



**Todd & Weld** LLP



## Appellate Litigation

### **Todd & Weld's appellate attorneys deploy rigorous, creative analysis and deep knowledge of the appellate process to achieve favorable results for clients.**

Drawing on their considerable experience as appellate advocates and law clerks to various appellate court judges, Todd & Weld lawyers understand how appeals get decided. That wealth of experience enables our attorneys to advocate for clients' positions persuasively and effectively with an eye toward how a ruling will impact the development of the law. Our clients' cases often involve novel issues of first impression and result in landmark decisions resolving previously unsettled issues of law, including in such areas as domestic relations, professional liability, First Amendment, and employment law.

Clients rely on our appellate attorneys to analyze legal issues creatively and rigorously, to write sophisticated but readable briefs, and to use the limited time at oral argument to persuade judges on the most critical points in dispute. Other lawyers recognize Todd & Weld as a go-to appellate law firm. In fact, many of our appellate cases are referred by attorneys who handled the cases at the trial court level.

We practice regularly before the Massachusetts Supreme Judicial Court, Massachusetts Appeals Court, the 1st U.S. Circuit Court of Appeals, and other federal circuits. Our attorneys have also represented clients and appeared before the U.S. Supreme Court.

Our lawyers have achieved favorable results for appellate clients across a diverse range of legal issues, including these recent rulings:

- *FBT Everett Realty, LLC v. Mass. Gaming Commission*, 489 Mass. 702 (2022). Persuaded the Massachusetts Supreme Judicial Court to reverse a lower court's dismissal on summary judgment of their client's regulatory

taking claim involving the site of the Encore casino.

- *Judge Rotenberg Educ. Ctr., Inc. v. U.S. Food & Drug Admin, et al.*, 3 F.4th 390 (D.C. Cir. 2021). Persuaded D.C. Circuit to vacate FDA's ban of electrical stimulation devices used to treat aggressive or self-injurious behavior because banning a medical device for a particular use regulates the practice of medicine in violation of 21 U.S.C. § 396.
- *D'Allessandro v. Lennar Hingham Holdings, LLC*, 486 Mass. 150 (2020). Answering a certified question from a U.S. District Court judge, the Massachusetts Supreme Judicial Court determined [in favor of the firm's client](#) that the six-year time period for filing a lawsuit regarding common areas of an individual building is triggered when the building is substantially complete or is open for its intended use – regardless of how many buildings or how many development phases exist in a multi-building condominium complex.

## Attorneys

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- Joseph M. Cacace
- Matthew S. Furman
- Richard M. Novitch
- Christopher R. O'Hara
- Ian J. Pinta
- Max D. Stern
- J. Owen Todd
- Benjamin J. Wish
- Josh L. Launer

## Representative Results

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- *FBT Everett Realty, LLC v. Mass. Gaming Commission*, 489 Mass. 702 (2022). Christopher Weld Jr. and Christian G. Kiely persuaded the Massachusetts Supreme Judicial Court to [reverse a lower court's dismissal on summary judgment](#) of their client's regulatory taking claim involving the site of the Encore casino.
- *Judge Rotenberg Educ. Ctr., Inc. v. U.S. Food & Drug Admin, et al.*, 3 F.4th 390 (D.C. Cir. 2021). Persuaded D.C. Circuit to vacate FDA's ban of electrical stimulation devices used to treat aggressive or self-injurious behavior because banning a medical device for a particular use regulates the practice of medicine in violation of 21 U.S.C. § 396.
- *D'Allessandro v. Lennar Hingham Holdings, LLC*, 486 Mass. 150 (2020). Answering a certified question from a U.S. District Court judge, the Massachusetts Supreme Judicial Court determined [in favor of the firm's client](#) that the six-year time period for filing a lawsuit regarding common areas of an individual building is triggered when the building is substantially complete or is open for its intended use – regardless of how many buildings or how many development phases exist in a multi-building condominium complex.
- *Squeri v. Mount Ida College, et al.*, 954 F.3d 56 (1st Cir. 2020). Howard Cooper persuaded the 1st U.S. Circuit Court of Appeals to [affirm the dismissal of a putative class action](#) against the firm's client, the former

President of Mt. Ida College, that was filed after the school's closure in May 2018. The court ruled that the complaint failed to allege a viable claim against the school's former President and the other defendants, including alleged breach of fiduciary duty and fraudulent misrepresentation.

- *Theisz v. Mass. Bay Transportation Authority*, 481 Mass. 1012 (2018). David Rich and Benjamin Wish persuaded the Massachusetts Supreme Judicial Court that the Massachusetts Bay Transportation Authority [waived its affirmative defense](#) that a pre-suit presentment letter related to an alleged assault by an MBTA bus driver was insufficient.
- *Sindi v. El-Moslimany*, 896 F.3d 1 (1st Cir. 2018). David Rich persuaded the 1st U.S. Circuit of Appeals to uphold a defamation verdict for their client, Saudi Arabian scientist Hayat Sindi, who sued Samia El-Moslimany and her mother arising from numerous publications accusing Dr. Sindi of fabricating and exaggerating her academic credentials.
- *Preston v. Nagel*, 857 F.3d 1382 (Fed. Cir. 2017). The firm [persuaded the Federal Circuit Court of Appeals](#) to reject the defendants' argument that the America Invents Act overrides a bar to appellate review of remand orders from federal court to state court based on lack of subject matter jurisdiction. The court ruled that the defendants' patent counterclaims – which the district court deemed non-justiciable before remanding the case to state court – alone were insufficient to create an exception allowing the court to consider the remand order on appeal.
- *Kiribati Seafood Co., LLC v. Dechert LLP*, 478 Mass. 111 (2017). The firm [persuaded the Supreme Judicial Court](#) to overturn summary judgment for a law firm and grant summary judgment to its client which had sued for legal malpractice. The SJC for the first time ruled that judicial error of law does not bar recovery in a legal malpractice case where a defendant law firm was negligent for failing to prevent or mitigate the legal error.
- *In Re: The Honorable Leon A. Kendall*, 712 F.3d 841 (3rd Cir 2013), in which Todd & Weld's argument on behalf of its client, Hon. Leon A. Kendall, resulted in the issuance of a landmark decision ruling that the First Amendment protects sitting judges from being criminally punished for their opinions.
- *Robert Somers v. Converged Access, Inc., et al.*, 454 Mass. 582 (2009), in which Todd & Weld represented the company in a case of first impression on potential defense to misclassification under independent contractor statute, M.G.L. c. 149, Sec. 148B, and successfully defended company in claim of age discrimination.
- *Anastos v. Sable*, 443 Mass. 146 (2004), a case in which the Supreme Judicial Court affirmed a substantial verdict in our client's favor, and which resolved novel issues relating to the allocation of partnership assets at dissolution.
- *Zoning Bd. Of Appeals of Wellesley v. Ardmere Apartments LP*, 436 Mass. 811 (2002), in which Todd & Weld submitted a friend of the court brief on behalf of its client, the Massachusetts Housing Finance Agency, which resulted in the Supreme Judicial Court substantially accepting the Agency's position on an important issue related to the preservation of affordable housing in the Commonwealth.
- *Bradstreet v. United States*, 207 F.3d 76 (1st Cir. 2000), where we successfully defended a significant downward departure from federal sentencing guidelines which we had obtained for the accused in the district court.

- *E.N.O. v. L.M.M.*, 429 Mass. 824 (1999), (a widely cited case which has been influential across the nation) in which we represented a biological mother in a case defining the rights of *de facto* parents in alternative family settings.
- *R.R. v. M.H.*, 426 Mass. 501 (1998), in which Todd & Weld represented the biological mother in a case defining the enforceability of surrogate parenting agreements in Massachusetts.
- *First Enterprises v. Cooper*, 425 Mass. 344 (1997), a case which resolved an issue of first impression in the Commonwealth concerning the potential scope of an attorney's liability to non-clients.
- *Pettingell v. Morrison, Mahoney & Miller*, 426 Mass. 253 (1997), a nationally recognized case circumscribing the restrictions which a law firm can place upon a departing lawyer's ability to practice law.

## News & Insights

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- Joseph Cacace offers expert analysis on pending appeal to SJC on evidentiary time limits
- Richard Novitch quoted in NYT article on landmark MA ruling concerning nondisparagement orders in divorce cases
- Joseph Cacace comments in article on recent revisions to state's appellate rules

## Results

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- SJC rules that public transit agency not immune from negligent hiring and supervision lawsuit
- Todd & Weld prevails in appeal that sets time limit for filing claims in construction defect cases
- Firm persuades SJC to revive \$40M regulatory taking claim involving Encore casino
- Todd & Weld prevails in SJC on Statute of Repose question in construction defects case between developer and condo association
- David Rich, Ben Wish obtain favorable ruling from SJC under Mass. Tort Claims Act
- First Circuit upholds defamation verdict for Saudi Arabian scientist