

# Mass Torts and Insurance Litigation

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The Mass Torts and Insurance Litigation Group at Skadden, Arps, Slate, Meagher & Flom LLP and affiliates (“Skadden, Arps” or “Skadden”) has been involved in many of the significant complex tort and consumer fraud litigations of the last 20 years, and we represent a wide variety of *Fortune* 500 companies. The group pioneered the “national counsel” model of handling mass tort litigation and has strong relationships with local defense lawyers in virtually every state. We received the 2011 Chambers USA Award for Excellence for “Products Liability Team of the Year,” and we also were selected as a finalist by *The American Lawyer* in the products liability section of its Litigation Department of the Year contest (January 2012). Skadden received the most first-tier rankings in the Mass Tort Litigation/Class Actions – Defendants category in the 2011 *U.S. News – Best Lawyers* report, and we were named among the top Class Action and Product Liability Groups for both 2011 and 2010 by *Law360*.

Skadden’s Mass Torts and Insurance Litigation Group is comprised of experienced litigators who have defended cases on every level — from formulating and implementing national strategy in multijurisdictional litigation to conducting *Daubert* hearings and trials, as well as pursuing significant appeals. We have been lead defense counsel in a number of MDL proceedings, developed experts and conducted expert discovery, mapped strategies to obtain important early victories on substantive motions in key jurisdictions, coordinated discovery in thousands of actions, and prepared for and conducted significant trials.

Skadden also has served as appellate counsel in landmark cases in many state and federal appellate courts and files amicus briefs in appeals that raise significant substantive law issues. Sheila Birnbaum, who co-heads the Mass Torts and Insurance Litigation Group with John Beisner, argued and won one of the most important business cases heard by the United States Supreme Court, *State Farm Mutual Automobile Insurance Co. v. Campbell*, which set important constitutional limits on punitive damages awards. She also successfully argued the Supreme Court’s landmark asbestos medical monitoring case, *Buckley v. Metro North Railroad*.

### Diverse Practice

- **Pharmaceuticals:** We have served as national counsel for a major pharmaceutical company in the defense of product liability actions and nationwide consumer fraud and third-party payor putative class actions involving certain prescription cardiovascular medications. We have developed and implemented a nationwide legal strategy to address the range of claims asserted in this highly-regulated industry, identified and developed medical experts, litigated *Daubert* motions to exclude plaintiffs’ expert testimony, and managed discovery for the client. We also represent a major biotechnology company in a multidistrict litigation involving RICO class action claims by third-party payors challenging the promotion of certain medicines that boost the production of red blood cells.

- **Consumer Products:** We have represented numerous sellers of consumer products in individual actions, class actions, product recalls and proceedings before the Consumer Product Safety Commission. We represented one of the national's leading manufacturers of consumer products and household appliances in multiple litigations involving a wide variety of products, where plaintiffs were seeking to recover on behalf of consumers whose products had not yet failed and had performed as intended. We also defended a baby food manufacturer in two putative class actions involving "nursing mouth syndrome," and represented a grocery store chain in a class action trial and opt-out litigation arising from the alleged contamination of milk with salmonella. In addition, we represented a beverage manufacturer in a class action suit involving a printing error in a promotional sweepstakes.
- **Fen-Phen:** We have served as national coordinating counsel for a principal defendant in Fen-Phen (diet drug) litigation involving thousands of individual and class action lawsuits, many of which raise novel issues of causation.
- **Automotive/Other Vehicles:** We have represented automobile and other vehicle manufacturers, as well as component part manufacturers, in a variety of cases across the country, including several putative class actions. We also have represented a major automobile manufacturer in a leading case on the issue of punitive damages in an appeal in the Florida Supreme Court.
- **Asbestos:** For more than a decade Skadden, Arps served as national coordinating counsel and trial counsel for a defendant in nationwide asbestos litigation. We have appeared in courtrooms across the country for this client, including courts in Mississippi, Texas, Illinois, West Virginia, Pennsylvania, California, Maryland, Washington and Hawaii. We have secured summary judgments and directed verdicts on these claims and have tried these cases successfully to defense verdicts. We have identified and developed industry experts and medical experts for this litigation and have been the day-to-day manager of discovery for hundreds of thousands of claims.
- **Albuterol:** We were trial counsel in one of the very few product liability class actions ever to proceed to trial, *In re Copley Pharmaceutical, Inc. Albuterol Litigation*. The case involved the alleged contamination of prescription asthma medication. We conducted all phases of briefing and trial, including identifying and developing the industry experts and medical experts.
- **Alcohol:** For decades Skadden has represented one of the world's largest brewers in lawsuits challenging beer advertising, promotion and labeling. We defend this

client before the industry's independent advertising review board and advise it on a variety of state and federal bills that seek to regulate its commercial speech.

- **Silicone Gel Breast Implants:** We were national coordinating counsel for a major manufacturer with more than 10,000 claims involving silicone gel breast implants and the company's sales of silicone raw materials that other manufacturers used in making silicone gel implants. We acted as lead counsel for the MDL and coordinated the legal strategy for the client, selecting key jurisdictions in which to challenge consolidated trial settings and to advance summary judgment motions asserting the bulk supplier and sophisticated purchaser defenses. We also made numerous summary judgment and *in limine* motions challenging the conclusions of the plaintiffs' experts that silicone caused systemic autoimmune disease.
- **Tobacco:** We have served as national coordinating counsel for a defendant in smokeless tobacco litigation involving both personal injury claims and claims for reimbursement of health care expenses. We have been involved in the development and preparation of industry experts and medical experts in these cases and manage all aspects of discovery for these claims. The group represented this client in its successful constitutional challenge to Massachusetts' regulations restricting indoor and outdoor tobacco advertising. In the appeal, which was consolidated with two other cases, the U.S. Supreme Court held that the core regulatory provisions violated the First Amendment.
- **Phenylpropanolamine (PPA):** We have been national coordinating counsel for a manufacturer of an over-the-counter product in multidistrict litigation involving the alleged health effects of ingesting phenylpropanolamine. We are defendants' liaison counsel in the MDL, and our responsibilities include the development of medical experts and conducting *Daubert* hearings.
- **Silica:** For many years, we were national coordinating counsel in personal injury litigation for a *Fortune* 500 defendant that owned a company which, at one time, had been an industrial silica supplier. We were responsible for all legal strategy, expert identification and development, discovery, motion practice and trial. We achieved many dismissals for lack of personal jurisdiction.
- **Ethylene Oxide:** We have been national coordinating counsel for a manufacturer of hospital sterilizing equipment in litigation over the alleged health effects of exposure to ethylene oxide. We have won numerous summary judgments in those cases, many of which involve successful challenges to plaintiffs' causation experts, and have tried several cases to a favorable conclusion. The decision we obtained in *Allen v. Pennsylvania Eng'g Corp.*, (5th

If you have questions regarding Skadden's mass torts and insurance litigation practice, please contact Sheila L. Birnbaum at 212.735.3000 or John H. Beisner at 202.371.7000.

Cir. 1996), is frequently cited as an important application of *Daubert* guidelines to exclude expert testimony.

- **Repetitive Stress Injury Litigation:** We were national coordinating counsel for a major manufacturer of computer keyboards and other data access devices in cases alleging “repetitive stress injury.” We successfully challenged the admissibility of testimony from a variety of experts, including epidemiologists, mechanical engineers and physicians. We also obtained a reversal in the U.S. Court of Appeals for the Second Circuit of a jury verdict in repetitive stress injury litigation for another computer manufacturer, which essentially terminated such litigation against our client.
- **Medical Devices:** We have represented a major medical device manufacturer in litigation involving pacemaker leads and other medical devices and have successfully defeated MDL consolidation and class certification in such cases. Skadden also represented a major pharmaceutical company in the nationwide defense of its intrauterine device litigation.
- **High Tech:** We have represented one of the world's largest computer companies in floppy disk controller litigation and in class actions challenging the company's consumer warranty practices. We have identified and developed experts in the cases and litigated *Daubert* motions to exclude plaintiffs' expert testimony. We also are national coordinating counsel for a defendant in multi-district litigation involving mobile telephones and serve as defendants' liaison counsel in the MDL.
- **Biotech:** We have represented a major agribusiness client in individual and multiple putative class actions involving damages allegedly stemming from a bioengineered corn product. These cases have included not only traditional contract and tort theories, but novel allegations of market-based harm as well.
- **Toxic Substance Litigation:** We served as national coordinating counsel for a major paper manufacturer's dioxin litigation and served as trial counsel in a property damage class action arising from alleged water pollution. We tried that case to a hung jury in Tennessee state court and achieved a settlement that was beneficial for our client. We also defended a chemical manufacturer in 9,000 consolidated DDT exposure cases in Alabama, which resulted in a class action settlement. We represented a major paper and wood products company in class action litigation arising from a discharge of phenol into the Mississippi River, which contaminated a community's drinking supply. We also represented the company in litigation involving smokestack emissions from one of its chemical facilities. We have represented defendants in personal injury liti-

gation arising from alleged exposure to lead paint and have briefed and argued appeals on important issues of law affecting defendants in such litigation.

- **Building Products:** We achieved a defense verdict at trial in federal court in Florida for a *Fortune* 500 manufacturer of fire retardant treated plywood, and have served as national coordinating counsel for a manufacturer of home siding in claims alleging breach of warranty and consumer fraud brought by homeowners.
- **HMO Litigation:** We have been national coordinating counsel for a major Health Maintenance Organization in putative class action litigation and an MDL proceeding over its practices and policies regarding treatment coverage.
- **Insurance Sales Practices:** We were national coordinating counsel for Metropolitan Life Insurance Company in its sales practices litigation, and negotiated and implemented a class action settlement of that multidistrict litigation.
- **Insurance and Reinsurance Coverage:** We have represented insurance and reinsurance companies in a wide range of coverage litigation in state and federal courts, as well as arbitrations. These matters typically involve coverage for injuries associated with products such as DES and asbestos, as well as cleanup costs and property damage resulting from hazardous waste sites. We served as national coordinating counsel for a major reinsurance company with respect to its environmental insurance coverage claims.

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