

KING & SPALDING

California Automotive Consumer Warranty Litigation

California has become a hotbed of automotive consumer litigation related to the Song-Beverly Act, otherwise known as the California Lemon Law. The Act, which applies to new and used vehicles purchased in California under a new vehicle warranty, provides damages remedies that include attorneys' fees and civil penalties. The Act has been increasingly exploited by plaintiffs' lawyers who have begun adding fraudulent concealment and misrepresentation claims to Song-Beverly cases to seek punitive damages as well. According to the American Tort Reform Foundation, "what should be straightforward cases are becoming quite complex and consuming a large amount of the courts' time and resources."

With offices across California and an Automotive and Transportation Initiative that includes more than 100 lawyers, King & Spalding is well-positioned to help automotive manufacturers confront this vexatious litigation head on. We have been developing and executing creative strategies and legal arguments to defeat such claims on the merits, through motion practice and at trial, and to bring about favorable resolutions.

From managing entire dockets to providing strategic counseling and trial counsel, we offer the full suite of services in this area, including:

INVENTORY ANALYSIS AND DOCKET MANAGEMENT

We undertake reviews of our automotive clients' current landscape of consumer warranty cases through an analysis of company documents and discussions with in-house counsel. We organize the inventory, with a particular focus on California, by: (1) plaintiff's counsel; (2) vehicle; (3) issue/defect; (4) jurisdiction; (5) outside counsel; (6) fraud/no fraud; and (7) trial date. This analysis helps identify the issues of concern. We also work with our clients to develop practical strategies for managing these expanding dockets, including intake processes, reporting structures, and methods for allocating internal resources.

STRATEGIC COUNSELING ON CHALLENGING SUBSETS OF CASES

We critically review the most challenging subsets of cases to provide strategic advice on offensive discovery, application of pressure points, evaluation of cases for trial vs. resolution, and resolution strategies.

2018 Automotive Practice Group of the Year



Ranked in 2019 as Leading Firm in Transport: Rail and Road – Litigation (Susan Clare Named only "Next Generation Lawyer")



Ranked in Transportation Road (Automotive) in 2019





LEGAL ISSUES ANALYSIS

We conduct a review of the company's current motions to dismiss/demurrers, motions for summary judgment/adjudication, and motions *in limine* to understand what legal arguments our automotive clients have been advancing and offer recommendations on how to improve those motions and identify new approaches. This includes a review of potential jurisdictional arguments (i.e., assessing strategy around federal removal) and identifying the potential for motions to compel arbitration.

TRIAL STRATEGY

For defect allegations yielding considerable litigation and liability exposure, we develop trial strategies and preparation plans, including identifying and developing trial witnesses, identifying and developing defense experts and challenges to plaintiffs' experts, identifying and marshalling key documents for use at trial, and developing modules on key issues. We also work with our clients to ensure they have appropriate trial counsel assigned to given cases and act as trial counsel for high-exposure matters.

RISK MITIGATION COUNSELING

We review our automotive clients' processes and procedures for handling buyback requests, trend identification, field service actions, and customer satisfaction programs to provide strategic counseling regarding potential risk mitigation and provide training regarding the same. We then continue to work with our clients to provide counseling on other means of potential risk management, including the use of customer disclosures, arbitration clauses, and lobbying efforts.

CONTACTS:

Michael Shortnacy
Partner
Los Angeles
mshortnacy@kslaw.com
+1 213 443 4344

Susan Clare
Partner
Atlanta
sclare@kslaw.com
+1 404 572 3556

Geoffrey Drake
Partner
Atlanta
gdrake@kslaw.com
+1 404 572 4726

WHY KING & SPALDING?

- King & Spalding has been working in the automotive sector for **more than 50 years**
- We have a dedicated **Automotive & Transportation Initiative** of more than 100 lawyers across a range of practices that allows us to share knowledge, identify hot button issues and trends, and recruit top talent
- We have **proven experience** representing automotive companies in mass and class action litigation involving breach of warranty and other consumer claims
- We have **80 litigators across four California offices**, with 29 litigators from other offices admitted to practice in California
- We have a **92 percent success record in trials in California state courts** from 2007-2019