
King & Spalding's Professional Liability Practice

We try cases. Our attorneys are comfortable in courtrooms throughout the country, understand the applicable professional standards, monitor legal developments on a weekly basis, and know how to defend professionals at trial. In the last five years, King & Spalding has been lead counsel in four accounting malpractice cases that have gone to jury trials, three of which had potential exposure greater than \$1 billion. Two of those cases resulted in complete defense verdicts and two settled during trial. Although we stand ready to take any matter to trial, we also work with our clients to seek the most favorable resolution, taking into account all of the client's concerns, including reputational and institutional interests that may transcend a single matter.

We frequently represent auditors, accountants, actuaries, tax professionals, attorneys, and professional service firms in some of their most important matters. In the last decade, King & Spalding has handled more than 300 matters involving large accounting firms. Our team includes 25 attorneys who dedicate themselves full time to this practice, many of whom have spent their entire careers defending professionals.

We also represent accounting firms and individuals facing regulatory investigations and enforcement proceedings. Partners in our group have handled more than 80 investigations and enforcement proceedings in the last ten years, successfully dealing with, among others, the SEC, PCAOB, DOJ, OCC, FDIC, FDIC-OIG, CFTC, FTC, HUD-OIG, the Senate Permanent Subcommittee on Investigations, the New York Attorney General's Office, the Florida Department of Financial Services, and various state agencies and accountancy boards.

In recent years, a significant portion of our work has involved representing the non-U.S. members of the global network firms. Our roster of clients includes firms and individuals based in Argentina, the Bahamas, Brazil, Canada, China, Hong Kong, India, the Philippines, and the United Kingdom.

We count among our ranks several fellows of the American College of Trial Lawyers, a number of former CPAs, and many former senior SEC and DOJ attorneys. We capitalize on close relationships with our partners in our Appellate, Securities Litigation, Special Matters/Government Investigations, and Financial Restructuring practices to address the full range of issues facing our clients. Through our weekly *Auditor Liability Bulletin*, we update our clients on legal and regulatory developments and build expertise on our team.

We provide below examples of our attorneys' work.

Accounting Malpractice & Related Claims

King & Spalding has represented professionals and accounting firms in some of the most complex and highest-stakes malpractice cases in U.S. history. The claims in these cases include negligence, negligent misrepresentation, aiding-and-abetting, and other common law claims. We've litigated these claims in many states and in arbitration proceedings. From the time we are engaged, sometimes before a complaint is filed, we prepare for trial—should we not prevail on a pre-trial motion. Our results confirm the wisdom of that approach.

Representative matters include:

- Obtained a complete defense verdict for a Big Four accounting firm after a six-week jury trial in Florida state court, in a case where potential exposure exceeded \$1 billion. The Florida Department of Financial

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Services, as receiver for three insurance companies, alleged that regulators would have closed the companies and avoided their deepening insolvency had the audited financial statements disclosed the companies' true financial conditions before four hurricanes struck Florida the next year. The jury found for our client on each of the three counts: negligence; negligent misrepresentation; and breach of contract. This is one of the highest-stakes cases against an accounting firm to go to a jury verdict.

- Obtained a complete defense verdict after an eight-week jury trial in Kentucky state court representing a Big Four firm and one of its partners, where potential exposure was over \$300 million. Plaintiff, the Commissioner of Insurance, had sued in her capacity as rehabilitator for a workers' compensation self-insurance fund, bringing claims for negligence, negligent misrepresentation, fraud, and violations of several provisions of Kentucky's insurance code.
- Represented a Big Four accounting firm in litigation relating to the 2011 collapse of MF Global, which at that time was the eighth largest bankruptcy in U.S. history. Obtained complete dismissal of \$2 billion in claims asserted by former commodity customers of MF Global. Our client settled—during the third week of trial in the U.S. District Court for the Southern District of New York—the claims brought against our client by MF Global Holdings Ltd., as Plan Administrator.
- Represented a Big Four firm in what was reported at the time to be the highest stakes accounting malpractice case in U.S. history to go to trial. Plaintiff, the trustee of bankrupt mortgage originator Taylor, Bean & Whitaker, sought \$5.5 billion in damages in Florida state court. The case settled mid-trial.
- Obtained landmark decision on the *in pari delicto* doctrine while representing a Big Four firm in MDL litigation related to Refco, a provider of brokerage and clearing services. Refco's bankruptcy trustee sought \$2 billion from underwriters and professional services firms. The district court dismissed the trustee's claims. The Second Circuit affirmed based on the New York Court of Appeals' answers to certified questions. The court held that management's knowledge of the fraud was imputed to the company and barred the trustee's claims. The decision is regularly cited by professional services firms in litigation involving alleged management wrongdoing.
- Successfully tried one of the two biggest business cases ever to go to verdict in Georgia. The jury found against the plaintiffs on RICO and fraud claims and, as to the negligent misrepresentation claim, fully exonerated the individual accounting firm partners and awarded damages against the accounting firm that were less than five percent of the requested amount.
- Obtained a complete defense verdict for a Big Four firm following a bench trial in the New York Supreme Court's Commercial Division in a case involving claims arising out of the acquisition and subsequent sale of a human resources consulting business as part of a \$280 million transaction.
- Successfully asserted that a Big Four firm was fraudulently joined to prevent removal of action from Louisiana state court, leading to dismissal of accounting malpractice claim.
- Represented accounting firms in a number of matters in which the firms' tax advice was at issue, including in 35 civil actions involving tax shelters disallowed by the IRS. We also recently have represented accounting firms in matters involving missed deadlines and transfer pricing and in a

malpractice action seeking \$20 million in damages that proceeded while the accounting firm was working with its client to resolve the tax issue in IRS administrative proceedings.

- Obtained complete victories in numerous AAA and CPR arbitrations in which the plaintiffs alleged accounting malpractice and other claims. We also have experience successfully compelling arbitration, including compelling arbitration against non-signatory plaintiffs.
- Won motion to dismiss an actuarial malpractice claim brought in Kentucky state court against a Big Four firm.
- Represented many large law firms in professional negligence lawsuits, complex commercial litigation, and SEC and other regulatory proceedings, including successfully defending a national law firm in connection with SEC and DOJ investigations of suspected insider trading by one of the firm's former lawyers and defending four national law firms in a variety of actions, including actions brought by an SEC receiver, clients, investors, and parties to business ventures.

Securities and Class Action Litigation

King & Spalding's professional liability lawyers have defended professional services firms and others in more than 60 securities lawsuits, many of which were filed as class actions. We have obtained early dismissals in dozens of securities cases filed against accounting firms. In many of those cases, our clients have prevailed at the motion-to-dismiss stage, and our clients defeated class certification in others.

Representative matters include:

- Obtained dismissal of securities fraud claim while representing a Brazilian accounting firm in a securities class action relating to *Petróleo Brasileiro S.A. – Petrobras*, one of the world's largest oil companies. A Brazilian investigation into public corruption uncovered that a cartel of companies had colluded to overcharge Petrobras and allegedly use a portion of the proceeds to pay \$2.5 billion in bribes to win \$80 billion in company contracts. Citing this alleged scheme, plaintiffs brought claims under Section 10(b) of the Securities Exchange Act of 1934 and Section 11 of the Securities Act of 1933. King & Spalding successfully moved to dismiss class plaintiffs' Section 10(b) claim and all individual plaintiffs' claims against King & Spalding's client, save the remaining Section 11 claim. The court also rejected plaintiffs' request, at the end of discovery, for leave to amend to add back the Section 10(b) claim, holding that it would be contrary to the purpose of the PSLRA.
- Obtained dismissal of Section 10(b) claim in securities class action brought against a Big Four firm in connection with the sixth largest bank failure in U.S. history. Plaintiffs alleged GAAP and GAAS violations, multiple red flags, the existence of a large fraud, and large drops in stock prices following purported corrective disclosures. In the same matter, we successfully argued that subjective falsity applied to multiple portions of plaintiffs' Section 11 claim related to management estimates, including goodwill impairment, allowance for loan losses, and other than temporary impairment on investment securities.
- Obtained dismissal of a Section 10(b) claim in a class action brought against a Big Four firm arising out of a mortgage banking client's \$3 billion restatement. After the company settled claims, the district court

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dismissed with prejudice the sole remaining claim against the auditor. Applying *Tellabs*, the district court found that the more compelling inference was that the auditor had been a victim of management's fraud, rather than a participant. The Second Circuit affirmed.

- Obtained dismissal of securities fraud claim brought against Big Four firm in connection with restatement of several years of audited financial statements. The court found the allegations of scienter to be deficient as to our client, rejecting plaintiffs' arguments based on the magnitude of the restatement and so-called "red flags." We successfully opposed plaintiffs' motion to re-plead based on purported new evidence.
- Obtained dismissal of Section 11 claim in securities class action brought against a Big Four firm. The district court was one of the first in the Eleventh Circuit to find that a class action plaintiff must plead both objective and subjective falsity in order to state a Section 11 claim.

SEC, PCAOB, DOJ and Other Investigations and Enforcement Proceedings

We regularly represent U.S. and non-U.S. accounting firms and individuals in regulatory inquiries, investigations, and enforcement proceedings. We have particular expertise with PCAOB proceedings, having handled more than 20 PCAOB matters in recent years, including successfully defending an auditor in the first-ever contested trial of a PCAOB disciplinary proceeding. Our team includes more than 20 former SEC and DOJ attorneys, including former U.S. and Assistant U.S. Attorneys and lawyers who served in the DOJ's antitrust, civil, criminal, and tax divisions.

Much of our work in this area is confidential, but examples of our work include:

- Successfully defending accounting-firm partners who were subjects of DOJ criminal and SEC investigations;
- Successfully responding to SEC Wells notices, resulting in no action being taken against individuals and firms;
- Defending accounting firms in fraud investigations by the DOJ and state attorneys general;
- Representing accounting firms in connection with investigations by state regulators, state attorneys general, and state accountancy boards;
- Representing accounting firms in connection with investigations and proceedings before various federal government actors, including the DOJ, SEC, OCC, FDIC, FDIC-OIG, CFTC, FTC, HUD-OIG, and Senate Permanent Subcommittee on Investigations.

We have developed substantial experience handling all varieties of matters involving the PCAOB, including:

- Litigating contested disciplinary proceedings, including successfully defending an individual partner in the first-ever contested trial of a PCAOB disciplinary proceeding;
- Consulting in connection with the PCAOB inspection process;
- Producing documents in connection with informal and formal inquiries and investigations;
- Making presentations to the PCAOB in connection with informal and formal inquiries and investigations;

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- Preparing for and defending witnesses in testimony;
- Preparing 5109(d) submissions;
- Negotiating settlements with the PCAOB and SEC.

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