

**ROBERT A. LONG, JR.
APPELLATE CASES**

Supreme Court of the United States¹

1. *Spokeo, Inc. v. Robins*, No. 13-1339 (Clients: American Bankers Association, Consumer Bankers Association, Mortgage Bankers Association, The Clearing House, and Financial Services Roundtable). Issue: Whether Congress may confer Article III standing on a plaintiff who suffers no concrete harm by authorizing a private right of action based on a bare violation of a federal statute.

2. *Tyson Foods, Inc. v. Bouaphakeo*, No. 14-1146 (Client: Consumer Data Industry Association). Issue: Whether a class may be certified under Federal Rule of Civil Procedure 23 based on statistical techniques that determine liability and damages based on an assumption that all class members are identical; whether a class action can be certified and maintained when the class contains members who were not injured.

3. *Campbell-Ewald Co. v. Gomez*, No. 14-857 (Client: Consumer Data Industry Association). Issue: Whether a putative class action becomes moot when a plaintiff who has asserted a class claim under Federal Rule of Civil Procedure 23 receives an offer of complete relief before a class is certified.

4. *King v. Burwell*, No. 14-114 (Client: HCA Inc.). The Court held that health insurance subsidies under the Affordable Care Act are available in all 50 states, including states that have not established their own health insurance exchanges.

5. *Obergefell v. Hodges*, Nos. 14-556 et al. (Client: Conflict of Law Scholars). The Court held that states are constitutionally required to allow same-sex couples to marry, and to recognize same-sex marriages performed in other states.

6. **Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (Client: Fifth Third Bancorp). The Court held that plaintiffs alleging that fiduciaries of an Employee Stock Ownership Plan (an "ESOP") violated their duty of prudence by allowing plan participants to continue investing in company stock do not have to overcome a "presumption of prudence," but must meet several requirements in order to survive a motion to dismiss the complaint.

7. *ABC, Inc. v. Aereo, Inc.*, No. 13-461 (Clients: National Association of Broadcasters, CBS Television Network Affiliates Association, and NBC Television Affiliates). The Court held that a for-profit service that enables subscribers to receive

¹ Mr. Long presented oral argument in cases marked with an asterisk. In addition to the listed cases, Mr. Long has participated in more than 150 cases at the certiorari stage in the Supreme Court.

broadcast television programs over the Internet infringes broadcasters' rights under the Copyright Act.

8. *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, No. 12-786 (Clients: The Clearing House, Financial Services Roundtable). The Court held that a defendant is not liable for inducing infringement of a patent under 35 U.S.C. § 271(b) when no one has directly infringed the patent under § 271(a) or any other statutory provision.

9. *United States v. Quality Stores, Inc.*, No. 12-1408 (Client: ERISA Industry Committee). The Court held that supplemental unemployment compensation benefits are taxable wages for purposes of the Federal Insurance Contributions Act.

10. *State of Mississippi ex rel. Hood v. AU Optronics*, No. 12-1036 (Client: Samsung). The Court held that a *parens patriae* action in which a state is the only named plaintiff cannot be removed to federal court as a "mass action" under the Class Action Fairness Act.

11. *Association for Molecular Pathology v. Myriad Genetics, Inc.*, No. 12-398 (Client: Pharmaceutical Research and Manufacturers of America). The Court held that a naturally occurring DNA segment is a product of nature and not patent eligible, but synthetic complementary DNA (cDNA) is patent eligible because it is not naturally occurring.

12. *Federal Trade Commission v. Actavis, Inc.*, No. 12-416 (Client: Shire plc). The Court held that agreements to settle Hatch-Waxman litigation that involve payments from an innovator company to a generic company are neither lawful per se nor presumptively unlawful, and should be evaluated under the antitrust "rule of reason."

13. *United States v. Windsor*, No. 12-307 (Client: Political Science Professors). The Court held that Section 3 of Defense of Marriage Act is unconstitutional as a deprivation of the equal protection component of the Fifth Amendment Due Process Clause.

14. *Hollingsworth v. Perry*, No. 12-144 (Client: Political Science Professors). Issue: The Court held that the proponents of California's Proposition 8, which bans same-sex marriage, lacked standing to challenge a district court decision invalidating the ban.

15. **National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012) (Client: Appointed by the Supreme Court as amicus curiae). The Court held that the Anti-Injunction Act did not bar constitutional challenges to the minimum coverage provision of the Affordable Care Act. The Court rejected the constitutional challenges on the merits on the ground that the statutory penalty for failing to obtain minimum coverage can be regarded as a tax for constitutional purposes.

16. *Federal Communications Commission v. Fox Television Stations, et al.*, 132 S.Ct. 2307 (2012) (Clients: CBS Affiliates Association and NBC Affiliates

Association). Issue: The Court held that the FCC's revised indecency policy violates the Due Process Clause. The Court's opinion cites and relies on the brief for the CBS and NBC Affiliates.

17. *Salazar v. Patchak*, 132 S.Ct. 2199 (2012) (Clients: Wayland Township, Michigan, and other local governments). The Court held that plaintiff had standing, and that his claim was not barred by the Quiet Title Act.

18. *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, 132 S. Ct. 1670 (2012) (Client: Pharmaceutical Research and Manufacturers of America). The Court held that a generic drug manufacturer may use the counterclaim provision of the Hatch-Waxman Act to challenge the "use code narrative" for a prescription drug published in the FDA's Orange Book.

19. *Mississippi State Conference of the NAACP v. Barbour*, 132 S. Ct. 542 (Client: Mississippi Secretary of State). The Court summarily affirmed a three-judge district court's ruling that Mississippi could proceed with scheduled state-wide elections in 2011 even though redistricting in response to the 2010 decennial census would not be completed until 2012.

20. *Brown v. Entertainment Merchants Association*, 131 S. Ct. 2729 (2011) (Client: National Association of Broadcasters). The Court held that a state law prohibiting the sale of violent video games to minors violated the First Amendment.

21. *Mayo Foundation for Medical Education and Research v. United States*, 131 S. Ct. 704 (2011) (Clients: John Hopkins University, Stanford University, Yale-New Haven Hospital, and 33 other universities and teaching hospitals). The Court upheld the validity of a Treasury Department regulation barring medical residents from claiming an exemption from Social Security taxes.

22. *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011) (Clients: Consumer Healthcare Products Association and Council for Responsible Nutrition). Issue: The Court held that a claim under § 10(b) of the Securities Exchange Act and Rule 10b-5 based on a pharmaceutical company's nondisclosure of "adverse event reports" by users of a drug need not be based on statistically significant evidence that the adverse events may be caused by the drug.

23. *Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.*, 131 S. Ct. 2188 (2011) (Client: Pharmaceutical Research and Manufacturers of America). The Court held that the Bayh-Dole Act does not necessarily vest title to government-funded inventions in federal contractors. The Court's opinion cites PhRMA's brief.

24. **Conkwright v. Frommert*, 130 S. Ct. 1640 (2010) (Client: Xerox Corporation Retirement Plan). The Court held that an ERISA plan administrator's good-faith interpretation of the terms of the plan is entitled to judicial deference, even if the plan administrator's initial interpretation was erroneous.

25. **Robertson v. United States ex rel. Watson*, 130 S. Ct. 2184 (2010) (Client: Wykenna Watson). The issue in this case was whether the U.S. Constitution requires that an action for criminal contempt be brought in the name of, and pursuant to the power of, the government rather than a private individual. The Court dismissed the writ of certiorari as improvidently granted, leaving the court of appeals' decision in favor of Ms. Watson as the final decision in the case.

26. *Mac's Shell Service, Inc. v. Shell Oil Products Company LLC*, 130 S. Ct. 1251 (2010) (Client: American Petroleum Institute). The Court considered claims for constructive termination and constructive non-renewal under the Petroleum Marketing Practices Act.

27. *United States v. Comstock*, 560 U.S. 126 (2010) (Client: Graydon Comstock *et al.*). The Court held that a federal statute authorizing indefinite civil commitment of sexually dangerous persons in the custody of the Bureau of Prisons does not exceed Congress's powers under Article I of the Constitution.

28. *Abbott v. Abbott*, 560 U.S. 1 (2010) (Client: Reunite International Child Abduction Centre). The Court held that a *ne exeat* clause (which prohibits a parent from removing a child to another country without permission from the other parent or a court) confers a "right of custody" for purposes of the Hague Convention on International Child Abduction.

29. *City of Ontario v. Quon*, 560 U.S. 746 (2010) (Client: National League of Cities). The Court held that a police department did not violate a police officer's Fourth Amendment rights by reviewing text messages sent to and from a government-issued paging device.

30. *Wyeth v. Levine*, 555 U.S. 555 (2009) (Clients: Pharmaceutical Research and Manufacturers of America and Biotechnology Industry Association). Issue: The Court held that prescription drug labeling determinations by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act did not preempt state law product liability claims premised on the theory that different labeling determinations were necessary to make drugs reasonably safe.

31. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (Clients: PBS and other public broadcasting entities). The Court held that the FCC's revised indecency policy for broadcast television is not arbitrary and capricious, and remanded for consideration of whether the policy violates the First Amendment.

32. *Cuomo v. The Clearing House Association*, 557 U.S. 519 (2009) (Client: Financial Services Roundtable). The Court held that state regulatory authorities may bring judicial actions to enforce non-preempted state laws against national banks.

33. *Pearson v. Callahan*, 555 U.S. 223 (2009) (Client: Afton Callahan). The Court overruled its decision in *Saucier v. Katz*, 533 U.S. 194 (2001), and held that a court may determine that a public official is entitled to qualified immunity (because the

constitutional right at issue was not “clearly established”) without first determining whether the official’s conduct violated the Constitution.

34. *Horne v. Flores*, 557 U.S. 433 (2009) (Client: Asian American Legal Defense & Education Fund). The Court considered the scope of the “appropriate action” requirement of the Equal Education Opportunity Act for English Language Learners in public schools.

35. *District of Columbia v. Heller*, 554 U.S. 570 (2008) (Client: District of Columbia). The Court held that portions of the District of Columbia’s gun control laws are invalid under the Second Amendment to the U.S. Constitution.

36. *Department of Revenue of the Commonwealth of Kentucky v. Davis*, 553 U.S. 328 (2008) (Client: National Association of State Treasurers). The Court held that a state income tax exemption that applies to interest earned on in-state municipal bonds, but not on out-of-state municipal bonds, does not violate the Commerce Clause of the U.S. Constitution.

37. *Quanta Computer, Inc. v. LG Electronics, Inc.*, 553 U.S. 617 (2008) (Client: iBiquity Digital Corporation). The Court clarified the scope of the patent exhaustion doctrine, under which the first authorized sale of a patented item exhausts the rights of the patent holder.

38. *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U.S. 248 (2008) (Client: ERISA Industry Committee). The Court held that a participant in a defined contribution pension plan is permitted to sue under Section 502(a)(2) of ERISA to recover certain losses attributable to the participant’s individual account.

39. *Leegin Creative Leather Products, Inc. v. PSKS, Inc., dba Kay’s Closet . . . Kay’s Shoes*, 551 U.S. 877 (2007) (Client: American Petroleum Institute). The Court held (overruling its prior decisions on the issue) that vertical minimum resale price maintenance is subject to the antitrust rule of reason rather than the per se rule.

40. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (Client: American Petroleum Institute). The Court held that a complaint alleging a contract, combination or conspiracy in violation of Section 1 of the Sherman Act must allege more than parallel business conduct to survive a motion to dismiss.

41. **Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007) (Client: Wachovia Bank, N.A.). The Court held that federal law preempts state laws regulating the banking activities of national bank operating subsidiaries, and that exclusive federal regulation of the banking activities of national bank operating subsidiaries is permissible under the Tenth Amendment.

42. **Lopez v. Gonzales*, 549 U.S. 47 (2006) (Client: Jose Antonio Lopez). The Court held that conviction in state court for a drug offense that is a felony under state law but only a misdemeanor under federal law is not an “aggravated felony” for immigration purposes.

43. **Samson v. California*, 547 U.S. 843 (2006) (Client: Donald Samson). The Court held that suspicionless, discretionary searches of parolees by police officers are permissible under the Fourth Amendment.

44. *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006) (Client: American Petroleum Institute). The Court held that antitrust challenges to joint ventures generally are analyzed under the rule of reason rather than the per se rule.

45. *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005) (Client: Business Software Alliance). The Court's decision clarified the scope of a software distributor's secondary liability for copyright infringement.

46. **Ortega v. Star-Kist Foods, Inc.*, 545 U.S. 546 (2005) (Client: Star-Kist Foods). The Court held that only one plaintiff in a multi-plaintiff case is required to satisfy the \$75,000 amount-in-controversy requirement for federal diversity jurisdiction.

47. *Gonzales v. Raich*, 545 U.S. 1 (2005) (Client: Angel Raich). The Court held that Congress did not exceed its powers under the Commerce Clause by applying the federal Controlled Substances Act to individuals who possess locally-produced cannabis within California for personal medical use, even if their activity is authorized by state law.

48. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005) (Clients: National League of Cities, *et al.*). The Court held that 42 U.S.C. § 1983 does not provide a cause of action for violations of provisions of the Telecommunications Act of 1996 that limit state and local authority over the construction of cellular telephone antenna towers.

49. *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111 (2004) (Client: Society of Permanent Cosmetic Professionals). The Court's decision clarified the scope of the fair use defense to trademark infringement.

50. *Lawrence v. Texas*, 539 U.S. 558 (2003) (Clients: Presiding Bishop of the Episcopal Church, *et al.*). The Court held that a Texas law criminalizing private sexual behavior between consenting adults of the same sex violated the Due Process Clause of the Fourteenth Amendment.

51. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003) (Client: Common Good). The Court held that a \$145 million punitive damages award violated the Due Process Clause, where full compensatory damages were \$ 1 million.

52. *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003) (Client: Texas Equal Access to Justice Foundation). The Court held that Interest on Lawyers' Trust Accounts ("IOLTA") programs do not violate the Takings Clause of the Fifth Amendment.

53. *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418 (2003) (Clients: Ringling Bros.-Barnum & Bailey Combined Shows, Inc., *et al.*). The Court's decision clarified the scope of Federal Trademark Dilution Act.

54. **Harris Trust and Savings Bank v. Salomon Smith Barney*, 530 U.S. 238 (2000) (Clients: Harris Trust and Savings Bank and Ameritech Corp.). The Court held that a non-fiduciary party in interest who engages in a transaction prohibited by the Employee Retirement Income Security Act (ERISA) may be sued for equitable relief, including restitution.

55. *Rice v. Cayetano*, 528 U.S. 495 (2000) (Client: Office of Hawaiian Affairs). The Court held that a provision of the Hawaiian Constitution providing for election of trustees of the Office of Hawaiian Affairs by Native Hawaiians violates the Fifteenth Amendment to the U.S. Constitution.

56. *Bragdon v. Abbott*, 524 U.S. 624 (1998) (Clients: American Association of Retired Persons, *et al.*). The Court held that the Americans With Disabilities Act applies to people infected with HIV.

57. *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998) (Clients: Council of State Governments, *et al.*). The Court held that interest earned on client funds held by lawyers under Interest on Lawyers' Trust Accounts ("IOLTA") programs is property for purposes of the Takings Clause.

58. *State of California v. Deep Sea Research, Inc.*, 523 U.S. 491 (1998) (Clients: National Trust for Historic Preservation, *et al.*). The Court held that the Eleventh Amendment does not apply to *in rem* admiralty proceedings when the *res* is not in the state's possession.

59. *United States v. United States Shoe Corp.*, 523 U.S. 360 (1998) (Client: United States Shoe Corp.). The Court held that the Federal Harbor Maintenance Tax violates the Export Clause of the U.S. Constitution.

60. *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998) (Clients: National Football League, *et al.*). The Court held that there is no Seventh Amendment right to a jury trial to determine "statutory damages" for copyright infringement.

61. *State Oil Co. v. Khan*, 522 U.S. 3 (1997) (Client: American Petroleum Institute). The Court held that vertical maximum price restraints are not per se illegal under the federal antitrust laws.

62. *City of Boerne, Texas v. P.F. Flores, Archbishop of San Antonio, et al.*, 521 U.S. 507 (1997) (Clients: San Antonio Conservation Society, *et al.*). The Court held that the Religious Freedom Restoration Act exceeded Congress's power under Section 5 of the Fourteenth Amendment.

63. *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997) (Clients: Lawyers' Committee For Civil Rights Under Law, *et al.*). The Court held that Alabama sheriffs executing their law enforcement duties are representatives of the state rather than the county, and therefore are not the county's "final policy maker" for purposes of 42 U.S.C. § 1983.

64. *Regents of the University of California v. Doe*, 519 U.S. 425 (1996) (Client: Regents of the University of California). The Court held that the Eleventh Amendment bars an action for damages against a state entity even if the state entity is entitled to indemnification from a third party.

65. *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996) (Client: National Football League). The Court held that there is an implied exemption from the antitrust laws for employers' joint implementation of a "last, best offer" in multi-employer collective bargaining.

66. **Bank One, Chicago, N.A. v. Midwest Bank & Trust Co.*, 516 U.S. 264 (1996) (Client: Bank One, Chicago, N.A.). The Court held that federal courts have jurisdiction to decide interbank claims under the Expedited Funds Availability Act.

67. *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) (Client: National Fair Housing Alliance). The Court's decision clarified the scope of an exemption under the Fair Housing Act.

68. *Swint v. Chambers County Commission*, 514 U.S. 35 (1995) (Clients: Lawyers' Committee for Civil Rights Under Law, *et al.*). The Court's decision narrowed the scope of "pendent party" appellate jurisdiction.

69. *West Lynn Creamery v. Healy*, 512 U.S. 186 (1994) (Client: West Lynn Creamery). The Court held that a Massachusetts tax on all milk sold to in-state retailers violated the Commerce Clause, where the proceeds of the tax were distributed to Massachusetts dairy farmers.

70. *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513 (1994) (Client: United States). The Court held that the federal drug paraphernalia statute requires proof of *scienter* and is not unconstitutionally vague.

71. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (Client: United States). The Court held that provisions of the Civil Rights Act of 1991 authorizing compensatory and punitive damages for intentional violations of Title VII do not apply to cases that were pending when the 1991 legislation was enacted.

72. *Rivers v. Roadway Express*, 511 U.S. 298 (1994) (Client: United States). The Court held that provisions of the Civil Rights Act of 1991 defining a term in 42 U.S.C. § 1981 do not apply to cases that arose prior to the enactment of the 1991 legislation.

73. *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993) (Client: United States). The Court's decision clarified the applicability of comity principles in international antitrust cases, as well as the scope of the boycott exception under the McCarran-Ferguson Act.

74. **United States Department of the Treasury v. Fabe*, 508 U.S. 491 (1993) (Client: United States). The Court's decision specified the extent to which the McCarran-Ferguson Act authorizes states to determine the priority of U.S. government claims against insolvent insurance companies.

75. **Musick, Peeler & Garrett v. Employers Insurance of Wausau*, 508 U.S. 286 (1993) (Client: Securities and Exchange Commission). The Court held that there is an implied right of action for contribution under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

76. *Keene Corp. v. United States*, 508 U.S. 200 (1993) (Client: United States). The Court's decision clarified the jurisdiction of the Court of Federal Claims under 28 U.S.C. § 1500.

77. *United States v. Green*, 507 U.S. 545 (1993) (dismissed) (Client: United States). The issue was whether *Edwards v. Arizona* requires suppression of a voluntary confession made when police officers initiated custodial interrogation months after a suspect invoked his right to counsel in connection with an unrelated offense, and after the suspect pleaded guilty to the unrelated offense.

78. **Spectrum Sports v. McQuillan*, 506 U.S. 447 (1993) (Client: United States). The Court's decision clarified the standard of liability for attempted monopolization in violation of Section 2 of the Sherman Act.

79. **Republic National Bank of Miami v. United States*, 506 U.S. 80 (1992) (Client: United States). The Court held that a federal court of appeals retains jurisdiction in an *in rem* forfeiture proceeding after the proceeds of the sale of the *res* have been released from the court's control and deposited in the U.S. Treasury.

80. *Federal Trade Comm'n v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992) (Client: Federal Trade Commission). The Court clarified the meaning of the "active supervision" requirement of the state action doctrine in antitrust cases.

81. **Wade v. United States*, 504 U.S. 181 (1992) (Client: United States). The Court held that federal courts generally have no authority to review a decision by a United States Attorney not to file a motion requesting a sentencing reduction to recognize substantial assistance to the government.

82. *Dawson v. Delaware*, 503 U.S. 159 (1992) (Client: United States). The Court held that a prosecutor's introduction of evidence in a capital sentencing proceeding that the defendant was associated with a racist prison gang violated the defendant's constitutional rights.

83. **Presley v. Etowah County Comm'n*, 502 U.S. 491 (1992) (Client: United States). The Court's decision clarified the scope of Section 5 of the Voting Rights Act.

84. **Southwest Marine v. Gizoni*, 502 U.S. 81 (1991) (Client: United States). The Court held that a maritime employee whose occupation is enumerated in the Longshore and Harbor Workers' Compensation Act may be "seaman" for purposes of the Jones Act.

85. *Astoria Federal Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991) (Client: United States). The Court clarified the preclusive effect of state agency findings of fact that have not been reviewed by a court.

86. *McNeil v. Wisconsin*, 501 U.S. 171 (1991) (Client: United States). The Court held that a defendant's invocation of the Sixth Amendment right to counsel during a judicial proceeding does not invoke the defendant's *Miranda* rights.

87. **Kay v. Ehrler*, 499 U.S. 432 (1991) (Client: United States). The Court held that a pro se lawyer is not eligible for an award of attorney's fees under federal fee-shifting statutes.

88. *Grogan v. Garner*, 498 U.S. 279 (1991) (Client: United States). The Court held that a claim that a debt arises from fraud must be proved by clear and convincing evidence under the Bankruptcy Code.

89. *Minnick v. Mississippi*, 498 U.S. 146 (1990) (Client: United States). The Court clarified the scope of *Miranda's* restrictions on reinitiation of custodial interrogation after a suspect invokes the right to counsel.

90. *Texaco, Inc. v. Hasbrouck*, 496 U.S. 543 (1990) (Clients: American Petroleum Institute and National Association of Manufacturers). The Court clarified the circumstances in which "functional discounts" are permissible under the Robinson-Patman Act.

Other Appellate Cases

91. *Meoli v. The Huntington National Bank*, Nos. 15-2308 & 2362 (6th Cir.) (Client: The Huntington National Bank) Issues: (1) Whether, under the Bankruptcy Code, a bank is a "transferee" of funds that are merely deposited in a customer's account; (2) whether the Bank was improperly held liable for transfers that did not diminish the assets available to creditors of the bankrupt entity; and (3) whether the Bank was improperly deprived of affirmative defenses under the Bankruptcy Code.

92. *East Coast Sheet Metal Fabricating Corp. v. Autodesk, Inc.*, No. 15-1717 (Fed. Cir.) (Client: Autodesk, Inc.) Issues: Whether East Coast's patents related to computer-aided design patents claim unpatentable subject matter and are not infringed.

93. *Americans for Clean Energy v. U.S. Environmental Protection Agency*, No. 16-1005 (D.C. Cir.) (Client: American Petroleum Institute) Issues: Whether EPA's Renewable Fuel Standards for 2014, 2015, and 2016, including the agency's partial waiver of statutory requirements that specified amounts of ethanol and other renewable fuels be used in those years, are lawful.

94. *American Petroleum Institute v. U.S. Department of Labor*, No. 15-1253 (D.C. Cir.) (Clients: American Petroleum Institute, American Fuel and Petrochemical Manufacturers, American Chemistry Council) Issue: Whether a guidance document issued by the Occupational Safety and Health Administration amounts to a legislative rule issued without the opportunity for notice and comment required by the Administrative Procedure Act.

95. *Global Tel*Link v. Federal Communications Commission*, No. 15-1461 & consolidated cases (Client: CenturyLink Public Communications, Inc.) Issue: Whether an order of the Federal Communications Commission establishing rate caps for telephone service to correctional institutions is arbitrary and capricious, contrary to the evidence in the record, and in excess of the FCC's regulatory authority.

96. *Bais Yaakov of Spring Valley v. Federal Communications Commission*, No. 14-1234 & consolidated cases (D.C. Cir.) (Clients: Gilead Sciences, Inc., et al.) Issue: (1) Whether the Federal Communications Commission exceeded its authority under a statute that regulates unsolicited faxes by adopting a rule that regulates solicited faxes; (2) whether the agency exceeded its authority by granting a limited waiver of its rule.

97. *ACA International v. Federal Communications Commission*, No. 15-1211 & consolidated cases (Client: Portfolio Recovery Associates, LLC) Issue: Whether the Federal Communications Commission's regulations implementing the Telephone Consumer Protection Act exceed the agency's statutory authority and are arbitrary and capricious.

98. *United States v. Burleson*, No. 15-6589 (4th Cir.) (Client: Arnold Paul Burleson) Issue: Whether an individual who has had his civil rights restored after being convicted of a felony is no longer a "felon" for purposes of 18 U.S.C. § 924(e), which prohibits a convicted felon from possessing a firearm.

99. *United States v. Adams*, No. 13-7107 (4th Cir.) (Client: Richard Adams) Issue: Whether a defendant who pleads guilty to the crime of being a felon in possession of a firearm, in violation of 18 U.S.C. § 924(e), and as part of the guilty plea waives the right to appeal his conviction, can nevertheless seek to vacate his conviction on the ground that he is actually innocent of the crime.

100. *Baghat v. Arab Republic of Egypt*, No. 15-1492-cv (2d Cir.) (Client: Arab Republic of Egypt) Issues: Whether a U.S. court has jurisdiction, under an exception to the Foreign Sovereign Immunities Act, to adjudicate claims that Egypt expropriated property of the plaintiffs; whether the district court properly dismissed the plaintiffs' claims under the doctrine of *forum non conveniens*.

101. *Takeda Pharmaceuticals, U.S.A., Inc. v. Burwell*, Nos. 15-5021 & 5022 (D.C. Cir.) (Client: Pharmaceutical Research and Manufacturers of America) Issue: Whether section 505(b)(2) of the Hatch-Waxman Act allows generic drug manufacturers to obtain the benefits provided to them under the Act without following the Act's procedures for protecting the incentives of pioneer manufacturers to innovate.

102. **CBS Corporation v. FCC*, No. 14-1242 (D.C. Cir. 2015) (Clients: CBS Corporation, the Walt Disney Company, Scripps Networks Interactive, Inc., Time Warner, Inc., Twenty-First Century Fox, Inc. Univision Communications Inc., Viacom Inc.) The Court stayed, and then vacated, an FCC order, issued in connection with the proposed Comcast-Time Warner Cable and AT&T-DirectTV mergers, that would have made petitioners' highly confidential business documents available to third parties.

103. *Synopsys v. Mentor Graphics Corp.*, Nos. 2014-1516 & 1530 (Fed. Cir.) (Client: Mentor Graphics Corporation) Issues: Whether the Patent Trial and Appeal Board correctly resolved a range of issues in an *inter partes* of Mentor's patent.

104. **Synopsys v. Lee*, No. 15-1183 (Fed. Cir.) (Client: Mentor Graphics Corporation) Issue: Whether the statutory restrictions on judicial review of decisions by the Patent and Trial Appeal Board to institute, or not institute, *inter partes* review extend to an effort to require the Board to consider additional patent claims challenged in a petition for *inter partes* review by bringing a challenge to an agency rule that permits the Board to institute review on some or all challenged claims.

105. *In re Actos (Pioglitazone) Products Liability Litigation* No. 14-31256 (Client: Eli Lilly and Company). Issues: Whether a \$9 billion jury award for failing to provide an adequate warning that the diabetes drug Actos increases the risk of bladder cancer, should be upheld.

106. *Shea Homes Inc. v. Commissioner of Internal Revenue*, Nos. 17-72161, 72162 & 72163. (Client: Shea Homes, Inc.) Issue: Whether Shea Homes properly reported income and losses from its planned communities using the completed contract method of accounting.

107. *Wal-Mart Stores, Inc. v. Trinity Wall Street*, No. 14-04764 (3d Cir.) (Clients: American Petroleum Institute, Business Roundtable, and Chamber of Commerce of the U.S.) Issue: Whether shareholder proposals seeking review of a retailer's selection of products to sell may be excluded from the retailer's proxy materials under the securities laws).

108. *Georg F.W. Schaeffler, INA v. United States*, No. 14-1965 (2d Cir.) (Client: Chamber of Commerce of the U.S.) Issue: Whether the attorney work product doctrine applies to a memorandum analyzing legal issues and arguments that could be made if the IRS audited the company's tax return.

109. *United States ex rel. Rigsby v. State Farm Fire & Cas. Co.*, No. 14-60160 (5th Cir.) (Client: Chamber of Commerce of the U.S.) Issue: Whether the district court acted within its discretion by limiting discovery in a False Claims Act case.

110. *Motorola Mobility LLC v. AU Optronics Corp.*, No. 14-8003 (7th Cir. 2014) (Client: Samsung Electronics Co.) Issue: Whether the Foreign Trade Antitrust Improvements Act bars antitrust claims under Section 1 of the Sherman Act based on sales of a component to foreign subsidiaries of a U.S. parent company, where some finished products that incorporate the component are imported into the U.S.

111. *Samsung Electronics Co. v. Panasonic Corp.*, No. 12-15185 (9th Cir. 2014) (Client: Samsung Electronics Co.) Issue: Scope of the “continuing violation exception” to the four-year statute of limitations on private antitrust actions.

112. *Securus Technologies, Inc. v. FCC*, Nos. 13-1280, 1281 & 1291 (D.C. Cir.) (Client: CenturyLink Public Communications, Inc.) Issue: Whether FCC regulations governing telephone services for prison inmates are arbitrary and capricious.

113. *American Petroleum Institute v. U.S. Environmental Protection Agency*, No. 12-1465 (D.C. Cir.) (Client: American Petroleum Institute) Issue: Whether the EPA’s biomass-based diesel volume requirement for 2013 violates the Clean Air Act.

114. *Newspaper Association of America v. Postal Regulatory Commission*, No. 12-1367 (D.C. Cir.) (Client: Newspaper Association of America) Issue: Whether the Commission’s decision approving a negotiated service agreement was arbitrary and capricious or contrary to law.

115. *AstraZeneca Pharmaceuticals LP v. Food and Drug Administration*, No. 12-5227 (D.C. Cir.) (Client: AstraZeneca) Issue: Whether the FDA violated the Food Drug and Cosmetic Act or the Administrative Procedure Act by prematurely approving generic versions of AstraZeneca’s drug Seroquel.

116. *Comcast Cable Communications, LLC v. Federal Communications Commission*, No. 12-1337 (D.C. Cir.) (Client: The Tennis Channel, Inc.) Issues: Whether the FCC’s determination that Comcast discriminated against The Tennis Channel on the basis of ownership is consistent with Section 616 of the Communications Act and the First Amendment.

117. *Fox Television Stations, Inc. v. Aereokiller LLC*, Nos. 13-55156, 13-55157 & 13-55228 (9th Cir.) (Clients: National Association of Broadcasters, CBS Television Network Affiliates Association, NBC Television Affiliates) Issue: Whether an unlicensed for-profit service that retransmits broadcasters’ signals to an unlimited number of viewers while the program is being aired is lawful under the Copyright Act.

118. *WNET v. Aereo, Inc.*, Nos. 12-2786 & 2807 (2d Cir.) (Clients: National Association of Broadcasters, ABC, CBS, NBC, and Fox Television Affiliates Associations). Issue: Whether an unlicensed for-profit service that retransmits broadcasters’ signals to an unlimited number of viewers while the program is being aired is lawful under the Copyright Act.

119. *Fox Broadcasting Company, Inc. v. Dish Network L.L.C.*, No. 12-57048 (9th Cir.) (Clients: ABC, CBS, NBC, and Fox Television Affiliates Associations) Issue: Whether a service that automatically skips all the advertisements on television programming is lawful.

120. **In re: FCC 11-161*, No. 11-9900 (10th Cir.) (Client: CenturyLink) Issue: Whether an FCC order adopting a “bill-and-keep” compensation system for long-distance telephone calls exceeds the FCC’s jurisdiction and is otherwise not in accordance with law.

121. *National Association of Broadcasters v. Federal Communications Commission*, No. 12-1225 (D.C. Cir.) (Client: National Association of Broadcasters). Issue: Whether an FCC rule requiring television stations to post detailed pricing information concerning political advertising is arbitrary and capricious or contrary to the Bipartisan Campaign Reform Act.

122. *Rouse v. Wachovia Mortgage FSB*, No. 12-55278 (9th Cir.) (Client: Wells Fargo Bank). Issue: Whether a national bank, for purposes of federal diversity jurisdiction, is a citizen of the state that is its principal place of business as well as the state in which its main office is located.

123. **American Petroleum Institute v. U.S. Environmental Protection Agency*, 706 F.3d 474 (D.C. Cir. 2013) (Client: American Petroleum Institute) Issue: Whether the EPA’s cellulosic biofuel volume requirement for 2012 violates the Clean Air Act.

124. *American Petroleum Institute v. U.S. Environmental Protection Agency*, No. 12-1330 (D.C. Cir.) (Client: American Petroleum Institute) Issue: Whether the EPA’s cellulosic biofuel volume requirement for 2011 violates the Clean Air Act.

125. **American Petroleum Institute v. Cooper*, No. 12-1078 (4th Cir.) (Client: American Petroleum Institute) Issue: Whether a state statute authorizing distributors and retailers to blend ethanol into gasoline over the objections of refiners is preempted by the Lanham Act, the Petroleum Marketing Practices Act, and the federal renewable fuel program.

126. *United States v. Quality Stores, Inc.*, No. 101563 (6th Cir. 2012) (Client: ERISA Industry Committee). The court held that payments made by Quality Stores to its employees upon terminating their employment involuntarily due to business cessation constituted supplemental unemployment compensation benefits that are not taxable as wages under the Federal Insurance Contributions Act (FICA).

127. **Wells Fargo Bank, N.A. v. Gutierrez*, Nos. 10-16959 & 10-17468 (9th Cir.) (Client: Wells Fargo Bank). Issues: The court held that state-law claims challenging the order in which a national bank posts transactions to customer checking accounts are preempted by federal law. In addition, the court held the state-law claims challenging the adequacy of the bank’s disclosures concerning posting order are preempted, but that state-law claims for affirmative misrepresentations could proceed.

The court of appeals vacated a \$203 million judgment against the bank in its entirety, and remanded for further proceedings.

128. **Amylin Pharmaceuticals, Inc. v. Eli Lilly and Company*, 456 Fed. Appx. 676 (9th Cir. 2011) (Client: Eli Lilly and Company). Issue: The court upheld the district court's denial of a preliminary injunction that would have prevented Lilly's sales representatives from promoting Tradejenta, a new oral diabetes medicine, together with Amylin's Byetta, an injectable diabetes medicine.

129. *Classen Immunotherapies, Inc. v. Biogen IDEC*, Nos. 2006-1634 & 1649 (Fed. Cir.) (Client: GlaxoSmithKline). Issues: Whether Classen's patents meet the requirements for patentability set out in 35 U.S.C. § 101; whether GSK's activities fall within the safe harbor established by 35 U.S.C. § 271(e)(1).

130. **Grace v. Family Dollar Stores*, 637 F.3d 508 (4th Cir. 2011) (Client: Family Dollar Stores, Inc.) Issues: In a case asserting that store managers are entitled to overtime pay under the Fair Labor Standards Act, the court of appeals held that the district court properly granted summary judgment to Family Dollar Stores on the ground that the store manager is subject to the executive exemption to the FLSA's overtime pay requirements.

131. **National Petrochemical & Refiners Ass'n v. EPA*, 630 F.3d 145 (D.C. Cir. 2011) (Client: American Petroleum Institute). Issue: The court held that EPA's renewable fuel standards for 2010 were not impermissibly retroactive and did not violate the Clean Air Act.

132. **In re: Zyprexa Products Liability Litigation*, 620 F.3d 121 (2d Cir. 2010) (Client: Eli Lilly and Company). Issue: The court held that the district court erred in certifying a class in a civil RICO case alleging mail fraud based upon generalized (rather than individualized) evidence of causation, injury, and damages.

133. *Association for Molecular Pathology v. Myriad Genetics, Inc.*, No. 2010-1406 (Client: PhRMA) Issue: Whether isolated DNA molecules that differ from naturally-occurring genes in the human body are patentable.

134. **In re An Arbitration in London, England Between Norfolk Southern Corporation and ACE Bermuda Insurance Limited*, No. 09-2609 (7th Cir.) (Clients: Norfolk Southern Corporation and Norfolk Southern Railway Company). Issue: Whether 28 U.S.C. § 1782 authorizes federal courts to provide assistance in gathering evidence for foreign commercial arbitration proceedings. Norfolk Southern dismissed this appeal following a settlement in the underlying London arbitration proceeding.

135. *Prometheus Radio Project v. FCC*, No. 08-3078 & consolidated cases (3d Cir) (Client: Coalition of Smaller Market Television Stations). Issue: Validity of FCC's review of and modifications to media ownership rules, including the local television ownership rule.

136. *Association for Maximum Service Television, Inc. v. FCC*, No. 09-1080 (D.C. Cir.) (Clients: Association for Maximum Service Television and National Association of Broadcasters). Issue: Validity of FCC order allowing unlicensed personal devices to share spectrum with broadcast television).

137. *CBS Corp. v. FCC*, No. 08-1187 (D.C. Cir.) (Client: CBS Television Network Affiliates Association). Issue: Validity of FCC's modifications to disclosure requirements for television broadcast licensees.

138. *Alongi v. Ricci*, 367 Fed. Appx. 341 (3d Cir. 2010) (Client: Anthony Alongi). The court granted Alongi's petition for a writ of habeas corpus, holding that he had been deprived of his Sixth Amendment right to represent himself at a murder trial. Alongi, who had been serving a life sentence, was released from prison after the state decided not to retry him.

139. *Miller v. SmithKline Beecham Corp.*, Nos. 08-5042 & 08-5050 (10th Cir.) (Client: Pharmaceutical Research and Manufacturers of America). Issue: Whether federal law preempts state tort claims for failure to warn of the suicide risk connected with certain antidepressants.

140. *Dobbs v. Wyeth Pharmaceuticals*, No. 08-6018 (10th Cir.) (Client: Pharmaceutical Research and Manufacturers of America). Issue: Whether federal law preempts state tort claims for failure to warn of the suicide risk connected with certain antidepressants.

141. *Mason v. SmithKline Beecham Corp.*, No. 08-2265 (7th Cir.) (Client: Pharmaceutical Research and Manufacturers of America). Issue: Whether federal law preempts state tort claims for failure to warn of the suicide risk connected with certain antidepressants.

142. *In re: Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988 (9th Cir. 2010) (Client: Council of Institutional Investors). The court held that Federal Rule of Civil Procedure 23 requires that class members be provided with reasonable notice and an opportunity to object to a motion for attorney's fees.

143. *Henirom, Inc. v. ExxonMobil Oil Corp.*, No. 08-2069 (4th Cir.) (Client: American Petroleum Institute). Issue: Whether a petroleum franchise agreement may be terminated under the Petroleum Marketing Practices Act for failure to adhere to contractual provisions designed to detect leaks in underground storage tanks.

144. *Comer v. Murphy Oil USA*, 585 F.3d 855 (5th Cir. 2009), *rehearing en banc granted*, 598 F.3d 208 (5th Cir. 2010), *appeal dismissed*, 607 F.3d 1049 (5th Cir. 2010) (5th Cir.) (Client: American Petroleum Institute). The issue in this appeal was whether plaintiffs' complaint alleging that oil companies, coal companies, and public utilities that emit greenhouse gases should be held liable for causing Hurricane Katrina was properly dismissed for lack of standing or because it raises a nonjusticiable political question. After the panel reversed the district judge's judgment of dismissal in part, the Fifth Circuit agreed to rehear the case en banc and vacated the panel decision. The

Fifth Circuit subsequently determined that it had lost a quorum to hear the case en banc, leaving intact the district court's judgment dismissing the case in its entirety. The Supreme Court denied plaintiffs' petition for a writ of mandamus.

145. *Solers, Inc. v. John Doe*, 977 A.2d 941 (D.C. 2009) (Client: Business Software Alliance). Issue: The court clarified the circumstances in which a third-party subpoena requiring an association to reveal the identity of a whistleblower should be quashed on First Amendment grounds.

146. *Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233 (11th Cir. 2008), *cert. denied*, 130 S. Ct. 59 (2009) (Client: Family Dollar Stores, Inc.). The court of appeals upheld a trial court decision in a collective action under the Fair Labor Standards Act that 1,424 store managers were not executives within the meaning of the FLSA and therefore were entitled to overtime pay.

147. *Elizabeth Powell v. Wal-Mart Stores, Inc.*, 303 Fed. Appx. 284 (6th Cir. 2008) (Client: Wal-Mart Stores, Inc.). The court of appeals upheld the district court's dismissal of the plaintiffs' civil RICO action and related state-law claims.

148. *Claudio Hernandez v. John A. Palakovich, et al.*, 293 Fed. Appx. 890 (3d Cir. 2008) (Client: Claudio Hernandez). The court of appeals reversed the district court's order dismissing Hernandez's *pro se* prisoner complaint and remanded for further proceedings.

149. *Linda M. Springer v. James R. Adkins*, 525 F.3d 1363 (Fed. Cir. 2008) (Client: James R. Adkins). The court of appeals held that Adkins, a federal firefighter forced to retire because of a disability, was entitled to an enhanced annuity under the Federal Employees Retirement System.

150. *Washington University v. Catalona*, 490 F.3d 667 (8th Cir. 2007), petitions for cert. denied, Nos. 07-521 & 07-525 (Client: Washington University). The court held that the University is the owner of human tissue and blood specimens contributed to the world's largest biorepository for prostate cancer research.

151. *Fox Television Stations, Inc. v. Federal Communications Commission*, 489 F.3d 444 (2d Cir. 2007) (Clients: CBS and NBC Affiliates Associations). The court held that the FCC's indecency policy is arbitrary and capricious and suggested, without deciding, that the policy violates the First Amendment.

152. **Certain Underwriters at Lloyd's, London v. Foster Wheeler Corporation*, 36 A.D.3d 17, 822 N.Y.S. 2d 30 (App. Div., 1st Dep't 2006), *affirmed*, 9 N.Y.3d 928, 876 N.E.2d 500, 844 N.Y.S. 2d 773 (2007) (Client: Foster Wheeler Corporation). The New York appellate courts held that insurance policies that cover multi-state risks and lack a choice-of-law provision are governed by the law of the policyholder's principal place of business. (Mr. Long argued this case before the Appellate Division, First Department and the New York Court of Appeals.)

153. **Animal Legal Defense Fund v. Veneman*, 469 F.3d 826 (9th Cir. 2006), rehearing en banc granted, 482 F.3d 1156 (2007), panel decision vacated and appeal dismissed, 490 F.3d 725 (2007) (Client: National Association for Biomedical Research). The issues were: (i) whether plaintiffs have standing to challenge a federal agency's decision not to adopt a discretionary policy concerning implementation of the Animal Welfare Act; and (ii) whether the agency's decision is subject to judicial review under the Administrative Procedure Act. After rehearing en banc was granted, the plaintiffs dismissed their appeal with prejudice, leaving the district court's decision in favor of NABR as the final decision in the case.

154. **National City Bank of Indiana v. Turnbaugh*, 463 F.3d 325 (4th Cir. 2006), *cert. denied*, 127 S. Ct. 2096 (2007) (Client: National City Bank). The court of appeals held that federal law preempts laws providing for state regulation of the federally-authorized banking activities of operating subsidiaries of national banks.

155. *Cooper v. IBM Personal Pension Plan*, 457 F.3d 636 (7th Cir. 2006), *cert. denied*, 127 S. Ct. 1143 (2007) (Clients: IBM Corporation and IBM Personal Pension Plan). The court of appeals held that IBM's cash balance pension plan does not violate the age discrimination provision of ERISA.

156. *Novartis Vaccines and Diagnostics v. Stop Huntingdon Animal Cruelty USA, Inc.*, 143 Cal. App. 4th 1284, 50 Cal. Rptr 3d 27 (Cal. Ct. App. 2006) (Client: National Association for Biomedical Research). The court of appeal held that neither the First Amendment nor California's anti-SLAPP statute bars the entry of an injunction prohibiting speech that constitutes the aiding and abetting of unlawful activity.

157. **United States v. Roderick Keith McDonald*, 178 Fed. Appx 643, 2006 U.S. App. LEXIS 10679 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1148 (2007) (Client: Roderick Keith McDonald). The court of appeals affirmed convictions for bribery, extortion, and money laundering.

158. *United States ex rel. Taylor v. Gabelli*, No. 05-7080 (D.C. Cir.) (Clients: Mario Gabelli, *et al.*). The issue was whether the Federal Communications Commission is subject to a third-party subpoena under Fed. Rule of Civil Procedure 45 in a *qui tam* case. This case settled before the court issued a decision; the D.C. Circuit adopted our argument that the United States is a "person" within the meaning of Rule 45 in *Yousuf v. Samantar*, 451 F.3d 248 (D.C. Cir. 2006).

159. **Wells Fargo Bank, N.A. and National City Bank of Indiana v. Boutris*, 419 F.3d 949 (9th Cir. Cal. 2005) (Clients: Wells Fargo Bank, N.A. and National City Bank of Indiana). The court of appeals held that state bank regulators lack authority to regulate the federally-authorized banking activities of national banks and their operating subsidiaries.

160. **Carolina Power & Light Co. v. Dynegy Marketing and Trade*, 415 F.3d 354 (4th Cir. 2005) (Client: Carolina Power & Light Co.). The court of appeals held that

when attorney's fees are an element of damages for breach of contract, the time for appeal does not begin to run until the district court decides the claim for attorney's fees.

161. *Tesoro Hawaii Corp. v. United States*, 405 F.3d 1339 (Fed. Cir. 2005) (Client: American Petroleum Institute). The court of appeals upheld the legality of price adjustment clauses in government fuel supply contracts.

162. **Prometheus Radio Project v. FCC*, 373 F.3d 373 (3d Cir. 2004) (Clients: ABC, CBS, and NBC Television Network Affiliates Associations). The court of appeals considered the validity of Federal Communication Commission's media ownership rules, including national limit on ownership of television stations.

163. *Union Pacific Railroad Co. v. Loa*, 153 S.W.3d 162 (Tex. App. – El Paso 2004) (Client: Union Pacific Railroad Co.). The court of appeals held that evidence of workplace harassment would not support a large award of damages for intentional infliction of emotional distress, but was sufficient to uphold a smaller award of damages under the Texas version of Title VII.

164. *Pfizer, Inc. v. Dr. Reddy's Laboratories, Ltd.*, 359 F.3d 1361 (Fed. Cir. 2004) (Client: Pharmaceutical Research and Manufacturers of America). The court of appeals held that a patent extension granted by the Hatch-Waxman Act includes a salt or ester of the active ingredient of a drug product.

165. *Office of Communication, Inc. of the United Church of Christ, et al. v. Federal Communications Commission*, 327 F.3d 1222 (D.C. Cir. 2003) (Client: Association of Public Television Stations). The court of appeals held that public television stations may use their surplus digital capacity for commercial purposes, including non-broadcast advertisements.

166. *DVD Copy Control Association, Inc. v. Bunner*, 75 P.3d 1 (Cal. 2003) (Clients: Microsoft, et al.). The California Supreme Court held that an injunction prohibiting publication of trade secrets over the internet does not violate the First Amendment.

167. *Union Pacific Railroad Co. v. Novus International, Inc.*, 113 S.W.2d 418 (Tex. App. – Houston, 2003, writ denied) (Client: Union Pacific Railroad Co.). The court of appeals held that a non-party to a shipping contract is not entitled to recover from the railroad as a third-party beneficiary.

168. *Motion Picture Ass'n of America v. FCC*, 309 F.3d 796 (D.C. Cir. 2002) (Client: WGBH Educational Foundation). The court of appeals held that regulations intended to assist visually impaired persons by requiring "video description" of certain television programs exceeded the FCC's regulatory authority and raised First Amendment concerns.

169. **7-Eleven, Inc. v. National Union Fire Insurance Co.*, 2002 WL 432619 (5th Cir. Feb. 28, 2002) (Client: 7-Eleven, Inc.). The court of appeals held that

exclusions in a crime insurance policy did not bar coverage of losses resulting from theft by a franchisee.

170. *Amfac Resorts, L.L.C. v. United States Department of the Interior*, 282 F.3d 818 (D.C. Cir. 2002), *vacated in part and remanded sub. nom. National Park Hospitality Association v. Department of the Interior*, 123 S. Ct. 2026 (2003) (Client: ARAMARK Sports and Entertainment Services, Inc.). The court of appeals considered the validity of regulations governing concessions contracts in national parks.

171. **Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (Clients: ABC, CBS, and NBC Television Network Affiliates Associations). The court of appeals considered the validity of restrictions on television network ownership of stations affiliated with the network, and on common ownership of cable systems and television stations.

172. *Dart Industries, Inc. v. Granite State Insurance Co.*, 52 P.3d 79 (Cal. 2002) (Client: Pharmaceutical Research and Manufacturers of America). The California Supreme Court clarified the requirements for proving the existence and terms of a lost insurance policy.

173. *Union Pacific Corp. v. Legg*, 49 S.W.3d 72 (Tex. App–Austin 2001, no writ) (Client: Union Pacific Corporation). The court of appeals reversed a \$50 million default judgment entered against Union Pacific in a tort case.

174. *Satellite Broadcasting & Communications Association of America v. FCC*, 275 F.3d 337 (4th Cir. 2001), *cert. denied*, 536 U.S. 922 (2002) (Clients: Public Broadcasting Service, Corporation for Public Broadcasting, and Association of Public Television Stations). The court of appeals held that a provision of federal law requiring satellite television operators to carry local television broadcast signals in limited circumstances does not violate the First Amendment.

175. **Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, 270 F.3d 180 (5th Cir. 2001), *rehearing denied by an equally divided court*, 293 F.2d 242 (2002), *vacated and remanded*, 538 U.S. 942 (2003) (Client: Texas Equal Access to Justice Foundation). This case concerned whether the Texas Interest on Lawyers' Trust Accounts ("IOLTA") program violates the First or Fifth Amendments to the U.S. Constitution. The federal courts ultimately upheld the constitutionality of the program. (Covington & Burling received a special award from the American Bar Association for its work on this case, and Mr. Long received two awards from the Texas Equal Access to Justice Commission.)

176. *United States v. Microsoft Corporation*, 253 F.3d 34 (D.C. Cir.) (en banc), *cert. denied*, 534 U.S. 952 (2001) (Client: Microsoft Corporation). In an antitrust action brought by the United States and several states against Microsoft, the court of appeals (i) affirmed in part and reversed in part a determination that Microsoft violated Section 2 of the Sherman Act, (ii) vacated a remedial order requiring Microsoft to be split into two

or more companies, and (iii) directed that the case be reassigned to a different district judge on remand.

177. **U.S. Airwaves, Inc. v. FCC*, 232 F.3d 227 (D.C. Cir. 2000) (Clients: U.S. Airwaves, Inc. and Sprint PCS). The court of appeals upheld the validity of amendments to Federal Communications Commission rules modifying the payment obligations of holders of certain licenses to provide wireless services.

178. *United States Telecom Association v. FCC*, 227 F.3d 450 (D.C. Cir. 2000) (Client: Sprint PCS). The court of appeals granted, in part, petitions challenging the validity of FCC rules implementing the Communications Assistance for Law Enforcement Act of 1994.

179. *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel or Vessels*, 221 F.3d 634 (4th Cir. 2000), *cert. denied*, 531 U.S. 1144 (2001) (Client: Kingdom of Spain). The court of appeals held that Spain retained ownership of two Spanish frigates sunk off the coast of Virginia in 1750 and 1802. (The Spanish Government awarded Mr. Long the "Cross of Queen Isabella" for his work on this case.)

180. *The Pittston Co. v. Sedgwick James of New York, Inc.*, 754 A.2d 1207 (N.J. 2000) (Client: The Pittston Co.). The question in this appeal (which was certified to the New Jersey Supreme Court by the U.S. Court of Appeals for the Third Circuit) concerned the choice-of-law rules applicable to a statute of limitations question. The case settled before the court issued a decision.

181. **The Pittston Co. v. Sedgwick James of New York, Inc.*, Nos. 97-5582 (3d Cir.) (Client: The Pittston Co.). This appeal concerned the choice-of-law rules applicable to a statute of limitations question. The Third Circuit certified a question of state law to the New Jersey Supreme Court; the case settled before that court issued a decision.

182. **Bank One, Utah, N.A. v. Guttau*, 190 F.3d 844 (8th Cir. 1999), *cert. denied*, 529 U.S. 1087 (2000) (Client: Bank One). The court of appeals held that the National Bank Act preempts state law restrictions on the establishment and operation of automated teller machines by national banks.

183. *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (Client: Sprint PCS). The court of appeals upheld an FCC order implementing the universal service provisions of the Telecommunications Act of 1996.

184. **QUALCOMM Inc. v. FCC*, 181 F.3d 1370 (D.C. Cir. 1999) (Clients: Sprint PCS and PrimeCo). The court of appeals considered the effect of an amendment to the Communications Act on an application for a "pioneer's preference" in connection with wireless telecommunications service.

185. *Cellular Telecommunications Industry Association v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999) (Client: Sprint PCS). The court of appeals rejected challenges to a

state law requiring wireless service providers to contribute to universal service programs.

186. *Legal Aid Society of Hawaii v. Legal Services Corp.*, 145 F.3d 1017 (9th Cir. 1998), *cert. denied*, 525 U.S. 1015 (1998) (Client: Legal Services Corp.). The court of appeals rejected constitutional challenges to regulations restricting the activities of Legal Aid organizations that receive federal funds.

187. *United States v. Engelhard Corp.*, 126 F.3d 1302 (11th Cir. 1997) (Client: U.S. Borax Inc.). The court of appeals held that a merger of mining companies did not violate § 7 of the Clayton Act.

188. *Pittston Co. v. Allianz Ins. Co.*, 124 F.3d 508 (3d Cir. 1997) (Client: The Pittston Co.). The court of appeals held that the “known loss” doctrine did not bar Pittston’s coverage under an insurance policy.

189. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *affirmed in part and reversed in part*, 525 U.S. 366 (1999) (Client: Cellular Telecommunications Industry Association). The court of appeals agreed with CTIA’s argument that provisions of an FCC order implementing interconnection provisions of Telecommunications Act of 1996 were valid as applied to wireless carriers.

190. *Iowa Utilities Board v. FCC*, 109 F.3d 468 (8th Cir. 1996) (Client: Cellular Telecommunications Industry Association). The court of appeals declined to stay provisions of an FCC order implementing interconnection provisions of Telecommunications Act of 1996 as applied to wireless carriers.

191. *Martinson v. Kinney Shoe Corp.*, 104 F.3d 683 (4th Cir. 1997) (Client: Epilepsy Foundation of America). The court of appeals applied the Americans With Disabilities Act to the discharge of an employee with epilepsy.

192. *Mobile Comm. Corp. v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996) (Client: American Personal Communications). The court of appeals granted, in part, petitions challenging an FCC order requiring a narrowband PCS pioneer to pay for a PCS license.

193. *Freeman Engineering Associates, Inc. v. FCC*, No. 95-1185, 1995 U.S. App. LEXIS 38565 (D.C. Cir., Nov. 12, 1995) (Client: American Personal Communications). The court of appeals held that the plaintiff lacked standing to raise a constitutional challenge to the pioneer’s preference provisions of the GATT legislation.

194. *Telephone Elecs. Corp. v. FCC*, No. 95-1055, 1996 U.S. App. LEXIS 4942 (D.C. Cir., Mar. 15, 1996) (Client: GO Communications). This case presented a challenge to provisions of the FCC’s rules implementing § 309(j) of the Communications Act, a provision that created preferences based on race and gender.

195. *Pacific Bell v. FCC*, No. 94-1148, 1994 U.S. App. LEXIS 32486 (D.C. Cir.) (Client: American Personal Communications). This case presented a challenge to FCC

orders awarding “pioneer’s preferences” for Personal Communications Services (“PCS”).

196. *Praxair, Inc. v. Florida Power & Light Co.*, 64 F.3d 609 (11th Cir. 1995), *cert. denied*, 517 U.S. 1190 (1996) (Client: Florida Power & Light Co.). The court of appeals held that a territorial service agreement between electric utilities was immunized from antitrust challenge under the state action doctrine.

197. *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) (Client: NYNEX). The court of appeals held that the FCC lacked authority under the Communications Act to permit nondominant common carriers to file tariffs reflecting a range of rates rather than fixed rates.

198. **Exxon Shipping Co. v. United States Department of the Interior*, 34 F.3d 774 (9th Cir. 1994) (Client: Exxon Shipping Co.). The court of appeals invalidated federal regulations purporting to authorize a federal agency to decide whether to respond to third-party discovery in civil cases. This decision is noted in 108 *Harv. L. Rev.* 965 (1995).

199. *Alaska Sport Fishing Ass’n v. Exxon Corp.*, 34 F.3d 769 (9th Cir. 1994) (Client: Exxon Corp.). The court of appeals held that res judicata principles barred private claims for lost recreational uses resulting from the Exxon Valdez oil spill.

200. *Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994) (Client: NYNEX). The court of appeals held that the FCC lacked authority to require physical co-location of telephone equipment.

201. *Procter & Gamble Mfg. Co. v. Hagler*, 880 S.W.2d 123 (Tex. App.-Texarkana), *writ denied*, 884 S.W.2d 771 (Tex. 1994) (Client: Procter & Gamble) In a defamation action, the court of appeals reversed a \$15 million damages award against P&G in its entirety.

202. **United States v. Dudley*, No. 90-8709 (5th Cir. 1992) (Client: United States). The court of appeals largely affirmed the convictions in a multi-defendant, multi-issue drug prosecution.

203. **United States v. Doe*, 903 F.2d 16 (D.C. Cir. 1990) (Client: Tarvis Newsom). The court of appeals reversed the defendants’ criminal convictions, holding that they were based on improper expert testimony and prosecutorial argument.