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GREGORY M. MILLER

Principal

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Gregory M. Miller joined Carney Badley Spellman as a founding member of the Appellate Group. Mr. Miller also maintains a substantial health law practice representing physicians and physician groups in contract negotiation, employment and medical practice issues. In his appellate work, Mr. Miller has:

- Briefed over 125 merits appeals to the Washington appellate courts and 9th Circuit Court of Appeals.
- Argued over 75 merits appeals.
- Authored or co-authored 20 *amicus curiae* submissions, primarily health law issues.
- Assisted on 75 appeals as judicial law clerk at the Washington Court of Appeals, Division One.
- Directed appeals on administrative law, civil and appellate procedure, statutory construction, commercial, contract, constitutional, criminal, medical malpractice, probate & family law.

Experience

Mr. Miller's experience brings rich perspective to his appellate and general litigation work from both plaintiff and defense sides.

- Municipal law, including land use, labor, and employment matters (including grievance arbitrations and collective bargaining).
- Criminal law, as a municipal court prosecutor; judge pro tem in Seattle Municipal Court; and half his caseload as judicial law clerk.
- Ten years operating sole law firm.
- Staff counsel to the Washington State Senate Health and Long Term Care Committee, 1990 legislative session.
- Class action litigation.
- Judicial extern, U.S. District Court.
- Five years developing national standards, accreditation program, and local resources for county jail health care in Washington, collaborating with local sheriffs and medical societies, and surveying jails for compliance with those health care standards.
- Expert witness on constitutional adequacy of jail health services, including court testimony.

Education

J.D., Northeastern University School of Law

A.B., Harvard University, *cum laude* JD, *magna cum laude*

Bar and Court Admissions

State of Washington

U.S. Supreme Court

U.S. District Court, Western District of Washington

U.S. Circuit Court of Appeals, Ninth Circuit State of Washington

Professional Associations

- **Washington State Bar Association**, 1984 – present.
- **King County Bar Association**, 1985 – present; trustee, 2001-2004.
  - KCBA Appellate Law Section, Co-Founder, 2005. Member, 2005 – present; chair, 2006-2007.
  - KCBA Judicial Evaluation Committee: member, 1997-2005; 2013-present. Chair, 1999-2000.
  - KCBA Martin Luther King Luncheon Committee, 2004 – present.
  - KCBA Lawyer Referral Committee, 1986-1992; Chair, 1988-90.
- **Washington Appellate Lawyer's Association**, 2000- present.
  - Founding Member.
  - Chaired Appellate Judges CJE programs, 2003, 2006.
  - Chair and presenter, WALA-Division III Appellate Practice CLE, 2016.

Merits Appeals – Cases of Note

- ***Swank v. Valley Christian School, et al*.,** 188 Wn.2d 663, 398 P.3d 1108 (2017). Secured 9-0 dismissal of Idaho physician under long arm jurisdiction in a malpractice suit by an Idaho patient released to play football at his Washington State school, allegedly in violation of Washington's concussion prevention statute (Lystedt Law). Patient received head injury in football game in Washington and died two days later. Held: the place of the injury was where treatment was rendered – in Idaho – requiring dismissal of physician.
- ***Keene v. Edie***, 131 Wn.2d 822, 935 P2d 588 (1997). Overruled *Brotton v. Langert*, 1 Wash. 73, 23 P. 388 (1890) (9-0), on the construction of community property statutes to permit tort victims to recover from the tort-feasor's interest in community real property where other resources were exhausted or inadequate, while safeguarding the innocent spouse's interests in the property.
- ***Farmer v. Farmer,*** 172 Wn.2d 616, 259 P.3d 256 (2011). Affirmed trial court's tort-based "make whole" measure of damages for employee stock options converted by soon-to-be-ex-spouse in dissolution, based on stock value appreciation to date of potential exercise discounted to present value, where options were increasing in value and exercisable over many years.
- ***Spooner-LeDuff v. SunTrust Mortgage, Inc.,*** 726 Fed.Appx. 549, 2018 WL 1099750 (9th Cir., 2018). Reversed summary judgment dismissal of two contract claims and CPA claims arising out of tear-down and rebuild construction project. Lender refused to move loan into permanent phase on receipt of certificate of occupancy as required by loan documents.
- ***Foss Maritime Co. v. Brandewiede,*** 190 Wn. App. 186, 359 P.3d 905 (2015). Reversed disqualification of trial counsel on eve of trial for alleged misconduct -- review of documents from employer's ex-employee with allegedly privileged communications. Obtained emergency stay of DQ order and discretionary review.
- ***Akhavuz v. Moody et al.***, 178 Wn. App. 526, 315 P.3d 572 (2013). Reversed vacation of default judgment in premises liability case to obtain recovery for client. Held: no such thing as an "innocent insured doctrine" that allows for vacation of a default judgment a year after entry, where no defense was made and defendant was promptly served with complaint, case schedule, and complete discovery requests.
- ***Tatham v. Rogers***, 170 Wn.App. 76, 283 P.3d 583 (2012). Reversed refusal to vacate property division in underlying committed intimate relationship for trial judge's failure to disclose material information on the personal relationship between the woman's counsel and the trial judge. Because the lopsided property division called into question its fairness given the circumstances

and the law for such divisions, judge's non-disclosure was not harmless.

- ***Hargis v. Foster, et al.***, 312 F.3d 404 (9th Cir. 2002). Reversed dismissal of Idaho prisoner's 1st Amendment claim and remanded to determine whether discipline of prisoner speech violated the constitution.
- ***State v. King and Israel,*** 113 Wn. App. 243, 54 P.3d 1218 (2002). Reversed four convictions for instructional error on conspiracy charges, which had allowed finding of guilt for accomplice liability based on reasonable forseeability of acts, rather than on the knowledge of the specific substantive crimes charged.
- ***Ackler, et al. v. Cowlitz County***, 7 Fed. Appx. 543, 2001 WL 115019 (9th Cir. 2001). Reversed refusal to award third year of damages for willful violation of Fair Labor Standards Act for sheriffs' deputies; reversed the denial of double damages; awarded attorney's fees.
- ***Hunter v. U.W*****,** 101 Wn.App. 283, 2 P.3d 1022 (Div. I, 2000). Reversed denial of administrative appeal; mandated grant of tuition wavier to law student because the University of Washington was required to follow administrative rule-making in adopting policies; awarded fees under EAJA.
- ***Estrada v. McNulty***, 98 Wn. App. 717, 988 P.2d 492 (1999). Vacated award of pension death benefits to deceased's ex-wife and awarded benefits to client because statute in effect at time of death did not require that the designated beneficiary have an insurable interest in the deceased; obtained appellate stay to preserve benefits during appeal.

Amicus Curiae Representation

Amicus curiae briefs (sometimes augmented by oral argument) give local and national groups input into major cases by presenting policy and legal arguments about how the court should address specific issues presented, providing input on the practical ramifications of the decision beyond the litigants. Recent briefs have addressed medical malpractice and general tort liability, health care regulation, the constitutionality of charter schools, parenting plans, and municipal antitrust liability.

- ***Fergen v. Sestero***, 182 Wn.2d 794, 346 P.3d 708 (2015). The Court upheld, continued use of the "exercise of judgment" instruction in medical malpractice cases claiming a mis-diagnosis. The majority held the instruction may continue to be used in proper cases over a strong challenge to eliminate the instruction entirely, and a strong dissent. The majority incorporated the *amicus* analysis that the instruction is a necessary "tool in the toolbox" for trial judges. Holding affirmed 9-0 in *Paetsch v. Spokane Dermatology Clinic, P.S.*, 182 Wn.2d 842, 348 P.3d 389 (2015),authored by one of the dissenters in *Fergen.*
- ***Anya-Gomez v. Sauerwein****,* 180 Wn.2d 610, 331 P.3d 19 (2014). The Court held that, in a misdiagnosis case, the informed consent doctrine and statute do not allow a separate, independent claim against a physician who did not give the patient inconclusive, preliminary test results, which were still subject to verification. The *amicus* brief was cited three times in the majority opinion.
- ***Dunnington v. Virginia Mason Medical Center***, 187 Wn.2d 629, 389 P.3d 498 (2017). Held, 9-0, that "lost chance" claims for a physician's alleged failure to diagnose or misdiagnosis of non-

terminal cancer is determined under the traditional “but for” standard, rejecting “substantial factor” test; and reversed trial court’s dismissal of the contributory negligence defense, affirming the patient’s obligation to follow physician orders, including to return for re-evaluation. Both holdings were consistent with position of the *amicus* brief.

- ***Reyes v. Yakima Health District et al.,*** 191 Wn.2d 79, 419 P.3d 819 (2018). Affirmed summary judgment dismissal holding that where expert declaration failed to state the standard of care, how it was breached, or the specific facts on which it was based, it is insufficient to support medical negligence claim, consistent with the position of the *amicus* brief.
- ***Keck v. Collins***, 184 Wn.2d 358, 357 P.3d 1080 (2015). Affirmed the requirement of experts to state specific facts supporting opinions at summary judgment in medical negligence cases, declining to overrule *Guile v. Ballard Hospital*, 70 Wn. App. 18 (1993), consistent with *amicus* brief position. Adopted the *amicus* brief’s suggestion to require trial courts to use the test in *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997), and its progeny when deciding to exclude late-filed evidence at summary judgment.
- ***Wa.State Hospital Ass’n. v. Wa. Dep’t. of Health,*** 183 Wn.2d 590, 353 P.3d 1285 (2015). Held: Department of Health exceeded its authority under the certificate of need program regulating health care costs and expansion by attempting to control changes in ownership or control over hospitals through a rule change under the CON laws, consistent with the amicus position.
- ***Washington Water Jet Workers Ass'n v. Yarbrough,*** 151 Wn.2d 470, 90 P.3d 42 (2004). Prisoner prevailing wage work-rehabilitation programs in state prisons held unconstitutional 5-4 on reconsideration of earlier 5-4 decision upholding the programs: Art. 2 § 29 of the 1889 State Constitution prohibiting lease of inmate labor applied to prohibit the state-supervised, rehabilitation-based programs.

Honors and Recognitions

- Martindale-Hubbell® "AV" Preeminent rating, given to attorneys who demonstrate the highest ethical standards and professional ability.
- Martindale-Hubbell® recognition as 2013 Top Rated Lawyer in *Appellate Law.*
- 2013 Top Rated Lawyers in Health Care in *The American Lawyer, Corporate Counsel,* and *The National Law Journal*
- *American Lawyer Media* recognition as a Top Rated Lawyer in Labor & Employment.
- *Seattle Metropolitan Magazine* recognition as one of King County's "Top Lawyers 2010."