



Ilana H. Eisenstein

Partner

CO-CHAIR, APPELLATE ADVOCACY PRACTICE

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Ilana H. Eisenstein is Co-Chair of the firm's Appellate Advocacy Practice. She is a former Assistant to the Solicitor General and a former federal prosecutor with experience at every stage of litigation – from investigation, through trials, appeals, and the US Supreme Court.

Ilana has argued five cases in the Supreme Court, including cases involving novel questions of statutory interpretation and constitutional law and procedure, and has been the lead author of dozens of briefs at the merits and certiorari stages in the Supreme Court and in the federal courts of appeals.

Ilana has extensive trial experience – she has tried 11 jury trials to verdict and handled more than 100 federal cases.

Ilana focuses her practice on appellate, complex commercial, products liability, and white-collar litigation.

EXPERIENCE

Ilana has argued 5 cases in the U.S. Supreme Court and brief dozens of others at the merits and certiorari stages. Ilana has successfully briefed and argued numerous cases in the federal courts of appeals. She regularly represents and counsels clients on appellate and post-trial matters. Ilana also works closely with trial teams to develop legal strategy, draft and argue pre-trial motions and post-trial briefs, and preserve legal arguments at all stages of litigation. Recent and current representative matters include:

- Lead counsel for major pharmaceutical manufacturer in the multi-district litigation, *In re Generics Antitrust Litigation*
- Lead appellate counsel for major pharmaceutical manufacturer in large multi-district litigation involving product liability and failure-to-warn claims.
- National coordinating counsel for a major medical device manufacturer on issues of preemption of product-liability claims
- Represented distributor/importer of infusion pump in successfully dismissing qui tam False Claims Act lawsuit alleging device defects and purported failure to report product recalls
- Represented pharmaceutical manufacturer in federal civil litigation against private payors alleging fraud, kickbacks, and off-label marketing

RELATED SERVICES

- Litigation, Arbitration and Investigations

- Lead appellate attorney for major device manufacturer in Ninth Circuit appeal on issues of federal preemption under 21 U.S.C. 360k, implied preemption, and causation
- Appellate counsel embedded with trial team representing Ethicon, Inc. and Johnson & Johnson in Pennsylvania pelvic mesh litigation, resulting in a defense verdict at trial
- Argued appeal to Second Circuit on behalf of a major credit-card processing company in case involving complex software copyright and licensing agreements
- Represented multinational tire manufacturer in Fourth Circuit appeal from \$40 million negligent manufacturing verdict
- Represented public gaming corporation in the Pennsylvania Supreme Court in successful equal protection challenge to Pennsylvania taxation scheme
- Represent space exploration corporation in post-trial and appeal to the Third Circuit in breach of contract action

REPRESENTATIVE SUPREME COURT AND APPELLATE EXPERIENCE:

- *Moore v. Texas*, No. 18-443 (S. Ct. 2019): Author of a brief on behalf of amicus curiae the American Bar Association in support of Mr. Moore, arguing that his death sentence should be summarily reversed as inconsistent with the Eighth Amendment standard for diagnosing intellectual disability. The U.S. Supreme Court granted summary reversal of Mr. Moore's capital sentence.
- *Lucia v. Securities and Exchange Commission*, No. 17-130 (S. Ct. 2018): Author of brief on behalf of amicus curiae Equity Dealers of America describing due process concerns posed by the SEC's administrative forum
- *Microsoft v. United States*, No. 17-2 (S. Ct. 2018): Author of brief on behalf of amici curiae DIGITALEUROPE, Syntec Numérique, and other European national trade organizations asking the Court to consider the potential conflict between the Stored Communications Act and the GDPR
- *Dahda v. United States*, No. 17-43 (S. Ct. 2017): Author of brief on behalf of amicus curiae the National Association of Criminal Defence Lawyers and the Electronic Frontier Foundation on Title III's territorial limits on cellular wiretaps
- *Masterpiece Cakeshop LTD v. Colorado Civil Rights Commission*, No. 16-111 (S. Ct. 2017): Author of amicus brief on behalf of the Lawyers' Committee for Civil Rights Under Law and eight other national civil rights organizations in support of Colorado's public accommodation law, which prohibits discrimination on the basis of sexual orientation
- *Howell v. Howell*, 137 S. Ct. 1400 (2017): Federal preemption of state-court division of military disability benefits (argued)
- *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017): Held that pre-trial detention without probable cause violates the Fourth Amendment and may give rise to a federal civil rights claim (argued)
- *Menominee Tribe v. United States*, 136 S. Ct. 750 (2016): Clarified proper application of equitable tolling principles in a contracting dispute with the federal government (argued)
- *United States v. Voisine*, 136 S. Ct. 2272 (2016): Determined the scope of the federal prohibition on firearms by domestic abusers (argued)
- *Ohio v. Clark*, 135 S. Ct. 2173 (2015): Held the Sixth Amendment's Confrontation Clause to be inapplicable to out-of-court statements given by an abused child to his teacher (argued)
- *Cooper v. Harris*, 137 S. Ct. 1455 (2017): Author of the brief for the United States as amicus curiae on the legal and factual requirements for proving a racial gerrymandering claim
- *Athena Cosmetics, Inc. v. Allergan, Inc.*, cert denied, 135 S. Ct. 2886 (2015): Author of brief for the United States as amicus curiae, filed at the invitation of the Supreme Court, involving implied preemption under the Food, Drug and Cosmetic Act of a state-law unfair competition suit

TRIAL LEVEL EXPERIENCE:

Ilana has extensive trial experience – she has tried 11 jury trials to verdict and handled more than 100 federal cases, and numerous state court trial matters.

REPRESENTATIVE INVESTIGATION EXPERIENCE:

As a former federal prosecutor, Ilana has extensive investigation experience in front of the federal grand jury; in cases involving parallel civil, criminal, and administrative investigations, and running joint-task forces that utilize federal, state, and local partnerships. Representative matters include:

- Pharmaceutical-pricing investigation of a large, publicly traded pharmaceutical company and pharmacy benefit management company involving False Claims Act and anti-kickback allegations resulting in a global US \$16 million settlement
- Major securities and a financial-fraud investigation of a publicly traded banking institution and its senior officers
- Off-label marketing investigation of a major pharmaceutical company involving the marketing and distribution of several blockbuster medications
- One-and-a-half-year investigation into the murder-for-hire of a government witness killed on the eve of trial
- Leak investigation into unauthorized disclosure of a federal grand jury investigation of a member of the US House of Representatives
- Multi-million dollar credit-card scam investigation involving employees of publicly-traded commercial bank
- Investigation of credit-card skimming operation at local retail establishments run by an Eastern-European crime organization
- Multi-million dollar tax fraud ring involving more than one thousand stolen identities and falsely filed tax returns
- Federal wiretap investigations involving large teams of federal, state, and local law enforcement
- Numerous national drug-trafficking investigations of major narcotics distributors, including money laundering, asset forfeitures and seizures

CREDENTIALS

Admissions

- Pennsylvania

Prior Experience

Ilana joins DLA Piper after three years as Assistant to the Solicitor General in the US Department of Justice, where she briefed and argued extensively before the US Supreme Court. She also advised the Solicitor General regarding federal appellate litigation on civil, criminal, and administrative law matters.

Before joining the Office of the Solicitor General, Eisenstein served as an Assistant US. Attorney in the District of Delaware for eight years. While there, she was the lead attorney on more than 100 cases and tried 11 jury trials to verdict. She was involved in a wide array of cases, including a three-year pharmaceutical pricing investigation, securities and financial fraud investigations, and cases involving bank and tax fraud.

Earlier in her career, Eisenstein clerked for Judge Edward R. Becker of the US Court of Appeals for the Third Circuit and she was awarded a one-year Bristow Fellowship with the US Office of the Solicitor General.

Education

- J.D., University of Pennsylvania Law School
summa cum laude
- B.A., Harvard University
magna cum laude

Courts

- Supreme Court of the United States
- Supreme Court of Pennsylvania
- United States District Court for the Eastern District of Pennsylvania
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit

- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Ninth Circuit

Other Professional Activities

- Co-Director, Appellate Advocacy Clinic, University of Pennsylvania School of Law, 2019-present
- Leo Model Foundation Public Policy Fellow, University of Pennsylvania School of Law, 2018-present
- University of Pennsylvania Law School Inn of Court, 2017-present
- Board Member, Homeless Advocacy Project, Philadelphia, PA 2017-present
- Board Member, William Penn Charter School, Philadelphia, PA, 2001-present

INSIGHTS

Publications

Ilana Eisenstein named to *Legal Intelligencer* Unsung Hero list

October 2019

Ilana Eisenstein, a Philadelphia-based partner and co-chair of DLA Piper's Appellate Advocacy practice, has been named to the *Legal Intelligencer's* 2019 list of Unsung Heroes.

The slow death of agency deference? "Potent in its place, but cabined in its scope"

October 2019

In *Albrecht*, US Supreme Court narrows implied preemption of failure-to-warn claims, finds preemption is legal issue for judge, not jury

21 MAY 2019

The *Albrecht* decision clarifies and substantially narrows the scope of preemption under the *Wyeth v. Levine* "clear evidence" standard.

Northern District of Illinois dismisses False Claims Act case against Pfizer and Hospira: key takeaways

19 MAR 2019

The DLA Piper team expects this case will be cited frequently by qui tam defendants in future cases.

False Claims Act – Year in Review: 2018

4 FEB 2019

In this handbook, we look back on 2018 as a year of shifting enforcement policies and continuing jurisprudential uncertainty in

the wake of *Escobar*.

- “Should Third-Party Funders Be Able to Cash in on Whistleblower Cases?” *Bloomberg Law* (November 4, 2020)
- Co-Author, "Suspending antitrust limitations periods during the COVID-19 pandemic: Constitutional and practical implications," *WestLaw*, May 19, 2020
- Speaker, "RICO Conspiracy," *PA Criminal Defense Lawyer's White-Collar Seminar*, November, 2018
- Panelist, "Effective Third Circuit Advocacy," CLE, *Third Circuit Bar Association*, January, 2018
- Panelist, "The Fourth Amendment in the Digital Age," *District of Delaware Bench-Bar Conference*, May, 2015
- Panelist, "Lavender Law Conference," *Supreme Court Review* (2017-2018)

Events

Previous

AMG Capital Management v. FTC: A Supreme Court oral argument preview

6 January 2021
Webinar

Considerations for drug pricing and demonstrating value in a post-pandemic environment

5 August 2020 | 12:00 – 1:00 ET
Webinar

DLA Piper White Collar CLE Series: Take 5

6 April 2020
Webinar

NEWS

DLA Piper announces its 2019-2020 Pro Bono Award winners

30 November 2020
DLA Piper’s lawyers and staff across the country and around the world are committed to promoting access to justice by providing their time, talent and energy to those who cannot afford to hire a lawyer.

DLA Piper's Ilana Eisenstein named an Unsung Hero by the *Legal Intelligencer*

19 June 2019

DLA Piper is pleased to announce that Ilana Eisenstein, a Philadelphia-based partner and co-chair of the Appellate Advocacy

practice, has been named to the *Legal Intelligencer* 2019 list of Unsung Heroes.

MEDIA MENTIONS

- "Overdose prevention network advocates for Philly safe injection site," *Pennsylvania Capital-Star*, November 19, 2020
- "One Simple Way Biden Could Prove He Regrets His Role in the Drug War," *Slate Magazine*, November 18, 2020
- "US appeals court weighs law on supervised injection sites," *The Sentinel*, November 16, 2020
- "US prosecutors take second swing at Philly supervised injection site in federal appeals court," *WHYY*, November 16, 2020
- "Grenfell Tower Fire Case Moves From Pa. To UK," *Law 360*, September 16, 2020
- "November Advocate of the Month: Ilana Eisenstein," *Legal Prescription*, November 25, 2019
- "Judge: Philly supervised injection site proposal does not violate federal law," *The Philadelphia Inquirer*, October 2, 2019
- "'Crackhouse' Or 'Safehouse'? U.S. Officials Try To Block Philly's Supervised Injection Site," *Kaiser Health News*, September 9, 2019
- "Merck Trade Secret Suit A Ploy To Aid Patent Case, Pfizer Says," *Law360*, September 17, 2019
- "McSwain, DLA Piper's Appellate Head Spar Over Legality of Safe Injection Site," *Law.com*, September 5, 2019
- "Supporters Sue To Open Safe Injection Site In Philadelphia, Citing Religious Freedom," *WHYY*, April 13, 2019
- "Justice Department sues Philadelphia over supervised injection facility that aims to prevent fatal drug overdoses," *Washington Post*, February 7, 2019
- "U.S. sues to block Philadelphia safe drug-injection site," *Reuters*, February 6, 2019
- "What Clarence Thomas Gets Wrong About the Second Amendment," *The Atlantic*, February 22, 2018
- "Why Are There So Few Women SCOTUS Advocates?" *The National Law Journal*, October 25, 2017

PRO BONO

- Safehouse litigation (pending): Lead counsel for Safehouse in federal district court litigation to establish the legality of its proposed overdose prevention services to combat opioid overdose deaths in the City of Philadelphia.
- "Sanctuary Cities" litigation (2017): Authored amicus brief on behalf of eight Philadelphia social services agencies in Philadelphia's successful challenge to the Department of Justice policy to withhold federal grant money.
- "Travel Ban" litigation (2017): Co-Authored amicus brief for International Bar Association filed in the Fourth and Ninth Circuits in the pending travel ban litigation.
- Filed amicus briefs in the U.S. Supreme Court in support of petitions for certiorari in two capital cases on behalf of retired Florida judges in *Eric Scott Branch v. Jones*, and on behalf of retired Missouri judges in *Lance Schockley v. Griffith*, arguing in each case that the procedure employed to determine the death penalty was unconstitutional and warranted Supreme Court review.