Appellate Practice

Lathrop GPM regularly briefs and argues cases in state and federal appellate courts throughout the United States. Our attorneys recognize that an appeal presents a new and distinct phase of litigation — it is rarely a "do-over" of the trial court proceedings. Case strategy and issues typically shift on appeal, so whether challenging or defending the decision in the underlying case, our attorneys focus on the factors that frame a reviewing court's analysis of the case and drive successful outcomes.

Our appellate attorneys provide insight and value at every stage of litigation, whether it is working with trial counsel to evaluate case-dispositive legal issues, managing interlocutory appeals and post-trial motion practice, or navigating the complexities of an appellate court once an appeal has been filed.

Lathrop GPM's appellate practice spans the entire range of the firm's litigation practice — from environmental and utilities cases, to commercial, franchise, personal injury, insurance recovery, employment and civil rights litigation. It also spans the spectrum of appellate matters — traditional appeals from final judgments, interlocutory appeals and original writs testing discrete issues or significant milestones, petitions supporting or opposing discretionary appellate review, administrative rulemakings or adjudications, and amicus briefs on matters of commercial or public interest.

Representative Experience

- *Little Caesar Enterprises, Inc. v. Little Caesars ASF Corporation*, Case No. 19-2335, 2021 WL 37544 (6th Cir. Jan. 5, 2021). The Firm successfully represented franchisor in federal court in Michigan, obtaining summary judgment enforcing termination of franchise agreements and post-termination obligations, including covenants not to compete, awarding damages of approximately $4.5 million, and dismissing franchisees' counterclaims. The 6th Circuit affirmed the district court's judgment in its entirety,

upholding the termination and the damages award, and rejecting the franchisees' arguments that certain claims were waived, that one of the parties was improperly sued, and that certain franchisees' claims should have been brought by the bankruptcy trustees overseeing their Chapter 7 cases.

- *Quraishi v. St. Charles County, Missouri,* No. 19-2462 (8th Cir. Jan. 28, 2021). During protests in Ferguson, Missouri after the death of Michael Brown, a police officer deployed a tear-gas cannister at reporters who were peacefully preparing for a live broadcast. On behalf of reporters, the Firm brought a federal civil rights action against officer and police department, and obtained district court order that officer was not entitled to qualified immunity from suit. On appeal by officer, the Eighth Circuit affirmed order denying qualified immunity from reporters' claims for first-amendment violation and assault and remanded for trial, finding multiple video streams supported reporters' version of events and that officer had not shown that his conduct did not violate clearly established statutory or constitutional rights.
- *Romag Fasteners v. Fossil, 140 S. Ct. 1492 (2020)*. The Firm authored an amicus brief filed in US Supreme Court on behalf of the American Intellectual Property Law Association in support of neither party, urging the Court to hold that willfulness is not a prerequisite to an accounting of profits for a violation of Section 35 (a) of the Lanham Act; the Court's opinion closely tracks the position we advocated.
- *Hayat Muse v. Minnesota Department of Employment and Economic Development* - No. A20-1330 (Minn. Ct. App. Dec. 7, 2020). In pro bono representation of nonprofit client Youthprise and a group of Minnesota high school students, the Firm successfully challenged state's position that high school students in Minnesota are not eligible for federal unemployment benefits under the CARES Act. The ruling makes millions of dollars in federal financial assistance available to thousands of high school students and low-income families that depend on their teenagers' wages to help make ends meet. Additional information available on Lathrop GPM press release.
- *Kansas City Area Transportation Authority v. Donovan*, 601 S.W.3d 262 (Mo. App. 2020). The Firm obtained summary judgment and appellate affirmance in favor of bi-state public transit agency establishing the agency's fee simple ownership of land conveyed by a 1901 Deed of Right of Ways, currently used as a public walking trail, and on the path of a potential new streetcar line. The appellate court accepted the ownership claim based on extensive

research of 19th and 20th century land records and rejected argument that abutting landowner had acquired title by adverse possession.

- *Travelers Indemnity Co. v. Mitchell,* 925 F.3d 236 (5th Cir. 2019). Representing three men who had been wrongfully convicted and incarcerated for several decades, the Firm persuaded the U.S. District Court, Southern District of Mississippi to hold, and the Fifth Circuit to affirm, that insurers cannot utilize common law "coverage theories" (e.g., "first manifestation" or "first exposure" or "continuous trigger" theories) to sidestep the plain language governing their policies. Both courts found the insurers liable under their policies for civil rights violations resulting in wrongful convictions. For more information, see June 3, 2019, AmLaw Litigation Daily article.
- *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125 (8th Cir. 2019). The Firm successfully represented an energy company in North Dakota federal court, and on appeal to the 8th Circuit, in obtaining and upholding an injunction against a tribal court lawsuit for alleged breach of a federal mineral lease. The 8th Circuit found the tribal court lacked jurisdiction because the energy company was not a member of the tribe and because tribal courts have no power to adjudicate a federal contract claim.
- *Roman Catholic Bishop of San Bernardino v. Doe*, No. 04-19-00153-CV, 2019 WL 3307858 (Tex. App.—San Antonio [14th Dist.] July 25, 2019). On appeal from a trial court's refusal to dismiss the case for lack of personal jurisdiction, the Firm obtained complete dismissal of a California diocese and its bishop in a multi-party personal injury lawsuit in Texas. The Court of Appeals held there was no personal jurisdiction because the defendants lacked sufficient minimum contacts with Texas. For example, defendants did not operate in Texas, did not control the student or the seminary allegedly involved in the misconduct at issue, and had no notice or knowledge of the alleged misconduct.
- *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018). The Firm represented plaintiffs in landmark education case before the Minnesota Supreme Court, alleging the State of Minnesota had failed to provide a constitutionally adequate education in Minneapolis and Saint Paul public schools because of racial and socioeconomic segregation. After the Minnesota Court of Appeals dismissed the lawsuit on justiciability grounds, the Minnesota Supreme Court reversed that dismissal and reinstated plaintiffs' lawsuit.

- *Rochester City Lines, Co. v. City of Rochester*, 913 N.W. 2d 443 (Minn. 2018) and *Rochester City Lines, Co. v. City of Rochester*, 868 N.W. 2d 655 (Minn. 2015). The Firm successfully represented winning bidder for city bus service in related Supreme Court cases reviewing procurement process for municipal bus contract. After a losing bidder challenged two consecutive public transportation contracts, the Minnesota Supreme Court rejected an argument that unproven allegations of bias in an earlier procurement process could create an appearance of bias in the subsequent procurement process. Both decisions helped shape the procedure and standard of review for challenges to best-value procurement processes in Minnesota.
- *State ex rel. Church & Dwight Co. v. Collins* and *State ex rel. Focus Workforce Management, Inc., et al. v. Collins*, 543 S.W.3d 22 (Mo. 2018). After the trial court refused to dismiss employment discrimination claims filed one day late against the Firm's clients, the Firm obtained a discretionary writ of prohibition placing two important restrictions on the ability of a plaintiff to bring suit under the Missouri Human Rights Act (MHRA). First, the Missouri Supreme Court made clear that the MHRA's 90-day window for filing a private cause of action is to be strictly enforced. Second, the Court rejected the plaintiff's effort to circumvent the deadline for statutory claims under the MHRA by alleging common law claims. Instead, the court held that that the private remedy available under the MHRA is the sole remedy for plaintiffs to whom the Act applies. Additional information available on Lathrop GPM news release.
- *Smith v. The Humane Society of the United States*, 519 S.W.3d 789 (Mo. 2017). The Firm successfully defended national animal rights organization against claims for defamation and false light invasion of privacy for statements made as part of campaign to pass a state-wide ballot initiative known as the Puppy Mill Cruelty Prevention Act. The Humane Society included plaintiff's business in a campaign publication entitled "Missouri's Dirty Dozen: A report on some of the worst puppy mills in Missouri." The Missouri Supreme Court found the alleged defamatory statements were constitutionally protected statements of opinion that could not be defamatory as a matter of law and that plaintiff's insufficient defamation claims could not be repackaged as false-light claims.
- *F.M. Doe v. Popravak*, 55 Kan.App.2d 1 (Kan. Ct. App. 2017). The Firm served as lead appellate counsel in a multi-defendant appeal that affirmed a trial court's ruling that the statute of repose barred an adult plaintiff's claims for injuries allegedly sustained many years earlier as a minor.

- *Concaten, Inc. v. AmeriTrak Fleet Solutions*, 669 Fed. Appx. 571 (Fed. Cir. Oct. 11, 2016). Representing a client accused of infringing five patents related to the tracking and coordination of snow plow fleets, the Firm obtained judgment on the pleadings based on the argument that the plaintiff's patents were directed at abstract ideas that were ineligible subject matter for a patent. The Federal Circuit agreed, affirming the invalidation of the plaintiff's patents.
- *Chavez v. Cedar Fair*, 450 S.W.3d 291 (Mo. 2014). After adverse rulings by the trial court and an intermediate appellate court, the Firm persuaded the Missouri Supreme Court to review and reverse a six-figure jury verdict in favor of an amusement park guest who was injured on a water slide. The Supreme Court held that the trial court instructed the jury on the wrong standard of care and erroneously refused to allow the jury to consider the plaintiff's comparative fault.
- *McGuire v. Kenoma*, LLC, 447 S.W.3d 659 (Mo. 2014). After granting the Firm's request for discretionary transfer to review adverse lower court decisions, the Missouri Supreme Court reexamined state law and reversed a judgment that retroactively awarded six-figures in post-judgment interest to a group of plaintiffs claiming that a hog farm was a nuisance. Based on comprehensive briefing and analysis by the Firm, the Supreme Court also abrogated more than a dozen Missouri cases because they incorrectly stated or applied the law.