Supreme Court and Appellate Litigation

Skadden

Appeals often involve novel or high-stakes legal questions — issues that can't be resolved through settlement. Clients turn to Skadden's Supreme Court and Appellate Practice for our deep strategic thinking, persuasive briefs, and forceful oral advocacy. Led by one of the nation's most accomplished Supreme Court and appellate advocates, the attorneys in our group routinely argue before the U.S. Supreme Court and have extensive experience practicing before every U.S. Court of Appeals, as well as state appellate courts nationwide. Skadden's Supreme Court and Appellate Practice briefed and argued 10 merits cases since 2020, among the most of any firm.

No matter the subject area, we embrace the challenge of distilling complicated cases to their essence and presenting them in clear, meticulous briefs and compelling oral arguments. Whether we are defending a favorable decision or working to overturn a loss, we bring a fresh perspective to cases and insights into what moves generalist judges. Our ranks include former law clerks to federal appellate judges, including several U.S. Supreme Court Justices.

As appellate generalists, we don't work alone. We join forces with Skadden's market-leading trial attorneys, drawing on their wealth of substantive knowledge in particular areas and their experiences in specific courts. When called upon to do so, we also collaborate seamlessly with co-counsel at other firms who first tried the case. At the trial level, we leverage our appellate experience to counsel clients on key strategic issues and to brief and argue dispositive motions with an eye toward appeal.

Our efforts have resulted in precedent-setting victories for clients in cases spanning the legal spectrum, including matters of constitutional law, administrative law, antitrust, arbitration, bankruptcy, labor and employment, ERISA, tax, telecommunications, securities, preemption, energy, intellectual property, criminal defense, and complex statutory interpretation. Our attorneys also maintain an active pro bono practice, regularly representing clients in both the U.S. Supreme Court and the federal courts of appeal.

Skadden's Supreme Court and appellate litigation lawyers have been ranked by *Chambers* and *The Legal 500*, and recognized as *Law360* Appellate MVPs, *The American Lawyer* Litigators of the Year, *The National Law Journal* D.C. Rising Stars, and *Bloomberg Law* Pro Bono Innovators. The firm was recently named among the top firms for Appellate Law by *Chambers USA 2025* and named to *The National Law Journal*'s 2023 Appellate Hot List. In addition, we have been recognized repeatedly among BTI's Fearsome Foursome — the top four firms that clients "don't want to litigate against." The firm was also selected as the *New York Law Journal*'s 2021 Litigation Department of the Year and a finalist in the general litigation category of the *NYLJ*'s 2024, 2023 and 2022 Litigation Department of the Year competitions, and recognized as a 2021 Litigation Department of the Year finalist by *The American Lawyer*.

U.S. Supreme Court

The head of our Supreme Court and Appellate Practice has argued 21 cases in the U.S. Supreme Court with at least one more on the docket this Term. Skadden's Supreme Court and Appellate Practice briefed and argued 10 merits cases since 2020, among the most of any firm. Attorneys on our team have drafted numerous Supreme Court merits briefs, as well as dozens of petitions for certiorari, briefs in opposition, and amicus briefs in cases involving everything from international arbitration and federal preemption to statutory interpretation and the Fourth Amendment.

Supreme Court and Appellate Litigation

Continued

Federal Courts of Appeals

Our attorneys practice before every United States Court of Appeals, where we have secured important legal rulings in cases of first impression in a variety of areas of law — including telecommunications, securities, labor and employment, antitrust, administrative, white collar, constitutional, and bankruptcy law.

Recent Highlights

Notable representations and victories by attorneys working in our group include:

- *NextEra Energy & 9REN Holding v. Kingdom of Spain.* Skadden secured a precedent-setting victory for NextEra Energy and 9REN Holding, with the D.C. Circuit ruling that the district court has jurisdiction under the Foreign Sovereign Immunities Act's arbitration exception to enforce approximately €400 million in awards the companies secured against the Kingdom of Spain for violating the Energy Charter Treaty.
- *Airlines for America v. Department of Transportation.* Skadden secured a stay pending appeal in the Fifth Circuit for Airlines for America, the National Air Carrier Association, and the International Air Transport Association of the effective date of a Department of Transportation final rule on airline ancillary service fees on the grounds that the Rule likely exceeds the DOT's authority and would result in irreparable harm to airlines absent a stay.
- *Carter v. Local 556.* Skadden persuaded the Fifth Circuit in a high-pro-file Title VII religious discrimination case to reverse a jury verdict and an unprecedented contempt order against Southwest Airlines requiring its in-house lawyers to attend religious liberty training; the win follows an earlier victory obtaining a rare stay pending appeal.
- *CSX Transportation v. Norfolk Southern Railway Co.* Skadden secured a complete victory for Norfolk Southern in an antitrust case brought by CSX Transportation seeking hundreds of millions of dollars in damages, with the Fourth Circuit agreeing that CSX's claims were time-barred.
- *In re Credit Default Swaps Antitrust Litigation.* Skadden persuaded the Second Circuit, on behalf of Citibank and affiliates, to uphold enforcement of a settlement release barring investments funds from asserting antitrust claims against a group of banks stemming from their participation in the credit default swaps market.
- *American Cruise Lines v. United States.* Skadden secured a victory for Viking USA LLC as intervenor in the Second Circuit in this important administrative law case presenting a novel question over the U.S. Maritime Administration's (MARAD) public notice obligations. The Second Circuit held that MARAD reasonably determined that a lease of a vessel allowed Viking to operate cruises along the Mississippi River, and that the agency complied with its notice-and-comment requirements.
- *Wallrich v. Samsung & Hoeg v. Samsung.* Over a six-month span, Skadden secured two total victories for Samsung before the Seventh Circuit in first-of-their-kind mass arbitration cases. In both cases, the Seventh Circuit reversed the district court's order compelling Samsung to arbitrate hundreds of thousands of claims and frontload the administrative fees associated with those arbitrations, which quickly could have ballooned to over $100 million in one case and $200 million in the other.
- *Eaton Corp. v. Commissioner.* Skadden secured a ground-breaking victory on behalf of the Eaton Corporation in major transfer-pricing cross-appeals before the Sixth Circuit. The decision not only prevents the IRS from imposing more than $350 million in liability on Eaton, but also creates important precedent for other corporations facing retroactive action by the IRS.
- *Hunstein v. Preferred Collection & Management Services.* Skadden secured an en banc victory in the Eleventh Circuit on behalf of client Preferred Collection and Management Services, Inc. The court ordered the district court to dismiss the FDCPA claim for lack of Article III standing in a first-of-its-kind decision after the Supreme Court's decision in *TransUnion LLC v. Ramirez* (2021).
- *Airlines for America v. City & County of San Francisco.* Skadden secured a precedent-setting victory for Airlines for America (A4A) before the Ninth Circuit, which held that civil penalties make government action regulatory and subject to federal preemption. The victory cleared the way for A4A's arguments on remand that an onerous San Francisco ordinance is preempted by the Airline Deregulation Act, Employee Retirement Income Security Act, and Railway Labor Act.
- *Coca-Cola Co. v. Commissioner.* Skadden represents Coca-Cola in its fight against a U.S. Tax Court opinion threatening to impose more than $3 billion in additional tax liability for 2007 to 2009 and billions more for later tax years. The Skadden team is arguing that the IRS's retroactive change in how it calculates Coca-Cola's tax liability violates fundamental principles of administrative and constitutional law.
- *Macomb County Employees' Retirement System v. Align Technology.* Skadden secured a complete victory for Align Technology, Inc., before the Ninth Circuit in an appeal involving a securities fraud class action brought by Align stockholders. The court held that none of the company's allegedly false and misleading statements were actionable, declining to reach matters of scienter and control-person or insider-trading liability.

Supreme Court and Appellate Litigation

Continued

- *Southwest Airlines v. Saxon.* U.S. Supreme Court case about the scope of the Federal Arbitration Act's § 1 "transportation worker" exemption. The Court applied the § 1 exemption to only airline workers who frequently load and unload cargo from airplanes, rejecting a more far-reaching interpretation that would have applied to all airline workers.
- *Virgin America v. Bernstein.* Skadden won a critical part of a Ninth Circuit appeal for Virgin America, Inc., and Alaska Airlines, Inc. The appeal stemmed from a wage-and-hour class action suit brought on behalf of all interstate flight attendants. The Ninth Circuit vacated the largest component of the district court's judgment, an award of over $40 million.

Pro Bono Highlights

- *Caniglia v. Strom.* Skadden secured a unanimous victory in the U.S. Supreme Court on behalf of *pro bono* client Edward Caniglia. The ruling prevents police from entering people's homes without a warrant for "community caretaking functions," affirming bedrock Fourth Amendment principles protecting the sanctity of the home.
- *Reed v. Goertz.* Skadden secured a victory in the U.S. Supreme Court on behalf of Rodney Reed, a Texas death-row inmate who has long claimed his innocence, in a case concerning the statute of limitations for 42 U.S.C. § 1983 claims seeking DNA testing of crime-scene evidence. In a critical decision for incarcerated individuals who seek access to exonerating DNA evidence, the Court endorsed a later trigger date for the statute of limitations for such § 1983 claims.
- *Department of the Interior v. Navajo Nation & Arizona v. Navajo Nation.* Skadden represented the Navajo Nation in two consolidated U.S. Supreme Court cases regarding the scope of the United States' duties under its 1868 treaty with the Navajo Nation. Although a 5–4 Court did not grant the specific relief the tribe sought, the Court importantly held that the Navajo do have the right to "necessary water to accomplish the purpose of the Navajo Reservation," reaffirming the continued vitality of the Winters doctrine.
- *United States v. Johnson.* Skadden secured an important due process victory in the Eighth Circuit on behalf of Stacey Johnson, a death-row inmate seeking to prove his innocence through a state-created right to conduct DNA testing on certain evidence that likely would support his wrongful conviction claim. Tracking Skadden's arguments, the Court held that Mr. Johnson had Article III standing and met his burden of showing causation and redressability at the pleading stage.
- *Martin v. Nines.* Skadden secured a Fourth Circuit victory on behalf of Charles Brandon Martin, a Maryland inmate who has long maintained his innocence and was sentenced to life imprisonment after the state failed to disclose a computer forensic report that would have undermined its case. The Court agreed with Skadden's arguments, finding that the state appellate court unreasonably applied clearly established law on Brady materiality and affirming the district court's order that the state retry or release Mr. Martin within 60 days.

"The appellate department at Skadden is the gold standard. They produced the highest level of work. The research and writing is always flawless."

"We go to them for the toughest problems. They're legally rigorous and strategic, that's what I really appreciate. We don't have to worry about things being half done, an excellent product is standard."

— Chambers USA 2025