KING & SPALDING

Class and Mass Action Resolution Experience

Delivering Solutions

Our team has served as resolution counsel for a number of Fortune 100 and multinational companies facing thousands of individual toxic tort claims as well as a variety of other mass torts and class actions across numerous federal and state courts. Our team has developed, implemented and executed exit strategies in some of the most complex litigation matters facing our clients. We partner with our clients and the trial/litigation teams to provide effective solutions and proactive strategic resolutions tailored to the companies' objectives. In addition, we also work closely with the trial/litigation teams to maintain an effective multi-track approach to litigation. Below is a list of Class & Mass Actions we have resolved including (1) Toxic Torts; (2) Consumer Products; and (3) Financial Services and Pharmaceuticals.

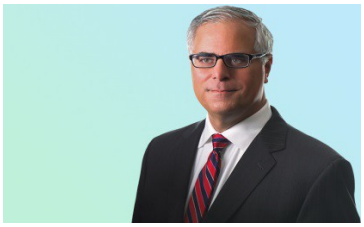
I. TOXIC TORTS

Represent Mine Safety Appliances Company ("MSA") as National Coordinating and Strategic Counsel in strategic defense and resolution of its asbestos, silica and coal toxic tort litigations. We have developed and implemented strategies to manage, defend and resolve thousands of cases pending in numerous federal and state courts around the country. This includes the use of early case assessments to identify cases MSA needs to resolve. We have partnered with MSA and trial/litigation counsel to implement strategies and procedures aimed at (1) Obtaining early and cost-effective dismissals where possible and appropriate; (2) Early case assessment for resolution of cases where there is clear product ID, exposure and/or injury; (3) Managing and staggering trial settings around the country; (4) Identifying legitimate trial threats and demonstrating a preparedness and willingness to try cases. We have constant focus on priority cases while responding to unreasonable demands and settlement postures with new defenses and arguments. We also evaluate cases for large inventory settlements and flow deals in the appropriate groups of cases which has eliminated some of the greatest threats against the company while further reducing both litigation and indemnity spend.

Resolved New Orleans Tank Car class action, in which our clients, the Illinois Central and the Norfolk Southern railroads, received a settlement discount, involving approximately 10,000 plaintiffs who alleged personal injury from derailment of tank car in New Orleans, Louisiana in an action with the second largest punitive damages award and that had been pending for over 10 years: A jury awarded a punitive damages verdict of $3.3 billion, of which $900 million was apportioned to five of the nine defendants that subsequently settled. At the time, it was the second largest punitive damages award in history. We were brought in by one client and then hired by a second client. The court appointed John Hooper as Defense Settlement Liaison Counsel to negotiate and settle for five of nine defendants for $152.5 million. A sixth defendant settled using a substantially similar agreement for an additional $62.5 million. Our clients represented a small amount of the total settlement since we obtained a significant settlement discount for brokering the settlement. *In re New Orleans Tank Car Leakage Fire Litigation*, No. 87-16374 and all Related Cases on Exhibit "A', Civil District Court, Ad Hoc Division, Parish of Orleans, New Orleans, Louisiana.

Resolved class and mass action alleging personal injury due to an explosion that resulted in the evacuation of a city of over 20,000 residents: The case involved substantial Louisiana trial, Appellate and Supreme Court practice, including approximately 15 published opinions. After the notice was published, 4,000 plaintiffs opted out and filed a mass joinder action in Mississippi, while 16,000 remained in the class in Louisiana. After a lengthy trial in Mississippi involving 20 plaintiffs, we were brought in to resolve the matter for the Illinois Central. A total of five defendants settled for approximately $75 million, with our client paying a small fraction of that amount. We negotiated with class counsel and counsel for the individual Mississippi plaintiffs to resolve approximately 100 intervenors, lienholders, and assignees, including several interventions involving substantial amounts filed by state entities. We also negotiated to use a portion of the funds, as two set-asides, to resolve future claims arising out of the litigation and those who initially rejected their offer, including a cost-of-defense provision. *In re Chemical Release at Bogalusa*, No. 73,341 and All Cases, 21st JDC, Washington Parish, Louisiana; *In re Bogalusa Chemical Release*, No. 251-96- 000493-CIV (Cir. Ct., Hinds County, Miss.).

CONTACTS



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Developed and implemented a two-pronged litigation and settlement strategy that reduced the number of cases by 90% within two years: As National Counsel for Fox Silica, we worked closely with in-house counsel to develop and implement a two-pronged litigation and settlement strategy that resulted in the dismissal and/or settlement for nominal amounts of thousands of plaintiffs over the first two years while reducing the overall litigation budget. We reduced the number of cases we defended by 90% in that period while controlling litigation and indemnity costs. Our client noted that, during that time, even though the number of cases increased, their outside counsel fees and costs decreased. The same client also noted that our team "litigates cases as if he were still an in-house lawyer." Our strategy was to be a background player and not to be depicted as a "target" by plaintiffs' firms. It allowed us to take advantage of the work done by other more aggressive defendants in seeking dismissals. Finally, it allowed our client to significantly reduce overall litigation costs by selectively targeting cases where there was substantial opportunity for settlements and/or dismissals. Just this year, the last cases pending against our client were dismissed, effectively eliminating this litigation threat. Our client will explain that we utilized a number of techniques in achieving such positive results, including:

- **Negotiated block settlements,** when necessary, to eliminate our attendance at thousands of depositions and the cost of file preparation. These settlements were only concluded in cases with positive product identification and evidence of injury. These cases were resolved for less than the cost of taking the plaintiffs depositions.
- **Prevented our client from being named in an MDL**, through the use of tolling agreements with plaintiffs' attorneys, pending in federal court in Texas, avoiding the requirement to serve and file corporate discovery and being targeted as a "deep pocket" by the plaintiffs' bar.
- **Obtained a number of dismissals** by providing plaintiffs' attorneys with an advanced copy of a draft motion for summary judgment, providing an opportunity for voluntary dismissal without the associated costs of filing, briefing and arguing such a motion.
- **Executed a comprehensive strategy** to enable our client to be viewed as a background player and not as a target defendant. Consistent with this approach, we took advantage of work done by other more aggressive defendants to achieve dismissals without incurring unnecessary expenses.

Resolved five consolidated mass actions involving over 4,000 plaintiffs who alleged harm due to exposure to creosote over a wide area, which settled for approximately $20 million for two defendants, with our client paying a small percentage of that amount: After dismissing hundreds of plaintiffs who failed to comply with the court's order regarding the completion of discovery, we resolved approximately 3,500 of the remaining plaintiffs in short order on behalf of the Illinois Central and Canadian National. For those claimants who rejected their original offer, we established a streamlined mediation process that included submitting master briefs and arguments before a court-appointed mediator. Over a one-year period, in which five sets of mediations were held, the parties were able to resolve approximately 225 of the remaining 250 plaintiffs for very reasonable sums. For the remainder, brief depositions were taken and substantially similar motions for summary judgment were submitted, which the court granted against all remaining plaintiffs. *Taylor v. Illinois Central*, 00-2102 and All Consolidated Cases (W.D. La.).

Resolved mass action asbestos exposure case at Smurfit-Stone's paper manufacturing facility in Louisiana: We worked with in-house counsel, conducted an initial assessment of the pleadings and documents relating to the litigation, and negotiated with plaintiffs' counsel to develop and implement the settlement matrix. The settlement matrix calculated the award based the illness alleged, the severity and the percentage allotted to a particular defendant. We negotiated an 18.5% discount with plaintiffs' counsel if the settlement funds were paid on an expedited basis and received additional discounts based on other factors.

II. CONSUMER PRODUCTS

Obtained final approval in nationwide class action relating to certain Toyota vehicles: On November 1, 2017, the United States District Court for the Southern District of Florida finally approved a class action settlement with Toyota and the class involving over 9 million class members regarding the Takata airbag recalls. The Court also finally approved class action settlements with three other defendant automobile manufacturers. The settlements include a novel outreach program, out-of-pocket claims process, rental car/loaner program and a residual distribution. This settlement is currently on appeal. *In re: Takata Airbag Products Liability Litigation*, 15-0299-MD-MORENO (S.D. Fla.).

Successfully resolved nationwide economic loss class action related to claims of Unintended Acceleration involving Toyota, Lexus and Scion vehicles: On July 24, 2013, the United States District Court for the Central District of California finally approved one of the largest automobile class actions alleging issues with the Electronic Throttle Control Systems. Although 13 appeals were filed, they were resolved with no payment from Toyota. The settlement resolved nearly 200 economic loss class actions pending in the MDL and in state courts nationwide. The class includes over 16 million vehicles or approximately 23 million class members. Class counsel values the settlement at $1.65 billion. As co-negotiating counsel with Morgan Lewis, we designed the settlement, which includes five components to address the allegations in plaintiffs' master complaint. These components are: (i) a $250 million fund for those persons or entities who sold or traded in the vehicle during a specific window; (ii) installation of a Brake Override System ("BOS");
(iii) a $250 million fund to current owners or lessees whose vehicles are not eligible for BOS; (iv) a Customer Support Program covering certain parts for up to 10 years, subject to 150,000 miles; and
(v) a $30 million automobile safety and education program with university-based research and education/information programs. The Court approved a distribution process that provided 100% of damages to eligible class members who filed claims and a lesser percentage to those eligible class members who did not file claims, but who will be sent checks. *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 8:10MD2151 (JVS) (FMOx) (C.D. Cal.); Toyota Motor Cases, No. 4621 (Judicial Council Coordination Proceeding, Superior Court, Complex Part, Los Angeles County, CA).

Obtained dismissal from over 20 putative class actions and the MDL litigation using a proffer strategy: We represented GNC in nearly two dozen herbal supplement consumer fraud class actions, filed after the New York Attorney General requested that GNC and other retailers remove certain herbal supplements products from their shelves based on allegations that the products did not contain the ingredients listed. GNC

cooperated fully with the NY Attorney General which ultimately terminated its investigation finding that GNC had met all regulatory current good manufacturing practices. Despite this announcement, GNC was still left to defend 22 class actions moving toward an MDL consolidation. In only a few months of representing GNC, We negotiated with plaintiffs' counsel in 8 of the original 22 class actions to dismiss their actions even before the cases were consolidated in the MDL court through a proffer of relevant information. After consolidation, the MDL Court was pleased with this voluntary discovery proffer strategy and created a separate track for GNC to continue its efforts. Our unique strategy resulted in Plaintiffs' Lead Counsel Committee omitting GNC from their consolidated class action complaint (filed on November 11, 2015), which named four other defendants. *In re: Herbal Supplements Marketing and Sales Practices Litigation*, 15-cv-05070 (N.D. III.).

Successfully resolved FTC action in the U.S. and nationwide class actions in the U.S. and Canada: The United States District Court for the District of Massachusetts finally approved a nationwide class action settlement of all persons or entities that purchased certain EasyTone shoes and toning apparel in response to alleged violations of consumer fraud and consumer protection statutes relating to the marketing and advertising of these shoes and apparel. This class action settlement also resolved four other pending class actions. We also resolved the U.S. Federal Trade Commission's ("FTC") complaint making similar allegations. The terms were unique in that the $25 million paid to the FTC was allowed to be used to fund a consumer redress program for eligible class members. In addition, Reebok agreed to certain conduct changes. The FTC also provided extensive input and guidance in designing a consumer-friendly redress program. The funds were successfully distributed, after it was approved and after an appeal was dismissed in exchange for no relief. *In re Reebok EasyTone Litigation*, 4:10-CV-11977-FDS (D. Mass.); *Federal Trade Commission v. Reebok International Ltd., d/b/a Reebok*, 1:11-cv-02046-DCN (N.D. Ohio).

Obtained final approval in nationwide class action relating to certain Tacoma, Tundra and Sequoia vehicles: On May 21, 2017, the United States District Court for the Central District of California finally approved a nationwide class action settlement involving several million class members alleging premature frame rusting on certain Toyota pick-ups. The settlement provided for a customer support warranty program for between one and twelve years as well as a reimbursement program for out-of-pocket frame replacement costs. *Warner v. Toyota Motor Sales, U.S.A., Inc.*, 15-cv-2171-FMO-FFMx (C.D. Cal.).

Successfully resolved nationwide class action with a cap and collar: The United States District Court for the District of New Jersey finally approved a nationwide settlement of purchasers of certain lines of tires alleging violations of the Magnuson Moss Warranty Act, the New Jersey Consumer Fraud Act and other state claims. The final approval of the settlement was a very effective resolution of two cases seeking classes that could have otherwise presented issues for Continental Tire North America, Inc. The terms contain several unique features that are uncommon in these types of settlements. First, the client managed to cap their liability for claims at $8 million while obtaining a low floor of $5 million. Second, attorneys' fees and costs of $2.25 million are included in the floor and up to the cap. Third, the settlement amount also includes payments for administrative costs, including relating to notice, up to the cap. Fourth, Continental Tire had the ability to review claims before they were processed by the Administrator, reducing administrative costs.

The settlement amount is low when compared to other tire settlements, even though there necessarily were differences in each of the other settlements. *McGee v. Continental Tire North America, Inc.*, 2:06-cv-06234-GEB-CCC (D.N.J.).

Successfully resolved hundreds of Unintended Acceleration personal injury cases involving Toyota, Lexus and Scion vehicles using an innovative two-phase Court-ordered settlement conferences and mediations: In addition to the class action resolution discussed above, we are lead counsel in resolving the hundreds of products liability cases pursuant to the two-step Intensive Settlement Process orders issued by the MDL and JCCP courts. The first step of the ISP is a settlement conference at which the parties discuss the strengths and weaknesses of the cases, with the plaintiff readily available to discuss settlement offers. If this phase is not successful, then the parties attend an in-person mediation with the Court-appointed Settlement Special Master or his designee. The parties submit mediation statements to the Settlement Special Master. If the case is not resolved, then the Settlement Special Master certifies that the case has gone through the process and it can be placed on an active trial calendar. To date, hundreds of matters have been resolved and the number of pending cases has been dramatically reduced. *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 8:10MD2151 (JVS) (FM0x) (C.D. Cal.); *Toyota Motor Cases*, No. 4621 (Judicial Council Coordination Proceeding, Superior Court, Complex Part, Los Angeles County, CA).

Resolved nationwide consumer class action involving 100 million plaintiffs and used the All Writs Act to enjoin a parallel state proceeding in a "judicial hellhole": Two actions were filed, one in St. Clair County, Illinois and another in federal court in Alabama. Both actions alleged that the First Alert brand of smoke detectors were defective as they did not adequately respond to all types of fires. After motion and limited discovery practice, we settled the action in federal court and that court issued a preliminary injunction. However, the state court declined to halt its proceedings. We successfully briefed the federal court regarding the use of the All Writs Act. The federal court enjoined the parallel state case, which was venued in a well-known "judicial hellhole" for defendants. *Claybrook v. BRK Brands, Inc.,* CV 98-C-1546-W (N.D. Ala.).

Successfully resolved class action alleging violations of Canadian anti-competition statutes related to certain Toyota vehicles purchased under the "Access Toyota" marketing campaign: On May 29, 2015, the Supreme Court of British Columbia approved a Settlement Agreement to resolve the claims of Class Members who purchased or leased a Toyota vehicle from an Authorized Toyota Dealership in British Columbia, Canada between June 12, 2002 and June 30, 2004 are class members. We designed the settlement to provide eligible class members settlement vouchers to use towards the purchase or lease of a new Toyota vehicle from an Authorized Toyota Dealership, or, alternatively, towards Toyota products offered at an Authorized

Toyota Dealership. Eligible claimants were prohibited from aggregating more than three Settlement Vouchers, unless they purchased multiple vehicles. The settlement was designed with a high/low for CAD$4.9M/CAD$2.3M. Should the total amount of the settlement have exceeded CAD$4.9M, each Settlement Voucher, which holds a maximum value of CAD$125.00 was to be reduced pro rata. Should the total amount of the settlement have been valued below CAD$2.3M, the difference between payment to the

eligible claimants and the minimum settlement value was to be donated to the Law Foundation of British Columbia. *Steele et al. v. Toyota Canada Inc. et al.*, L031022 Vancouver Registry, in the Supreme Court of British Columbia.

III. FINANCIAL SERVICES & PHARMACEUTICALS

Resolved the third largest nationwide insurance sales practices class action valued at $800 million for MassMutual:

- **Potentially Large Liability:** Prior to settlement, the client had been battling numerous class actions filed in a number of states around the country. MassMutual had successfully litigated the class actions for years, but, ultimately, two cases were certified and set for trial. Two cases, in particular, were of substantial concern to the client. In California, one appellate court had reversed the denial of class certification of a statewide class. In the other case in New Jersey, the trial court granted certification of a statewide class, which was upheld by the New Jersey Appellate and Supreme Court. This action, which was on the eve of trial and venued in plaintiff- friendly Essex County, alleged violations of the New Jersey Consumer Fraud Act, which, if successful, would automatically result in treble damages.
- **Strategy for Nationwide Settlement:** A national settlement class was filed, which enabled us to develop a single nationwide resolution strategy, after evaluating various internal company documents, discovery, and filings. We negotiated a resolution of the California and New Jersey actions and made them part of a nationwide class settlement, which was finally approved and, after eight appeals were filed, was resolved for a very favorable amount. This allowed the client to resolve completely the liability and take advantage of the federal courts injunctive powers. Varacallo v. MassMutual, No. 04-2702 (JLL) (D.N.J.), 226 F.R.D. 207 (D.N.J. 2005).
- **Actual Costs Were Lower Than Estimated Value or Other Reported Settlements**: The district court valued the settlement at nearly $800 million. Due in large part to the administrative design of the settlement, the actual cost disclosed on the regulatory filings were less than $300 million. This amount is substantially less than the reported costs by other companies. See Prudential (settlement costs ranging from $1.15 billion to $2.030 billion); Metropolitan Life ($957 million).
- **Resolved Opt-Outs to Avoid Mass Opt-Out Litigation Later:** We engaged in an opt-out resolution program utilizing the “carrot and stick” method. The “carrot’ was resolution of several cases before the finalization of the class action settlement, which eliminated a number of plaintiffs’ firms that solicit opt-outs. The “stick” was the inclusion of language in the courts preliminary injunction precluding the advertisement for the purpose of soliciting opt-outs during the notice period. One year after the settlement was completed, there were five opt-out lawsuits filed against the company. In the Metropolitan Life settlement, according to published reports, the company had over 2,000 lawsuits. MetLife’s settlement class was only twice as large as MassMutual’s settlement class. We also resolved one action filed by an opt out by obtaining the consent of class counsel and plaintiff s counsel to withdraw plaintiff s opt-out and return to the settlement, without the payment of any additional funds.

National Coordinating Counsel in MDL and State Cases for Medical Device Manufacturer: We were National Coordinating Counsel to C. R. Bard, Inc., a Fortune 100 medical device manufacturer, in a complex product liability litigation arising out of an FDA recall with the cases filed in and transferred into an MDL, a consolidated Rhode Island state court action and individual state courts across the country. In connection with this representation, we successfully designed and implemented a strategy that tried two cases and resolved the great majority of the cases pending in the litigation. We also implemented a Target Budget Fixed Fee arrangement that was narrowly tailored to meet the client's needs and goals, and aimed at controlling costs across the board in this nationwide litigation. *In re Kugel Mesh Hernia Patch Products Liability Litigation*, MDL Docket No. 07-1842-ML (D.R.I.), *In re: All Individual Kugel Mesh Cases*, Master Docket No.: PC-2008-9999 (Superior Court, Providence County, State of Rhode Island).

Resolved mass litigation involving Mirapex: We resolved hundreds of cases and claims pending in the United States and the United Kingdom for injuries allegedly caused by taking a prescription medication. These product liability cases involved the prescription medication, Mirapex, which Pfizer co-promoted with Boehringer Ingelheim Pharmaceuticals, Inc. from 1997 until 2005. After a jury found for plaintiff and while a second trial was underway, we partnered with the client and with the co-defendant to create a very successful end-game strategy that resolved over 95% of the cases in a four month period through negotiating large block settlements with various large plaintiffs' firms, which has also had the added benefit of minimizing the potential tail. *In re: Mirapex Products Liability Litigation*, 0:07-md-01836- JMR-FLN (D. Minn.) and numerous state cases.

Resolved nationwide class action modal premium disclosure settlement: Prior to our involvement, the court granted partial summary judgment against the client. The first settlement was withdrawn after class counsel refused to support it, in light of the number of objections raised. The second settlement, which we designed in conjunction with the client, included the involvement of many of the objectors' counsel to take into account their objections. The redesigned settlement included the mailing of over 3 million certificates that could be used to purchase certain financial products or for a smaller amount of cash and disclosures to all prospective and current policyholders of the modal charge. The nationwide class action settlement was upheld on appeal against arguments by two states regarding the abandoned and unclaimed property statutes. *Wilson, v. MassMutual*, No. D-101-CV 98-02814 (District Court, Santa Fe County, New Mexico).