

**BRIAN WOLFMAN**  
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## **FULL-TIME LEGAL EMPLOYMENT**

*Georgetown University Law Center, Washington, DC* 2016-present  
Associate Professor of Law  
Director, Appellate Courts Immersion Clinic  
Head clinic that handles public-interest cases in appellate courts  
Course: *Appellate Courts*

*Stanford Law School, Stanford, CA* 2014-2016  
Professor of the Practice of Law  
Co-Director, Supreme Court Litigation Clinic  
Co-taught student clinic that handles cases in the U.S. Supreme Court

*Georgetown University Law Center, Washington, DC* 2009-2014  
Visiting Professor of Law  
Co-Director, Institute for Public Representation  
Headed civil rights and general public-interest law clinic that handles federal trial and appellate litigation  
Courses: *Federal Courts and the Federal System* and *Appellate Courts*

*Public Citizen Litigation Group, Washington, DC* 1990-2009  
Director, *Litigation Group*, 2004-2009  
General Counsel, *Public Citizen*, 2004-2009  
Staff lawyer, *Litigation Group*, 1990-2004  
Practice areas: Public interest Supreme Court and appellate litigation; consumer health and safety; drug and medical device regulation; federal preemption; class actions; access-to-the-courts litigation; freedom of information and open government law; poverty law

*Legal Services of Arkansas, Little Rock, AR* 1985-1990  
Staff lawyer for rural legal services program  
Represented poor people in all areas of poverty law in state and federal courts and before administrative agencies

*U.S. Court of Appeals for the Eleventh Circuit, Macon, GA* 1984-1985  
Law clerk to Judge R. Lanier Anderson, III

## **PROFESSIONAL APPOINTMENTS**

*Institute of Medicine of the National Academies* 2010-2011

Member, Committee on the Public Health Effectiveness of the FDA 510(k)  
Clearance Process  
Wrote report entitled "Medical Devices and the Public's Health: The FDA 510(k)  
Clearance Process at 35 Years"

*American Law Institute*, Philadelphia, PA 2004-2009  
Advisor on the "Principles of the Law of Aggregate Litigation"  
Member of expert panel of advisors regarding creation of comprehensive ALI treatise  
on the law of class actions and other aggregate litigation

*Clients= Security Fund of the District of Columbia Bar* 1999-2004  
Trustee, appointed by D.C. Court of Appeals for five-year term  
Chair of Fund, 2003-2004; Vice-Chair, 2002-2003  
Investigated and ruled on claims that D.C. Bar members took money or other property  
entrusted to them by clients and others

*Wasserstein Public Interest Fellow*, Cambridge, MA November 1993  
Advised students at Harvard Law School on careers in public interest law

#### **ACADEMIC APPOINTMENTS (ADJUNCT)**

*Harvard Law School*, Cambridge, MA 2004-present  
Visiting Associate Professor of Law (2017-)  
Lecturer in Law (2004-2017)  
Teach course on appellate courts

*Vanderbilt University Law School*, Nashville, TN November 2008  
Adjunct Professor and Distinguished Visiting Practitioner of Law  
Taught course on public interest litigation

*Washington College of Law*, Washington, DC 1997-2005, 2009  
Adjunct professor  
Taught course on appellate courts and advocacy

*Stanford Law School*, Palo Alto, CA January 2001  
Irvine Visiting Lecturer in Law  
Taught appellate courts seminar

*Georgetown University Law Ctr.*, Washington, DC Fall 1995, Fall 1997  
Adjunct professor  
Taught courses on professional responsibility and appellate advocacy

## EDUCATION

Harvard Law School, J.D., 1984  
University of Pennsylvania, B.A., 1978

## PUBLICATIONS

*AMutual Pharmaceutical Co. v. Bartlett* and Its Implications,@ 82 U.S.L.W. (BNA) 627-635, 667-676 (Oct. 29 & Nov. 5, 2013), and 41 Prod. Safety & Liab. Rptr. 1236 (BNA) (Oct. 14, 2013) (lead author)

AJudges! Stop Deferring to Class-Action Lawyers,@ 2 U. Mich. J.L. Reform (on-line) 80A (2013)

*APLIVA v. Mensing* and Its Implications,@ 39 Prod. Safety & Liab. Rptr. (BNA) 972 (Sept. 5, 2011) (lead author)

*AWyeth v. Levine* and Its Implications,@ 37 Prod. Safety & Liab. Rptr. (BNA) 550 (May 11, 2009), and 24 Toxics Law Rptr. (BNA) 619 (May 21, 2009)

AForeword: The National Association of Consumer AdvocatesCStandards and Guidelines for Litigating and Settling Consumer Class Actions (Second Edition),@ 255 F.R.D. 215 (2009)

AWhy preemption proponents are wrong,@ 43 *Trial* 20 (March 2007)

AWhat the *Shutts* Opt-Out Right Is and What It Ought to Be,@ 74 U. Mo. K.C. Law Rev. 729 (2006) (lead author)

AThe FDA=s Argument for Eradicating State Tort Law: Why It Is Wrong and Warrants No Deference,@ 21 Toxics Law Rptr. (BNA) 516 (May 25, 2006), and 34 Prod. Safety & Liab. Rptr. (BNA) 308 (Mar. 27, 2006) (co-author)

*ABates v. Dow Agrosiences: Will the Lower Courts Finally Start Listening?*@ 3 Prod. Safety & Liab. Rptr. (BNA) 949 (Sept. 26, 2005) (co-author)

APreventing the Subversion of *Devlin v. Scardelletti*,@ 6 Class Action Litigation (BNA) 453 (June 24, 2005)

AA Section-by-Section Analysis of the Class Action >Fairness= Act,@ 6 Class Action Litigation (BNA) 365 (May 27, 2005) (co-author)

ALet a Hundred Cases Wither: Proposal to require opt-in class actions would weaken

consumers= weapon, freeing companies to cheat again,@ *Legal Times* 58 (May 9, 2005) (co-author)

AA real pick-up fix: Response to Thornburgh,@ *Legal Times*, Aug. 6, 2001, A25

Monograph, *Preemption Under the National Traffic and Motor Vehicle Safety Act of 1966: Strategies for Plaintiffs= Lawyers in Vehicle-Defect Cases* (Independent Counsel Resources 1998) (lead author)

APreempting the preemption defense,@ 34 *Trial* 54 (July 1998) (lead author)

APreserving the Class Action by Fighting its Abuse,@ 4 *The Consumer Advocate* 10 (May/June 1998)

AForeword: National Association of Consumer AdvocatesCStandards and Guidelines for Litigating and Settling Consumer Class Actions,@ 176 F.R.D. 370 (1998)

AClass actions for the injured classes,@ *San Diego Union Tribune*, Nov. 14, 1997, B-11 (also published in *San Francisco Daily Journal* and *Los Angeles Daily Journal* on October 17, 1997)

ARepresenting the Unrepresented in Class Action Settlements,@ 71 N.Y.U. Law Rev. 439 (1996) (lead author)

ALitigating Pre-emption Issues After *Medtronic v. Lohr*,@ 11 *Toxics L. Rptr.* (BNA) 296 (Aug. 1996), and 24 *Prod. Safety & Liab. Rptr.* (BNA) 832 (Sept. 1996) (abridged and amended versions also published in various state trial bar periodicals) (lead author)

AMedtronic v. Lohr: Its Effect on Breast Implant Litigation,@ Vol 4, No. 8, *Med. Legal Aspects of Breast Implants* (July 1996)

AChild Care, Work, and the Federal Income Tax,@ 3 *Am. Journ. Tax Pol.* 153 (1984)

Contributions to *ALSSC Reporter*, the newsletter of the Arkansas Legal Services Support Center, and op-ed pieces

## **CASEWORK**

### **United States Supreme Court**

*(Not listed: extensive certiorari-stage work, including approximately 20 petitions for*

*certiorari and 30 oppositions to certiorari on which I was the principal lawyer)*

*Andrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988 (2017) (establishing definition of “free appropriate public education” under the federal special-education statute, the Individuals with Disabilities Education Act) (principal co-counsel)

*Green v. Brennan*, 136 S. Ct. 1769 (2016) (when administrative filing period commences for a Title VII constructive discharge claim) (lead counsel)

*Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015) (whether federal Natural Gas Act preempts state antitrust claims regarding market manipulation of retail natural gas sales) (co-counsel)

*McBurney v. Young*, 133 S. Ct. 1709 (2013) (whether state statute limiting right of access to public records to citizens of the state violates Article IV=s Privileges and Immunities Clause and the dormant commerce clause) (principal co-counsel).

*U.S. Airways, Inc. v. McCutchen*, 133 S. Ct. 1537 (2013) (whether ERISA contact abrogates equitable common-fund doctrine) (lead counsel for consumer amicus)

*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012) (whether the Anti-Injunction Act barred suit seeking to enjoin operation of the Affordable Care Act) (principal co-counsel for amici former commissioners of the Internal Revenue Service)

*Elgin v. Department of Treasury*, 132 S. Ct. 2126 (2012) (whether the Civil Service Reform Act precludes a federal district court from granting a federal employee equitable relief on a constitutional claim against that employee=s federal employer) (principal co-counsel)

*Minnecci v. Pollard*, 132 S. Ct. 617 (2012) (whether *Bivens* authorizes a suit for damages alleging violations of the Eighth Amendment against employees of a private prison corporation operating a federal prison) (principal co-counsel)

*Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010) (whether New York=s ban on class actions in certain civil cases applies in federal court under *Hanna* and *Erie*) (principal co-counsel)

*Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009) (whether a district court=s rejection of a claim of attorney-client privilege is immediately appealable under the collateral order doctrine) (principal co-counsel)

*Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008) (whether paralegal services

are reimbursable at market rates under the Equal Access to Justice Act) (lead counsel)

*Taylor v. Sturgell*, 553 U.S. 880 (2008) (regarding federal common law and due process limits on *res judicata*, particularly in public law litigation) (principal co-counsel)

*Warner-Lambert Co., LLC v. Kent*, 552 U.S. 440 (2008) (equally divided court) (whether state statute authorizing liability arising from prescription drugs, where manufacturer deceived FDA in gaining marketing approval, is preempted by federal law) (principal co-counsel)

*Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008) (whether federal law preempts state-law products liability claim arising from medical device that has received FDA pre-market approval) (principal co-counsel)

*Jones v. Flowers*, 547 U.S. 220 (2006) (whether government has obligation, under due process clause, to take additional reasonable steps to attempt notice to homeowner before selling her property when mailed notice of tax sale is returned unclaimed) (principal co-counsel)

*Lockhart v. United States*, 546 U.S. 142 (2005) (whether Debt Collection Act permits federal government to offset a debtor's social security benefits to collect student loan debt that has been outstanding for more than 10 years) (lead counsel)

*Scarborough v. Principi*, 541 U.S. 401 (2004) (whether statute of limitations under fee-shifting statute applicable in actions against the federal government, the Equal Access to Justice Act, is jurisdictional or, rather, is subject to common-law equitable exceptions) (lead counsel)

*Barnes v. Gorman*, 536 U.S. 181 (2002) (whether punitive damages are available under Title II of the Americans With Disabilities Act and section 504 of the Rehabilitation Act) (principal co-counsel)

*Devlin v. Scardelletti*, 536 U.S. 1 (2002) (whether an absent class member may appeal approval of class action settlement to which he had timely objected without first having intervened in action) (principal co-counsel)

*Norfolk Southern Railway Company v. Shanklin*, 529 U.S. 344 (2000) (whether federal railroad laws and regulations preempt state-law tort claims alleging inadequate warnings at railroad crossings) (principal co-counsel)

*Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598 (2001) (whether catalyst theory authorizes recovery of attorney's fees)

under federal statutes that authorize awards to the prevailing party) (lead counsel for amici Public Citizen and American Civil Liberties Union)

*Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001) (whether federal law preempts a state-law damages claim alleging injury from a regulated entity's fraud on a federal agency) (principal co-counsel for amicus Public Citizen)

*El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473 (1999) (case concerning the preemptive breadth of the Price Anderson Act amendments to the Atomic Energy Act) (lead counsel for amici Public Citizen et al.)

*Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997) (whether class action settlement seeking to resolve future asbestos personal-injury claims against large segment of asbestos industry can withstand Rule 23, due process, and justiciability challenges), *aff'd* *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610 (3d Cir. 1996) (lead counsel for respondent labor union, asbestos worker, and advocacy group litigants)

*Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) (whether federal medical device laws preempt state-law product liability claims) (lead counsel)

*Ticor Title Ins. Co. v. Brown*, 511 U.S. 117 (1994) (per curiam dismissal of writ) (whether Rule 23 and due process require a right to opt out of a damages class action) (co-counsel for amicus Public Citizen)

*Shalala v. Schaefer*, 509 U.S. 292 (1993) (procedural issue under federal attorney's fees statute) (lead counsel)

*Ardestani v. INS*, 502 U.S. 129 (1991) (whether federal fee-shifting statute applies to certain administrative deportation proceedings) (principal co-counsel)

*Melkonyan v. Sullivan*, 501 U.S. 89 (1991) (precursor to *Schaefer* above) (lead counsel)

*Connecticut v. Doehr*, 501 U.S. 1 (1991) (due process challenge to state statute permitting *ex parte* attachment of real property) (principal co-counsel)

## **United States Courts of Appeals**

*Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071 (9th Cir. 2017) (whether, and in what circumstances, under the Magistrates Act and Article III of the constitution, a non-

Article III magistrate judge may enter a final appealable judgment approving a class-action settlement) (lead counsel on relevant issues)

*Freeman v. Dal-Tile Corp.*, 750 F.3d 413 (4th Cir. 2014) (concerning the standard for imputation of liability to employer based on third-party sexual and racial harassment under Title VII) (principal co-counsel)

*Day v. Persels & Assocs., LLC*, 729 F.3d 1309 (11th Cir. 2013) (same issues as Koby above) (sole counsel on relevant issues)

*Hecht v. United Collection Bureau*, 691 F.3d 218 (2d Cir. 2012) (whether to allow a collateral attack on a class-action settlement on the basis of constitutionally inadequate notice)

*McBurney v. Young*, 667 F.3d 454 (4th Cir. 2012) (whether a state freedom of information statute that gives only that state=s citizens the right to obtain public records violates Article IV=s Privileges and Immunities Clause and the dormant Commerce Clause) (principal co-counsel)

*Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468 (5th Cir. 2011) (whether and in what circumstances the cy pres doctrine may be used to distribute left over class-action settlement funds) (lead counsel)

*McBurney v. Cuccinelli*, 616 F.3d 393 (4th Cir. 2010) (whether plaintiffs had standing to bring constitutional challenge to Virginia law limiting use of Virginia=s FOIA to Virginia citizens) (principal co-counsel)

*Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865 (D.C. Cir. 2010) (whether Freedom of Information Act requires release of unredacted versions of documents relevant to question of which government agencies were permitted to bypass OMB=s legislative and budgetary clearance processes) (principal co-counsel)

*Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010) (whether New York=s lawyer advertising restrictions violate the First Amendment) (principal co-counsel)

*Fellner v. Tri-Union Seafoods, L.L.C.*, 539 F.3d 237 (3d Cir. 2008) (whether FDA=s statements concerning the risks of eating tuna preempts state-law claims for damages from mercury poisoning) (principal co-counsel)

*Del Campo v. Kennedy*, 517 F.3d 1070 (9th Cir. 2008) (whether private debt collector working under contract with prosecutors was an Arm of the state@ entitled to Eleventh Amendment immunity) (principal co-counsel)

*Owner-Operator Independent Drivers Ass'n, Inc. v. Federal Motor Carrier Safety Admin.*, 494 F.3d 188 (D.C. Cir. 2007) (second challenge to Department of Transportation regulations on commercial truck drivers= hours of service) (principal co-counsel)

*Peoples v. CCA Detention Centers*, 422 F.3d 1090 (10th Cir. 2005), *effectively affirmed by equally divided en banc court*, 449 F.3d 1097 (10th Cir. 2006) (whether *Bivens* authorizes an Eighth Amendment claim against a prison guard employed by a private prison corporation under contract with the federal government) (principal co-counsel)

*Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Admin.*, 429 F.3d 1136 (5th Cir. 2005) (challenge to Department of Transportation regulation on entry-level training for commercial truck drivers) (principal co-counsel)

*In re Community Bank of Northern Virginia*, 418 F.3d 277 (3d Cir. 2005) (whether and in what circumstances district courts have authority to abrogate class members= previously exercised opt-outs to bar opt-out clients from consulting with their individually retained lawyers) (lead counsel)

*Public Citizen v. Federal Motor Carrier Safety Admin.*, 374 F.3d 1209 (D.C. Cir. 2004) (first challenge to Department of Transportation regulations on commercial truck drivers= hours of service) (principal co-counsel)

*In re Orthopedic Bone Screw Prods. Liab. Litig. (Custer)*, 350 F.3d 360 (3d Cir. 2003) (whether defendant may be indemnified by class action settlement for costs of defending and settling collateral attacks on that settlement) (lead counsel)

*Martin v. Medtronic, Inc.*, 254 F.3d 573 (5th Cir. 2001) (whether federal medical device laws preempt state-law product liability claims) (lead counsel)

*In re Orthopedic Bone Screw Prods. Liab. Litig. (Sambolin)*, 246 F.3d 315 (3d Cir. 2001) (whether notice and registration deadline in mass-tort class action settlement comported with Rule 23 and due process) (lead counsel)

*In re Telectronics Pacing Systems, Inc.*, 221 F.3d 870 (6th Cir. 2000) (whether non-opt-out class action settlement comported with Rule 23 and due process) (principal co-counsel)

*Hart v. Bayer Corp.*, 199 F.3d 239 (5th Cir. 2000) (whether Federal Insecticide, Fungicide and Rodenticide Act completely preempts state-law product liability claims and thus establishes federal jurisdiction) (lead counsel)

*Mitchell v. Collagen Corp.*, 126 F.3d 902 (7th Cir. 1997) (whether federal law preempts state-law tort claim arising from medical device that has received FDA pre-market approval) (lead counsel on remand from Supreme Court)

*Dillon v. United States*, 184 F.3d 556 (6th Cir. 1999) (en banc) (whether Federal Rule of Appellate Procedure 3(c)'s requirement that notice of appeal name the court to which appeal is taken is jurisdictional) (lead counsel for amicus)

*Duhaim v. John Hancock Mut. Life Ins. Co.*, 183 F.3d 1 (1st Cir. 1999) (whether class members in class action that has been settled can enter into side-settlement of their claims without disclosure to, or approval by, district court under Federal Rule of Civil Procedure 23) (lead counsel)

*In re Prudential Ins. Co. of America Sales Practices Litig.*, 148 F.3d 283 (3d Cir. 1998) (justiciability and class certification challenge to nationwide class action insurance fraud settlement) (lead counsel for arguing amicus Public Citizen)

*Roberts v. Florida Power & Light*, 146 F.3d 1305 (11th Cir. 1998) (whether state-law-based tort claims are preempted by Price Anderson Act amendments to the Atomic Energy Act) (lead counsel)

*Bowling v. Pfizer, Inc.*, 132 F.3d 1147 (6th Cir. 1998) (challenge to fee award methodology for post-settlement monitoring in common-fund class action) (lead counsel)

*Bowling v. Pfizer, Inc.*, 102 F.3d 777 (6th Cir. 1996), *aff=g Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261 (S.D. Ohio 1996), *recon. denied*, 927 F. Supp. 1036 (S.D. Ohio 1996) (challenge to \$33 million fee request in class action settlement regarding defective heart valve implanted in 80,000 patients) (lead counsel)

*Arent v. Shalala*, 70 F.3d 610 (D.C. Cir. 1995) (challenge to regulations concerning labeling of fresh fish and produce) (lead counsel)

*In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768 (3d Cir.) (striking down class action settlement concerning 5.7 million owners of allegedly defective GM trucks), *cert. denied*, 516 U.S. 824 (1995) (lead counsel for objectors in Third Circuit; lead counsel in opposition to certiorari)

*Jones v. Brown*, 41 F.3d 634 (Fed. Cir. 1994) (interpretation of 1992 statute applying fee-shifting statute to Court of Veterans Appeals) (follow-up to *Karnas* below) (lead counsel)

*Worm v. American Cyanamid Co.*, 5 F.3d 744 (4th Cir. 1993) (whether state-law tort claims are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act) (principal co- counsel)

*Benavides v. Bureau of Prisons*, 995 F.2d 269 (DC Cir. 1993) (whether federal regulation denying access to certain medical records is lawful under the Privacy Act and Freedom of Information Act) (lead counsel)

*Lidy v. Sullivan*, 911 F.2d 1075 (5th Cir. 1990), *cert. denied*, 500 U.S. 959 (1991), *on remand*, No. 92-1035 (5th Cir.) (due process challenge to federal regulation denying right to cross-examine author of adverse medical report in social security disability hearing) (lead counsel in Supreme Court and on remand)

*Miles v. Metropolitan Dade County*, 916 F.2d 1528 (11th Cir. 1990), *cert. denied*, 502 U.S. 898 (1991) (challenge to housing authority policy imposing costs on tenants in non-meritorious eviction proceedings) (lead counsel in Supreme Court)

*Johnson v. Sullivan*, 919 F.2d 503 (8th Cir. 1991) (challenge to below-market attorney=s fees recoveries in social security cases) (sole counsel)

### **United States District Courts**

*Batson v. Branch Banking and Trust Co.*, 2012 WL 4479970 (D. Md. 2012) (religious accommodation and discrimination case under Title VII of the Civil Rights Act of 1964) (lead counsel).

*Nicholls v. U.S. Office of Personnel Management*, 863 F. Supp. 2d 4 (D.D.C. 2012) (concerning the scope of agency responsibilities to respond to requests for public records under the Freedom of Information Act) (sole counsel)

*Benavides v. Bureau of Prisons*, 774 F. Supp.2d 141 (D.D.C. 2011) (concerning availability of digital recordings of inmate-lawyer phone calls under Freedom of Information Act) (sole counsel)

*Brigham v. Office of Workers Compensation Programs*, 477 F. Supp.2d 160 (D.D.C. 2007) (whether Energy Employees Occupational Illness Compensation Program Act applies to clean-up efforts at nuclear and other facilities operated by or under contract with Department of Energy) (principal co-counsel)

*In re American Historical Ass=n*, 49 F. Supp.2d 274 (S.D.N.Y. 1999) (whether Alger Hiss grand-jury records should be made public in light of Federal Rule of Criminal Procedure 6(e)) (principal co-counsel)

*Duhaim v. John Hancock Mut. Life Ins. Co.*, 2 F. Supp.2d 175 (D. Mass. 1998) (whether and under what circumstances fees can be awarded to objectors to class action settlement if their efforts improve the settlement for class as a whole) (lead counsel for objectors)

*Duhaimé v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375 (D. Mass. 1997) (whether fees to class action plaintiffs= counsel should be staged to align interests of lawyers and clients) (principal co-counsel for objectors)

*Public Citizen v. Shalala*, 932 F. Supp. 13 (D.D.C. 1996) (challenge to FDA exemption for restaurant menus under nutrient-content and health claims provisions of federal food labeling law) (lead counsel)

*In re Ford Motor Co. Bronco II Prods. Liab. Litig.*, 1995 U.S. Dist. Lexis 3507 (E.D. La. 1995) (challenge to class action settlement in case affecting owners of rollover-prone Bronco II vehicle) (lead counsel for objectors)

*South Dakota v. Madigan*, 824 F. Supp. 1469 (D.S.D. 1993), *appeals dismissed*, Nos. 93-2869, et al. (challenge to federal policy adversely affecting food stamp benefits of low-income housing residents) (lead counsel)

*Bowling v. Pfizer, Inc.*, 143 F.R.D. 141 (S.D. Ohio 1992) (represented objector Public Citizen in seeking improvements to worldwide class-action settlement concerning defective heart valve implanted in 85,000 patients) (lead counsel)

*Larry v. Yamauchi*, 753 F. Supp. 784 (E.D. Ark. 1990) (precursor to *South Dakota v. Madigan*) (lead counsel)

*Tolson v. Sheridan School Dist.*, 703 F. Supp. 766 (E.D. Ark. 1988) (whether termination of public employee violated Fourteenth Amendment=s Due Process Clause) (sole counsel)

*Williams v. Patterson*, 1988 WL 124742 (E.D. Ark. 1988) (class action challenge to regulation that included recoupments of public benefit overpayments as income to food stamp recipients) (sole counsel)

### **Other reported federal cases**

*Scarborough v. Nicholson*, 19 Vet.App. 253 (Vet.App. 2005) (attorney=s fees litigation on remand from Supreme Court) (lead counsel)

*In re Kissinger*, 106 B.R. 180 (E.D. Ark. Bankr. 1989) (whether debtor met standards for non-discharge of consumer debt in bankruptcy on ground of fraud) (sole counsel)

### **Representative state-court cases**

*Texas Riogrande Legal Aid, Inc. v. Education and Workforce Development Cabinet of Ky.*, 2010 WL 4316924 (Ky. Cir. Ct. 2010) (whether state regulation barring public access to records of growers who employ migrant workers is invalid under state and federal law) (lead counsel)

*Conte v. Wyeth, Inc.*, 168 Cal.App.4th 89 (Cal.App. 2008) (whether name-brand prescription drug manufacturers have a duty of care to patients who are prescribed the generic version of their drugs) (lead counsel)

*In re Hager*, 812 A.2d 904 (D.C. 2002) (bar disciplinary case regarding ethical obligations of lawyers in class action-like setting, in particular regarding whether ethical rules demand disgorgement of ill-gotten attorney=s fees) (lead counsel for Public Citizen)

*R.F. v. Abbott Laboratories*, 745 A.2d 1174 (N.J. 2000) (whether federal law preempts state-law claim that defective HIV screening test resulted in plaintiff=s HIV infection) (lead counsel)

*R. T., et al. v. Patterson*, 301 Ark. 400 (1990), *on remand*, No. 87-2689 (Pulaski Cty., Ark. Chancery, 3rd Div.) (challenge to operation of various aspects of Arkansas foster care system) (co-counsel for class)

*Garibaldi v. Dietz*, 25 Ark. App. 136 (1988) (en banc) (standards for termination of parental rights of mentally ill, but medically controlled, parent) (sole counsel)

### **Representative unreported litigation**

*Eley v. Gov=t Printing Office*, No. 09-2158 (D.D.C.) (Title VII challenge to race- and retaliation-based non-promotion)

*Briggs v. United States*, No. CV-07-5760 (N.D. Cal.) (class action challenge to government agency=s practice of debt collection beyond the applicable statute of limitations) (co-counsel for class)

*Hayden v. Atochem North America Inc.*, No. 99-20249 (5th Cir. Feb. 21, 2000) (challenge to mandatory personal-injury class action concerning arsenic exposure) (lead appellate counsel for objectors)

*Karnas v. Derwinski*, No. 92-7046 (Fed. Cir.) (appeal concerning whether attorney=s fees are available to prevailing claimants in cases before new Court of Veterans Appeals) (lead counsel)

*People With AIDS Health Group v. Burroughs Wellcome Co.*, No. 91-574-JGP (D.D.C) (consumer challenge to validity of AZT patent) (lead counsel)

*Gulley v. Patterson*, No. LR-C-88-563 (E.D. Ark.) (class action challenge to Arkansas policies regarding the child support pass through for AFDC recipients) (sole class counsel)

*Blundell v. Sharp*, No. PB-C-86-268 (E.D. Ark.) (class action challenge to operation of housing project, claiming violations of right to privacy and other constitutional, statutory, regulatory, and common-law rights) (sole class counsel)

*Public Citizen, Inc. v. Shiley Incorporated*, No. C755862 (Los Angeles Sup. Ct.), *aff=d*, No. B051171 (Cal. Ct. App., 2d Dist.) (case under California consumer protection laws seeking worldwide notification of patients implanted with defective heart valve) (lead counsel)

## **PRESENTATIONS AT ACADEMIC AND EDUCATIONAL SEMINARS**

National Academy for IDEA Administrative Law Judges and Impartial Hearing Officers, “*Andrew F.*: Facts, Issues, Arguments, Opinion” and “*Andrew F.*: Application—How to Determine FAPE,” Washington, D.C., July 13, 2017

Education Writers Association, 70th EWA National Seminar, “High Stakes for Schools in High Court Actions,” Washington, D.C., May 31, 2017

American Academy of Appellate Lawyers, Spring Conference, “Legal Scholarship and Appellate Advocacy,” Boston, April 8, 2017

District of Columbia Bar, Continuing Legal Education Presentation, U.S. “Supreme Court in Focus: *Andrew F. v. Douglas County School District*,” Washington, D.C., March 27, 2017

West Coast Progressive Lawyering Conference, “Translating Native Values into Legal Terms: Working with and through NAGPRA,” Stanford, CA, October 17, 2015

The Impact Fund, 13th Annual Class Action Conference, “Protecting Your Plaintiffs and the Class: Rule 68 and Other Pick-Off Tactics,” Berkeley, CA, February 27, 2015

National Consumer Law Center, Consumer Rights Litigation Conference, Class Action Symposium, “Ethics Update: The 2014 Edition of the NACA Consumer Class Action Guidelines” and “The Economics of Objecting for All the Right Reasons,” Tampa, November 8, 2014

National Consumer Law Center, Consumer Rights Litigation Conference, “How Appellate Developments and Strategies Will Affect Your Practice,” Tampa,

November 7, 2014

Court of Appeals for Veterans Claims Bar Association, Annual Conference, AAttorney Fees Panel,@ Washington, D.C., June 6, 2014

National Consumer Law Center, Consumer Rights Litigation Conference, AClass Action Developments and Roundtable@ and AHow Appellate Developments and Strategies Will Affect Your Practice,@ Washington, D.C., November 7, 2013

National Consumer Law Center, Consumer Rights Litigation Conference, ARecent Appellate Decisions That Will Affect Your Practice,@ Seattle, October 26, 2012

Egyptian American Rule of Law Association (and others), ARule of Law: Rhetoric vs. Reality in Egypt=s Transition to Democracy@ (discussing comparative open government law), Washington, D.C., October 10, 2012

Association of the Bar of the City of New York, ASupreme Court B A Year in Review,@ New York, July 18, 2012

National Association of Appellate Court Attorneys, AWhen Should Judges Raise Issues Sua Sponte,@ Washington, D.C., July 17, 2012

The District of Columbia Bar, Antitrust and Consumer Law Section, ARecent Developments in Mandatory Arbitration,@ Washington, D.C., April 3, 2012

The Food & Drug Law Inst., AAn FDLI Dialogue: A First Look at the IOM Study of the 510(k) Clearance Process,@ Washington, D.C., August 4, 2011

Association of the Bar of the City of New York, ASupreme Court B A Year in Review,@ New York, July 20, 2011

George Washington University Law School, ACan the Google Books Settlement Be Fixed? C A Roundtable Discussion Among Experts,@ Washington, D.C., June 15, 2011

George Washington University Law School, AThe Future of Arbitration: Channeling Class Actions into Single Claims Arbitrations,@ Washington, D.C., March 17, 2011

Georgetown Consumer Law Society & the American Constitution Society, AAT&T v. Conception: Supreme Court Oral Argument Recap & Panel Discussion@ (moderator), Washington, D.C., November 10, 2010

Uniform Law Commission and George Washington University Law School,

AFederalism, Preemption and State Law: Legislating Areas of Shared Federal and State Interest,@ Washington, D.C., October 29, 2010

Georgetown University Law Center, Supreme Court Institute Annual Press Briefing, AAnticipating the Supreme Court=s October Term 2010: What to Expect,@ Washington, D.C., September 20, 2010

Association of the Bar of the City of New York, ASupreme Court B A Year in Review,@ New York, July 21, 2010

National Center for State Courts, General Counsel Business Meeting, ARegulatory Preemption: Erosion of State Tort Law or Protection of the National Economy,@ Washington, D.C., November 19, 2009

University of Maryland School of Law, Emerging Issues in Food & Drug Law, ANational Conference for Lawyers, Policy-Makers, and Corporate Leaders, APreemption and the Impact of *Riegel v. Medtronic* and *Wyeth v. Levine* on Drug and Device Labeling,@ Baltimore, November 16, 2009

American Bar Association, Section of Litigation, Current Issues in Pharmaceutical and Medical Device Litigation, APreemption: What=s Happening in Congress to Change the Landscape?,@ Kenilworth, NJ, November 12, 2009

National Consumer Law Center, Consumer Rights Litigation Conference, Class Action Symposium, A*Shady Grove* and Naked Class Action Bans: The Emerging Conflicts Between Federal and State Laws on Class Certification, Multistate Classes and Choice of Law Issues,@ Philadelphia, October 25, 2009

National Consumer Law Center, Consumer Rights Litigation Conference, AClass Action Roundtable,@ Philadelphia, October 22, 2009

National Foundation for Judicial Excellence, Fifth Annual Judicial Symposium, AMapping the Legal Frontier: The Uncertain Boundary Between Federal and State Law, The Role of State and Federal Courts in Federal Preemption CasesCA Spirited Discussion Between Adversaries at the Bar,@ Chicago, July 11, 2009

American Constitution Society Annual Convention, AThe Future of the Civil Jury System,@ Washington, D.C., June 19, 2009

Biotechnology Industry Organization Annual Convention, APreemption of Product Liability Litigation on FDA-Regulated Products,@ Atlanta, May 19, 2009

Bureau of National Affairs Audio Conference, APlanning for a Post-*Levine* World:

Implications and Strategies for Manufacturers, U.S. Consumers and the Courts,@ May 12, 2009

The Federal Circuit Bar Association, Horizons Seminar Series, AThe Equal Access to Justice Act: History, Principles and Practice,@ Washington, DC, October 22, 2008

Stanford Law School Chapter of American Constitution Society, ASocial Justice on Appeal: Progressive Appellate Litigators in the 21st Century,@ Stanford, CA, September 3, 2008

University of Arkansas School of Law, APublic Interest Advocacy Before the U.S. Supreme Court,@ Fayetteville, AR, March 3, 2008

American Enterprise Institute, AFederal Preemption and the Supreme Court,@ Washington, D.C., February 21, 2008

New York State Bar Association, Annual Meeting of the Food, Drug and Cosmetic Law Section, Panel on APreemption (Drug and Device), Understanding Tort Preemption Claims,@ New York, January 31, 2008

National Consumer Law Center, Class Action Symposium, Panel on Whether Reliance is an Element in UDAP Cases, Washington, DC, November 11, 2007

National Consumer Law Center, Consumer Rights Litigation Conference, AClass Action Roundtable,@ Washington, D.C., November 8, 2007

American Bar Association, AThe Supreme Court: Good for Business?@ (national teleconference), October 17, 2007

Environmental Law Institute, AAccess to Courts After *Massachusetts v. EPA*: Who Has Been Left Standing?@, Washington, D.C., May 3, 2007

National Association of Attorneys General, 2007 Consumer Protection Seminar, AThe Nuts and Bolts of Briefing Preemption Cases,@ Washington, D.C., May 1, 2007

George Washington University Law School, Consumer Class Action Symposium, AConsumer Class Actions: Perspectives, Opportunities and Problems,@ Washington, D.C., March 28, 2007

National Association of Attorneys General, Administrative Law and Preemption: Administrative Law for State Attorneys Handling Preemption Cases, APractical Advice on Litigating Preemption Cases Involving Federal Agencies,@ Washington, D.C., March 7, 2007

National Consumer Law Center, Class Action Symposium, *A Shutts, Rule 23, and Other Class Action Issues*, @ Miami, November 13, 2006

National Consumer Law Center, Consumer Rights Litigation Conference, *ALitigating Consumer Cases in the Supreme Court*, @ Miami, November 12, 2006

American Bar Association, Section of Administrative Law and Regulatory Practice, Annual Meeting, *AFederal Agency Preemption of State Tort Law*, @ Washington, D.C., October 26, 2006

University of Missouri at Kansas City, Symposium Commemorating 20th Anniversary of *Phillips Petroleum v. Shutts*, *The Right to Opt Out and Rule 23 Reform*, Kansas City, MO, April 7, 2006

National Consumer Law Center, Class Action Symposium, Panel on the Class Action Fairness Act of 2005, Minneapolis, October 30, 2005

National Hispanic Bar Association National Convention, *AThe Class Action Fairness Act of 2005: How Does It Affect Your Practice* @ (moderator), Washington, D.C., October 18, 2005

American Bar Association, Section of Litigation, The 9th Annual National Institute on Class Actions, *AClass Actions in the Marble Palace: What if the Supremes Took on Rule 23(b)(2)?* @ (argued objector-petitioner=s position in moot court before panel of federal judges and lawyers), Chicago and San Francisco, September 23 and October 7, 2005

Association of Trial Lawyers of America, National College of Advocacy, *AThe Class Action >Fairness= Act: What Does This Mean For Your Practice*, @ National Electronic Seminar, March 3, 2005

National Consumer Law Center, Consumer Rights Litigation Conference, *AClass Action Settlements in Mortgage Lending Cases: Ethical Responsibilities and Practical Considerations*, @ Washington, D.C., November 7, 2004

Federal Trade Commission, Protecting Consumer Interests in Class Actions, *ASpecial Ethics Concerns in Class Action Litigation*, @ Washington, D.C., September 13, 2004

American Bar Association, Section of Litigation, The 7th Annual National Institute on Class Actions, *AWho Moved My Rule 23?* @ Washington, D.C., November 7, 2003

National Association of Attorneys General, 2003 Fall Consumer Protection Seminar, Class Actions and the *Hager* Case, Washington, D.C., October 22, 2003

Virginia Trial Lawyers Association Conference, 2003 Products Liability and Accident Prevention Retreat, AClass Actions, the FDA, and Federal Preemption,@ Williamsburg, VA, October 17, 2003

District of Columbia Bar, Annual Conference, ASecret Settlements: Should the Ground Rules Be Changed?@ Washington, D.C., March 28, 2003

National Association of Insurance Commissioners, State Insurance Regulation: Successes, Challenges, and Opportunities, AClass Action Litigation Panel,@ Washington, D.C., February 27, 2003

American Bar Association, Section of Litigation, The 6th Annual National Institute on Class Actions, AOverlapping and Competing Class Actions,@ New York and Chicago, November 1 and 15, 2002

National Consumer Law Center, Consumer Class Action Seminar, AClass Action Management and Attorneys Fees@ (Attorney Fee Auctions), Baltimore, Maryland, October 29, 2001

Advisory Committee on Civil Rules, Class Action Conference, ASettlement Review,@ Chicago, October 22-23, 2001

Harvard Law SchoolCHarvard Journal on Legislation, ASocial Reform Through the Class Action,@ Cambridge, MA, March 14, 2000

FDLI 43rd Annual Educational Conference, AShould Compliance With FDA Requirements Bar Recovery Of Tort Damages For Harm Resulting From The Use Of An FDA-Regulated Product?@ Washington, D.C., December 17, 1999

FDLI Law Symposium, ARegulatory Compliance: Should It Be A Bar To Tort Liability?@ (commenter on series of papers), Georgetown University Law Center, Washington, D.C., October 8, 1999

National Grants Management Association Annual Meeting, Panel Discussion on Ethics of Government Lawyers, Bethesda, MD, May 12, 1999

The Federalist Society, 1998 National Lawyers Convention, AClass Action Litigation: Is Reform Needed Before American Business is Strangled?@ Washington, D.C., November 13, 1998

ABA Annual Meeting, AHot Issues in Class Action Litigation@ (argued objector-appellant=s position in moot court before panel of federal appellate judges), Toronto, Ontario, August 4, 1998

FDLI Medical Device Update >98, AFDC Act Preemption & FDA=s Proposed Regulation,@ Washington, D.C., June 24, 1998

ABA General Liability and Consumer Law Committee, AEmerging Issues in Motor Vehicle Product Liability Litigation@ (Class Actions), Phoenix, April 3, 1998

ABA Toxic Tort and Environmental Law Committee, AMass Tort and Environmental Litigation: Hot Issues in Class Actions,@ Charleston, SC, March 14, 1998

FDLI 41st Annual Educational Conference, AThe Implications of FDA=s Tobacco Regulations for FDA Regulated Industry, and Possible New Directions of the Food, Drug, and Cosmetic Act,@ Washington, D.C., December 9, 1997

Trial Lawyers Association of Metropolitan Washington, ADavid v. Goliath: Litigating for Plaintiffs in the >Tort Reform= EraCProcedural Pitfalls in Class Action Litigation,@ Washington, D.C., March 21, 1997

AMEaley=s Drug and Medical Device Litigation Conference: Preemption and the *Lohr* Case,@ West Palm Beach, Florida, November 22, 1996

Association of Trial Lawyers of America, AGore and More: How to Survive Recent Supreme Court Decisions,@ Washington, D.C., July 18, 1996

National Employment Law Project, Unemployment Compensation Advanced Litigation Training: ARecovery of Attorney & Expert Witness Fees,@ Washington, D.C., June 6, 1995

The Institute for Judicial Administration, New York University School of Law, Research Conference on Class Actions and Related Issues in Complex Litigation, New York, April 21-22, 1995

## **CONGRESSIONAL AND JUDICIAL TESTIMONY**

Testimony on Proposed Amendments to Federal Rule of Civil Procedure 23 Before the Advisory Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Washington, DC, November 3, 2016

Testimony on H.R. 1996, The Government Litigation Savings Act, Before the House

Judiciary Committee, Subcommittee on Courts, Commercial and Administrative Law, October 11, 2011

Testimony on H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2011, Before the House Committee on Energy and Commerce, Subcommittee on Health, April 6, 2011

Testimony on H.R. 1115, The Class Action Fairness Act of 2003, Before the House Committee on the Judiciary, May 15, 2003

Testimony on Proposed Amendments to Federal Rule of Civil Procedure 23 Before the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Washington, DC, January 22, 2002

Testimony Before the Third Circuit Task Force on the Selection of Class Counsel, Philadelphia, June 1, 2001

Testimony on H.R. 1875, The Interstate Class Action Jurisdiction Act of 1999, Before the House Committee on the Judiciary, July 21, 1999

Testimony on H.R. 1283, The Fairness in Asbestos Compensation Act, Before the House Committee on the Judiciary, July 9, 1999

Testimony on H.R. 2112, The Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999, Before the House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property, June 16, 1999

Testimony on S. 353, The Class Action Fairness Act of 1999, Before the Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, May 4, 1999

Testimony on H.R. 3789, The Class Action Jurisdiction Act of 1998, Before the House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property, June 18, 1998

Testimony at oversight hearing on AClass Action Lawsuits: Examining Victim Compensation Attorneys= Fees,@ Before the Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, October 30, 1997

Testimony on H.R. 4558, Regarding Reform of the Equal Access to Justice Act, Before the House Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, October 5, 1994

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