

# Appeals

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d'QM utilizes its appellate expertise in all phases of disputes, providing d'QM clients with expertise both deep and broad throughout every stage of litigation and arbitration, offering the best strategies from start to finish and targeted efficiency in reaching favorable outcomes.

d'QM's appellate practitioners focus on briefing and arguing cases before the higher courts of New York, Florida, New Jersey, Georgia, Pennsylvania, and Texas, and the circuit courts of appeals for the Second, Third, Fourth, Fifth, Sixth, and Eleventh circuits. d'QM appellate practitioners also have experience in the United States Supreme Court and the appellate courts of numerous other states across the country.

## REPRESENTATIVE MATTERS

### **Kerrigan v Metropolitan Life Insurance Company**

Supreme Court of the State of New York, New York County

New York State Appellate Division, First Department

New York State Court of Appeals

- Issue: Insurer brought action to rescind policy based on material misrepresentations. Defendant beneficiary claimed that an EKG in the underwriting file constituted constructive notice of the misrepresentation regarding heart disease
- Resolution: trial court rescinded policy, and First Department affirmed, holding that insurer must have actual, not constructive, knowledge of the misrepresentation during underwriting. Defendant moved for leave to appeal to the New York State Court of Appeals based on allegations of post-claim underwriting. The motion was denied.

### **Recovery Home Services v Metropolitan Life Insurance Company**

Supreme Court of the State of New York, New York, County

New York State Appellate Division, First Department

- Issue: Plaintiff brought a lawsuit challenging the reduction of at home skilled nursing benefits from 24 hours to 2 hours a day based on waiver and claim that the services were medically necessary.
- Resolution: the issue of whether the skilled nursing care was needed to manage the needs of an acutely versus chronically ill patient was tried. After the trial, the Judge upheld the insurer's conclusion that the patient was chronically ill and entitled to 2 hours of skilled nursing a day according to the plan terms. Plaintiff appealed and the First Department affirmed the trial court's decision.

### **Dormer v Northwestern Life Insurance Company**

United States District Court, Southern District of New York

United States Court of Appeals, Second Circuit

- Issue: During review of a disability claim, the insurer discovered that the insured had made several material misrepresentations in her applications for disability. The applications were executed more than two years prior to the disability claim being filed. The insurer accordingly rescinded the policies. The insured sued in New York state court and the action was removed to the United States District Court for the Southern District.
- Resolution: After trial, the District Court (J. Rakoff) held that plaintiff had intentionally made material misrepresentations and rescinded the Policy. The Second Circuit affirmed.



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