

Appellate & Supreme Court

Cozen O'Connor's nationally ranked appellate practice — named to the National Law Journal's 2020 Appellate Hot List — represents clients in the U.S. Supreme Court and in federal and state appellate courts throughout the country. Our appellate lawyers help guide clients through all stages of the appellate process, but our work often begins pre-appeal. We collaborate with trial teams at all stages of litigation, including during and prior to trial, pre- and post-verdict, and throughout the appellate process.

The firm's attorneys have successfully handled appellate matters in such diverse legal areas as constitutional law, class actions, antitrust, securities, contract law, business torts, labor and employment, medical device and drug litigation, toxic torts, intellectual property, insurance coverage, subrogation, professional liability, health care, and white collar criminal defense. Our appellate lawyers work closely with our clients, our trial teams, and experts to deliver excellent results. We also represent our clients and related trade organizations in filing amicus briefs on important issues before the U.S. Supreme Court and other appellate courts throughout the country.

There are only limited opportunities to make the winning arguments to an appellate court — a few briefs and oral argument — so experience, big-picture strategic thinking, and foresight are key to appellate success. We understand that appealing a trial court ruling is often a high-stakes proposition with the potential for a business-altering result. With this in mind, we never lose sight of our clients' business goals and realities.

One example of Cozen O'Connor's appellate prowess is our victory before the U.S. Supreme Court in a groundbreaking First Amendment case, representing the appellant in *Manhattan Community Access Corp. v. Halleck*. The dispute centered on questions of private versus governmental activity and who can be sued under the First Amendment. Convincing the Court to grant certiorari presented a significant challenge, and our team made key strategy decisions at that stage that not only persuaded the Court to take the case, but led directly to the victory. In that case, as in all appeals we handle, our focus was on framing the issue and keeping the Court focused on our framework, regardless of the other side's repositioning. A perfectly presented appeal does not ask judges to wrestle with a decision, but rather asks them to endorse an inexorable conclusion.

Cozen O'Connor's appellate team includes more than 50 attorneys around the country with significant appellate experience. They have collectively handled hundreds of appellate matters, authored important amicus briefs on behalf of industry groups and other interested parties, served in prestigious judicial clerkships, authored law review articles, served on law review editorial boards, and participated in numerous court-related committees. This level of professional and academic activity keeps our attorneys on the cutting edge of trends in the appellate courts, which, in turn, allows us to offer our clients superb service and prescient strategic advice.

SERVICE AREAS

- Handle all types of appellate matters in any appellate forum
- Analyze the record, supporting documents, and relevant law to advise clients and develop appellate strategies that ensure the most compelling legal arguments are raised to an appellate court
- Provide advice on potential interlocutory appeals
- Draft persuasive and comprehensive appellate briefs and other appellate documents
- Present compelling oral arguments
- Advise trial counsel prior to and during trial to ensure the proper identification and preservation of appellate issues
- Draft compelling amicus curiae briefs that are never mere rehashes of the parties' arguments



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Related Practice Areas

- Commercial Litigation

Experience

Secured an appellate victory for a cooperative corporation and members of its board in a suit, spanning two decades, filed by a famous fashion designer who sought to perform substantial alterations to his penthouses to create an enormous residence atop the building owned by the corporation. The unanimous Appellate Division not only dismissed the entire complaint against all but two of the individual defendants, but also dismissed various claims against the corporation at the pleading stage — including violation of the business corporations law, breach of fiduciary duty, fraudulent misrepresentation, and negligent misrepresentation — for which the plaintiff sought damages in excess of \$50 million on each of four of the causes of action. *Tahari v 860 Fifth Ave. Corp.*, 214 A.D.3d 491 (1st Dept. 2023).

Secured a unanimous appellate victory in New York state court, allowing a case brought under New York's Debtor & Creditor Law and common law to move forward after six years of litigation. In its ruling, the Appellate Division reversed the trial court's denial of our client's motion for summary judgment on various statutory causes of action asserted in the complaint and its grant of the defendants' cross-motion seeking dismissal of the entire complaint. Further, the Appellate Division granted our client's motion for summary judgment as to liability for certain interest payments and a related-party security interest, and denied defendants' cross-motion, thereby reinstating not only the complaint but also the client's cause of action for legal fees under the Debtor & Creditor Law.

Secured a victory for a defendant-guarantor in a matter of first impression before the California Court of Appeal in a case centering on prevailing party attorneys' fees. The underlying case was a landlord-tenant dispute involving breach of contract and breach of guaranty claims, and it came before the Court twice. The initial issue was whether the prevailing plaintiff-landlord could collect attorneys' fees from the individual guarantor, who had deposited the funds at issue with the trial court, under the prevailing party attorneys' fee clause contained in the lease guaranty. We successfully moved to strike the plaintiff's prayer for attorneys' fees, and Court of Appeal affirmed in a published decision. On remand, we successfully moved for an award of attorneys' fees on behalf of the guarantor for fees she incurred both on appeal and in significant ancillary appellate proceedings, and the landlord again appealed. In its second published decision in the case, the Court announced for the first time that debtor defendants can escape contract liability for attorneys' fees, even after an action has been brought against them, if they tender the full amount owed before answering the complaint.

Obtained a major First Amendment victory before the Supreme Court of the United States in *Manhattan Community Access Corporation v. Halleck*. The Supreme Court reversed the U.S. Court of Appeals for the Second Circuit and held that a private company that, among other things, operates the public access channels in Manhattan, was not a "state actor" and therefore not subject to liability under the First Amendment. The Court clarified its tests for when private parties can be found to be "state actors" and thus subject to constitutional liability.

Represented a school district board and administrators in a lawsuit filed in federal court, obtaining dismissal with prejudice of complaints arising out of a student's special education asserted under the American with Disabilities Act and the Civil Rights Act and successfully defended the dismissal in the Court of Appeals for the 7th Circuit.

Served as part of the team of attorneys representing an association of approximately 3,500 retirees, in pursuit of their bankruptcy claims in one of the largest bankruptcies of its kind. The representation included proceedings before the bankruptcy and district courts, the 7th Circuit Court of Appeals, and the U.S. Supreme Court. Our representation resulted in a substantial extension of pension and

insurance benefits for our clients.

Successfully represented the Southeastern Pennsylvania Transportation Authority (SEPTA) before the Pennsylvania Supreme Court, defeating an effort to overturn the statutory damages cap that limits recovery against state agencies to \$250,000. Responding to the plaintiffs' King's Bench petition, the Cozen O'Connor team argued that the extraordinary relief sought was improper and that the plaintiffs' arguments regarding potential changes to the sovereign immunity statute were inappropriately directed to the Court, rather than to the legislature.

Secured an appellate victory in New York state court on behalf of our client, a trucking company, in a personal injury case centered on a motor vehicle accident. The appellate court found that the record established as a matter of law that the client was not at fault for the accident, and that the lower court should have granted our motion for summary judgment and dismissed the complaint.
