

THE NATIONAL  
LAW JOURNAL

# THE APPELLATE HOT LIST

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## “Unqualified Excellence”

WHEN IT COMES to appellate practice, giving credit where it's due can be complicated.

It's the nature of the practice. World-changing precedents rarely are the work of a single law firm. As we scrutinized the achievements of the dozens of firms nominated for this, our first Appellate Hot List, that quickly became clear. Cases important enough to land before the U.S. Supreme Court or other appellate venues tend to attract lots of interested parties—ones either directly interested or with broader concerns about how the outcome will shape the law. Great firms work in concert to achieve their goals.

We asked our readers to nominate firms that scored at least one significant appellate win since January 2007, plus

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an impressive track record overall. A “significant win” meant prevailing before the U.S. Supreme Court, a U.S. circuit court of appeals or a state court of last resort when the financial stakes were high or an important legal principle was at stake. Government attorneys were not eligible (so the California attorney general's office, for example, unfortunately gets no credit here for its role in sustaining the big tobacco settlement against an antitrust claim). We also examined the

records of dozens of cases.

The firms on this list all played roles in the most important appeals of the year, drafting the main briefs or offering the main oral arguments, or else chiming in as friends of the court. We looked for evidence that amicus briefs contributed to an outcome (by offering arguments referenced in the ruling, for example). For each firm, we list a number of cases that we felt illustrated the skills the organization had to offer. Unfortunately, space did not allow us to list each firm that contributed to a specific outcome. Also unfortunately, some fine appellate firms did not make this list. The ones that did get credit for unqualified excellence. **NLJ**

—MICHAEL MOLINE

## McDermott Will & Emery

**M**cdermott Will & Emery is a global law firm with 1,100 attorneys, about 20 of whom specialize in appellate practice. The firm has argued before the U.S. Supreme Court, each of the 13 federal appellate circuits and numerous state supreme courts. The team's leaders are M. Miller Baker in the Washington office and Rory Little, who also teaches at University of California Hastings College of the Law in San Francisco.

### NOTEWORTHY CASES:

■ ***Beck v. PACE International Union***, 127 S. Ct. 2310 (2007). Lead attorney M. Miller Baker. The Supreme Court rejected a union's bid to force the bankrupt Crown Vantage Inc. and Crown Paper Co. to merge the pension plans into a fund managed by the union. McDermott represented the bankruptcy trustee.

■ ***Federal Election Comm'n v. Wisconsin Right to Life, Inc.***, 127 S. Ct. 2652 (2007). Lead McDermott attorney M. Miller Baker. The Supreme Court struck down the McCain-Feingold law's restriction on preelection issue ads by corporations or unions as an unconstitutional abridgement of free speech. McDermott was co-counsel for Wisconsin Right to Life, Inc., with James Bopp, Jr., who was counsel of record and argued the case.

■ ***In re Seagate Technology LLC***, 497 F.3d 1360. Lead counsel Ray V. Lupo.\* The Federal Circuit upended 24 years of precedent by rejecting the “affirmative duty of care” to avoid infringement. Willfulness now requires a showing of “objective recklessness.”

\* Lead counsel updated since original publication.