

## Appellate

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### Department Co-Chairs

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**Our appellate attorneys are experienced advocates that advise and collaborate with clients at every stage of a case. In addition to representing clients in post-trial litigation and appeals in state and federal courts, they recommend strategic approaches at every point of the litigation process, as effective appellate advocacy begins long before a trial or an appeal.**

### Overview

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Post & Schell's attorneys have earned a national reputation for their innovative perspective, aggressive techniques, identification and pursuit of unique issues, and meticulous case management in state and federal appellate courts.

Our Appellate team works collaboratively with clients to:

- Identify a "big picture" appeals strategy from the inception of a case through all phases of litigation.
- Provide support in mediation and settlement proceedings to signal strength of purpose, position, and an aggressive approach.
- Build and correctly preserve the record - a crucial element in appeals.
- Aggressively defend clients on appeal.

The team is comprised of dedicated appellate attorneys, as well as adjunct attorneys across Post & Schell's practices, that provide advocacy in a wide variety of cases, including those related to:

- Administrative law— including appeals involving the Pennsylvania Attorney General, Consumer Protection, Pennsylvania Departments of Health, Securities and Banking, Transportation (PennDOT), and Insurance; Pennsylvania's Ethics Commission, Board of Claims, and Licensure Boards in the Bureau of Professional and Occupational Affairs.
- Antitrust
- Bankruptcy and creditors' rights
- Casualty and general liability
- Construction
- Copyright and trademark infringement
- Constitutional law— first, fourth, 14th, commerce clause, separation of powers, civil rights, Supremacy clause/preemption
- Energy and utilities
- Environmental
- Insurance bad faith
- Insurance coverage
- Labor and employment
- Products liability
- Professional licensure (Pennsylvania)
- Professional liability and medical malpractice

- Regulatory agency law
- White collar criminal matters and government investigations
- Workers' compensation (Pennsylvania and New Jersey)

## Representative Matters

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- Antitrust and Immunity – Our team's efforts resulted in the United States Court of Appeals affirming the dismissal, on summary judgment, of a disruptive physician's treble damages antitrust lawsuit against a hospital under the Health Care Quality Improvement Act. The appellate tribunal also affirmed, on appeal, the District Court's refusal to award injunctive relief under the antitrust laws.
- Appellate Security – Consistently, in matters where money Judgments are pending against defending parties, our specialists have been successful in reducing the amount of appellate security which may be required pertinent to an appeal as well as in thwarting opposing parties' efforts to prematurely and/or improperly enforce liability on that security. An example of the latter circumstance includes a recent victory where the plaintiff aggressively moved to enforce the liability on a Supersedeas Bond in excess of \$14,000,000.00, seeking to undermine the fiscal soundness of the surety during the life of the appeal. Upon judicial review at both the trial court and the appellate court levels, the plaintiff's efforts were rejected, with the tribunals leaving both the appeal and the previously filed appellate security, firmly in place.
- Breach of Contract – Our efforts resulted in the appellate courts reversing a Judgment, which had been entered in favor of the plaintiff awarding him lost business income, finding that the plaintiff's general release did not permit the recovery.
- Construction Litigation – Our team worked to set aside an original trial award of \$2,500,000.00, and ensured that Judgment Notwithstanding the Verdict is entered in our client's favor.
- Employment Discrimination – Due to our appellate team's efforts, the United States Court of Appeals for the Fourth Circuit affirmed the District Court's dismissal of a female staff physician's Title VII sex discrimination lawsuit against a hospital because of the absence of any employment relationship between the hospital and the physician.
- General Liability/Premises Liability – On appeal, the courts set aside the jury's \$6,400,000.00 verdict, which had been rendered in favor of the plaintiff, and awarded a new trial to the defending corporation.
- Insurance Coverage – Our team obtained a declaration of "no coverage" from the appellate courts, reversing the trial court which had ruled against our client and thwarting a pending bad faith claim.
- Products Liability – The jury's verdict in the plaintiff's favor, in the amount of \$10,600,000.00, was set aside on appeal, and a new trial was ordered in favor of the defendant which had manufactured the storage racks in issue. The appellate tribunal agreed with the manufacturer's position that the trial court had erred and abused its discretion in granting the plaintiff's petition which prevented the manufacturer from utilizing evidence which the plaintiff had intended to use against other co-defendants, who had settled the claims against them one week before the start of the trial. Other related appellate findings included, but were not limited to, determinations that the trial court had also erred in refusing to include the settled defendants on the verdict sheet and in failing to give related jury instructions.
- Professional Liability – The appellate courts, as a result of a second appeal from an interlocutory, pre-trial Order, reversed the Orders of the trial court and entered Judgments of Non Pros in favor of a physician and a hospital, thereby entirely dismissing the plaintiff's case against them.
- Public Policy – The jury's verdict, in excess of \$350,000.00 which had been rendered in favor of the plaintiff, was set aside on appeal, and Judgment was entered in favor of the defending corporation. In so finding, the appellate courts agreed that the patient was barred, as a matter of law and public policy, from benefiting from his own criminal acts, and that the patient failed to establish proximate cause, thereby necessitating the entry of Judgment in favor of the corporation.
- Scope of Regulatory Authority – In a unanimous decision, the Pennsylvania Supreme Court reversed the decisions of the Commonwealth Court and the Pennsylvania Public Utility Commission (PUC) in holding that electric generation suppliers are not public utilities, and therefore, are not subject to assessments and other forms of regulation by the PUC. The decision cleared a major potential roadblock to the development of competitive electricity markets in Pennsylvania.
- Statutory Interpretation – In an *en banc* Opinion, the Pennsylvania Commonwealth Court reversed itself on a motion for reconsideration, accepted an appeal by a licensed funeral director, and reversed an effort by the State

Board of Funeral Directors to declare all pre-need agreements for the provision of funeral services and merchandise rescindable at the will of the customer. The decision preserved millions of dollars in pre-need money which had been collected and invested by funeral directors.

- Waste Removal – Members of our appellate team successfully defended the Greater Lebanon Refuse Authority before the United States Court of Appeals for the Third Circuit which ruled that Pennsylvania counties can restrict waste removal to local facilities even if cheaper, out-of-town alternatives exist. This precedent-setting decision created a new, reasonable option with which to finance, monitor, and enforce environmentally sound waste disposal practices without conflicting with the federal Commerce Clause.