

## Appellate Practice and Trial Support - Amicus Curiae

Carlton Fields' national Appellate Practice and Trial Support group has extensive experience representing large companies, associations, and trade groups as amicus curiae in cases involving a multitude of issues affecting their interests. Through our extensive experience in the appellate courts, we have developed a command of strategies and techniques that allow us to present effective arguments as amici that grab the attention of appellate judges by providing insight on issues that cannot be provided in the merits briefing due, for instance, to limitations caused by the record on appeal.

Our group includes lawyers who have briefed and argued cases before the U.S. Supreme Court, every U.S. Circuit Court of Appeals, and in the state courts of more than 30 states. It includes former law clerks from numerous federal and state appellate courts, including the U.S. Supreme Court and the Florida Supreme Court; a former judge from Florida's district courts of appeal; a former Solicitor General of Florida; and two fellows of the American Academy of Appellate Lawyers, an invitation-only national organization.

### Representative *Amicus Curiae* Briefs

- *Fla. Dep't of Transp. v. Schwefringhaus*, 188 So. 3d 840 (Fla. 2016). Represented industry association in action involving whether state Department of Transportation was bound by railroad crossing agreement under which it received a revocable license to use land.
- *McCaffree Fin. Corp. v. Principal Life Ins. Co.*, 811 F.3d 998 (8th Cir. 2016). Represented industry group in support order granting motion to dismiss in ERISA class action involving allegedly excessive management fees charged by retirement plan service provider.
- *Gainesville Woman Care, LLC v. State of Florida*, Case No. SC16-381. Represented Florida Right to Life on the constitutionality of a 24-hour waiting period before terminating a pregnancy.
- *FM East Dev., LLC v. Mirzataheri*, 193 So. 3d 19 (Fla. 3d DCA 2016). Represented trade association in action involving whether homestead property can be the subject of an action for specific performance.
- *Ober v. Town of Lauderdale-By-The-Sea*, Case No. 4D14-4597 (Fla. 4th DCA). Representing trade association in action involving rights of individuals who purchase a home at a judicial sale.
- *Rothstein v. Balboa Ins. Co.*, 794 F.3d 256 (2d Cir. 2015). Represented American Security Insurance Company on application of the filed rate doctrine to lender-placed insurance claims.
- *Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364 (6th Cir. 2015). Represented industry groups and the U.S. Chamber of Commerce in action involving damages available to individuals receiving ERISA benefits.
- *Sells v. CSX Transp.*, 170 So. 3d 27 (Fla. 1st DCA 2015). Represented industry association in action involving whether railroad had duty to equip trains with automated external defibrillators in anticipation of the possibility that employees might suffer cardiac arrests.
- *DirecTV, Inc. v. Fla. Dep't of Rev.*, Fla. Supreme Court Case No. SC15-1249. Representing industry group in action challenging constitutionality of communications services tax as violative of interstate commerce clause.

- *Wollschlaeger v. Governor of Florida*, 760 F.3d 1195 (11th Cir. 2014), *opinion vacated and superseded on reh'g*, 797 F.3d 859 (11th Cir. 2015), *opinion vacated and superseded on reh'g sub nom. Wollschlaeger v. Governor of the State of Florida*, 814 F.3d 1159 (11th Cir. 2015), *reh'g en banc granted, opinion vacated sub nom. Wollschlaeger v. Governor of Florida*, 649 Fed. Appx. 647 (11th Cir. 2016), and *on reh'g en banc sub nom. Wollschlaeger v. Governor, Florida*, 848 F.3d 1293 (11th Cir. 2017). Represented American Bar Association in First Amendment challenge to the right of a regulated medical professional to engage in gun safety counseling with patients.
- *Merrimon v. Unum Life Ins. Co. of Am.*, 758 F.3d 46 (1<sup>st</sup> Cir. 2014). ERISA claims involving life insurer's use of retained asset accounts in connection with paying benefits.
- *Fridman v. Safeco Ins. Co. of Ill.*, No. SC13-1607. Represented industry associations on issue of whether the district court correctly found that in an action for uninsured motorist benefits, an insurer's payment of policy limits and confession of judgment fully resolves the substantive issues framed by the pleadings, rendering the issues moot and requiring dismissal of the action.
- *Heco v. Johnson Controls, Inc.*, Vermont Supreme Court Docket No. 2013-473. Representing Product Liability Advisory Council advocating the admission of evidence the plaintiff was not wearing a seat belt in automotive products liability actions; and that the trial court correctly followed Vermont precedent and the vast majority of U.S. courts' holdings.
- *Estate of McCall v. United States*, 145 So. 3d 894 (Fla. 2014). Represented large corporation in action challenging the constitutionality of statutory cap on noneconomic damages.
- *Raymond James Financial Services, Inc. v. Phillips*, SC11-2513, 162 So. 3d 186 (Fla. 2013). Represented Florida Association of Realtors in connection with whether statutes of limitations can be raised as defenses in arbitration proceedings.
- *Leimkeuhler v. Am. United Life Ins. Co.*, 713 F.3d 905 (7th Cir. 2013). Represented industry group in class action involving alleged revenue sharing by retirement plan service provider.
- *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432 (1st Cir. 2013). Represented industry group in appeal involving a challenge to lender-placed flood insurance.
- *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406 (3d Cir. 2013). Represented industry group in ERISA class action involving group life insurer's use of retained asset accounts to pay life insurance benefits.
- *Bondi v. Tucker*, 93 So. 3d 1106 (Fla. 1st DCA 2012). Represented Florida Chamber of Commerce in action involving the constitutionality of prison privatization legislation.
- *Hoover v. Maxum Indemnity Co.*, 291 Ga. 402, 730 S.E.2d 413 (2012). Represented the Georgia Defense Lawyers Association, an insurance defense oriented industry group, in authority an amicus brief in support of a motion for reconsideration.
- *Trafalgar at Greenacres, Ltd. v. Zurich Am. Ins. Co.*, 100 So. 3d 1155 (Fla. 4th DCA 2012). Represented insurance company and trade group in action regarding insurance bad faith.
- *Nationwide Life Ins. Co. v. Haddock*, 460 F. App'x 26 (2d Cir. 2012). Represented industry group regarding the district court's order certifying nationwide plan trustee class under Rule 23(b)(2) in ERISA litigation involving alleged "revenue sharing" fees received by 401(k) retirement plan service provider.
- *Curtis v. Northern Life Insurance Company*, Washington State Supreme Court, No. 82582-3. Amicus brief filed on behalf of the American Council of Life Insurers (ACLI).

- *Sorrell, Attorney General of Vermont, et al. v. IMS Health, Inc., et al.*, 564 U.S. 552 (2011). Amicus brief filed on behalf of TechFreedom.
- *Otte v. Life Ins. Co. of N. Am.*, No. 11-1973 (1st Cir. 2011). Represented industry group in appeal relating to district court's class certification order in ERISA litigation involving a group life insurer's use of retained asset accounts to pay life insurance benefits.
- *Genovese v. Provident Life & Accident Ins. Co.*, 74 So. 3d 1064 (Fla. 2011); *Aircraft Holdings, LLC v. X.L. Specialty Ins. Co.*, Fla. Supreme Court Case No. SC06-1303 (voluntarily dismissed after full briefing). Drafted an *amicus* brief on behalf of insurance companies supporting position that insurers should retain their right to assert attorney-client privilege with regard to confidential communications with their attorneys concerning the handling of and litigation over contractual disputes that arise when the insureds later file an action accusing the insurers of bad faith.
- *Raymond James Fin'l Servs., Inc. v. Phillips*, 126 So. 3d 186 (Fla. 2013). Represented trade association in action involving whether statute of limitations can be raised as a defense in arbitration proceedings.
- *Healthcare Strategies Inc. v. ING Life Ins. And Annuity Co.*, No. 12-4092 (2d Cir.). Represented industry group regarding 401(k) retirement plan service provider's petition for interlocutory appellate review, pursuant to Federal Rule of Civil Procedure 23(f) of the district court's order certifying nationwide plan administrator class under Rule 23(b)(3) in ERISA excessive fee" litigation.
- *Masone v. City of Aventura* (Fla. Supreme Court). Represented industry group in action addressing the authority to implement intersection safety cameras.
- *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011). Represented state chamber of commerce in action challenging constitutionality of growth management statute.
- *Travis v. Am. Honda Motor Co., Inc.*, Case No. 2010 CA 2935 (Fla. 2d Jud. Cir. Ct.). Represented industry group in action involving whether the Florida Legislature had the authority to overrule what it found to be an unfair, inequitable, and incorrect decision of the Florida Supreme Court.
- *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Protection*, 560 U.S. 702 (2010). Represented industry group in action alleging the state's beach renourishment project was an unconstitutional taking.
- *United States ex rel. Loughren v. UNUM Group*, 613 F.3d 300 (1st Cir. 2010). Represented industry and employer groups in action under federal civil False Claims Act involving private long-term disability insurance industry practices relating to insureds' application for Social Security Disability Insurance benefits.
- *Peters v. General Motors Corp.*, Missouri Supreme Court No. SC 87559 Representing Product Liability Advisory Council regarding imposition of punitive damages and the admissibility of evidence of other incidents.
- *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005). Drafted amicus brief on merits of engineering society in high-profile copyright case, advocating position ultimately adopted by Court.
- *Peters v. General Motors Corp.*, Missouri Supreme Court No. SC 87559 Representing Product Liability Advisory Council regarding imposition of punitive damages and the admissibility of evidence of other incidents.

- *D'Angelo v. Fitzmaurice*, 863 So. 2d 311 (Fla. 2003). Drafted an amicus brief on behalf of the Florida Defense Lawyers Association regarding application of set-off and apportionment rules in medical malpractice action.
- *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722 (2002). Drafted amicus brief on merits for engineering society in high-profile patent case, advocating position ultimately adopted by the Court.
- *Jackson v. General Motors Corp.*, Tennessee Supreme Court Appeal No. M2001-000433-SC-R23-CQ Representing Product Liability Advisory Council regarding the proper test for a design defect in products liability cases.