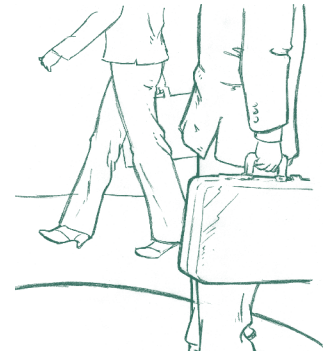


Consumer Class Action Defense Successfully Defeating Class Litigation



Few adverse rulings generate greater risk to corporate defendants than an order certifying a class action. Indeed, a certified class may force the defendant to stake its business on the outcome of a single “class-wide” trial. Many corporations are not in the position to run this risk and are forced to settle sometimes frivolous claims. Nevertheless, there are many ways to combat a class action. In fact, every stage of class litigation — from the filing of the complaint through trial and appeals — presents opportunities to prevail or otherwise advance the defense. King & Spalding has achieved success in each facet of class litigation, defeating class cases in virtually every state and against every conceivable theory of relief.

King & Spalding received the Law360 “Class Action Group of the Year” Award in 2010.

Jurisdiction: A Key Battleground

Successfully removing a putative class case from state to federal court can be the difference between winning and losing. From the beginning King & Spalding has been at the front lines of the removal wars. After CAFA was enacted in 2005, the firm has continued to lead the fight, handling some 17 CAFA appeals in the Third, Fourth, Seventh, Eighth, Ninth, and Eleventh Circuits. See, e.g., *Frederico v. The Home Depot U.S.A., Inc.*, 507 F.3d 188 (3rd Cir. 2007); *Evans v. Walter Indus., Inc.*, 449 F.3d 1159 (11th Cir. 2006).



Defeating Class Certification

Defeating class certification is often outcome determinative. Recent King & Spalding successes include:

- *Hardin v. The Home Depot U.S.A., Inc.*, 243 F.R.D. 469 (S.D. Fla. 2006). Defeated class of individuals who paid a damage waiver fee in connection with the rental of Home Depot tools.
- *Blain v. SmithKline Beecham Corp.*, 240 F.R.D. 179 (E.D. Pa. 2006). Defeated nationwide class action of pediatric patients prescribed antidepressant medication.
- *In re Paxil Prod. Liab. Litig.*, 218 F.R.D. 242 (C.D. Cal. 2003), and 212 F.R.D. 539 (C.D. Cal. 2003). Defeated nationwide and California classes seeking relief for injuries allegedly associated with antidepressant use. The first opinion has been referred to as one of the “big four” decisions rejecting class claims in pharmaceutical cases. The second is equally noteworthy because the court denied certification of consumer fraud claims brought under the old, plaintiff-friendly version of California’s consumer protection statute (§ 17200).
- *Buynie v. Airco, Inc.*, 2007 WL 2275013 (N.J. Ct. App. 2007), cert denied, 944 A.2d 30 (N.J. 2008). Defeated class seeking medical monitoring for alleged vinyl chloride exposure.



Summary Adjudication

Another weapon in the defense arsenal against class actions is the dispositive motion. King & Spalding recently won such a motion in a putative consumer fraud class action on the novel ground that collateral estoppel precluded certification because a federal court had already denied certification of an identical class in an earlier case. See *Grair v. GlaxoSmithKline, Inc.* (L.A. County Sup. Ct. 2007). Even more recently, we obtained the dismissal of a class of game-show participants seeking to recover “gambling losses” under an archaic state law. *Hardin v. NBC Universal, Inc.*, --S.E.2d--2008 WL 1774036 (Ga. 2008).

Trials and Appeals

King & Spalding is one of only a handful of firms that has tried several certified class actions to verdict. In *Engle v. Liggett Group*, for example, we served as lead trial and appellate counsel for Brown & Williamson in what is surely the biggest class action ever tried to a jury verdict. We also served as appellate counsel in the ensuing appeal in which the Florida Supreme Court decertified the class and overturned the majority of the jury’s “class-wide” findings, including the record punitive damage award. See *Engle*, 945 So.2d 1246 (Fla. 2006).

Settlement Experience

In certain cases, a settlement can be the most cost-effective way to resolve a class action. A favorable settlement in one jurisdiction can also be used as a weapon to undermine or defeat copy cat class actions filed in other jurisdictions. We employed this approach in a series of consumer fraud class actions filed against GlaxoSmithKline. After negotiating a favorable deal in the first-filed of these cases, we were able to defeat and/or ultimately resolve all of the others.

Representative Clients

- American Honda
- Bank of America
- The Coca-Cola Company
- GSK
- The Home Depot
- Honeywell International Inc.
- Olympus America Inc.
- Purdue Pharma
- Reynolds American Tobacco Company
- Union Carbide Corporation
- USAA

Contacts

Dwight J. Davis
(404) 572-4791
ddavis@kslaw.com

Todd P. Davis
(404) 572-3589
tdavis@kslaw.com

Stephen B. Devereaux
(404) 572-4735
sdevereaux@kslaw.com

Barry Goheen
(404) 572-4618
bgoheen@kslaw.com

S. Stewart Haskins II
(404) 572-4687
shaskins@kslaw.com

L. Joseph Loveland
(404) 572-4783
jloveland@kslaw.com

W. Ray Persons
(404) 572-2494
rpersons@kslaw.com

Richard A. “Doc”
Schneider
(404) 572-4889
dschneider@kslaw.com

Chilton D. Varner
(404) 572-4789
cvarner@kslaw.com