

Appellate

Overview

Liskow & Lewis is well positioned to handle all aspects of case appeals in the federal and state court systems. The firm is home to several former law clerks for judges in the state and federal appellate systems and this experience provides valuable insight into effective appellate advocacy. The smaller Appellate Practice group consists of seasoned attorneys who have significant experience in the appellate system. Our attorneys provide clients with a set of unique skills tailored to this complex area, and maintain our exceptionally high standards in legal and factual analysis, brief writing and oral advocacy.

The Appellate Practice group is often called upon to act as appellate counsel in matters tried by other law firms. Our attorneys also provide assistance to clients at trial to assist firm trial counsel in perfecting the best record for appellate review, including, for example, the filing of appropriate pre- and post-trial motions, preparation of jury charges, and preservation of error in the trial proceedings. The firm's distinguished appellate practice group is also often retained to prepare and file amicus curiae briefs in matters of significant importance to our clients, including business trade groups and organizations. Our experienced lawyers represent clients in appellate proceedings before the United States Supreme Court, the Louisiana and Texas Supreme Courts, all of the intermediate federal and state appeal courts in Louisiana, Texas and other jurisdictions.

Appellate Resources, Published by Liskow & Lewis Team

Initial Civil Appeals: Louisiana

Additional Civil Appeals: Louisiana

Materials published by Thompson Reuters Practical Law

Experience

The Liskow & Lewis Appellate group has successfully handled a number of precedent-setting cases in which lower court judgments were reversed and favorable judgments were rendered by the appellate courts.

Examples of these successes include:

- Represented Monsanto in seeking appellate review of denial of enforcement of an arbitration agreement. After the Louisiana Second Circuit Court of Appeal denied Monsanto's writ application, Liskow & Lewis obtained a writ grant from the Louisiana Supreme Court with an order that the Second Circuit issue a decision on the matter. *Hanlon v. Monsanto AG Prods., LLC*, 2013-0169 (La. 3/1/13), 108 So. 3d 781. Following remand from the Louisiana Supreme Court,

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the Second Circuit reversed the trial court and ruled in favor of Monsanto, finding the arbitration clause valid and enforceable. *Hanlon v. Monsanto AG Prods., LLC*, 48,010 (La. App. 2 Cir. Oct. 9, 2013), 2013 La. App. Lexis 2019.

- Retained by Dow Chemical Company as appellate counsel to assist trial counsel in seeking discretionary review by the Louisiana Supreme Court of an intermediate appellate court decision that had reversed a district court judgment dismissing class action plaintiffs' claims for punitive damages. The Louisiana Supreme Court granted the writ application and, with an accompanying order, reinstated the district court decision. *Thomas v. A. Wilbert & Sons, Inc.*, 2012-1534 (La. 10/12/12), 98 So. 3d 879.
- Represented a producing company, as trial and appellate counsel, in a matter asserting land damage/remediation claims arising from historical operations on the property. The matter was dismissed by the state district court on exceptions and the dismissal was completely affirmed by the appellate court. *Kinder Gas, Inc. v. Reynolds*, 2011-1012 (La. App. 3 Cir. 02/01/12), 84 So. 3d 695.
- Secured dismissal at the pleadings stage of RICO and fraud claims asserted against numerous oil and gas producers and their corporate officers. The dismissal was affirmed on appeal. *Bonvillain v. La. Land & Exploration Co.*, No. 10-30810, 2011 U.S. App. LEXIS 13366 (5th Cir. June 28, 2011).
- Successfully represented a major oil and gas company at the trial and appellate levels in its defense of a claim for more than \$60 million brought by the State of Louisiana. On cross motions for summary judgment, the district court ordered the money refunded to the taxpayer. The Louisiana First Circuit Court of Appeal affirmed, and the Louisiana Supreme Court denied writs. *BP Prods. N. Am. v. Bridges*, 2010-1860 (La. App. 1 Cir. 8/10/11), 77 So. 3d 27.
- Defeated multi-billion dollar royalty claims asserted by United States Department of the Interior against offshore federal lessees by securing rulings that federal regulations and federal offshore lease provisions violated the Deep Water Royalty Relief Act of 1995 and were therefore unenforceable. *Kerr-McGee Oil & Gas Corp. v. U.S. Dep't of Interior*, 554 F.3d 1082 (5th Cir. 2009), cert denied, 130 S. Ct. 236 (price threshold provisions of offshore leases unenforceable); *Santa Fe Synder Corp. v. Norton*, 385 F.3d 884 (5th Cir. 2004) (MMS regulations unlawful).
- Represented a major oil and gas company at trial and appellate level in its successful defense of a damage claim brought by a landowner asserting that the company's pipeline and related facilities constituted a trespass. After a judgment of dismissal was secured in the federal district court, the dismissal was affirmed by the federal Fifth Circuit in *Gulf & Miss. River Transp. Co. v. Chevron Pipeline Co.*, No. 11-30443, 2011 U.S. App. LEXIS 21652 (5th Cir. Oct. 25, 2011).
- Engaged as appellate counsel after an adverse judgment in a Louisiana district court and secured reversal by the Louisiana Supreme Court of a multi-million-dollar statutory damages judgment entered against an oil and gas operator arising from allegations that a concursus had been improperly filed. *Cimarex Energy Co. v. Mauboules*, 2009-1170 (La. 4/9/10), 40 So. 3d 931.
- Secured reversal, in part, by the Louisiana Supreme Court of a multi-million dollar jury verdict against an oil and gas operator for land contamination, breach of contract, tort, misrepresentation, and wanton and reckless conduct. *Marin v. Exxon Mobil Corp.*, 2009-2368 (La. 10/19/2010), 48 So. 3d 234.
- Successfully represented an oil and gas exploration company, as trial and appellate counsel, in a legacy litigation matter asserting land damage/remediation claims arising from historical operations on the property. After a full trial on the merits, the jury found in favor of the defendants. The jury verdict was completely affirmed by the appellate court, and the Louisiana Supreme Court denied Plaintiffs' application for supervisory review. *Meaux v. Hilcorp Energy Co.*, 2009-591 (La. App. 3 Cir. 12/9/09), 26 So. 3d 875, writ denied, 2010-0441 (La. 4/30/10), 34 So. 3d 194.
- Obtained a unanimous Louisiana Supreme Court decision in favor of an integrated energy company in a dispute over property taxes. *Gisclair v. La. Tax Comm'n*, 2009-0007 (La. 6/26/09), 16 So. 3d 1132.
- Secured full dismissal of state antitrust claims of price fixing and monopolization on behalf of a downstream oil company; the dismissal was affirmed by the Louisiana Fourth Circuit Court of Appeal, and the Louisiana Supreme Court denied writs. *Tuban Petroleum, L.L.C. v. SIARC, Inc.*, 2009-0302 (La. App. 4 Cir. 4/15/09), writ denied, 2009-0945 (La. 6/5/09), 9 So. 3d 877.

- Retained as appellate counsel for a major oil and gas producer against whom a Louisiana district court had entered judgment assessing damages with respect to operations conducted on leased premises to support a drilling operation on an adjoining tract. This trial court judgment was reversed in its entirety by the Louisiana Second Circuit Court of Appeal and confirmed by a writ denial from the Louisiana Supreme Court. *Fuller v. XTO Energy, Inc.*, 43,454 (La. App. 2 Cir. 8/13/08), 989 So. 2d 298.
- Won trial judgment in products liability case in state court on behalf of helicopter manufacturer after fatal crash, and successfully defended result in the Third Circuit Court of Appeal and the Louisiana Supreme Court. *Kramer v. Petroleum Helicopters, Inc.*, 2008-133 (La. App. 3 Cir. 11/26/08), 999 So. 2d 101, writ denied, 2009-402 (La. 5/1/09), 6 So. 3d 811.
- Successfully represented a hospital in a multi-million-dollar dispute with its tenants' insurer on a complex subrogation claim. *Lifecare Hosps. of New Orleans, LLC v. Lifemark Hosps. of La., Inc.*, 2007-914 (La. App. 5 Cir. 4/15/08), 984 So. 2d 894.
- Secured a reversal and remand of an award of \$72 million in sanctions against a federal banking agency. Firm attorneys were hired to handle the matter on appeal from the sanctions award. *FDIC v. Maxxam, Inc.*, 523 F.3d 566 (5th Cir. 2008).
- Secured an important decision by the Louisiana Supreme Court on the re-perfection of creditor's security interest under the Louisiana Commercial Code. *First Nat'l Bank of Picayune v. Pearl River Fabricators, Inc.*, 2006-2197 (La. 11/16/07), 971 So. 2d 302.
- Successfully defended insurance agents in myriad claims arising out of the sale of an employee welfare benefit plan. *Boes Iron Works, LLC v. Galatas*, 2007-336 (La. App. 5 Cir. 12/11/07), 974 So. 2d 713.
- Obtained dismissal on the pleadings in favor of national law firm and successfully defended judgment in client's favor on appeal. *Brookwood Invs. Co. v. Sixty- Three Twenty-Four Chef Menteur Hwy., L.L.C.*, 958 So. 2d 1200 (La. App. 4th Cir. 2007), writ denied, 2007 La. LEXIS 2347 (La. 2007).
- Assumed representation of individual on appeal of federal false statement conviction and obtained full reversal from the Fifth Circuit Court of Appeals. *U.S. v. Individual*, 467 F.3d 496 (5th Cir. 2006).
- Successfully challenged the use of tax increment financing to fund the developer's cost of constructing a hotel in the existing World Trade Center in New Orleans, whereby the Louisiana Fourth Circuit Court of Appeal ruled that the TIF Statute at issue violated the Louisiana Constitution on multiple grounds. *World Trade Ctr. Taxing Dist. v. All Taxpayers*, 2005-48 (La. App. 4 Cir. 2/1/05), 894 So. 2d 1185.
- Defeated a class certification in a nationwide securities fraud class action on interlocutory appeal based on the plaintiffs' failure to establish the prerequisites for the fraud-on-the-market presumption. *Unger v. Amedisys Inc.*, 401 F.3d 316 (5th Cir. 2005).
- Successfully challenged the use of tax increment financing to fund the construction of a sporting goods retail store with public funds in Livingston Parish, whereby the state Supreme Court ruled that the financing structure at issue violated the Louisiana Constitution. *Denham Springs Econ. Dev. Dist. v. All Taxpayers*, 2004-1674 (La. 2/4/05), 894 So. 2d 325.
- Successfully opposed a motion to remand and obtain monetary damages in excess of \$2 million and declaratory judgment in our client's favor. Decision was affirmed in full on appeal, and the firm's team successfully opposed petition for certiorari review filed by opposing party. *City of New Orleans v. Mun. Admin. Servs., Inc.*, 376 F.3d 501 (5th Cir. 2004), cert. denied, 125 S. Ct. 1396 (2005).
- Obtained Rule 11 sanctions against prominent Mississippi plaintiffs' attorney and affirmance by en banc United States Fifth Circuit. *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796 (5th Cir. 2003) (en banc).
- Obtained summary judgment on behalf of the defendant, the owner of the facility, and succeeded in dismissing all claims by construction contractor who sought damages for alleged undue delay, fraud and extra costs. The judgment was affirmed in full on appeal. *Pellerin Constr., Inc. v. Witco Corp.*, No. 01-30536, 2002 U.S. App. LEXIS 11536 (5th Cir. May 21, 2002).

- Represented the taxpayer in an appeal of an adverse ruling issued by the Louisiana Tax Commission, which held that the client's wholesale electric-power manufacturing facility was "other property," not "public service property," under the Louisiana Constitution. The trial court reversed, and the Court of Appeal affirmed. The Louisiana Supreme Court granted writs and, resolving an issue of first impression, affirmed the Court of Appeal's judgment in a unanimous decision. *Cleco Evangeline, L.L.C. v. La. Tax Comm'n*, 2001-2162 (La. 4/3/02), 813 So. 2d 351.
- Secured a reversal by the Louisiana Supreme Court of a large malpractice judgment entered against a law firm and national malpractice carrier, in which we were retained to handle the appeal after the adverse judgment was rendered by the district court. *Hendrick v. ABC Ins. Co.*, 2000-2403 (La. 5/15/01), 787 So. 2d 283.
- Assumed representation of defendants after a jury verdict rendered against them in a contract dispute involving a license agreement for the manufacture of soft-drink pallets. The firm obtained a full reversal for the \$900,000 adverse judgment on appeal in the United States Court of Appeals for the Fifth Circuit. *C.C. Clark, Inc. v. DCV, Inc.*, No. 00-6005, 2001 U.S. App. LEXIS 4642 (5th Cir. Feb. 12, 2001).
- Secured an important victory in the United States Fifth Circuit in a professional liability case involving the failure of Louisiana's largest thrift institution. The matter included a burden of proof on issues of causation and damage. *FDIC v. Barton*, 233 F.3d 859 (5th Cir. 2000).
- Reversed a judgment imposing a writ of mandamus requiring the collection of an occupancy tax on hotel rooms when such a tax was not previously approved by voter referendum. *Re'l Transit Auth. v. Kahn*, 1999-2015 (La. App. 4 Cir. 8/26/99), 742 So. 2d 960.
- As appellate counsel for a major retailer, obtained reversal of adverse jury verdict due to inflammatory and prejudicial conduct of plaintiffs' attorney *Whitehead v. Food Max of Miss., Inc.*, 163 F.3d 265 (5th Cir. 1998).
- Obtained ruling that federal oil and gas lessees did not owe royalties on take-or-pay payments. *Diamond Shamrock Exploration Co. v. Hodel*, 853 F.2d 1159 (5th Cir. 1988).