

IADC Amicus Brief Program

The IADC amicus curiae program has been very active over the first six months of 2016, participating in eight matters covering a broad variety of issues important to our members and their clients. Courts have also decided important cases in the first half of 2016 in which the IADC participated as amicus curiae. Among the most notable of these briefs are the following:

In Spokeo, Inc. v. Robins (July 9, 2015; decision issued May 16, 2016), the International Association of Defense Counsel joined with the U.S. Chamber of Commerce, The American Hotel & Lodging Association, The American Tort Reform Association, The National Association Of Manufacturers, and The National Federation Of Independent Business, in support of defendant and petitioner Spokeo, arguing that, to establish Article III standing, a plaintiff must allege concrete, particularized injury-in-fact, and not a mere technical violation of a statute. In May 2016, the U.S. Supreme Court decided in favor of Spokeo and reaffirmed that the injury-in-fact requirement for Article III standing in federal court requires a plaintiff to allege an injury that is both “concrete” and “particularized.” The Court provided additional guidance on what amounts to “concrete” harm by making clear that just because Congress may have enacted a statute that “identifies] and elevat[es] intangible harms” to give rise to a cause of action, including statutory damages, “does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.” In other words, “a bare procedural violation, divorced from any concrete harm,” such as dissemination of an incorrect zip code in violation of the Fair Credit Reporting Act, is not enough to create standing. The Spokeo decision will impact purported class actions across the country brought under a variety of different statutes which govern how companies gather, share, or sell consumer information (including the Video Privacy Protection Act (VPPA), the Telephone Consumer Protection Act (TCPA), and the Fair and Accurate Credit Transmission Act (FACTA)).

In Cogent Communications, Inc. v. Joan Ambrosio, et al. (January 28, 2016), the International Association of Defense Counsel filed a brief in support of petitioner Cogent Communications's argument that a court's assessment of damages for purposes of class certification must incorporate the heightened "rigorous analysis" required by Comcast Corp., v. Behrend, 133 S. Ct. 1426 (2013). In Cogent Communications, the district court granted certification on the basis of expectation of a showing of common damages. The IADC's brief argued that Comcast requires a rigorous analysis of damages claims, and further that concerns regarding individualized damages issues must be addressed by present evidence of common damages at the certification stage. The brief was authored by IADC member Andrew Kopon Jr. and Eleonora P. Khazanova of Kopon Airdo, LLC.

In Exxon Mobil Corporation and Exxon Mobil Oil Corporation v. State of New Hampshire (February 19, 2016), the International Association of Defense Counsel filed a brief in support of petitioner ExxonMobil Corporation that parens patriae should incorporate the same procedural and substantive safeguards as private class actions. In ExxonMobil, the State of New Hampshire initiated a parens patriae action against ExxonMobil, and in connection with this action, the State sought to use the very "trial by formula" methods the Supreme Court rejected in Wal-Mart v. Dukes, to avoid presenting individualized claims for damages. The IADC's brief argued that parens patriae actions arose in an attempt to address the same public policy considerations that underlie private class actions and that defendants in parens patriae actions are entitled to the same substantive and procedural due process rights guaranteed to private class action defendants under Dukes. The brief was authored by IADC member and amicus brief committee chair Mary-Christine Sungaila and Martin M. Ellison of Haynes and Boone LLP.

In Michael Williams v. Marshalls of CA, LLC (May 3, 2016), the International Association of Defense Counsel filed a brief in support of real party of interest Marshalls of CA, LLC to the Los Angeles County Superior Court. Marshalls sought to affirm the discovery order of the trial court relating to a claim brought by Williams alleging violations of California's meal-and-rest break and business-expense-reimbursement laws. Williams sought extensive discovery of all Marshall's employees nationwide; and the court granted instead limited discovery of employees only within a limited geographic region. The IADC's brief argued that the discovery order was a valid exercise of the inherent authority of the trial court, and further, what constitutes reasonable disclosure within the California state law context. The brief was authored by IADC member and amicus brief committee chair Mary-Christine Sungaila and Martin M. Ellison of Haynes and Boone LLP.