



## **Evan M. Tager**

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Identified by Chambers USA as one of America's leading appellate lawyers for the past nine years, Evan Tager has been integrally involved in a range of issues of paramount importance to the business community, including punitive damages, class-certification standards, admissibility of expert testimony, and enforceability of arbitration agreements. Evan has filed hundreds of briefs on these and other issues of importance to the business community in the United States Supreme Court and in lower courts throughout the country.

In December 2014, Evan was named to *The National Law Journal's* inaugural list of "Litigation Trailblazers & Pioneers," which recognizes the achievements of 50 people who have "helped make a difference in the fight for justice" and "shown a deep passion and perseverance in pursuit of their mission, having achieved remarkable successes along the way." *The National Law Journal* highlighted Evan's transformative work in two areas of law that are of great concern to the business community: punitive damages and the enforceability of arbitration provisions. In February 2013, International Law Office awarded Evan its Client Choice Award for the Litigation category in Washington, D.C. And in 2012, *The National Law Journal* named Evan to its "Champions and Visionaries" list, recognizing his efforts leading up to the Supreme Court's seminal decision in *AT&T Mobility v. Concepcion*.

## **SELECTED EXPERIENCE**

### **Adams v. AT&T Mobility, LLC (Ninth Circuit)**

The named plaintiffs filed this putative nationwide class action claiming that AT&T violated the federal Telephone Consumer Protection Act by sending text-message advertisements to its wireless customers about upgrading their cellular telephones after AT&T acquired their former wireless provider.

### **American Express Co. v. Italian Colors Restaurant (U.S. Supreme Court)**

We filed an amicus brief successfully arguing that the Federal Arbitration Act does not permit courts to refuse to enforce arbitration agreements based on an ad hoc assessment that individual arbitration might not be cost-effective.

### **American Trucking Associations, Inc. v. New York State Thruway Authority (Second Circuit)**

We secured reversal from the Second Circuit of a district court's ruling that the State of New York was a necessary party to a dormant Commerce Clause suit filed against the New York State Thruway Authority, which is a public corporation under state law.

### **American Trucking Associations, Inc. v. New York State Thruway Authority (Second Circuit)**

We are appealing a district court's decision that Congress authorized the New York State Thruway Authority to collect excessive tolls that would otherwise violate the Constitution's Commerce Clause.

### **AT&T Mobility LLC v. Concepcion (U.S. Supreme Court)**

AT&T Mobility's customer agreements require disputes to be resolved on an individual basis in arbitration.

### **Bennett v. CSX Transportation, Inc. (Fourth Circuit)**

We obtained reversal of a multi-million-dollar verdict against our client, successfully arguing that the evidence at trial was legally and factually insufficient to sustain employer liability and front pay on the plaintiff's hostile-environment claims.

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**Black v. CSX Transp., Inc. (Pennsylvania)**

The plaintiff in this case alleged that he contracted cancer as a result of being exposed to asbestos for a brief period in the 1950s, while employed in Kentucky by one of CSX's predecessors.

**BMW of North America, Inc. v. Gore (U.S. Supreme Court)**

The U.S. Supreme Court agreed with our argument that the punitive damages award in the case was grossly excessive, establishing the legal framework that has been foundational in punitive damages cases ever since.

**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.

**Caperton v. A.T. Massey Coal Co. (U.S. Supreme Court)**

Traditionally, in both British and American law, judges could be disqualified from participating in a case only if they had direct financial stakes in the case's outcome.

**CGB Occupational Therapy, Inc. v. Sunrise Assisted Living, Inc. (Third Circuit)**

The Third Circuit agreed with our argument that a \$2 million punitive award that was more than 18 times the compensatory damages was unconstitutionally excessive, reducing it to \$750,000.

**Choate v. Indiana Harbor Belt Railroad Co. (Illinois)**

While trespassing on defendants' railroad tracks, plaintiff Dominic Choate was injured trying to jump onto a moving train in order to impress his girlfriend.

**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.

**Coneff v. AT&T Corp. (Ninth Circuit)**

The plaintiffs in this case brought several putative nationwide class actions alleging that, after acquiring their wireless carrier, AT&T Mobility degraded their service in order to force them to switch to its network.

**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.

**CSX Transp., Inc. v. Pitts (Maryland)**

A locomotive engineer brought a personal injury action under the Federal Employers' Liability Act (FELA) against our client, CSX, for knee injuries he allegedly sustained while working in CSX's rail yards.

**CSX Transportation, Inc. v. Gilkison (Fourth Circuit)**

We successfully argued that the district court erred in dismissing our client's fraud and RICO claims as time-barred, leading to a \$1.3 million verdict for our client on remand.

**CSX Transportation, Inc. v. Hensley (Tennessee)**

Plaintiff Thurston Hensley sued his employer, CSX Transportation ("CSX"), under the Federal Employees Liability Act, alleging that CSX negligently caused his asbestosis and seeking damages for (among other things) a fear of developing cancer in the future.

**CSX Transportation, Inc. v. McBride (U.S. Supreme Court)**

Plaintiff brought a FELA claim for injuries he allegedly suffered while adding and removing railroad cars for his employer, and our client, CSX Transportation.

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**DirecTV, LLC v. Hall (U.S. Supreme Court)**

We filed a petition for certiorari seeking review of a Fourth Circuit decision announcing a novel test for “joint employment” under the FLSA.

**Dziadek v. The Charter Oak Fire Insurance Company (Eighth Circuit)**

We filed an amicus brief for several groups addressing the proper treatment of prejudgment interest under the Supreme Court’s due process guideposts for reviewing punitive awards.

**Epic Systems Corp. v. Lewis; Ernst & Young LLP v. Morris; NLRB v. Murphy Oil USA, Inc. (U.S. Supreme Court)**

We drafted an *amicus* brief for the U.S. Chamber of Commerce in a Supreme Court case involving a National Labor Relations Board rule prohibiting agreements to arbitrate employment disputes on an individual basis.

**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.

**Ferguson v. Corinthian Colleges, Inc. (Ninth Circuit)**

Former students at for-profit colleges brought a putative class action against the colleges, claiming that they were misled into enrolling and taking out student loans (which they could not repay) by assurances about their job prospects after completing their studies.

**Galarneau v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (First Circuit)**

This is one of the rare cases in which an appellate court has held that although there was sufficient evidence to support the underlying tort claim, there was insufficient evidence to support punitive damages.

**Grayson v. AT&T Corp. (District of Columbia en banc)**

We filed an amicus brief successfully arguing that standing to sue under D.C. consumer-protection laws must be limited to plaintiffs who have suffered a personal injury.

**Hancock v. AT&T Co. (Tenth Circuit)**

The plaintiffs in this case brought a multistate class action in federal court in Oklahoma on behalf of customers of AT&T, alleging that they were dissatisfied with AT&T’s U-Verse service (which provides television, voice, and Internet services).

**Holt v. Hobbs (U.S. Supreme Court)**

Gregory Holt, a state inmate who is a Muslim, sought an exemption from his prison’s no-facial-hair policy to grow a short beard consistent with his religious beliefs.

**In re Wholesale Grocery Products Antitrust Litigation (Eighth Circuit)**

On behalf of the U.S. Chamber of Commerce, we filed an amicus brief arguing that the Federal Arbitration Act requires individual arbitration of the plaintiffs’ federal antitrust claims in accordance with the parties’ contractual agreements.

**Johnmohammadi v. Bloomingdale’s, Inc. (Ninth Circuit)**

Plaintiff Fatemeh Johnmohammadi brought a putative class action against Bloomingdales under California law, seeking to recover unpaid overtime wages.

**Jupiter Medical Center, Inc. v. Visiting Nurse Association of Florida, Inc. (U.S. Supreme Court)**

Our certiorari petition in this case asks the Supreme Court to resolve a split in the circuits on the question whether, under the Federal Arbitration Act, courts have the authority to vacate an arbitral award on the ground that the underlying contract, as interpreted by the arbitrators, is illegal.

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**Kilgore v. KeyBank, N.A. (Ninth Circuit)**

We filed an amicus brief and presented oral argument before the en banc court, arguing that the Federal Arbitration Act preempts California's state-law rule prohibiting arbitration of public-injunction claims.

**Leavey v. Unum Provident Corp. (Ninth Circuit)**

In an insurance bad-faith case, we successfully reduced a \$15 million punitive award to \$3 million and a \$4 million compensatory award to \$1.2 million on post-trial motions and defended that outcome on appeal.

**Lockley v. CSX Transportation, Inc. (Pennsylvania)**

Albert Lockley brought suit against his employer, CSX Transportation, for neck injuries allegedly suffered while working for CSX. We represented CSX in its appeal of the liability judgment and in its appeal of an award of post-judgment interest.

**Lompe v. Sunridge Partners, LLC (Tenth Circuit)**

We filed an amicus brief for the Chamber of Commerce identifying several significant errors in the trial court's decision to approve punitive damages of \$25.5 million when compensatory damages were \$2.7 million.

**McArdle v. AT&T Mobility LLC (Ninth Circuit)**

An AT&T customer sued AT&T on behalf of a putative class, claiming that the company violated consumer protection statutes by failing to adequately disclose certain charges.

**Morgan v. AT&T Wireless Services, Inc. (California)**

Customers of AT&T Mobility agreed that any disputes between the parties would be resolved by arbitration on an individual basis, thus barring class actions.

**Murco Wall Prods., Inc. v. Galier (US Supreme Court)**

We persuaded the Supreme Court to vacate and remand a state court decision applying an improper test for specific personal jurisdiction.

**Philip Morris USA v. Williams (U.S. Supreme Court)**

The Supreme Court granted our petition for certiorari and held that under the U.S. Constitution, state courts may not permit juries in individual cases to punish defendants for harms suffered by non-parties even where those harms arose from conduct similar to the conduct that injured the plaintiff.

**Poole v. CSX Transportation, Inc. (Florida)**

We successfully defended a summary judgment in favor of CSX Transportation, Inc., persuading the Florida appellate court that when it comes to duties owed to trespassers on land, there is no distinction between the "active" and "passive" negligence of the landowner.

**Raniere v. Citigroup Inc. (Second Circuit)**

On behalf of a coalition of business groups, we filed an amicus brief successfully arguing that the Fair Labor Standards Act does not evince a congressional intent to preclude individual arbitration of wage-and-hour claims.

**Sells v. CSX Transportation, Inc. (Florida)**

The husband of the plaintiff in this case died from cardiac arrest. Plaintiff sued CSXT in the Circuit Court for Duval County, Florida under FELA, alleging that CSXT should have provided automated external defibrillators in the workplace, should have required employees to undergo mandatory training in cardiopulmonary resuscitation, and negligently delayed the arrival of emergency medical technicians.

**Shorts v. AT&T Corp. (West Virginia)**

In this case, the plaintiff brought a class action challenging the early termination fees charged by one of AT&T Mobility's predecessors.

**Simon v. San Paolo U.S. Holding Co. (California)**

In this seminal decision, the California Supreme Court embraced several arguments advanced by Mayer Brown in its amicus brief for the Chamber of Commerce.

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**Turley v. ISG Lackawanna, Inc. (Second Circuit)**

In this case involving workplace racial harassment by the plaintiff's co-workers, we obtained a reduction of a \$24 million punitive judgment against their employer to \$2.5 million.

**Udac v. Takata, Corp. (Hawaii Court of Appeals)**

We obtained a new trial on liability and JMOL on punitive damages following a \$17 million verdict based on alleged defects in a seatbelt buckle that resulted in the plaintiff's paralysis.

**Dutra Group v. Batterton (U.S. Supreme Court)**

We filed an amicus brief on behalf of maritime industry organizations urging the Supreme Court to hold that punitive damages are unavailable in cases brought under the maritime-law doctrine of unseaworthiness.