

# APPELLATE HOT LIST

A SPECIAL REPORT

**O**ur annual Appellate Hot List recognizes firms that made exemplary contributions to appellate practice during the past year. We asked our readers to nominate firms with at least one significant appellate victory since January 2010 and that had demonstrated an impressive track record overall. We supplemented this material with our own extensive research to arrive upon the 17 firms listed. We understand that appellate victories frequently are collaborations, and regret that we lack space to fully recognize all the firms that contributed to the cases listed. We highlighted cases that affected the course of industries, vindicated important constitutional rights, and in which an awful lot of money was at stake. We gave extra weight to cases in which the firms pulled off come-from-behind wins.

## Covington & Burling

Covington & Burling's appellate group includes 56 attorneys led by Robert Long, who has argued 16 cases before the U.S. Supreme Court. The group, which also includes former federal judges Michael Chertoff, Rod McKelvie and Sarah Wilson, employs former law clerks from the Supreme Court and every federal court of appeals as well as six former assistants to the solicitor general. During the past year, Covington clients prevailed in two cases before the Supreme Court and won 13 cases in the courts of appeal, including controversies worth more than \$1 billion.

### NOTEWORTHY CASES

- *UFCW Local 1776 v. Eli Lilly and Co.* Lead attorneys Robert Long (argued), Michael Imbroscio, Mark Lynch, Jonathan Marcus and Mark Mosier. The 2d Circuit rejected class certification for third-party payers who claimed that Eli Lilly and Co. made misrepresentations about the effectiveness and safety of the drug Zyprexa. They sought \$7.7 billion in damages. Under RICO, the court said, there's "no question" that plaintiffs must allege and prove "third-party reliance as part of their chain of causation." The firm says the precedent could head off a cause of action that has been growing in popularity.
- *Conkright v. Frommert.* Lead counsel Robert Long (argued), Robert Wick, Richard Shea, Jonathan Marcus and Christian Pistilli. Xerox Corp.'s pension administrator told retirees during the 1980s that their benefits would be handled in a manner it later determined violated the Employee Retirement Income Security Act. The retirees sued to enforce the original interpretation. The 2d Circuit said they could, but, in a 5-3 decision, the Supreme Court rejected the lower court's "one-strike-and-you're-out" approach. The justices said that "a single honest mistake" in plan interpretation does not justify stripping a plan administrator of deference in subsequent interpretations of the plan.
- *Robertson v. Watson.* Lead counsel Robert Long (argued), Jack Metzler, Mark Mosier, Greg Rubio. Sometimes discretion is the better part of valor. During oral arguments in a test of a District of Columbia law permitting private citizens to pursue criminal contempt charges against people who violate civil protective orders, a faction of the court expressed open hostility. Long gave the justices a way out: Drop the appeal as improvidently granted. A narrow majority agreed, preserving a raft of similar laws in the district.

Covington has a highly successful appellate and Supreme Court litigation practice. Covington's lawyers include a former federal court of appeals judge, a former federal district judge, six former members of the U.S. Solicitor General's Office, 16 former law clerks to Supreme Court Justices, and more than 150 former law clerks to other appellate judges. Our lawyers have argued more than 50 cases in the U.S. Supreme Court and hundreds of cases in the federal and state appellate courts. Covington's appellate lawyers regularly are asked to represent clients on appeal after a lower court has entered an adverse ruling. In addition, our appellate lawyers frequently litigate legal issues in trial courts, functioning as members of a fully integrated trial team. Our appellate lawyers also analyze legal issues of importance to clients even before they arise in litigation.

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