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Experience: **Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP**, Partner, 5/01-present
Mayer, Brown & Platt, Washington, D.C.: Associate 1989-1990, Partner 1991-2001
U.S. Department of Justice, Assistant to the Solicitor General, 1986-1989
Wilmer, Cutler & Pickering, Washington, D.C.: Associate, 1982-1986
U.S. Court of Appeals for the D.C. Circuit: Court Law Clerk, 1981-1982

In these various positions, my principal focus has been appellate litigation and antitrust. My appellate experience includes arguing 18 cases in the Supreme Court of the United States – winning 16, losing 1, and achieving a split decision in 1. I have also briefed many other Supreme Court cases, and briefed and argued many cases in other state and federal appellate courts. My appellate cases have spanned many fields of law, including antitrust, bankruptcy, employment discrimination, federal jurisdiction, judicial ethics, administrative law, RICO, punitive damages, and the death penalty. My antitrust experience includes representing clients at trial and on appeal, negotiating with antitrust agencies, providing counseling, and working on antitrust-like issues before other federal agencies.

Adjunct Professor of Law, Georgetown University Law Center, Appellate Litigation Program, 2002-2003 through 2009-2010 Academic Years

Education: **Harvard Law School**, J.D. 1981 (Cum Laude, Executive Editor, *Harvard Law Review*)
Princeton University, A.B. 1978 (majored in mathematics, graduated in three years)

Publications: Among others, *Anticompetitive Mergers: Prevention and Cure* (co-author), in ANTI-TRUST AND REGULATION (F. Fisher ed. 1985); *So Many Cases, So Little Time* (co-author), in Legal Times, July 23, 1990 (annual Supreme Court Review), at S23; *Antitrust: A Change in Direction*, in Legal Times, July 26, 1993 (annual Supreme Court Review), at S40; *How to Write a Good Appellate Brief* (co-author), in LITIGATION, Winter 1994, at 6; *In Favor of Friends*, in Legal Times, Aug. 25, 2003, at 50; *Defending the Result in LePage's v. 3M: A Response to Other Commentators*, 50 ANTI-TRUST BULL. 481 (2005).

Profiles: Tony Mauro, *A Firm Arguing Its Way to the Top*, in Legal Times, Dec. 16, 2002, at 1; David F. Pike, *Low-Key Supreme Court Litigator Wins High-Profile Case*, in L.A. Daily Journal, Feb. 27, 2003, at 4; Jonathan Groner, *Leading Lawyers: Twelve of the D.C. Area's Go-To Appellate Litigators*, in Legal Times, July 19, 2004, at 1, 29, 34; *Leading Antitrust defence litigators – the best in the US*, Global Competition Review, April 2006, at 12, 23; BEST LAWYERS IN AMERICA (2009); CHAMBERS USA: AMERICA'S LEADING LAWYERS FOR BUSINESS (2009); SUPER LAWYERS (2009); THE LEGAL 500 (2009).

Memberships: District of Columbia Bar; Supreme Court Bar; Bars of Various Federal Courts; American Bar Association; ABA Section of Antitrust Law; Program Committee, Supreme Court Historical Society; Outside Advisory Board, Georgetown Supreme Court Institute; Constitutional & Administrative Law Advisory Committee, National Chamber Litigation Center; Edward Coke Appellate Inn of Court (President 2008-09); American Academy of Appellate Lawyers.

APPELLATE CASES BRIEFED AND ARGUED BY ROY T. ENGLERT, JR.

(In all cases that I list below as cases that I “briefed,” I worked together with co-counsel.

In all cases that I list below as cases that I “argued,” I was the only lawyer who presented argument for my client.)

Current as of September 17, 2009

1. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986) (Commerce Clause challenge to state statute) — briefed for amicus curiae.
2. *Jordan v. Mississippi*, 476 U.S. 1101 (1986) (death penalty appeal) — briefed for petitioner at petition stage; case was summarily remanded.
3. *Michigan v. Shabaz*, 478 U.S. 1017 (1986) (Fourth Amendment seizure case) — briefed for amicus curiae; case became moot after merits brief was filed.
4. *United States v. American Waste Fibers Co.*, 809 F.2d 1044 (4th Cir. 1987) (government appeal from dismissal of indictment) — briefed and argued for appellant.
5. *Brown v. United States (Griffith v. Kentucky)*, 479 U.S. 314 (1987) (case concerning retroactivity of decision forbidding discrimination in use of peremptory challenges) — briefed for respondent.
6. *United States v. Dunn*, 480 U.S. 294 (1987) (Fourth Amendment search case) — briefed and argued for petitioner.
7. *See v. United States*, 479 U.S. 1048 (1987) (case concerning application of Fifth Amendment to documentary subpoenas) — briefed for respondent; case became moot after merits brief was filed.
8. *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987) (Commerce Clause challenge to state anti-takeover statute) — briefed for amicus curiae.
9. *INS v. National Center for Immigrants’ Rights*, 481 U.S. 1009 (1987) (challenge to regulation forbidding unauthorized work by aliens released from INS custody), on remand, 913 F.2d 1350 (9th Cir. 1990), rev’d, 502 U.S. 183 (1991) — briefed for petitioner at petition stage; case was summarily remanded and has since returned to the Supreme Court, which ultimately adopted the theory advocated in the 1986 cert. petition.
10. *Ricketts v. Adamson*, 483 U.S. 1 (1987) (double jeopardy challenge to retrial of defendant who breached plea agreement) — argued for amicus curiae.
11. *United States v. Hohri*, 482 U.S. 64 (1987) (action by Japanese-Americans for damages for treatment by government during World War II) — briefed for petitioner.
12. *United States v. Hernandez*, 825 F.2d 846 (5th Cir. 1987) (Fourth Amendment search case), cert. denied, 484 U.S. 1068 (1988) — argued for appellee.

13. *United States v. Greene*, 834 F.2d 1067 (D.C. Cir. 1987) (case raising statutory and constitutional issues concerning insanity defense), cert. denied, 487 U.S. 1238 (1988) — briefed and argued for appellee.
14. *United Savings Association v. Timbers of Inwood Forest, Inc.*, 484 U.S. 365 (1988) (bankruptcy case concerning “adequate protection” of undersecured creditors) — briefed for amicus curiae.
15. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197 (1988) (bankruptcy case concerning “absolute priority rule”) — briefed for amicus curiae.
16. *Patrick v. Burget*, 486 U.S. 94 (1988) (antitrust case concerning “state action” doctrine) — briefed for amicus curiae.
17. *Braswell v. United States*, 487 U.S. 99 (1988) (case concerning application of Fifth Amendment to documentary subpoenas) — briefed and argued for respondent.
18. *Murray v. United States*, 487 U.S. 533 (1988) (Fourth Amendment exclusionary rule case) — briefed and argued for respondent.
19. *Bowen v. Massachusetts*, 487 U.S. 879 (1988) (case concerning jurisdiction of United States Claims Court) — briefed and argued for petitioner/cross-respondent.
20. *United States v. Broce*, 488 U.S. 563 (1989) (double jeopardy challenge to consecutive sentences resulting from guilty plea) — briefed and argued for petitioner.
21. *United States v. Dakins*, 872 F.2d 1061 (D.C. Cir.) (criminal case concerning jury unanimity requirement and law of conspiracy), cert. denied, 493 U.S. 966 (1989) — argued for appellee.
22. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989) (Section 1983 case concerning application of Due Process Clause to state inaction) — briefed for amicus curiae.
23. *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (Freedom of Information Act case concerning privacy exemption) — briefed and argued for petitioner.
24. *United States v. Halper*, 490 U.S. 435 (1989) (double jeopardy challenge to cumulative criminal and civil penalties), overruled by *Hudson v. United States*, 522 U.S. 93 (1997) — briefed for appellant.
25. *California v. ARC America Corp.*, 490 U.S. 93 (1989) (antitrust case involving alleged preemptive effect of *Illinois Brick*) — briefed and argued for amicus curiae.

26. *United States Department of Justice v. Tax Analysts*, 492 U.S. 136 (1989) (Freedom of Information Act case involving request that agency provide publishing service with continuing access to all court opinions in tax cases) — briefed for petitioner.
27. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146 (1989) (Freedom of Information Act case concerning law enforcement records exemption) — briefed for petitioner.
28. *Sherman v. Robinson*, 319 Md. 445, 573 A.2d 34 (1990) (estate case concerning time limits for challenging will after beneficiary allegedly murdered testator) — argued for appellee.
29. *United States v. Eichman*, 496 U.S. 310 (1990) (First Amendment challenge to Flag Protection Act of 1989) — briefed for amicus curiae.
30. *Nello L. Teer Co. v. Washington Metropolitan Area Transit Authority*, 921 F.2d 300 (D.C. Cir. 1990) (commercial dispute concerning prejudgment interest) — briefed and argued for appellant/cross-appellee Washington Metropolitan Area Transit Authority. Following certification of questions to the D.C. Court of Appeals, the court entered an unpublished judgment order reversing and remanding “with instructions to enter judgment for WMATA in all respects.” No. 89-7274 (D.C. Cir. May 17, 1993).
31. *Washington Metropolitan Area Transit Authority v. Nello L. Teer Co.*, 618 A.2d 128 (D.C. 1992) (commercial dispute concerning prejudgment interest) — briefed and argued for appellant on questions certified by D.C. Circuit in 921 F.2d 300.
32. *In re Application of Malev Hungarian Airlines*, 964 F.2d 97 (2d Cir. 1992) (dispute over interpretation of 28 U.S.C. § 1782, which concerns assistance by U.S. courts in discovery for use in foreign tribunals), cert. denied, 506 U.S. 861 (1992) — briefed for appellant.
33. *American National Red Cross v. S.G.*, 505 U.S. 247 (1992) (dispute concerning federal jurisdiction over the Red Cross) — briefed and argued for petitioner.
34. *FTC v. Ticor Title Insurance Co.*, 504 U.S. 621 (1992) (antitrust case concerning “state action” doctrine) — briefed for amicus curiae.
35. *Hartford Fire Insurance Co. v. California*, 509 U.S. 764 (1993) (antitrust case concerning McCarran-Ferguson Act immunity for the “business of insurance”) — briefed for domestic insurance company petitioners.
36. *Polsby v. Chase*, 970 F.2d 1360 (4th Cir. 1992) (appeal from dismissal of Title VII and RICO claims against government agencies and employees), vacated, 507 U.S. 1048 (1993) — briefed for appellant.
37. *Harriscop of Chicago, Inc. v. FCC*, No. 91-1455 (D.C. Cir.) (settled while appeal pending) (appeal from denial of renewal of television license) — briefed for appellants.

38. *Jiffy Lube International, Inc. v. Morgan*, No. 92-1249 (4th Cir. Sept. 21, 1993) (unpublished) (appeal from judgment enforcing a promissory note despite undisputed allegation that the franchise grant underlying the promissory note was made in violation of state law) — briefed for appellants.
39. *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993) (antitrust case concerning proper test for determining whether a lawsuit is a “mere sham” lacking *Noerr-Pennington* protection) — briefed for respondents.
40. *Virtual Maintenance, Inc. v. Prime Computer, Inc.*, 506 U.S. 910 (1992) (cert. granted, judgment vacated, and case remanded) (antitrust case concerning tying doctrine and scope of Supreme Court's 1992 *Kodak* decision), on remand, 995 F.2d 1324 (6th Cir. 1993), modified on denial of rehearing, 11 F.3d 660 (1993), cert. dismissed, 512 U.S. 1216 (1994) — briefed for petitioner at petition stage; case was summarily remanded, as we requested, and on remand the Sixth Circuit held, contrary to its prior ruling, that our client had presented a valid antitrust theory to the jury. I remained involved in the briefing at the cert. petition stage, during which the case was settled by the payment of a substantial sum to our client.
41. *Los Angeles Land Co. v. Brunswick Corp.*, 6 F.3d 1422 (9th Cir. 1993) (antitrust case in bowling industry), cert. denied, 510 U.S. 1197 (1994) — briefed for defendants-appellants, who prevailed in all respects on appeal. I also tried this case.
42. *United States v. Bailey*, 36 F.3d 106 (D.C. Cir. 1994) (en banc) (appointed criminal appeal), rev'd, 516 U.S. 137 (1995) — briefed for defendant-appellant, before the panel, before the en banc court, and (successfully) in the Supreme Court.
43. *Sherman v. Smith*, No. 92-6947 (4th Cir. Oct. 27, 1993) (unpublished) (habeas corpus challenge to murder conviction) — briefed for habeas petitioner-appellant, who prevailed in this round of the litigation.
44. *Gilmore v. Taylor*, 508 U.S. 333 (1993) (habeas corpus challenge to murder conviction) — briefed for habeas petitioner-respondent.
45. *Polsby v. Shalala*, 507 U.S. 1048 (1993) (successful cert. petition seeking review of 970 F.2d 1360, described above; Court summarily granted petition, vacated judgment of Fourth Circuit, and remanded for further consideration in light of Solicitor General's confession of error) — briefed for petitioner.
46. *Northwest Airlines, Inc. v. United States Department of Transportation*, 15 F.3d 1112 (D.C. Cir. 1994) (challenge to DOT transfer of Detroit-London route from Pan Am to Delta) — briefed and argued for petitioners.
47. *United States v. Felder*, No. 93-3106 (D.C. Cir. June 1, 1994) (unpublished) (appointed criminal appeal) — briefed for appellant.

48. *GTE California Incorporated v. FCC*, 39 F.3d 940 (9th Cir. 1994) (First Amendment challenge to statute prohibiting telephone companies from providing “video programming”) — briefed for petitioner.
49. *O’Neil v. Continental Bank, N.A.*, 278 Ill. App. 3d, 662 N.E.2d 489, 214 Ill. Dec. 923 (Ill. App. 1st Dist. 1996) (appeal from judgment awarding damages for breach of contract), appeal denied, Nos. 80919, 81004 (Ill. June 5, 1996) — briefed and argued for appellant/cross-appellee Continental Bank, N.A.
50. *Wal-Mart Stores, Inc. v. American Drugs, Inc.*, 319 Ark. 214, 891 S.W.2d 30 (1995) (challenge by competitors, under state law analogous to federal prohibition of predatory pricing, to Wal-Mart’s below-cost pricing of certain products) — briefed for appellant Wal-Mart.
51. *NICORE Exploration Co. v. FERC*, 50 F.3d 1341 (5th Cir. 1995) (petition for review of FERC order holding that producer/seller has contractual authority under “area rate clauses” to charge incentive prices to purchaser of natural gas), cert. denied, 516 U.S. 1043 (1996) — briefed for petitioner.
52. *O’Neal v. McAninch*, 513 U.S. 432 (1995) (habeas corpus case concerning allocation of burden of proving harmless error) — briefed for amicus curiae.
53. *James Cable Partners, L.P. v. City of Jamestown, Tennessee*, 43 F.3d 277 (6th Cir. 1995) (action concerning whether provision of 1992 Cable Act prohibiting exclusive franchises permits Jamestown to operate its own cable system in competition with company previously granted an exclusive franchise) — argued for appellant/cross-appellee.
54. *Sherman v. Smith*, No. 94-6831 (4th Cir. Dec. 4, 1995) (unpublished) and 89 F.3d 1134 (4th Cir. 1996) (en banc) (habeas corpus challenge to murder conviction), cert. denied, 519 U.S. 1091 (1997) — briefed for habeas petitioner-appellant (second appeal in same case as #43 above).
55. *Vuong v. Collins*, 62 F.3d 673 (5th Cir.) (habeas corpus challenge to death sentence), cert. denied, 516 U.S. 1005 (1995) — briefed for habeas petitioner-appellant.
56. *Massachusetts v. United States Department of Transportation*, 93 F.3d 890 (D.C. Cir. 1996) (dispute over preemptive effect of Hazardous Materials Transportation Act) — briefed for amicus curiae.
57. *Deters v. United States Parole Commission*, 85 F.3d 655 (D.C. Cir. 1996) (dispute over agency’s duty under Privacy Act to maintain accurate records) — briefed for amicus curiae, appointed by the court.
58. *United States v. Mercy Health Services*, 107 F.3d 632 (8th Cir. 1997) (government challenge to hospital merger) — briefed for amicus curiae; case became moot after merits brief was filed and case was argued.

59. *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) (case concerning preemption of common law claims by the Medical Device Amendments of 1976 to the Food, Drug, and Cosmetic Act) — briefed for petitioner/cross-respondent Medtronic, Inc.
60. *Grainbelt Corp. v. Surface Transportation Board*, 109 F.3d 794 (D.C. Cir. 1997) (challenge to ICC decision approving railroad merger subject to certain conditions) — briefed for intervenors.
61. *Western Resources, Inc. v. Surface Transportation Board*, 109 F.3d 782 (D.C. Cir. 1997) (challenge to ICC decision approving railroad merger subject to certain conditions) — briefed for intervenors.
62. *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494 (3d Cir. 1998) (antitrust, RICO, and tort challenge to practice of requiring pharmacies to purchase health benefits from HMO as condition of being admitted to that HMO’s pharmacy network) — briefed and argued for defendant/appellant/cross-appellee.
63. *State Oil Co. v. Khan*, 522 U.S. 3 (1997) (antitrust case in which Supreme Court was asked to overrule, and ultimately did overrule, its precedent setting a *per se* rule against maximum resale price maintenance) — briefed for amicus curiae.
64. *Air Canada v. United States Department of Transportation*, 148 F.3d 1142 (D.C. Cir. 1998) (challenge by multiple air carriers to method used to fund billion-dollar-plus construction project for American Airlines at Miami International Airport) — briefed for petitioners.
65. *Western Coal Traffic League v. Surface Transportation Board*, 169 F.3d 775 (D.C. Cir. 1999) (challenge to ICC decision approving railroad merger subject to certain conditions) (although case resulted in a published opinion, aspect of the case in which we participated was settled, and our petition for review withdrawn, after argument and before decision) — briefed and argued for petitioner The Burlington Northern and Santa Fe Railway Company.
66. *Small v. United States*, 136 F.3d 1334 (D.C. Cir. 1998) (due process challenge to notice of forfeiture given to prisoner) — briefed for amicus curiae, appointed by the court.
67. *Burlington Northern & Santa Fe Railway v. International Brotherhood of Teamsters Local 174*, 170 F.3d 897 (9th Cir. 1999) (appeal of preliminary injunction against threatened picketing by Teamsters, challenged by BNSF under antitrust and labor laws), rev’d, 203 F.3d 703 (9th Cir. 2000) (en banc) — briefed and argued for appellee before panel and again before en banc court.
68. *Bank of America National Trust & Savings Association v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999) (bankruptcy case involving the “new value exception” to the absolute priority rule) — briefed and argued for petitioner.

69. *Wills Trucking, Inc. v. Shinn*, No. 98-5108 (3d Cir. Oct. 23, 1998) (unpublished) (appeal of preliminary injunction in preemption and Commerce Clause challenge to state regulation of hazardous materials transportation) — briefed for amicus curiae.
70. *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128 (1998) (antitrust case involving scope of *per se* prohibition on “group boycotts”) — briefed for amicus curiae.
71. *California Dental Association v. FTC*, 526 U.S. 756 (1999) (antitrust case involving application of “quick look” rule of reason to professional standard-setting organization) — briefed for amicus curiae.
72. *SEC v. Better Life Club of America, Inc.*, No. 98-5079 (D.C. Cir. Mar. 24, 1999) (unpublished) (SEC civil prosecution for fraud and other securities violations) — briefed for amicus curiae, appointed by the court.
73. *Valencia-Lucena v. United States Coast Guard*, 180 F.3d 321 (D.C. Cir. 1999) (FOIA case) — briefed for amicus curiae, appointed by the court.
74. *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40 (1999) (due process challenge to Pennsylvania workers’ compensation scheme, involving question whether private insurers are “state actors” under that scheme as well as the due process merits) — briefed for petitioners.
75. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) (Americans with Disabilities Act case raising question whether nearsighted persons who seek pilot positions are “disabled”) — briefed and argued for respondent.
76. *United States Healthcare Systems of Pennsylvania, Inc. v. Pennsylvania Hospital Insurance Co.*, 530 U.S. 1241 (2000) (cert. granted, judgment vacated, and case remanded) (ERISA case raising question of preemption of negligence action against HMO) — briefed for petitioner at petition stage; case was summarily remanded.
77. *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, No. 99-1383 (3d Cir. Dec. 8, 2000) (unpublished) (second appeal in same case as #62 above, now raising only state-law tort challenge to practice of requiring pharmacies to purchase health benefits from insurance company as condition of being admitted to that insurance company's pharmacy network, and challenge to jurisdiction of federal court to resolve case involving only state law and non-diverse parties) — briefed and argued for defendant/appellant/cross-appellee.
78. *Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000) (challenges to decision of STB to impose 15-month moratorium on large railroad mergers) — briefed and argued for petitioner The Burlington Northern and Santa Fe Railway Company.
79. *Olinger v. United States Golf Association*, 532 U.S. 1064 (2001) (cert. granted, judgment vacated, and case remanded) (challenge by disabled golfer to USGA’s refusal to waive its

- rules to allow him to ride a cart in the U.S. Open) — briefed for respondent USGA, which won below but acquiesced in Olinger’s request for certiorari.
80. *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001) (challenge by disabled golfer to PGA Tour’s refusal to waive its rules to allow him to ride a cart in professional tournaments) — briefed for amicus curiae.
 81. *Fairbairn v. United Air Lines, Inc.*, 250 F.3d 237 (4th Cir. 2001) (appeal from holding by district court that grievances by individual, non-union employees are subject to arbitration under the Railway Labor Act) — briefed and argued for defendant-appellant United Air Lines, Inc.
 82. *UAL Corp. v. Fielder*, 536 U.S. 919 (2002) (cert. granted, judgment vacated, and case remanded) (sexual harassment case raising question of scope of “continuing violation” doctrine) — briefed at petition stage for petitioner United Airlines.
 83. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) (racial harassment and discrimination case raising question of scope of “continuing violation” doctrine) — briefed and argued for petitioner.
 84. *Benham v. Lenox Savings Bank*, 292 F.3d 46 (1st Cir. 2002) (ERISA Section 510 case involving alleged improper termination of 36-year employee because employer considered her pension benefits too expensive) — briefed and argued for plaintiff-appellant.
 85. *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73 (2002) (Americans with Disabilities Act case raising question whether employer must disregard the threat an employee poses to his own safety) – briefed for amici curiae U.S. Chamber of Commerce et al.
 86. *SEC v. Zandford*, 535 U.S. 813 (2002) (Rule 10b-5 case raising question whether stockbroker’s conversion of client funds was “in connection with” the purchase or sale of securities so as to constitute securities fraud) – briefed for respondent Zandford.
 87. *LePage’s Inc. v. 3M*, 324 F.2d 141 (3d Cir. 2003) (en banc) (antitrust case in which jury found that 3M’s bundled rebates and other exclusionary practices violated Section 2 of the Sherman Act), cert. denied, 542 U.S. 953 (2004) – briefed and argued for plaintiff-appellee at en banc stage; briefed for respondent at cert. petition stage.
 88. *Barnes v. Gorman*, 536 U.S. 181 (2002) (case raising question whether punitive damages are available under Section 504 of the Rehabilitation Act of 1973 and Section 202 of the Americans with Disabilities Act) – briefed for petitioners.
 89. *Yellow Transportation, Inc. v. Michigan*, 537 U.S. 36 (2002) (challenge to Michigan’s effort to collect fees for 1992 registration year under a statute freezing truck registration fees to those “charged or collected as of November 15, 1991,” on either the theory that reciprocity agreements waiving fees are “irrelevant” to what was “charged or collected” or the theory

- that prebilling or prepayment of 1992 fees affected what was “charged or collected”) – briefed for amici curiae.
90. *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (challenge to constitutionality of Copyright Term Extension Act) – briefed for amici curiae.
 91. *Morgan v. National Railroad Passenger Corp.*, 300 F.3d 1144 (9th Cir. 2002) (racial harassment and discrimination case raising question of scope of “continuing violation” doctrine and evidentiary issues on appeal from jury verdict favorable to employer) — briefed for appellee on remand from the Supreme Court of the United States in same case as #83 above.
 92. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003) (due process challenge to \$145 million punitive damages award) – briefed for amicus curiae.
 93. *Fielder v. UAL Corp.*, 203 Fed. Appx. 15 (9th Cir. Sept. 27, 2006) (case was ultimately dismissed without a decision on the merits because claim had been discharged in bankruptcy) (sexual harassment and retaliation case raising question of scope of “continuing violation” doctrine on appeal from summary judgment for employer) — briefed for appellee on remand from the Supreme Court of the United States in same case as #82 above.
 94. *Chavez v. Martinez*, 538 U.S. 760 (2003) (qualified-immunity case involving police officer’s allegedly coercive interrogation of wounded individual who had been involved in police shooting) – briefed for petitioner.
 95. *Christie’s International plc v. Kruman*, 539 U.S. 978 (2003) (matter settled while certiorari petition was pending) (challenge to construction of Foreign Trade Antitrust Improvements Act that would allow purchasers whose injury did not arise from U.S. effects of challenged conduct to sue under U.S. antitrust law) – briefed for amicus curiae at petition stage.
 96. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004) (challenge to construction of 28 U.S.C. § 1782 to allow complainant in first-phase antitrust investigation before the European Commission to obtain U.S. discovery for use in that investigation when the same discovery would not be allowed under European law) – briefed for amicus curiae at petition stage and at merits stage.
 97. *Scheidler v. National Organization for Women*, 537 U.S. 393 (2003) (challenge to RICO damages and injunction awards against anti-abortion protesters) – argued for petitioners.
 98. *Hillside Dairy, Inc. v. Lyons*, 539 U.S. 59 (2003) (challenge to Ninth Circuit decision holding that California’s entire “pricing and pooling” scheme of milk regulation has been statutorily exempted from constitutional scrutiny under the Commerce Clause) – briefed and argued for petitioners.
 99. *Lawrence v. Texas*, 539 U.S. 558 (2003) (due process and equal protection challenge to convictions under Texas Homosexual Conduct Law) – briefed for amici curiae.

100. *United States Fidelity & Guaranty Co. v. Braspetro Oil Services Co.*, 369 F.3d 34 (2d Cir. 2004) (dispute about obligation of sureties to pay large damages award to Brazilian state-controlled oil company in connection with construction of oil and gas production facilities) – briefed for appellants.
101. *DiFelice v. Aetna/U.S. Healthcare, Inc.*, 346 F.3d 442 (3d Cir. 2003) (appeal from district court decision holding that purported medical malpractice challenge to HMO’s benefit decision was properly removed to federal court under the doctrine of “complete preemption” and properly dismissed as preempted by ERISA) – argued for appellee.
102. *Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246 (2004) (challenge to construction of preemption provision of Section 209 of the Clean Air Act that allowed SCAQMD to adopt its own Fleet Rules requiring private parties to purchase only specified low-emission vehicles) – briefed for amicus curiae at petition stage.
103. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324 (11th Cir. 2004) (appeal from district court ruling that Southwest Airlines’ website is not a “public accommodation” or “place of public accommodation” that must be made accessible under Title III of the Americans with Disabilities Act) – briefed for amicus curiae.
104. *District of Columbia v. Beretta U.S.A.*, 847 A.2d 1127 (D.C. 2004) (tort suit by District of Columbia and individual victims of gun violence seeking to hold gun manufacturers liable under theories of public nuisance or negligent marketing and distribution), vacated on grant of rehearing en banc, reinstated en banc, 872 A.2d 633 (2005), cert. denied, 126 S. Ct. 399 (2005) – briefed for amicus curiae.
105. *Martinez v. Chavez*, 337 F.3d 1091 (9th Cir. 2003) (qualified-immunity case involving police officer’s allegedly outrageous behavior in interrogating wounded individual who had been involved in police shooting), cert. denied, 542 U.S. 953 (2004) – briefed for appellant on remand from the Supreme Court of the United States in same case as #94 above; Ninth Circuit decided case on remand without awaiting any briefs from parties, so rehearing petition was first opportunity to file a substantive brief on remand. After Ninth Circuit denied rehearing, filed a petition for a writ of certiorari.
106. *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50 (2004) (challenge to Fourth Circuit’s construction of the 1995 amendments to the Truth in Lending Act as removing \$1000 cap on liability for technical violations) – briefed for amici curiae at petition stage and on the merits.
107. *Tesoro Hawaii Corp. v. United States*, 405 F.3d 1339 (Fed. Cir. 2005) (government contract case involving test for waiver by contractor of right to protest illegal contract term) – briefed for amicus curiae at petition-to-appeal stage, on the merits, and in support of rehearing petition.

108. *F. Hoffmann LaRoche Ltd. v. Empagran, S.A.*, 542 U.S. 155 (2004) (challenge to construction of Foreign Trade Antitrust Improvements Act that would allow purchasers whose injury did not arise from U.S. effects of challenged conduct to sue under U.S. antitrust law) – briefed for amici curiae at petition stage and on the merits.
109. *In re Kensington International Ltd.*, 353 F.3d 211 (3d Cir. 2003) (petition for a writ of mandamus to disqualify federal district judge from presiding over large asbestos-related bankruptcy case) – briefed and argued for petitioners. See also *In re Kensington International Ltd.*, 351 F.3d 97 (3d Cir. 2003) (order granting stay).
110. *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004) (case involving ERISA preemption of tort actions against HMOs) – briefed for petitioner.
111. *Ileto v. Glock Inc.*, 349 F.3d 1191 (9th Cir. 2003) (action seeking to have gun manufacturers held liable under California common law of tort for actions of criminals who misused manufacturers’ products), rehearing denied over eight dissenting votes, 370 F.3d 860 (2004), cert. denied, 543 U.S. 1050 (2005) – briefed for amicus curiae at rehearing stage.
112. *In re Kensington International Ltd.*, 368 F.3d 289 (3d Cir. 2004) (petition for a writ of mandamus to disqualify federal district judge from presiding over large asbestos-related bankruptcy case) – briefed and again argued for petitioners in second appellate proceeding in same case as #109 above.
113. *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272 (11th Cir. 2005) (appeal from district court order granting judgment as a matter of law to defendant, and overturning \$1.3 billion jury award to plaintiffs, in antitrust-like case brought under the Packers and Stockyards Act), cert. denied, 547 U.S. 1040 (2006) – briefed for amicus curiae supporting defendant.
114. *APCC Services, Inc. v. Sprint Communications Co.*, 418 F.3d 1238 (D.C. Cir. 2005) (interlocutory appeal from district court orders holding that plaintiffs have standing as assignees of the claims of payphone operators and that there is a private right of action to enforce regulations adopted under Section 276 of the Communications Act, as added by the Telecommunications Act of 1996), vacated, 127 S. Ct. 2094 (2007), on remand, 489 F.3d 1249 (D.C. Cir. 2007), aff’d, 128 S. Ct. 2531 (2008) – briefed and argued for appellees before D.C. Circuit, briefed for petitioners at cert. petition stage in first trip to Supreme Court, briefed for appellees on remand, briefed for respondents at cert. petition stage in second trip to Supreme Court, and briefed and argued for respondents on the merits in second trip to Supreme Court (see #146 below).
115. *Shepard v. United States*, 544 U.S. 13 (2005) (statutory and constitutional challenge to use of prior guilty pleas to burglary under Massachusetts law, which criminalizes both conduct that does and conduct that does not qualify as an aggravator under the Armed Career Criminal Act, to enhance sentence without submission of any sentencing questions to a jury) – briefed for amici curiae.

116. *Cuno v. DaimlerChrysler*, 386 F.3d 738 (6th Cir. 2004) (Commerce Clause challenge to Ohio's tax incentives to manufacturers to locate facilities in the State and in certain economically troubled areas of the State), vacated, 126 S. Ct. 1854 (2006) – briefed for amicus curiae at petition-for-rehearing stage.
117. *United States v. Booker*, 543 U.S. 220 (2005) (challenge to constitutionality under Sixth Amendment of provisions of Federal Sentencing Guidelines that permit use in sentencing of facts not found by jury or admitted by defendant) – briefed for amicus curiae.
118. *Granolm v. Heald*, 544 U.S. 460 (2005) (Commerce Clause challenge to Michigan statute allowing in-state but not out-of-state wineries to ship their products directly to consumers) – briefed for amici curiae Members of Congress.
119. *Snowney v. Harrah's Entertainment, Inc.*, 35 Cal. 4th 1054, 112 P.3d 28, 29 Cal. Rptr. 3d 33 (challenge to California courts' personal jurisdiction over Nevada hotel in putative nationwide class action to recover surcharges on hotel bills for stays in Nevada), cert. denied, 126 S. Ct. 659 (2005) – briefed for amicus curiae.
120. *Miles v. Merrill Lynch & Co. (In re Initial Public Offering Securities Litigation)*, 471 F.3d 24 (2d Cir. 2006) (challenge to decision by district court to certify massive class action under securities laws), rehearing denied with opinion, 483 F.3d 70 (2d Cir. 2007) – briefed for amicus curiae at leave-to-appeal stage and merits stage of class certification appeal.
121. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005) (challenge to Ninth Circuit holding that 47 U.S.C. § 332(c)(7), which pertains to preemption of the application of certain local zoning decisions to communications towers, can be enforced through a lawsuit under 42 U.S.C. § 1983, which allows damages and attorneys' fees to a prevailing plaintiff) – briefed for amicus curiae.
122. *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005) (appeal from district court's grant of substantive consolidation in bankruptcy of Owens Corning and its subsidiaries), cert. denied, 126 S. Ct. 1910 (2006) – briefed for appellant.
123. *Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc.*, 546 U.S. 164 (2006) (Robinson-Patman Act case) – briefed for petitioner at petition stage and briefed and argued for petitioner at merits stage.
124. *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119 (2005) (case concerning whether Americans with Disabilities Act applies to foreign-flagged cruise ships) – briefed for amicus curiae.
125. *Scheidler v. National Organization for Women*, 547 U.S. 9 (2006) – briefed for petitioners at petition stage and on merits in further proceeding following #97 above.
126. *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224 (2007) (challenge to Ninth Circuit decision holding that petitioner is not an instrumentality of a foreign sovereign under

- the Foreign Sovereign Immunities Act) – briefed for amicus curiae Province of British Columbia at petition stage and merits stage. See also #136 below.
127. *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006) (challenge to Ninth Circuit decision holding that a decision by a joint venture or its parents about how to price the joint venture’s product can be a *per se* antitrust violation) – briefed for amicus curiae.
 128. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312 (2007) (challenge to Ninth Circuit decision upholding an antitrust verdict against Weyerhaeuser for “predatory buying”) – briefed for amici curiae at petition stage and merits stage.
 129. *Laboratory Corp. of America v. Metabolite Laboratories, Inc.*, 548 U.S. 124 (2006) (patent case raising question whether a patent can validly claim a monopoly over all techniques to measure a substance, including methods not covered by the patent, and then “correlate” the results with a medical condition by applying a simple law of nature) – briefed for amicus curiae.
 130. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006) (patent case raising question whether there should be a presumption, and if so how, strong, in favor of injunctive relief when a court has determined that a patent has been infringed) – briefed for amicus curiae.
 131. *EM Ltd. v. Republic of Argentina*, 473 F.3d 463 (2d Cir.) (case involving effort to attach assets to pay a debt of Argentina), cert. denied, 128 S. Ct. 109 (2007) – briefed and argued for plaintiff-appellant in Second Circuit and briefed in Supreme Court at petition stage.
 132. *Credit Suisse Securities (USA) LLC v. Billing*, 551 U.S. 264 (2007) (challenge to Second Circuit decision rejecting immunity from antitrust laws for common securities-industry practices heavily regulated by the SEC) – briefed for amici curiae at petition stage and merits stage.
 133. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (challenge to Second Circuit decision reversing dismissal of a multibillion-dollar antitrust case even though plaintiffs have no evidence of conspiracy and plead no “plus factors”) – briefed for amici curiae at petition stage and merits stage.
 134. *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45 (2007) (case involving whether the Communications Act provides an express private right of action to challenge violation of FCC rules governing compensation of payphone service providers) – briefed and argued for respondent.
 135. *Cloverland-Green Spring Dairies, Inc. v. Pennsylvania Milk Marketing Board*, 462 F.3d 249 (3d Cir. 2006) (Commerce Clause challenge to Pennsylvania’s minimum wholesale prices for milk) – briefed for intervenor-defendant-appellee at post-argument briefing stage.
 136. *California Department of Water Resources v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008) (cases raising questions whether defendant is an agency or instrumentality of a foreign

- sovereign within the meaning of the Foreign Sovereign Immunities Act) – briefed for amicus curiae. See also #126 above.
137. *Philip Morris USA v. Williams*, 549 U.S. 346 (2007) (constitutional challenge to excessive punitive damages) – briefed for amicus curiae.
 138. *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) (antitrust case presenting question whether the Supreme Court should overrule its 1911 *Dr. Miles* decision creating a *per se* rule against minimum resale price maintenance) – briefed for amicus curiae at petition stage and merits stage.
 139. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) (patent case involving standard for determining “obviousness” of claimed invention) – briefed for amicus curiae.
 140. *Ohngo Gaudadeh Devia v. Nuclear Regulatory Commission*, 492 F.3d 421 (D.C. Cir. 2007) (**pending; held in abeyance by published opinion**) (challenge to grant of a license to a storage facility for spent nuclear fuel) – briefed for petitioner State of Utah.
 141. *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71 (2d Cir. 2008) (interlocutory appeal by plaintiffs from district court order dismissing certain sovereign and other defendants whom plaintiffs are trying to hold liable – along with the actual perpetrators and known al Qaeda supporters – for the terrorist attacks on the World Trade Center), cert. denied, 129 S. Ct. 2859 (2009) – briefed for appellee Saudi High Commission.
 142. *DAG Petroleum Suppliers, L.L.C. v. BP p.l.c.*, 268 Fed. Appx. 236 (4th Cir. Jan. 23, 2008) (unpublished) (case involving allegations of race discrimination and conspiracy in the sale of 182 service stations in the Washington-Baltimore area) – briefed and argued for appellant.
 143. *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733 (2008) (FERC case involving *Mobile-Sierra* doctrine and California energy crisis) – briefed for amici curiae at petition stage and at merits stage.
 144. *Baze v. Rees*, 128 S. Ct. 1520 (2008) (challenge to constitutionality of lethal injection as a means of carrying out death sentences) – argued for respondent officials of the Commonwealth of Kentucky.
 145. *Commonwealth Scientific & Industrial Research Organisation v. Buffalo Technology (USA), Inc.*, 542 F.3d 1363 (Fed. Cir. 2008) (patent case involving standards for granting an injunction in favor of a research organization that owns but does not itself practice an infringed patent) – briefed for amici curiae.
 146. *Sprint Communications Co. v. APCC Services, Inc.*, 128 S. Ct. 2531 (2008) (challenge to standing of assignees-for-collection to bring a lawsuit) – briefed and argued for respondents on the merits in same case as #114 above.

147. *Pharmacia Corp. v. Motor Carrier Services Corp.*, 309 Fed. Appx. 666 (3d Cir. Feb. 10, 2009) (unpublished) (contract dispute over responsibility for environmental remediation of and natural resource damage to Lower Passaic River) – briefed and argued for appellant.
148. *In re Kaiser Aluminum Corp.*, No. 08-1406 (3d Cir. argued Sept. 15, 2009) (**pending**) (dispute over subordination of certain notes in the context of a reorganization in bankruptcy) – briefed and argued for appellant.
149. *Bank of New York v. Unsecured Creditors’ Committee*, No. 08-40746 (5th Cir. argued Oct. 6, 2008) (**pending**) (dispute over confirmation, under “cramdown” provisions, of a plan of reorganization in bankruptcy) – briefed and argued for appellants.
150. *Altmayer-Pizzorno v. L-Soft International Inc.*, 302 Fed. Appx. 148 (4th Cir. Dec. 3, 2008) (unpublished) (copyright and licensing dispute) – briefed for appellant.
151. *District Attorney’s Office v. Osborne*, 2009 WL 1685601, No. 08-6 (U.S. June 18, 2009) (challenge to use of 42 U.S.C. § 1983 to obtain DNA evidence for use in postconviction proceedings after conviction in state court) – briefed for petitioners (name does not appear on opening brief but does appear on reply brief).
152. *Prometheus Laboratories, Inc. v. Mayo Collaborative Services*, No. 2008-1403 (Fed. Cir. argued Aug. 5, 2009) (**pending**) (patent case involving patentability of measurement of human body’s natural processing of a substance introduced into the body) – briefed for amici curiae.
153. *Choose Life Illinois, Inc. v. White*, No. 08-1283 (U.S.) (**pending on petition for a writ of certiorari**) (First Amendment challenge to Illinois’s refusal to issue “Choose Life” specialty license plates) – briefed at petition stage for petitioners.
154. *Costco Wholesale Corp. v. Omega, S.A.*, No. 08-1423 (U.S.) (**pending on petition for a writ of certiorari**) (dispute about first-sale doctrine in copyright law) – briefed at petition stage for petitioners.
155. *Apotex Inc. v. Sanofi-Synthelabo*, No. 09-117 (U.S.) (**pending on petition for a writ of certiorari**) (dispute about whether patent on Plavix® is invalid for obviousness) – briefed at petition stage for petitioners.
156. *Feesers, Inc. v. Michael Foods, Inc.*, Nos. 09-2548, 09-2952, and 09-2993 (3d Cir. to be argued Oct. 29, 2009) (**pending**) (Robinson-Patman Act price discrimination case in foodservice industry) – briefed and will argue for appellant Michael Foods, Inc.
157. *Smith v. Spisak*, No. 08-724 (U.S. to be argued Oct. 13, 2009) (**pending**) (habeas case concerning, among other things, ineffective assistance of counsel in closing argument at penalty phase of capital case) – briefed for amici curiae.

158. *Pacific Management Co. LLC v. Mayer Brown LLP*, No. 09-1619-cv (2d Cir.) (**pending**) (securities case involving SEC’s “creator” theory of liability under Rule 10b-5) – briefed for amicus curiae.

ADDITIONAL MAJOR APPELLATE WORK BY ROY T. ENGLERT, JR.

1. *Eli Lilly & Co. v. Medtronic, Inc.*, 496 U.S. 661 (1990) (dispute over application of Drug Price Competition and Patent Term Restoration Act of 1984 to patents for medical devices) — consulted extensively by successful respondent Medtronic, Inc., although name does not appear on brief.
2. *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991) (Due Process Clause challenge to award of punitive damages) — consulted extensively by amici curiae “Big 6” accounting firms, although name does not appear on brief.
3. *Shell Oil Co. v. Commissioner*, 952 F.2d 885 (5th Cir. 1992) (challenge to Tax Court decision concerning calculation of Windfall Profit Tax) — consulted extensively by successful petitioner Shell Oil Company, although name does not appear on briefs.
4. *Hall v. American National Red Cross*, 86 F.3d 919 (9th Cir.) (challenge under Religious Freedom Restoration Act to Red Cross's refusal to certify religious activist as a Red Cross AIDS prevention instructor, resolved in favor of the Red Cross on the ground that RFRA applies only to the government and the Red Cross is not the government for this purpose), cert. denied, 519 U.S. 1010 (1996) — participated in drafting of brief for successful appellee Red Cross, although name does not appear on brief.
5. *Concord Boat Co. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir.) (antitrust challenge to Brunswick’s pricing practices and vertical mergers involving boat engines, in which court of appeals reversed judgment of more than \$140 million for plaintiffs), cert. denied, 531 U.S. 979 (2000) — consulted extensively by successful appellant Brunswick, although name does not appear on briefs.
6. *Ciardi v. F. Hoffmann-LaRoche Ltd.*, 436 Mass. 53, 762 N.E.2d 303 (2002) (appeal from trial court decision allowing indirect purchasers to use state consumer protection act to bring price-fixing action that is not allowed under state antitrust law) — consulted extensively by appellant BASF Corporation, although name does not appear on briefs.
7. *Raygor v. University of Minnesota*, 534 U.S. 533 (2002) (case raising questions of applicability and constitutionality, in litigation against entity that partakes of State’s Eleventh Amendment immunity, of federal statute that purports to toll state statute of limitations while case is pending in federal court) — consulted extensively by respondent University of Minnesota, although name does not appear on briefs.
8. *PacifiCare Health Systems, Inc. v. Book*, 538 U.S. 401 (2003) (challenge to Eleventh Circuit decision holding that court, not arbitrator, decides whether RICO claims are arbitrable and that the claims in this case were not arbitrable because the arbitrator could not award “punitive” or “extracontractual” damages) – consulted extensively by petitioner United-Healthcare, although name does not appear on briefs.
9. *NML Capital, Ltd. v. Republic of Argentina*, No. 05-1543-cv(L) (2d Cir. May 27, 2005) (unpublished) (expedited appeal from order vacating attachment of assets of Republic of

Argentina so that they may be used to pay holders of defaulted Argentine bonds) – consulted extensively by appellant NML Capital, Ltd., although name does not appear on briefs.

10. *Rambus Inc. v. FTC*, 522 F.3d 456 (D.C. Cir. 2008) (petition for review of FTC decision holding Rambus liable for monopolization through “deception” of trade association about its intentions with respect to patents), cert. denied, 129 S. Ct. 1318 (2009) – consulted extensively by successful petitioner Rambus Incorporated, although name does not appear on briefs.
11. *Madison Square Garden, L.P. v. National Hockey League*, 270 Fed. Appx. 56 (2d Cir. Mar. 19, 2008) (appeal from denial of preliminary injunction in antitrust challenge to NHL’s limitations on team websites) – consulted extensively by plaintiff-appellant New York Rangers hockey team, although name does not appear on briefs.
12. *Toledo Mack Sales & Service, Inc. v. Mack Trucks, Inc.*, 530 F.3d 204 (3d Cir. 2008) (appeal from district court decision resolving in defendant’s favor claims under the Sherman and Robinson-Patman Acts) – consulted extensively by defendant-appellee Mack Trucks, although name does not appear on briefs. Mack Trucks prevailed on the Robinson-Patman Act count on this appeal and prevailed on the Sherman Act count at a subsequent trial that ended in June 2009. An appeal from the June 2009 verdict is pending.