Matt Holian

Partner

GLOBAL CO-CHAIR, LIFE SCIENCES SECTOR

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Matt Holian serves as the Global Co-Chair of DLA Piper's Life Sciences Sector. Matt's practice focuses on litigation, regulatory and enforcement challenges facing pharmaceutical and medical device companies. His litigation practice primarily involves serving as national counsel in complex, multi-jurisdictional product liability suits, for which DLA Piper's Product Liability and Mass Tort practice group has been recognized by *Legal 500* as Tier 1 since 2014 and by *Chambers* as Band 2 or Band 3 since 2015. In those cases, Matt defends his clients from start to finish, beginning with litigation risk assessments before medications are approved and continuing through pretrial discovery, bellwether trials and, ultimately, resolution. Matt previously served as Co-Chair of its Pharmaceutical and Medical Device Product Liability sub-group. Matt also has litigated cases involving the False Claims Act, consumer fraud, trade secret misappropriation and commercial disputes relating to licensing agreements.

RELATED SERVICES

- Litigation, Arbitration and Investigations
- Product Liability, Mass Torts and Product Stewardship

RELATED SECTORS

- Life Sciences
- Healthcare

In addition to his litigation practice, Matt also has an active regulatory and enforcement practice, which includes conducting compliance investigations, counseling clients regarding research and development issues (including defending hundreds of claims asserted by patients in clinical trials) and advising life sciences and other clients on a wide range of emerging regulatory issues, such as product labeling, First Amendment challenges to promotional restrictions, real word evidence and value-based contracts.

EXPERIENCE

Representative of his experience are the following cases:

- *In re Eliquis Products Liability Litigation*, MDL 2754 (S.D.N.Y.): National counsel for Bristol-Myers Squibb Co. and Pfizer in product liability litigation alleging that Eliquis causes bleeding, in which the DLA Piper team obtained landmark rulings finding that plaintiffs' claims were preempted at the pleading stage (*Utts v. Bristol-Myers Squibb Co.*, 226 F. Supp. 3d 166, 177 (S.D.N.Y. 2016) ("Utts I"); *Utts v. Bristol-Myers Squibb Co.*, 251 F. Supp. 3d 644, 658 (S.D.N.Y. 2017) ("Utts II"). The MDL

decisions were affirmed on appeal (*Gibbons v. Bristol-Myers Squibb Co.*, No. 17-2638, 2d Cir. Mar. 26, 2019), a ruling the Drug & Device Law Blog called "the *TwIqbal* decision to end all *TwIqbal* decisions" in the preemption context and noted, "If anyone wonders why we consider preemption our side's most powerful defense, *Gibbons* is Exhibit A."

- *In re Proton Pump Inhibitor Products Liability Litigation*, MDL 2789 (D.N.J.): National counsel for Pfizer and Wyeth in product liability litigation alleging that proton pump inhibitors Protonix and Nexium 24HR (OTC) cause chronic kidney disease and other kidney injuries.
- *In re Viagra Products Liability Litigation,*MDL 2691 (N.D. Cal.): Co-national counsel for Pfizer in product liability litigation alleging that Viagra causes melanoma.
- *Talc Product Liability Litigation*: National counsel for BASF Catalysts LLC in nationwide litigation involving personal injuries allegedly caused by talc.
- *Tecfidera Litigation:* Counsel for Biogen in personal injury suits involving MS medication.
- *In re Testosterone Replacement Therapy Products Liability Litigation,* MDL 2545 (N.D. Ill.): National counsel for Pfizer and Pharmacia & Upjohn in product liability litigation involving testosterone replacement therapies; obtained orders dismissing all claims against clients, including failure-to-warn and design claims on basis of impossibility preemption, which were affirmed by 7th Circuit (*Guilbeau v. Pfizer Inc.*, 2018 WL 476343 (7th Cir. Jan. 19, 2018)).
- *Rapamune Products Liability Litigation*: Lead counsel for Pfizer and Wyeth in product liability litigation pending around the country involving immunosuppressant for use after organ transplantation.
- *In re Chantix (Varenicline) Products Liability Litigation*, MDL 2092 (N.D. Ala.): Appointed by MDL court as Defendants' Liaison Counsel in product liability litigation involving Chantix, an aid to smoking cessation treatment; obtained ruling that label was adequate as a matter of law (*In re Chantix (Varenicline) Prods. Liab. Litig.*, 881 F. Supp. 2d 1333 (N.D. Ala. 2012)).
- *Pepe v. Genzyme Corporation et al.* (D. Mass.): Represented Genzyme in putative class action relating to DNA testing services.
- *In re Prempro Products Liability Litigation,* 738 F. Supp. 2d 887 (E.D. Ark. 2010): Obtained ruling excluding plaintiffs' experts' opinion that estrogen-only hormone therapy causes breast cancer.
- *In re Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation,*MDL No. 1699 (N.D. Cal.): Defended Pfizer in product liability and consumer fraud litigation involving selective COX-2 inhibitors; obtained exclusion of any expert opinions that Celebrex causes heart attacks and strokes at the most commonly prescribed dose (524 F.Supp. 2d 1166 (N.D. Cal. 2007)), which CNN.Money called "one of the most important 'gatekeeping' rulings ever rendered in a mass-tort case"; oversaw resolution program for thousands of cases.
- Represented Pfizer in securities class action involving disclosures related to COX-2 inhibitors.
- *Baycol Litigation*: Defended Bayer in product liability litigation involving Baycol, a prescription cholesterol-lowering medication; served on six trial teams in three states.
- *Buckingham v. Bayer Corporation (San Diego Superior Court)*: Obtained dismissal with prejudice of putative consumer fraud litigation against Bayer involving Aleve on preemption grounds.
- Defended a clinical research organization in suits alleging breach of contract, conversion and trade secret misappropriation.
- Represented students with special needs in proceedings against school districts relating to Individualized Education Programs, with a focus on children with autism spectrum disorder

CREDENTIALS

Admissions

- California
- Massachusetts

Recognitions

From 2017 through 2019, *Chambers* has ranked Matt as Band 5 in product liability and mass torts. In 2017 and 2018, *Legal 500* ranked him as a "Next Generation Lawyer," and in 2015 and 2016, *Chambers* recognized Matt as "Up and Coming." Clients have

commented that Matt is "incredibly smart and practical – he can shape effective strategies in understandable and presentable ways"; he "has a great way of explaining issues in a user-friendly way," with a "very good sense of . . . business issues"; and he is "the type of lawyer who really gets invested in your interests." Other clients have said Matt is "absolutely detail-oriented and on top of every issue in the case." In 2018 and 2019, Matt was selected for inclusion in *Who's Who Legal: Life Sciences* for Product Liability.

Education

- J.D., Stanford University 2000
  Order of the Coif
  Research Assistant to Dean Kathleen Sullivan
  Teaching Assistant, Federal Litigation
  Associate Editor, *Stanford Law Review*
  Senior Editor, *Stanford Law and Policy Review*
  Co-President, Stanford Law Students Association
- B.A., Harvard University 1995
  magna cum laude
  Social Studies
  Phi Beta Kappa
  Truman Scholar

Courts

- All California state and federal district courts
- All Massachusetts state courts
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the District of Massachusetts

Memberships

- Boston Bar Association (2006 – present)
- Defense Research Institute (2003 – present)
- Local Rules Committee, US District Court for Southern District of California (2002 – 2003)

Clerkships and Other Relevant Professional Experience

- Law Clerk to the Honorable Charles R. Breyer, US District Court for the Northern District of California (2000 – 2001)
- Extern to the Honorable Napoleon A. Jones, US District Court for the Southern District of California (1998)
- **Teaching Experience**: Matt has taught, co-taught or prepared lectures on the following topics for courses at Harvard Law School and Yale Law School: (1) the regulatory system governing pharmaceutical, biotech and medical device companies; (2) how to litigate complex multi-jurisdictional product liability suits, including the coordination of these cases with related litigation such as government investigations, securities litigation, trade secret litigation and putative class actions; (3) the use of scientific data and other expert evidence in complex litigation; (4) the selection of plaintiffs for bellwether trials in mass torts; (5) the resolution of mass torts; and (6) the role of lawyers as strategic advisors.

INSIGHTS

Publications

Significant preemption win for Bristol-Myers-Squibb and Pfizer in Eliquis product liability multi-district litigation

27 MAR 2019

The ruling significantly strengthens preemption law in two respects.

Exploring ways to improve MDL management: key takeaways from the MDL Subcommittee biannual session

5 NOV 2018
The MDL Subcommittee of the Advisory Committee on Civil Rules has held a number of public hearings regarding ways to improve the management of multi-district litigation.

CRISPR technology and evolving scientific data: how biotechnology and pharmaceutical companies can mitigate potential product safety risks

16 AUG 2018

How may product safety issues impact those who develop, license or evaluate the potential of innovative gene therapies like CRISPR?

- Matthew Holian & Katie Insogna, "Massachusetts Supreme Court recognizes brand-name pharmaceutical makers owe duty to consumers of generic medications," *DLA Piper Litigation Alert*, Mar. 19, 2018
- Matthew Holian, Melissa Whitney, & Andrew Gilbert, "How To Navigate Pharma Collaboration and Licensing Agreements," *Life Science Leader (LSL),* Feb. 1, 2017
- Matthew Holian & Jessica Wilson, "Mitigating Litigation Risk: Steps Every Small Biotech Company Should Consider," *Genetic Engineering & Biotechnology News*, Oct. 3, 2016
- John Hillebrecht, Rebecca Jones McKnight, James N. Czaban & Matt Holian, "The writing's on the wall: wise pharma companies will heed FDA warning in new draft guidance on data integrity cGMPs," *DLA Piper Client Alert*, May 2, 2016
- Matthew Holian, Dov Rothman, & David Toniatti, "A Modified Approach to Random Selection of Bellwether Cases," *BNA Product Safety & Liability Reporter*, July 6, 2015
- Matthew Holian, Loren Brown, & Dov Rothman, "Random Selection Is Best for MDL Bellwether Trials," *Law360*, Oct. 21, 2014
- Loren H. Brown, Matthew A. Holian, & Arindam Ghosh, "Bellwether Trial Selection In Multi-District Litigation: Empirical Evidence In Favor of Random Selection," 47 *AKRON L. REV*. 663, 2014
- Matthew Holian & Jessica Wilson, "Clinical Trial Data Sharing and its Potential Litigation Impact,"*InsideCounsel*, Sept. 23, 2014
- Loren H. Brown & Matthew Holian, "Bellwether Trial Selection in Multi-District Litigation: Empirical Evidence in Favor of Random Selection," *DLA Piper Litigation Alert (US)*, Sep. 9, 2014

Events

Previous

Attorney-client privilege and work product protection for in-house life sciences lawyers

10 September 2019
Webinar

- "Latest Developments on the Status of Preemption Law: Emerging Theories, Express Preemption, and Innovator Liability,"

ACI: Drug & Medical Device Litigation, Dec. 2017

- "Clinical Trials 101: From Phase 1 to Phase 4 in 60 Minutes," Client CLE, Mar. 2016
- "Preemption Developments in Pharmaceutical Litigation," Client CLE, Dec. 2015
- "Interpreting Clinical Trial Data: What In-House Lawyers Need to Know," Client CLE, July 2015
- "Attorney-Client Privilege and Work Product Protection in the U.S. & Abroad: Best Practices for Navigating Different Rules Around the World," Client CLE, Jan. 2015