

# OUR PRACTICE

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## Appellate Practice

**Baker Donelson's Appellate Group members are experienced litigators and understand firsthand the types of concise, strategic arguments expected by appellate courts. We regularly partner with trial counsel in anticipation of an appeal to produce results in line with the client's desired business outcome. We also come into cases to handle post-trial motions and appeals when other lawyers have achieved a result that was not what the client wanted.**

Nationally and regionally-recognized litigators, our attorneys' experience with appellate courts and issues is vast, and we leverage that on behalf of our clients when brought on to the case. We work closely with trial counsel to give our clients the benefit of both the trial attorneys' knowledge and the appellate attorneys' unique skills and experience. Our attorneys are often retained to handle pre- and post-judgment proceedings and appeals at the request of the client, trial counsel or the client's insurance carrier. If retained before trial, we also are able to assist trial counsel in preserving issues when an appeal is anticipated.

## Where We Practice

We are regularly involved in scores of appeals touching upon all areas of the Firm's broad litigation practice. Our attorneys have been involved in more than 60 cases in which review was granted by or sought before the U.S. Supreme Court. The Group has handled cases in the appellate courts across and beyond Baker Donelson's footprint in Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and the District of Columbia, including the:

- U.S. Supreme Court;
- U.S. Court of Appeals for the Federal Circuit;
- U.S. Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits;
- U.S. Court of Appeals for the District of Columbia Circuit;
- U.S. Court of Federal Claims;
- U.S. Tax Court;
- U.S. Court of International Trade;
- U.S. Court of Appeals for Veterans Claims;
- U.S. District Courts;
- Bankruptcy Courts;
- State Supreme Courts; and
- State intermediate Courts of Appeal.

## Who We Are

Nationally and regionally-recognized litigators, our attorneys include a former U.S. District Court Judge, retired Circuit Court Judge and a Georgetown University faculty member who teaches constitutional law. Our team also includes founding members of the Appellate Practice Sections of the Alabama, Mississippi and Tennessee State Bar Associations; members of the former Tennessee Appellate Court Nominating Commission; and former chair of the Tennessee Judicial Selection Commission. Several individuals in our group are active members of "by invitation only" organizations of trial lawyers such as the American College of Trial Lawyers, American Board of Trial Advocates and Litigation Counsel of America.

We offer strategic guidance informed by service as law clerks or staff attorneys on federal and state courts, including the:

- U.S. Courts of Appeals for the First, Fourth, Fifth, Sixth, Ninth and Eleventh Circuits;
- U.S. Court of Appeals for the Federal Circuit;
- U.S. Court of Federal Claims;
- U.S. Tax Court;
- U.S. District Courts in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New York, North Carolina, Tennessee, Texas and Virginia, including Bankruptcy Courts;
- State Supreme Courts in Alabama, Arkansas, Louisiana, Mississippi, Tennessee and Texas; and
- State courts of appeal and trial courts.

Baker Donelson's appellate attorneys are involved in many professional organizations and committees dedicated to improving the appellate practice and process, including the American Academy of Appellate Lawyers, American Bar Association Appellate Practice Committees, DRI Appellate Practice Committee, International Association of Defense Counsel Appellate Practice Committee and state bar association sections and committees.

The issues we have handled on appeal and at the trial level are as diverse as the Firm's litigation practice. We have also prepared amicus briefs for trade associations or other parties interested in an appeal.

## Case Studies

*Results may vary depending on your particular facts and legal circumstances.*

- [Appellate Victory in Non-Compete Agreement Enforcement for Home Warranty Company](#) - Breach of confidentiality/non-compete agreement
- [Eleventh Circuit En Banc Appellate Ruling Affirms Dismissal of Antitrust Claims Against Automobile Insurer](#) - Antitrust
- [Successful Result for Client in TCPA Class Action](#) - Telephone Consumer Protection Act Class Action
- [Supreme Court Rules in Favor of Memphis and Memphis, Light, Gas & Water in Water-Rights Fight](#) - Governmental Entities

## Representative Matters

*Results may vary depending on your particular facts and legal circumstances.*

- Defended large municipality against water rights suits seeking to cut off access to its underground aquifer. The U.S. District Court, Court of Appeals and the Supreme Court of the United States preserved the municipality's access to the aquifer.
- Received per curiam ruling in the Eleventh Circuit affirming trial court's grant of summary judgment in a pharmaceutical case. Brought as a false advertising claim under the Lanham Act, the plaintiffs claimed our client's product was being marketed, without adequate testing, as substitute for theirs and was therefore bioequivalent to theirs. The trial court stated the burden of proof remained with the plaintiff, and the Eleventh circuit agreed.
- Persuaded Maryland's highest court to overturn ruling that would have allowed borrowers to rescind mortgages long after the Truth In Lending Act's three-day limit.
- Obtained a decision in the Supreme Court of Tennessee, reversing the trial court, that class actions are not allowed under the Tennessee Consumer Protection Act.
- Successfully defended trial court's dismissal of lawsuit by Catholic visionary seeking personal control over assets of nonprofit organization that had declined to follow visionary's instructions. Issues

included First Amendment, civil Racketeer Influenced and Corrupt Organizations Act (RICO), fraud, implied trust, Georgia Charitable Solicitations Act and breach of fiduciary duty.

- On issue of first impression in the United States Court of Appeals for the Eleventh Circuit, overturned the trial court's order permitting employees discharged for refusing to sign an arbitration agreement to sue for wrongful retaliation under Title VII, ADEA and ADA.
- On an issue of first impression, obtained decision dismissing claims by doctor concerning statements made to peer review committee. Case was resolved under the Tennessee Peer Review Law and the Health Care Quality Improvement Act.
- Overturned a federal district court's \$500,000 judgment against a hospital client based on changes in medical care benefits for retirees. The issues included preemption, vesting of benefits, estoppel, fiduciary duty and compensatory damages under ERISA.
- Successfully defended a jury's findings of trade dress infringement and design patent infringement concerning women's apparel and accessories in the United States Court of Appeals for the Federal Circuit.
- Successfully defended an appeal to the Sixth Circuit Court of Appeals by an employee seeking to avoid the forum selection clause contained in an employment contract. The Court affirmed the propriety of the removal of the case to federal court and found the forum selection clause designating Brazil as the appropriate forum wholly enforceable.
- Successfully represented Medicaid-managed care organizations and state trade association in United States Court of Appeals for the Sixth Circuit in action seeking fairness hearing on Medicaid class action settlement imposing significant new burdens on MCOs.
- Represented managed care company in enforcement of arbitration clause in network physician agreement. Trial court held clause unenforceable; Tennessee Court of Appeals reversed.
- Successfully defended property insurance policy provisions under Mississippi law related to wind, water and anti-concurrent causation in the U.S. Court of Appeals for the Fifth Circuit following Hurricane Katrina.
- Represented one of the largest tank barge operators in the United States in a collective action filed pursuant to the Fair Labor Standards Act. The Fifth Circuit reversed the district court's ruling and rendered judgment in favor of our client.
- Argued one of the first Medicare exclusion cases to be appealed to federal court: *Anesthesiologists Affiliated v. Sullivan*, 941 F.2d 678 (8th Cir. 1991).
- Obtained the dismissal of multiple health care liability lawsuits based on the plaintiff's failure to comply with the requirements of the Tennessee Healthcare Liability Act, including successfully defending a dismissal on appeal.
- Successfully represented a large Ohio health insurer accused of orchestrating a boycott of an insurance agent; all claims were dismissed pretrial and affirmed on appeal by the Sixth Circuit.
- Obtained a favorable ruling in the United States Court of Appeals for the Sixth Circuit on behalf of the client in a dispute over an early termination provision in a commercial lease after previously obtaining a summary judgment in the client's favor at the district level. The ruling saved the client more than \$2.5 million.



## Select Baker Donelson Federal and State Court Clerkships

### Federal Court Clerkships

#### United States Court of Appeals

- [William H.D. Fones Jr.](#), U.S. Court of Appeals for the Federal Circuit, Judge Marion T. Bennett
- [John S. Ghose](#), U.S. Court of Appeals for the Third Circuit, Judge Jane R. Roth
- [Lindsay P. Lounsbury](#), U.S. Court of Appeals for the Third Circuit, Judge David J. Porter
- [Matthew Gissendanner](#), U.S. Court of Appeals for the Fourth Circuit, Judge Karen J. Williams
- [Ronald S. Range Jr.](#), U.S. Court of Appeals for the Fourth Circuit, Judge H. Emory Widener Jr.

- [Eduardo Bruera](#), U.S. Court of Appeals for the Fifth Circuit, Judge Carolyn Dineen King
- [Amy L. Champagne](#), U.S. Court of Appeals for the Fifth Circuit, Judge W. Eugene Davis
- [Nakimuli O. Davis-Primer](#), U.S. Court of Appeals for the Fifth Circuit, Judge Leslie H. Southwick
- [Sterling Kidd](#), U.S. Court of Appeals for the Fifth Circuit, Judge E. Grady Jolly
- [Leonard C. "Len" Martin](#), U.S. Court of Appeals for the Fifth Circuit, Chief Judge James P. Coleman
- [Alexandra Bruce Rychlak](#), U.S. Court of Appeals for the Fifth Circuit, Judge Rhesa H. Barksdale
- [Michael B. Chance](#), U.S. Court of Appeals for the Sixth Circuit, Judge Harry Wellford
- [Andrew J. Droke](#), U.S. Court of Appeals for the Sixth Circuit, Judge Bernice B. Donald
- [F. Dalton Thompson III](#), U.S. Court of Appeals for the Sixth Circuit, Judge Gilbert S. Merritt Jr.
- [Scott S. Frederick](#), U.S. Court of Appeals for the Eleventh Circuit, Chief Judge Edward E. Carnes
- [Lori H. Patterson](#), U.S. Court of Appeals for the Eleventh Circuit, Judge John Godbold

#### **United States Court of Federal Claims**

- [William H.D. Fones Jr.](#), Judge Judith A. Yanello
- [W. Patton Hahn](#), Judge Eric G. Bruggink

#### **United States District Courts**

##### *Alabama*

- [Kevin R. Garrison](#), U.S. District Court for the Middle District of Alabama, Chief Judge W. Keith Watkins
- [William G. Somerville](#), U.S. District Court for the Northern District of Alabama, Judge Seybourn H. Lynn
- [Boston Topping, CIPP/US](#), U.S. District Court for the Northern District of Alabama, Chief Judge L. Scott Coogler

##### *Arkansas*

- [Pete A. Brunson](#), U.S. District Court for the Western District of Arkansas, Judge Timothy L. Brooks
- [Ryan P. Loofbourrow](#), U.S. District Court for the Eastern District of Arkansas, Judge Jerome T. Kearney

##### *California*

- [Jamie L. Kastler](#), U.S. District Court for the Eastern District of California, Judge Sheila K. Oberto

##### *Delaware*

- [Destiney Parker-Thompson](#), U.S. Bankruptcy Court, U.S. District Court for the District of Delaware, Judge Craig T. Goldblatt

##### *Georgia*

- [Kathleen G. Furr](#), U.S. Bankruptcy Court, U.S. District Court for the Northern District of Georgia, Judge Wendy L. Hagenau

##### *Indiana*

- [Lindsay E. Ray](#), U.S. District Court for the Southern District of Indiana in Indianapolis, Judge Mark J. Dinsmore

##### *Kentucky*

- [Whitney M. Dowdy](#), U.S. District Court for the Eastern District of Kentucky, Judge Karl S. Forester

##### *Louisiana*

- [Brian M. Ballay](#), U.S. District Court for the Eastern District of Louisiana, Judge Carl J. Barbier
- [Aubrey "Copper" Hirsch](#), U.S. District Court for the Eastern District of Louisiana, Chief Judge Frederick Heebe
- [Kenneth M. Klemm](#), U.S. District Court for the Eastern District of Louisiana, Judge George Arceneaux Jr.

*Maryland*

- [Annie McGuire Kenville](#), U.S. District Court for the District of Maryland, Judge Richard D. Bennett

*Mississippi*

- [Drew C. Bigelow](#), U.S. Bankruptcy Court, U.S. District Court for the Southern District of Mississippi, Judge Neil P. Olack
- [Fredrick N. Salvo, III](#), U.S. District Court for the Southern District of Mississippi, Chief U.S. Magistrate John M. Roper

*Missouri*

- [Caldwell G. Collins](#), U.S. District Court for the Eastern District of Missouri, Judge Audrey G. Fleissig

*New Jersey*

- [Lauren Brophy Cooper](#), U.S. District Court for the District of New Jersey, Judge Peter G. Sheridan

*New York*

- [Michael A. Brodlieb](#), U.S. District Court for the Eastern District of New York, Judge Raymond J. Drearie
- [Matthew S. Mulqueen](#), U.S. District Court for the Southern District of New York, Chief Judge Loretta A. Preska

*North Carolina*

- [John David Folds](#), U.S. Bankruptcy Court, U.S. District Court for the Middle District of North Carolina, Chief Judge William L. Stocks
- [Kathleen G. Furr](#), U.S. Bankruptcy Court, U.S. District Court for the Western District of North Carolina, J. Craig Whitley
- [Alex S. Lewis](#), U.S. Bankruptcy Court, U.S. District Court for the Middle District of North Carolina, Judge Catharine R. Aron
- [Robert Meyer](#), U.S. District Court for the Western District of North Carolina, Chief Judge Martin Reidinger
- [Matthew W. Wolfe](#), U.S. District Court for the Eastern District of North Carolina, Judge James C. Dever III

*Pennsylvania*

- [John S. Ghose](#), U.S. District Court for the Eastern District of Pennsylvania, Judge Norma L. Shapiro
- [Thomas Kane](#), U.S. District Court for the Eastern District of Pennsylvania, Judge Thomas N. O'Neill Jr.

*Tennessee*

- [Adam S. Baldridge](#), U.S. District Court for the Western District of Tennessee, Judge J. Daniel Breen
- [Pete A. Brunson](#), U.S. District Court for the Western District of Tennessee, Judge Thomas L. Parker
- [Spencer Clift](#), U.S. Bankruptcy Court, U.S. District Court for the Western District of Tennessee, Judge David S. Kennedy
- [Russell W. Gray](#), U.S. District Court for the Eastern District of Tennessee, Judge R. Allan Edgar

- [Cameron S. Hill Sr.](#), U.S. District Court for the Eastern District of Tennessee, Judge Curtis L. Collier
- [Meagan O. Jones](#), U.S. Bankruptcy Court, U.S. District Court for the Western District of Tennessee, Chief Justice David S. Kennedy
- [Nora A. Koffman](#), U.S. District Court for the Eastern District of Tennessee, Judge Clifton L. Corker
- [Erno D. Lindner](#), U.S. Bankruptcy Court, U.S. District Court for the Western District of Tennessee, Judge David S. Kennedy
- [Ryan P. Loofbourrow](#), U.S. District Court for the Western District of Tennessee, Judge Waverly D. Crenshaw Jr.
- [Jerrick D. Murrell](#), U.S. District Court for the Western District of Tennessee, Judge John T. Fowlkes Jr.
- [Adam Sanders](#), U.S. District Court for the Eastern District of Tennessee, Chief Judge Curtis L. Collier
- [Melanie C. Walker](#), U.S. District Court for the Eastern District of Tennessee, Judge Curtis L. Collier

*Texas*

- [Emma L. Short](#), U.S. District Court for the Eastern District of Texas, Judge Zachary J. Hawthorn

*Virginia*

- [John E. Branch III](#), U.S. District Court for the Western District of Virginia, Judge Glen M. Williams
- [Spencer Leach](#), U.S. District Court for the Western District of Virginia, Magistrate Judge B. Waugh Crigler

*West Virginia*

- [Jamie L. Kastler](#), U.S. District Court for the Southern District of West Virginia, Judge Thomas E. Johnston

## **State Court Clerkships**

### **Supreme Courts**

- Alabama Supreme Court, [Jonathan R. Geisen](#), Judge Harold F. See
- Alabama Supreme Court, [Daniel Moss](#), Judge James L. "Jay" Mitchell
- Arkansas Supreme Court, [Mary Ann Jackson](#), Judge Robert Brown
- Colorado Supreme Court, [Tim Maffett](#), Chief Justice Brian D. Boatright
- Louisiana Supreme Court, [Steven F. Griffith Jr.](#), Chief Justice Pascal F. Calogero Jr.
- Louisiana Supreme Court, [Adam B. Zuckerman](#), Chief Justice Pascal F. Calogero Jr.
- Mississippi Supreme Court, [Drew C. Bigelow](#), Chief Justice William L. Waller Jr.
- Mississippi Supreme Court, [Stacy E. Thomas](#), Judge Dan M. Lee
- Tennessee Supreme Court, [George T. "Buck" Lewis III](#), Judge Frank Drowota

### **Courts of Appeal**

- Louisiana Third Circuit Court of Appeal, [Aubrey "Copper" Hirsch](#), Appellate Clerk, Judge William A. Culpepper
- Maryland Court of Special Appeals, [Diane Festino Schmitt](#), Judge Theodore G. Bloom
- Mississippi Court of Appeals, [Drew C. Bigelow](#)
- Mississippi Court of Appeals, [Alan Lee Smith](#)
- North Carolina Court of Appeals, [Iain Stauffer](#), Chief Judge Sidney S. Eagles
- Tennessee Court of Appeals, [Gary C. Shockley](#)
- Tennessee Court of Appeals, Western Section, [Sam Blair](#), Judge W. Frank Crawford
- Tennessee Court of Appeals, Western Section, [Craig C. Conley](#), Judge W. Frank Crawford
- Texas, First Court of Appeals, [Angie C. Davis](#), Judge Sam Nuchia
- Texas, Fourteenth Court of Appeals, [Bobbie L. Stratton](#), Judge John S. Anderson
- Washington, D.C. Court of Appeals, [E. Bahati Mutisya](#), Judge Anna Blackburn Rigsby

