

## News & Insights

### Dykema Posts Series of Impressive Appellate Wins Over Past Few Months

Helps Clients—from Automotive to Consumer Goods, Security Alarms to Financial Services—Earn Important Victories in Key Jurisdictions

**September 16, 2013**

Over the past few months, Dykema's Appellate team has helped clients earn impressive victories in myriad jurisdictions on cases involving a wide variety of businesses and industries, on matters reflecting a diverse array of legal issues and actions. Among these wins:

*Edmundson v. Procter & Gamble Co.* – This opinion of the Ninth Circuit Court of Appeals, issued on August 9, 2013, affirmed the dismissal of a nationwide consumer class action against the Firm's client, Procter & Gamble. Dan Stephenson, who directs Dykema's 180+-member Litigation Department, Ben Jeffers, leader of the Firm's Insurance Industry Group, and Steve Borgsdorf, a senior attorney with significant experience managing electronic discovery, collaborated on this matter.

*Cooper v. Asset Acceptance, LLC* – This August 6, 2013 decision of the Seventh Circuit Court of Appeals held that Dykema's client, Asset Acceptance, did not waive its right to invoke an arbitration clause in this purported class action, thus affirming the dismissal of plaintiffs' claims. The Dykema lawyers who directed this successful appeal were Ted Seitz, Amy Jonker and Jill Wheaton.

*ADT Security Services v. Lisle-Woodridge Fire Protection District* – In an opinion published by the Seventh Circuit Court of Appeals on July 31, 2013, the court affirmed a grant of a permanent injunction in favor of our client, holding that defendants could not engage in fire alarm monitoring. A host of Dykema attorneys, chiefly from the Firm's Lisle and Chicago offices, applied their talents to this case. The team included Bruce Goldsmith, Dave Bressler, Dan Zollner, Michelle Schindler, Kara Murphy, Jim Dougherty, Rosa Tumialán and Jill Wheaton.

*EFA v. ABC Hotel and Restaurant Supply* – On July 26, 2013, the Seventh District Court of Appeals in Texas issued its decision affirming a multi-issue grant of summary judgment to the Firm's client, ABC Hotel & Restaurant Supply, in a complex commercial dispute arising from ABC's attempt to acquire its leading competitor, New York-based restaurant supply company EFA. Two Dallas-based members of our team—Chris Kratovil and Brian Colao—championed this successful outcome.

*Standard Fire Ins. Co. v. Ford Motor Co.* – In a July 24, 2013 published decision of the Sixth Circuit Court of Appeals, which is likely to be oft-cited on choice of law principles, the court held that in this products liability action, brought in the state of Michigan, Tennessee law applied. Since the Tennessee statute of repose barred the claim, the district court's grant of summary judgment in favor of Ford was affirmed. The Dykema team was led by Clay Guise, who guides Dykema's Ford Team, assisted by Tim Kuhn.

*Halvorson v Auto-Owners Ins. Co.* – The Eighth Circuit Court of Appeals published its decision on July 3, 2013, reversing the certification of a class action on the grounds that individual issues predominated. This reversal came after a successful FRCP 23(f) petition for interlocutory review. Jill Wheaton, leader of Dykema's national Appellate practice, and Lori McAllister, the Firm's General Counsel, served as lead attorneys.

*Mook v Draper Chevrolet* – This decision of the Michigan Court of Appeals, published June 25, 2013, affirms the grant of summary disposition to the defendant (Dykema client, Draper Chevrolet) in this personal injury case. The decision essentially holds that the plaintiff could not make an end-run around the Michigan statute that protects nonmanufacturing product sellers from liability for personal injury claims by bringing suit against a dealer. The Dykema team included Mike Cooney, Jill Wheaton and Mike Weisenbach.

*Bridgeview Health Care Center v. State Farm Fire and Casualty* – This opinion, rendered on June 21, 2013 by the Illinois Court of Appeals, was yet another that involved choice of law issues. It held that state courts may consider federal court opinions in ascertaining another state's law. This opinion effectively reversed an earlier decision against our client. The

Dykema Posts Series of Impressive Appellate Wins Over Past Few Months (Cont.)

Dykema attorneys on this matter were Mike Borders, Office Managing Member of the Firm's Chicago office, and Rosa Tumialán.

While not as recent as these other cases, the *Kim v. JP Morgan Chase* decision--rendered by the Michigan Supreme Court in December 2012, and determining that a violation of the Michigan foreclosure by advertisement statute does not render a foreclosure automatically void but is only voidable if the borrower can establish that s/he was prejudiced by the violation—has not only been met with open arms by the lower courts and the Sixth Circuit since its issuance, but has been cited dozens of times in cases dismissing claims against lenders: a true landmark decision. The Dykema attorneys that joined forces to help secure this significant and favorable outcome included Joe Hickey, assistant leader of the Firm's Financial Services Practice Group, Joe Doerr, a member of Dykema's Business and Commercial Litigation practice, and Jill Wheaton.

If you have questions, or would like to learn more about Dykema's Appellate team, we invite you to contact Jill Wheaton, leader of the Firm's Appellate practice, at 734-214-7629 or [jwheaton@dykema.com](mailto:jwheaton@dykema.com)

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### **Practice Areas**

Appellate