POLSINELLI

Appellate

Polsinelli has a vibrant and active national appellate team that represents clients in state and federal appellate courts, including in the Supreme Court of the United States. Our team handles appeals from beginning to end, as well as extraordinary writs and amicus curiae filings for matters generated inside the firm and those referred by outside counsel and clients.

Polsinelli's appellate attorneys frequently advise clients during trials on issues likely to be of significant consequence in any subsequent appeal, including jury instructions, error preservation, and similar issues. Prior to trial, the appellate attorneys frequently prepare critical, dispositive motions, particularly in complex commercial cases. Polsinelli's Appellate practice is ready to address any appellate need, whether by consulting on issues and strategy, seeking further discretionary review after an adverse appellate opinion, or coordinating post-judgment and post-opinion proceedings in trial and appellate courts.

Effective appellate advocacy demands careful judgments not only at the trial stage in anticipating and planning for appellate scenarios, but through all stages of the appellate process. Our team routinely considers and weighs how complex trial records can best be simplified and which arguments appellate judges will find most persuasive. Polsinelli's appellate attorneys have the experience to understand how appellate courts view legal issues and to frame arguments accordingly. This process is informed through our team partnering with our firm's trial lawyers to develop and tailor effective arguments for our clients.

Our deep bench of attorneys includes a Certified Appellate Specialist, a rare distinction reserved for attorneys who have handled a substantial number of appeals and oral arguments.

From notice of appeal (and even before) to the final mandate, our Appellate team has the experience to help strategically obtain and defend a client's favorable result, creatively challenge an adverse one, or help a client meaningfully contribute as an amicus curia to the development of the law or policy on issues that matter to its own or broader interests.

Matters

- The Big 12 Conference, Inc. and Conference USA (CUSA) before the United States Supreme Court. In conjunction with 11 other collegiate conferences, the Big 12 and CUSA filed a Petition for Writ of Certiorari in October 2020, requesting the Supreme Court grant the Petition to address the Ninth Circuit Court of Appeals' affirmance of an injunction that prohibited the NCAA and its members from enforcing rules that limited the forms of compensation that could be provided to student-athletes above the full cost of attending an institution. The injunction held that the NCAA's rules violated the Sherman Act and could not place any

limits on benefits related to education for basketball and football players in Division 1 that exceed the full cost of attendance. The injunction also prohibited the NCAA from placing a cap on the annual graduation of academic awards below $5,980. The Big 12 and the other conferences asserted that the Petition should be granted and was granted in December 2020, and over twenty-four amicus briefs were filed related to the issue, with more than ten of them supporting the Petition. After a full briefing, the United States Supreme Court affirmed the injunction and the decision of the Ninth Circuit Court of Appeals. *The Big 12 Conference, Inc. and Conference USA, Inc In Re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*; Case No. 4:14-md-2541-CW.

- Plaintiff alleged the parties entered into an oral joint venture agreement, which was purportedly evidenced by a Letter of Intent that expressly stated it was not intended to be, and shall not be construed to be, a binding commitment, agreement or contract. The district court granted summary judgment in favor of Domtar, and the Court of Appeals affirmed. *Brezoczky v. Domtar Corporation*, 770 Fed.Appx. 353. (9th Cir. 2019).
- Represented defendant in an appeal raising first-impression jurisdictional issue and challenging award of attorney's fees under contract. *Jet Midwest International Co. Ltd v. Jet Midwest Group, LLC*, 932 F.3d 1102 (8th Cir. 2019).
- Affirmed order granting an all-issues new trial in a toxic-tort product liability case because the evidence did not support the jury's fault allocation. The new trial order vacated the jury's $206,281,015 compensatory and punitive damages award. *Evans v. CertainTeed Corp.*, No. B227075, 2012 WL 4338617 (Cal. Ct. App. Sept. 24, 2012).
- Affirmed order granting summary judgment under the doctrine of primary assumption of risk against plaintiff's claim for a spinal injury sustained during a high school football game. *Bridges v. Bellarmine-Jefferson High School*, No. B278124, 2018 WL 3569047 (Cal. Ct. App. July 25, 2018).
- Affirmed order granting summary judgment that dismissed plaintiff's wrongful death product liability action based on the doctrine of res judicata. *Stewart v. Union Carbide*, No. B267405, 2017 WL 2954311 (Cal. Ct. App. July 11, 2017).
- Affirmed order granting summary judgment against plaintiff's product liability claim and jury's defense verdict against a premises liability claim. *Murat v. Exxon Mobil Corp.*, No. B247889, 2015 WL 4744455 (Cal. Ct. App. Aug. 11, 2015).
- Affirmed order granting summary judgment against plaintiff's claim under the Longshore Harbor Worker's Compensation Act for vessel owner negligence. Court of Appeal held the vessel owner did not breach any duty of care. *Petitpas v. Ford Motor Co. and Exxon Mobil Corp.*, 13 Cal. App. 5th 261, 220 Cal. Rptr. 3d 185 (2017).
- The Archdiocese of Los Angeles rented a 16-foot tall inflatable slide from Grandpa's Jumps for a "Fiesta" fundraiser and signed a rental contract containing a general indemnity agreement. A minor fell from the slide at the fundraiser and fractured his skull, causing serious injury. Grandpa's Jumps and the Archdiocese settled with the minor, and then Grandpa's Jumps filed a cross-complaint against the Archdiocese for indemnity and attorney fees. This was the second appeal (the first was an appeal from the order denying contractual indemnity). The trial court denied Grandpa's Jumps' motion for attorney fees, and the Court of Appeal affirmed. *Grandpa's Jumps v. Archdiocese of Los Angeles*, No. B265924, 2017 WL 2874566 (Cal. Ct. App. July 6, 2017).
- The trial court denied defendants' special motion to strike portions of plaintiff's second amended complaint under Code of Civil Procedure §425.16 on the ground the motion should have been made in connection with earlier pleadings and was therefore untimely. The Court of Appeal reversed and remanded for the trial court to hear the motion on its merits. *Bell v. Brumm*, No. A159820, 2021 WL 3673808 (Cal. Ct. App. Aug. 19, 2021).
- Successfully opposed appeal of grant of summary judgment in trust contest and the largest known award of attorney's fees in Missouri under probate statute. *Berezo v. Berezo*, 628 S.W.3d 737 (Mo. Ct. App. 2021).
- Represented client pro bono in appeal, raising a constitutional challenge to criminal statute.*Missouri v. Edwards*, 579 S.W.3d 249. (Mo. Ct. App. 2019).
- Plaintiff returned the rental car days earlier than scheduled. At the check-in inspection, Enterprise noted damage to the passenger door that was not noted by Enterprise or plaintiff at the time of the check-out inspection. The remainder of plaintiff's credit card deposit was applied to the repair expense, and plaintiff was billed for the rest. Plaintiff alleged violation of various consumer protection laws. The trial court entered

summary judgment in favor of Enterprise, and the Court of Appeal affirmed the judgment in favor of Enterprise. *Peterson v. Enterprise*, E075199 (Super.Ct.No. RIC1722277).

- In a pending putative class action brought on behalf of all NCAA Division I athletes for damages and an injunction under the Sherman Act, the NCAA's rules prohibited student-athletes from profiting from using their name, image or likeness (NIL). The NCAA has amended the rules related to NIL, primarily because multiple states enacted NIL legislation in 2020 and 2021 that went into effect in July 2021. The lawsuit seeks to recover a percentage of the payments made to the NCAA and the "Power Five" conferences as a result of their media rights. *The Big 12 Conference, Inc. In Re College Athlete NIL Litigation*, Case No. 4:20-cv-03919-CW.
- Obtained partial reversal of judgment by Delaware Chancery Court in post-closing litigation. *Peterson Enterprises, Inc. v. Brace Industrial Contracting, Inc.*, 224 A.3d 574 (Del. 2020).
- Successfully obtained extraordinary writ prohibiting trial court from exercising jurisdiction over an out-of-state client. *State ex rel. PPG Industries, Inc. v. Hon. Maura McShane*, 560 S.W.3d 888 (Mo. 2018).
- The Court of Appeal opinion departed from the decades-long precedent set forth in *Wahlgren v. Coleco Industries, Inc.*(1984) 151 Cal.App.3d 543, regarding the admissibility of former deposition testimony. It relies on federal authority (Fed. Rules Evid., rule 804(b)(1), 28 U.S.C. (rule 804)) to support its conclusion that prior deposition testimony is almost always admissible in a later case that raises similar issues and that it is the burden of the party resisting its admission, not the proponent of the evidence, to establish the former testimony does not meet the hearsay exception under Evidence Code §1291. The California Supreme Court issued an opinion reaffirming the Wahlgren line of authority. *Berroteran v. Superior Court*, 41 Cal. App. 5th 518, 254 Cal. Rptr. 3d 338 (2019).