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Appeals

The stakes on appeal and the level of advocacy demanded are high. Appellate litigation – like trial work – is a specialty that requires experience to be successful. With recent changes to the rules of appellate practice and the increasing tendency of appellate courts to dismiss appeals summarily, it is more important than ever to have an appellate expert handling your appeals. Miller Canfield's appellate lawyers have won many important appeals in the state and federal courts. We want to be part of the team that defends your hard-fought victory or overturns a decision against you.

Clifford W. Taylor, former Chief Justice of the Michigan Supreme Court, adds his vast judicial experience to our seasoned team of appellate lawyers. Justice Taylor served on the appellate bench for over 16 years, and learned first-hand what works – and what doesn't work – in presenting an appeal. He knows federal and state trial and appellate judges throughout the country from his service on the boards of the National Conference of Chief Justices and a leading university provider of continuing legal education for trial and appellate judges. Of Counsel to the Firm, Justice Taylor consults on a wide range of appeals and appears on amicus briefs involving federal and state constitutional, statutory and public policy issues. Jack Van Coevering, former Chief Judge of Michigan's Tax Court, is also part of our appellate team.

Many of our appellate lawyers began their legal careers as law clerks for federal and state appeals judges. We know what it takes to prevail on appeal: diligent review of the record, forceful writing, well-organized, persuasive oral arguments, and mastery of the appellate rules. We work quickly, efficiently, and effectively, and we pride ourselves on working hand-in-hand with trial counsel to present appeals in the most powerful way possible. Consider us for your next appeal.

REPRESENTATIVE MATTERS

- Consumer Protection - Hospital Chain
When plaintiff filed a class action suit claiming that hospitals' charges to lawyers for copies of clients' medical records were excessive, the Court of Appeals held that attorneys' requests for copies of their clients' medical records were covered by the Michigan Consumer Protection Act (MCPA). We appealed. The Michigan Supreme Court reversed, agreeing with us that the

records were for the attorneys' business use, and that the MCPA does not apply to purchases that are primarily for business use - an issue of first impression. Plaintiff's class action complaint was summarily dismissed.

- Commercial Law - Grocery Retailer

A national retailer turned to us after a bad result in a case tried by other counsel involving a right of first refusal for the sale of retail stores. We convinced the Michigan Court of Appeals to reverse on appeal of a \$6 million judgment for fraud and a \$10 million interest claim.

- Commercial Law - Foreign Brewer

This case involved novel issues regarding the interaction of the Twenty-First Amendment, the Commerce Clause, and the Federal Arbitration Act. When a Polish brewer terminated an Illinois distributor, the distributor filed suit alleging that the termination violated the Illinois Beer Industry Fair Dealing Act. The district court refused to enforce a contract provision requiring arbitration in Poland, holding that the Twenty-First Amendment (which reserves regulation of alcoholic beverages to the States) trumped the arbitration clause. We appealed, and the U.S. Court of Appeals for the Seventh Circuit reversed and ordered arbitration in Poland. After the arbitrators rejected the distributor's claims, the district court confirmed the award, and the Court of Appeals affirmed.

- Commercial Law - Gasoline Engine Manufacturer

When a manufacturer terminated a Wisconsin distributor, the distributor sued alleging that the termination violated the Wisconsin Fair Dealer Law. After the district court entered a preliminary injunction reinstating the dealer, we appealed. The Seventh Circuit reversed, holding that the dealer had not suffered irreparable injury and was not likely to prevail on the merits. The dealer then voluntarily dismissed its complaint at no cost to our client.

- Constitutional Law - School District

When a school district increased the deductible its retirees were required to pay under their health insurance, the retirees sued, contending that the change violated the Michigan Constitution's prohibition on changing public retirees' "accrued financial benefits," and the retirees' contractual rights. We filed an amicus brief that helped convince the Michigan Supreme Court to

reject the retirees' claims and hold that public bodies are free to reduce the benefits they provide retirees.

- **Constitutional Law - Casino**
Petitioning taxpayers alleged that the State violated its constitution when it submitted compacts between the Governor and Indian tribes authorizing the tribes to operate casinos on reservations through joint resolution process instead of legislative process. We filed an amicus brief on behalf of an Indian Tribe that helped convince the Michigan Supreme Court that Legislature did not violate the Michigan Constitution.
- **Constitutional Law - Suburban City**
When a city imposed a property tax levy to pay the cost of a consent judgment against the city, taxpayers sued, contending that the tax levy violated an amendment to the Michigan Constitution requiring voter approval of any tax increase. Both the Michigan Tax Tribunal and the Court of Appeals agreed with the taxpayers. We appealed to the Michigan Supreme Court, which agreed with us that the amendment did not apply because the statute authorizing a judgment tax levy existed before the effective date of the amendment.
- **Constitutional Law - Regional Airport Authority**
When the Michigan Legislature transferred control of the state's largest airport from the County to a statutorily-created airport authority, the County Commissioners sued raising a number of federal and state constitutional challenges. On appeal, the Court of Appeals agreed with us that the statute was valid on all grounds.
- **Employment Law - Casino**
An employee sued our client, a casino, claiming wrongful termination and retaliation. We appealed after the circuit court denied our motion for summary disposition. The Michigan Court of Appeals reversed, mandating that the motion be granted.
- **Employment Law - Air Freight Company**
In-house counsel tried an employment discrimination case resulting in a \$1.9 million jury verdict. The client retained us to appeal. We convinced the Michigan Court of Appeals to vacate the jury verdict on plaintiff's claims for sexual harassment. Although the Court of Appeals affirmed the verdict as to plaintiff's claims of sex discrimination and retaliation, it also affirmed the trial court's

order granting our motion for remittitur, which substantially reduced the jury verdict.

- **Employment Law - Major City**
After a city spun off its Housing Department into a separate governmental entity, employee unions sued alleging that the reorganization violated employees' statutory rights as city employees. The circuit court agreed with the unions' arguments, and we appealed. The Michigan Supreme Court reversed, holding that an amendment to the Michigan Housing Facilities Act had severed the relationship between the city and its Housing Commission, so that the City was not the employer of Housing Commission employees.
- **Employment Law - Country Club**
A country club's former golf professional brought breach of contract and marital discrimination claims against the club, alleging the club declined to renew his employment contract following his notorious and public separation from his wife and cohabitation with another woman. The circuit court summarily dismissed the professional's claims, but the Court of Appeals reinstated the marital discrimination claim. We convinced the Michigan Supreme Court that an employer does not violate the Elliott-Larsen Civil Rights Act if it discriminates on the basis of conduct (adultery) as opposed to marital status. Thomas M. Cooley Law Review awarded us their annual Distinguished Brief award in this case.
- **Employment Law - Municipality**
The Michigan Court of Appeals upheld the Michigan Employment Relations Commission (MERC) dismissal of a union's unfair labor practice charge against county officials.
- **Taxation - Municipality**
We filed an amicus brief supporting the position that a taxing jurisdiction may only exempt its taxes from capture by the downtown development authority (DDA) within 60 days following a public hearing on establishing a DDA District or altering the DDA District's boundaries. The Michigan Court of Appeals agreed with our position. In its opinion, the Court commented on the "excellent briefs of the parties and amici curiae."
- **Taxation - Public Corporation**

When our client, a public corporation created pursuant to statute for purpose of administering a governmental pension plan, bought vacant commercial property as an investment, the state Tax Tribunal held that the property was subject to local property tax. We appealed. The Court of Appeals ruled that the property was exempt from taxation under a statute exempting property of local government units or agencies.

- Taxation - State Government
Disavowing two of its prior decisions and several previous decisions of the court of appeals, the Michigan Supreme Court held that the state Court of Claims has exclusive jurisdiction over all claims against the state based on contract and tort.
- Criminal Law - Professional Representation
We persuaded the Sixth Circuit to affirm dismissal of a civil rights action against a former criminal defense attorney and current circuit court judge.