



The Appellate Practice Group of Ward and Smith, P.A. assists clients in all aspects of state and federal appellate practice. To better assist our clients, we draw upon the experience and knowledge of attorneys in other practice areas to provide competent counsel and solutions.

The members of the Appellate Practice Group have many years of experience before the North Carolina Court of Appeals, the North Carolina Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. Among the members of the Group are former judicial clerks who are familiar with the dynamics of the appellate courts, and members of organizations such as the North Carolina Advocates for Justice, the North Carolina Association of Defense Attorneys, and the Defense Research Institute.

The attorneys in the Appellate Practice Group possess the skills to succeed in the appellate courts, with experience in appellate research, preparation of records on appeal, drafting of persuasive briefs, and presentation of oral arguments. These skills are critical to navigating successfully through the sophisticated appellate process. The attorneys have put substantial effort into this area of practice, and the Group serves as an important resource for clients faced with appeals.

The Appellate Practice Group handles not only appeals in cases tried by our litigation attorneys, but also appeals that are referred to us from attorneys outside of Ward and Smith. In the latter situations, protection of the referring attorneys' relationships with their clients is paramount.

Following are some representative cases handled by the Appellate Practice Group:

Trade Secrets Appeal

Ward and Smith represented a husband and wife who were accused of misappropriating the trade secrets of one of their competitors when they started a new business. Following a jury trial that resulted in a hung jury, the trial court granted our motion for judgment notwithstanding the verdict. The plaintiff appealed. The North Carolina Court of Appeals affirmed the decision of the trial court, holding that the plaintiff offered no evidence to support its claims.

Homeowners' Association Appeal

Ward and Smith represented a homeowners' association that was forced to sue the developers of its subdivision when the developers, notwithstanding numerous pleas and requests from the association, failed to repair and maintain the streets. When demand for repairs went unanswered, the homeowners' association undertook the repairs itself. It then filed suit against the developers to recover damages it incurred to repair the streets, to recover damages for the amount it would have to spend to bring the streets in accord with reasonable standards, and for an injunction to compel the developers to prospectively carry out their repair and maintenance responsibilities. The developers moved to dismiss the lawsuit on the ground that the association failed to join all of the residents of the subdivision as parties to the suit. The trial court denied this motion, and the developers appealed. We objected to the developers' appeal on the basis that the appeal was interlocutory. The North Carolina Court of Appeals agreed with our position and dismissed the

developers' appeal.

ERISA Appeal

Ward and Smith represented an employer who was sued by the widow of one of its former employees who claimed she was wrongfully denied benefits under her deceased husband's employee welfare benefit plan. Her husband was killed in an automobile accident and, according to the police report, he had a blood alcohol level of 0.17 percent at the time of the collision. Under the terms of the plan, the insurance company that insured the plan, not the employer, had the full and sole responsibility for determining eligibility for benefits.

The insurance company denied the benefits based on a policy exclusion for death or injury to a participant while under the influence of drugs or intoxicants. The trial court granted our motion for summary judgment on behalf of the employer, and the widow appealed. The United States Court of Appeals for the Fourth Circuit affirmed the decision of the trial court on all grounds.

Real Estate Appeal

Ward and Smith represented a municipality involved in a dispute with one of its residents over the ownership of an alley. Although the municipality had paved the alley; dug up portions of the alley to maintain and repair the sewer lines and other utilities; provided garbage, police, and fire service to the alley; and used the alley for more than 40 years, the resident contended that he owned the alley and wanted to close it to construct a patio behind his store. The resident relied on the Marketable Title Act to argue that his claim to title to the alley was under a chain of record title for 30 years and that no other person had filed a notice of any claim or interest in the alley during that 30-year period. Following a bench trial, the trial court held that the municipality's use of and provision of municipal services to the alley were sufficient to establish actual possession of the alley, which was an exception to the Marketable Title Act. Therefore, the municipality owned the alley. The resident appealed. The North Carolina Court of Appeals unanimously affirmed the ruling of the trial court.

Construction Appeal

Ward and Smith represented two homeowners who, after purchasing a newly-constructed oceanfront home, experienced water intrusion around their windows and doors. We sued, among others, the corporate builder of the home and the corporation's president. We alleged that the corporation's president oversaw and personally supervised the day-to-day construction of the home and was negligent in failing to properly supervise such construction. The trial court dismissed our claims against the president, and we appealed. The North Carolina Court of Appeals agreed with our position, holding that an individual member of a limited liability company or an officer of a corporation may be individually liable for his or her own torts, including negligence. Accordingly, the Court of Appeals reversed the dismissal by the trial court.