

## Hugh S. Balsam

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Hugh's nationwide appellate practice, which includes landmark cases in multiple U.S. courts of appeals and state courts, combines deep legal breadth with clear, accessible writing that makes complex matters understandable for judges.

### OVERVIEW

Hugh has extensive experience drafting and arguing appeals across a broad spectrum of legal areas, including commercial litigation, intellectual property, insurance liability, bankruptcy, employment, constitutional law, and more. Representing clients nationwide in state and federal courts, he handles cases in the U.S. Supreme Court and numerous U.S. courts of appeals, including extensive experience in the Federal and Seventh Circuits.

Hugh's clients range from pharmaceutical companies to insurance firms and beyond. He is known for his ability to simplify complex technical subjects, making them accessible to judges who may lack specialized knowledge. This skill is particularly valuable in high-stakes appeals where clarity and precision are paramount.

### REPRESENTATIVE MATTERS

- *Frantic Inc. v. Certain Underwriters at Lloyd's, London*, No. B326222 (Cal. Ct. App. 2024). Affirming summary judgment for an insurer under communicable disease exclusion on a claim for Metallica concerts postponed due to Covid.
- *California Insurance Guarantee Ass'n v. Azar*, 940 F. 3d 1061 (9th Cir. 2019). Agreeing that a guarantee association was not liable to the federal government for Medicare payments.
- *Department of Commerce v. New York*, 588 U.S. \_\_\_\_ (2019) (amicus brief). Holding Department of Commerce was not permitted to include a citizenship question in the 2020 census.
- *General Re Life Corp. v. Lincoln National Life Ins. Co.*, 909 F. 3d 544 (2d Cir. 2018). When an arbitration panel can revise an award under the "ambiguity" exception to the *functus officio* doctrine.
- *People ex rel. Hammer v. Lumbermens Mutual Casualty Co.*, 2018 IL App (1st) 170996. Statutory construction — insurance company liquidation.
- *UCB, Inc. v. Accord Healthcare, Inc.*, 890 F. 3d 1313 (Fed. Cir. 2018). Validity of a drug-related patent.
- *Advocate Health Care Network v. Stapleton*, 581 U.S. \_\_\_\_ (2017) (amicus brief). Under ERISA, a defined-benefit pension plan maintained by a principal-purpose organization — one controlled by or associated with a church for the administration or funding of a plan for the church's employees — qualifies as a "church plan," regardless of who established it.

- *Medina v. Catholic Health Initiatives*, 877 F. 3d 1213 (10th Cir. 2017) (amicus brief). Whether a church pension plan is exempt from ERISA.
- *Van Dyke v. White*, 60 N.E. 3d 1009 (Ill. App. Ct. 2016) (amicus brief). Reversing a determination that indexed annuities fall within the definition of “security,” and holding that their sale is regulated instead as insurance products.
- *Rollins v. Dignity Health*, 830 F. 3d 900 (9th Cir. 2016) (amicus brief). Whether a religiously affiliated hospital's pension plan qualifies as a church plan exempt from ERISA.
- *Apotex Inc. v. Acorda Therapeutics, Inc.*, 823 F. 3d 51 (2d Cir. 2016). Antitrust and false-advertising claims.
- *Kaplan v. St. Peter's Healthcare Sys.*, 810 F.3d 175 (3d Cir. 2015) (amicus brief). Whether a religiously affiliated hospital's pension plan qualifies as a church plan exempt from ERISA.
- *Advanced Steel Recovery, LLC v. X-Body Equip., Inc.*, 808 F. 3d 1313 (Fed. Cir. 2015). Affirming summary judgment that the client's systems of loading shipping containers does not infringe patent claims.
- *James R.D. v. Maria Z.*, 28 N.E. 3d 776 (Ill. 2015) (amicus brief). Whether the doctrine of equitable adoption applies to child custody proceedings.
- *Lightspeed Media Corp. v. Smith*, 761 F. 3d 699 (7th Cir. 2014). Affirming the client's right to receive significant sanctions from opposing counsel.
- *AF Holdings, LLC v. Does 1-1058*, 752 F. 3d 990 (D.C. Cir. 2014). Vacating the client's obligation to engage in expedited discovery due to the plaintiff's insufficient showing.
- *Senju Pharmaceutical Co., Ltd. v. Apotex, Inc.*, 746 F. 3d 1344 (Fed. Cir. 2014). Establishing an important principle of claim preclusion where the party faces successive suits from the same plaintiff asserting infringement of the same patent after a reexamination.
- *Endo Pharmaceuticals Inc. v. Actavis, Inc.*, 746 F. 3d 1371 (Fed. Cir. 2014). Application of legal estoppel after settlement.
- *In re Scarlett Z.D.*, 11 N.E. 3d 360 (Ill. App. Ct. 2014). Authored an amicus curiae brief, pro bono, supporting an individual trying to assert claims for custody, visitation, and equitable adoption.
- *Citimortgage, Inc. v. Sharlow*, 4 N.E. 3d 580 (Ill. App. Ct. 2014). Upholding mortgagee's right to post-judgment interest following a foreclosure sale.
- *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 998 N.E. 2d 69 (Ill. 2013). Construction of Illinois Insurance Guaranty Fund Act.
- *U.S. Nat'l Bank Ass'n v. Luckett*, 987 N.E. 2d 47 (Ill. App. Ct. 2013). Misnomer in a complaint for forcible entry and detainer does not affect the validity of judgment.
- *U.S. Bank Nat'l Ass'n v. Prabhakaran*, 968 N.E. 2d 169 (Ill. App. Ct. 2013). Holding Foreclosure Law repose section bars relief from foreclosure judgment as a matter of law once the deed has been delivered.
- *Murphy v. Aurora Loan Services, LLC*, 699 F. 3d 1027 (8th Cir. 2012). Authority required to foreclose mortgage.
- *Deutsche Bank National Trust Co. v. Brewer*, 974 N.E. 2d 224 (Ill. App. Ct. 2012). Requirements for service of process by publication.
- *Skokie Castings v. Illinois Insurance Guaranty Fund*, 964 N.E. 2d 1225 (Ill. App. Ct. 2012). Liability of Guaranty Fund to reimburse a self-insured employer upon insolvency of excess workers compensation insurer. Obtained review in Illinois Supreme Court – decision pending.
- *Deutsche Bank Nat'l Trust Co. v. Hall-Pilate*, 975 N.E. 2d 924 (Ill. App. Ct. 2011). Mortgage foreclosure — waiver of right to challenge service of process.
- *Keeley & Sons, Inc. v. Zurich American Ins. Co.*, 947 N.E. 2d 876 (Ill. App. Ct. 2011). Applicability of an arbitration agreement to asserted claim.
- *Sanchez v. Rental Service Corp.*, \_\_\_ N.E. 2d \_\_\_ (Ill. App. Ct. 2011). Reversing a trial court judgment that refused to enforce workers' compensation lien in full amount.
- *Fednav Int'l, Ltd. v. Continental Ins. Co.*, 624 F. 3d 834 (7th Cir. 2010). Federal procedure — application of the “American” rule.
- *All American Roofing, Inc. v. Zurich American Ins. Co.*, 934 N.E. 2d 679 (Ill. App. Ct. 2010). Claims of fraud, unconscionability, and breach of contract in connection with entry of arbitration agreement.
- *Clark Investments, Inc. v. Airstream, Inc.*, 926 N.E. 2d 408 (Ill. App. Ct. 2010). Claimed violation of Illinois Motor

Vehicle Franchise Act.

- *Century Indem. Co. v. Certain Underwriters at Lloyd's, London*, 584 F. 3d 513 (3d Cir. 2009). Duties under retrocession agreement.
- *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (Ill. 2010). Illinois property taxes — hospital's entitlement to charitable- and religious-use exemptions.
- *Varnum v. Brien*, 763 N.W. 2d 862 (Iowa 2009) (pro bono). Authored an amicus brief supporting a challenge to Iowa's ban on same-sex marriage.
- *State ex rel. Wagner v. United National Ins. Co.*, 761 N.W. 2d 916 (Neb. 2009). Applicability of regulatory exclusion in a D&O policy to claims brought by a state insurance liquidator.
- *Abbott Labs. v. Sandoz, Inc.*, 433 F. 3d 1341 (Fed. Cir. 2008). Preliminary-injunction standard.
- *Baldwin Graphic Systems, Inc. v. Siebert, Inc.*, 512 F. 3d 1338 (Fed. Cir. 2008). Construction of claims for device and method for cleaning a printing press's cylinder.
- *Travel 100 Group, Inc. v. Mediterranean Shipping Co.*, 889 N.E. 2d 781 (Ill. App. Ct. 2008). Claimed violation of federal junk-fax statute.
- *Fidelity Nat'l Title Ins. Co. v. Westhaven Properties Partnership*, 898 N.E. 2d 1051 (Ill. App. Ct. 2007). Whether a written-notice provision was material to a partnership agreement.
- *Del Monte Fresh Produce N.A. v. Transportation Ins. Co.*, 500 F. 3d 571 (7th Cir. 2007). Affirming no duty to defend commercial disparagement claims under an advertising injury insurance policy.
- *Certain Underwriters at Lloyd's, London v. Argonaut Ins. Co.*, 500 F. 3d 571 (7th Cir. 2007). Timing for naming an arbitrator in an international arbitration when the deadline falls on a U.S. holiday.
- *Gore v. Indiana Ins. Co.*, 876 N.E. 2d 156 (Ill. App. Ct. 2007). Propriety of the inclusion of privilege tax in a premium for property insurance.
- *Allstate Ins. Co. v. American Home Assur. Co.*, 837 N.Y.S. 2d 138 (N.Y. App. Div. 2007). Reinsurer's obligation, under the follow-the-fortunes doctrine, to accept the reinsured's post-settlement loss allocation.
- *Howard Delivery Service, Inc. v. Zurich American Ins. Co.*, 547 U.S. 651, 126 S. Ct. 2105 (2006). Whether, under the bankruptcy laws, a creditor may seek priority status in a bankruptcy case to recover unpaid premiums owed for legally required workers' compensation insurance.
- *Razor v. Hyundai Motor America*, 854 N.E. 2d 607 (Ill. 2006). Availability of warranty and consequential damages under the Magnuson-Moss Act and Illinois Commercial Code.
- *TIG Ins. Co. v. Giffin Winning Cohen & Bodewes, P.C.*, 444 F. 3d 587 (7th Cir. 2006). Proximate causation in a legal malpractice case.
- *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F. 3d 1312 (Fed. Cir. 2006). Whether a product-by-process claim is available for an old prior art product produced by a new process.
- *Mikrut v. First Bank of Oak Park*, 832 N.E. 2d 376 (Ill. App. Ct. 2005). Availability of the Fiduciary Obligations Act to claims of conversion of checks under UCC, Article 3.
- *In re J.G. Furniture Group, Inc.*, 405 F. 3d 191 (4th Cir. 2005) (amicus brief). Whether an insurance company could obtain priority under section 507(a)(4) of the Bankruptcy Code for claims for unpaid premiums and fees, pertaining to an employee benefit plan, owed by a debtor-employer.
- *Combined Ins. Co. of Amer. v. Certain Underwriters at Lloyd's, London*, 826 N.E. 2d 1089 (Ill. App. Ct. 2005). Whether dismissal is required under the Illinois Code of Civil Procedure when there is a parallel action pending elsewhere between the same parties.
- *SmithKline Beecham Corp. v. Apotex Corp.*, 403 F. 3d 1331 (Fed. Cir. 2005). Patent invalidity under a doctrine of inherent anticipation.
- *In re Howard Delivery Service, Inc.*, 403 F. 3d 228 (4th Cir. 2005). Priority under bankruptcy laws for unpaid workers' compensation claims.
- *Associated Underwriters of America Agency, Inc. v. McCarthy*, 826 N.E. 2d 1160 (Ill. App. Ct. 2005). Alleged injury from the termination of a brokerage agreement.
- *Pembroke Country Club, Inc. v. Regency Savings Bank, F.S.B.*, 815 N.E. 2d 241 (Mass. App. Ct. 2004). Reversing judgment on a claim of tortious interference and fraud under M.G.L.A. 93A with respect to repayment of a commercial note under a participation agreement.

- *South 51 Development Corp. v. Vega*, 809 N.E. 2d 122 (Ill. 2004). Challenge to the validity of Illinois statutes and rules relating to short-term lending.
- *Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F. 3d 1337 (Fed. Cir. 2004) (amicus brief). Whether adverse inference that an opinion of counsel was or would have been unfavorable flows from an alleged infringer's failure to obtain or produce an exculpatory opinion of counsel.
- *Adkins Energy LLC v. Delta-T Corp.*, 806 N.E. 2d 1273 (Ill. App. Ct. 2004). Jurisdiction for a declaratory-judgment action.
- *Glaxo Group Ltd. v. Apotex, Inc.*, 376 F. 3d 1339 (Fed. Cir. 2004). Whether filing of an Abbreviated New Drug Application without a Paragraph IV certification can constitute an act of willful patent infringement.
- *Department of Transportation ex rel. People v. 151 Interstate Road Corp.*, 810 N.E.2d 1 (Ill. 2004). Appellate jurisdiction and a question of good faith negotiation under the Illinois quick-take-condemnation statute.
- *RGA Reinsurance Co. v. Ulico Cas. Co.*, 355 F. 3d 1136 (8th Cir. 2004). Court's authority to modify an arbitration award under the guise of confirming it.
- *Rosen v. SCIL, LLC*, 799 N.E. 2d 488 (Ill. App. Ct. 2003). Enforceability of an arbitration provision in an amended credit card agreement.
- *Apotex, Inc. v. Thompson*, 347 F. 3d

## AWARDS

- Independent Voters of Illinois-Independent Precinct Organization, Legal Eagle Award (2021)
- *Super Lawyers*® Illinois, Appellate, Intellectual Property Litigation (2006-2025)
- *Leading Lawyer*, Civil Appellate Law (2017-2020)

## TOP AREAS OF FOCUS

- Appellate + Supreme Court
- Insurance + Reinsurance
- Intellectual Property
- Litigation + Trial

## ALL AREAS OF FOCUS

- Appellate + Supreme Court
- Business Litigation
- Insurance + Reinsurance
- Intellectual Property
- Labor + Employment
- Litigation + Trial
- Product Liability

## PROFESSIONAL/COMMUNITY INVOLVEMENT

- Former lecturer, The John Marshall Law School
- Former member, board of directors, Illinois Appellate Lawyers Association

## EDUCATION AND CERTIFICATIONS

## **EDUCATION**

- John Marshall Law School, J.D., *summa cum laude*, 1995
- Kellogg School of Management, Northwestern University, M.M., 1987
- Lawrence University, B.A., 1981

## **BAR ADMISSIONS**

- Illinois

## **COURT ADMISSIONS**

- U.S. Court of Appeals, Eighth Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, First Circuit
- Supreme Court of the United States

## **PUBLICATIONS**

- Author, “HUD Face-to-Face Meeting Requirement: Fourth Circuit Holds That a Bank Office That Conducts No Mortgage-related Business Does Not Qualify as a ‘Branch Office’ of a ‘Mortgagee,’” Locke Lord QuickStudy, April 22, 2020.