

## Overview

Dentons provides its clients with some of the best, most seasoned appellate advocates in the United States. Our appellate litigators have briefed and argued more than 500 cases before the US Courts of Appeals in every circuit, and state supreme courts and intermediate appellate courts. Our appellate team includes former US law clerks to appellate judges on the federal and state benches, as well as former government officials at the US Department of Justice and US Attorneys' offices.

What distinguishes our Appellate practice is that most of our appellate lawyers are also experienced trial lawyers, which ensures that they have a firm grasp of a case, from the moment a client first meets with counsel, through pleadings, pre-trial proceedings, trial and appeal. We enhance our appellate practice and advocacy through a thorough understanding of your business, and of the proceedings in the trial court or administrative agency where your case began.

Clients regularly turn to us to take over cases heading for the US appellate courts. Clients who were represented by Dentons at the trial level stay with Dentons for their appeals. In both situations, our appellate litigators bring to bear the deep experience, specialized knowledge and sound judgment needed to overturn an adverse ruling or preserve a victory in high-stakes litigation involving the most complex issues. Dentons is also frequently retained to file *amicus curiae* briefs and enlist *amicus* support on issues of importance, including in the US Supreme Court.

Dentons' appellate expertise is especially valuable in substantive areas of law in which our firm has been recognized nationally in the US, including:

- Class Action Defense
- Competition and Antitrust
- Energy
- Financial institutions
- First Amendment
- Insurance
- Intellectual Property
- Life Sciences and Health Care
- Native American Law and Policy
- Privacy
- Restructuring, Insolvency and Bankruptcy
- Technology

# Representative Experience

- **Mutual insurance company:** Winning a favorable decision in the Seventh Circuit Court of Appeals that affirmed the District Court for the Western District of Wisconsin's dismissal of a US\$100+ million purported class-action lawsuit challenging changes by our client to its retiree medical plan that reduced its costs under the plan. The suit claimed that the retirees had a vested, unalterable right to require the insurance company to pay more of the cost of retirees' medical benefits than the insurance company felt it could afford. The trial and appellate courts disagreed, dismissing all of the plaintiffs' claims under the Employee Retirement Income Security Act and all of the related state law claims. Of particular significance was that a case of such magnitude was dismissed on the first motion to dismiss, with prejudice, avoiding the significant costs of discovery that usually are incurred in such cases. Dentons also successfully opposed plaintiffs' Petition for Certiorari to the US Supreme Court.
- **Insurance company:** Representing in a class action involving the issue of whether the use by insurance companies of preferred provider organization (PPO) discounts when calculating medical payments coverage amounts constitutes a deceptive practice and/or breach of contract. This is part of a series of class actions nationwide, but predominantly located in Madison and St. Clair counties in Illinois, dealing with this and similar medical payment reimbursement class-action issues. The trial court in this case certified an Illinois-only class, and the insurance company appealed. The Fifth District Appellate Court refused to hear the interlocutory appeal. However, the Illinois Supreme Court, based on our motion and briefs, required the Fifth District to take the case. In this decision, the court reversed the class certification order, finding that the relevant contracts clearly allowed the conduct in question. Therefore, there was no valid breach of contract, unjust enrichment or fraud claim upon which to base a class certification. This is a significant decision because many of the Firm's insurance clients have similar class actions that we are defending, and this case will serve as precedent for those cases.
- **Insurance company:** Playing a leading role in the successful defense of an antitrust class action filed in California federal court against a long-time insurance client and several other large insurers. The putative class plaintiffs alleged that the defendants conspired to supply inferior aftermarket repair parts and charge anticompetitive premiums to policyholders in violation of antitrust laws. The court granted defendants' Daubert motion, declaring the plaintiffs' proposed methodology for identifying the allegedly inferior aftermarket repair parts inadmissible. The court also denied plaintiffs' third motion for class certification—this time with prejudice. We also played a central role in obtaining summary judgment in favor of the defendants and an affirmance from the US Court of Appeals for the Ninth Circuit.
- **International House of Pancakes and DineEquity, Inc.:** Achieved a complete victory in the Ninth Circuit Court of Appeals who readily affirmed the district court's decision in dismissing a putative class action complaint against IHOP at the pleading stage, before even any discovery or class certification argument was required, where Sultan Hameed filed a putative class action complaint on behalf of a nationwide class of IHOP franchisees in the Eastern District of California, alleging numerous business practices and contracts violations impacting his franchise relationship with DineEquity (parent company of IHOP and Applebee's).
- **Council of the City of New Orleans, LA:** Serving as lead regulatory counsel for nearly 30 years, we have defeated significant class action litigation against the city of New Orleans, and as part of an interdisciplinary regulatory advisor team have achieved an unprecedented fourth consecutive rate reduction for the city's ratepayers, and assisted in the massive effort to rebuild the city's entire electric and natural gas system following the Hurricane Katrina disaster. Our team is currently handling more than 50 matters at the Federal Energy Regulatory Commission, Courts of Appeals and at the retail regulatory level, including the divestiture of Entergy Corporation's entire transmission system and the company's decision to join the Midwest Independent Transmission System Operator, Inc.
- **Life insurance client:** In another win for a life insurance subsidiary of a longtime insurance client, the Seventh Circuit affirmed the decision of the Northern District of Illinois granting summary judgment for our client in a nationwide class action. The plaintiffs had sought billions of dollars in damages, alleging breach of contract in our client's assessment of the COI charges for more than 500,000 policyholders. We fought hard in the district court after lengthy fact and expert discovery, motions for sanctions and motions to strike. In a thorough decision, the three-judge appellate panel affirmed the district court's holding that the construction of the contract terms supported the insurers' actions in determining the cost of insurance. This is the first federal appellate court opinion on the merits of this issue, which has been raised in several class actions against life insurers. The court's reasoning should help the life insurance industry as a whole in combatting such claims.
- **Major clean energy generating companies:** Representing as respondent intervenors in defense of the Environmental Protection Agency's Cross-State Air Pollution Rule in the DC Circuit, including through a successful merits briefing in the Supreme Court where the rule was upheld. The matter is now back on remand in the DC

Circuit. This high-profile case involves one of the Obama administration's most complex and significant regulations to date addressing air emissions from power plants.

- **Major national insurance company:** Successfully represented before the California Supreme Court in a precedent-setting unanimous ruling and significant win. Resolving a split within the state's lower courts, the court held that the insurer properly denied liability coverage for an underlying false advertising suit and "clarif[ied] and limit[ed]" the extent of an insurer's duty to defend. The case addressed the scope of coverage under a general liability policy's disparagement clause for claims of competitive injury, and was closely watched throughout the insurance industry. The court also disapproved of an earlier case against another insurer that had adopted a broader interpretation of coverage. The Ninth Circuit Court of Appeals subsequently upheld the insurer's denial of coverage for similar claims in another case in which Dentons also assisted on appeal.
- **Insurance client:** Obtained a major victory on behalf of longtime insurance client in the United States Court of Appeals for the Eleventh Circuit, who affirmed the dismissal of a class action seeking approximately US\$5 million plus enhanced damages. After the trial court ruled on multiple grounds in our client's favor, plaintiffs challenged only certain of those grounds on appeal. The Eleventh Circuit, in a detailed and fully published opinion, expanded on the waiver/abandonment of claims on appeal doctrine, finding that since plaintiffs did not challenge all of grounds for decision in our client's favor ruled on by the trial court, they had waived and abandoned those arguments, thus justifying affirmance on that basis alone. This decision is significant not only as a full class action victory for our client, but also for the detailed waiver and abandonment discussion, which should offer a useful precedent to our other appellate clients facing similar situations.
- **Representing the insurance industry in the aftermath of Hurricane Katrina:** Serving the insurance industry's defense efforts and representing the industry in many of the most significant cases, including presenting oral argument in the keynote case in which the validity and effect of the homeowner's insurance flood exclusion was upheld. We also successfully argued key dismissal and jurisdictional motions in actions brought against multiple insurers by the Louisiana attorney general, as well as arguing in numerous matters which resulted in the striking of class action allegations on the pleadings. Our team also obtained major favorable rulings in significant bad faith penalty and False Claims Act cases.
- **Schütz:** Representing a world leader in the supply of bulk industrial container technology in a patent infringement case. When the action came on to appeal in the Court of Appeal, we were successful in overturning the High Court judgment on an important point of law relating to remanufacturing products. The matter was tried by the Supreme Court in January 2013, and is only the second patent case to be heard by the new Supreme Court since it replaced the House of Lords. The complex case involved the coordination of three expert witnesses and the use of cutting-edge strain mapping and finite element analysis techniques to win the day.