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.

Vonnick Le Guillou
Partner
Paris
T: +33 (0)1 40 15 25 51
vonnick.leguillou@dlapiper.com

- Litigation, Arbitration and Investigations
- Data Protection, Privacy and Security
- Cybersecurity
- Antitrust and Competition
- Employment
- Corporate and Securities Litigation
- Telecom

- Financial Services
- Consumer Goods, Food and Retail
- Insurance
- Technology

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 plaintiffsagreed 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 inhibiter 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 attached 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
- Arconic in relation to the Grenfell Tower public inquest and related contentious issues
- 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

Publications

Insights from the US: will knowledge, recklessness or negligence in Australian securities class actions actually change anything?

16 August 2021

Last week the Federal Government introduced permanent reforms to the continuous disclosure regime and misleading and deceptive conduct provisions in the *Corporations Act 2001* and *ASIC Act 2001* which provide that companies and their officers will not be exposed to civil liability unless they had a requisite mental element, being *knowledge, recklessness or negligence*. This change is in line with the recommendations of the Parliamentary Joint Committee for Corporations and Financial Services and also extends the temporary measures originally introduced at the height of the COVID-19 pandemic.

This change brings Australia's continuous disclosure regime closer to that of its counterparts in the United States and the United Kingdom, and there is much we can learn from our international colleagues.

US: Four significant developments in arbitration case law

26 October 2020
US-style discovery; compelling arbitration on the basis of equitable estoppel; class-wide arbitration when the arbitration agreement is ambiguous; ongoing use of the US DDCC for ICSID award enforcement.

Class actions make it easier than ever to seek redress

28 July 2020

Businesses should note that they are at risk of increased exposure to claims once group proceedings are permitted in Scottish courts, write Alistair Drummond and Jen Talbot.

Global Class Actions Briefing: Major developments in European consumer protection laws: Product safety and consumer class actions in Europe

15 July 2020
The EU's proposals for a revised EU General Product Safety Directive (the GPSD) and the EU's deal for a Collective Redress Directive (the CRD) point the way to a future of heightened novel risk in Europe of collective redress or, as these claims are popularly known, "class actions".

Events

Previous

Global Class Actions Client Summit 2022

21 June 2022

White Collar Crime, Investigations and Compliance Symposium

5 October 2021
Webinar
