Appellate Practice

From the time of its founding, Schnader has focused on appellate advocacy as a specialized aspect of litigation. The Firm’s founders developed a vibrant appellate practice in both federal and state courts, with Bernard G. Segal, one of the foremost appellate advocates of his day, arguing scores of appeals throughout the country, including a dozen cases in the Supreme Court of the United States. In recent years, the Firm’s Appellate Practice Group has featured such preeminent appellate litigators as former Third Circuit Judges Arlin Adams and Timothy Lewis, James Crawford, former Superior Court of Pennsylvania Judge Carl Solano, Nancy Winkelman and Bruce Merenstein.

The work of Schnader’s Appellate Practice Group includes briefing and arguing civil and criminal appeals; appellate consulting and mooting of oral advocates; and trial-level appellate advising. We handle matters in both federal and state appellate courts throughout the country, and in particular appear regularly in the United States Court of Appeals for the Third Circuit and the Pennsylvania state appellate courts.

While our traditional appellate-court work remains the bulk of our practice, we find that clients increasingly are turning to our appellate specialists for assistance at the earliest stages of litigation. Our trial-level work encompasses pre-litigation strategizing on the most promising legal claims or defenses; taking the lead in dispositive motion practice, motions in limine, jury instructions, and post-trial briefing; sitting in on trials to advise on strategy and preservation of issues; and generally advising as to how best to frame and litigate issues in the trial court with an eye toward future appellate review. In our appellate consulting role, we assist other lawyers by providing strategic advice, reviewing briefs, and holding moot courts.

Our appellate lawyers are nationally recognized in their field. Members of our Appellate Practice Group have been elected to such prestigious groups as the American Academy of Appellate Lawyers and the American Law Institute. We serve on appellate rules and practice committees; hold leadership positions in bar association groups devoted to appellate practice; write and lecture frequently on appellate issues; teach appellate practice courses at law schools; and are contacted by the media for explanation of appellate issues in the news. Our Practice Group regularly receives recognition as the top appellate group in Philadelphia.
and in Pennsylvania.

**Schnader's Recent Noteworthy Appellate Cases**


The Supreme Court of Pennsylvania unanimously reversed a Superior Court decision that had allowed trust beneficiaries to skirt the statutory requirements for removing a corporate trustee. In the decision in favor of Wells Fargo, the Court agreed with Schnader’s argument that removal of a trustee was governed by the specific Uniform Trust Act provision on this topic and beneficiaries could not rely on a more general trust-modification provision to avoid the requirements for removing a trustee.


The Firm’s client, Dr. Graham Spanier, the former President of Penn State University, was charged with crimes arising out of the investigation of former Penn State assistant football coach Gerald Sandusky. In January 2016, the Superior Court of Pennsylvania reversed a trial court ruling denying Dr. Spanier’s motion to dismiss charges of perjury, obstruction of justice, and conspiracy, and dismissed those charges. The appellate court issued three lengthy opinions in Dr. Spanier’s case and the related appeals involving two other former administrators in which the court found fault with the conduct of the grand jury proceedings, the lead prosecutor in those proceedings, and Dr. Spanier’s counsel during those proceedings (the former Penn State general counsel).


Schnader successfully represented the New Jersey Institute of Technology in a state-court lawsuit brought by a disaffiliated alumni association. On the alumni association's appeal, the Appellate Division of the New Jersey Superior Court affirmed the rulings in NJIT's favor, rejecting the association's arguments that NJIT breached a contract or violated the association's trademark or First Amendment rights. The New Jersey Supreme Court denied the alumni association's certification request and awarded costs to NJIT.


Railroads represented by Schnader on appeal to the Superior Court of Pennsylvania obtained a reversal of a trial court ruling that the railroads improperly deducted certain amounts from a plaintiff's Federal Employers Liability Act verdict for taxes the railroads had paid on the plaintiff's behalf and disability benefits the plaintiff had received. The trial court ruled that the railroads had forfeited their right to take these deductions because they failed to file a post-trial motion and that they were not entitled to deduct the
funds from the verdict. The Superior Court disagreed on all counts, in a 39-page precedential opinion adopting the railroad’s position on all issues.


Schnader was lead counsel for General Electric Co. in a Pennsylvania Superior Court appeal in which the court held that a two-year asbestos statute of limitations applied to bar a wrongful death claim filed more than two years after the decedent was diagnosed with an asbestos-related disease. The decision affirmed a trial court ruling in General Electric's favor that a prior asbestos statute of limitations was revived when a later statute purporting to repeal that earlier statute was declared void by the Pennsylvania Supreme Court. The Superior Court also affirmed the trial court's ruling that all asbestos claims for personal injury or death must be brought within two years of the diagnosis of the asbestos-related disease.


On behalf of the School District of Philadelphia, Schnader obtained reversal of a Commonwealth Court of Pennsylvania ruling that the Pennsylvania Department of Education was required to pay a charter school out of School District subsidy funds for all of the charter school’s students, even those enrolled in excess of an agreed-upon cap. In the School District’s appeal to the state supreme court, that court held that the Department and the lower court had misinterpreted both the relevant statute relating to enrollment caps and the applicable charter agreement.

- **Landay v. Rite Aid of Pennsylvania, Inc.** (Pa. 2014)

In a matter of first impression, Schnader obtained a holding that provisions of the Pennsylvania Medical Records Act that regulate charges for obtaining medical records from health care facilities and providers do not apply to Pennsylvania pharmacies.

- **In re Estate of McFadden** (Pa. Super. 2014)

After successfully obtaining rehearing *en banc*, Schnader obtained reversal of a decision construing a clause in a testamentary trust to require the trust’s termination 21 years after the death of the testator’s last-surviving child. The clause was written to comply with the common-law rule against perpetuities and was capable of a construction that permitted a much longer duration, thereby postponing taxation of the estate.

- **Snizavich v. Rohm and Haas Co.** (Pa. Super. 2013)

The Superior Court of Pennsylvania upheld entry of summary judgment in favor of Schnader’s client Rohm and Haas in a wrongful death case brought by the estate of a pipefitter who was alleged to have developed brain cancer from working at a Rohm and Haas facility. The trial court held that the plaintiff’s causation expert failed to support his opinion with scientific authority demonstrating a link between the decedent’s
illness and the defendant, and therefore, summary judgment for Rohm and Haas was warranted. The Superior Court affirmed these holdings.

- **Yorty v. PJM Interconnection LLC** (Pa. Super. 2013)

The Superior Court of Pennsylvania directed that judgment be entered in favor of Schnader's client PJM Interconnection LLC, the entity that coordinates the flow of electricity on the interstate electric grid in the mid-Atlantic United States, in a suit that sought to impose liability on PJM for injuries suffered by an electrician employee of a utility in PJM's geographic territory while working on his employer's transmission lines.


An *en banc* Commonwealth Court panel rejected all challenges to the decision of Schnader's client the Pennsylvania Gaming Control Board to revoke a $50 million casino license.


The Superior Court of Pennsylvania vacated confessed judgments entered against Schnader's client Cambridge Warren on the ground that the parties' agreements did not permit the confessed judgments.

- **In re Estate of Elkins** (Pa. Super. 2012)

The *en banc* Superior Court of Pennsylvania affirmed the Orphans' Court's award to Schnader's client the Philadelphia Health and Education Corporation (the medical school of Drexel University) of the funds held in a trust established in 1919 by George Elkins for the benefit of Hahnemann Hospital, when Hahnemann was acquired by a for-profit health system and the charitable purpose of the Elkins Trust therefore failed.

- **Gates v. Rohm & Haas Co.** (3d Cir. 2011)

The Third Circuit affirmed the denial of class certification in an action against Schnader's client Rohm & Haas seeking recovery for medical monitoring and property damage on behalf of the residents of a village in northern Illinois who allegedly were threatened with harm by a chemical used at a facility acquired by Rohm and Haas. The Court held that differences in the scientific evidence applicable to the residents' claims made a class of plaintiffs seeking medical monitoring and property damage insufficiently cohesive to enable certification.
The California Court of Appeal affirmed a grant of summary judgment to Schnader’s client in a contractual dispute between former and current property owners regarding allocation of responsibility for a $42 million environmental clean-up.

In a trust case involving a major bank client, Schnader convinced the Supreme Court of Pennsylvania to overturn its 60-year-old precedent limiting the commissions from principal that a corporate trustee could receive.

In an asbestos case in which the plaintiff alleged that he contracted mesothelioma from working with turbines installed in a U.S. Steel plant, the Pennsylvania Superior Court affirmed the grant of summary judgment for Schnader’s client General Electric Co. on the basis of a construction statute of repose, holding that the turbines designed by General Electric were permanent fixtures and thus covered by the statute.

Contacts

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