

APPELLATE

HOT LIST

The National Law Journal's annual Appellate Hot List profiles 20 firms that represent the best in the practice of appellate law. These are firms that have amassed precedent-setting victories in the U.S. Supreme Court, the circuit courts of appeal and state appellate courts and that have demonstrated impressive track records over time. Our annual Appellate Hot List denotes law firms that made singular contributions to appellate practice during the past year.

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McDermott Will & Emery

Twenty appellate litigators often partner with experts in tax, health, insurance, environmental and ERISA law. During the course of eight of the past Supreme Court terms, the firm's lawyers have served as counsel in one or more cases argued and decided on the merits. Victories included striking down the McCain-Feingold ban on pre-election issue ads by corporations or unions.

NOTEWORTHY CASES

- *Arthur Andersen LLP v. Carlisle*, 129 S. Ct. 1896 (2009), led by M. Miller Baker (argued), Rory Little, Paul Thompson, and Douglas Whitney (on the brief). The case clarified the rights of nonparties to an arbitration agreement. The Sixth Circuit in this case, following a D.C. Circuit decision written by then-Judge John Roberts, held that only signatories to an agreement could enforce it. The Supreme Court reversed 6-3, holding that nonsignatories may enforce the agreement if their rights are recognized by state law. Chief Justice Roberts joined Justice Souter's dissent.

- *U.S. v. Rosen and Weissman*, 557 F.3d 192 (4th Circuit 2009). Lead attorney Abbe Lowell (argued). Co-counsel Baruch Weiss, John Nassikas (then with Arent Fox, now Arnold & Porter). The Justice Department charged two lobbyists with espionage for allegedly conspiring to share classified information with the Israeli government and journalists. McDermott contended they should be entitled to introduce classified evidence at trial. The government appealed, but the 4th Circuit upheld the district court.

- *U.S. v. Memorial Sloan-Kettering*, 563 F.2d 19 (2d Cir. 2009). Lead attorney Mark Churchill (argued and wrote respective briefs). Whether teaching hospitals can claim tax refunds to take advantage of an exemption for students is at the crux. In the 2d Circuit reversal of two lower-court rulings, Albany Medical Center and Memorial Sloan-Kettering were deemed eligible for millions in taxes withheld from medical residents' stipends.