



## **Brian D. Netter**

Partner

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Brian Netter is a partner in the Washington DC office. A former law clerk to Justice Stephen Breyer on the US Supreme Court, Brian briefs and argues high profile and legally complex cases covering a broad range of substantive areas, including administrative law, constitutional law, and ERISA.

Much of Brian's work involves issues of first impression in the federal courts. He is currently co-lead counsel to the District of Columbia Council in litigation against the Mayor about the District's right to spend local tax dollars. On three occasions, Brian's innovative work has been recognized in The National Law Journal's "Appellate Hot List." Brian has also been recognized by Washington DC Super Lawyers as an emerging star in appeals.

### **SELECTED EXPERIENCE**

#### **Abbott v. Lockheed Martin Corp. (Seventh Circuit)**

Participants in a 401(k) retirement plan brought an ERISA class action for breach of fiduciary duty against their employer.

#### **Arkema Inc. v. EPA (D.C. Circuit)**

In this case, we secured vacatur of a final rule promulgated by the Environmental Protection Agency ("EPA"). The rule provided allowances for the production of ozone-depleting substances under a cap-and-trade system.

#### **Brinker Restaurant Corp. v. Superior Court (California)**

Plaintiffs filed a putative class action seeking monetary damages for alleged violations of a California law requirement meal and rest breaks for employees.

#### **Chavez v. Nestlé USA, Inc. (Ninth Circuit)**

Plaintiffs filed suit against Nestlé under California's false advertising and unfair competition laws, alleging that the labeling of certain Juicy Juice brand beverages (which are sold by Nestlé) was deceptive.

#### **Clements v. CSX Transp. Inc. (Eleventh Circuit)**

Following a train collision, plaintiff Jimmy Clements sued CSX Transportation, Inc. under the Federal Employees Liability Act for negligence.

**Council of the District of Columbia v. Gray (D.C. Circuit)**

We represent the D.C. Council in litigation regarding the right of the District of Columbia to spend its own tax dollars.

**Crews v. Farina (U.S. Supreme Court)**

We successfully opposed a petition for certiorari that sought to reimpose a previously-vacated death sentence on our client.

**CSX Transp., Inc. v. General Mills, Inc. (Eleventh Circuit)**

We represent a railroad, challenging the dismissal of an indemnity action. The case presents a choice-of-law question regarding collateral estoppel and a question of contractual interpretation.

**Farina v. Florida Dep't of Corr. (Eleventh Circuit)**

In this case, we filed an amicus brief on behalf of religious and civil liberties organizations including Americans United for Separation of Church and State, American Civil Liberties Union, and Interfaith Alliance Foundation in support of the petitioner Anthony Farina's petition for habeas corpus to the Eleventh Circuit.

**King v. Burwell (U.S. Supreme Court)**

We filed an *amicus* brief explaining that federal tax credits are an essential tool for broadening the risk pool and stabilizing the health insurance market.

**Local Search Ass'n v. City and County of San Francisco (Ninth Circuit)**

We represented Yellow Pages publishers in a First Amendment challenge to a San Francisco ordinance outlawing the distribution of Yellow Pages directories without the recipient's prior or contemporaneous consent.

**Lockheed Martin Corp. v. Abbott (U.S. Supreme Court)**

We represented Lockheed Martin Corporation in this class action lawsuit arising under the Employee Retirement Income Security Act (ERISA).

**Lockheed Martin Corp. v. Retail Holdings, N.V. (Second Circuit)**

The parties in this case disputed ownership of an overfunded pension plan originally created by The Singer Corporation.

**Polar Tankers, Inc. v. City of Valdez (U.S. Supreme Court)**

Polar Tankers, Inc. challenged a municipal ordinance that imposed a tax on certain boats and vessels. The ordinance contained several exceptions that largely limited its applicability to large oil tankers.

**Republic of the Philippines v. Pimentel (U.S. Supreme Court)**

Our client, the Philippine government, sought dismissal of a suit claiming a right to approximately \$35 million in assets that Ferdinand Marcos allegedly stole from the Philippines during his time as the country's president.

**Tibble v. Edison Int'l (U.S. Supreme Court)**

Claims alleging breach of fiduciary duty under ERISA must be brought within six years. This case concerns whether a fiduciary-breach claim may be brought after six years, based on the fiduciary's supposed duty to monitor a decision previously made.

**Putnam Investments, LLC v. Brotherston (U.S. Supreme Court)**

Our amicus brief argued that the Supreme Court should resolve a circuit split over the allocation of the burden of proof for duty-of-prudence actions under ERISA.