Appellate Practice

Quinn Emanuel has an extensive nationwide appellate practice that focuses on briefing and arguing significant cases before the Supreme Court of the United States and the federal courts of appeals, and also maintains an extensive practice before the appellate courts of California, Delaware, New York, and other states. Our appellate experience spans all areas of our practice, from copyright, patent, trademark and trade secret law to antitrust, arbitration, business torts, commercial contracts, financial products, insurance and reinsurance, media, securities, bankruptcy, products liability, and white-collar criminal defense. Our appellate group has received numerous accolades, including being named to *The National Law Journal*'s prestigious "Appellate Hot List."

Our appellate practice is led by **Kathleen M. Sullivan**, who joined Quinn Emanuel in 2005 after a storied career as a professor at Harvard and Stanford Law Schools and as Dean of Stanford Law School. The author of leading casebooks on constitutional law and the First Amendment (as well as numerous articles published in both the academic and the popular press), Ms. Sullivan became the first and only woman name partner of an *AmLaw* 100 firm in 2010, when the firm became Quinn Emanuel Urquhart & Sullivan, LLP. Ms. Sullivan is one of the nation's most renowned appellate litigators, and has been named repeatedly to *The National Law Journal* (ALM)'s list of "The 100 Most Influential Lawyers in America." *Chambers* has recognized Ms. Sullivan for her Outstanding Contribution to the Legal Profession, and *Chambers USA* has described her as a "brilliant appellate lawyer" and "a consummate practitioner before any appeal court," who wins clients' approval as a "tremendously agile and a fabulous advocate." *Benchmark Litigation* named Ms. Sullivan a Top 10 Female Litigator and a Top 10 Appellate Star, and *Law360* has named her an Appellate MVP three times. *The American Lawyer* awarded Ms. Sullivan Litigator of the Week honors for the fourth time in 2021, after having profiled her in a 2013 cover story entitled "The Golden Touch." She has been named a Legend by *Lawdragon*. *The American Lawyer* and *New York Law Journal* (ALM) conferred on her Lifetime Achievement awards in 2021 and 2015, respectively, and in 2017 *Legal 500* named her to "The Hall of Fame." Ms. Sullivan was elected to the American Academy of Appellate Lawyers in 2014.

Sanford ("Sandy") I. Weisburst co-chairs the practice. Sandy has argued appeals in nine of the U.S. Courts of Appeals, as well as the New York Court of Appeals (New York's highest state court), a New York intermediate appellate court, and intermediate appellate courts in California, Georgia, and New York. In 2022, *LawDragon* named Sandy as one of the top 500 litigators in the United States. In 2020, Sandy was recognized by *The American Lawyer*'s Litigation Daily for a Fifth Circuit victory for Total Exploration and Production that overturned a multimillion judgment concerning decommissioning liability and another victory the same week in the Federal Circuit for Alacritech vacating and remanding a decision of the Patent Trial and Appeal Board that had invalidated one of Alacritech's patent.

Derek L. Shaffer also co-chairs the appellate practice. In 2021, *Law 360* named him an Appellate MVP, noting his recent string of resounding wins and observing how he successfully took a First Amendment "suit all the way from the earliest stages at the trial level up to the highest stages of appellate review" in prevailing before the U.S. Supreme Court. Following that seminal victory, he obtained California's agreement this year to a permanent injunction and payment of $8 million in legal fees his client had incurred. Even more recently, he won a precedent-setting First Amendment decision

from the D.C. Court of Appeals, which agreed with his invocation of religious abstention on behalf of UCI, a religious nonprofit, thereby largely resolving a longstanding lawsuit by a rival religious faction seeking more than a billion dollars in disputed assets.

William B. Adams also co-chairs the appellate practice and has been a member since its inception in 2005. *Benchmark Litigation* recognized William as a Litigation Star for 2023. In December 2021, *The American Lawyer*'s Litigation Daily named him "Litigator of the Week" for his Delaware Supreme Court victory on behalf of Mirae Asset in a $5.8 billion COVID busted-deal case. William has particularly substantial experience in the U.S. Courts of Appeals for the Second, Ninth, and Federal Circuits and the New York Appellate Division, First Department.

Quinn Emanuel's immensely talented appellate team additionally includes **John F. Bash**, a former U.S. Attorney for the Western District of Texas, a former Assistant to the Solicitor General and a former law clerk to Justice Antonin Scalia, who has argued ten cases in the U.S. Supreme Court and briefed twenty cases on the merits there; **David M. Cooper**, first in his class at Stanford Law School and former law clerk to Justice Anthony Kennedy, who has argued cases in seven federal circuit courts and many state courts across the country; and **Ellyde R. Thompson**, a former clerk on the Ninth Circuit, who practices extensively before federal and state appellate courts.

Quinn Emanuel's appellate practice is uniquely intertwined with its trial practice; the firm's leading trial lawyers, such as **Michael B. Carlinsky**, **Robert Schwartz**, **Christopher Tayback**, **Margret Caruso**, and **Adam M. Abensohn,** regularly argue and win significant appeals. Among our patent lawyers, **Charles K. Verhoeven, Raymond N. Nimrod**, **Victoria F. Maroulis**, **David A. Perlson**, **Brian C. Cannon**, and **Kevin P.B. Johnson** routinely score important Federal Circuit wins.

SELECTED RECENT REPRESENTATIONS

Supreme Court of the United States:

Quinn Emanuel has an experienced and deep Supreme Court practice. Its lawyers have argued before the Supreme Court on numerous occasions and the firm has filed countless principal and amicus curiae briefs. Some of our representative wins include:

- We recently achieved an appellate victory for BlackRock subsidiary **Tennenbaum Capital Partners (TCP)**, convincing the California Court of Appeal to reject a challenge to an arbitration award by TCP's former general counsel. The former in-house lawyer was attempting to invoke the California Labor Code to alter an arbitration award relating to sharing of carried interests, and the Court of Appeal rejected each of his arguments.

- On behalf of our client **Samsung**, we obtained a landmark victory in *Samsung Electronics Co., Ltd. v. Apple Inc.*, the first design-patent case to reach the Supreme Court in over a century. A federal jury had awarded Apple $399 million—the entire profits on Samsung's accused Galaxy phones—for supposed design-patent infringement of certain narrow portions of an iPhone's appearance. After successfully petitioning for certiorari, we obtained a stunning 8-0 reversal vacating that award and adopting Samsung's argument that, in a multicomponent device, infringer's profits under Section 289 of the Patent Act are limited to profits from the component to which the patented design is applied. The high court win was one of the last

chapters of the "smartphone wars" between Apple and Samsung, in which our firm represented Samsung in all trials and appeals.

- We won a seminal First Amendment victory for the **Americans for Prosperity Foundation** protecting the rights of all nonprofits and their donors. The Court adopted our arguments as to why and how the First Amendment prohibits governments from making sweeping, unjustified demands that charities disclose the identities of their individual donors. According to the Court's decision, it is facially unconstitutional for the Attorney General of California to demand that charities report the names and addresses of their major donors. The decision is the capstone for over six years of litigation by the firm on behalf of the Foundation.

- We successfully challenged a federal statute that made it harder for unwed U.S.-citizen fathers than unwed U.S.-citizen mothers to pass citizenship to a child born abroad, which the Supreme Court held unconstitutional under the Fifth Amendment's principle of equal protection in *Sessions v. Morales-Santana*.

- In a case *The New York Times* called "the most important business decision" of its Term, we won a landmark unanimous victory for **Shell Oil** in *Kiobel v. Royal Dutch Petroleum*, which held that the Alien Tort Statute (ATS), enacted by the First Congress in 1789, does not provide a cause of action in U.S. courts for alleged violations of international law that take place in foreign countries. The decision greatly curtailed the availability of the ATS as a vehicle to sue corporations in U.S. courts for supposedly aiding and abetting foreign governments' wrongdoing.

- We obtained a 7-2 victory in the Supreme Court for **Roche** in *Bd. of Trustees of Leland Stanford University v. Roche Molecular Systems, Inc.*, which arose from a suit involving patents related to HIV treatment that had been developed in a collaboration between Stanford and Roche's predecessor. The Court sided with Roche, holding that it was a co-owner of the patents-in-suit and rejected Stanford's effort to void its contracts based on its receipt of federal funding, reasoning that the statute governing federal research funding does not give universities automatic ownership of patents.

- We secured a 6-2 victory for **Wyeth LLC** (part of Pfizer Inc.) in *Bruesewitz v. Wyeth*, which held that the National Childhood Vaccine Injury Act preempts state-law claims based on theories of defective design in governmentally-approved child vaccines. The decision has significant implications for public health, as it removes design-defect claims that would have increased manufacturers' costs and depressed vaccine supply and development.

- We won an 8-1 victory for **Shell Oil** in the Supreme Court in *Burlington Northern & Santa Fe Railway v. United States*, which greatly limited "arranger" liability under CERCLA and held that Shell could not be held liable as an arranger for shipping useful chemicals. The decision also clarified the standards for apportionment under CERCLA.

- We obtained a Supreme Court victory for Japanese ocean carrier **"K" Line** in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, which unanimously held that ocean carriers are not subject to

regulation under the Carmack Amendment when they make intermodal shipments that travel both by sea and by land.

- In *Granholm v. Heald,* our lawyers obtained a 5-4 victory in the Supreme Court on behalf of **California vintners and Michigan consumers** challenging state laws imposing discriminatory restrictions on interstate shipments of wine. The Court held that the Twenty-First Amendment does not give states license to interfere with the national market in a way that violates the Dormant Commerce Clause.

STATE SUPREME COURTS:

We have also obtained successful results for our clients in state Supreme Courts around the country. For example:

- We obtained a victory for **Mirae Asset Global Investments**, in the Delaware Supreme Court, which upheld a ruling we obtained in the Delaware Court of Chancery holding that the seller of a $5.8 billion portfolio of hotels had breached its sale agreement's ordinary course covenant when it shut down and curtailed operations in response to the Covid-19 pandemic. On that basis, and another breach of a closing condition related to insurance, the court released Mirae Asset from its obligation to purchase the properties from the Chinese-based seller, financial conglomerate Anbang Insurance.

- We convinced the Delaware Supreme Court to reverse a summary judgment against our clients, the **Heyman family trusts**, in connection with a $3.2 billion sale of the chemicals business International Specialty Products Inc. to Ashland LLC. In 2015, Ashland and related entities filed a complaint in the Delaware Superior Court seeking to hold the Heyman Parties liable under the parties' 2011 stock purchase agreement for a significant environmental remediation. We obtained a complete reversal of the Superior Court's grant of partial summary judgment in favor of the Ashland Parties on their claim seeking contractual indemnification for the underlying environmental liability. The trial court had determined that the stock purchase agreement unambiguously allocates that liability to our clients, but, based on our arguments, the Delaware Supreme Court drew the opposite conclusion, holding that the parties' agreement unambiguously allocates the liability at issue to the Ashland Parties.

- We obtained a victory from the Delaware Supreme Court in a unanimous opinion vacating an $82 million jury verdict and remanding for a new trial on far more favorable terms for our client **Express Scripts** and its subsidiary in a post-M&A dispute. Although the transaction agreement expressly prevented the buyer from recovering outside an agreed insurance policy for anything other than "deliberate" fraud, the buyer nonetheless obtained a jury instruction authorizing recovery for mere reckless misrepresentations, and subsequently obtained an $82 million verdict. The Delaware Supreme Court set important precedent in holding these jury instructions impermissibly failed to heed the parties' agreement to limit fraud to intentional fraud, requiring a new trial.

- We secured a unanimous win in the Delaware Supreme Court, which affirmed a complete defense verdict that we had obtained for **Athilon Capital** and its board of directors. In this

bet-the-company case, Quadrant Structured Products (owned by Magnetar) had sought not only hundreds of millions of dollars and findings of breach of fiduciary duty against the members of the board as individuals, but also an order requiring Athilon to liquidate its assets and shut down its business. After our repeated victories, they obtained neither.

- We obtained a unanimous victory for **AIG** in the Delaware Supreme Court, which affirmed dismissal of a suit in which eight plaintiffs alleged AIG breached guaranteed investment contracts by triggering the contracts' event of default provisions.

- We obtained a complete appellate victory for **Southern California Gas Co. ("SoCalGas")** in a closely-watched business cases in the California Supreme Court. In a unanimous decision, the court reaffirmed that California follows the economic loss rule, which holds that plaintiffs may not recover in negligence for purely economic losses caused by harm to third parties. The decision required dismissal of actions against SoCalGas for indirect economic harms to local businesses allegedly suffered when local residents relocated temporarily after a gas leak. The decision clarified California tort law and eliminated the potential threat of billions of dollars in liability against California businesses for purely economic harm in mass disaster cases.

- We obtained a 5-0 decision from the New York Court of Appeals for an association of reinsurers vacating a summary judgment in a $400 million reinsurance case and holding that the "follow the fortunes" doctrine does not bar review of whether an insurer's allocation of a settlement to its reinsurers has an objectively reasonable basis.

- We won a resounding, precedent-setting decision from the D.C. Court of Appeals, which thoroughly vindicates our First Amendment arguments on behalf of **Unification Church International ("UCI")**. UCI is a DC religious non-profit that is caught in a religious schism dividing the Unification Movement along with the family of the late Reverend Moon. Following nearly a decade of litigation in DC courts that went against UCI, we were retained shortly before a remedial order was entered necessitating an emergency appeal: The order posed an existential threat to the corporation by, e.g., imposing hundreds of millions of dollars in fines on individual directors and removing a majority of UCI's board while granting plaintiffs' rival faction say over replacements. Turning the tide, we won an emergency stay from the D.C. Court of Appeals, followed by expedited consideration of our appeal, and now a merits decision that holds most of the rival faction's claims to be altogether foreclosed by ecclesiastical abstention under the First Amendment.

- We won a First Amendment decision from the Connecticut Supreme Court on behalf of **Gartner**, a global leader in technology analysis that publishes reports ranking vendors and products in cutting-edge technology markets. An aggrieved vendor, NetScout Systems, Inc., sued Gartner, alleging defamation and unfair trade practices based on Gartner's ranking of NetScout in one of its renowned "Magic Quadrant" publications. The Court rejected NetScout's efforts and agreed with the trial court that NetScout's allegations lacked evidentiary support. The Connecticut Supreme Court's decision provides important First Amendment protections more broadly for all consumer reviews.

- Representing **AIG** in a rare win for an insurer in the Supreme Judicial Court of Massachusetts, we successfully petitioned for review of, and then succeeded in reversing, an intermediate appellate court's decision that a "judgment" for purposes of a treble-damages statute includes not only the amount of a judgment but also accrued interest. The court unanimously adopted our interpretation of the statute and thus eliminated over a third of the judgment.

- We prevailed in an appeal to the Nevada Supreme Court on behalf the Board of Directors of **Reading International**, an internationally diversified company focused on cinema exhibition and real estate assets, in a dispute against its former CEO who had attempted to bring a purported derivative action for breach of fiduciary duty against the members of the Reading Board based upon their decision to terminate him, as well as a variety of subsequent board actions. The Nevada Supreme Court agreed with our argument that plaintiff lacked standing to bring his derivative suit and articulated, for the first time in Nevada, an eight-factor test to evaluate derivative standing.

- We obtained an important victory for **Google, LLC** in the Georgia Supreme Court against claims brought by Edible IP, the company that owns the "Edible Arrangements" trademark, alleging that Google's keyword advertising business constituted theft and conversion of the Edible Arrangements mark. Unlike in a prior federal claim, Edible's complaint specifically disclaimed consumer confusion. Instead, it asserted that its trademarks were property under Georgia law that Google was stealing. The Supreme Court unanimously affirmed the dismissal of Edible's claims, holding that no claim for trademark theft or conversion could be maintained without a showing of confusion.

LOWER FEDERAL AND STATE APPELLATE COURTS:

We have achieved numerous victories in other appellate courts throughout the United States. Below are examples of some of the results we have obtained for our clients:

ANTITRUST

- We represent numerous plaintiffs in two MDLs challenging the nation's four largest freight railroads' coordination of fuel surcharges as a violation of the antitrust laws. In the district court, the railroads argued that dozens of pieces of evidence should be excluded under a statutory provision particular to the railroad industry, 49 U.S.C. § 10706(a)(3)(B)(ii), which they claimed shielded the evidence from antitrust scrutiny. We prevailed in the district court, which denied the railroads' motion, and the D.C. Circuit largely affirmed the district court ruling. In the first decision interpreting this statutory provision, the D.C. Circuit held that a discussion or agreement may be excluded only if it concerns the participating rail carriers' shared interline traffic (i.e., shipments carried along two or more railroads' tracks)—and is not excludable if it is about single-line traffic (i.e., shipments moved by one carrier on its own tracks) or about freight traffic generally. This is an important ruling in ensuring that the railroads cannot broadly exclude evidence and thereby create a de facto immunity for their antitrust violations.

- Acting for a group of plaintiffs including the **City of Philadelphia** and **Prudential**, we obtained a victory in the Second Circuit in antitrust litigation over financial institutions' manipulation of the U.S. Dollar London Interbank Offered Rate ("Libor"). The Second Circuit reversed a district court's dismissal of plaintiffs' antitrust claims, adopting our arguments and holding that even though the Libor-setting process was cooperative, Libor manipulation still constitutes horizontal price-fixing (a *per se* antitrust violation).

- Acting for **The Home Depot**, we persuaded the Second Circuit to overturn a $7.25 billion antitrust class-action settlement that had required more than 12 million merchants to release *all* current and future claims against Visa and MasterCard—without permitting merchants to opt out of that release. We convinced the Second Circuit that the class had been inadequately represented and that the insufficient relief and inability to opt out meant the settlement violated class members' due process rights.

- We obtained a unanimous win for **Samsung** in the Ninth Circuit in a case making significant new law on the antitrust statute of limitations. We took over the case after the district court had dismissed Samsung's antitrust claims as untimely. On appeal, the Ninth Circuit reversed and reinstated the claims, holding that the imposition of new anticompetitive royalties restarted the statute of limitations under the "continuing conspiracy" doctrine even if other anticompetitive royalties had been imposed outside the limitations period.

ARBITRATION

- We obtained a decision from the Fifth Circuit enforcing a $722 million arbitration award for our client **Vantage Deepwater**—the largest ever enforced in that circuit. Following our arbitration win and district court confirmation victory, Petrobras argued on appeal that the arbitration award violated public policy. The Fifth Circuit rejected this argument, agreeing with our position that Petrobras' public-policy defense was just a disguised challenge to the factual findings and legal rulings of the arbitrators to which the court was required to defer. Additionally, in its first published opinion on the issue, the Fifth Circuit agreed with us that the district court was within its discretion to deny discovery from a dissenting arbitrator and the arbitration administrator.

- We represented the **Abu Dhabi Investment Authority** in an arbitration arising from a $7.5 billion investment in Citigroup. While Citigroup asked the district court to enjoin the arbitration on res judicata grounds, both that court and the Second Circuit on appeal rejected Citigroup's arguments—siding with us and ADIA in holding that the preclusion issue must be decided by the arbitrators in the first instance.

- We obtained a victory for **Sequus Pharmaceuticals**, a subsidiary of **Johnson & Johnson**, persuading the Ninth Circuit to issue a decision that strengthened protection of foreign arbitral awards by holding that the removal provision of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards should be construed broadly to prevent state-court end runs around foreign arbitration.

BANKRUPTCY

- We represented Charter Communications in an appeal from a bankruptcy court decision where Charter was sanctioned $20 million for violating the automatic stay, which is the largest sanction ever issued for an alleged stay violation. We obtained a complete reversalof the bankruptcy court's decision and $20 million award.

- We obtained an important victory in the Fifth Circuit for **Amplify Energy Corporation**, against three other energy companies that were challenging the chapter 11 reorganization plan of Amplify's wholly-owned subsidiary, Beta Operating Company. The challengers, third-party beneficiaries of a $160 million trust that Beta established for the benefit of the federal government to secure certain plugging and abandonment obligations in connection with offshore oil and drilling platforms, argued that Beta's chapter 11 plan impaired their rights in the trust because it would allow Beta to substitute the cash in the trust with bonds. After successfully defending against the companies' challenges in both the bankruptcy court and district court, Quinn Emanuel prevailed in the companies' further appeal to the Fifth Circuit, which unanimously ruled in favor of Beta.

- On behalf of our client, **G-I Holdings**, we won affirmance in the Third Circuit of the bankruptcy court's dismissal of an adversary proceeding filed by the New York City Housing Authority ("NYCHA"). The complaint sought to compel G-I to remove asbestos-containing materials from NYCHA's buildings, a $500-$600 million task. NYCHA sought to circumvent G-I's bankruptcy reorganization plan by arguing that its injunction claim was for equitable relief and not discharged under the bankruptcy code or G-I's plan. But we persuaded the bankruptcy court, the district court, and finally the Third Circuit that NYCHA's claim was ineligible for any exception to the discharge.

BUSINESS CONTRACTS AND TORTS

- We represented **Safeguard Properties** in a class action alleging consumer protection law violations. Within six months of being retained, we were successful in getting the class decertified and the case dismissed. Plaintiffs appealed the district court's dismissal of their class action and grant of summary judgment in Safeguard's favor, and asked the Ninth Circuit to certify questions about Safeguard's "good faith" defense to the Washington Supreme Court. The Ninth Circuit declined Plaintiffs' certification request and affirmed the dismissal of the consumer protection claim, confirming that Safeguard acted in good faith under existing law and therefore could not be liable. As a result of this ruling, this former 19,000-plaintiff class action could only proceed as single plaintiff, non-class, individual trespass claim.

- We took over a case from another firm, successfully appealed to the Ninth Circuit, and obtained a reversal of the district court, establishing new precedent in the employment field. A senior salesperson brought suit against our client, alleging statutory discrimination claims amongst other causes of action. Despite a broadly written arbitration agreement, the district court declined to compel arbitration on the basis that plaintiff had not "knowingly waived" her right to litigate in court over her statutory employment claims. On appeal, we obtained

a reversal and ruling from the Ninth Circuit that broad contractual language meets the "knowing waiver" standard.

- We obtained a $70 million post-trial victory, affirmed on appeal to the Federal Circuit, in a fraud case based on allegations that our client **Cisco** had delayed telling plaintiff XpertUniverse that a partnership application had been denied. After a jury awarded $70 million in damages, Cisco retained us for post-trial motions and appeal. We persuaded both the district court and the Federal Circuit that the evidence had been insufficient to support the award, and thus to enter and affirm judgment as a matter of law for Cisco.

- We successfully represented **Total Recall Technologies** in a Ninth Circuit appeal from an order granting summary judgment against our client based on Total Recall's partners' supposed lack of authority to sue on behalf of the company. Total Recall brought suit claiming that Oculus VR—which Facebook acquired in 2014 for $2 billion—had used a design its founder Palmer Luckey had created when he worked under exclusive contract with Total Recall, and that Luckey had taken the design with him when he founded his own company and used that design. On appeal, the Ninth Circuit reversed and remanded, agreeing with our position that any defect in authority had been retroactively cured and thus clearing the way for Total Recall's claims to proceed

- We obtained a significant victory for our client, **Colgate-Palmolive Co.**, in a case alleging that Colgate's talcum powder products were contaminated with asbestos. The Pennsylvania Superior Court—Pennsylvania's intermediate appellate court—affirmed summary judgment in favor of Colgate, holding that the plaintiff had failed to present evidence that would support a jury finding that Colgate's Cashmere Bouquet Cosmetic Talcum Powder caused her disease. This was the third straight appellate decision affirming summary judgment that QE has obtained for Colgate in a case involving allegations of asbestos contamination in talcum powder.

- We obtained a unanimous victory for our client **Pinterest** in the New York Appellate Division, First Department, which affirmed the dismissal of all claims asserted against Pinterest in its very first lawsuit, a trade-secret case in which the plaintiff alleged that he had come up with the idea for the wildly successful Pinterest website only to have it misappropriated by Pinterest's first investor. The decision adopted our arguments in explaining that the plaintiff failed to state claims for aiding and abetting breach of fiduciary duty, trade-secret misappropriation, unjust enrichment, and unfair competition.

CONSTITUTIONAL LAW AND CIVIL RIGHTS

- We represented the **Kamehameha Schools**, the world's largest private K-12 educational trust, obtaining an 8-7 *en banc* victory in the Ninth Circuit that held that the schools do not engage in "race discrimination in contracting" in violation of 42 U.S.C. § 1981 by giving an admissions preference to the Native Hawaiian schoolchildren for whose benefit they were founded by one of Hawaii's last monarchs.

CRIMINAL LAW

- We obtained reversal in the Second Circuit of our client's individual white-collar conviction on charges of violating the Iranian trade embargo and operating an unlicensed money transmitting business based on his receipt of family funds sent from Iran through an informal money transfer system called a hawala. The court held that the ITR do not unambiguously prohibit non-commercial remittances, including family remittances, between the United States and Iran, and that the district court had erred by improperly equating operation of a hawala with operation of a money transmitting business. On remand, we convinced the Government to dismiss the remaining charges.

DATA PRIVACY AND SECURITY

- We obtained a significant victory for **hiQ Labs, Inc.** over LinkedIn Corporation in the Ninth Circuit, which held in precedential opinion that scraping data from a public website does not violate the Computer Fraud and Abuse Act ("CFAA"). The Ninth Circuit held that the statute's prohibition on accessing a computer network "without authorization" does not extend to public websites. This holding represents a significant win for the open internet, and prevents website operators from invoking the federal computer hacking statute to enforce their terms of service against users who access only data that is not password-protected.

ENVIRONMENTAL LAW

- We convinced the Fourth Circuit to affirm the dismissal of three consumer class and mass actions against **Hyundai Motor America, Inc.** and a number of Virginia-based Hyundai dealerships arising from facts relating to the Environmental Protection Agency's imposition of civil fines on Hyundai for asserted Clean Air Act violations involving the method used to calculate vehicle mileage estimates for Elantra model years for 2011-2013.

- We won a major federal preemption decision for **Entergy** in the Second Circuit, which held that the Atomic Energy Act barred Vermont's effort to prevent continued operation of the Vermont Yankee plant for reasons of nuclear safety. After prevailing in a bench trial by demonstrating that state lawmakers had acted with a purpose to regulate nuclear safety (a field reserved to the federal government), we successfully defended that victory on Vermont's appeal to the Second Circuit, securing a unanimous affirmance.

- We obtained *five* significant Ninth Circuit victories for **Shell**, defeating petitions for review challenging the Bureau of Ocean Energy Management's approvals of Shell's plans for gas and oil exploration in Alaska's Camden Bay and Chukchi Sea and related challenges to EPA's issuance of Clean Air Act permits. The court held, among other things, that the agencies were entitled to significant deference when interpreting the relevant statutes, interpreting their own regulations, and making technical and scientific assessments.

- We represented the **Alliance of Automobile Manufacturers** in one of the highest-stakes appellate and environmental litigation matters in years, helping to obtain a ruling in the D.C. Circuit that nationwide greenhouse gas emission standards for automobiles, on which our client had already relied in constructing their 2012 model year fleet, would survive a challenge from a host of states and other industry groups.

GOVERNMENT AND REGULATORY LAW

- We successfully represented **United Parcel Service** ("UPS") in the D.C. Circuit, which granted our petition for review of an order of the Postal Regulatory Commission that had allowed the Postal Service to unfairly compete with other package-delivery services by misclassifying huge portions of its costs. In a unanimous opinion, the D.C. Circuit agreed with our arguments that the Commission's order was arbitrary, capricious, and contrary to law, describing it as "largely incomprehensible."

- On behalf of **Agility**, we convinced the Federal Circuit to issue a precedential opinion holding that the United States' invocation of the Debt Collection Act "is subject to judicial review," which "logically encompasses whether the government correctly assessed an overpayment." The result was a remand enabling Agility to continue pursuing its claim for the full amount of money withheld by the United States.

- In a major victory for **PG&E** in the California Court of Appeal for the Third District, we greatly limited California utilities' litigation exposure from wildfires by eliminating the threat of punitive damages for the 2015 Butte Fire. The court held that, in light of PG&E's extensive vegetation management program along its 135,000 miles of powerlines, PG&E could not possibly be found to have consciously disregarded the risk of tree-related wildfires. In addition to saving PG&E from potentially billions of dollars in punitive damages, the decision created important new California law protecting companies that institute risk management programs from the threat of such damages.

- We obtained a significant pro bono victory in the Federal Circuit for a Gulf War veteran. Our client sought disability benefits following a pulmonary embolism that resulted in a heart attack. The Veterans Administration denied benefits, and the Board of Veterans Appeals affirmed. On appeal to the U.S. Court of Appeals for Veterans Claims, that court held that the Board's decision rested on legal error but excused that error as harmless based on its own factual findings. We pursued a further appeal to the Federal Circuit, which vacated the decision as exceeding the Veterans Court's authority and expressly held that that court may not make factual findings in conducting harmless error review. This is an important decision as it ensures that the findings relevant to disability determinations will be made by experts not judges.

INSURANCE

- We represented subsidiaries of **AIG** in successfully persuading the Second Circuit to reverse a $34 million judgment after a jury trial in a reinsurance dispute. After a jury had found AIG liable for fraudulently inducing the plaintiff to enter into six reinsurance agreements, the district court had rescinded the agreements and ordered AIG to pay over $34 million, including $5.75 million in punitive damages. Taking the unusual step of overturning a jury verdict, the Second Circuit unanimously reversed, holding that the claims were barred by the statute of limitations because the plaintiff reinsurer was on notice of key facts from which it could have inferred its claims years prior to filing suit—including from the terms of a contract it had signed but claimed not to have read.

- We obtained a win in the California Court of Appeal for **QBE Insurance (Europe) Limited** and **Beazley Syndicate 2623/623 at Lloyd's**, securing reversal of a $12 million judgment. The two insurers had issued policies that were initially found to cover losses to restaurants related to feared contamination of fresh spinach; we persuaded the Court of Appeal that the plaintiffs had not shown that the losses were caused by conduct covered by the policies, as opposed to market-wide events.

PATENTS

- We obtained a major appellate victory for **Caltech** in the Federal Circuit in Broadcom's and Apple's appeal of a $1.1 billion patent infringement judgment our firm obtained for Caltech after a jury trial. The case concerns Caltech's inventions related to error correction in digital communications that are practiced by Broadcom's Wi-Fi chips and Apple's devices using those chips. Broadcom and Apple argued on appeal that the district court had erred by denying them judgment as a matter of law on infringement, admitting and excluding various expert testimony related to damages, and precluding certain invalidity defenses, among other issues. A 2-1 panel majority rejected almost all of those arguments, upholding the liability judgment for Caltech and making new law limiting patent estoppel based on proceedings before the Patent Trial and Appeal Board. The court remanded for a new trial on damages because the jury had found two different royalty rates, one for Broadcom and one for Apple.

- We had a 4-0 clean sweep for **Fitbit** at the Federal Circuit, invalidating Valencell's patents and keeping Fitbit's alive. Valencell had launched high-stakes patent litigation against Fitbit's heart-rate tracking technology, and also against Apple in a parallel action over the Apple Watch. After Apple settled, our client was alone in fielding four concurrent appeals before the Federal Circuit. We won them all.

- We successfully defended **SemaConnect, Inc.** in a patent infringement lawsuit brought by one of its competitors, ChargePoint, Inc. SemaConnect won a contract to install electric vehicle charging stations as part of the $15 billion settlement of Volkswagen's vehicle emissions scandal. We successfully sought and obtained dismissal of ChargePoint's complaint at the pleading stage on an expedited schedule. ChargePoint appealed the district court's decision to the Federal Circuit, which affirmed our victory in a precedential decision.

- We represented **Olaplex, Inc.** in successfully defending the Patent Trial and Appeal Board's rejection of L'Oreal USA's petition seeking invalidation of certain claims of Olaplex's patent on a groundbreaking process to protect hair during bleaching treatments. The Federal Circuit rejected L'Oreal USA's argument that the claims—which concerned the percentage amount by which hair breakage was reduced—were an inherent result of the other steps of Olaplex's patented process.

- We obtained an important appellate victory in the Federal Circuit for our medical device client **BlephEx, LLC**. This appeal focused on free speech: specifically, BlephEx's right to speak freely regarding its patents and Myco's infringement of those patents. Before we were

retained, the district court entered a preliminary injunction enjoining BlephEx from making allegations of patent infringement or threatening Myco's customers with patent litigation. The Federal Circuit reversed the district court's injunction and vacated the district court's tentative claim construction in the injunction order, leaving Myco with no credible non-infringement defense.

- We successfully obtained an affirmance from the Federal Circuit on behalf of our client, **Bio-Rad Laboratories**, that 10x Genomics's commercial products infringe Bio-Rad's patents, keeping in place an exclusion order from the U.S. International Trade Commission that prevents importation of 10x's infringing product.

- We obtained a complete reversal in the Federal Circuit of an $85 million judgment of patent infringement against **Google**. Plaintiff SimpleAir, Inc. had sued Google, Microsoft, and numerous other providers of smartphones and software, claiming its patents covered the technology used to send notifications to mobile devices. Google, while represented by previous counsel, had been found by two juries to infringe and to owe $85 million in royalties. On our successful appeal, the Federal Circuit reversed the district court's key claim construction ruling.

- We represented **Google**, **AOL**, **IAC**, **Target**, and **Gannett** in litigation accusing Google's AdWords and AdSense systems of patent infringement. We obtained reversal of a jury verdict of infringement and validity and an award of $30.5 million in damages. The Federal Circuit held that all of the asserted patent claims invalid for obviousness.

SECURITIES AND BANKING

- We obtained a complete victory in the Second Circuit for our clients **Mickey Gooch** and **Colin Heffron**, former Chairman and CEO of interdealer broker GFI Group. In a unanimous decision, the Second Circuit affirmed the district court's summary judgment ruling dismissing a Rule 10b-5 securities fraud case. The court held that no reasonable investor would have relied, in making an investment decision, on the general statement in a press release that a proposed deal represented "a singular and unique opportunity to return value." The decision brought a decisive end to a long-running case, and reaffirmed that "vague and indefinite expressions of corporate enthusiasm" are no basis for securities fraud class actions, a ruling that will aid future defendants.

- We represented five of the six largest Chinese state-owned banks in successfully convincing the Second Circuit to affirm a district court's decision that denied a motion for contempt seeking $150 million worth of sanctions. Plaintiffs moved for sanctions against the Chinese banks for discovery deficiencies and for violating the asset freeze orders by failing to freeze the accounts in China on the basis of Chinese law's prohibitions against enforcing foreign courts' asset freeze orders. The case involved major issues confronting foreign banks subject to U.S. litigation, including international comity, New York's separate entity rule's application, and joint liability for customers' activities.

- We successfully appealed, on behalf of **Iraq Telecom Limited**, a district court's decision to reduce a previously obtained $100 million attachment order against a Lebanese bank to $3

million. We had obtained an ex parte order from the district court, authorizing an asset freeze of up to $100 million in aid of the already issued arbitral award and in furtherance of a pending arbitration proceeding. The district court reduced the attachment to $3 million, largely on the grounds that Lebanon's ongoing financial crisis presented an extraordinary circumstance, and that the attachment could worsen Lebanon's financial crisis. The Second Circuit held that the court abused its discretion in reducing the attachment without considering whether an alternative attachment amount would have been appropriate.

- We achieved a remarkable across-the-board victory for the **Federal Housing Finance Agency**, as Conservator for Fannie Mae and Freddie Mac, in the Second Circuit, which affirmed our $800+ million trial win against Nomura and RBS. In an exhaustive, 147-page opinion, the court found "no merit in any of Defendants' arguments." Because FHFA had settled related cases, the decision vindicated our years-long litigation strategy as precedent, helping set important standards for securities markets.

- We represented **Financial Guaranty Insurance Company** in a case relating to a $900 million insurance policy on a credit default swap referencing a $1.5 billion collateralized debt obligation. We obtained a complete reversal from the Second Circuit of the district court's order dismissing the complaint for failure to state a claim, protecting our client's right to pursue its claims for fraud, negligent misrepresentation, and negligence.

- We obtained a unanimous affirmance from the Third Circuit of a complete trial victory for client **C3.ai**, including the award of attorneys' fees and expenses for our client. Former stockholders of E2.0, a company acquired by C3, sued C3 as well as its founder Tom Siebel and its former CEO David Schmaier for alleged securities fraud under 10(b) of the Securities Exchange Act of 1934, common law fraud, and breach of contract, seeking over $68 million in damages. We obtained a complete defense victory following trial. E2.0 appealed solely on one contract claim, and asked the Third Circuit to overturn the award of attorneys' fees and expenses to C3, but the Third Circuit agreed with the trial court that E2.0 had failed to prove damages on that claim and affirmed the judgment for C3 in its entirety.

- We successfully represented 2 U.S. and 37 non-U.S. plaintiffs in obtaining reversal of a dismissal on forum non conveniens grounds of claims pertaining to Citigroup's participation in a $750 million fraud that caused plaintiffs to lose over $1.1 billion from the collapse of Oceanografia, formerly the largest oil services company in Mexico. The Eleventh Circuit held that U.S. plaintiffs should be accorded a "strong" presumption in their chosen forum; our non-U.S. clients should also be accorded only "somewhat less deference" in their chosen forum; and it would be impractical and defeat the core objective of convenience to have two cases, one in the U.S. for the U.S. plaintiffs and one in Mexico for the non-U.S. plaintiffs. This is now one of the leading decisions on forum non conveniens.

TRADEMARKS, TRADE SECRETS AND COPYRIGHTS

- We obtained a significant victory for **Moldex-Metric, Inc.** in a trademark dispute over lime-green colored ear plugs, convincing the Ninth Circuit to vacate the grant of summary judgment to McKeon Products and holding that functionality of the lime green color must

be resolved at trial. This was our second Ninth Circuit victory in this case, having previously convinced the court of appeals to vacate an earlier summary judgment ruling on functionality as well.

- We obtained a complete reversal in the Ninth Circuit of a $172.5 million judgment entered against **Mattel** following a jury verdict on a trade-secrets misappropriation claim raised by toy company MGA Entertainment. The Ninth Circuit agreed that MGA's trade-secrets claim, which was raised as a "counterclaim-in-reply," was procedurally barred because it was not a "compulsory" response to any claim Mattel had raised, and therefore "should not have reached this jury."

- We obtained a unanimous Second Circuit win for **Vimeo,** a video-hosting website, in major record labels' suit for copyright infringement based on music in user-uploaded videos. After the district court granted Vimeo only partial summary judgment based on its ruling that the safe harbor provisions of the Digital Millennium Copyright Act do not apply to pre-1972 sound recordings and that questions of fact remained about Vimeo's knowledge, we successfully petitioned for a rare interlocutory appeal. We then convinced the Second Circuit that the DMCA safe harbor *does* apply to pre-1972 sound recordings, that mere awareness of a "famous" song in a video cannot confer "red flag" knowledge, and that Vimeo was not willfully blind to the alleged infringement.