# Appellate

Appellate litigation is high-stakes litigation. The legal precedent set by an appellate court could materially impact the client and the client's industry for years — or even decades. Regularly handling a variety of complex appeals, our appellate lawyers have amassed an impressive record in federal and state courts as well as administrative agencies across the United States. Our abilities in the appellate arena have earned us a reputation as tenacious advocates for our clients who also garner the respect of our opponents and the courts.

## Our Services

We deliver our appellate services efficiently and effectively, offering a variety of alternative fee arrangements tailored to our clients' needs, including the need to control and predict legal spend. Beyond writing briefs and presenting oral arguments, we handle every conceivable facet of appellate practice, including pursuing and opposing:

- Petitions for discretionary review filed with the U.S. Supreme Court (petitions for writs of certiorari) and state appellate courts of last resort.
- Motions for stays or supersedeas of execution on underlying civil judgments.
- Motions for panel or en banc reconsideration and rehearing.
- Petitions for extraordinary relief or special writs filed with the state appellate courts.

We are also regularly engaged by industry, trade and interest groups to file amicus curiae briefs on highly important and consequential issues with appellate courts across the United States. Through these briefs, we give a voice to business communities and industry sectors we represent on critical issues affecting those segments of our society or commerce and their constituents.

## Navigating Appeals of All Complexities

We are well-versed in the full spectrum of traditional appellate matters, such as:

- Complex civil and commercial actions appealed to the federal circuit courts of appeal and state appellate courts.
- Criminal defense matters appealed to the state appellate courts and federal circuit courts of appeal.
- Intellectual property matters appealed to the U.S. Court of Appeals for the Federal Circuit.
- Religious institution disputes appealed to the federal circuit courts of appeal and state appellate courts.
- Construction litigation appealed to the federal circuit courts of appeal and state appellate courts.
- Employment disputes, including discrimination matters, appealed to the federal and state appellate courts.
- Consumer finance cases appealed to federal circuit courts of appeal and state appellate courts.

## Representative Matters

- Secured reversal in the Supreme Court of Pennsylvania of the forfeiture of a judge's state pension by the State Employees' Retirement System (SERS). After the judge pleaded guilty to two charges of violating 18 U.S.C. Section 1001 by lying to federal investigators, SERS informed him that by doing so, he forfeited his pension under the Public Employee Pension Forfeiture Act (Act 140) and that the violation of the federal statute was "substantially the same" as violating 18 Pa.C.S. Section 4906. The Pennsylvania Supreme Court ruled unanimously that the statutes were not identical, overturning the Pennsylvania Commonwealth Court's ruling and precedent set in *Merlino v. Philadelphia Board of Pensions and Retirement* (*O'Neill v. State Employees' Retirement System*, 280 A.3d 873 (Pa. 2022)).
- Defeated a $200 million class-wide constitutional challenge to Pennsylvania budget enactments by the Pennsylvania General Assembly appropriating tobacco settlement funds, first by obtaining the Commonwealth Court's denial of multiple injunction requests and then by obtaining a unanimous Pennsylvania Supreme Court decision in the client's favor after televised oral arguments.
- Obtained summary judgment in the trial court and subsequent affirmance in the Superior Court of New Jersey, Appellate Division, in a dispute asserting claims of defamation and trade libel, unjust enrichment, negligence and tortious inference.
- Secured victories for several health insurance plans seeking to protect marketplace competition by preventing public disclosure of their proprietary Medicaid payment rate information in Right-to-Know Law disputes before the Pennsylvania Commonwealth Court and Pennsylvania Supreme Court.
- Prevailed in a series of cases for the Pennsylvania Insurance Department in an insolvent insurance company's liquidation proceedings, including defeating nearly all of a $12 million claim through a unanimous Pennsylvania Supreme Court decision and a $700,000 state guaranty association claim in a 4-3 Commonwealth Court decision.
- On appeal, received an order and opinion from the Superior Court of New Jersey, Appellate Division, affirming summary judgment on all claims, including defamation, filed by a behavioral healthcare provider against managed care companies.
- Protected a patent holder from an award of attorney fees by obtaining a precedent-setting Federal Circuit decision rejecting a fee award when a patent owner sought to defend its intellectual property rights.
- Obtained a U.S. Court of Appeals for the Third Circuit decision blocking an alleged participant in the Luzerne County, Pennsylvania "kids-for-cash" scandal from obtaining insurance coverage.
- Secured a precedential Third Circuit decision in an insurance client's favor that agreed with the client's position on the meaning and application of a flood insurance policy's terms and conditions.
- Defended against a challenge to a Pennsylvania General Assembly statute permitting counties to abolish the Office of Jury Commissioner in expedited election-related proceedings that started before the Pennsylvania Commonwealth Court and ended with a Pennsylvania Supreme Court decision in the client's favor following televised arguments.

# Publications

**The Scope and Standard – Third Circuit to the Rescue**
March 24, 2022

**The Scope & Standard – The Great Font Debate**
July 28, 2021

# Experience

**Stradley Ronon Secures Appellate Win for TD Bank on New Jersey Claims Arising from Law Enforcement Involvement**

A Stradley Ronon has secured a significant win for TD Bank before the New Jersey Superior Court, Appellate Division, which affirmed the trial court's grant of summary judgment in the client's favor. In *Wimbish v. TD Bank*, the plaintiff sought to hold TD Bank liable under a negligence theory after criminal charges stemming from an attempted check transaction were later dismissed. The Appellate Division rejected that theory, agreeing that New Jersey does not permit plaintiffs to use negligence as a lower-standard substitute for malicious prosecution.

The decision builds on important New Jersey precedent, including *Morris v. TD Bank*, another prior TD Bank win, in which the Appellate Division declined to recognize negligence-based claims that would undermine the state's strong public policy encouraging cooperation with law enforcement. In *Wimbish*, the court reaffirmed that where a plaintiff's alleged harm flows from a criminal prosecution, the proper claim, if any, is malicious prosecution, a cause of action requiring a substantially higher showing, including malice and lack of probable cause.

The ruling is an important confirmation for financial institutions and other businesses that New Jersey courts will not expand negligence law to penalize citizens or businesses for contacting or assisting law enforcement. It also reinforces TD Bank's successful defense strategy in a line of cases addressing attempts to recast malicious-prosecution allegations as ordinary negligence claims.

**Pennsylvania Supreme Court Rules Sureties Are Not Liable for Bad Faith**

Stradley Ronon partner Patrick Kingsley and counsel Adriel Garcia secured a significant victory for surety companies in Pennsylvania. In *Eastern Steel Constructors v. International Fidelity Insurance*, 2026 WL 457805 (Pa. 2026), the Pennsylvania Supreme Court ruled that Pennsylvania's insurance bad-faith statute does not apply to sureties or surety bonds. The subcontractor, Eastern Steel Constructors, had asserted a payment bond claim, which was denied in part. It argued a surety should be liable for bad faith under the statute because suretyship and insurance are essentially the same thing. Mr. Kingsley presented oral argument before the Supreme Court and convinced them otherwise.

The Supreme Court found the plain language of the statute only applies to "insurance policies" written by "insurers." The court found that language "clearly and unambiguously does not encompass a surety bond." The court was persuaded that insurance and suretyship were fundamentally different and had been recognized as different for quite some time, citing the 1996 Pennsylvania Supreme Court case *Foster v. Mutual Fire, Marine and Inland Insurance*, which itself quotes the 1962 U.S. Supreme Court case *Pearlman v. Reliance Insurance*. As a result, the court concluded that "the General Assembly did not intend to subject surety bonds to the bad faith statute."

Until *Eastern Steel Constructors,* there had not been a published Pennsylvania appellate court decision on the applicability of the bad-faith statute to sureties. This historic ruling from Pennsylvania's highest court resolves the issue in Pennsylvania once and for all.

Mr. Kingsley previously succeeded in reversing the law in New Jersey regarding the applicability of bad-faith claims to sureties. In the 2010 case of *SBW v. Ernest Bock & Sons*, the U.S. District Court for the District of New Jersey rejected the holding in the 2000 case of *U.S. ex rel. Don Siegel Construction v. Atul Construction*, which recognized such a bad-faith cause of action against sureties. The *SBW* case has since been cited several times with approval, marking a reversal in New Jersey law.

**Stradley Ronon Secures Summary Judgment Victory for Bank in Multimillion-Dollar Theft Case**

After 10 years of litigation, a Stradley Ronon team has secured summary judgment on behalf of a bank in the U.S. Court of Appeals for the Second Circuit in a complex case involving a multimillion-dollar burglary affecting a safe deposit box.

The plaintiff, an LLC formed solely to pursue this lawsuit, filed suit over the theft. Central to the dispute was the ownership of the box's contents and whether the LLC had standing to bring the claim. During discovery, the individuals who rented the box admitted they did not own the items inside and instead asserted they were holding the items for an unidentified third party.

In response, the bank argued the renters lacked the authority to transfer ownership or title to the contents of the box. Furthermore, the bank contended that the assignment on which the lawsuit was based was invalid, as it failed to convey ownership or title of the stolen contents.

On summary judgment, the bank raised defenses for lack of standing and an invalid assignment. The plaintiff opposed the motion and also sought leave to amend its complaint in an attempt to cure the standing deficiencies. The U.S. District Court for the Eastern District of New York ruled in favor of the bank, dismissing the case for lack of standing and denying the plaintiff's request to amend as untimely, prejudicial and futile.

On appeal, the Second Circuit upheld the district court's dismissal, bringing this long-running litigation to a close. The victory reinforces the importance of legal precision and the critical need to assert jurisdictional defenses at the inception of any case.

**Stradley Ronon Attorneys Victorious in Historic Appellate Decision Granting the Garden State's Largest and Oldest Health Insurer, Horizon, to Reorganize Corporate Structure**

New Jersey's appellate court issued an opinion today, May 31, 2023, in a matter concerning a challenge to the reorganization of Horizon Blue Cross Blue Shield of New Jersey, deciding whether the almost a century-old health insurance carrier could reorganize its corporate structure to a mutual insurance holding company. The court unanimously upheld Stradley Ronon's arguments on behalf of Horizon to reorganize as a mutual holding company saying, "As Horizon correctly noted at oral argument, on the critical issue of membership in the new MHC, the statute controls. For these reasons, based on the facts presented, we are unconvinced the revelation of this information at the public hearings would have led to a different result."

Andrew I. Hamelsky, partner-in-charge of the firm's Newark office and member of the firm's healthcare litigation team, defended and argued on behalf of Horizon Healthcare Services, Inc. on May 1, 2023. The Stradley Ronon team also included Spencer R. Short and Deenah Sirota.

Stradley Ronon's arguments focused on how the corporate reorganization will benefit the State, including creating a more modern structure that will allow Horizon to provide better services to their members by partnering with innovative healthcare companies.

Stradley Ronon worked closely with Horizon representatives, state agencies and partners on this landmark application.

**Appellate Court Victory for Hyperion Bank in Significant Title Dispute Litigation**

Stradley Ronon's client, Hyperion Bank, was victorious in a significant decision for the banking industry. On July 28, 2022, the Superior Court of Pennsylvania affirmed the dismissal of a lawsuit against Hyperion Bank. The suit alleged fraudulent deed transfers and sought to render the transfers and Hyperion's mortgage and other security interests null and void. The Court held that an action challenging a deed transfer accomplished through a sheriff's tax sale pursuant to 53 P.S. § 7283, even assuming that such a challenge could survive the "absolute title" conveyed by the sheriff, is subject to a six-year statute of limitations and that the equitable doctrine of laches also precluded the plaintiff/appellant's claims which challenged the tax sale and the bank's security interests in the real estate approximately seven years later.