

## Appellate

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Appellate litigation is a specialized area requiring unique skill sets and experience. As one noted appeal court judge has put it, “The skills needed for effective appellate advocacy are not always found—indeed, perhaps are rarely found—in good trial lawyers.” Honorable Laurence H. Silberman, U.S. Court of Appeals, District of Columbia Circuit. “Persuading juries takes different forensic and analytical skills than persuading appellate judges.”

An appellate court does not look at the case or the issues in the same way that the trial court did. Success on appeal requires appellate counsel to draw on their judgment and experience to reanalyze and reframe the issues in the most effective way possible. What worked in the trial court usually will not work in the appellate court. Success also requires a skilled presentation. As Judge Silberman says, “The boost given a case by a thoughtful, elegantly written brief and polished oral argument cannot be overstated.”

### Services

#### Case Analysis

We provide an objective evaluation of the issues and merits of an appeal and advise on selection of appropriate issues and strategies for an appeal.

#### Appellate Advocacy

Our appellate attorneys are skilled brief writers, able to quickly zero in on the crux of the dispute—the issue or issues that will turn the case in our client’s favor. Our attorneys are skilled oral advocates. We use moot courts to hone the oral argument and prepare for all possible questions that the judges may ask during the argument.

#### Obtaining Discretionary Review

The skill to persuade appellate judges is nowhere more important than when discretionary review is sought of a decision that is not appealable as a matter of right. We understand the legal as well as practical considerations that appellate courts use to evaluate cases for discretionary review, and how to best position the case to obtain review.

## Amicus Briefs

We represent amicus curiae on matters of importance to industry and trade groups and other parties interested in the outcome of a case pending on appeal.

## Thinking Ahead

We assist counsel during trial court proceedings to identify issues that may arise in a later appeal and steps to take to preserve the issues for appeal. We prepare post-trial motions, or assist counsel with preparing them, with an eye toward properly framing the issues for a later appeal.

## Experience

### Appellate Representation in Important Business Cases

- **Augustine v. Arizant, Inc.:** 751 N.W.2d 95 (Minn. 2008), defining the scope of corporate officers' and directors' indemnification rights under Minnesota Business Corporation Act.
- **Damman v Progressive Direct Ins. Co.:** 856 F.3d 580 (8th Cir 2017), establishing standard for federal court removal jurisdiction under CAFA for class actions.
- **DLH Inc. v. Russ:** 566 N.W.2d 60 (Minn. 1997), landmark case establishing standard for summary judgments in Minnesota courts.
- **Sysdyne Corp. v. Rousslang:** 860 N.W.2d 347 (Minn. 2015), establishing a company's right to rely on advice-of-counsel defense to avoid liability for hiring employees subject to noncompete agreements with prior employers.
- **Silicone Implant Ins. Coverage Litigation:** 667 N.W.2d 405 (Minn. 2003), determining obligations of insurers to cover corporation's mass tort liability.
- **Diversified Water Diversion Inc. v. Standard Water Control Systems, Inc.:** 2008 WL 4300258 (Minn. Ct. App. 2008), setting standards governing punitive damages awards in cases involving nominal compensatory damages.
- **Estate of Prince Rogers Nelson:** 901 N.W.2d 234 (2017), determining intestate succession rights in high-profile case.

### Amicus Curiae Representation in Impact Cases

- **Adhikari v. Kellogg Brown & Root, Inc.:** 845 F.3d 184, 190-91 (5th Cir. 2017), addressing extra-territorial application of the Trafficking Victims Protection Reauthorization Act and Alien Tort Statute for human trafficking claims abroad.
- **Medtronic, Inc. Shareholder Litigation:** 900 N.W.2d 401 (Minn. 2017), addressing corporation's liability to shareholders for direct claims arising from inversion merger transactions.

- **Kottschade v. City of Rochester:** 760 N.W.2d 342 (Minn. Ct. App. 2009), defining the rights of commercial developers to assert regulatory takings claim based on severe development restrictions.
- **Wensmann Realty Inc. v. City of Eagan:** 734 N.W.2d 623 (Minn. 2007), establishing standards for regulatory takings claims.
- **Domtar Inc. v. Niagara Fire Ins. Co.:** 563 N.W.2d 724 (Minn. 1997), establishing scope of insurance coverage for pollution claims.