



# Class Action Litigation

## Overview

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Our trial lawyers are experienced and accomplished in handling class action litigation in jurisdictions throughout the United States. We resolve suits brought by consumers, competitors, suppliers, employees, investors, shareholders, and regulators across many areas of the law – including consumer fraud, product warranties, contracts, insurance, employment, product liability, antitrust, securities, employee benefits, health care, and business torts. Our lawyers have the right skills and experience to handle any type of class action dispute for our clients.

Our team approach to our class action matters, as well as our use of technology and litigation management techniques, maximizes efficiency and promotes collaboration both within our firm and with our clients. Our experience handling class actions allows us to help our clients efficiently resolve cases to their satisfaction and in conformance with their goals. Because class actions are frequently filed in jurisdictions nationwide, our lawyers commonly work in “virtual law firms” with other firms around the country to bring our clients the best lawyers for the task at hand and to coordinate a consistent defense across jurisdictions.

Tucker Ellis holds a National Tier 1 ranking in Mass Tort Litigation and Class Actions – Defendants in the Best Law Firms – United States rankings, and we were named one of the 15 “Most Active Class Action Defendant Law Firms” for 2014 (as ranked by *Class Action Reporter*, a daily newsletter devoted solely to the key details of virtually every major class action suit filed in the United States). We are also proud to be ranked in Chambers USA in the category of Litigation: General Commercial (Ohio), where our team is described as “highly skilled and strategic.” One client comments that our attorneys are “very savvy and offer excellent suggestions that work for our business.” Another source notes that our team “demonstrates ease in discussing complex, nuanced issues, and provides real-world examples and experience to support guidance.”

## AREAS OF CLASS ACTION EMPHASIS

### CONSUMER

Our lawyers handle consumer class action matters that include business torts, product liability, data security, software licensing, false advertising, Consumers Legal Remedies Act (CLRA), Telephone Consumer Protection Act (TCPA), Fair Credit Reporting Act (FCRA), food, cosmetic, nutritional supplement, and other product labeling, product warranties, and state consumer protection laws. We also advise clients on marketing and labeling claims, including false advertising counseling to avoid consumer class actions and enforcement by the Federal Trade Commission; food, beverage, supplement, and cosmetic manufacturer counseling regarding the requirements of the Food, Drug, and Cosmetic Act and California

Proposition 65; and counseling on the use of claims such as “Organic,” “non-GMO,” and “Natural.”

## **LIFE SCIENCES LITIGATION**

Our nationally renowned Life Sciences Litigation Group teams with our class action attorneys to advise and defend our clients in high-profile class action cases involving drugs and medical devices, including class certification briefing and precertification strategy in cases around the country.

## **EMPLOYMENT**

Our Class Action Litigation Group is experienced in litigating a wide range of class- and collective-action cases, including wage-and-hour and discrimination claims, including related private attorney general act claims (PAGA).

## **ERISA AND PENSION**

Our seasoned employee benefits class action attorneys serve as lead counsel in a variety of ERISA, ESOP, and pension cases at both the trial and appellate court levels. Our class action attorneys provide expert consultation services and advice to government entities as they lobby for and enact legislation to maintain the solvency of governmental pension systems.

## **INSURANCE**

Our lawyers leverage their extensive experience representing major insurance carriers in insurance coverage matters to defend our clients in class action litigation related to policy interpretation and claims handling practices.

## **SECURITIES**

We handle securities class actions ranging from defending companies and board members against shareholder derivative suits to representing law firms and other parties in professional liability actions arising from their involvement in securities transactions.

## **APPELLATE**

Our innovative Appellate and Legal Issues Group partners with our Class Action Litigation Group to represent clients before federal and state appellate courts in class certification appeals, as well as appeals on the merits.

## Experience

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### CONSUMER

- Represent a pet food manufacturer in a consumer class action alleging PFAS chemicals in packaging renders product worthless and entitles nationwide class to economic damages
- Represent a clothing manufacturer and retailer in a consumer false advertising class action with CLRA claims alleging supply chain representations in Vendor Code of Conduct about compliance with labor and employment laws, along with various sustainability claims, are false and misleading
- Obtained favorable settlement for a clothing manufacturer and retailer of a consumer class action alleging violations of wire-tapping laws through use of automated chat tool on company website
- Represent a defendant in a class action involving claimed racial discrimination and causes of action brought under the Due Process Clause, Equal Protection Clause, and a novel theory of liability under the federal Fair Housing Act and Ohio Civil Rights Act
- Defend a major health care network in a class action asserting Consumer Sales Practices Act (CSPA), fraud, and breach of contract claims related to rates charged for copies of medical and billing records
- Represent a leading private-label manufacturer of flushable wipes in class actions brought by consumers and municipalities that allege violations of various state consumer protection laws and common-law claims and seek national injunctive relief
- Represent national retailers in consumer class actions involving gift certificates, return policies on merchandise, truncation of credit card receipts, and false advertising
- Represent a food company in a nationwide consumer class action challenging the use of partially hydrogenated oils (PHO) and the use of the term “No Trans-Fat” on product labels
- Defend a food manufacturer in a “Made in USA” false advertising class action, which includes CLRA claims
- Served as lead trial counsel in a class action related to “natural” claims brought by an individual; obtained a nuisance-value resolution before protracted litigation
- Obtained dismissal for a large consumer products company in a class action asserting claims for violations of the state statutes, including CLRA, involving an anti-wrinkle/anti-aging cream product line
- Served as trial counsel and national coordinating counsel in class actions in four states alleging design and manufacturing defects in residential furnaces; all cases were resolved after class certification was denied in one jurisdiction
- Obtained dismissal and a favorable settlement without payment by the client of a class action against a leading ecommerce subscription service in a nationwide class action alleging breach of contract, fraud, RICO, and violation of state consumer protection statute claims, including CLRA

- Represented a nationwide retailer/rental agency in a consumer class action alleging violations of state consumer protection actions, including CLRA, regarding pricing, rates, and discounting
- Served as lead counsel representing a major credit reporting agency in more than 80 cases involving the FCRA in federal courts throughout the Midwest, including putative class actions
- Obtained a favorable settlement for a real estate lead-generation company of a TCPA class action
- Represented a banking association and its independent contractors/service providers in a case alleging violations of federal consumer statutes on credit transactions and alleged fraudulent practices
- Represented a national banking institution in a consumer class action arising from a credit card protection offer

#### **LIFE SCIENCES LITIGATION**

- Secured denial of class certification, an order striking class action allegations, and favorable resolution of an issue of first impression regarding class-action tolling under Ohio law in a putative class action based on a variety of state tort- and contract-based claims alleged against a major hospital system
- Served as trial counsel and international coordinating counsel for over 15 years in individual and class action proceedings related to aesthetic medicine throughout the world for an international medical device manufacturer; acted as lead or co-lead appellate counsel in multiple affirmances in state and federal circuit courts
- Obtained dismissal of a medical monitoring class action against an international medical device manufacturer of transvaginal mesh
- Obtained dismissal with prejudice of a putative medical monitoring class action regarding a needle-free jet injection device used to administer a flu vaccine
- Represented a pharmaceutical company in a consumer class action arising from the Digitek® recall; class rejected
- Obtained summary judgment for a medical device company because plaintiff was a member of a non-opt-out class action settlement in a case involving injuries allegedly caused by silicone gel breast implants
- Obtained dismissal for a generic drug manufacturer in a class action asserting claims for breach of implied warranty of merchantability, fraudulent concealment, and unfair business practices; successfully defended judgment on appeal
- Defended a pharmaceutical company in a class action alleging economic damages resulting from off-label promotion; the matter settled favorably for the client shortly before trial
- Represented a pharmaceutical company in a class action following contraceptive recall

## **EMPLOYMENT**

- Represent employers in numerous wage-and-hour law class actions and collective actions under federal and state law
- Represented a national medical staffing firm and its California joint venture in a wage-and-hour class action involving claims of failure to provide meal and rest breaks, failure to pay overtime, failure to reimburse expenses, and failure to provide accurate, itemized wage statements
- Represented a consolidated restaurant group in a wage-and-hour class action under California law
- Represented large retailers against employment class actions that included allegations of unfair competition and/or unfair business practice claims, in addition to underlying misclassification and unpaid overtime claims
- Represented a foodservice client in the defense of a collective action, resulting in decertification of the class and the restructuring of the client's operations to ensure compliance with the law and minimize the risk of future legal claims
- Represented a retail client in the defense of a wage-and-hour collective action, resulting in the plaintiffs' voluntary dismissal of the claim with no payment by the client
- Served as lead or co-lead regional counsel in a series of class action employment and discrimination lawsuits, obtaining seven pre-trial wins, including Sixth Circuit precedent-setting decisions relating to reverse discrimination claims
- Represented national clothing retailers in consumer class actions alleging their employment applications violated a statute prohibiting inquiry on prior misdemeanor drug convictions
- Defended manufacturers of vinyl chloride in personal injury, wrongful death, and class action claims in federal and state courts throughout the country relating to workers' alleged occupational exposure to vinyl chloride

## **ERISA AND PENSION**

- Served as lead counsel for internal ESOP trustees and the plan administrator in the defense of class action ERISA claims for breach of fiduciary duty, prohibited transactions and injunctive relief, and a parallel state-law shareholder derivative claim asserted by plan participants
- Served as co-counsel in the defense of ERISA breach of fiduciary duty and prohibited transaction claims asserted against the trustees of two union-sponsored multi-employer ERISA plans; obtained dismissal of all claims upon the filing of two motions to dismiss
- Served as lead counsel in a class action ERISA benefits claim regarding the proper credits owed to plan participants in a defined benefit pension plan after a change in control
- Served as special counsel to the independent settlement fiduciary upon the agreement to a \$13.5-million settlement of class action ERISA breach of fiduciary duty claims regarding the

fees incurred by a 401(k) plan

- Served as lead trial counsel in two class action ERISA cases regarding the benefits owed to class members after a corporate change in control
- Represented a state retirement system in litigation brought by a putative class of higher education employees who participate in alternative retirement plans and contest the right of the retirement system to hold back a statutorily required “mitigating rate” from the employer’s contribution to their retirement plans

## **INSURANCE**

- Represent a major insurance carrier as national counsel in numerous class actions across the country challenging whether sales tax and title fees should be included in the calculation of the actual cash value of a total loss vehicle
- Represent a major insurance carrier as Ohio counsel in a class action challenging the calculation of the actual cash value of the repair of damaged property
- Represented a major insurance carrier in a class action seeking medical payments coverage; obtained voluntary dismissal of the case after dispositive briefing
- Served as trial counsel for a major insurance carrier in a class action of more than 100,000 policyholders during a 22-year class period involving windshield repairs; obtained a favorable settlement prior to trial
- Represented a major insurance carrier as Ohio counsel in a class action alleging price fixing through direct repair programs
- Obtained a voluntary dismissal of a class action against a major insurance carrier alleging a pattern of bad faith negotiations and settlement practices

## **SECURITIES**

- Represent a law firm in a securities fraud and professional negligence class action
- Represent offering sponsor of a private placement investment in a Delaware statutory trust in a federal court class action brought by trust investors alleging failure to disclose material facts, and related state court proceedings alleging breach of contract, breach of fiduciary duty, and other claims
- Served as lead counsel in defending a company and board members in a transaction-related shareholder class action lawsuit brought by a national shareholder plaintiff firm; defeated claims for injunctive relief and obtained complete dismissal of lawsuit
- Served as co-lead counsel in defending a company against fiduciary duty class actions brought against a director in connection with an unsolicited proposal by a third party; obtained complete dismissal

## **APPELLATE**

- Obtained reversal of certification in the Third Circuit of a consumer class action regarding run-flat tires on luxury vehicles

- Prevailed in two class action ERISA cases regarding the benefits owed to class members after a corporate change in control in the Sixth Circuit and Eighth Circuit Courts of Appeal
- Obtained reversal of court of appeals' class action certification of "Light" smokers in a case of first impression under the Ohio Consumer Sales Practices Act before the Ohio Supreme Court
- Obtained affirmation of dismissal of class plaintiffs' merit appeals from decisions of a Special Master appointed to oversee the settlement trust in a case alleging defective prostheses