



## **LEE MARSHALL**

**Partner**

**San Francisco**

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## **BIOGRAPHY**

Lee Marshall focuses his practice on commercial, intellectual property, and appellate litigation. Lee is an experienced trial lawyer who has represented clients in the United States Supreme Court, argued appeals in numerous appellate courts, and tried cases in district courts across the country. He is the global department leader for Disputes and Investigations and is one of two chief allies for the firm's LGBTQ affinity group. He is also the former leader of the firm's Commercial Litigation Group and the firm's Appellate Team.

As a trial lawyer, Lee maintains an active intellectual property trial practice with an emphasis in complex technology cases. He has served as lead counsel in patent cases and successfully resolved patent, trademark and copyright cases in the most active districts - including the Northern

District of Illinois, the Central and Northern Districts of California, the Eastern District of Texas, the District of Delaware and the Western District of Wisconsin. Lee has also tried numerous commercial cases, including contract, non-compete, unfair competition, and fraud cases in the software, banking, and pharmaceutical industries, and has first chaired several over the years. He has also worked with universities and biomedical institutions across the country on significant disputes and intellectual property issues. He is active in class action matters, having defended several cases with potential exposure into the nine and ten figures. Lee has also defeated multiple class certification motions in cases involving tens of thousands of putative class members and billions of dollars of exposure. He works with clients early on to assess their case and a strategy for resolution. When resolution is not appropriate or possible, however, he will prepare and try the case.

Lee has a background in organic chemistry and enzymology. He attended graduate school as a Ph.D. candidate at The Scripps Research Institute, where he was the recipient of a National Science Foundation Graduate Fellowship. He received his bachelor's in chemistry from Washington University. Lee has represented clients in patent disputes involving a variety of biotechnology and pharmaceutical technologies, including DNA labeling technology, liquid biopsy, disease-causing mutations, drug development, single cell genomics, microfluidics, and nutraceuticals.

Lee has won appeals in state and federal appellate courts from coast to coast, including the United States Supreme Court. He has personally argued dozens of appeals before the Third, Seventh, Eighth, Ninth, Eleventh, and Federal Circuits, as well as intermediate and supreme appellate courts in California, Kansas, Illinois, Missouri, Nebraska, and Wisconsin. Among other victories, he acted as lead appellate counsel for Residential Funding Corporation, a division of Ally Financial, in reversing a \$92 million punitive damage jury verdict on appeal. Lee recently assisted a large agricultural company with post-trial motions in two cases alleging that a popular herbicide caused cancer and was successful in eliminating over \$2.2 billion in punitive damages. He also recently first chaired a jury trial win for Dr. Martens footwear.

Lee is also active in *pro bono* work. He served as lead appointed counsel in a rare instance in which the district court granted a writ of habeas corpus; handled appellate work for Voices for Children and National Center for Missing and Exploited Children; served as special counsel to the Advisory Committee on St. Louis Public Schools, and filed amicus briefs in marriage equality cases on behalf of the Family Equality Council. The "Voices of Children" amicus brief Lee helped author for the Family Equality Council was discussed at oral argument by Justice Kennedy in *Hollingsworth v. Perry*.

From 2003 to 2010, Lee served as an adjunct professor of law at Washington University, where he taught the Appellate Clinic. In 2007, Chief Judge James Loken appointed him to the Federal Advisory Committee for the United States Court of Appeals for the Eighth Circuit.

Prior to joining the firm in 2000, he clerked for Judge Pasco M. Bowman of the United States Court of Appeals for the Eighth Circuit. Lee received his J.D. from Washington University and while there

served as editor-in-chief of the *Washington University Law Review*.

## CIVIC INVOLVEMENT & HONORS

- BCLP LGBTQ Lawyers Affinity Group / Allies Program
- *The Best Lawyers in America®*, Appellate Practice, 2013-2014
- *Northern California Super Lawyers*, 2013
- Benchmark: Litigation, Future Star, Missouri, 2010
- *St. Louis Business Journal*, "40 under 40," 2009
- *Missouri/Kansas Super Lawyers*, Rising Star, 2009
- *Missouri Lawyers Weekly*, Up & Coming Lawyers, 2009

## COMMITTEE CONTENT

- Executive Committee
- Pro Bono Coordinators
- Recruiting Committee

## CLERKSHIPS

Clerkship, Honorable Pasco M. Bowman, U.S. Court of Appeals for the Eighth Circuit, 1999-2000

## ADMISSIONS

- California, 2011
- England & Wales (Registered Foreign Lawyer), 2000
- Missouri, 1999
- United States Supreme Court

United States Courts of Appeals for the First, Seventh, Eighth, Ninth and Federal Circuits

United States District Courts for the Southern District of Illinois and Eastern District of Missouri

United States Patent and Trademark Office

## **EDUCATION**

Washington University in St. Louis, J.D., Order of the Coif, 1999

The Scripps Research Institute, M.S., Chemistry, 1996

Washington University in St. Louis, B.A., magna cum laude, 1993

## **RELATED PRACTICE AREAS**

- Business & Commercial Disputes
- Investigations
- Real Estate Disputes
- Environment
- Real Estate
- Consumer Fraud
- Insurance (Class Actions)
- Pharmaceutical & Medical Devices (Class Actions)
- Campus Free Expression
- Higher Education Technology Development & Commercialization
- Trade Secrets
- Class Actions
- Antitrust Class Actions
- Shareholder Securities and Mergers & Acquisitions
- Food, Ag & Nutrition (Class Actions)
- Financial Services
- Class Actions & Mass Torts
- Brownfields
- Citizen Suits/NIMBY
- Clean Air Act
- Clean Water Law
- Compliance Audits and Internal Investigations
- Cost Recovery Litigation (Superfund/CERCLA and State equivalents)
- Criminal Enforcement
- Endangered Species (ESA)
- Environmental Review (NEPA and State EIS laws)
- Hazardous Materials Transportation (HMTA)
- Hazardous Waste (RCRA)

- Insurance Counseling
- International Environmental Law
- Oil Spills
- Pesticides (FIFRA)
- Data Center & Digital Infrastructure Team
- Healthcare & Life Sciences
- Reporting Requirements (EPCRA, CERCLA, Prop 65 and other state laws)
- Safe Drinking Water (SDWA)
- Solid Waste and Landfills
- Toxic Substances Regulation (TSCA)
- Transactional Work, Including SEC Disclosures
- Underground Injection Control (UIC)
- Water Rights
- Wetlands
- Mobile Source Emissions and Fleet Management
- Higher Education Team
- Regulation, Compliance & Advisory
- Litigation & Dispute Resolution
- Patents: Litigation
- Trademarks: Litigation
- Agribusiness
- Food & Beverage
- Employment Class & Collective Actions
- Sports (Class Actions)
- Data Privacy, Telecommunications & Collections
- Toxic Tort
- Pubs, Clubs & Restaurants
- Food & Agribusiness
- Appellate
- Intellectual Property and Technology

## **EXPERIENCE**

### **LITIGATION EXPERIENCE:**

- Lead counsel for liquid biopsy cancer genomics company in international arbitration regarding alleged breaches of patent license agreement.

- Lead counsel for microfluidics biotechnology case in multiple trade secret and patent litigation matters. Cases successfully resolved.
- Lead counsel for National Association of Theater Owners in class action challenging the film ratings of movies depicting tobacco smoking.
- Lead counsel for leading consumables company in post-acquisition earn out case. Obtained summary judgment on all claims.
- Lead counsel for national retailer in class action alleging price fixing conspiracy. Obtained voluntary dismissal with prejudice after filing sanctions motions against plaintiff's counsel.
- Lead counsel for the largest workplace solutions company in the world. Successfully defeated multiple motions for class certification in consumer fraud, RICO, false advertising, and unfair competition class action in Northern District of California.
- Lead counsel for Residential Finance Corporation in multiple class actions alleging violations of various federal and state mortgage regulatory laws. Economically resolved matter prior to adverse class certification decisions entered against co-defendant.
- Lead counsel for nutritional supplement company in patent infringement case in the Northern District of California. Successfully invalidated all patents on summary judgment.
- Lead counsel for multiple wrongful death cases against leading rental car company. Obtained efficient resolutions, including voluntary dismissal immediately after taking key deposition.
- Lead national counsel for educational software company defending allegations of patent infringement in multiple jurisdictions. Implemented novel strategy of suing "licensing agent" of unknown patent owner, resulting in quick resolution. Strategy later described in *New York Times*.
- Lead counsel for fashion industry client in a series of patent cases involving garment-finishing technology resulting in multi-million dollar licensing revenue.
- Lead counsel for numerous designers and manufacturers in intellectual property cases involving counterfeit goods.
- Lead counsel for investors in a shareholder dispute resulting in a \$2.6 million jury verdict.
- Lead counsel for a mortgage company in a trademark and unfair competition case resulting in the dismissal of all claims following a two-day evidentiary hearing.
- Lead counsel for software company in a trade secret case resulting in the dismissal of all claims after a two-day evidentiary hearing.

- Lead counsel for mortgage company in a trade secret and non-competition case resulting in a favorable settlement following the denial of a preliminary injunction motion after a two-day evidentiary hearing.
- Lead counsel for the Recording Industry Association of America in Missouri and Illinois for music file sharing subpoena and copyright infringement cases.
- Co-lead counsel for Sigma-Aldrich in a patent case involving DNA labeling technology resulting in a favorable settlement following the claim construction hearing.
- Member of the trial team for the husband in a divorce case involving a \$72 million marital estate.
- Member of the trial team for PING in a patent case resulting in a defense verdict and award of attorneys' fees.

#### APPELLATE EXPERIENCE:

- In *Johnson v. Monsanto Co.*, No. CGC-16-550128 (S.F. Superior 2018), Mr. Marshall serves as post-trial and appellate counsel and helped obtain a \$211 million reduction in a punitive damages award. Appeal ongoing.
- In *Circle Click Media LLC v. Regus Management Group, LLC*, No. 17-15088 (9th Cir. 2018), Mr. Marshall successfully argued for affirmance of the denial of class certification in unfair competition cases involving shared office space.
- In *Roberts v. Daymon Worldwide*, No. 16-16474 (9th Cir. 2018), Mr. Marshall successfully argued for affirmance of summary judgment in a post-acquisition earn out case.
- In *Nestle Purina Company v. Oil Dri Corp.*, No. 17-1744 (Fed. Cir. 2018), Mr. Marshall successfully argued in favor of remand to the PTAB for reconsideration of an adverse decision in an *inter partes* review.
- In *Deutsche Bank National Trust Co. v. Wuensch*, No. 2015AP175 (Wisc. 2018), Mr. Marshall successfully obtained review in the Wisconsin Supreme Court over an adverse intermediate appellate decision regarding the enforceability of commercial paper and later successfully argued for reversal of that decision.
- In *Veritas Tech. LLC v. Veeam Software Corp.*, No. 2015-1894 (Fed. Cir. 2016), Mr. Marshall successfully argued for a rare reversal of the denial of a motion to amend in the *inter partes* review of a patent involving backup restoration software.
- In *Yvanova v. New Century Mortgage Corp.*, Nos. B247188 & S218973 (Cal. 2016), Mr. Marshall successfully argued in the California Supreme Court and the California Court of

Appeal resulting in decisions that substantially limited the standing of borrowers to sue for wrongful foreclosure.

- In *Creagri, Inc. v. PinnacLife Inc.*, No. 2014-1209 (Fed. Cir. 2014), Mr. Marshall convinced the Federal Circuit to affirm the invalidity judgment of the trial court on rare section 101 and 112 grounds with respect to patents involving nutritional supplements.
- In *Arabia v. BAC Home Loan Servicing, L.P.*, No. D060923 (Cal. App. 4th 2012), Mr. Marshall convinced the California Court of Appeals, in an issue of first impression, that loan servicers have standing to seek judicial foreclosure under California Code of Civil Procedure Section 725a.
- In *Delta Groups Engineering, Inc. v. Sprint Spectrum, L.P.*, No. 100,920 (Kan. 2012), Mr. Marshall convinced the Kansas Supreme Court to hear a discretionary appeal regarding the scope of the parol evidence rule under Kansas law in a case with approximately \$20 million at stake (the case settled shortly thereafter).
- In *Mitchell v. Residential Funding Corp.*, No. WD70210 (Mo. App. W.D. 2010), Mr. Marshall successfully argued for reversal of a \$92 million punitive damages judgment in a class action under the Homeowner Equity Protection Act.
- In *Trim Fit, LLC v. Dickey*, No. 08-3711 (8th Cir. 2010), Mr. Marshall successfully argued before the Eighth Circuit, which reversed the district court's denial of attorneys' fees for the defendant in a non-compete case.
- In *S. Neurosurgical, Inc. v. Midwest Division – RMC, LLC*, No. WD70122 (Mo. App. W.D. 2010) (en banc), Mr. Marshall successfully argued before the en banc Missouri Court of Appeals, which ordered an approximately 70% reduction to a multi-million jury verdict for breach of contract.
- In *Erickson v. U-Haul Int'l Inc.*, 278 Neb. 18 (Neb. 2009), Mr. Marshall successfully argued before the Nebraska Supreme Court, which affirmed a final judgment for U-Haul in a products liability case.
- In *Crater Corp. v. Lucent Tech. Inc.*, No. 08-1289 (Fed. Cir. 2009), Mr. Marshall successfully argued before the Federal Circuit, which affirmed summary judgment in favor of a government contractor in a contract, patent, and trade secret case in which the United States Navy asserted the state secrets privilege.
- In *Jewish Center for Aged v. BSPM Trustee, Inc.*, No. ED91965 (Mo. App. E.D. 2009), Mr. Marshall successfully argued before the Missouri Court of Appeals, which upheld a lower court injunction preventing the sale of a substantial nursing home facility.



- In *Vale v. Avila*, No. 08-2161 (7th Cir. 2008), Mr. Marshall successfully argued before the Seventh Circuit, which affirmed the district court just one day after oral argument to allow the return of a father's children to their home in Venezuela in this pro bono international child-abduction case under the Hague Convention.
- In *Mars, Inc. v. Coin Acceptors, Inc.*, 527 F.3d 1359 (Fed. Cir. 2008), Mr. Marshall wrote the brief that convinced the Federal Circuit to reverse a multi-million dollar patent damages award for lack of standing.
- In *Cures Without Cloning v. Pund*, 259 S.W.3d 76 (Mo. App. 2008), Mr. Marshall wrote the brief that convinced the Missouri Court of Appeals to reverse the trial court's judgment finding the ballot summary statement insufficient and unfair for a ballot initiative related to stem cell research.
- In *Vinson v. Vinson*, 243 S.W.3d 418 (Mo. App. 2007), Mr. Marshall successfully argued before the Missouri Court of Appeals in a divorce appeal involving ownership of a \$40 million business that Missouri Lawyers Weekly described as one of the most important Missouri appeals of the year.
- In *Roper v. Weaver*, 550 U.S. 598 (2007), Mr. Marshall was part of a team representing a death row inmate that convinced the Supreme Court to dismiss a writ of certiorari as improvidently granted and thus leave intact the lower court's reversal of the death sentence.
- In *Stehno v. Sprint Spectrum, L.P.*, 186 S.W.3d 247 (Mo.banc 2006), Mr. Marshall wrote the brief that convinced the Missouri Supreme Court to reinstate a defense verdict and hold that temporary employees have no business expectancy in future employment.
- In *Boggs v. Lay*, 164 S.W.3d 4 (Mo. App. 2005), Mr. Marshall wrote the brief that convinced the Missouri Court of Appeals to affirm a \$3 million verdict on behalf of a young boy run over by a truck.
- In *In re ETM Network*, No. 03-555 (9th Cir. 2005), Mr. Marshall successfully argued before the Ninth Circuit in a bankruptcy preference and breach of contract action.
- In *Harris v. ChartOne*, 841 N.E.2d 1028 (Ill. App. 2005), Mr. Marshall successfully argued before the Illinois Court of Appeals, which affirmed the dismissal of a class action suit brought against medical record companies.
- In *Tivoli Building, L.L.C. v. Metropolitan Design*, 139 S.W.3d 592 (Mo. App. 2004), Mr. Marshall successfully argued in the Missouri Court of Appeals, which affirmed a significant judgment of attorneys' fees, interest, and costs in the absence of any finding of liability.

- In *Billy-Bob Teeth, Inc. v. Novelty, Inc.*, 329 F.3d 586 (7th Cir. 2003), Mr. Marshall successfully argued before the Seventh Circuit, which reinstated a jury verdict for copyright infringement.
- In *Leggett & Platt, Inc. v. Hickory Springs Manufacturing Co.*, 285 F.3d 1353 (Fed. Cir. 2002), Mr. Marshall wrote the brief that convinced the Federal Circuit to reverse summary judgment of non-infringement in a patent case, directly resulting in a favorable settlement.

## RESOURCES

### PUBLICATIONS

- Chapter on Brief Writing for *8th Circuit Appellate Practice Manual*, 2010

## RELATED INSIGHTS

News

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**BCLP adds top-tier trial lawyer in Seattle, continuing momentum of strategic hires and growth in Pacific Northwest**

News

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**Partner Lee Marshall elected to the American Law Institute**

Awards

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**Opening of new office in Seattle featured by numerous legal media outlets**

News

Aug 23, 2022

**BCLP strengthens Business & Commercial Disputes Team in London**

International law firm BCLP is growing its Litigation & Investigations Practice with the appointment of Ravi Nayer as partner in the Business & Commercial Disputes Team. He joins from Quinn Emanuel and will be based in the

London office.

Awards

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