SUPREME COURT CASES WORKED ON BY ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

June 28, 2011

Granted Cases

No.	Caption and Status	Attorneys	Description
09-479	*Kevin Abbott* v. *United States* Cert. granted January 25, 2010 Petitioner's brief filed April 30, 2010 Reply brief filed August 16, 2010 Argued October 4, 2010 Affirmed November 15, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott, which the Court granted on January 25, 2010. We argue that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless "a greater minimum sentence is * * * provided * * * by any other provision of law" – includes as an "other provision of law" either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott's sentence did not need to be enhanced by an additional five years under Section 924(c). In granting cert., the Court consolidated *Abbott* with *Gould* v. *United States*, No. 09-7073. On November 15, 2010, the Court rejected Abbott's and Gould's position.

No.	Caption and Status	Attorneys	Description
02-1845, consoli-dated with 03-83	*Aetna Health Inc.* v. *Davila*, consolidated with *CIGNA HealthCare of Texas, Inc.* v. *Calad* *Aetna* petition filed June 20, 2003 (docketed June 23, 2003) Cert. granted in both cases, and cases consolidated, November 3, 2003 Merits brief filed December 18, 2003 Reply brief filed February 26, 2004 Argued March 23, 2004 Decided June 21, 2004	R. Englert	Together with Aetna's lead counsel – Gibson, Dunn & Crutcher and Andrews & Kurth – we worked on the merits brief in this case. The question presented was whether ERISA completely preempts claims that an HMO was negligent in making a decision – arguably based at least in part on medical judgment – not to pay for particular treatment for a subscriber to an ERISA-governed health benefit plan. On June 21, 2004, the Court agreed unanimously with our arguments.
07-562	*Altria Group, Inc. and Philip Morris USA Inc.* v. *Stephanie Good, et al.* Cert. granted January 18, 2008 Opening brief filed March 31, 2008 Reply brief filed August 11, 2008 Argued October 6, 2008 Affirmed December 15, 2008	A. Untereiner	Although our firm's name does not appear on the cert. petition or briefs, we have worked with Gibson Dunn on this "Lights" class action case, which raises issues of implied and express preemption under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1334(b) and the FTC Act. On December 15, 2008, the Court rejected our position by a 5-4 vote.

No.	Caption and Status	Attorneys	Description
09-893	*AT&T Mobility LLC* v. *Vincent Concepcion and Liza Concepcion* Cert. granted May 24, 2010 Amicus brief filed August 9, 2010 Argued November 9, 2010 Reversed April 27, 2011	R. Englert B. Pérez-Daple M. Hiller	We represent the Chamber of Commerce of the United States of America, which participated at the cert. stage and again at the merits stage as an amicus supporting petitioner. The question presented is whether the Federal Arbitration Act preempts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures – here, class-wide arbitration – when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims. On April 27, 2011, the Court by a 5-4 vote agreed with the essence of our position, holding broadly that the FAA preempts California's *Discover Bank* rule, which rejected as "unconscionable" most class-action waivers in consumer contracts.
01-682	*Kay Barnes, in her official capacity as Member of the Board of Police Commissioners of Kansas City, Missouri, et al.* v. *Jeffrey Gorman* Cert. granted January 11, 2002 Opening brief filed February 27, 2002 Reply brief filed April 15, 2002 Argued April 23, 2002 Reversed June 17, 2002	L. Robbins R. Englert A. Untereiner A. Siegel S. Wolson	We represented the petitioners. We challenged a decision of the Eighth Circuit holding, in agreement with the Fourth Circuit but in conflict with the Third and Sixth Circuits, that punitive damages may be awarded against a municipal government in an implied private right of action under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), or Section 202 of the Americans with Disabilities Act, 42 U.S.C. § 12132. Larry Robbins argued the case. On June 17, 2002, the Court – unanimous as to result but divided 6-3 as to rationale – ruled in favor of our clients.

No.	Caption and Status	Attorneys	Description
03-388	*Bates* v. *Dow Agrosciences LLC* Cert. granted June 28, 2004 Amicus brief filed November 24, 2004 Argued January 10, 2005 Vacated and remanded April 27, 2005	A. Untereiner D. Taaffe	We filed an amicus brief on the merits for the Chamber of Commerce of the United States supporting respondent Dow. The question presented is whether the Fifth Circuit correctly held that FIFRA preempts state-law claims by farmers arising from their use of the herbicide Strongarm, which they allege caused numerous problems with peanut growth in soil with a pH level greater than 7.0, reducing total production and increasing the expense of harvesting future crops. On April 27, 2005, the Court vacated and remanded over two partially dissenting votes (though those Justices concurred in the judgment).
07-5439	*Baze* v. *Rees* Cert. granted September 25, 2007 Argued January 7, 2008 Affirmed April 16, 2008	R. Englert A. Untereiner	Although our firm's name does not appear on the briefs, Roy Englert argued this case on behalf of respondents, officials of the Commonwealth of Kentucky. The question presented is whether Kentucky's protocol for carrying out executions by lethal injection using a three-drug formula violates the Eighth Amendment's prohibition on the infliction of cruel and unusual punishments. On April 16, 2008, our position prevailed by a 7-2 vote.

No.	Caption and Status	Attorneys	Description
05-1126	*Bell Atlantic Corp.* v. *Twombly* Cert. granted June 26, 2006 Amicus brief filed August 25, 2006 Argued November 27, 2006 Reversed May 21, 2007	R. Englert D. Russell M. Segal	Our amicus briefs on behalf of the Chamber of Commerce of the United States of America, CTIA – The Wireless Association, the Alliance of Automobile Manufacturers, the National Association of Manufacturers, the Pharmaceutical Research and Manufacturers of America, Northwest Airlines, United Air Lines, and Weyerhaeuser Company have argued that the Second Circuit erred by failing to apply, at the motion-to-dismiss stage, the substantive antitrust principle that it is impermissible to infer a conspiracy from parallel conduct, without more. We have argued that the Second Circuit's error, in reversing a well-reasoned district court judgment dismissing the case, allows an unmeritorious lawsuit to go forward against defendants who are not even alleged in the complaint (other than through a conclusory allegation of "conspiracy") to have done anything unlawful. On May 21, 2007, the Court by a 7-2 vote ordered the complaint dismissed.

No.	Caption and Status	Attorneys	Description
08-876	*Conrad M. Black et al.* v. *United States* Cert. granted May 18, 2009 Amicus brief filed August 6, 2009 Argued December 8, 2009 Vacated and remanded June 24, 2010	L. Robbins D. Walfish	We filed an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners' position that 18 U.S.C. § 1346 does not apply to the conduct of a private individual whose alleged "scheme to defraud" did not contemplate economic or other property harm to the private party to whom honest services were owed. Specifically, we argued that § 1346 is unconstitutionally vague. On June 24, 2010, the Court by a 9-0 vote ruled that the statute would be unconstitutionally vague without a limiting construction, by a 6-3 vote held that a limiting construction rendered the statute not unconstitutionally vague, and ruled that, so construed, the statute rendered the honest-services jury instructions given in Black's case incorrect.
08-728	*Taylor James Bloate* v. *United States* Cert. granted April 20, 2009 Opening merits brief filed June 18, 2009 Reply brief filed September 11, 2009 Argued October 6, 2009 Reversed and remanded March 8, 2010	M. Stancil B. Pérez-Daple	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we represented Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which had divided the Circuits, was whether time spent preparing pretrial motions is excludable under the Speedy Trial Act. Mark Stancil argued the case on October 6, 2009. On March 8, 2010, our position prevailed by a 7-2 vote.

No.	Caption and Status	Attorneys	Description
09-1476	*Borough of Duryea, PA* v. *Charles J. Guarnieri* Cert. granted October 12, 2010 Petitioner's brief filed December 6, 2010 Reply brief filed February 17, 2011 Argued March 22, 2011 Vacated and remanded June 20, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we assisted in the preparation of a cert. petition on behalf of the Borough challenging a Third Circuit rule that allows public employees to base retaliation claims under the First Amendment's Petition Clause on petitions that implicate matters of only private concern. On June 20, 2011, our client prevailed by an 8-1 vote.
10-844	*Caraco Pharmaceutical Laboratories, Ltd.* v. *Novo Nordisk A/S, et al.* Cert. granted June 27, 2011	R. Englert M. Stancil D. Burke	We represent the Generic Pharmaceutical Association as amicus curiae in support of petitioner Caraco. We argue that a decision of the Federal Circuit improperly allows manufacturers of brand-name drugs to block entry of generic drugs that do not infringe any of their patents.

No.	Caption and Status	Attorneys	Description
01-1444	*Ben Chavez* v. *Oliverio Martinez* Cert. granted June 3, 2002 Opening brief filed September 5, 2002 Reply brief filed November 20, 2002 Argued December 4, 2002 Decided May 27, 2003	L. Robbins R. Englert K. Zecca	We represented petitioner, Sergeant Ben Chavez of the Oxnard (California) Police Department. In seeking reversal of a Ninth Circuit decision in a Section 1983 civil rights case, we argued that Sgt. Chavez did not violate respondent's constitutional rights while interrogating him following a shooting by other police officers, and that Sgt. Chavez is entitled to qualified immunity. Larry Robbins argued the case. On May 27, 2003, the Court reversed the Ninth Circuit, rejecting the Fifth Amendment claim but remanding for further proceedings on a Fourteenth Amendment substantive due process claim. The Fifth Amendment claim was rejected 6-3 in two separate opinions, neither of which spoke for a majority. The substantive due process claim was remanded by a 5-3 vote, with three Justices voting to reject the claim outright rather than remand, two Justices voting to remand without explaining their views, three Justices voting to remand solely to provide a disposition of the case even though they would have affirmed the Ninth Circuit, and Justice O'Connor stating no views at all on the proper analysis or disposition of the substantive due process claim.

No.	Caption and Status	Attorneys	Description
00-1406	*Chevron U.S.A. Inc.* v. *Mario Echazabal* Cert. granted October 29, 2001 Amicus brief filed December 26, 2001 Argued February 27, 2002 Decided June 10, 2002	R. Englert K. Zecca	We filed an amicus brief on the merits on behalf of the Chamber of Commerce of the United States, the California Chamber of Commerce, and the Association of Washington Business. Chevron argued that a person who has a medical condition that makes a particular job especially dangerous for him may be denied that job, without violating the Americans with Disabilities Act, either because of the statutory "direct threat to the health or safety of other individuals in the workplace" defense or because he is not a "qualified individual with a disability." Our brief agreed with Chevron on both points but concentrated on the latter, "qualified individual" argument. On June 10, 2002, the Court agreed unanimously with Chevron.
03-1601	*City of Rancho Palos Verdes* v. *Abrams* Cert. granted September 28, 2004 Amicus brief filed November 12, 2004 Argued January 19, 2005 Reversed March 22, 2005	R. Englert M. Huffman	We filed an amicus brief on the merits for numerous local governments and related associations supporting petitioner. We argue that 47 U.S.C. § 332(c)(7), which places certain limitations on local zoning authority over communications towers, cannot be enforced through an action under 42 U.S.C. § 1983 and therefore cannot result in an award of attorneys' fees to a successful plaintiff. On March 22, 2005, the Court ruled in petitioner's favor by a 9-0 vote.

No.	Caption and Status	Attorneys	Description
06-5618 and 06-5754	*Claiborne* v. *United States* and *Rita* v. *United States* Cert. granted November 3, 2006 Amicus brief filed December 18, 2006 Argued February 20, 2007 *Claiborne* vacated as moot June 4, 2007, because of petitioner's death *Rita* affirmed June 21, 2007	G. Poe	On behalf of Families Against Mandatory Minimums, we have filed an amicus brief arguing that Congress has codified the principle of parsimony – that is, required courts to impose sentences no greater than necessary to effect the legitimate purposes of punishment – that courts must give consideration to each of the factors mentioned specifically in 18 U.S.C. § 3553(a), and that the reasonableness of a sentence is not determined by its consistency with the invalidated Sentencing Guidelines, but rather by its procedural correctness and its compliance with the principle of parsimony. On June 21, 2007, ruling in the *Rita* case only, the Court partially rejected our position by an 8-1 vote, holding that a court of appeals may presume that a within-Guidelines sentence is reasonable.

No.	Caption and Status	Attorneys	Description
10-568	*Commission on Ethics of the State of Nevada* v. *Carrigan* Cert. granted January 7, 2011 Petitioner's brief filed February 22, 2011 Argued April 27, 2011 Reversed June 13, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we assisted in the preparation of a cert. petition and merits briefs defending the constitutionality of the state ethics statute, which the Nevada Supreme Court struck down (in part) as overbroad and facially unconstitutional. The question presented is: "Whether the First Amendment subjects state restrictions on voting by elected officials to (i) strict scrutiny, as held by the Nevada Supreme Court and the Fifth Circuit, (ii) the balancing test of *Pickering* v. *Board of Education*, 391 U.S. 563 (1968), for government-employee speech, as held by the First, Second, and Ninth Circuits, or (iii) rational-basis review, as held by the Seventh and Eighth Circuits." On June 13, 2011, the Court unanimously ruled in our client's favor.

No.	Caption and Status	Attorneys	Description
08-1423	*Costco Wholesale Corp.* v. *Omega, S.A.* Cert. granted April 19, 2010 Petitioner's brief filed July 2, 2010 Reply brief filed September 27, 2010 Argued November 8, 2010 Affirmed by an equally divided Court December 13, 2010	R. Englert A. Lavinbuk	The Court granted our cert. petition urging it to overturn a Ninth Circuit decision. Reversing the district court, the Ninth Circuit held that Omega may block Costco from selling its "copyrighted" goods (watches with a small globe on the back, added for the sole purpose of being able to use copyright law to restrict distribution) even though Omega sold the watches in Switzerland and Costco bought them lawfully in the United States. We argue that the first-sale doctrine applies, that Omega exhausted its copyright rights when it sold the watches, and that plain statutory language as well as *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U.S. 135 (1998), precludes the result the Ninth Circuit reached. Roy Englert argued the case on November 8, 2010. On December 13, 2010, because the 8 sitting Justices split 4-4, the judgment below was affirmed without explanation.

No.	Caption and Status	Attorneys	Description
05-1157	*Credit Suisse Securities* v. *Billing* Cert. granted December 7, 2006 Amicus brief filed January 22, 2007 Argued March 27, 2007 Reversed June 18, 2007	R. Englert G. Orseck D. Walfish	Our amicus briefs at the cert. stage and merits stage have argued that the Second Circuit erred by rejecting the arguments of the defendants, the SEC, and the district court for implied immunity from the antitrust laws for various underwriting activities that are within the SEC's regulatory purview. We have filed an amicus brief at the merits stage on behalf of the Securities Industry and Financial Markets Association, the Chamber of Commerce of the United States of America, and the Business Roundtable. Our co-counsel is former judge and former Solicitor General Robert H. Bork. We represented SIFMA's predecessors and the Chamber at the cert. stage. On June 18, 2007, the Court agreed with our position by a 7-1 vote.
08-6	*District Attorney's Office for the Third Judicial District et al.* v. *William G. Osborne* Cert. granted November 3, 2008 Opening merits brief filed December 24, 2008 Reply brief filed February 23, 2009 Argued March 2, 2009 Reversed and remanded June 18, 2009	R. Englert A. Untereiner D. Walfish	We assisted the Office of the Attorney General of Alaska, which briefed and argued this case for petitioners. The questions presented are whether a free-standing request for access to evidence that allegedly could, through DNA testing, help prove actual innocence (1) may be pursued in federal court through a Section 1983 action rather than a habeas corpus petition and (2) state a constitutional claim on the merits. On June 18, 2009, our position that respondent had not stated a constitutional claim on the merits prevailed by a 5-4 vote. Because that holding disposes of the case, the Court did not answer the first question presented.

No.	Caption and Status	Attorneys	Description
09-958, 09-1158, and 10- 283	*Douglas* v. *Independent Living Center of Southern California, Inc.* *Douglas* v. *California Pharmacists Association* *Douglas* v. *Santa Rosa Memorial Hospital* Cert. granted January 18, 2011 Amicus brief due August 5, 2011	A. Untereiner M. Stancil	On behalf of the Chamber of Commerce of the United States of America, we will file an amicus brief supporting respondents in these consolidated cases. The question presented is whether an action may be brought directly under the Supremacy Clause to assert that state law is preempted by a federal statute.
03-932	*Dura Pharmaceuticals Inc.* v. *Broudo* Cert. granted June 28, 2004 Amicus brief filed September 13, 2004 Argued January 12, 2005 Reversed April 19, 2005	L. Robbins K. Zecca B. Willen	We have filed an amicus brief on the merits for the American Institute of Certified Public Accountants supporting petitioner Dura. The question presented is whether the Ninth Circuit correctly held that the loss causation element of a claim under Section 10(b) of 1934 Securities Exchange Act and SEC Rule 10b-5 in a fraud-on-the-market case does not require pleading a stock price drop following corrective disclosure or otherwise, but merely requires pleading that the price at the time of a purchase was overstated and sufficient identification of the cause. On April 19, 2005, Dura prevailed unanimously on the merits.

No.	Caption and Status	Attorneys	Description
05-130	*eBay Inc.* v. *MercExchange, L.L.C.* Cert. granted November 28, 2005 Amicus brief filed March 10, 2006 Argued March 29, 2006 Vacated May 15, 2006	L. Robbins R. Englert D. Walfish	We filed an amicus brief supporting respondent for Rembrandt IP Management, LLC, a "non-practicing entity" or NPE. NPEs are companies that own patents but do not practice the inventions described in the patents. We argued, among other things, that the Court should adhere to its holding in a 1908 case that non-use of a patent is not a factor undermining the patent-holder's entitlement to an injunction, and that the district court abused its discretion on the facts of this case by denying an injunction to respondent MercExchange. On May 15, 2006, the Court unanimously remanded the case for application of a four-factor test that does not make injunctions nearly automatic in patent cases, but the Court's opinion says nothing to suggest that an injunction should not again be entered on remand, and the Court did not overrule the 1908 case.

No.	Caption and Status	Attorneys	Description
01-618	*Eric Eldred et al.* v. *John D. Ashcroft, Attorney General* Cert. granted February 19, 2002 Amicus brief filed May 20, 2002 Argued October 9, 2002 Decided January 15, 2003	R. Englert	We represented economics professors and scholars George A. Akerlof, Kenneth J. Arrow, Timothy F. Bresnahan, James M. Buchanan, Ronald H. Coase, Linda R. Cohen, Milton Friedman, Jerry R. Green, Robert W. Hahn, Thomas W. Hazlett, C. Scott Hemphill, Robert E. Litan, Roger G. Noll, Richard Schmalensee, Steven Shavell, Hal R. Varian, and Richard J. Zeckhauser as amici curiae supporting petitioners. The case concerned the constitutionality of the Copyright Term Extension Act of 1998, also known as the "Sonny Bono Act." Without purporting to analyze the constitutional issues, the economists pointed out that the Act provides very little incentive to innovate at the expense of great costs to economic efficiency and consumer welfare. On January 15, 2003, however, the Court upheld the constitutionality of the statute by a 7-2 vote. Justice Breyer's dissent expressly relied, in part, on the analysis of our brief.

No.	Caption and Status	Attorneys	Description
02-1343	*Engine Manufacturers Association and Western States Petroleum Association* v. *South Coast Air Quality Management District* Petition filed March 11, 2003 (docketed March 14, 2003) Amicus brief filed April 14, 2003 Cert. granted June 9, 2003 Argued January 14, 2004 Vacated April 28, 2004	R. Englert M. Huffman	We filed, on behalf of the American Trucking Associations, the American Road & Transportation Builders Association, and the Taxicab, Limousine & Paratransit Association, an amicus brief in support of this cert. petition, which challenged the Ninth Circuit's construction of Section 209 of the Clean Air Act not to preempt local standards governing the emissions of vehicles purchased by "fleet operators" operating within the district. On April 28, 2004, the Court, by an 8-1 vote, accepted essentially the position advocated in our cert.-stage amicus brief.
03-724	*F. Hoffmann La Roche Ltd.* v. *Empagran, S.A.* Cert. petition filed November 13, 2003 (docketed November 18, 2003) Brief in opposition filed November 14, 2003 Amicus brief filed November 26, 2003 Cert. granted December 15, 2003 Merits brief filed February 3, 2004 Argued April 26, 2004 Decided June 14, 2004	R. Englert D. Russell M. Huffman	We filed cert.-stage and merits-stage amicus briefs on behalf of the Chamber of Commerce of the United States and (at the merits stage only) the Organization for International Investment urging the Court to reverse the decision of a divided panel of the D.C. Circuit allowing foreign plaintiffs who suffered no injury in the United States to recover damages under U.S. antitrust law for price fixing on products the plaintiffs purchased in other countries. On June 14, 2004, the Court reversed unanimously.
02-695	*Fitzgerald* v. *Racing Association of Central Iowa* Cert. granted January 17, 2003 Argued April 29, 2003 Decided June 9, 2003	L. Robbins A. Untereiner	We were co-counsel for respondents, defending the judgment of the Supreme Court of Iowa that differential taxation of racetracks and of riverboat casinos violates the Equal Protection Clause. On June 9, 2003, the Court reversed unanimously.

No.	Caption and Status	Attorneys	Description
10-114	*Ricky D. Fox* v. *Billy Ray Vice, Chief of Police for the Town of Vinton, Louisiana, et al.* Cert. granted November 1, 2010 Respondents' brief filed January 31, 2011 Supplemental briefing ordered March 4, 2011 Supplemental brief filed March 11, 2011 Argued March 22, 2011 Vacated and remanded June 6, 2011	M. Stancil	We represent respondents. The questions presented are whether defendants can be awarded attorneys' fees under 42 U.S.C. § 1988 in an action based on a dismissal of a claim, where the plaintiff has asserted other interrelated and non-frivolous claims, and whether it is improper to award defendants all of the attorneys' fees they incurred in an action under Section 1988, where the fees were spent defending non-frivolous claims that were intertwined with the frivolous claim. Mark Stancil argued the case on March 22, 2011. On June 6, 2011, the Court unanimously agreed with our position on the first question presented, but vacated and remanded for reconsideration of the fees awarded under the correct legal standard for cases involving both frivolous and non-frivolous claims.

No.	Caption and Status	Attorneys	Description
06-7949	*Gall* v. *United States* Cert. granted June 11, 2007 Amicus brief filed July 26, 2007 Argued October 2, 2007 Reversed December 10, 2007	G. Poe	On behalf of Families Against Mandatory Minimums, we have filed an amicus brief arguing that Congress has codified the principle of parsimony – that is, required courts to impose sentences no greater than necessary to effect the legitimate purposes of punishment – that courts must give consideration to each of the factors mentioned specifically in 18 U.S.C. § 3553(a), and that the reasonableness of a below-Guidelines sentence is not determined by its consistency with the invalidated Sentencing Guidelines, but rather by its procedural correctness and its compliance with the principle of parsimony. Our brief repeats and refines arguments made last Term in *Claiborne* v. *United States*, No. 06-5618, which was dismissed after argument but before decision because of the death of the petitioner. On December 10, 2007, the party we supported prevailed by a 7-2 vote.

No.	Caption and Status	Attorneys	Description
05-705	*Global Crossing Telecommunications Inc.* v. *Metrophones Telecommunications Inc.* Cert. granted February 21, 2006 Respondent's brief filed July 26, 2006 Argued October 10, 2006 Affirmed April 17, 2007	R. Englert D. Russell D. Taaffe	We briefed and argued this case for respondent Metrophones, defending the Ninth Circuit's holding that a private right of action exists to enforce the rules the FCC promulgated pursuant to a congressional command to ensure that payphone service providers are fairly compensated for each and every completed phone call. Roy Englert argued the case. On April 17, 2007, our client prevailed by a 7-2 vote.
10-76	*Goodyear Luxembourg Tires, S.A.* v. *Brown* Cert. granted September 28, 2010 Amicus brief filed November 18, 2010 Argued January 11, 2011 Reversed June 27, 2011	A. Untereiner D. Lerman	We represent the Product Liability Advisory Council as amicus curiae supporting petitioners. The question presented is whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum State, merely because other entities distribute in the forum State products placed in the stream of commerce by the defendant. On June 27, 2011, the Court unanimously agreed with petitioners' arguments.

No.	Caption and Status	Attorneys	Description
03-1116 and 03-1120	*Granholm* v. *Heald* and *Michigan Beer & Wine Wholesalers Association* v. *Heald* Cert. granted May 24, 2004 Amicus brief filed September 23, 2004 Argued December 7, 2004 Decided May 16, 2005	R. Englert	Together with their lead counsel, Patton Boggs LLP, we have filed an amicus brief on the merits for U.S. Senators Barbara Boxer and Dianne Feinstein and U.S. Representatives Howard L. Berman, Timothy H. Bishop, Sherwood L. Boehlert, Lois Capps, Chris Cox, Calvin M. Dooley, David Dreier, Sam Farr, Elton Gallegly, Maurice D. Hinchey, Richard W. Pombo, George P. Radanovich, Louise M. Slaughter, Pete Stark, Mike Thompson, James T. Walsh, Lynn Woolsey, and David Wu supporting respondents. We argue that neither the 21st Amendment nor any congressional legislation authorizes Michigan to discriminate against out-of-state wineries, by denying them the same right as in-state wineries to ship directly to consumers, in violation of the dormant Commerce Clause. On May 16, 2005, the Court agreed by a 5-4 vote.

No.	Caption and Status	Attorneys	Description
01-950 and 01-1018	*Hillside Dairy* v. *Lyons* and *Ponderosa Dairy* v. *Lyons* Cert. petitions filed December 26, 2001 Views of Solicitor General invited April 15, 2002 SG's brief filed December 4, 2002 Supplemental brief in response to SG's brief filed December 16, 2002 Cert. granted January 10, 2003 Opening brief filed February 24, 2003 Argued April 22, 2003 Decided June 9, 2003	L. Robbins R. Englert	After the Court on April 15, 2002, invited the Solicitor General to file a brief expressing the views of the United States, we were retained to work together with petitioners' existing counsel to communicate with the SG about this case and to file a supplemental brief responding to the SG's brief. The main question presented was whether Section 144 of the 1996 Farm Bill, which directs courts not to "construe" "any provision of law" to prevent California from regulating certain aspects of milk composition and labeling, exempted from Commerce Clause scrutiny California's entire economic scheme of "pricing and pooling" regulation for milk. Roy Englert argued the case. On June 9, 2003, the Court ruled in our clients' favor on both the statutory issue and a Privileges and Immunities Clause issue. The Court was unanimous, except that Justice Thomas would have ruled in California's favor on one of the two issues on a ground not raised by either party.

No.	Caption and Status	Attorneys	Description
07-208	*Indiana* v. *Edwards* Cert. granted December 7, 2007 Merits brief for respondent filed March 5, 2008 Argued March 26, 2008 Reversed June 19, 2008	M. Stancil	In connection with the University of Virginia Supreme Court Litigation Clinic, we represent respondent Ahmad Edwards. Edwards was deemed competent to stand trial but incompetent to exercise his right to represent himself. The Indiana Supreme Court reversed his conviction, holding that the standards for competency and self-representation are identical. The Supreme Court granted cert. limited to the following question: "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?" Mark Stancil argued this case. On June 19, 2008, the Court reversed by a 7-2 vote.

No.	Caption and Status	Attorneys	Description
02-572	*Intel Corp.* v. *Advanced Micro Devices, Inc.* Cert. petition filed October 11, 2002, docketed October 16, 2002 Amicus brief filed November 15, 2002 Views of Solicitor General requested January 13, 2003 SG's brief filed October 6, 2003 Supplemental brief of respondent withdrawing opposition to certiorari filed October 21, 2003 Cert. granted November 10, 2003 Merits brief filed December 31, 2003 Argued April 20, 2004 Decided June 21, 2004	R. Englert S. Wolson M. Huffman	We filed cert.-stage and merits-stage amicus briefs on behalf of the Chamber of Commerce of the United States in support of the petitioner. The question presented was whether 28 U.S.C. § 1782 authorizes a private party, which is a complainant in an investigative proceeding before the Directorate General for Competition of the Commission of the European Communities but is not involved in litigation in the EC, to obtain discovery of materials – not discoverable in the EC – in the absence of any pending or imminent "proceeding" before a foreign tribunal. The Commission itself filed cert.-stage and merits-stage amicus briefs, and participated in oral argument, in support of the petitioner. On June 21, 2004, the Court by a 7-1 vote rejected the statutory arguments of Intel, the European Commission, and the Chamber, but emphasized that some of the same factors petitioner and its amici cited may bear on the district court's exercise of its discretion.

No.	Caption and Status	Attorneys	Description
09-1343	*J. McIntyre Machinery Ltd.* v. *Nicastro* Cert. granted September 28, 2010 Amicus brief filed November 19, 2010 Argued January 11, 2011 Reversed June 27, 2011	A. Untereiner D. Lerman	We represent the Product Liability Advisory Council as amicus curiae supporting petitioner. The question presented is whether the Due Process Clause permits a State to exercise *in personam* jurisdiction over a foreign manufacturer under the stream-of-commerce theory solely because the manufacturer targets the United States market for the sale of its product and the product is purchased by a forum-state consumer. On June 27, 2011, petitioner prevailed in a fractured set of opinions adding up to a 6-3 vote for reversal.
09-525	*Janus Capital Group, Inc.* v. *First Derivative Traders* Cert. granted June 28, 2010 Amicus brief filed September 10, 2010 Argued December 7, 2010 Reversed June 13, 2011	L. Robbins D. Russell R. Englert	On behalf of the Center for Audit Quality, we have filed an amicus brief supporting neither party. Our brief argues that audit firms and other outside professionals may commit a primary securities-law violation under Rule 10b-5 only through statements and omissions that they make themselves, and that are attributed to them, not through the statements and omissions of their clients. On June 13, 2011, the Court agreed with petitioners' arguments (and ours) by a 5-4 vote.

No.	Caption and Status	Attorneys	Description
03-377	*Koons Buick Pontiac GMC, Inc.* v. *Nigh* Cert. petition filed September 4, 2003, docketed September 11, 2003 Cert.-stage amicus brief filed October 14, 2003 Cert. granted January 20, 2004 Merits-stage amicus brief filed April 19, 2004 Argued October 5, 2004 Reversed November 30, 2004	R. Englert A. Untereiner M. Huffman	We have filed cert.-stage and merits-stage amicus briefs in support of petitioner Koons Buick on behalf of the American Bankers Association, the American Financial Services Association, and the Consumer Bankers Association. The question presented is whether Congress in 1995 intended to eliminate the cap that had existed since 1968 on statutory penalties for non-mortgage, non-lease violations of the Truth in Lending Act (TILA), and allow unlimited liability for such violations. A divided panel of the Fourth Circuit held, in an opinion by Judge Luttig, that it does not matter what Congress intended, only what Congress wrote, and that the punctuation of the amended statute requires a conclusion that the cap was removed. The Seventh Circuit disagrees. On November 30, 2004, the Court reversed by an 8-1 vote.

No.	Caption and Status	Attorneys	Description
04-1350	*KSR International Co.* v. *Teleflex Inc.* Cert. granted June 26, 2006 Amicus brief filed October 16, 2006 Argued November 28, 2006 Reversed April 30, 2007	L. Robbins R. Englert D. Walfish	We filed an amicus brief, on behalf of a number of companies that invest in and/or provide liquidity for inventions and patents, supporting respondent on the merits. We argue that the Federal Circuit correctly reversed a district court summary judgment that had held a patent invalid for "obviousness" without sufficiently inquiring whether the record evidence created a genuine factual dispute about whether there was any teaching, suggestion, or motivation in the prior art that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. On April 30, 2007, the Court unanimously disagreed with our position that the judgment below should be affirmed, but agreed with our more basic suggestion that the "teaching, suggestion, or motivation" test provides useful insights when applied flexibly rather than rigidly.

No.	Caption and Status	Attorneys	Description
04-607	*Laboratory Corp. of America* v. *Metabolite Laboratories, Inc.* Cert. granted November 2, 2005 Amicus brief filed December 23, 2005 Argued March 21, 2006 Dismissed as improvidently granted June 22, 2006	R. Englert D. Walfish	We filed an amicus brief on behalf of the American Clinical Laboratories Association. Supporting petitioner LabCorp on the merits, we argued that a patent cannot validly claim a monopoly over doctors' ability to think about a natural relationship by purporting to patent the two-step process of assaying a body chemical (using either the patentee's or someone else's method) and then "correlat[ing]" the results with a medical condition. The ability of the patentee to demand royalties for its own assaying method is not in dispute, but the patentee also demands royalties for petitioner's alleged contributory infringement when doctors think about the results of an assay performed using a method belonging to Abbott Laboratories. On June 22, 2006, the Court by a 5-3 vote dismissed the writ of certiorari as improvidently granted. The Court did not reach the merits of the issues we briefed, but the 3 dissenters agreed with us and cited our brief.

No.	Caption and Status	Attorneys	Description
02-102	*John Geddes Lawrence and Tyron Garner* v. *State of Texas* Cert. granted December 2, 2002 Amicus brief filed January 16, 2003 Argued March 26, 2003 Decided June 26, 2003	R. Englert A. Untereiner S. Wolson	We represented Professors of History George Chauncey, Nancy F. Cott, John D'Emilio, Estelle B. Freedman, Thomas C. Holt, John Howard, Lynn Hunt, Mark D. Jordan, Elizabeth Lapovsky Kennedy, and Linda P. Kerber as amici curiae supporting petitioners. The case presented the question whether the Texas Homosexual Conduct Law, under which petitioners were convicted, violates the Equal Protection and/or Due Process Clauses, and also the question whether *Bowers* v. *Hardwick* should be overruled. On June 26, 2003, the Court ruled 6-3 in favor of petitioners (whom we supported).
06-480	*Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.* Cert. granted December 7, 2006 Amicus brief filed January 22, 2007 Argued March 26, 2007 Reversed June 28, 2007	R. Englert D. Russell	On behalf of CTIA – The Wireless Association, we have filed amicus briefs in support of the petition at the cert. stage and the merits stage. Our position is that the Court should reconsider the rule set in 1911 that minimum resale price maintenance is a *per se* violation of the antitrust laws. Our position is that vertical price restraints, like the vertical non-price restraints the Court has taken out of the *per se* category, are often procompetitive and therefore should be judged under the rule of reason. On June 28, 2007, the Court by a 5-4 vote agreed that the 1911 case should be overruled and the practice should be judged by the rule of reason.

No.	Caption and Status	Attorneys	Description
04-480	*Metro-Goldwyn-Mayer Studios, Inc.* v. *Grokster, Ltd.* Cert. granted December 10, 2004 Amicus brief filed January 24, 2005 Argued March 29, 2005 Vacated and remanded June 27, 2005	L. Robbins A. Untereiner D. Taaffe	We have filed a neutral amicus brief on the merits for the Digital Media Association, NetCoalition, the Center for Democracy and Technology, and the Information Technology Association of America. The question presented is whether the Ninth Circuit correctly held that Grokster and StreamCast, two vendors of peer-to-peer file-sharing technologies, are not secondarily liable for end users' acts of direct copyright infringement. The Supreme Court ruled unanimously against respondents on June 27, 2005, but preserved the *Sony Betamax* precedent, which was the main thing our clients hoped the Court would do. The opinion of the Court left reexamination of *Sony* for another day, three concurring Justices called for a reexamination of *Sony*, and three concurring Justices strongly defended *Sony*.
10-290	*Microsoft Corp.* v. *i4i Limited Partnership* Cert. granted November 29, 2010 Amicus brief filed February 2, 2011 Argued April 18, 2011 Affirmed June 9, 2011	R. Englert M. Stancil D. Lerman	We represent Apotex, Inc., which has filed an amicus brief supporting petitioner Microsoft. We argue that a defense of patent invalidity need not be proven by clear and convincing evidence, especially not if the Patent Office never considered the prior art on which the challenge to patent validity is based. On June 9, 2011, the Court unanimously disagreed and endorsed the standard of clear and convincing evidence.

No.	Caption and Status	Attorneys	Description
09-475	*Monsanto Co. et al.* v. *Geertson Seed Farms et al.* Cert. granted January 15, 2010 Respondents' merits brief filed March 29, 2010 Argued April 27, 2010 Reversed and remanded June 21, 2010	L. Robbins D. Russell A. Untereiner E. Temkin L. Helvin	We represented respondents. Petitioners challenged a nationwide injunction that restricts the further planting of genetically engineered alfalfa, until such time as the government issues an Environmental Impact Statement regarding the proposed deregulation of that crop. We prepared the respondents' brief, and Larry Robbins argued the case in April 2010. On June 21, 2010, the Court by a 7-1 vote reversed the nationwide injunction as overbroad, but the Court's rationale was the our clients' interests were sufficiently protected (as we ourselves argued) by other relief that Monsanto did not challenge.

No.	Caption and Status	Attorneys	Description
06-1457 and 06-1462	*Morgan Stanley Capital Group, Inc., et al.* v. *Public Utility District No. 1 of Snohomish County, Washington, et al.* *Calpine Energy Services, L.P., et al.* v. *Public Utility District No. 1 of Snohomish County, Washington, et al.* Cert. petitions filed May 3, 2007, docketed May 4 and May 7, 2007 Cert. granted September 25, 2007 Amicus brief filed November 28, 2007 Argued February 19, 2008 Affirmed and remanded June 26, 2008	R. Englert G. Orseck D. Russell A. Lavinbuk	We represent the International Swaps and Derivatives Association and the Financial Institutions Energy Group as amici curiae supporting petitioners. Petitioners challenge Ninth Circuit decisions that overturned FERC rulings that the rates in certain long-term energy contracts entered into during California's energy crisis were legally permissible. On June 26, 2008, the Court by a 4-2 vote (with Justice Ginsburg neither joining nor dissenting from the relevant parts of the opinion) agreed with our fundamental submissions that the Ninth Circuit erred by not applying the *Mobile-Sierra* doctrine to the challenged rates and that only "unequivocal public necessity" will justifying setting aside a freely negotiated rate, but the Court (with 5 Justices participating in this portion of the opinion) nevertheless held that a remand was necessary because of other "defects in FERC's analysis."

No.	Caption and Status	Attorneys	Description
00-1614	*National Railroad Passenger Corp. (Amtrak)* v. *Abner Morgan, Jr.* Cert. granted June 25, 2001 Opening brief filed August 29, 2001 Reply brief filed December 3, 2001 Argued January 9, 2002 Decided June 10, 2002	R. Englert	We were hired after the grant of certiorari to brief and argue this case on the merits. We challenged a Ninth Circuit decision holding that the "continuing violation doctrine" allows a plaintiff to challenge, and recover damages for, actions of alleged discrimination and racial harassment that were not the subject of a timely EEOC charge. Roy Englert argued the case. On June 10, 2002, the Court unanimously reversed the Ninth Circuit to the extent that the Ninth Circuit had held discrete acts of discrimination to be a "serial violation" that was not time barred, but by a 5-4 vote affirmed the Ninth Circuit's conclusion that a plaintiff may recover for a hostile environment that continues into the limitations period.
02-215	*PacifiCare Health Systems, Inc., et al.* v. *Jeffrey Book, D.O., et al.* Cert. granted October 15, 2002 Opening brief filed December 6, 2002 Reply brief filed February 12, 2003 Argued February 24, 2003 Decided April 7, 2003	R. Englert	We were co-counsel for petitioner UnitedHealthcare, Inc. The question presented was whether a district court must compel arbitration of a plaintiff's RICO claims under a valid arbitration agreement even if that agreement does not allow an arbitrator to award punitive or "extracontractual" damages. On April 7, 2003, petitioners prevailed by an 8-0 vote.

No.	Caption and Status	Attorneys	Description
05-1256	*Philip Morris* v. *Williams* Cert. granted May 30, 2006 Amicus brief filed July 28, 2006 Argued October 31, 2006 Vacated February 20, 2007	R. Englert A. Untereiner D. Walfish	We filed an amicus brief for the American Tort Reform Association in support of Philip Morris's challenge to the $79.5 million punitive damages award in this case. Our brief argued that modern punitive damages awards of many times the amount of compensatory damages have no historical pedigree that entitles them to any kind of presumption that they comport with due process. On February 20, 2007, a 5-4 majority of the Court agreed with Philip Morris that it is unconstitutional to use a punitive damages award to punish the defendant for harms caused to nonparties, and remanded the case for further consideration of whether this particular award is unconstitutional.
09-993, 09-1039, and 09-1501	*PLIVA Inc*. v. *Mensing*, *Actavis Elizabeth LLC* v. *Mensing*, and *Actavis Inc.* v. *Demahy* Cert. granted December 10, 2010 Amicus brief filed January 31, 2011 Argued March 30, 2011 Reversed June 23, 2011	R. Englert A. Untereiner L. Helvin	We represent Apotex, Inc., as amicus curiae supporting petitioners. We argue that respondents' state-law tort claims, which depend on the premise that makers of generic drugs should have changed the labeling of their products, are preempted by the requirement of federal law that the labeling of generic drugs be identical to the labeling of the brand-name equivalent, which is wholly outside the control of the maker of the generic drug. On June 23, 2011, the Court held by a 5-4 vote that respondents' claims are indeed preempted.

No.	Caption and Status	Attorneys	Description
05-85	*Powerex Corp.* v. *Reliant Energy Services, Inc., et al.* Cert. granted January 19, 2007 Amicus brief filed March 5, 2007 Argued April 16, 2007 Vacated in part with directions to dismiss petitioner's appeal for want of jurisdiction June 18, 2007	R. Englert R. Li Wai Suen M. Segal	We filed amicus briefs at the petition stage and merits stage for the Province of British Columbia challenging a Ninth Circuit decision holding that petitioner Powerex – which is responsible for carrying out the obligations of Canada under the Columbia River Treaty – is not an "organ" of the Province so as to be entitled to certain protections under the Foreign Sovereign Immunities Act. The Ninth Circuit decision has the effect of allowing plaintiffs to pursue a politically charged case, growing out of California's 2000-2001 energy crisis, to proceed before state judges to consider charges that the Federal Energy Regulatory Commission has already rejected on the merits. On June 18, 2007, the Court by a 7-2 vote determined that Powerex did not have a right of appeal in the first place. The Court therefore did not reach the issue on which Powerex had sought certiorari. The two dissenters (the only Justices to address the sovereign status of Powerex) agreed with Powerex on that issue as well as on the jurisdictional issue.

No.	Caption and Status	Attorneys	Description
00-1514	*Lance Raygor and James Goodchild* v. *Regents of the University of Minnesota* Respondent's brief filed October 9, 2001 Argued November 26, 2001 Decided February 27, 2002	L. Robbins R. Englert	We assisted the respondent University of Minnesota with preparation of its merits brief in this case. The Supreme Court of Minnesota held that 28 U.S.C. § 1367(d), insofar as it purports to command state courts to toll state statutes of limitations for the duration of a suit between the same parties in federal court, is an unconstitutional infringement of state sovereign immunity when applied to an entity that shares the State's Eleventh Amendment immunity. The respondent contended both that the statute is inapplicable and that, if applicable, it is unconstitutional. The Court ruled 6-3 in favor of our client on statutory grounds.
06-179	*Riegel* v. *Medtronic* Cert. granted June 25, 2007 Amicus brief filed October 19, 2007 Argued December 4, 2007 Affirmed February 20, 2008	A. Untereiner	We were hired by the Chamber of Commerce of the United States to file an amicus brief in this case. The question presented is whether the express preemption provision of the Medical Device Amendments to the Food, Drug & Cosmetic Act, 21 U.S.C. § 360k(a), preempts state-law claims seeking damages for injuries caused by medical devices that received premarket approval from the Food and Drug Administration. On February 20, 2008, our position prevailed by an 8-1 vote.

No.	Caption and Status	Attorneys	Description
04-1244	*Scheidler* v. *National Organization for Women, Inc.* Cert. petition filed March 16, 2005, docketed March 18, 2005 Brief in opposition filed May 11, 2005 Reply brief filed May 24, 2005 Cert. granted June 28, 2005 Opening merits brief filed September 2, 2005 Merits reply brief filed November 18, 2005 Argued November 30, 2005 Reversed February 28, 2006	A. Untereiner R. Englert K. Zecca N. Messing	Our petition asked the Court to enforce its mandate from its 2003 decision in this case, which held that "all of the predicate acts supporting the jury's finding of a RICO violation must be reversed," and to decide whether the Hobbs Act criminalizes acts of "violence" unconnected to either extortion or robbery, and whether injunctive relief is available in a private action under RICO. The Court granted cert. on the latter question in this case in 2002 but found it unnecessary to resolve because, "[w]ithout an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." The Seventh Circuit on remand determined that not all of the predicate acts supporting the jury's finding of a RICO violation had been reversed and that the injunction issued by the district court might not need to be vacated. Alan Untereiner argued this case. On February 28, 2006, the Court unanimously reversed the Seventh Circuit's construction of the Hobbs Act (without reaching other issues we had raised) and reversed for entry of judgment for petitioners.

No.	Caption and Status	Attorneys	Description
01-1118	*Joseph Scheidler et al.* v. *National Organization of Women et al.* Cert. granted April 22, 2002 Opening brief filed July 12, 2002 Respondents' brief filed September 17, 2002 Reply brief filed October 18, 2002 Argued December 4, 2002 Decided February 26, 2003	A. Untereiner A. Siegel K. Zecca S. Wolson R. Englert	We represented the petitioners – three individuals and one organization involved in anti-abortion protests – who were found liable under RICO and, on that basis, subjected to a nationwide injunction restricting their future activities at abortion clinics. Out petition was granted limited to the following two questions: (1) whether injunctive relief is available in a private civil action brought under RICO, 18 U.S.C. § 1964; and (2) whether the predicate crime of extortion under the Hobbs Act, 18 U.S.C. § 1951 – which is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear" – criminalizes the activities of political protestors who obstruct access to business premises and interfere with putative customers' ability to obtain services there. Roy Englert argued the case. On February 26, 2003, the Court ruled in our clients' favor on the Hobbs Act issue by an 8-1 vote. The Court did not reach the issue of the availability of injunctive relief under RICO.

No.	Caption and Status	Attorneys	Description
04-1352	*Operation Rescue* v. *National Organization for Women, Inc.* Cert. petition filed April 7, 2005, docketed April 11, 2005 Brief in opposition filed May 11, 2005 Reply brief filed May 23, 2005 Cert. granted June 28, 2005 Opening merits brief filed September 2, 2005 Merits reply brief filed November 18, 2005 Argued November 30, 2005 Reversed February 28, 2006	A. Untereiner R. Englert K. Zecca N. Messing	Our clients were respondents supporting petitioners in this matter, which challenged the same judgment on the same grounds as our *Scheidler* petition filed March 16, 2005. In granting cert. the Court consolidated this petition with *Scheidler*. Alan Untereiner argued the consolidated cases. On February 28, 2006, the Court unanimously reversed the Seventh Circuit and remanded for the entry of judg-ment for petitioners.

No.	Caption and Status	Attorneys	Description
01-1119	*Operation Rescue* v. *National Organization of Women et al.* Cert. granted April 22, 2002 Opening brief filed July 12, 2002 Respondents' brief filed September 17, 2002 Reply brief filed October 18, 2002 Argued December 4, 2002 Decided February 26, 2003	A. Untereiner A. Siegel K. Zecca S. Wolson R. Englert	In this case, we represented the same three individuals and one organization that were the petitioners in No. 01-1118. The Court granted and consolidated both petitions limited to the first two questions presented by No. 01-1118. On February 26, 2003, the Court ruled in all petitioners' favor by an 8-1 vote.
01-147	*Securities and Exchange Commission* v. *Charles Zandford* Cert. granted November 8, 2001 Brief filed February 4, 2002 Argued March 18, 2002 Decided June 3, 2002	R. Englert	We represented respondent Charles Zandford. The question presented was whether Zandford's conversion of client funds in a brokerage account – for which he has already been convicted of wire fraud and served a prison term – was "in connection with" the purchase or sale of securities so as to constitute securities fraud actionable under Rule 10b-5. Steve Goldblatt of Georgetown University was co-counsel and argued the case. On June 3, the Court ruled unanimously against our client.

No.	Caption and Status	Attorneys	Description
03-9168	*Shepard* v. *United States* Cert. granted June 21, 2004 Amicus brief filed August 27, 2004 Argued November 8, 2004 Reversed March 7, 2005	G. Poe R. Englert M. Huffman B. Willen	We have filed an amicus brief for the National Association of Criminal Defense Lawyers supporting reversal. The questions presented pertain to how far into the record a district court can go in determining when a defendant who pleaded guilty to burglary in the past has been convicted of a "violent felony" for purposes of a sentencing enhancement under the Armed Career Criminal Act. In the course of addressing those questions, we argue that the Court should overrule its 1998 decision in *Almendarez-Torres* v. *United States*. On March 7, 2005, the Court reversed by an unusual 4-1-3 vote, with Justice Thomas's fifth vote for reversal explicitly dependent on the theory that (as we argued) *Almendarez-Torres* was wrongly decided.

No.	Caption and Status	Attorneys	Description
08-1394	*Jeffrey K. Skilling* v. *United States* Cert. granted October 13, 2009 Amicus brief filed December 9, 2009 Argued March 1, 2010 Affirmed in part, vacated in part, and remanded June 24, 2010	L. Robbins D. Walfish	We filed an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners' position that 18 U.S.C. § 1346 either requires the government to prove that the defendant's conduct was intended to achieve "private gain" (rather than to advance the employer's interests), or is unconstitutionally vague. We argued that § 1346 is unconstitutionally vague. On June 24, 2010, the Court by a 9-0 vote ruled that the statute would be unconstitutionally vague without a limiting construction, by a 6-3 vote held that a limiting construction rendered the statute not unconstitutionally vague, and ruled that, so construed, the statute does not cover Skilling's alleged misconduct.

No.	Caption and Status	Attorneys	Description
08-724	*Keith Smith, Warden* v. *Frank G. Spisak, Jr.* Cert. granted February 23, 2009 Amicus brief filed August 14, 2009 Argued October 13, 2009 Reversed January 12, 2010	R. Englert E. Temkin	We represented the authors of manuals and treatises on trial advocacy, and other leading authorities on trial advocacy, as amici curiae supporting respondent. We argued that respondent's counsel's argument at the penalty phase of his capital trial – in which counsel presented graphic detail concerning what he called the "aggravating circumstances" of his client's multiple murders, disclaimed the existence of many "mitigating circumstances," and offered only a vague discussion of his client's evidence of diminished capacity to appreciate the wrongfulness of his actions – fell below minimum standards of professional competence. On January 12, 2010, the Court unanimously reversed the judgment below, but it did not reach our argument that counsel's performance was deficient, instead determining that any deficient performance did not prejudice respondent.
03-1388	*Spector* v. *Norwegian Cruise Line Ltd.* Cert. granted September 28, 2004 Amicus brief filed January 28, 2005 Argued February 28, 2005 Vacated June 6, 2005	R. Englert M. Huffman	On behalf of the Chamber of Commerce of the United States, we have filed an amicus brief supporting respondent Norwegian Cruise Line. The question presented is whether the Americans with Disabilities Act applies to foreign-flag cruise lines. On June 6, 2005, the Court by a 5-4 vote rejected our principal submission that the ADA does not apply at all, but the Court did give a relatively narrow scope to the ADA's permissible application.

No.	Caption and Status	Attorneys	Description
01-706	*Sprietsma* v. *Mercury Marine* Cert. granted January 22, 2002 Amicus brief filed May 20, 2002 Argued October 15, 2002 Decided December 3, 2002	A. Untereiner	We were retained by the Product Liability Advisory Council, Inc., to file an amicus brief in this case in support of the respondent. The question presented was whether the Federal Boat Safety Act, 46 U.S.C. § 4306, preempts a state-law product liability and wrongful death action based on a theory that a boat without a propeller guard is defectively designed. In an opinion by Justice Stevens, the Court unanimously reversed on December 3, 2002.
07-552	*Sprint Communications Co.* v. *APCC Services, Inc.* Cert. granted January 4, 2008 Merits brief for respondent filed March 12, 2008 Argued April 21, 2008 Affirmed June 23, 2008	R. Englert D. Russell D. Taaffe	We represent respondents. Petitioners challenge a 2005 decision of the D.C. Circuit holding that assignees of claims have standing even if they have agreed to return to the assignors any amounts recov-ered in litigation. Roy Englert argued this case. On June 23, 2008, our clients prevailed by a 5-4 vote.
01-1289	*State Farm Mutual Automobile Insurance Co.* v. *Curtis B. Campbell and Inez Preece Campbell* Cert. granted June 3, 2002 Amicus brief filed August 19, 2002 Argued December 11, 2002 Decided April 7, 2003	R. Englert A. Untereiner	On behalf of the American Tort Reform Association, we filed an amicus brief in this case in support of the petitioner. The question presented was whether a $145 million punitive damages award to respondents, based almost entirely on conduct of State Farm dissimilar to the conduct underlying respondents' insurance bad-faith lawsuit, was unconstitutionally excessive. On April 7, 2003, State Farm prevailed by a 6-3 vote.

No.	Caption and Status	Attorneys	Description
10-179	*Howard K. Stern, Executor of the Estate of Vickie Lynn Marshall* v. *Elaine T. Marshall, Executrix of the Estate of E. Pierce Marshall* Cert. granted September 28, 2010 Respondent's brief filed December 13, 2010 Argued January 18, 2011 Affirmed June 23, 2011	R. Englert	We were co-counsel for respondent. The basic question presented was whether the bankruptcy court had jurisdiction to adjudicate a tort counterclaim brought by the late Vickie Lynn Marshall, also known as Anna Nicole Smith, against the late E. Pierce Marshall, son of J. Howard Marshall. J. Howard, at the age of 89, married then-26-year-old Vickie, but his will did not leave anything to Vickie. Much litigation related to disposition of his estate followed his death. A proceeding in state court in Texas resulted, after a 5½-month jury trial, in a judgment in favor of Pierce against Vickie. Proceedings in bankruptcy court and district court in California, by contrast, resulted in judgments in favor of Vickie against Pierce, which the Ninth Circuit reversed on grounds pertaining to the authority of the bankruptcy court. Our client defended the Ninth Circuit's judgment in the Supreme Court. Roy Englert argued this case in the Supreme Court. On June 23, 2011, the Court rejected our statutory arguments but agreed with our constitutional argument, thus affirming judgment in our client's favor.

No.	Caption and Status	Attorneys	Description
06-43	*Stoneridge Investment Partners, LLC* v. *Scientific-Atlanta, Inc.* Cert. granted March 26, 2007 Amicus brief filed August 15, 2007 Argued October 9, 2007 Affirmed and remanded January 15, 2008	L. Robbins G. Orseck K. Zecca	We represented the AICPA as amicus curiae supporting respondents. The question presented (as phrased by the plaintiffs) was whether the decision in *Central Bank NA* v. *First Interstate Bank NA*, 511 U.S. 164 (1994), forecloses claims for deceptive conduct under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, when respondents allegedly engaged in transactions with a public corporation with no legitimate business or economic purpose except to inflate artificially the public corporation's financial statements, but made no public statements concerning those transactions. On January 15, 2008, our position prevailed by a 5-3 vote.
04-805 and 04-814	*Texaco, Inc.* v. *Dagher* and *Shell Oil Co.* v. *Dagher* Cert. granted June 27, 2005 Amicus brief filed September 12, 2005 Argued January 10, 2006 Reversed February 28, 2006	R. Englert D. Russell	We filed an amicus brief for Verizon Communications in support of petitioners Texaco and Shell. In supporting reversal of a Ninth Circuit decision, written by Judge Reinhardt, that suggested that an agreement between two joint venturers to set the price of the joint venture's output was probably illegal *per se*, we argued that a structured rule of reason should be applied to any restraint that plausibly relates to a procompetitive collaboration. On February 28, 2006, the Court unanimously agreed with Texaco's and Shell's position.

No.	Caption and Status	Attorneys	Description
01-344	*Tommy G. Thompson, Secretary of Health and Human Services* v. *Western States Medical Center* Cert. granted October 29, 2001 Brief filed January 17, 2002 Argued February 26, 2002 Decided April 29, 2002	A. Untereiner A. Siegel	We represented the International Academy of Compounding Pharmacists (with co-counsel from the FDA firm of Hyman, Phelps & McNamara) and filed an amicus brief in support of respondents. The issue in the case was whether a limited exemption in the Food and Drug Administration Modernization Act for certain new drug approval requirements is consistent with the First Amendment. The Ninth Circuit held that it was not. In our brief, we focused on showing that the government misread and misdescribed the history of drug compounding and its treatment under state law. On April 29, 2002, the Court ruled, 5-4, in favor of the respondents, whom we supported.
04-104 and 04-105	*United States* v. *Booker* and *United States* v. *Fanfan* Cert. granted and cases expedited August 2, 2004 Amicus brief filed September 21, 2004 Argued October 4, 2004 Decided January 12, 2005	G. Poe R. Englert B. Willen M. Huffman	We have filed an amicus brief for Families Against Mandatory Minimums in support of respondents addressing the effect of *Blakely* v. *Washington* on the United States Sentencing Guidelines. On January 12, 2005, the Court held by a 5-4 vote, and in agreement with our position, that *Blakely*'s constitutional holding applies fully to the Guidelines. A differently composed 5-4 majority held, also somewhat in line with our position, that the Guidelines may continue to be used in advisory fashion.

No.	Caption and Status	Attorneys	Description
04-905	*Volvo Trucks North America, Inc.* v. *Reeder-Simco GMC, Inc.* Cert. petition filed January 4, 2005, docketed January 5, 2005 Reply brief filed February 16, 2005 Cert. granted March 7, 2005 Opening merits brief filed May 20, 2005 Reply brief filed August 29, 2005 Supplemental brief filed October 12, 2005 Argued October 31, 2005 Reversed and remanded January 10, 2006	R. Englert D. Russell M. Huffman	The Court granted our petition for a writ of certiorari arguing that the Court should reverse the Eighth Circuit's judgment in this case, which affirmed a judgment entered on a jury verdict that Volvo is liable for violating the Robinson-Patman Act. We argued that there can be no liability for price discrimination in a circumstance in which there are not two "purchases," so the competitive bidding situations alleged in this case do not implicate the Act; and that sales lost to a rival selling a different manufacturer's trucks, rather than to a favored purchaser from the same manufacturer as specified in the Act, cannot constitute Robinson-Patman violations. Roy Englert argued the case. On January 10, 2006, the Court by a 7-2 vote agreed with our position in all essential respects.

No.	Caption and Status	Attorneys	Description
10-277	*Wal-Mart Stores, Inc.* v. *Betty Dukes, et al.* Cert. granted December 6, 2010 Amicus brief filed January 27, 2011 Argued March 29, 2011 Reversed June 20, 2011	R. Englert M. Stancil S. Ribstein	On behalf of Intel Corporation, we filed an amicus brief supporting petitioner Wal-Mart at the certiorari stage and another at the merits stage. We argue that improper certification of class actions puts inappropriate pressure on defendants to settle cases, that a class action seeking monetary relief should not be certified under Rule 23(b)(2), and that the class certified in this case does not meet the requirements of Rule 23(a). On June 20, 2011, Wal-Mart prevailed, unanimously on the Rule 23(b)(2) issue and 5-4 on the Rule 23(a) issue.
06-571	*Michael Watson* v. *United States* Cert. granted February 26, 2007 Opening merits brief filed May 4, 2007 Reply brief filed August 2, 2007 Argued October 9, 2007 Reversed December 10, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we represented Mr. Watson, who was convicted under 18 U.S.C. § 924(c) for the "use" of a firearm in connection with a drug trafficking transaction. Mr. Watson received the gun in exchange for drugs, and we argued that mere receipt does not constitute "use" within the meaning of Section 924(c), as that term was defined by *Bailey* v. *United States,* 516 U.S. 137 (1995). The Circuits were divided 6-4 on this question. Our certiorari petition was granted on February 26, 2007, over the Solicitor General's opposition. Our co-counsel Karl Koch argued the case. On December 10, 2007, the Court unanimously agreed with our position.

No.	Caption and Status	Attorneys	Description
05-1342	*Watters* v. *Wachovia Bank, N.A.* Cert. granted June 19, 2006 Amicus brief filed November 3, 2006 Argued November 29, 2006 Affirmed April 17, 2007	A. Untereiner	We were retained by the Chamber of Commerce of the United States of America to file an amicus brief in this case in support of the respondents. The questions presented involve federal preemption of state laws regulating the mortgage lending activities of operating subsidiaries of National Banks. Specifically, the case raises the questions whether the Comptroller's interpretations of the National Bank Act and a regulation are entitled to *Chevron* deference and whether they are consistent with the Tenth Amendment. On April 17, 2007, the Court ruled 5-3 in favor of respondent (the party we supported).

No.	Caption and Status	Attorneys	Description
05-381	*Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co.* Cert. granted June 26, 2006 Amicus brief filed August 24, 2006 Argued November 28, 2006 Vacated February 20, 2007	R. Englert D. Russell M. Stancil	We filed briefs on behalf of the American Forest & Paper Association and the Chamber of Commerce of the United States of America as amici curiae supporting this cert. petition and supporting reversal. We argued that the Supreme Court should reverse the Ninth Circuit's decision upholding a jury verdict of monopolization against Weyerhaeuser for "predatory buying," which in the Ninth Circuit's view meant paying more than a jury thought was "necessary" or "fair" for timber. We argued that such indeterminate standards in antitrust harm the competitive process, and that more determinate standards derived from seller-side predatory pricing cases should have been used to resolve this case in favor of defendant Weyerhaeuser. On February 20, 2007, the Court unanimously agreed with our position.

No.	Caption and Status	Attorneys	Description
03-287	*Wilkinson* v. *Dotson* Cert. granted March 22, 2004 Petitioners' brief filed July 19, 2004 Respondents' briefs filed October 15, 2004 Argued December 6, 2004 Affirmed March 7, 2005	A. Untereiner A. Barnes B. Willen	We represent respondent William Dotson, an Ohio prisoner. The question presented is whether the Sixth Circuit correctly held that Dotson's and respondent Johnson's procedural challenges to parole eligibility or suitability determinations may be brought under 42 U.S.C. § 1983, rather than as habeas corpus actions, because success by the prisoner on such a claim would result only in a new parole hearing and would not necessarily guarantee earlier release from prison. Alan Untereiner argued this case for respondent Dotson. On March 7, 2005, the Court ruled in favor of our client (and his co-respondent) by an 8-1 vote.

No.	Caption and Status	Attorneys	Description
08-1314	*Delbert Williamson, et al.* v. *Mazda Motor of America, Inc.* Cert. granted May 24, 2010 Amicus brief filed September 28, 2010 Argued November 3, 2010 Reversed February 23, 2011	A. Untereiner	On behalf of the Chamber of Commerce of the United States of America, we have filed an amicus brief supporting respondent Mazda. We argue that a California state court correctly held that plaintiffs' tort claims are preempted by federal law and that the Supreme Court should reaffirm *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). The court below held that plaintiffs' claims, including a wrongful-death claim stemming from a front-end collision, are preempted because they conflict with Federal Motor Vehicle Safety Standard 208. FMVSS 208 authorizes automobile manufacturers to install either a lap-only seatbelt or lap/shoulder seat belt assembly at a vehicle's inboard seating positions. The Acting Solicitor General, speaking on behalf of the National Highway Traffic Safety Administration, argues that plaintiffs' claims are not preempted. On February 23, 2011, the Court held, without dissent, that the claims are not preempted.

No.	Caption and Status	Attorneys	Description
06-1249	*Wyeth* v. *Levine* Cert. granted January 18, 2008 Amicus brief filed June 3, 2008 Argued November 3, 2008 Affirmed March 4, 2009	A. Untereiner	The Chamber of Commerce of the United States of America has hired us to prepare an amicus brief supporting petitioner Wyeth at the merits stage of this case. Wyeth seeks to overturn a decision of the Supreme Court of Vermont holding that federal law does not preempt an attempt use state tort law to impose on a drug manufacturer a more restrictive labeling requirement than that imposed by the Food and Drug Administration. On March 4, 2009, the Court rejected petitioner's position by a 6-3 vote.

No.	Caption and Status	Attorneys	Description
01-270	*Yellow Transportation, Inc.* v. *Michigan* Cert. granted January 22, 2002 Amicus brief filed April 5, 2002 Argued October 7, 2002 Decided November 5, 2002	R. Englert S. Wolson	We represented the American Trucking Associations, Schneider National, Inc., and ABF Freight System, Inc., as amici curiae. We argued, in agreement with the petitioner and the Solicitor General, that an Act of Congress limiting truck registration fees to the level "collected or charged as of November 15, 1991," limits the State to the fees actually collected or charged on that date and does not – as the Supreme Court of Michigan held – allow the State to charge a "generic" fee that it could have charged on November 15, 1991, but did not because of a reciprocity agreement with another State. We also argued, in agreement with the petitioner and a decision of the Interstate Commerce Commission but not the Solicitor General (who disclaimed any position on this issue), that prepayment before November 15, 1991, of fees under an agreement not yet in effect on that date does not allow the State to perpetuate the effects of the agreement not yet in effect as of November 15, 1991. On November 5, 2002, the Court unanimously agreed with our position on the first issue and did not reach the second issue.

Cert. Petitions, Appeals, And Miscellaneous Matters

No.	Caption and Status	Attorneys	Description
09-479	*Kevin Abbott* v. *United States* Cert. petition filed October 19, 2009, docketed October 22, 2009 Reply brief filed December 31, 2009 Cert. granted January 25, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott. We argued that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless "a greater minimum sentence is * * * provided * * * by any other provision of law" – includes as an "other provision of law" either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott's sentence did not need to be enhanced by an additional five years under Section 924(c).

No.	Caption and Status	Attorneys	Description
08-345	*Alabama* v. *Pope* Cert. petition filed September 15, 2008, and docketed September 17, 2008 Amicus brief filed October 17, 2008 Cert. denied December 15, 2008	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we will be filing an amicus brief on behalf of the International Municipal Lawyers Association in support of the cert. petition. The question presented, which has divided the courts of appeals, is whether an intervenor who requests precisely the same relief as a state party can be deemed a "prevailing party" under federal fee-shifting statutes when the court awards that relief, such that it may demand attorneys' fees from the state party.
09-1555	*Cedrick Bernard Alderman* v. *United States* Cert. petition filed June 18, 2010, docketed June 22, 2010 Reply brief filed September 28, 2010 Cert. denied (over published dissent) January 10, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we are co-counsel on a cert. petition on behalf of Mr. Alderman. The question presented is whether 18 U.S.C. § 931, which prohibits a person convicted of a felony crime of violence from purchasing, owning, or possessing body armor sold or offered for sale in interstate or foreign commerce, is a permissible exercise of congressional power under the Commerce Clause.

No.	Caption and Status	Attorneys	Description
03-1214	*Allstate Corp.* v. *DeHoyos* Cert. petition filed February 23, 2004, docketed February 25, 2004 Amicus brief filed March 26, 2004 Cert. denied April 19, 2004	A. Untereiner B. Willen	We filed an amicus brief for the Chamber of Commerce of the United States in support of this petition. The question presented was whether, in light of pervasive state regulation of insurance ratemaking, imposition of "disparate impact" liability under the Fair Housing Act on insurance companies' use of race-neutral credit scoring and similar mechanisms in assessing risk and setting the price of insurance products is precluded by Section 2(b) of the McCarran-Ferguson Act.
07-562	*Altria Group, Inc. and Philip Morris USA Inc.* v. *Stephanie Good, et al.* Cert. petition filed October 26, 2007, docketed October 29, 2007 Cert. granted January 18, 2008	A. Untereiner	Although our firm's name does not appear on the cert. petition or briefs, we have worked with Gibson Dunn on this "Lights" class action case, which raises issues of implied and express preemption under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1334(b) and the FTC Act.
00-1826	*American Bankers Insurance Company of Florida* v. *Alexander* Amicus brief filed July 9, 2001 Cert. denied October 1, 2001	R. Englert A. Untereiner	We represented the Chamber of Commerce of the United States as amicus curiae in this case, in which the issue was whether Mississippi's joinder of hundreds of individual cases without providing any of the protections of the class action device violated due process.

No.	Caption and Status	Attorneys	Description
02-367	*American Cyanamid Co.* v. *Geye* Cert. petition filed September 4, 2002, docketed September 9, 2002 Amicus brief filed October 8, 2002 Views of Solicitor General requested November 12, 2002 SG brief recommending denial filed May 30, 2003 Supplemental brief for petitioner in response to SG brief filed June 5, 2003 Cert. denied June 27, 2003	A. Untereiner	We filed an amicus brief for CropLife America, a trade association formerly known as the American Crop Protection Association, in support of the petition in this case. We argued that the Court had jurisdiction over this case arising from the state courts even though there were further proceedings to come, and that the conflict in the lower courts warranted the Court's review. On the merits, we argued that the Federal Insecticide, Fungicide, and Rodenticide Act preempts state-law damages claims for pesticide-related agricultural crop injury when the claims seek to hold a pesticide manufacturer liable for advertising statements that repeat information contained on nationally uniform product labeling that has been approved by the EPA.
04-27	*American National Insurance Co.* v. *Bratcher* Cert. petition filed July 1, 2004, docketed July 8, 2004 Amicus brief filed August 9, 2004 Cert. denied October 4, 2004	D. Russell R. Englert M. Huffman	We have filed an amicus brief in support of petitioners on behalf of the Chamber of Commerce of the United States. The question presented is whether Federal Rule of Civil Procedure 23(b)(2) – which provides for the certification of classes seeking injunctive relief – authorizes class certification in a case in which all class members seek damages; at least a million class members can recover only damages; and massive individual damages inquiries are required.

No.	Caption and Status	Attorneys	Description
02-1569	*American Telephone & Telegraph Co. and Lucent Technologies, Inc.* v. *United States* Cert. petition filed April 25, 2003, docketed April 30, 2003 Amicus brief filed June 30, 2003 Cert. denied October 6, 2003	R. Englert M. Huffman	We filed an amicus brief for the National Defense Industrial Association and the Government Electronics and Information Technology Association in support of petitioners. The question presented was whether standard contract remedies are available when a contract or some of its terms are illegal, but the statute invalidating the contract or particular terms does not create a private cause of action.
06-1291	*Amgen Inc.* v. *Hoechst Marion Roussel, Inc. (now known as Aventis Pharmaceuticals, Inc.) and Transkaryotic Therapies, Inc.* Cert. petition filed March 22, 2007, docketed March 26, 2007 Reply brief filed April 16, 2007 Cert. denied May 14, 2007	R. Englert D. Walfish	We filed a petition for a writ of certiorari on behalf of Amgen in this patent case. Amgen is seeking to enforce several patents related to erythropoietin (EPO) therapy for anemia and other blood-related disorders, a therapy pioneered by Amgen's Dr. Fu-Kuen Lin. The Federal Circuit's application of *de novo* review to reverse, by a 2-1 vote, the district court's construction of one of the claims in a patent (and render it subject to possible invalidation for anticipation) led to six opinions either concurring in or dissenting from the denial of rehearing en banc in the Federal Circuit. The petition challenged *de novo* review of claim construction and also raised an issue about the scope of the Doctrine of Equivalents.

No.	Caption and Status	Attorneys	Description
05-766	*APCC Services, Inc., et al.* v. *Sprint Communications Co. L.P., et al.* Cert. petition filed December 12, 2005, docketed December 14, 2005 Reply brief filed March 1, 2006 Cert. granted, judgment vacated, and case remanded April 23, 2007	R. Englert D. Russell D. Taaffe	We filed a petition for a writ of certiorari challenging the decision of a divided panel of the D.C. Circuit in this case. In addition to the 2-1 split on the panel, the en banc court divided 5-3 over whether to grant rehearing, and the Ninth Circuit has expressly agreed with the D.C. Circuit panel dissent. On February 21, 2006, the Supreme Court granted certiorari to review the Ninth Circuit decision that conflicts with the D.C. Circuit decision. The question presented is whether independent payphone service provides have a private right of action to sue long-distance carriers in court for failure to pay compensation for coinless "dial-around" calls mandated by FCC rules, passed pursuant to Congress's express directive in the Telecommunications Act of 1996 that payphone service providers be compensated for "each and every call." On April 23, 2007, the Court remanded the case for further consideration in light of *Global Crossing* v. *Metrophones*.
09-117	*Apotex, Inc., and Apotex Corp.* v. *Sanofi-Synthelabo, et al.* Cert. petition filed July 24, 2009, docketed July 28, 2009 Reply brief filed October 13, 2009 Cert. denied November 2, 2009	R. Englert A. Untereiner D. Walfish	We have filed a petition for a writ of certiorari arguing that the Federal Circuit should have declared invalid as obvious a patent used to enforce a monopoly on clopidogrel bisulfate, an anti-blood-clotting drug that is used to treat or prevent heart attacks and strokes.

No.	Caption and Status	Attorneys	Description
10-453	*Apotex, Inc.* v. *Sebelius* Cert. petition filed October 4, 2010, docketed October 5, 2010 Reply brief filed December 22, 2010 Cert. denied January 18, 2011	R. Englert M. Stancil R. LeGrand	We have filed a cert. petition on behalf of Apotex, arguing that the D.C. Circuit misconstrued the statute giving certain generic drug manufacturers a 180-day exclusivity period or head start over competing generic drug manufacturers when it allowed Teva Pharmaceuticals to market generic versions of losartan drugs used to treat hypertension because Teva challenged an expired Merck patent on the brand-name versions of the drugs.
05-1493	*AT&T Inc.* v. *RLH Industries, Inc.* Cert. petition filed May 23, 2006, docketed May 24, 2006 Amicus brief filed June 23, 2006 Cert. denied October 2, 2006	R. Englert A. Yao	We filed an amicus brief for the Chamber of Commerce of the United States of America and Verizon Communications arguing that the Court should correct the unconstitutional application of California law to attempt to regulate dealings between a California company and a regulated local telephone company that took place entirely outside of California.

No.	Caption and Status	Attorneys	Description
09-893	*AT&T Mobility LLC* v. *Vincent Concepcion and Liza Concepcion* Cert. petition filed January 25, 2010, docketed January 26, 2010 Amicus brief filed February 25, 2010 Cert. granted May 24, 2010	R. Englert B. Pérez-Daple	On behalf of the Chamber of Commerce of the United States of America, we have filed an amicus brief in support of the cert. petition in this case. The question presented is whether the Federal Arbitration Act pre-empts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures – here, class-wide arbitration – when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.
01-682	*Kay Barnes, in her official capacity as Member of the Board of Police Commissioners of Kansas City, Missouri, et al.* v. *Jeffrey Gorman* Cert. petition filed November 2, 2001 (docketed November 8) Reply brief filed December 27, 2001 Cert. granted January 11, 2002, reversed June 17, 2002	L. Robbins A. Untereiner	We represented the petitioners. We challenged a decision of the Eighth Circuit holding, in agreement with the Fourth Circuit but in conflict with the Third and Sixth Circuits, that punitive damages may be awarded against a municipal government in an implied private right of action under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), or Section 202 of the Americans with Disabilities Act, 42 U.S.C. § 12132.

No.	Caption and Status	Attorneys	Description
04-81	*BASF Corporation* v. *Peterson* Cert. petition filed July 16, 2004 Amicus brief filed September 24, 2004 GVR order entered May 2, 2005	A. Untereiner D. Taaffe	We filed an amicus brief for the Product Liability Advisory Council supporting a grant of the petition. The questions presented include whether the Supreme Court of Minnesota correctly held that FIFRA does not preempt a state-law claim that a manufacturer's labeling of its pesticide in full compliance with Environmental Protection Agency regulations was an unconscionable commercial practice. On May 2, 2005, the Court granted cert., vacated the judgment below, and remanded the case for further consideration in light of *Bates* v. *Dow Agrosciences*.
06-144	*BASF Corporation* v. *Peterson* Cert. petition filed and docketed July 28, 2006 Amicus brief filed October 13, 2006 Cert. denied November 13, 2006	A. Untereiner	We were retained by the Product Liability Advisory Council to file an amicus brief supporting a grant of the petition. The questions presented included whether the Supreme Court of Minnesota correctly held that FIFRA does not preempt a state-law claim that a manufacturer's labeling of its pesticide in full compliance with Environmental Protection Agency regulations was an unconscionable commercial practice.

No.	Caption and Status	Attorneys	Description
05-1126	*Bell Atlantic Corp.* v. *Twombly* Cert. petition filed March 6, 2006, docketed March 7, 2006 Amicus brief filed April 6, 2006 Cert. granted June 26, 2006	R. Englert D. Russell	Our amicus brief on behalf of the Chamber of Commerce of the United States of America, CTIA – The Wireless Association, the Alliance of Automobile Manufacturers, Northwest Airlines, and United Air Lines argued that the Second Circuit erred by failing to apply, at the motion-to-dismiss stage, the substantive antitrust principle that it is impermissible to infer a conspiracy from parallel conduct, without more. We argued that the Second Circuit's error, in reversing a well-reasoned district court judgment dismissing the case, allows an unmeritorious lawsuit, purportedly on behalf of hundreds of millions of plaintiffs, to go forward and place enormous settlement pressure on defendants who are not even alleged in the complaint (other than through a conclusory allegation of "conspiracy") to have done anything unlawful.
08-728	*Taylor James Bloate* v. *United States* Cert. petition filed and docketed December 4, 2008 Reply brief filed February 18, 2009 Record requested February 23, 2009 Cert. granted April 20, 2009	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which has divided the Circuits, is whether time spent preparing pretrial motions is excludable under the Speedy Trial Act.

No.	Caption and Status	Attorneys	Description
09-1476	*Borough of Duryea, PA* v. *Charles J. Guarnieri* Cert. petition filed June 2, 2010, docketed June 4, 2010 Reply brief filed September 21, 2010 Cert. granted October 12, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we assisted in the preparation of a cert. petition on behalf of the Borough challenging a Third Circuit rule that allows public employees to base retaliation claims under the First Amendment's Petition Clause on petitions that implicate matters of only private concern.

No.	Caption and Status	Attorneys	Description
09-980	*British American Tobacco (Investments) Ltd.* v. *United States* Cert. petition filed February 19, 2010, docketed February 22, 2010 Reply brief filed June 8, 2010 Cert. denied June 28, 2010 Rehearing petition filed July 23, 2010 Rehearing denied September 3, 2010	A. Untereiner R. Englert M. Stancil E. Temkin	We represent petitioner BATCo, which is one of the defendants in the government's RICO case against the tobacco companies. BATCo's petition argued that the D.C. Circuit incorrectly held that the traditional presumption against extraterritoriality is completely irrelevant to determining whether Congress intends a statute to reach the wholly foreign conduct of a foreign corporation, if such foreign conduct is alleged to have had a direct and substantial effect within the United States. The petition also argued that the D.C. Circuit, in concluding that RICO regulates BATCo's wholly foreign conduct, improperly (a) ignored the presumption against extraterritoriality and affirmative evidence that Congress never intended RICO to apply extraterritorially; (b) borrowed from federal securities and antitrust cases the ill-suited "effects" test as a measure of RICO's extraterritorial reach; (c) approved a watered-down version of that test that conflicts with the test used by other circuits; and (d) relied on the U.S. "effects" of the U.S. conduct of other co-defendants and of the "overall" alleged RICO scheme. BATCo's rehearing petition, filed July 23, 2010, asks the Court to grant rehearing, grant certiorari, vacate the judgment below, and remand for further consideration in light of *Morrison* v. *National Australia Bank Ltd.*, No. 08-1191 (June 24, 2010).

No.	Caption and Status	Attorneys	Description
10-844	*Caraco Pharmaceutical Laboratories, Ltd.* v. *Novo Nordisk A/S, et al.* Cert. petition filed December 23, 2010, docketed December 28, 2010 Amicus brief filed January 27, 2011 Views of Acting Solicitor General invited March 28, 2011 Acting SG brief recommending grant filed May 26, 2011 Cert. granted June 27, 2011	R. Englert M. Stancil D. Burke	We represent the Generic Pharmaceutical Association as amicus curiae in support of this cert. petition. Our brief argues that a decision of the Federal Circuit improperly allows manufacturers of brand-name drugs to block entry of generic drugs that do not infringe any of their patents.

No.	Caption and Status	Attorneys	Description
07-515	*Carpenter* v. *United States* Cert. petition filed October 16, 2007, docketed October 18, 2007 Reply brief filed January 30, 2008 Cert. denied February 25, 2008	M. Stancil	We represented Daniel Carpenter, who was convicted of mail fraud and related offenses in connection with his management of a tax-efficient investment vehicle. The district court granted his Rule 33 new trial motion but denied his Rule 29 sufficiency motion. The Government then took an interlocutory appeal of the new trial motion. Carpenter cross-appealed the denial of the Rule 29 motion. The First Circuit affirmed the grant of a new trial, but held that it did not have jurisdiction to review the denial of Carpenter's Rule 29 motion. The question was whether either Double Jeopardy principles or the collateral order doctrine requires the court of appeals to review the Rule 29 motion. We were co-counsel in this case with Scott Ballenger (Latham & Watkins) and Jack Robinson (solo practitioner).
03-464	*Carson City, Nevada* v. *David Q. Webb* Cert. petition filed September 26, 2003, docketed September 29, 2003 Reply brief filed December 2, 2003 Cert. denied January 12, 2004	A Untereiner R. Englert	We filed a petition for a writ of certiorari urging review of a Ninth Circuit decision holding that deputy district attorneys are "policymakers" so that the municipality is liable in a Section 1983 action for their acts.

No.	Caption and Status	Attorneys	Description
08-1375	*Cassens Transport Co., et al.* v. *Paul Brown, et al.* Cert. petition filed May 6, 2009, docketed May 7, 2009 Motion for leave to file amicus brief (with accompanying brief) filed June 8, 2009 Response requested September 2, 2009, filed November 2, 2009 Motion for leave to file granted and cert. denied December 7, 2009	A. Untereiner	We were retained by the American Trucking Associations, Inc. to file an amicus brief in support of the petition in this case, which raised questions concerning the effect of the McCarran-Ferguson Act's anti-preemption provision on RICO actions that challenge the denial of worker's compensation claims under state law.
03-1381	*Ben Chavez* v. *Oliverio Martinez* Cert. petition filed April 2, 2004, docketed April 2, 2004 Reply brief filed June 8, 2004 Cert. denied June 30, 2004	L. Robbins R. Englert B. Willen	We filed a petition for a writ of certiorari seeking review of the Ninth Circuit's decision, on remand from a prior reversal by the Supreme Court, that petitioner police officer is not entitled to qualified immunity on respondent's claim that petitioner's interrogation of him "shocked the conscience." Three Supreme Court Justices stated in the prior Supreme Court decision that petitioner's actions did not shock the conscience, and three others found the issue not yet appropriate for resolution after full briefing and argument, but the Ninth Circuit held that any reasonable police officer would have known that his actions were unconstitutional.

No.	Caption and Status	Attorneys	Description
08-1283	*Choose Life Illinois , Inc., et al.* v. *Jesse White, Secretary of State of the State of Illinois* Cert. petition filed April 16, 2009, docketed April 17, 2009 Brief in opposition filed July 31, 2009 Reply brief filed August 13, 2009 Cert. denied October 5, 2009	A. Untereiner R. Englert D. Taaffe J. Windom	We represented 15 individuals and a non-profit organization in this lawsuit against the State of Illinois arising out of the State's refusal to issue a "Choose Life" speciality license plate. The district court held that the refusal was viewpoint discrimination in violation of the First Amendment and granted summary judgment in our favor. The Seventh Circuit reversed. The cert. petition raised issues concerning the Seventh Circuit's determinations that the denial of the plate was content rather than viewpoint discrimination, that speciality plates are a nonpublic forum rather than a limited public forum, and that Illinois's denial of the plate passed muster under the rules governing non-public fora. The petition also raised an issue relating to the Seventh Circuit's rejection of our clients' facial challenge to the licensing scheme as completely standardless.

No.	Caption and Status	Attorneys	Description
02-340	*Christie's International PLC* v. *Kruman* Cert. petition filed September 3, 2002, docketed September 5, 2002 Amicus brief filed October 7, 2002 Petition dismissed under Rule 46 (because of settlement) August 8, 2003	L. Robbins R. Englert S. Wolson	We filed an amicus brief on behalf of the Chamber of Commerce of the United States in support of the petition in this case. We supported petitioners' argument that the Foreign Trade Antitrust Improvements Act bars the assertion of jurisdiction over the Sherman Act claims of private plaintiffs whose injuries do not arise from the effects of an alleged international conspiracy on U.S. commerce. On June 14, 2004, in the *Empagran* case, the Court agreed unanimously with the position Christie's had advanced and we had supported.
07-159	*City of Newport News, Virginia* v. *Christopher A. Sciolino* Cert. petition filed August 8, 2007, docketed August 9, 2007 Brief in opposition filed November 9, 2007 Cert. denied December 10, 2007	M. Stancil	In connection with the University of Virginia Supreme Court Litigation Clinic, we filed a brief in opposition on behalf of respondent Sciolino. Our client, a former probationary city police officer, contends that the city, when discharging him, placed in his personnel file information damaging to his good name without giving him a name-clearing hearing, thus depriving him of liberty rights without due process of law.

No.	Caption and Status	Attorneys	Description
02-815	*City of Sacramento* v. *Barden* Cert. petition filed November 25, 2002 (docketed November 29, 2002) Response and amicus briefs filed January 27, 2003 Reply brief filed February 12, 2003 Views of Solicitor General requested March 3, 2003 SG brief recommending denial filed May 27, 2003 Supplemental brief for petitioners in response to SG brief filed June 5, 2003 Cert. denied June 27, 2003	R. Englert A. Untereiner L. Robbins K. Zecca	We asked the Court to review the Ninth Circuit's judgment that all *existing* sidewalks in the City of Sacramento constitute a "program," "service," or "activity" of the City that must be made immediately accessible to the disabled. Amicus briefs supporting the petition were filed by, among others, the National League of Cities, the U.S. Conference of Mayors, the International Municipal Lawyers Association, the National Association of Counties, Guam, Puerto Rico, the Virgin Islands, Albany, Birmingham, Boston, Dallas, Des Moines, Denver, Detroit, Little Rock, Memphis, Milwaukee, Nashville, New York City, Phoenix, and Pittsburgh.
09-314	*City of Virginia Beach* v. *Tanner* Brief in opposition filed December 14, 2009 Cert. denied January 19, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a brief in opposition to this certiorari petition. The petition sought review of a decision of the Supreme Court of Virginia striking down a city anti-noise ordinance as unconstitutionally vague.

No.	Caption and Status	Attorneys	Description
02-1629	*Clark County, Nevada, and Morgan Harris* v. *Roberto Hernandez Miranda* Cert. petition filed May 5, 2003, docketed May 9, 2003 Reply brief filed July 23, 2003 Cert. denied October 6, 2003	L. Robbins A. Untereiner A. Barnes M. Huffman	We filed a petition for a writ of certiorari urging the Court to review and reverse the February 3, 2003, en banc decision of the Ninth Circuit (by a 7-4 vote and contrary to a panel opinion written in February 2002 by Trott, J.) holding that the Public Defender of Clark County, Nevada, and the County itself may be sued under 42 U.S.C. § 1983 for depriving the respondent of his constitutional rights in his representation of the respondent in a criminal case.
10-568	*Commission on Ethics of the State of Nevada* v. *Carrigan* Cert. petition filed October 27, 2010, docketed October 29, 2010 Reply brief filed December 15, 2010 Cert. granted January 7, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we assisted in the preparation of a cert. petition defending the constitutionality of the state ethics statute, which the Nevada Supreme Court struck down (in part) as overbroad and facially unconstitutional. The question presented is: "Whether the First Amendment subjects state restrictions on voting by elected officials to (i) strict scrutiny, as held by the Nevada Supreme Court and the Fifth Circuit, (ii) the balancing test of Pickering v. Board of Education, 391 U.S. 563 (1968), for government-employee speech, as held by the First, Second, and Ninth Circuits, or (iii) rational-basis review, as held by the Seventh and Eighth Circuits."

No.	Caption and Status	Attorneys	Description
05-1512	*Samuel Antonio Constanza Alvarado* v. *United States* Cert. petition filed May 25, 2006, docketed May 30, 2006 Reply brief filed August 30, 2006 Cert. denied October 2, 2006	L. Robbins D. Walfish	We filed a petition for a writ of certiorari asking the Court to resolve a circuit split over whether the "dual sovereignty" doctrine (developed in the context of double jeopardy law) can be used to define as two separate offenses what would otherwise be a single offense for purposes of the Sixth Amendment right to counsel.
07-257	*Continental Carbon Co.* v. *Action Marine, Inc.* Cert. petition filed August 24, 2007, docketed August 27, 2007 Amicus brief filed September 26, 2007 Cert. denied June 27, 2008	A. Untereiner	On behalf of the American Chemistry Council and the National Association of Manufacturers, we have filed an amicus brief urging the Court to grant Continental Carbon's cert. petition, which challenges as unconstitutionally excessive a $17.5 million punitive damages award in an environmental case. Our brief focuses on the conflict and confusion in the lower courts over the meaning of the "comparable penalties" factor for evaluating excessiveness that was identified in *BMW of North America* v. *Gore*, 517 U.S. 559 (1996).

No.	Caption and Status	Attorneys	Description
05-364	*Corus Staal BV* v. *Department of Commerce* Cert. petition filed September 15, 2005, docketed September 20, 2005 Amicus brief filed December 6, 2005 Cert. denied January 9, 2006	R. Englert R. Li Wai Suen	We filed a brief for the Commission of the European Communities as an amicus curiae supporting this cert. petition. We argued that the Federal Circuit went too far by construing the Uruguay Round Agreements Act to make considerations of compliance with international obligations completely irrelevant in construing a Department of Commerce anti-dumping determination, and further argue that the Department's "zeroing" methodology – held invalid by both a WTO Appellate Body and a NAFTA Binational Panel – is not entitled to *Chevron* deference because it would bring the United States into noncompliance with treaty obligations.

No.	Caption and Status	Attorneys	Description
08-1423	*Costco Wholesale Corp.* v. *Omega, S.A.* Cert. petition filed and docketed May 18, 2009 Brief in opposition filed July 17, 2009 Reply brief filed July 28, 2009 Supplemental brief filed September 28, 2009 Views of Solicitor General invited October 5, 2009 SG brief recommending denial filed March 17, 2010 Supplemental brief in response to SG's brief filed March 29, 2010 Cert. granted April 19, 2010	R. Englert A. Lavinbuk	We have filed a petition for a writ of certiorari urging the Court to review, and overturn, a Ninth Circuit decision. Reversing the district court, the Ninth Circuit held that Omega may block Costco from selling its "copyrighted" goods (watches with a small globe on the back, added for the sole purpose of being able to use copyright law to restrict distribution) even though Omega sold the watches in Switzerland and Costco bought them lawfully in the United States. We argue that the first-sale doctrine applies, that Omega exhausted its copyright rights when it sold the watches, and that plain statutory language as well as *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U.S. 135 (1998), precludes the result the Ninth Circuit reached.

No.	Caption and Status	Attorneys	Description
05-1157	*Credit Suisse First Boston Ltd.* v. *Billing* Cert. petition filed March 8, 2006, docketed March 13, 2006 Amicus brief filed April 11, 2006 Views of Solicitor General requested June 19, 2006 Solicitor General brief recommending a grant of cert. filed November 9, 2006 Cert. granted December 7, 2006	R. Englert G. Orseck M. Segal D. Walfish	Our amicus brief on behalf of the Securities Industry Association, the Chamber of Commerce of the United States of America, and the Bond Market Association argues that the Second Circuit erred by rejecting the arguments of the defendants, the SEC, and the district court for implied immunity from the antitrust laws for various underwriting activities that are within the SEC's regulatory purview.
06-926	*Daewoo Motor America, Inc.* v. *General Motors Corp.* Cert. petition filed January 3, 2007, docketed January 5, 2007 Reply brief filed March 21, 2007 Cert. denied April 16, 2007	L. Robbins A. Untereiner A. Yao	On behalf of Daewoo, we filed a petition for a writ of certiorari arguing that the Eleventh Circuit should have reviewed *de novo* the district court's dismissal of Daewoo's complaint based on the doctrine of international comity and an order of a Korean bankruptcy court, and that the doctrine of international comity should not have been invoked to preclude claims that are asserted against parties other than the foreign debtor and could not have been brought in the Korean proceeding.

No.	Caption and Status	Attorneys	Description
01-929	*DaimlerChrysler AG* v. *Olson* Cert. petition filed December 19, 2001 Waiver of response filed Jan. 18, 2002 Amicus brief (U.S. Chamber et al.) filed February 1, 2002 Amicus brief (Southern Co.) filed February 4, 2002 Response requested February 14, 2002 Brief in opposition filed March 18, 2002 Reply brief filed April 3, 2002 Cert. denied May 20, 2002	A. Untereiner R. Englert	We filed a petition for a writ of certiorari in this case arising out of the Texas courts. The principal issue was whether Texas may, consistent with the Due Process Clause of the Fourteenth Amendment, exercise "general" personal jurisdiction over a foreign corporation that owns no property in Texas, has no employees or operations there, maintains no books or inventory or bank accounts there, and does not make direct sales of automobiles to Texas consumers. The Texas Court of Appeals concluded that the foreign company was present and doing business in Texas based on the activities of a wholly separate U.S. subsidiary, the maintenance by the foreign corporation of a passive website, and the foreign company's assertion of its federal trademark rights in a federal lawsuit in Texas.
07-384	*Daniel Measurement Services, Inc.* v. *Eagle Research Corp.* Cert. petition filed September 19, 2007, docketed September 20, 2007 Amicus brief filed October 22, 2007 Cert. denied November 26, 2007	A. Untereiner K. Zecca	On behalf of the Product Liability Advisory Council, we filed an amicus brief in support of the petition in this case. We argued that the Due Process Clause requires meaningful review of whether an award of compensatory damages has any evidentiary support and that the trial and appellate courts of West Virginia failed to afford any such review.

No.	Caption and Status	Attorneys	Description
04-222	*Dassault Aviation* v. *Anderson* Cert. petition filed and docketed August 17, 2004 Reply brief filed November 3, 2004 Cert. denied November 29, 2004	A. Untereiner M. Huffman	We have filed a petition for a writ of certiorari arguing that the Court should review and reverse the Eighth Circuit's holding that the Due Process Clause of the Fourteenth Amendment does not preclude the assertion of personal jurisdiction by the State of Arkansas over Dassault, a French manufacturer of airplanes.
07-1180	*Defenders of Wildlife* v. *Chertoff* Cert. petition filed March 17, 2008, docketed March 18, 2008 Amicus brief filed April 17, 2008 Cert. denied June 23, 2008	A. Untereiner A. Strasser M. Huffman	We have filed an amicus brief on behalf of 14 Members of the House of Representatives in support of petitioners, who bring the constitutional challenge. The question presented is whether Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which gives the Secretary of Homeland Security the authority to waive otherwise-applicable laws to the extent he deems necessary to ensure expeditious construction of physical barriers along the U.S. border, unconstitutionally delegates legislative power or violates the requirements of Article I that a duly enacted law may be repealed only by the actions of both Houses of Congress and the President.

No.	Caption and Status	Attorneys	Description
06-1576	*EM Ltd. and NML Capital Ltd.* v. *Republic of Argentina and Banco Central de la República Argentina* Cert. petition filed and docketed May 29, 2007 Reply brief filed July 11, 2007 Cert. denied October 1, 2007	R. Englert A. Untereiner M. Segal	On behalf of our client NML Capital Ltd., and together with Dechert LLP (our co-counsel for NML) and Debevoise & Plimpton (which represents EM Ltd.), we filed a petition for a writ of certiorari challenging the Second Circuit's holding that under the Foreign Sovereign Immunities Act certain assets held by Argentina's central bank cannot be attached by valid creditors of Argentina, notwithstanding presidential decrees making those assets available to pay *other* creditors (including the IMF).
09-631	*Elisa Encarnacion on behalf of Arlene George, et al.* v. *Michael J. Astrue, Commissioner of Social Security* Cert. petition filed November 24, 2009, docketed December 2, 2009 Reply brief filed March 16, 2010 Cert. denied April 5, 2010	R. Englert D. Walfish	Along with lead counsel at Kramer Levin and disability-rights organizations, we represented the parents of poor children who, we contended, would be considered disabled and eligible for Social Security benefits but for an illegal policy of the Social Security Administration. We contended that the Second Circuit's decision below, upholding the policy, is contrary to a prior decision of the same court and to *Sullivan* v. *Zebley*, 493 U.S. 521 (1990).

No.	Caption and Status	Attorneys	Description
02-1343	*Engine Manufacturers Association and Western States Petroleum Association* v. *South Coast Air Quality Management District* Cert. petition filed March 11, 2003 (docketed March 14, 2003) Amicus brief filed April 14, 2003 Cert. granted June 9, 2003	R. Englert M. Huffman	We filed, on behalf of the American Trucking Associations, the American Road & Transportation Builders Association, and the Taxicab, Limousine & Paratransit Association, an amicus brief in support of this cert. petition, which challenged the Ninth Circuit's construction of Section 209 of the Clean Air Act not to preempt local standards governing the emissions of vehicles purchased by "fleet operators" operating within the district.
10-693	*Ernst & Young* v. *Clark* Cert. petition filed November 22, 2010, docketed November 30, 2010 Amicus brief filed December 30, 2010 Cert. denied February 22, 2011	D. Russell L. Robbins M. Hiller	We represent the Center for Audit Quality as amicus curiae supporting petitioner in this challenge to a decision of the Supreme Court of Kentucky. The issue is whether the Federal Arbitration Act is "reverse preempted" by the McCarran-Ferguson Act – in this case, whether a contract dispute between E&Y and an insurance company must be arbitrated, per the terms of the contract, or whether McCarran-Ferguson can be invoked to prevent arbitration.

No.	Caption and Status	Attorneys	Description
01-9504	*Justine Theresa Everett* v. *United States* Petition filed April 4, 2002 Reply brief filed August 22, 2002 Cert. denied October 7, 2002	A. Untereiner S. Wolson	We filed a cert. petition on behalf of an our client, an accountant who was convicted of bank fraud under 18 U.S.C. § 1344. In upholding the conviction, the Sixth Circuit acknowledged a conflict in the circuits over the specific intent required to violate the bank fraud statute. 270 F.3d 986 (2001). Some circuits have required proof of a specific intent to defraud the bank itself, but the Sixth Circuit held that "[i]t is sufficient if the defendant in the course of committing fraud on *someone* causes a federally insured bank to transfer funds under its possession and control."
03-862	*Excel Corp.* v. *Estate of Brianna Kriefall* Cert. petition filed December 11, 2003 (docketed December 16, 2003) Amicus brief filed February 13, 2004 Cert. denied March 22, 2004	R. Englert A. Untereiner A. Barnes	We filed an amicus brief in support of the petitioner in this case on behalf of the American Meat Institute and several other trade associations together representing more than 95% of all companies engaged in processing beef, chicken, turkey, pork, lamb, and veal products in the United States. The question presented was whether a state court may substitute its own judgment as to what constitutes "adulterated" meat for the contrary judgment of the Secretary of Agriculture, on the ground that Congress has not delegated to the Secretary the power to incorporate the central statutory terms even though USDA has thousands of inspectors stationed in every meatpacking plant applying the Secretary's interpretation on a daily basis.

No.	Caption and Status	Attorneys	Description
03-724	*F. Hoffmann La Roche Ltd.* v. *Empagran, S.A.* Cert. petition filed November 13, 2003 (docketed November 18, 2003) Brief in opposition filed November 14, 2003 Amicus brief filed November 26, 2003 Cert. granted December 15, 2003	R. Englert M. Huffman	We filed an amicus brief on behalf of the Chamber of Commerce of the United States urging the Court to review and reverse the decision of a divided panel of the D.C. Circuit allowing foreign plaintiffs who suffered no injury in the United States to recover damages under U.S. antitrust law for price fixing on products the plaintiffs purchased in other countries.
06-863	*Shane Fausey* v. *Cheryl Hiller* Cert. petition filed December 20, 2006, docketed December 21, 2006 Reply brief filed March 6, 2007 Cert. denied March 26, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, and working together with Howard Bashman, we filed a petition for a writ of certiorari on behalf of Mr. Fausey, who seeks review of a decision by the Supreme Court of Pennsylvania awarding partial custody and visitation rights regarding his minor child to the child's maternal grandmother. That court held that the federal Constitution's due process guarantee does not require a grandparent seeking such rights against a fit parent's wishes to show that harm would otherwise result to the child. Approximately two dozen state supreme courts have issued conflicting opinions on this question in the wake of *Troxel* v. *Granville*, 530 U.S. 57 (2000).

No.	Caption and Status	Attorneys	Description
08-640	*Federal Insurance Company et al.* v. *Kingdom of Saudi Arabia et al.* Cert. petition filed November 12, 2008, docketed November 14, 2008 Brief in opposition filed December 30, 2008 Views of Solicitor General invited February 23, 2009 SG brief recommending denial filed May 29, 2009 Petitioners' supplemental brief filed June 8, 2009 Cert. denied June 29, 2009	L. Robbins R. Englert A. Barnes	We represent respondent the Saudi High Commission for Relief of Bosnia and Herzegovina. The petition presents three questions, but the one relevant to our client is whether the state-sponsor-of-terrorism exception to the Foreign Sovereign Immunities Act provides the exclusive means for victims of terrorism (specifically, the terrorist attacks of September 11, 2001) to recover from foreign sovereign entities for their injuries, or whether plaintiffs may instead invoke the Act's non-commercial tort exception. The state-sponsor-of-terrorism exception applies only to countries that have been designated by the United States Government as sponsors of terrorism, and the Kingdom of Saudi Arabia has not been so designated. In addition, the district court dismissed our client on the alternative ground that there was not sufficient evidence to make out even a *prima facie* case that our client sponsored terrorism or otherwise committed a non-commercial tort.

No.	Caption and Status	Attorneys	Description
08-694	*Federal Trade Commission* v. *Rambus Inc.* Cert. petition filed November 24, 2008, docketed November 26, 2008 Brief in opposition filed January 23, 2009 Cert. denied February 23, 2009	R. Englert	Our firm's name does not appear on the brief in opposition, but we assisted respondent Rambus's lead counsel, WilmerHale, in opposing the FTC's cert. petition, which was filed without the participation of the Solicitor General. The petition challenged the D.C. Circuit's conclusion that the FTC wrongly put the burden on Rambus to prove that its alleged "deception" (which consisted of not meeting alleged "expectations," not embodied in any rule, about what patent interests it would disclose to a standard-setting organization) *did not* lead to acquisition of monopoly power. The petition further challenged the D.C. Circuit's conclusion that the FTC wrongly concluded that Rambus's "deception" was anticompetitive even if it affected only the prices Rambus could charge to license its patents and did not affect market structure. In addition to defending the D.C. Circuit's conclusions, Rambus pointed out that there is no sufficient legal or factual support for the FTC's conclusion that Rambus's conduct amounted to "deception." The D.C. Circuit did not need to reach that issue, but suggested it would have agreed with Rambus had it reached the issue.

No.	Caption and Status	Attorneys	Description
09-1499	*Feesers, Inc.* v. *Michael Foods, Inc., and Sodexho, Inc.* Cert. petition filed June 2, 2010, docketed June 9, 2010 Brief in opposition filed August 9, 2010 Cert. denied October 4, 2010	R. Englert	We represent respondent Michael Foods in this Robinson-Patman Act case. Petitioner contends that the Third Circuit erred in holding that, as a matter of law, the favored and disfavored purchasers of Michael Foods' products were not in competition with each other.
04-788	*Eugene Frye et al.* v. *Rex Tarwater et al.* Cert. petition filed December 7, 2004, docketed December 11, 2004 Brief in opposition filed February 11, 2005 Cert. denied March 21, 2005	A. Untereiner B. Willen	We represent the respondents, three Kansas City police officers who were sued after they arrested a group of anti-abortion protesters for hindering or obstructing traffic by creating a traffic hazard in violation of an anti-loitering ordinance. Among other things, the protesters were standing between the sidewalk and curb and holding large, graphic photographs of aborted and mutilated fetuses. The protesters were arrested after they were asked to either move further away from the road, or to remain where they were but without displaying the graphic poster-size photos that were creating the traffic hazard. A divided panel of the Eighth Circuit affirmed the dismissal, on qualified-immunity grounds, of the protesters' First Amendment claims against the respondent police officers.

No.	Caption and Status	Attorneys	Description
A01- A638	*Rita Gluzman* v. *United States* Application filed February 19, 2002 Application denied February 27, 2002	R. Englert A. Untereiner	We filed with Justice Ginsburg, the Circuit Justice for the Second Circuit, an application for a certificate of appealability on behalf of our client, who is the only woman ever convicted as a principal of the crime of "interstate domestic violence" contained in the Violence Against Women Act of 1994, 18 U.S.C. § 2261(a)(1).
10-896	*Harrison Central Appraisal District* v. *Peoples Gas, Light, and Coke Company* Cert. petition filed December 30, 2010, docketed January 11, 2011 Reply brief filed March 23, 2011 Cert. denied April 18, 2011	R. Englert	Along with lead counsel at Alexander, Dubose & Townsend LLP of Austin, Texas, we represent petitioner Harrison Central Appraisal District. The cert. petition presents the question whether natural gas stored in an underground storage facility is subject to *ad valorem* taxation under the Commerce Clause test stated in *Complete Auto Transit, Inc.* v. *Brady*, 430 U.S. 274 (1977). The decision we challenge is in acknowledged conflict with a decision of the Supreme Court of Oklahoma, with respect to which the Supreme Court invited the Solicitor General to express her views last year. The Solicitor General opined that the Supreme Court of Oklahoma had reached the correct result, and that the decisions of Texas intermediate appellate courts, which we are now challenging, incorrectly invalidated the state tax at issue.

No.	Caption and Status	Attorneys	Description
10-1303	*Ava Heydt-Benjamin* v. *Thomas Heydt-Benjamin* Cert. petition filed April 22, 2011, docketed April 25, 2011 Motion for leave to file amicus brief filed May 19, 2011 Cert. denied (and motion for leave to file granted) June 27, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a motion for leave to file and lodged an amicus brief on behalf of Professors Linda D. Elrod and Robert G. Spector. We urge a grant of this cert. petition, which raises a question about the proper test for determining a child's country of habitual residence for purposes of the Hague Convention on the Civil Aspects of International Child Abduction.
01-950 and 01-1018	*Hillside Dairy* v. *Lyons* and *Ponderosa Dairy* v. *Lyons* Cert. petitions filed December 26, 2001 Views of Solicitor General invited April 15, 2002 SG's brief filed December 4, 2002 Supplemental brief in response to SG's brief filed December 16, 2002 Cert. granted January 10, 2003	L. Robbins R. Englert	After the Court on April 15, 2002, invited the Solicitor General to file a brief expressing the views of the United States, we were retained to work together with petitioners' existing counsel to communicate with the SG about this case and to file a supplemental brief responding to the SG's brief. The main question presented was whether Section 144 of the 1996 Farm Bill, which directs courts not to "construe" "any provision of law" to prevent California from regulating certain aspects of milk composition and labeling, exempted from Commerce Clause scrutiny California's entire economic scheme of "pricing and pooling" regulation for milk.

No.	Caption and Status	Attorneys	Description
08-40	*Joseph Hirko* v. *United States* Cert. petition filed July 8, 2008, docketed July 9, 2008 Reply brief filed October 27, 2008 Cert. granted in companion case, No. 08-67, *Yeager* v. *United States*, November 14, 2008. The Court did not act on the *Hirko* petition and appears to be holding it pending disposition of *Yeager,* which was argued March 23, 2009, and decided in favor of Yeager (Hirko's co-defendant) on June 18, 2009. Petition granted, judgment vacated, and case re-manded for further proceedings in light of *Yeager* June 29, 2009.	L. Robbins A. Strasser M. Stancil	Our petition asked the Court to resolve (a) whether the court of appeals, in conflict with the Sixth, Seventh, Ninth, and Eleventh Circuits, correctly declined to afford collateral estoppel effect to an acquittal solely because the jury also hung on one or more factually related counts and (b) alternatively, whether the court of appeals' holding that an acquittal may have rested on the jury's *failure* to agree unanimously on the sole disputed element of the offense should be summarily reversed or certiorari granted to resolve conflicts created by that decision.
03-18	*Adrian Horien* v. *City of Rockford, Illinois* Cert. petition filed July 1, 2003 (docketed July 2, 2003) Reply brief filed August 15, 2003 Cert. denied October 6, 2003	A. Untereiner A. Siegel M. Huffman	We filed a petition for a writ of certiorari urging the Court to review and reverse the decision of an Illinois state court upholding, against First Amendment and Due Process (vagueness) challenges, our client's conviction for making "annoying" noises during an anti-abortion protest.

No.	Caption and Status	Attorneys	Description
07-208	*Indiana* v. *Edwards* Cert. petition filed August 15, 2007 Response requested Sept. 13, 2007 Brief in opposition filed November 6, 2007 Cert. granted December 7, 2007	M. Stancil	In connection with the University of Virginia Supreme Court Litigation Clinic, we filed a brief in opposition on behalf of respondent Ahmad Edwards. Edwards was deemed competent to stand trial but incompetent to exercise his right to represent himself. The Indiana Supreme Court reversed his conviction, holding that the standards for competency and self-representation are identical. The State contends in its petition for certiorari that those competency standards may be – and should be – different, and that the courts are divided on that legal question.
02-572	*Intel Corp.* v. *Advanced Micro Devices, Inc.* Cert. petition filed October 11, 2002, docketed October 16, 2002 Amicus brief filed November 15, 2002 Views of Solicitor General requested January 13, 2003 SG's brief filed October 6, 2003 Supplemental brief of respondent withdrawing opposition to certiorari filed October 21, 2003 Cert. granted November 10, 2003	R. Englert S. Wolson	We filed an amicus brief on behalf of the Chamber of Commerce of the United States in support of the petitioner in this case. The question presented was whether 28 U.S.C. § 1782 authorizes a private party, which is a complainant in an investigative proceeding before the Directorate General for Competition of the Commission of the European Communities but is not involved in litigation in the EC, to obtain discovery of materials – not discoverable in the EC – in the absence of any pending or imminent "proceeding" before a foreign tribunal.

No.	Caption and Status	Attorneys	Description
08-656	*Teresa Jezierski* v. *Holder* Cert. petition filed November 17, 2008 Reply brief filed March 4, 2009 Cert. denied March 23, 2009	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition on behalf of Ms. Jezierski seeking review of two questions: (1) Whether the jurisdiction-stripping provision of the Immigration and Nationality Act (INA) permits the Attorney General to divest the federal courts of the power of review simply by declaring by administrative regulation that a particular decision is discretionary; and (2) if so, whether the jurisdiction-restoring provision of the INA nevertheless preserves review over mixed questions of law and fact.
06-739	*Walter W. Kelley, Trustee* v. *Ricky Wayne Bracewell* Cert. petition filed November 27, 2006, docketed November 28, 2006 Reply brief filed February 20, 2007 Cert. denied March 19, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we prepared a petition for a writ of certiorari on behalf of Mr. Kelley, who is the bankruptcy trustee for respondent's Chapter 7 estate. We argued that the Court should review the Eleventh Circuit's incorrect holding that federal crop disaster payments are not "property" of the bankruptcy estate, where the crop losses were sustained pre-petition but the authorizing federal legislation was enacted post-petition.

No.	Caption and Status	Attorneys	Description
03-377	*Koons Buick Pontiac GMC, Inc.* v. *Nigh* Cert. petition filed September 4, 2003, docketed September 11, 2003 Amicus brief filed October 14, 2003 Cert. granted January 20, 2004	R. Englert A. Untereiner M. Huffman	We filed an amicus brief in support of petitioner Koons Buick on behalf of the American Bankers Association, the American Financial Services Association, and the Consumer Bankers Association. The question presented is whether Congress in 1995 intended to eliminate the cap that had existed since 1968 on statutory penalties for non-mortgage, non-lease violations of the Truth in Lending Act (TILA), and allow unlimited liability for such violations. A divided panel of the Fourth Circuit held, in an opinion by Judge Luttig, that it does not matter what Congress intended, only what Congress wrote, and that the punctuation of the amended statute requires a conclusion that the cap was removed. The Seventh Circuit disagrees.
06-1589	*Lanard Toys, Inc.* v. *General Motors Corp.* Cert. petition filed and docketed May 31, 2007 Reply brief filed August 15, 2007 Cert. denied October 1, 2007	R. Englert G. Orseck D. Taaffe	Together with Greenebaum Dell & McDonald PLLC, we prepared a cert. petition seeking review of the Sixth Circuit's affirmance of the district court's holding that Lanard's toy trucks infringe General Motors' unregistered trade dress in certain design features of its Humvee and Hummer vehicles. Lanard contended that GM failed to prove that the design features are "non-functional" as required by *TrafFix Devices, Inc.* v. *Mktg. Displays, Inc.*, 532 U.S. 23 (2001), and that the design features therefore were not entitled to protection.

No.	Caption and Status	Attorneys	Description
06-480	*Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.* Cert. petition filed October 4, 2006, docketed October 5, 2006 Amicus brief filed November 6, 2006 Cert. granted December 7, 2006	R. Englert D. Russell	On behalf of CTIA – The Wireless Association, we filed an amicus brief in support of this cert. petition. We argue that the Court should grant cert. to reconsider the rule set in 1911 that minimum resale price maintenance is a *per se* violation of the antitrust laws. We argue that vertical price restraints, like the vertical non-price restraints the Court has taken out of the *per se* category, are often procompetitive and therefore should be judged under the rule of reason.
08-8466	*Daniel J. Leveto* v. *United States of America* Cert. petition filed January 30, 2009, docketed February 3, 2009 Reply brief filed May 27, 2009 Cert. denied June 15, 2009	A. Untereiner D. Walfish	Mr. Leveto filed a pro se cert. petition, but we represent him for purposes of filing a reply to the government's brief in opposition. Mr. Leveto was charged with tax evasion and initially waived his right to counsel, intending to proceed pro se. Before trial he changed his mind and sought to withdraw his waiver. The Third Circuit, in a ruling that conflicts with opinions from many other appellate courts, upheld the trial court's refusal to appoint counsel.

No.	Caption and Status	Attorneys	Description
09-1183	*Little Rock Cardiology Clinic, P.A.* v. *Baptist Health, et al.* Cert. petition filed March 29, 2010, docketed March 31, 2010 Brief in opposition filed June 1, 2010 Cert. denied June 28, 2010	R. Englert D. Russell	Along with lead counsel at Ober Kaler, we represented respondent Baptist Health in this antitrust case. The petition asked the Court to review the Eighth Circuit's holding that a complaint was properly dismissed for failure to allege either a proper product market or a proper geographic market.
09-5844	*Tarry Cordell London* v. *United States* Cert. petition filed and docketed August 11, 2009 Reply brief filed November 24, 2009 Cert. denied November 29, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a reply brief on behalf of Mr. London, who petitioned for certiorari *pro se*. The *London* case raises the same issues as the *Abbott* case discussed above, and was held pending disposition of *Abbott*, which was granted January 25, 2010, but then denied after the government prevailed in *Abbott*.

No.	Caption and Status	Attorneys	Description
05-1433	*James J. Mackey and Samuel Severino* v. *Compass Marketing, Inc.* Cert. petition filed May 10, 2006, docketed May 11, 2006 Petition dismissed voluntarily under Rule 46 September 22, 2006, because underlying case had been settled	L. Robbins A. Untereiner A. Barnes	We represented Mr. Severino, and Covington & Burling represented Mr. Mackey. Our petition challenged the holdings of the Maryland Court of Appeals that a "conspiracy" theory of personal jurisdiction comports with constitutional due process and that the theory may constitutionally be applied to a nonresident who exercised no control over the alleged co-conspirator, derived no benefit from the alleged conspiracy, and is charged with acts of the co-conspirator that occurred outside the forum but allegedly had effects within the forum.
08-118	*Eduardo A. Masferrer* v. *United States* Cert. petition filed and docketed July 28, 2008 Waiver of right to respond filed July 31, 2008 Response requested by Court September 8, 2008 Reply brief filed December 22, 2008 Cert. denied January 21, 2009	L. Robbins M. Waldman M. Madden	Our petition asks the Court to determine whether a standard of proof higher than preponderance of the evidence applies to a judge's post-verdict determination of facts with a disproportionate impact on sentencing, and whether the loss causation principles of *Dura Pharmaceuticals* v. *Broudo*, announced in the civil context, apply in the context of criminal sentencing.

No.	Caption and Status	Attorneys	Description
03-1532	*MasterCard International Incorporated* v. *United States* Cert. petition filed May 10, 2004, docketed May 13, 2004 Government's brief in opposition and amicus briefs of ChevronTexaco, Shell, Independent Community Bankers of America, The Small Business Survival Committee, and Card Services for Credit Unions filed August 13, 2004 Reply brief filed August 25, 2004 Cert. denied October 4, 2004	R. Englert D. Russell M. Huffman D. Geyser	We have filed a petition asking the Court to review the holding of the Second Circuit that loyalty provisions separately adopted by MasterCard and Visa – provisions that preclude banks that issue MasterCard or Visa cards, respectively, from issuing American Express or Discover cards as well – violate Section 1 of the Sherman Act.

No.	Caption and Status	Attorneys	Description
09-490	*Mayo Collaborative Services (d/b/a Mayo Medical Laboratories) and Mayo Clinic Rochester* v. *Prometheus Laboratories, Inc.* Cert. petition filed October 22, 2009, docketed October 26, 2009 Amicus brief filed November 25, 2009 Cert. granted, judgment vacated, and case remanded for further consideration in light of *Bilski* v. *Kappos*, No. 08-964 (June 28, 2010), on June 29, 2010	R. Englert D. Walfish	We represent clinical laboratories that filed an amicus brief supporting petitioners. The question presented is whether 35 U.S.C. § 101 is satisfied by a patent claim that covers observed correlations between patient test results and patient health, so that the claim effectively preempts all uses of those naturally occurring correlations.

No.	Caption and Status	Attorneys	Description
01-1778	*Hon. John McBryde* v. *Committee to Review Circuit Council Conduct & Disability Orders, et al.* Cert. petition filed June 3, 2002 (docketed June 6, 2002) Reply brief filed August 20, 2002 Cert. denied October 7, 2002	A. Siegel	We were co-counsel for Judge John McBryde, of the U.S. District Court for the Northern District of Texas, in a case that raised novel and interesting constitutional issues concerning the statute that governs the disciplining of federal judges. In a split decision (reported at 264 F.3d 52), a D.C. Circuit panel held that certain constitutional claims were moot and that others were foreclosed from judicial review; the court rejected two constitutional claims on the merits. The petition argued among other things that, as Judge Tatel wrote in dissent from denial of rehearing en banc, the panel's decision on mootness and preclusion is inconsistent with binding Supreme Court precedent. The petition also argued that the panel majority was wrong on the merits.

No.	Caption and Status	Attorneys	Description
05-827 and 05-941	*James J. McMonagle, The Legal Representative for Future Claimants* v. *Credit Suisse First Boston As Agent, et al.* Cert. petition filed December 23, 2005, docketed January 3, 2006 *Official Representatives of the Bondholders and Trade Creditors of Debtors Owens Corning, et al.* v. *Credit Suisse First Boston As Agent, et al.* Cert. petition filed January 26, 2006, docketed January 27, 2006 Brief in opposition filed March 29, 2006 Cert. denied May 1, 2006	R. Englert D. Taaffe	Together with Weil Gotshal & Manges and Kramer Levin Naftalis & Frankel, we represented respondent CSFB in opposing certiorari in this case. Petitioners challenged the decision of a unanimous Third Circuit panel reversing an order of "substantive consolidation" of debtor Owens Corning with its subsidiaries in a bankruptcy case. The effect of substantive consolidation would have been to shift roughly a billion dollars of recoveries in bankruptcy from bank debtholders to tort claimants and other creditors.

No.	Caption and Status	Attorneys	Description
05-236	*Merck & Co., Inc.* v. *Teva Pharmaceuticals, Inc.* Cert. petition filed August 19, 2005, docketed August 23, 2005 Reply brief filed September 28, 2005 Cert. denied October 17, 2005	R. Englert	Together with Howrey LLP, we represented petitioner Merck & Co. We challenged the Federal Circuit's decision – issued over a dissent from a member of the panel, and three more judges' dissent from denial of rehearing en banc – to invalidate a Merck patent that had been upheld after a lengthy bench trial. We argued that the Federal Circuit did not give sufficient deference to the district court's findings of fact and that the Federal Circuit improperly dismissed strong evidence of the commercial success of Merck's invention in concluding (contrary to the district court) that the invention was "obvious."
08-1482	*Tommy Zeke Mincey* v. *United States* Cert. petition filed May 21, 2009, docketed June 2, 2009 Brief in opposition filed September 2, 2009 Reply brief filed September 15, 2009 Cert. denied October 13, 2009	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Mincey raising the question whether Mincey had a reasonable expectation of privacy in his girlfriend's rental car, which he was driving with her permission but in alleged violation of the rental agreement. Our co-counsel on the case was Matthew R. Segal, Assistant Federal Defender in the Western District of North Carolina.

No.	Caption and Status	Attorneys	Description
02-1865	*3M Co. (fka Minnesota Mining and Manufacturing Co.)* v. *LePage's, Inc.* Cert. petition filed June 20, 2003 Brief in opposition filed July 28, 2003 Views of Solicitor General requested October 6, 2003 Solicitor General's brief (recommending denial) filed May 28, 2004 Cert. denied June 30, 2004	R. Englert	We represented the plaintiff/respondent in this case, in which 3M challenged the 7-3 en banc decision of the Third Circuit upholding a $68.5 million treble-damages verdict under Section 2 of the Sherman Act. The Third Circuit affirmed the jury's verdict that 3M's bundled rebates and exclusive dealing constituted unlawful monopolization.
05-1328	*Francisco Munoz* v. *United States* Cert. petition filed and docketed April 19, 2006 Cert. denied May 22, 2006	L. Robbins G. Poe R. Li Wai Suen	Our petition for a writ of certiorari asked the Court to resolve circuit splits concerning federal sentencing issues. The petition also asked the Court to resolve a circuit split concerning whether different standards of review apply to claims of constitutional and non-constitutional error where the defendant fails to object in the trial court.
08-1172	*Joseph P. Nacchio* v. *United States* Cert. petition filed March 20, 2009, docketed March 23, 2009 Amicus brief filed April 22, 2009 Cert. denied October 5, 2009	L. Robbins G. Orseck M. Stancil	On behalf of the Chamber of Commerce of the United States of America, we filed an amicus brief in support of this cert. petition, which challenged the criminal insider-trading convictions of the former CEO of Qwest Communications. We argue dthat the en banc Tenth Circuit misapplied materiality standards to forward-looking internal corporate risk assessments when it upheld Nacchio's convictions.

No.	Caption and Status	Attorneys	Description
05-198	*Nokia, Inc.* v. *Pinney* Cert. petition filed and docketed August 10, 2005 Amicus brief filed October 3, 2005 Cert. denied October 31, 2005	A. Untereiner D. Taaffe	We filed an amicus brief for the Product Liability Advisory Council in support of the petition in this case. The petition asked the Court to review a Fourth Circuit decision holding, by a 2-1 vote, that federal statutes and regulations do not preempt a lawsuit alleging that wireless telephones, although admittedly in compliance with federal safety standards, were defective and unreasonably dangerous products under state law because they exposed users to unsafe levels of radio frequency emissions.
06-130	*Palakovich* v. *Thomas* Cert. petition filed July 24, 2006, docketed July 27, 2006 Brief in opposition filed November 13, 2006 Cert. denied January 8, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we prepared a successful brief in opposition to this cert. petition filed by the Philadelphia DA's Office. The petition challenged the Third Circuit's grant of a writ of habeas corpus based on ineffective assistance of counsel.

No.	Caption and Status	Attorneys	Description
06-3	*Payless ShoeSource, Inc.* v. *Adidas America, Inc., et al.* Cert. petition filed June 29, 2006, docketed July 3, 2006 Reply brief filed September 5, 2006 Cert. denied October 2, 2006	A. Untereiner	Together with Lathrop & Gage L.C., we filed a petition for a writ of certiorari to challenge the Ninth Circuit's decision upholding the use of Fed. R. Civ. P. 54(b) to enter a partial final judgment in a case involving various trademark, trade dress, and contract claims and counterclaims, where there is substantial factual and legal overlap between the adjudicated claims and the claims and counterclaims that remain pending in the district court.

No.	Caption and Status	Attorneys	Description
07-806	*Philip Morris USA Inc. et al.* v. *Ronald Accord et al.* Cert. petition filed Dec. 17, 2007 Amicus brief filed Jan. 16, 2008 Cert. denied February 25, 2008	A. Untereiner M. Stancil	The Chamber of Commerce of the United States of America hired us to file an amicus brief in this case, which arises out of approximately 700 consolidated tobacco-related lawsuits in the West Virginia courts. The petitioners are challenging a reverse-bifurcation plan under which a jury in Phase I (set to begin in March 2008) will determine "general" issues of liability under a variety of legal theories (but no individual issues such as causation, reliance, or compensatory damages), liability for punitive damages, and the "multiplier" that should be applied to future compensatory awards to yield the correct amount of punitive damages. In Phase II, different factfinders will decide compensatory damages and the other remaining issues on liability (and for the first time hear evidence relating to individual plaintiffs). The petitioners are four tobacco companies that unsuccessfully sought a writ of prohibition from the West Virginia Supreme Court of Appeals to bar this trial plan on the ground that it violates due process and is inconsistent with the Supreme Court's cases involving punitive damages, including *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408 (2003), and *Philip Morris USA* v. *Williams*, 127 S. Ct. 1057 (2007).

No.	Caption and Status	Attorneys	Description
07-1272	*Philip Morris USA Inc. et al.* v. *Deania M. Jackson et al.* Cert. petition filed April 7, 2008, docketed April 9, 2008 Reply brief filed May 20, 2008 Cert. denied June 9, 2008	A. Untereiner R. Englert	We filed a petition for a writ of certiorari to challenge a decision of the Louisiana Fourth Circuit Court of Appeal upholding liability to a state-wide class of smokers, based on state-law claims that include challenges to statements authorized by the Federal Trade Commission regarding tar and nicotine yields in cigarette advertising, notwithstanding the cigarette companies' preemption defenses. We asked that the petition be held pending the disposition of *Altria Group* v. *Good*, No. 07-562.

No.	Caption and Status	Attorneys	Description
10-735	*Philip Morris USA Inc., et al.* v. *Deania M. Jackson, et al.* Stay application filed September 13, 2010 Stay pending receipt of a response entered September 14, 2010 Response to stay application filed September 21, 2010 Reply in support of stay application filed September 23, 2010 Stay pending filing and disposition of cert. petition granted by Justice Scalia, as Circuit Justice, September 24, 2010 Cert. petition filed and docketed December 2, 2010 Reply brief filed February 16, 2011 Supplemental brief (address *Wal-Mart* v. *Dukes* filed June 21, 2011 Cert. denied June 27, 2011	A. Untereiner M. Stancil	We represent Philip Morris USA Inc. Together with other tobacco companies, we have sought and obtained a stay of, and seek certiorari to review, the judgment of the Louisiana Court of Appeal, Fourth Circuit, requiring petitioners to pay $241.5 million plus interest to fund a ten-year smoking cessation program for the benefit of a class of current and former Louisiana smokers, supposedly numbering in the hundreds of thousands. We contend that the judgment has no connection to any proven actual injury and resulted from a trial that radically departed from traditional methods of civil adjudication by abandoning a host of due process safeguards, including the right to cross-examine a party opponent. In granting our stay application on September 24, 2010, Justice Scalia observed (among other things) that it is "reasonably probable that four Justices will vote to grant certiorari, and significantly possible that the judgment below will be reversed."

No.	Caption and Status	Attorneys	Description
07-659	*Phoenix of Broward, Inc.* v. *McDonald's Corp.* Cert. petition filed November 19, 2007, docketed November 20, 2007 Reply brief filed February 19, 2008 Cert. denied March 17, 2008	M. Stancil	In connection with the University of Virginia Supreme Court Litigation Clinic, we prepared a cert. petition on behalf of Phoenix, which owns a Florida Burger King franchise. Phoenix brought suit against McDonald's, alleging that the latter's advertisement of its corrupt Monopoly prize promotion game (some 50 individuals ultimately were convicted in connection with a multiyear scheme to divert winning game pieces) violated the Lanham Act. The Eleventh Circuit dismissed Phoenix's claim on prudential standing grounds, furthering widespread conflict among the circuits on the proper standing analysis under the Act.

No.	Caption and Status	Attorneys	Description
08-824	*James E. Pietrangelo, II* v. *Robert M. Gates, Secretary of Defense, et al.* Cert. petition filed December 23, 2008, docketed January 5, 2009 Opposition to motion to strike, motion to withdraw brief, and notice of intention filed February 17, 2009 Brief for the Cook Respondents filed May 6, 2009 Cert. denied (and motion to strike denied and motion to withdraw granted) June 8, 2009	R. Englert J. Windom	Petitioner Pietrangelo and our clients, Thomas Cook et al., were all discharged from the military under the "Don't Ask, Don't Tell" policy and all filed suit in the United States District Court for the District of Massachusetts challenging the policy on various constitutional grounds. After the district court dismissed the complaint for failure to state a claim, Mr. Pietrangelo and our clients pursued separate (but consolidated) appeals to the First Circuit, which affirmed by a divided vote. Mr. Pietrangelo filed a cert. petition, but our clients (represented at the time by other counsel) elected not to do so. Now our clients are respondents under the Supreme Court's Rule 12.6. Through prior counsel, our clients on January 26 filed a brief agreeing with Mr. Pietrangelo's arguments on the merits but not supporting a grant of certiorari. Mr. Pietrangelo has moved to strike the January 26 brief. We filed a response to his motion in February and filed a substitute brief May 6, again agreeing with Mr. Pietrangelo's arguments on the merits but not supporting a grant of certiorari.

No.	Caption and Status	Attorneys	Description
05-85	*Powerex Corp.* v. *Reliant Energy Services, Inc., et al.* Cert. petition filed July 15, 2005, docketed July 18, 2005 Amicus brief filed August 17, 2005 Views of Solicitor General requested April 17, 2006 Solicitor General brief recommending a grant of cert. filed November 14, 2006 Cert. granted January 19, 2007	R. Englert R. Li Wai Suen	We filed an amicus brief for the Province of British Columbia challenging a Ninth Circuit decision holding that petitioner Powerex – which is responsible for carrying out the obligations of Canada under the Columbia River Treaty – is not an "organ" of the Province so as to be entitled to certain protections under the Foreign Sovereign Immunities Act. The Ninth Circuit decision has the effect of allowing plaintiffs to pursue a politically charged case, growing out of California's 2000-2001 energy crisis, to proceed before state judges to consider charges that the Federal Energy Regulatory Commission has already rejected on the merits. The Government of Canada also filed an amicus brief supporting the petition.
10-898	*Princo Corporation and Princo America Corporation* v. *International Trade Commission and U.S. Philips Corporation* Cert. petition filed January 5, 2011, docketed January 11, 2011 Reply brief filed April 25, 2011 Cert. denied May 16, 2011	R. Englert	Along with lead counsel at Perkins Coie and Orrick, Herrington & Sutcliffe, we represent petitioner Princo. Our cert. petition challenges the holding of a 7-2 en banc Federal Circuit decision that the doctrine of patent misuse does not extend to an agreement between Philips and Sony to suppress the only possible competition to Philips's patented invention, by paying Sony a portion of the royalties otherwise due to Philips in exchange for precluding anyone from using Sony's competing patent.

No.	Caption and Status	Attorneys	Description
10-113	*Robin Eddie Rivera-Martinez* v. *United States* Cert. petition filed July 19, 2010, docketed July 21, 2010 Reply brief filed October 5, 2010 Cert. granted, judgment vacated, and case remanded for further consideration in light of *Freeman* v. *United States* June 28, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a cert. petition on behalf of Mr. Rivera-Martinez. The petition asks the Court to resolve a circuit split over whether a defendant who was sentenced pursuant to a binding plea agreement of the type described in Fed. R. Crim. P. 11(c)(1)(C) for conspiring to distribute crack cocaine is entitled to a sentence reduction by reason of retroactive amendments to the Sentencing Guidelines designed to lower sentences for crack cocaine offenses. On September 28, 2010, the Court granted certiorari in a different case presenting the same question, *Freeman* v. *United States*, No. 09-10245.
06-1545	*R.J. Reynolds Tobacco Co. et al.* v. *Howard A. Engle et al.* Cert. petition filed May 20, 2007, docketed May 21, 2007 Amicus brief filed August 14, 2007 Cert. denied October 1, 2007	A. Untereiner	The Product Liability Advisory Council has hired us to prepare an amicus brief in support of the petition challenging rulings of the Florida Supreme Court with respect to issue preclusion and preemption.

No.	Caption and Status	Attorneys	Description
08-1453	*Tommy Ray Rollins, Jr.* v. *United States* Cert. petition filed May 21, 2009, docketed May 26, 2009 Waiver of right to respond filed June 2, 2009 Response requested by Court June 16, 2009 Brief in opposition filed September 16, 2009 Reply brief filed September 29, 2009 Cert. denied October 20, 2009	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Rollins. The question presented was whether a federal district court may order a federal sentence to be served consecutively to a not-yet-imposed state sentence arising from common events.
05-1588	*Safeguard International Fund, L.P.* v. *IFC Interconsult, AG* Cert. petition filed and docketed June 13, 2006 Reply brief filed August 22, 2006 Cert. denied October 2, 2006	R. Englert A. Yao	Together with Pepper Hamilton LLP, we filed a petition for a writ of certiorari on behalf of the Fund, which was held liable for a judgment entered against a different entity. We argue that the federal court had no ancillary jurisdiction over the plaintiff's garnishment action against the Fund and that the Third Circuit's assertion of jurisdiction is inconsistent with both *Peacock* v. *Thomas*, 516 U.S. 349 (1996), and decisions of lower courts interpreting *Peacock*.

No.	Caption and Status	Attorneys	Description
04-1244	*Scheidler* v. *National Organization for Women, Inc.* Cert. petition filed March 16, 2005, docketed March 18, 2005 Brief in opposition filed May 11, 2005 Reply brief filed May 24, 2005 Cert. granted June 28, 2005	A. Untereiner R. Englert K. Zecca B. Willen	Our petition, which the Court granted for full briefing and argument on June 28, 2005, asked the Court to enforce its mandate from its 2003 decision in this case, which held that "all of the predicate acts supporting the jury's finding of a RICO violation must be reversed," and to resolve the questions whether the Hobbs Act criminalizes acts of "violence" wholly unconnected to either extortion or robbery, and whether injunctive relief is available in a private action under RICO. The Court granted cert. on the latter question in this case in 2002 but found it unnecessary to resolve because, "[w]ithout an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." The Seventh Circuit on remand, over three dissents, determined that not all of the predicate acts supporting the jury's finding of a RICO violation had been reversed and that the injunction issued by the district court might not need to be vacated.

No.	Caption and Status	Attorneys	Description
01-1118	*Joseph Scheidler et al.* v. *National Organization of Women et al.* Cert. petition filed January 28, 2002 Respondent Operation Rescue's brief in support of the petition filed February 20, 2002 Brief in opposition filed March 4, 2002 Reply brief filed March 19, 2002 Cert. granted limited to Questions 1 and 2 April 22, 2002	A. Untereiner A. Siegel K. Zecca S. Wolson	We represented the petitioners – three individuals and one organization involved in anti-abortion protests – who were found liable under RICO and, on that basis, subjected to a nationwide injunction restricting their future activities at abortion clinics. The petition raised three questions: (1) whether injunctive relief is available in a private civil action brought under RICO, 18 U.S.C. § 1964; (2) whether the predicate crime of extortion under the Hobbs Act, 18 U.S.C. § 1951 – which is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear" – criminalizes the activities of political protestors who obstruct access to business premises and interfere with putative customers' ability to obtain services there; and (3) whether the jury verdict and the district court's procedures and instructions satisfy the scrutiny required by the First Amendment.
01-1119	*Operation Rescue* v. *National Organization of Women et al.* Cert. petition filed January 28, 2002 Cert. granted limited to Questions 1 and 2 presented by No. 01-1118 April 22, 2002	A. Untereiner	In this case, we represented the same three individuals and one organization that were the petitioners in No. 01-1118. The petition raised the same three issues presented in No. 01-1118 as well as the following issue: "Whether civil RICO liability may be imposed where the jury is instructed on 'generic' state extortion law, instead of the pertinent elements of each state's extortion law, as a RICO predicate offense."

No.	Caption and Status	Attorneys	Description
04-1352	*Operation Rescue* v. *National Organization for Women, Inc.* Cert. petition filed April 7, 2005, docketed April 11, 2005 Brief in opposition filed May 11, 2005 Reply brief filed May 23, 2005 Cert. granted June 28, 2005	A. Untereiner R. Englert K. Zecca B. Willen	The Court granted this petition and consolidated it with our No. 04-1244, which challenged the same judgment and raised the same issues.

No.	Caption and Status	Attorneys	Description
06-1454, 06-1457, 06-1462, and 06-1468	*Sempra Generation, et al.* v. *Public Utilities Commission of the State of California, et al.* *Morgan Stanley Capital Group, Inc., et al.* v. *Public Utility District No. 1 of Snohomish County, Washington, et al.* *Calpine Energy Services, L.P., et al.* v. *Public Utility District No. 1 of Snohomish County, Washington, et al.* *Dynegy Power Marketing, Inc., et al.* v. *Public Utilities Commission of the State of California, et al.* Cert. petitions filed May 3, 2007, docketed May 4 and May 7, 2007 Amicus brief filed August 6, 2007 Cert. granted in Nos. 06-1457 and 06-1462 September 25, 2007 Cert. granted, judgment vacated, and cases remanded for further consideration in light of *Morgan Stanley* in Nos. 06-1454 and 06-1468 June 27, 2008	R. Englert G. Orseck D. Russell	We represent the International Swaps and Derivatives Association and the Financial Institutions Energy Group as amici curiae supporting these petitions. Petitioners challenge Ninth Circuit decisions that overturned FERC rulings that the rates in certain long-term energy contracts entered into during California's energy crisis were legally permissible.

No.	Caption and Status	Attorneys	Description
06-717	*Dale L. Smith* v. *Wisconsin* Cert. petition filed November 22, 2006, docketed November 24, 2006 Cert. denied January 8, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Smith, who was convicted of DUI (second offense). We argue that the Supreme Court of Wisconsin erred – and put itself in conflict with the Seventh Circuit and numerous state courts – in concluding that the Sixth Amendment does not require exclusion of a prospective juror who was employed by the office of the District Attorney prosecuting the case.
01-1200	*Southern Co. et al.* v. *Alderson et al.* Amicus brief filed April 19, 2002 Cert. denied May 20, 2002	A. Untereiner R. Englert	We represented DaimlerChrysler AG as amicus curiae in this case, which presented the following question: "Whether Illinois courts may, consistent with the Due Process Clause, assert personal jurisdiction over out-of-state corporations that have no offices, agents, or employees in Illinois, to adjudicate claims arising from an industrial accident that occurred at a plant located outside of Illinois, solely on the ground that much of the product of that plant is sold, outside of Illinois, to an Illinois firm, when that contact between the defendants and Illinois is unrelated to plaintiffs' claims." We asked the Court to hold this case for, or grant it together with, *DaimlerChrysler* v. *Olson*, No. 01-929.

No.	Caption and Status	Attorneys	Description
07-552	*Sprint Communications Co.* v. *APCC Services, Inc.* Cert. petition filed October 25, 2007, docketed October 26, 2007 Waiver of response filed October 26, 2007; response requested November 2, 2007 Brief in opposition filed December 7, 2007 Cert. granted January 4, 2008	R. Englert D. Russell D. Taaffe	We represent respondents. Petitioners challenge a 2005 decision of the D.C. Circuit holding that assignees of claims have standing even if they have agreed to return to the assignors any amounts recov-ered in litigation. The 2005 decision resolved a dif-ferent issue against respondents, we sought cert., the Court vacated and remanded, and the D.C. Circuit in 2007 resolved the remanded issue in respondents' favor. Petitioners now raise the issue they lost and respondents won in 2005.

No.	Caption and Status	Attorneys	Description
09-1353	*Iron Thunderhorse* v. *Bill Pierce, Dir. of Chaplaincy Services, et al.* Cert. petition filed May 4, 2010, docketed May 7, 2010 Brief in opposition filed June 7, 2010 Reply brief filed June 11, 2010 Views of Acting Solicitor General invited October 4, 2010 Solicitor General's brief recommending summary reversal or denial of certiorari filed December 1, 2010 Cert. denied January 10, 2011	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a cert. petition on behalf of Mr. Thunderhorse challenging the treatment by the Texas Department of Criminal Justice of inmates seeking religious accommodation of their long hair. The question presented is: Did the Fifth Circuit misinterpret the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc *et seq.*, to require only a minimal showing that a prison rule against long hair was the least restrictive means of furthering a compelling government interest, contrary to the decisions of other circuits and contrary to undisputed evidence that the rule does not apply at all to female prisoners, is not followed in many prisons across the country, and is not uniformly enforced within the prison system itself?

No.	Caption and Status	Attorneys	Description
08-889	*Tri-Union Seafoods, L.L.C., dba Chicken of the Sea* v. *Deborah Fellner* Cert. petition filed January 13, 2009, docketed January 15, 2009 Amicus brief filed March 3, 2009 Cert. denied April 20, 2009	A. Untereiner M. Madden	We represented the Chamber of Commerce of the United States of America as amicus curiae in support of the petition. We argued that (a) no "presumption of preemption" arises in conflict preemption cases, and (b) state-law tort claims based on failure to warn of the risks of methylmercury in tuna fish products are preempted by the Federal Food, Drug, and Cosmetic Act and regulatory actions of the Food and Drug Administration, including a written determination that state-law warning requirements concerning methyl-mercury in tuna products are preempted by federal law.
00-1397	*UAL Corporation dba United Airlines* v. *Joanne Fielder* Cert. petition filed March 7, 2001 Reply brief filed June 8, 2001 Petition granted, judgment vacated, and case remanded June 17, 2002	R. Englert	We represented the petitioner. We challenged a Ninth Circuit decision holding that the "continuing violation doctrine" allows a plaintiff to challenge, and recover damages for, actions of alleged discrimination and sex-ual harassment that were not the subject of a timely EEOC charge. The Court held our petition pending its disposition of *National Railroad Passenger Corp. (Amtrak)* v. *Morgan*, No. 00-1614, and then – after deciding *Morgan* June 10 – entered a "GVR" order in light of *Morgan* June 17.

No.	Caption and Status	Attorneys	Description
04-522	*United Healthcare Group, Inc.* v. *Klay* Cert. petition filed and docketed October 19, 2004 Amicus brief filed December 3, 2004 Cert. denied January 10, 2005	R. Englert D. Russell B. Willen	On behalf of the Chamber of Commerce of the United States, we have filed an amicus brief in support of this petition, which asks the Court to review and reverse an Eleventh Circuit decision upholding the certification of a massive RICO class action against HMOs. The petition argues that the Eleventh Circuit wrongly accepted the plaintiffs' allegations as true for purposes of class certification rather than engaging in the "rigorous analysis" the Supreme Court has required, and that the Eleventh Circuit wrongly presumed reliance by each plaintiff rather than recognizing that reliance requires individualized proof.
09-978 and 09-994	*United States* v. *Philip Morris USA, Inc., et al.* Cert. petition filed and docketed February 19, 2010 *Tobacco-Free Kids Action Fund, et al.* v. *Philip Morris USA, Inc., et al.* Cert. petition filed February 19, 2010, docketed February 23, 2010 Brief in opposition filed May 25, 2010 Cert. denied June 28, 2010	A. Untereiner R. Englert M. Stancil	We represented respondent BATCo. The government argued that RICO provides for the remedy of disgorgement and seeks some $280 billion from respondent tobacco companies. The government's previous petition for certiorari on this issue was denied in 2005, but the government apparently contends that the denial of cert. when the case was in an interlocutory posture does not preclude another attempt. A private petition also raises additional issues concerning other remedies the D.C. Circuit did not order, and (as noted in part above) our client BATCo and the other defendants have also petitioned on liability issues.

No.	Caption and Status	Attorneys	Description
01-200	*United States Healthcare Systems of Pennsylvania, Inc.* v. *Pennsylvania Hospital Insurance Co. et al.* Cert. petition filed August 1, 2001 Reply brief filed October 1, 2001 Supplemental brief filed November 19, 2001 Cert. denied June 24, 2002	R. Englert A. Siegel	We represented the petitioner, which sought review of a divided decision of the Supreme Court of Pennsylvania holding that ERISA does not preempt any negligence actions against managed care organizations (MCOs) or, alternatively, that ERISA does not preempt actions in which the MCO decision the plaintiff challenges is a decision to deny coverage based in part on medical considerations and thus can be deemed a "mixed eligibility and treatment decision." The U.S. Supreme Court vacated a prior decision of the Pennsylvania Supreme Court in this case, but the Pennsylvania court reached the same result on remand. After its 5-4 disposition of *Rush Prudential HMO, Inc.* v. *Moran*, No. 00-1021 (June 20, 2002), the Court denied our petition.
10-1341	*UPMC* v. *West Penn Allegheny Health System, Inc.* Cert. petition filed April 28, 2011, docketed May 2, 2011	R. Englert	Together with lead counsel at Wilson Sonsini and Schnader Harrison, we have filed a cert. petition on behalf of UPMC, the leading hospital in Pittsburgh, in this antitrust case. Among other things, the Third Circuit reversed the dismissal of a claim of "predatory hiring," even though the complaint did not allege that the salaries UPMC paid to doctors resulted in losses or that UPMC had any prospect of recouping losses by driving a competitor out of the market.

No.	Caption and Status	Attorneys	Description
01-1464	*Visa U.S.A. Inc. and MasterCard International Incorporated* v. *Wal-Mart Stores, Inc., et al.* Cert. petition filed April 3, 2002 Amicus brief filed May 6, 2002 Cert. denied June 10, 2002	R. Englert K. Zecca S. Wolson	We represented a coalition of amici – the Alliance of Automobile Manufacturers, the American Chemistry Council, the American Council of Life Insurers, the American Insurance Association, the American Petroleum Institute, the Association of American Railroads, the California Bankers Association, the European-American Business Council, The Fertilizer Institute, the Institute of International Bankers, the Mortgage Bankers Association of America, the Pharmaceutical Research and Manufacturers of America, the Texas Bankers Association – who supported the petition for a writ of certiorari in this case, which according to the Second Circuit involves claims potentially valued at $100 billion or more. The 2-1 panel decision held that a class may be certified based on expert testimony proffered by the plaintiffs without resolving any conflicts between the plaintiffs' and the defendants' experts, even though those conflicts go to the heart of the inquiries mandated by Rule 23. The Tenth Circuit has announced a similar rule, but several decisions from other circuits, including a series of opinions written by Judge Easterbrook for the Seventh Circuit, conflict. The cert. petition and our amicus brief also challenged the Second Circuit's approach to specific Rule 23 issues such as manageability.

No.	Caption and Status	Attorneys	Description
04-905	*Volvo Trucks North America, Inc.* v. *Reeder-Simco GMC, Inc.* Cert. petition filed January 4, 2005, docketed January 5, 2005 Reply brief filed February 16, 2005 Cert. granted March 7, 2005	R. Englert D. Russell M. Huffman	We filed a petition for a writ of certiorari arguing that the Court should review and reverse the Eighth Circuit's judgment in this case, which affirmed a judgment entered on a jury verdict that Volvo is liable for violating the Robinson-Patman Act. We argued that there can be no liability for price discrimination in a circumstance in which there are not two "purchases," so the competitive bidding situations alleged in this case do not implicate the Act; and that sales lost to a rival selling a different manufacturer's trucks, rather than to a favored purchaser from the same manufacturer as specified in the Act, cannot constitute Robinson-Patman violations.
10-277	*Wal-Mart Stores, Inc.* v. *Betty Dukes, et al.* Amicus brief filed September 24, 2010 Cert. granted December 6, 2010	R. Englert M. Stancil E. Temkin	On behalf of Intel Corporation, we have filed an amicus brief supporting petitioner Wal-Mart. Our amicus brief argues that improper certification of class actions puts inappropriate pressure on defendants to settle cases, that a class action seeking monetary relief should not be certified under Rule 23(b)(2), and that the district court's trial plan and the Ninth Circuit's affirmance violate the Rules Enabling Act and Wal-Mart's constitutional right to present a defense.

No.	Caption and Status	Attorneys	Description
09-196	*Joseph P. Ward* v. *International Union of Operating Engineers, Local 150, AFL-CIO* Petition for a writ of certiorari filed and docketed August 14, 2009 Brief in opposition filed September 4, 2009 Reply brief filed September 15, 2009 Cert. denied October 13, 2009	L. Robbins M. Madden	We represented Mr. Ward, a union official sued by his union in federal court for an alleged breach of fiduciary duty under the Labor-Management Reporting and Disclosure Act (LMRDA). The question presented was whether Section 501 of the LMRDA provides an implied cause of action for labor organizations in addition to the express cause of action it provides union members. The Seventh Circuit reversed the district court and held that it does, contrary to the Ninth Circuit's position but in agreement with the Eleventh Circuit's.
06-571	*Michael Watson* v. *United States* Cert. petition filed October 23, 2006, docketed October 25, 2006 Reply brief filed February 6, 2007 Cert. granted February 26, 2007	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Watson, who was convicted under 18 U.S.C. § 924(c) for the "use" of a firearm in connection with a drug trafficking transaction. Mr. Watson received the gun in exchange for drugs, and we argued that mere receipt does not constitute "use" within the meaning of Section 924(c), as that term was defined by *Bailey* v. *United States,* 516 U.S. 137 (1995). The Circuits were divided 6-4 on this question.

No.	Caption and Status	Attorneys	Description
08-7757	*Darian Antwan Watts* v. *United States* Cert. petition filed February 13, 2008, docketed December 15, 2008 Reply brief filed May 19, 2009 Supplemental brief of petitioner filed (in response to supplemental brief of the United States) December 8, 2009 Petition granted, judgment vacated, and case remanded for further consideration "in light of the position asserted by the Solicitor General" January 19, 2010.	G. Poe R. Li Wai Suen M. Madden	Mr. Watts filed a *pro se* cert. petition, but we represent him for purposes of filing a reply to the government's brief in opposition and expect to handle the case on the merits if cert. is granted. Mr. Watts was convicted in a gun case and sentenced to a 15-year mandatory minimum sentence under the Armed Career Criminal Act (ACCA). ACCA provides for a mandatory minimum sentence in certain cases if the defendant has three qualifying prior convictions. One of Mr. Watts's prior convictions is for carrying a concealed weapon. The questions presented are (1) whether such a conviction is a qualifying "violent felony" within the meaning of ACCA (the Eleventh Circuit having said yes, the Sixth and Eighth Circuits say no) and, (2) given the Government's confession of error on the ACCA question, does a sentence greater than the statutory maximum amounts to a denial of due process sufficient to allow a certificate of appealability to issue (the Eleventh Circuit has recently held that it does not).

No.	Caption and Status	Attorneys	Description
06-330	*Fatima G. Weliver* v. *Merit Systems Protection Board* Cert. petition filed September 5, 2006, docketed September 7, 2006 Cert. denied October 10, 2006	A. Untereiner	We filed a petition for a writ of certiorari arguing that the Court should review and reverse the Federal Circuit's judgment in this case. The petition raised two questions relating to the legal standards and procedural protections that govern the determination whether the waiver of a statutorily conferred right to an administrative hearing before the Merit Systems Protection Board is "knowing and voluntary" under *Johnson* v. *Zerbst*, 304 U.S. 458 (1938), and other waiver cases.
05-381	*Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co.* Cert. petition filed September 23, 2005, docketed September 26, 2005 Amicus brief filed October 26, 2005 Views of Solicitor General requested November 28, 2005 Solicitor General brief recommending a grant of cert. filed May 26, 2006 Cert. granted June 26, 2006	R. Englert D. Russell	We filed a brief on behalf of the American Forest & Paper Association and the Chamber of Commerce of the United States of America as amici curiae supporting this cert. petition. We argued that the Supreme Court should review the Ninth Circuit's decision upholding a jury verdict of monopolization against Weyerhaeuser for "predatory buying," which in the Ninth Circuit's view meant paying more than a jury thought was "necessary" or "fair" for timber. We argued that such indeterminate standards in antitrust harm the competitive process, and that more determinate standards derived from seller-side predatory pricing cases should have been used to resolve this case in favor of the defendant Weyerhaeuser.