



## Class Actions

Class actions and collective redress litigation are being filed with increasing frequency across the globe. These proceedings allow plaintiffs' lawyers to file complaints that claim to remedy a supposed wrong on behalf of groups of aggrieved investors, shareholders or consumers. Aggressive plaintiffs' lawyers are attempting to capitalize on the rising availability of these actions in numerous countries and are increasingly prosecuting claims in a coordinated manner across jurisdictions.

Now, everything from a natural disaster to a company merger to an everyday event like an advertisement for a new consumer product may serve as the trigger. These cases may involve thousands, even millions of putative plaintiffs in numerous jurisdictions across the world – seeking millions or billions of dollars in damages or injunctive relief that may strike at the heart of your company's business.

These procedures vary across jurisdictions. Some jurisdictions are steeped in long-standing regulations, and others are emerging. To address this great variation, prudent companies seek an experienced team of lawyers on the ground who can help you navigate the issues, in each local jurisdiction as well as across borders and globally. In this high-stakes atmosphere, DLA Piper's Global Class Actions and Collective Redress group can help. Leveraging our global platform, our integrated team works closely together across multiple jurisdictions where class actions and collective redress litigation is existing or expanding, among them the United States, Canada, the United Kingdom, Australia and many countries in Europe and Asia.

We are proud that we have more than 150 class actions litigators with deeply rooted experience in key global markets, who regularly defend many of the world's leading corporations against class actions and related regulatory proceedings. Our team of lawyers is recognized worldwide by respected legal directories. We combine multi-jurisdictional reach with local knowledge and experience. Our clients depend on us to anticipate emerging threats, develop effective strategies that respond to the nuances of a particular suit and keep their overall business objectives in mind. Effective strategies to combat class actions and collective redress litigation often include defeating claims at an early stage through motions to dismiss, crafting a narrow focus for discovery where possible to control costs and contain international discovery issues, acting to prevent class certification by pre-emptive motions to deny class certification or otherwise, employing motions to block or limit testimony, crafting economical settlements when necessary or defeating the case at trial. We also consult with our clients proactively to identify and mitigate potential class action risks, including drafting arbitration or class action waiver provisions where they are enforceable and advising on emerging business issues before litigation occurs.

### RELATED SERVICES

- Litigation, Arbitration and Investigations
- Data Protection, Privacy and Security
- Cybersecurity

### CAPABILITES

Areas of focus for our team include:

- Antitrust
- Automotive
- Banking and financial services
- Consumer
- Employment
- Insurance
- Privacy
- Securities
- Technology
- Telecommunications

### EXPERIENCE

Canada

United Kingdom

United States

#### Canada

- BDO USA LLP in a proposed class action commenced in Ontario alleging violations of securities laws with respect to purchases and sales of shares of a publicly traded

international company in the secondary market. The plaintiffs agreed to dismiss this class action against BDO

- Sino-Forest Corporation in a secondary market class action brought by shareholders in relation to allegations against senior officers of fraud in the company's business activities in China
- Bristol-Myers Squibb in a proposed class action that the Province of British Columbia filed in August 2018 in the provincial Supreme Court against 40 defendants– international pharmaceutical companies, distributors and retailers who are alleged to have manufactured, distributed, marketed, promoted or sold opioids in British Columbia. The province is seeking to recover all healthcare, pharmaceutical and treatment costs in Canada related to opioids during the period from 1996 to the present and is seeking disgorgement of all of the defendants' gains resulting from the alleged wrongful conduct
- Pfizer in a proposed proton-pump inhibitor class action filed in Ontario; we are acting for Pfizer on the PPI matters in the US
- Pfizer and Bristol-Myers Squibb in a proposed class action commenced in Manitoba which asserts a variety of common law claims and statutory breaches (including breach of the Competition Act) with respect to Eliquis, an anti-coagulant drug approved for use in Canada. We are acting in parallel litigation brought in the US
- Air Canada, Lufthansa and Delta Airlines, Inc. in three separate class actions commenced in British Columbia with respect to international fuel surcharges levied on international air travel tickets over a 10-year period. The certification application before the Supreme Court of British Columbia was dismissed and the Court of Appeal upheld that decision
- Porsche AG in class actions commenced in Nova Scotia, Quebec and British Columbia involving consumer claims relating to diesel engine emissions. These actions were settled in 2018
- Nongshim Co. Ltd. in class actions commenced in both Ontario and British Columbia alleging criminal conspiracy/price fixing with respect to Korean noodles
- Air Canada in a proposed class action commenced in Saskatchewan in which alleging a conspiracy with respect to first bag fees for domestic flights
- Intellipharmaceutics International Inc. in a proposed secondary market class action in Ontario brought by shareholders regarding alleged misrepresentations in public statements. This action is ongoing
- An international computer and electronic device manufacturer in a proposed class action brought in British Columbia related to breach of privacy allegations involving Facebook
- Timminco Secondary in a market class action brought by shareholders in relation to alleged misrepresentations in Timminco's financial statements. The case was effectively dismissed on limitation periods, with the Court of Appeal decision becoming the leading case on the issue

## United Kingdom

- Groups of institutional investors in relation to claims and other contentious issues arising from the collapse of Abraaj Private Equity
- Unilever in successfully resisting the imposition of liability for mass claims arising out of an attack by armed invaders on the plantation operated by an indirect subsidiary in Kenya
- Miller Argent (an open cast mining company) in successfully resisting an application for a group litigation order made on behalf of 500 residents of Merthyr Tydfil who sought to bring claims of private nuisance in relation to a land reclamation site
- A global bank in resisting an attempt to join it into a group litigation order involving claims for breach of contract and misrepresentation arising from allegedly faulty silicone breast implant surgeries. Our work includes advising the bank on, and managing, a bespoke settlement process
- A global bank, defending discrimination claims brought under the Equality Act 2010 (UK) by Iranian and Pakistani nationals in relation to the termination of banking facilities
- A global bank, defending mass claims alleging the unenforceability of credit agreements
- A UK card acceptance service provider on a data compromise involving an American retail chain, which affected over 50 million cards. Our work focussed on potential tortious and contractual liability, including monitoring US class actions, reputational issues and advising on fraud liability
- Financial institutions in relation to mass mis-selling claims involving allegations of unfair relationship and/or fraudulent misrepresentation
- Multiple financial institutions and global companies, defending mass claims brought under the EU General Data Protection Regulation for data breaches

## United States

- Defeated class certification for Porsche Cars North America, Inc. in a case arising from alleged defects in certain Porsche 911 vehicles under the California Consumer Legal Remedies Act and Unfair Competition laws. The court denied class certification on predominance grounds because: (1) the plaintiff failed to prove the alleged defect on a class-wide basis; (2) even if the defect was pervasive, due to warranty replacements and multiple sales of the same vehicles, some putative class members necessarily bought cars with "non-defective" replacement cables, thus individual analysis was necessarily required; (3) reliance could not be presumed on a class-wide basis; and (4) exposure to and reliance upon PCNA's supposed omission required individual inquiry.
- Won dismissal for J. Crew Group, Inc. of a putative class action under federal privacy litigation, the Fair and Accurate Credit Transactions Act ("FACTA"). The plaintiff alleged J. Crew violated FACTA by printing the first six digits and last four digits of his credit card number and sought statutory damages of \$100 to \$1,000 per violation. The plaintiff did not allege that he suffered any actual damages. The court granted J. Crew's motion to dismiss for lack of subject matter jurisdiction pursuant to *Spokeo v. Robins*, holding the plaintiff had not suffered a "concrete" injury. This was the first district court decision within the Third Circuit to address standing under FACTA post-*Spokeo* and the first to make it to the Third Circuit for review, where it is pending.
- Won summary judgment for a technology company in a putative class action alleging violations of federal privacy litigation, the federal Driver's Privacy Protection Act ("DPPA"). The DPPA provides for statutory damages of \$2,500 per violation, so if the plaintiffs had been able to show that the DPPA applied, and that there was a violation, damages could have reached into the billions. Initially, we bifurcated discovery so that the court resolved the named plaintiffs' claims before any class discovery. After limited discovery, the court agreed the named plaintiffs' driver's licenses were not protected by the DPPA and dismissed the case in its entirety.
- Won dismissal of two putative class actions against Quik Park and Icon Parking that alleged certain parking fees were actionable under New York's deceptive practices act and a theory of unjust enrichment. After we filed our motion to dismiss, the plaintiffs agreed to dismiss their claims with prejudice for the payment of a nominal amount.
- Won dismissal for The WhiteWave Foods Company, maker of Silk dairy-substitute beverages, in a putative class action alleging use of the term "almond milk" was deceptive; and that products using that term should have nutritional qualities equivalent to dairy milk or else the product must be called "imitation milk." The court dismissed the action on federal preemption grounds.
- Won dismissal for Massachusetts Mutual Life Insurance Company of a putative class action before even responding to the complaint by demonstrating, through declarations and negotiations with plaintiff's counsel, that there was no certifiable class. The complaint alleged a national class of purchasers of whole life insurance policies with waiver of premium riders that were not refunded premium payments under the waiver when they became disabled. The plaintiff initially sought refunds of thousands of dollars in premium payments for each putative class member, but eventually conceded that there was no circumstance in which he could certify a class.
- Won a victory for Pool Corporation, the largest US distributor of swimming pool construction and maintenance products, in an antitrust class action. In January 2016, we won summary judgment on a claim of horizontal conspiracy under the Sherman Act; in April 2016, we won summary judgment on three claims of vertical conspiracy; in October

2016, the direct purchaser plaintiffs dismissed their appeal voluntarily without any money changing hands after the court granted our motion for summary judgment on the remaining federal and state law claims.

- Won dismissal of a putative shareholder class action brought against Ray Berry and Brett Berry, the founder and chairman of the board and the former CEO of The Fresh Market. After a tender offer of \$1.4 billion for the company, a stockholder challenged the transaction, claiming the directors had breached their fiduciary duties and that Brett Berry had aided and abetted the breach. We moved to dismiss on the ground that the decision by a majority of the stockholders to tender their shares was not coerced and had been fully informed. The matter is now on appeal.
- Defeated certification for Hilton of a putative class action seeking damages ranging from \$18 billion to \$54 billion on allegations it had violated the Telephone Consumer Protection Act by using an automated telephone dialing system to call customers' cell phones. The lawsuit sought statutory damages ranging from \$18 to \$54 billion. We defeated class certification, the plaintiffs appealed, and the Ninth Circuit heard oral argument and dismissed Plaintiffs' appeal in July 2017.
- Obtained a favorable settlement for Groupon, Inc. in 15 putative nationwide class action lawsuits and two state actions coordinated into an MDL. The plaintiffs alleged inclusion of an expiration date on Groupon's "daily deal" vouchers violated national and state laws prohibiting the expiration of gift cards. At the time, the applicability of gift card laws to Groupon's innovative Internet-based business model was not clear, and the challenged "daily deals" made up the majority of Groupon's rapidly growing business. Groupon settled the matter for \$8.5 million. The Ninth Circuit overturned an initial settlement, and the district court approved an amended settlement in 2016. Implementation of the settlement took place during 2016 and 2017.
- Obtained a favorable settlement for a boutique fitness company in a putative class action alleging the company's sale of classes violated federal and California gift certificate laws, the CLRA and UCL. In response to our first motion to dismiss, the plaintiff dropped claims under the laws of Connecticut, New Jersey, Massachusetts, Florida, Illinois and Maryland. In response to our second motion to dismiss, the court dismissed the CLRA claim. After discovery, the parties briefed class certification, which was pending when the parties went to mediation. In October 2017, the court granted final approval of a settlement in which the company agreed to provide replacement classes and a cash option capped at \$50 each and \$500,000 overall.
- Obtained a settlement and dismissals for The WhiteWave Foods Company in MDL class actions alleging Horizon Organic Milk fortified with DHA Omega-3 fatty acids did not "Support Brain Health," as advertised, and seeking damages in the hundreds of millions. We excluded plaintiffs' sole expert on the merits, then negotiated a novel settlement that included a nominal monetary payment but preserved the client's ability to continue making its "brain health" label claims and included protocols for a third-party monitoring process. In August 2017, a new putative class action was filed challenging the same label claims for Horizon milk; we won dismissal of that action.
- Settled thousands of putative class actions against Omni Hotels under California's Invasion of Privacy Act ("CIPA"). As the CIPA provides \$5,000 in statutory damages per alleged violation, the exposure was approximately \$65 million. The court approved a settlement which entailed no payment of attorneys' fees and class relief of less than \$10,000 in gift cards.

## INSIGHTS

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### Publications

#### Top of Mind: Life Sciences

16 January 2020

Eight big topics that life sciences businesses have been thinking about and how DLA Piper has been covering those stories.

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#### Disputes, Issue 1

October 2019

The inaugural issue of *Disputes* examines choice of law and the global class action; the slow death of agency deference; cybercrime via business email; the value of trade secret protection programs; the pre-service removal mechanism; and a significant decision regarding the *McDonnell* "official act" requirement.

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#### Institution of civil class action takes effect in Russia

2 August 2019

On 18 July 2019, the President of Russia signed a law whereby lawsuits can be filed to protect groups of people in civil disputes (so-called "class action suits").

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#### Our UK Class Actions film series

17 July 2019

In the UK, the growing prevalence of Class Actions and the circumstances in which businesses are threatened with them, including changing rules on litigation funding and more flexible procedures, means that Class Actions are becoming a major risk for our clients.

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#### Top franchise developments of 2018

11 APR 2019

DLA Piper IPT attorneys Barry Heller, John Hughes and Karen Marchiano recently conducted a webinar reviewing 2018's top franchise developments. Two stand out from the rest.

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#### Supreme Court rules Vedanta case on parent company liability for actions of overseas subsidiary can proceed to trial

11 APR 2019

The Supreme Court handed down on 10 April 2019 its much anticipated judgment in *Vedanta Resources PLC and another (Defendants/Appellants) v Lungowe and others (Claimants/Respondents)* [2019] UKSC 20 ("**Vedanta**"). The Supreme Court upheld the decisions of the Technology and Construction Court and the Court of Appeal that:

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#### Data breaches and group litigation: Still the perfect storm?

2 APR 2019

#### [INSURANCE HORIZONS](#)

Many organisations feared the worst after the introduction of the EU General Data Protection Regulation (GDPR) in May 2018. The levels of fines that can imposed by regulators have been significantly increased; it is easier for individuals and consumer groups to bring claims regarding a data breach; and individuals can now claim non-pecuniary damages, including for distress arising from the loss of personal data.

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#### Top of Mind: Litigation

20 MAR 2019

In this issue, our coverage of 10 big topics businesses have been thinking about this quarter.

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#### Top of mind: Litigation

10 DEC 2018

Our coverage of big compliance, enforcement and litigation issues that businesses are thinking about this quarter.

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#### US-style class actions set for Scottish courts

8 AUG 2018

A new law in Scotland may expose financial institutions and businesses to large collective legal claims in future rather than just claims by individual litigants.

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#### Consumer action without consumers

11 JUN 2018

Recently introduced by the EU Commission, representative action is one of the cornerstones of the New Deal for Consumers. This is of particular significance for products, their manufacturers, and consumers.

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#### Once more unto the breach: Canada's PIPEDA breach notification and reporting regulations in force November 1, 2018

30 APR 2018

Organizations have about seven months to get ready for compliance.

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#### [Events](#)

#### [Previous](#)

#### Financial Services Class Actions 360°: What is on the horizon in 2019?

8 MAY 2019

London

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#### Are US-Style Consumer Class Actions Coming to Europe?

5 NOV 2018

Webinar

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#### [NEWS](#)

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### **DLA Piper launches its Global Litigation Guide**

3 December 2019

DLA Piper has launched its 'Global Litigation Guide', which covers aspects of civil litigation in 30 jurisdictions worldwide.

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### **DLA Piper continues to boost CEE region capability with new hires in Poland**

5 September 2019

DLA Piper today announces the appointment of eight new lawyers in its Warsaw office into three key practice areas of Corporate, Finance & Projects (F&P) and Litigation & Regulatory. These hires follow the recent appointment of corporate partners Marek Sawicki and Jakub Marcinkowski from CMS.

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### **DLA Piper announces launch of Artificial Intelligence practice**

14 MAY 2019

DLA Piper announced today the launch of its Artificial Intelligence practice, which will focus on assisting companies as they navigate the legal landscape of emerging and disruptive technologies, while helping them understand the legal and compliance risks arising from the creation and deployment of AI systems.

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### **DLA Piper establishes Litigation Regulatory offering in Dublin with partner hire**

18 APR 2019

DLA Piper today announces the appointment of Caoimhe Clarkin as a Litigation & Regulatory partner in the firm's Dublin office. This is the seventh partner hire for DLA Piper in Dublin this year.

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### **DLA Piper announces partnership promotions for 2019**

1 APR 2019

DLA Piper is proud to announce that 77 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2019 in the United States and May 1, 2019 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 43 different offices throughout 20 countries.

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### **DLA Piper announces launch of Blockchain and Digital Assets practice**

26 FEB 2019

DLA Piper announced today the launch of its Blockchain and Digital Assets practice, which will offer strategic advice on a global basis to address the needs of companies implementing blockchain technology solutions and creating and deploying digital assets.

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### **Kate Brown de Vejar joins DLA Piper as global co-chair of International Arbitration**

22 JAN 2019

DLA Piper announced today that Kate Brown de Vejar has joined the firm's Litigation practice as a partner in Mexico City and New York.

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### **DLA Piper and IKM Advocates secure victory for the Republic of Kenya defeating a US\$2 billion ICSID claim**

24 OCT 2018

In a decisive victory for the Republic of Kenya, DLA Piper and DLA Piper Africa member firm, IKM Advocates, have successfully defeated the claim estimated to be worth US\$2 billion in arbitration proceedings brought by a mining investor, Cortec Mining Kenya Limited. The claim was brought under the bilateral investment treaty (BIT) between the UK and Kenya dated 13 September 1999. The arbitration took place under the auspices of the World Bank's International Centre for Settlement of Investment Disputes (ICSID), with the hearing taking place in Dubai in January 2018. The Tribunal issued its award on 22 October 2018.

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### **DLA Piper hosts inaugural Afghanistan-UK Business Conference**

18 SEP 2018

DLA Piper's London office yesterday hosted the first Afghanistan-UK Business Conference, organised by the Embassy of the Islamic Republic of Afghanistan in London and the International Chamber of Commerce in Afghanistan. The event, aimed at further enhancing Afghanistan-UK bilateral business, trade and investment relations, was attended by over 100 participants including public and private sector leaders, potential investors, NGOs and consultants, amongst others.

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### **DLA Piper's GTGA team named Sanctions Law Firm of the year 2018**

27 JUL 2018

DLA Piper's Global Trade and Government Affairs (GTGA) team has been named Sanctions Law Firm of the year, Europe, at this year's WorldECR Awards.

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#### **DLA Piper hires financial services and insurance sector team in Belgium**

2 JUL 2018

DLA Piper in Antwerp has today been joined by a team of financial services and insurance sector lawyers from Baker McKenzie.

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#### **DLA Piper secures victory for Transatel SA in landmark telecoms dispute**

20 JUN 2018

DLA Piper has secured a victory for the French telecommunications service provider, Transatel SA, in a dispute under telecommunications law before the Federal Network Agency (BNetzA). In this landmark procedure, the BNetzA ordered the German mobile network operator, Telefónica Germany GmbH & Co. OHG, to submit a draft agreement regarding access to regulated wholesale roaming services to Transatel.

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#### **DLA Piper announces partnership promotions for 2018**

3 APR 2018

DLA Piper is proud to announce that 62 lawyers have been promoted to its partnership. The promotions are effective as of 1 April 2018 in the United States and 1 May 2018 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 42 different offices throughout 20 countries.

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#### **DLA Piper Africa advises Adenia Partners on acquisition of controlling stake in Kanu Equipment Limited**

23 MAR 2018

Kanu has been driving an expansion strategy across Sub-Saharan Africa in recent years and the business now operates in 13 countries, servicing the agriculture, construction and mining industries.

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#### **DLA Piper advises Timor-Leste on historic maritime treaty**

6 MAR 2018

DLA Piper has been advising the Government of Timor-Leste, for more than four years, on its historic maritime treaty with the Australian Government, signed today at the United Nations Headquarters in New York, following the successful outcome of a compulsory conciliation process.

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#### **Four DLA Piper partners recognised in Jeune Afrique's Top 50 Lawyers in Francophone Africa 2017**

20 FEB 2018

DLA Piper is delighted to congratulate Litigation & Regulatory partners Michael Ostrove and Alexander Brabant, Finance & Projects partner Eric Villateau, and Corporate partner Christophe Bachelet, on their inclusion in *Jeune Afrique's* Top 50 Business Lawyers in Francophone Africa 2017 rankings. This year, more DLA Piper lawyers than ever before have been awarded a place on the rankings, with partners scoring individual record rankings for the firm.

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