 888 N.E.2d 879 (Mass. 2008) — Submitted brief for the United States Chamber of Commerce as amicus curiae in successful appeal; Court held that plaintiffs in a putative class action who had not experienced any personal injury or property damage could not seek recovery for an alleged "defect" absent proof that the product failed to meet a standard "legally required by and enforced by the government."

- *State ex rel. Coca-Cola Co. v. Nixon*, 249 S.W.3d 855 (Mo. banc 2008) — Filed brief for Product Liability Advisory Council, Inc. as amicus curiae in successful writ action; Court reversed the trial court's decision certifying a plaintiff class in consumer class action against Coca-Cola Co.

- *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) — Submitted brief for PING, Inc. as amicus curiae in groundbreaking case reversing 96-year-old doctrine that vertical price restraints were per se illegal; brief was discussed during oral argument and cited in Court's opinion, and has since been reprinted in full in a leading antitrust handbook and widely cited as an excellent example of an amicus brief.

- *Welzel v. Advocate Realty Investments, LLC (In re Welzel)*, 275 F.3d 1308 (11th Cir. 2001) (en banc) — Submitted brief on behalf of a bank as amicus curiae in a case involving the

allowance of statutory attorneys' fees to an oversecured creditor in bankruptcy case; the en banc Court largely adopted the reasoning set forth in the amicus brief in unanimously reversing the decision of the three-judge panel.

- *Knights of Ku Klux Klan v. Curators of University of Missouri*, 203 F.3d 1085 (8th Cir. 2000) — Submitted brief for National Public Radio as amicus curiae; position espoused in brief was adopted in Court's opinion dismissing Klan's claim alleging infringement of First Amendment rights.

Our members also volunteer time to pro bono appellate matters. Those pro bono appellate representations include:

- *Vale v. Avila*, 538 F.3d 581 (7th Cir. 2008) — Affirming order requiring return of children in international child abduction case.
- *Roper v. Weaver*, 550 U.S. 598 (2007) — Dismissing writ as improvidently granted and allowing lower court's reversal of death sentence to stand.
- *Bousley v. United States*, 523 U.S. 614 (1998) — Appointed by Chief Justice Rehnquist to argue position abandoned by government.

RELATED INSIGHTS

Insights
Jun 11, 2025
Importers who paid IEEPA tariffs that were later ruled unlawful seek refunds

Insights
Mar 27, 2025
Missouri House of Representatives Passes HB 575, Imposing Residency Requirements and Banning Per-Signature Payments for Initiative Petition Calculators

News
Mar 07, 2025
BCLP Associates Featured in Law.com on First Oral Argument Experience

News
Feb 28, 2025
BCLP's David B. Schwartz Featured on Our Curious Amalgam Podcast to Discuss Healthcare Information Blocking

News
Feb 12, 2025
BCLP Partner Quoted in Bloomberg on FTC's Litigation Challenges

Insights
Dec 17, 2024
The Absence of a Uniform Arbitration Waiver Test in the Second Circuit Poses Litigation Challenges

Defendants considering whether to seek dismissal of a complaint or to compel arbitration have to consider when failing to compel arbitration waives their right to arbitration. Since the Supreme Court's 2022 decision in Morgan v. Sundance, Inc., 596 U.S. 411, defendants litigating in the Second Circuit face an additional challenge, namely, the differing arbitration waiver rules district courts are applying.

News
Sep 09, 2024
Appellate Team secures Hague Convention pro bono win

Awards
Jul 24, 2024
Law360 Names Barbara A. Smith Tyson as a 2024 Top Attorney Under 40

News
May 16, 2024
Insights into legal battle over ex-Los Angeles Dodger's withdrawn plea agreement