

# Animals

Litigation and regulation against businesses that involve animals are proliferating.

## About

Kelley Drye's Animals practice group has decades of experience representing clients targeted by animal rights campaigns, legal challenges, and media outlets that disseminate and perpetuate misinformation.

We provide legal, political and public relations support in response to this increased litigation, legislation and regulatory pressure. We have in-depth experience helping clients navigate complex issues in connection with land use, agriculture, research, entertainment, companion animals, and food and drug development. We counsel a variety of clients on animal welfare and animal use, including exhibitors, breeders, dealers, retailers, trade associations, land owners and research facilities. More and more animal-related statutes are being enacted and regulations promulgated at the federal, state, and local levels. Resolutions and policies adopted at the international level dictate or influence national laws and are creating an increasingly complex landscape for the import, export and transport of live animals. The stakes have never been higher.

The multidisciplinary experience of our attorneys and government relations professionals provides significant value to our clients. Members of our Animals practice group have extensive litigation, public policy and legislative experience representing clients in the United States in a broad range of federal and state fora, including with respect to the:

- Endangered Species Act (ESA)
- Animal Welfare Act (AWA)
- The Lacey Act
- Marine Mammal Protection Act (MMPA)
- National Environmental Policy Act (NEPA)
- Animal Enterprise Terrorism Act
- Regulatory Flexibility Act
- The Wilderness Act
- Magnuson-Stevens Fishery Conservation and Management Act (MSA)
- National Wildlife Refuge System Administration Act
- Data Quality Act (DQA)

Our Animals practice also has significant reach and experience assisting clients in Europe on policy and legal matters. Work includes advocacy, regulatory counseling, permitting and litigation support

for matters governed by the laws of the European Union as implemented by its 28 Member States including:

- Regulation 338/97 on international trade in endangered species of fauna and flora
- Regulation 1/2005 on Transport of Live Animals
- Zoos Directive
- Birds and Habitats Directives

At the international level, our team represents clients in multiple fora. Our experience spans more than twenty years of actively advancing client interests through direct engagement in multilateral environmental agreements and related organizations including:

- Convention on International Trade in Endangered Species of Fauna and Flora (CITES)
- International Air Transport Association/Live Animal Regulations (IATA LAR)
- Convention on Biological Diversity (CBD)
- World Animal Health Organization (OIE)
- Convention on Migratory Species (CMS) and its regional agreements
- International Whaling Convention (IWC) and Small Cetaceans Committee
- Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters
- Food and Agriculture Organization (FAO)
- Regional Fisheries Management Organizations (RFMOs)

## Litigation and Regulatory Practice

Whether our clients find themselves on the plaintiff or defendant side of litigation, we stand ready to ensure that they receive the legal protection and support they need. In addition to the laws listed above, members of our team have represented clients in matters relating to anti-trapping challenges; the Constitution; Strategic Lawsuit Against Public Participation (SLAPP) suits; the Freedom of Information Act (FOIA); judicial challenges to anti-animal use legislation; and defamation claims against animal rights activists. Additionally, we have successfully defeated attempts by animal rights groups to obtain injunctive relief.

Some of our litigation successes include: (1) obtaining summary judgment for our intervenor client against WildEarth Guardians and Center for Biological Diversity in an action brought against the Fish & Wildlife Service (FWS) alleging a violation of the National Environment Policy Act in connection with the FWS's export program for furbearers under the Convention on International Trade in Endangered Species of Fauna and Flora; (2) representing several coalitions in *amicus curiae* briefs to the United States Supreme Court of the United States (SCOTUS) in *Food Marketing Institute v. Argus Leader Media*, a case dealing with the disclosure of business "confidential information" under FOIA Exemption Four; SCOTUS agreed with our clients' argument for a plain meaning application to the word "confidential" in Exemption Four and overturned decades of precedent upon which animal activists had relied to the detriment of our clients; (3) representing a coalition in an *amicus curiae*

brief submitted to the Supreme Court of the State of New York (County of Orleans), in a case in which our clients opposed application of animal “personhood” for the purpose of “freeing” an elephant owned by the Bronx Zoo; (4) obtaining summary judgment in addition to dismissal with prejudice of a case brought by WildEarth Guardians under the ESA, against state officials who had been accused of violating the ESA by not banning trapping in areas in New Mexico where Mexican gray wolves are found; (5) obtaining dismissal of a complaint brought by PETA against a corporate client in federal court claiming that animals (specifically in that case, killer whales) have standing to bring lawsuits and have rights under the Thirteenth Amendment of the Constitution, which abolished slavery; and (6) persuading a federal agency to reverse its decision to release to The Humane Society of the United States the proprietary and private information of a trade association and individuals in a “reverse-FOIA” case, and instead voluntarily remand the case from federal court to the agency for further administrative review and consideration.

Moreover, we have helped protect the privacy interests of marine mammal parks and other facilities that must report information, such as travel itineraries of employees or space dimensions of enclosures, to the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS). When animal activist groups have filed Freedom of Information Act (FOIA) requests seeking such information from APHIS, we have successfully contended that confidential information that affects privacy interests should be barred from disclosure under certain FOIA exemptions. In addition, we have helped draft comments to proposed rulemakings issued by the National Marine Fisheries Service (NMFS) in order to protect our clients’ interests against dissemination of confidential information contained in NMFS’ marine mammal inventory.

Other noteworthy representations include the following:

- Representing state agencies in an ESA action brought by an animal activist group.
- Representing U.S. trappers and commercial fishermen in ESA litigation.
- Representing U.S. fur merchants in opposition to a proposed EU ban on wild fur.
- Representing major U.S. retailers in defense of federal judicial challenges by animal rights groups to fur labeling practices.
- Representing retail pet dealers and animal exhibitors in APHIS regulatory actions.
- Representing one of the nation’s larger horse shows with respect to various actions taken by APHIS, including on a rulemaking proceeding initiated by APHIS.
- Advocating through litigation and the regulatory process on behalf of commercial fishermen for species including scallops, menhaden, reef fish, groundfish, horseshoe crabs, clams, sharks and Atlantic blue fin tuna at the federal, state and interstate levels from Alaska, to the South Atlantic, and New England.
- Crafting litigation strategies and drafting summary judgment motions, complaints and opposition briefs, as well as arguing motions involving commercial fisheries clients and commercial exhibitors in federal court and in administrative enforcement actions.
- Representing U.S. pet distributors in APHIS/CDC rulemaking proceedings and challenging Canadian regulatory proposals potentially banning the importation of U.S.-sourced pets.
- Representing commercial exhibitors in enforcement proceedings and/or federal rulemakings

before NMFS, APHIS and USFWS.

- Representing the reptile trade in regulatory matters involving the proposed listing of certain species under the Lacey Act.
- Retrieving imported animals seized by the Fish & Wildlife Service.
- Successfully representing the Atlantic scallop industry in opposition to a petition to add Atlantic loggerhead turtles to the endangered species list.
- Representing a retailer in challenging the legality of a local ordinance banning the sale of fur clothing. The case resulted in the local government amending the ordinance to narrow its coverage.
- Successfully representing a retailer on a challenge to a citation against it for violating a local ordinance banning the sale of fur clothing.

## Legislative Counseling and Advocacy

Kelley Drye is skilled in building and leading strategic coalitions to advocate on behalf of our clients, and has successfully pursued legislation aimed at protecting the rights of industries involved in animal welfare and use. In addition, our group has published many articles on various animal welfare issues, and drafted comments on numerous regulatory proposals and rulemakings.

A selection of our legislative successes on behalf of our clients include:

- Securing favorable Resolutions to CITES, and lobbying for the Asian Elephant Conservation Act.
- Seeking and obtaining a CITES Resolution facilitating the cross-border movement of exhibit animals.
- Successfully countering proposals under CITES contrary to the interests of the marine mammals parks and aquariums.
- Successfully proposing the revision of live animal transport requirements under the IATA Live Animal Regulations in line with clients' best professional practices for various specie.
- Ensuring the adoption of workable and effective Guidelines for Transport of Live Animals under CITES.
- Developing a fur industry political coalition that successfully lobbied for the enactment of the Animal Enterprise Terrorism Act.
- Obtaining disaster relief funding for a major commercial fishing concern, and identifying and advising clients on projects for conservation of endangered species including Asian elephants, tigers and marine mammals.

Additionally, we regularly advise clients on compliance issues regarding international treaties and trade agreements, federal and state laws, and enforcement actions at all levels (national, international, state and local). We help clients build effective relationships with law enforcement for compliance purposes and work to develop strategic plans that confront threats by animal rights extremists. We take anticipatory measures to seek to overcome and eliminate—often without litigation—allegations that our clients are in violation of particular animal-related regulations. Very

often, we seek to resolve matters before they develop into protracted administrative enforcement proceedings.

## Public Relations

A company's image is one its greatest assets, and when it comes to issues of animal welfare, even the most responsible companies can face challenges in managing public perception. As aggressive animal rights groups become increasingly vocal in their concern over alleged animal misuse or mistreatment, and as consumer interest in animal welfare issues continues to grow, businesses must become increasingly vigilant in implementing their public relations strategies.

From crisis communications and messaging to media and government relations, members of our practice help businesses and associations involved with animals combat unfair criticism. Members of our Animals practice have testified on clients' behalf before regulatory bodies, participated in debates and interviews on animal issues, served as press contacts for clients, and crafted public relations campaigns.

## Permitting

The transboundary movement of live animals and derived products is a critical component of the businesses and activities of many of our clients. Governed by international agreements and standards as well as national laws that differ in scope and content, member of our Animals practice assist clients with the entire permitting process. We are knowledgeable about international requirements and how they are interpreted and applied in practice as well as stricter legal measures applied by the U.S. and European Union. Long-term and ongoing participation in all major CITES meetings creates the possibility to liaise with officials and authorities involved in CITES implementation and permitting on the margins of meetings. Our work includes preparation of application roadmaps and checklists to ensure appropriate timing and sequence of requests to ensure the timely issuance and validity periods of permits for planned animal transports; drafting submissions to support the necessary governmental findings by countries of import, export and transit; and providing counseling and assistance with physical and documentary requirements for animal transport, quarantine, veterinary inspections and, where necessary, strategic planning to address concerns about activist interference and to support positive media attention. Our experience includes successfully navigating numerous inter-related permitting processes for a variety of endangered and threatened species involving multiple national authorities. Where necessary, members of our Animals practice intervene to counter objections or legal challenges to permits.

## Corporate Responsibility

Kelley Drye helps clients establish and implement responsible standards and guidelines to govern their activities and those of their vendors and business partners. Taking responsible preventative action, either individually or as members of a trade association or coalition, enables businesses from every industry to protect themselves from criticism, avoid unnecessary regulatory or legislative action and gain a competitive advantage. In addition, when dealing with a potentially politically sensitive topic like animal welfare, taking action can alleviate consumer concerns and demonstrate a company's commitment to sound business practices.

Members of our Animals practice group have extensive experience with the development of industry guidelines and best practices, corporate and financing transactions, building coalitions, and coordinating education programs and outreach activities. We also participate in the activities of a

variety of standard setting organizations, including the ISO and CITES.

Examples of our successes include:

- Helping to build elephant and tiger conservation programs.
- Building coalitions with like-minded animal exhibitors to further conservation efforts, provide animal care and husbandry in Africa and Asia, and hold workshops and research forums in the United States to share information on veterinary care and husbandry.
- Representing National Thoroughbred Racing Association (NTRA), Breeders' Cup Ltd. (and related entities), West Virginia Breeders Classics, Maryland Million and others in a range of tax and corporate matters.
- Representing several racetracks in Maryland (including The Maryland Jockey Club and related entities) in a range of corporate and financing matters.

## Economic Consulting

Georgetown Economic Services (GES), a subsidiary of Kelley Drye, delivers sophisticated economic analysis to our clients in a range of industries and practice areas. GES helps identify issues, shape technical and public policy positions, and strengthen our clients' litigation cases or competitive positions. Trade associations and companies also rely on GES to illuminate developments and trends in their industries and markets, providing such services as global and U.S. market research, international trade data and statistical indicators. This type of analysis is particularly relevant since agencies involved in the regulation of animal-use industries rely heavily on economic data to justify specific positions on humane care guidelines, species populations, and regulatory costs. The GES team of professionals includes former senior analysts from across key federal agencies involved in international trade and related matters, which gives them an insider's eye regarding not only today's economic realities, but also the trends that will shape client success in the coming years.

Examples of GES's work for our animal law clients include:

- Prepared an economic analysis of horse regulations.
- Conducted regulatory impact reviews and written analyses regarding Lacey Act invasive species-related rulemakings by the U.S. Fish and Wildlife Service, and Magnuson-Stevens Act fisheries management rulemakings by National Marine Fisheries Service.

## Aquaculture and Fisheries

Kelley Drye has one of the nation's foremost multidisciplinary practices in the areas of marine fisheries and resource management, and aquaculture. We have significant experience representing a wide variety of fishermen, from small clam diggers to offshore, vertically integrated multinational operations. Our team includes lobbyists, economists, public relations professionals, world class fisheries scientists, and other attorneys with know-how of particular value to commercial fishing and aquaculture businesses, who work on matters including international trade and customs, trade regulation, food and drug law, food safety, cross-border transactional counseling and financing, international arbitrations and business law. We routinely interact with the Department of Commerce, Department of the Interior, United States Coast Guard and members of Congress, to advocate on our clients' behalf.

## Contacts

Ira T. Kasdan  
[ikasdan@kelleydrye.com](mailto:ikasdan@kelleydrye.com)

David E. Frulla  
[dfulla@kelleydrye.com](mailto:dfulla@kelleydrye.com)