

# Diogenes P. Kekatos

Partner



A Seeger Weiss partner since 2004, Dion is a highly skilled and experienced civil litigation attorney, particularly in appellate matters.

His practice handles complex and class action litigation in both state and federal courts, with a focus on ERISA, civil RICO, consumer fraud, environmental, antitrust, and mass tort matters. In particular, he possesses profound knowledge in class certification motion practice.

A former Assistant U.S. Attorney in the Civil Division of the Southern District

U.S. Attorney's Office, where he served 12 years as Chief of the Financial Litigation and Immigration Units, Dion honed his appellate

skills arguing nearly 130 appeals and motions before the U.S. Court of Appeals for the Second Circuit.

Widely recognized for his accomplishments and standing, Dion has received numerous accolades, notably a letter of commendation by the Second Circuit Staff Counsels for his work in appellate mediation, a rare honor; a commendation from Attorney General Janet Reno; the Executive Office for United States Attorneys Director's Award for Superior Performance; and a commendation from U.S. Attorney Mary Jo White for exceptional achievement. In addition, he was also nominated for the Attorney General's John Marshall Award for the Handling of Appeals; John Marshall Award for Participation in Litigation; the EOUSA Director's Award for Outstanding Work in Financial Litigation; and the Federal Bar Association's Younger Federal Lawyer Award, for which he was nominated by U.S. Attorney Rudolph Giuliani.

## **Selected Representations**

### **Reported Decisions**

*Kramer v. Toyota Motor Corp.*, 705 F.3d 1122 (9th Cir. 2013)

*Zhang v. Slattery*, 55 F.3d 732 (2d Cir. 1995), *cert. denied*, 516 U.S. 1176 (1996)

*In re Extradition of McMullen*, 989 F.2d 603 (2d Cir. 1993), *cert. denied*, 510 U.S. 913 (1993)

*Disabled American Veterans v. U.S. Dep't of Veterans Affairs*, 962 F.2d 136 (2d Cir. 1992)

- *In re Syngenta AG MIR 162 Corn Litigation*, MDL No. 14-md-2591 (D. Kan.). A principal draftsman of the successful district court class certification papers for the nationwide and eight statewide classes representing corn producers harmed as a result of Swiss agrochemical giant Syngenta AG's premature commercialization of genetically modified strains of corn known as Agrisure Viptera and Duracade. Co-drafted the successful opposition in the U.S. Court of Appeals for the Tenth Circuit to Syngenta's Rule 23(f) petition for permission to appeal the district court's class certification ruling. Also contributed significantly to the briefing of the successful opposition to Syngenta's motion to dismiss and motion for summary judgment, as well as principally drafted sundry other

motions or oppositions to motions in that MDL.

- In re National Football League Players' Concussion Injury Litigation, 821 F.3d 410 (3d Cir. 2016). Significantly involved in briefing of successful opposition to objector appeals in beating back attempts to derail the MDL court's approval of the landmark \$1+ billion class action settlement of NFL players' neurocognitive impairment claims. Had earlier been the principal draftsman of the opposition to the attempt by a band of objectors to challenge the district court's preliminary approval of the settlement through a Rule 23(f) petition, a bid that the U.S. Court of Appeals rejected on jurisdictional grounds (In re National Football League Players Concussion Injury Litigation, 775 F.3d 570 (3d Cir. 2014)).
- In re Simply Orange Juice Marketing & Sales Practices Litigation, No. 4:12-MD-02361-FJG, 2017 WL 3142095 (W.D. Mo. July 24, 2017). Principal draftsman of the successful opposition to Coca-Cola's Rule 23(f) petition to the U.S. Court of Appeals for the Eighth Circuit for permission to appeal the district court's class certification ruling in an MDL litigation challenging false branding and labeling of orange juice products. Case pending.
- In re Bakery & Confectionery Union & Industry International Pension Fund Pension Plan, 865 F. Supp. 2d 469 (S.D.N.Y. 2012); Alcantara v. Bakery & Confectionery Union & Industry Int'l Pension Fund Pension Plan, 751 F.3d 71 (2d Cir. 2014) (U.S. Court of Appeals for the Second Circuit affirmance of the district court). Filed the first of several cases in the country that were ultimately transferred to the Southern District of New York, successfully challenging a 2010 amendment to the Bakery and Confectionery Workers pension plan that sought to eliminate vested and accrued early retirement benefits. The district court agreed that the amendment violated section 204(g) of ERISA, 8 U.S.C. § 1054(g) (anti-cutback" provision), restoring full pension eligibility for about 540 individuals.
- Kramer v. Toyota Motor Corp., 705 F.3d 1122 (9th Cir. 2013). Successfully argued plaintiffs' defense of Toyota's Ninth Circuit appeal, in which that court affirmed the district court's denial of the automaker's motion to compel arbitration of consumer claims in multidistrict litigation involving defective brakes in certain hybrid vehicle models (In re Toyota Motor Corp. Hybrid Brake Marketing, Sales Practices and Products Liability Litigation, MDL No. 2172 (C.D.

Cal.)).

- In re WellPoint, Inc. Out-of-Network "UCR" Rates Litigation, No. 2:09-ml-02074-PSG (C.D. Cal.). One of the principal draftsmen of the motion to dismiss opposition papers and class certification motion papers in a multidistrict litigation that challenged WellPoint's (now Anthem's) methodologies for paying charges for out-of-network benefits.
- In re Mirena IUD Products Liability Litigation, MDL No. 2434 (S.D.N.Y.). Was appointed as Liaison Counsel in multidistrict pharmaceutical litigation.
- In re Delta Air Lines, Inc., Nos. 08-5002-bk, 08-5230-bk, 08-5236-bk.2 (2d Cir.). One of the lead attorneys representing retired Delta Air Line pilots who challenged various pension plan methodologies, resulting in the recovery of \$16 million just days before the airline's bankruptcy filing.
- Zhang v. Slattery, 55 F.3d 732 (2d Cir. 1995), cert. denied, 516 U.S. 1176 (1996). Successfully defended challenges to the Government's initiation of proceedings to exclude hundreds of Chinese nationals smuggled into the United States.
- In re Extradition of McMullen, 989 F.2d 603 (2d Cir. 1993). Successfully petitioned the U.S. Court of Appeals for the Second Circuit to rehear a 2-1 decision of the U.S. District Court in Manhattan that had denied the Government's request to extradite an accused IRA terrorist in connection with the bombing of a British Army barracks, on the grounds that the 1986 supplemental U.S.-U.K. extradition treaty was an unconstitutional bill of attainder. Briefed and argued the rehearing en banc. After the court agreed to rehear the case en banc – something that court rarely does – it reversed the district court's ruling by a resounding 10-2 majority.
- Disabled American Veterans v. U.S. Dep't of Veterans Affairs, 962 F.2d 136 (2d Cir. 1992). Won an expedited appeal of a preliminary

injunction in a nationwide class action that challenged the enforcement of a VA disability benefits statute on Equal Protection grounds.

## **Bar Admissions**

New York

U.S. District Courts of the Eastern District of New York, Southern District of New York

U.S. Courts of Appeals for the Second, Third, Seventh, Eighth, Ninth, and Tenth Circuits

U.S. Supreme Court

## **Education**

J.D., Brooklyn Law School, 1983

B.A., Columbia College, Columbia University, 1980 [Dean's List, eight semesters]

## **Practices**

[Class Action](#)

[Claims Drug](#)

[Injury Defective](#)

[Products](#)

Dion's practice also includes ERISA, civil RICO, consumer fraud, and antitrust litigation.

## **Contact**

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