

# TRAILBLAZERS

## LITIGATION

### DAVID OGDEN AND KELLY DUNBAR WILMERHALE

**PIONEER SPIRIT** David Ogden has represented clients as deputy attorney general and assistant attorney general for the Civil Division of the Department of Justice and in private industry. “I’ve both defended and tried to resist some government regulations.” Kelly Dunbar also worked at the DOJ, on constitutional, statutory and regulatory issues. “I knew that litigation was something I would always do.”

**TRAILS BLAZED** Ogden and Dunbar led the team that convinced the Fifth Circuit in 2018 to vacate the Fiduciary Rule the Department of Labor issued in 2016. Said Dunbar, “Toward the end of the Obama administration, the Department of Labor issued a significant rule that would transform the regulation of the insurance industry as it related to the way the American consumer was able to access information about retirement options. David and I, working with others, represented the American Council of Life Insurers, NAFA (Nationwide Agents and Financial Advisors) and some NAFA affiliates to challenge under the administrative procedure the DOL Fiduciary Rule.” Said Ogden, “Together with the other lawyers, we devised and executed a strategy that the agency had gone too far and exceeded its mandate. It’s a challenging thing to do.”

**FUTURE EXPLORATIONS** Said Ogden, “Ends of administrations are always a fertile time for substantial efforts by an outgoing team to shape the law through administrative mechanisms. If this is the last year of the Trump administration, they might try to push through objectives via administrative mechanisms. So the ways these laws limit the power of the executive branch will be particularly important over the next 18 months.” Said Dunbar, “For decades, agencies have gotten the benefit of the doubt. What we’re witnessing is the Supreme Court and new judges’ willingness to interpret agency regulations more harshly.”

