

Professional Liability Practice



We represent accounting firms in high stakes regulatory matters and litigation. Our attorneys understand the applicable professional standards, monitor legal developments on a weekly basis, and know how to defend professionals at trial. In the last decade, King & Spalding has handled more than 400 matters involving large accounting firms, including audit, consulting, and tax matters.

In recent years, King & Spalding has been lead counsel in four auditing 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.

We also regularly represent accounting firms and their professionals in regulatory investigations and enforcement proceedings. Partners in our group have handled more than 100 investigations and enforcement proceedings in the last ten years, successfully dealing with, among others, the PCAOB, SEC, DOJ, OCC, FDIC, CFTC, FTC, HUD, HHS, IRS, Senate and House committees, the New York Attorney General's Office, the Florida Department of Financial Services, and various state agencies and accountancy boards. Our team includes former senior SEC and DOJ attorneys and a former PCAOB associate director.

Our team has significant experience representing the non-U.S. members of the global network firms. Our clients have included firms and individuals in more than a dozen countries, including Argentina, Australia, the Bahamas, Brazil, Canada, China, Hong Kong, India, Japan, the Philippines, and the United Kingdom.

We leverage the experience of 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. When appropriate, we involve our firm's industry experts in matters challenging an accounting firm's work relating to that industry. Through our weekly Auditor Liability Bulletin, we update our clients on legal and regulatory developments.

ACCOUNTING MALPRACTICE & RELATED CLAIMS

King & Spalding has represented accounting firms and their professionals 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. Our results confirm the wisdom of that approach. A few of our 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 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.

- 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. The district court dismissed \$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.
- 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 in *Kirschner v. KPMG LLP*, 938 N.E.2d 941 (N.Y. 2010). 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.
- 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.
- We also have handled similar, confidential matters for accounting firms in AAA and CPR arbitrations.

SECURITIES & CLASS ACTION LITIGATION

King & Spalding's professional liability lawyers have defended professional services firms in numerous securities lawsuits, many of which were filed as class actions. We have obtained early dismissals in many of these cases and favorable settlements in others. Representative matters include:

- We currently represent an accounting firm in high-profile securities litigation relating to Valeant Pharmaceuticals International, Inc. in New Jersey federal district court. We defeated attempts by individual plaintiffs in six opt-out cases to assert Section 10(b) securities fraud claims, including when one of those plaintiffs re-filed its claim in New Jersey state court. The Section 11 claim by the putative class plaintiffs remains pending.
- Obtained dismissal of securities fraud claim while representing a Brazilian accounting firm in a securities class action relating to Petroleo Brasileiro S.A.-Petrobras, one of the world's largest oil companies. *In re Petrobras Sec. Litig.*, 2016 WL 1533553 (Feb. 18, 2016). 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. We successfully moved to dismiss class plaintiffs' Section 10(b) claim and all individual plaintiffs' claims against our client, save the remaining Section 11 claim. The court also rejected class 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.

- We have obtained early dismissal of Section 10(b) claims in other, high-stakes securities class actions brought against Big Four firms, including a case brought in connection with the sixth largest bank failure in U.S. history, *In re Colonial Bancgroup, Inc. Sec. Litig.*, 9 F. Supp. 3d 1258 (M.D. Ala. 2014), and in a class action arising out of a mortgage banking client's \$3 billion restatement, *In re Doral Fin. Corp. Sec. Litig.*, 563 F. Supp. 2d 461 (S.D.N.Y. 2008), *aff'd*, 2009 WL 2779119 (2d Cir. Sept. 3, 2009).
- 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.

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. In these matters, we work with our firm's Special Matters and Government Investigations group, which includes former senior SEC and DOJ attorneys, including: the former SEC Enforcement Director and General Counsel; the former Regional Director for the SEC's Northeast Regional Office; the former Chief of the Securities and Commodities Fraud Task Force in the U.S. Attorney's Office for the Southern District of New York; the former U.S. Attorney for the Northern District of Illinois; the former Associate Deputy Attorney General at the Department of Justice; and the former Acting Attorney General, among others. 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;
- Representing accounting firms in connection with investigations by state regulators, state attorneys general, and state accountancy boards; and
- Representing accounting firms in connection with investigations and proceedings before various federal government actors, including DOJ, SEC, OCC, FDIC, CFTC, FTC, HUD, HHS, IRS, and Senate and House committees.

We have substantial experience handling matters involving the PCAOB, including:

- Litigating contested disciplinary proceedings, including successfully defending an individual partner in the first-ever contested trial of an auditor disciplinary proceeding;
- Making presentations to the PCAOB in connection with informal and formal inquiries and investigations;
- Preparing for and defending witnesses in testimony;
- Preparing 5109(d) submissions;
- Negotiating settlements with the PCAOB; and
- Consulting with clients in connection with the PCAOB inspection process.

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