



# Appellate

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## OVERVIEW

Recognized success in federal and state appellate courts throughout the country, deep experience in precedent-setting cases, and scholarly as well as practical know-how: That's why Fortune 500 companies and others count on the AP&S Appellate Group to handle complex appeals, often in cases previously handled by other law firms at the trial court level.

Our experienced and noted litigators—including adjunct professors of law, authors of important articles and books on judicial selection and appellate practice, and former clerks to federal and state judges—have briefed and argued hundreds of cases and filed amicus curiae briefs, from state courts nationwide to the United States Supreme Court. With AP&S, you get knowledgeable attorneys with a proven track record of success to handle your most critical matters.

## Areas of Concentration

- Commercial litigation
- [Complex corporate disputes](#)
- [Products liability](#)
- [Insurance coverage disputes](#)

## REPRESENTATIVE MATTERS

- ***Dauray v. Mee*, 109 A.3d 832 (R.I. 2015)**: In \$60 million litigation, AP&S attorneys defended charitable corporations that had been sued, in three separate lawsuits, for alleged undue influence and fraud in connection with charitable donations that had been made to the charitable corporations via will, trusts and lifetime gifts. AP&S attorneys obtained summary judgment on behalf of the firm's clients in the trial court in all three cases and successfully defended those judgments on appeal before the Rhode Island Supreme Court.
- ***Quest Diagnostic, Inc. v. Pinnacle Consortium of Higher Education, et al*, 93 A.3d 949 (R.I. 2014)**: AP&S represented Pinnacle Consortium of Higher Education in commercial litigation brought by Quest Diagnostics, Inc. seeking reimbursement of defense costs and indemnification for an underlying multi-million dollar medical malpractice case

filed by a graduate student against the Brown University student health clinic. Brown was and is one of Pinnacle's insured member universities. After Pinnacle prevailed on its motion for declaratory judgment before the Superior Court, Quest appealed to the Rhode Island Supreme Court. After full briefing and oral argument, the Supreme Court affirmed the trial court's decision. In so doing, the Court interpreted the underlying events as warranting professional liability coverage as opposed to CGL coverage, and therefore determined that Quest was not an additional insured under the policy issued by AP&S' client.

- ***McCulloch v. McCulloch*, 69 A.3d 810 (R.I. 2013)**: AP&S attorneys represented Hope McCulloch on appeal before the Rhode Island Supreme Court after extensive divorce proceedings in the Family Court that spanned almost five years. The central issue on appeal concerned the equitable assignment of marital property, which included a fabric manufacturer and a percentage of an affiliated company. On appeal, AP&S successfully argued that the trial justice abused his discretion when he assigned to Hope a percentage of the companies without first placing a value on those assets. The Supreme Court concluded that because the companies, having been valued at between \$106 million and \$126 million (at the time of valuation), constituted an enormous portion of the marital estate, it was error not to value those assets before assigning them.
- ***Automotive Industries Pension Trust Fund v. Textron Inc.*, 682 F.3d 34 (1st Cir. 2012)**: AP&S attorneys successfully defended Textron Inc. and several of its senior officers in both the trial court and on appeal to the United States Court of Appeals for the First Circuit in a securities fraud class action. On Textron's motion to dismiss, the district court found that the plaintiff's allegations were insufficient to show that Textron omitted material information concerning its backlog of aircraft orders at its wholly owned subsidiary, Cessna Aircraft Company. On appeal, the First Circuit affirmed on the grounds that the plaintiff's allegations failed to plead facts justifying a reasonable inference of scienter, a necessary element of a securities fraud claim.
- ***Irons v. Rhode Island Ethics Commission*, 973 A.2d 1124 (R.I. 2009)**: In a matter of first impression, the Rhode Island Supreme Court held that AP&S' client, the former President of the Rhode Island Senate, was immune from Ethics Commission prosecution because the charges against him stemmed from how he voted on legislation. Under the speech in debate clause of the Rhode Island Constitution, legislators are immune from prosecution on how they vote on legislation or participate in legislative activities.
- ***State of Rhode Island v. Lead Industries Association, et al.*, 951 A.2d 428 (R.I. 2008)**: In the longest jury trial in Rhode Island history—the Attorney General's landmark lead-litigation public nuisance case—AP&S successfully defended Atlantic Richfield Company, the only defendant found not responsible by the jury at trial. AP&S also represented Atlantic Richfield successfully on appeal, where the Rhode Island Supreme Court affirmed the verdict in the company's favor. AP&S also argued on behalf of all defendants with respect to their attacks on the Attorney General's contingency-fee agreement with private counsel.
- ***DeCesare v. Lincoln Benefit Life Co.*, 852 A.2d 474 (R.I. 2004)**: A watershed decision

on Rhode Island class action law in which the Supreme Court clarified the legal parameters that determine when and how a nationwide plaintiff class may be certified to pursue both injunctive and monetary relief.

- ***Insurance Company of North America v. Kayser-Roth Corporation*, 770 A.2d 403 (R.I. 2001)**: The Rhode Island Supreme Court ruled in favor of the firm’s client Kayser-Roth on several issues of first impression, including insurance law issues and right to a jury.
- ***Textron Inc. v. Aetna Casualty and Surety Co.*, 754 A.2d 742 (R.I. 2000)**: The Rhode Island Supreme Court held, in favor of AP&S’s client, the so-called pollution exclusion clause in commercial general liability policies to be ambiguous and thereby afforded coverage to policyholders who do not intentionally or recklessly pollute the properties of others.
- ***Textron Inc. v. Aetna Casualty and Surety Co.*, 723 A.2d 1138 (R.I. 1999)**: The Rhode Island Court determined the trigger for coverage for insurance policies in environmental damage cases, and also determined the kinds of expert and scientific/technical evidence that could be used to trigger policies, in favor of AP&S’ client.
- ***DiPetrillo v. The Dow Chemical Company*, 729 A.2d 677 (R.I. 1999)**: The Rhode Island Supreme Court adopted the Daubert-type standards for the admission of scientific evidence and established the procedure in Rhode Island courts for pretrial Daubert hearings.
- ***Woodland Manor III Associates v. Kenney*, 713 A.2d 806 (R.I. 1998)**: The Rhode Island Supreme Court held, in favor of AP&S’s client, that the Department of Environmental Management’s temporary denial of a permit to a landowner to develop the last phase of a planned unit development constituted an unconstitutional temporary taking.
- ***Paradis v. Heritage Loan & Investment Co.*, 678 A.2d 440 (R.I. 1996)**: In a case of first impression, the Rhode Island Supreme Court held, in favor of AP&S’ client, that money placed in a financial institution did not have to be managed according to the institution’s usual business practices for it to be considered a valid “deposit” or “deposit liability.”

## SEMINARS / PUBLICATIONS

### Seminars

- Nicole J. Benjamin, Speaker, Supreme Ghostbusters, Email Gatekeepers and Other Issues of First Impression, Rhode Island Supreme Court Round-Up Seminar, July 2015.
- Nicole J. Benjamin, Speaker, Recent Developments in Courts and Civil Procedure, RI Bar Association CLE, October 2014 and forthcoming October 2015.
- Nicole J. Benjamin, Speaker, Appellate Practice CLE, RI Bar Association Annual Meeting, June 2014.
- Nicole J. Benjamin, Speaker, The Court’s Role in Managing High Profile Civil and Criminal Cases, American College of Trial Lawyers’ Regional Meeting, June 2014.

- Nicole J. Benjamin, Speaker, May It Please The Court: Best Practices for Rhode Island Supreme Court Appeals, CLE, September 2011, March 2012.
- Nicole J. Benjamin, Speaker, Rhode Island Appellate Practice: Some Tips and Pitfalls, CLE, April 2011.
- Jeffrey K. Techentin, Speaker, Nuts and Bolts of Preparing an Appeal, RI Bar Association Seminar.

## **Publications**

- Nicole J. Benjamin, Five Rhode Island Supreme Court pointers for summary judgment, Rhode Island Lawyers' Weekly, September 15, 2014.

## **AWARDS**

- Rated Tier 1 Metropolitan "Best Law Firm" by Best Lawyers®.