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Class Action

Steptoe & Johnson LLP has a large and diversified Class Action practice. Firm attorneys have substantial experience in all of the core competencies needed for a robust class action practice.

Our attorneys have substantial familiarity with class certification standards and procedures under Federal Rule of Civil Procedure 23, as interpreted by the courts and as revised by the recently enacted Class Action Fairness Act (CAFA). We also have substantial familiarity with the state equivalents of Rule 23.

Our attorneys also have a deep background in other procedures governing complex litigation that are often relevant in class actions:

- removal from state to federal court under diversity jurisdiction (as revised by CAFA) and federal question jurisdiction;
- transfer and consolidation of class actions by the Judicial Panel on Multi-District Litigation; and
- best practices in case management, including sequencing of discovery, use of dispositive motions, etc.

Expert witnesses also often play a critical role in class actions, both on class certification questions and on the merits, or with respect to affirmative defenses. We have frequently worked with statistical and other experts concerning such questions as the predominance of individualized over common issues of fact. We also have considerable experience with the Daubert rules for the admissibility of expert testimony.

Another important dimension of our class action practice is that our attorneys combine experience on class action procedural issues with knowledge of the substantive governing law. Steptoe has nationally recognized skill in the following fields:

- insurance coverage and claims handling
- financial services regulation, including the banking and securities laws
- ERISA
- antitrust and consumer protection
- healthcare and pharmaceutical regulation
- telecommunications regulation, including wireless and wireline telecommunications, satellite television, and Internet service

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- regulation of computer and information systems and software, including federal privacy and law enforcement regulation
- federal regulation of airlines, railroads, and other transportation companies
- products liability and toxic torts
- intellectual property, including complex patent, trademark, and copyright litigation
- federal and state regulation of electric utilities, power generation companies, and other energy companies

Step toe’s class action lawyers either have direct experience with these industries and fields of regulation, or work in tandem with those Step toe lawyers who do.

We believe this is a critical aspect of class action defense because strategy and tactics are often determined on the basis of the substantive law governing the claims of the putative class. For example, class claims may be vulnerable to dismissal in the early stages of litigation based on exclusive and primary jurisdiction doctrines or federal preemption principles. We frequently work with federal regulators to obtain amici curiae briefs or other support of the defendants’ position.

Our attorneys also have considerable experience in settling class actions. We assist clients by developing innovative means of settling, such as by seeking injunctive or other relief-avoiding payment of hard dollars, ensuring the maximum possible scope and binding effect of the settlement, and making sure the settlement complies with changes in judicial approval requirements made by CAFA.

Although an important objective of class action defense is to prevent or limit intrusive discovery, it is a fact of life that extensive discovery is permitted in many class actions. To handle discovery in these and other complex cases, Step toe has established a document and data processing center in Rockville, Maryland, using advanced software and expert technicians.

We believe this offers class action clients an effective means of controlling discovery costs. Step toe does not have to turn to more expensive outside vendors to obtain this capability.

The following is a list of representative cases where we have defended clients in class actions.

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Class Action Experience

Step toe attorneys have remarkable skill in dealing with class certification issues, such as predominance of individualized over common questions, typicality, and adequacy. They have frequently worked with experts in opposing class certification motions. We have represented clients in passage of CAFA and have developed a practice guide based on the new provisions governing removal and class action settlements. We also have substantial background in class action settlements, including such issues as opt outs, scope of releases, hearings on fairness and reasonableness, appeals of objectors, and other matters.

Insurance

Step toe attorneys represent insurance industry clients in litigation matters, principally concerning antitrust, unfair trade practice, fraud, RICO, and regulatory claims. We have represented clients in government enforcement proceedings, parens patriae actions by state attorneys general, and private class actions brought in both federal and state court. We have substantial familiarity with exemptions and immunities from federal and state laws available to insurers, including the McCarran-Ferguson Act, the state action doctrine, the Noerr-Pennington doctrine, the filed rate doctrine, and the doctrines of exclusive and primary jurisdiction. We also have extensive knowledge of state unfair and deceptive practices acts (so-called "little FTC acts"), often relied upon in private class actions.

Our attorneys have litigated complex insurance coverage and bad-faith matters in state and federal courts in Arizona and throughout the United States. We also have substantial experience defending insurance-related class actions, both at the certification stage and at trial.

Financial Services

We have represented financial institutions and other litigants in major class actions, including representing lenders in "Ponzi" scheme fraudulent conveyance class actions, winning a take-nothing judgment; acting as national counsel to lenders in class actions relating to collateral protection insurance; and advising in a securities fraud class action arising from a major bank acquisition.

Step toe attorneys also frequently represent lenders and investment advisors in RICO, fraud, state deceptive practices act, and securities claims. We are currently national counsel to a financial services institution facing class action and individual suits alleging sale of abusive tax shelters and recently defended various lenders against a series of class actions brought regarding collateral protection insurance.

We have also handled class action cases involving broker-dealers, officers, directors, accounting firms, banks, and manufacturing firms. These matters have

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included allegations of violations of federal and state securities and racketeering laws, as well as direct and indirect purchaser claims involving alleged antitrust violations. Several of the cases have included applying accounting principles to complex financial transactions. One matter included representing 11 broker-dealers in a putative national class action seeking to compel the payment of interest on free credit balance and to enjoin account transfer practices that had been approved by the SEC.

Toxic Torts

Our national toxic tort practice is preeminent and focuses on the organization, management, and trial before juries in toxic tort cases, including class actions, considered significant by the client because of size, complexity, or the issues involved. We represent a large number of major petroleum, chemical, and manufacturing companies in class action and individual cases involving claims of injury, death, and property damage resulting from exposure to toxic materials. We are national counsel for a number of these companies with regard to specific products or types of claims. We had represented clients in cases arising from explosions, ship groundings, petroleum pipeline breaks, airborne industrial site emissions, underground water contamination, superfund sites, and employee work exposures.

ERISA

Our nationally recognized ERISA litigation and fiduciary responsibility attorneys have served as lead counsel in numerous ERISA actions, many of them class actions.

Healthcare

Our healthcare litigation attorneys have represented pharmaceutical benefit management industry and nursing home business clients in several large recent class actions.

Antitrust

Step toe's antitrust attorneys have served as lead counsel to defendants in numerous antitrust class actions, in both federal and state court. The federal cases ordinarily involve appearing before the Judicial Panel for Multi-District Litigation, as well as federal courts throughout the country in industries as diverse as pharmaceuticals, various industrial chemicals, travel reservation systems, ocean cruises, express package delivery services, gas and oil pipelines, medical equipment, construction equipment, telecommunications, and electricity.

Labor

Our Labor and Employment practice involves state and federal court litigation representing management in defending class action and other lawsuits alleging

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violations of employment discrimination statutes, contracts, or various common-law employment rights. Our litigation experience, which has involved several successful jury trials, includes issues under Title VII, the Age Discrimination in Employment Act, the Americans With Disabilities Act, and various related state and federal statutory and common-law claims. We have successfully defended class actions brought against an international airline, a national supermarket chain, a major defense contractor, and a large aircraft maintenance and overhaul facility.

We have also represented employers in all aspects of the employment relationship, with emphasis on multi-plaintiff and class action lawsuits. Much of our work centers on representing employers who are faced with claims of sexual harassment; disability, gender, age, race, national origin, and religion discrimination; equal pay, overtime, and wage law violations; denial of employee benefits and ERISA violations; defamation; and wrongful discharge.

Representative Matters

Products Liability/Toxic Tort

- Defeated certification of a class of residents allegedly impacted by multiple releases of chemicals into air, water, and groundwater from an equipment maintenance facility. Individual claims were later settled.
- Successfully overturned a preliminary certification of a class of workers in the coal industry alleging exposure to a chemical used for wastewater treatment.
- Represented a number of large companies in class actions involving claims for cancer, neurological, and other systemic injuries; reproductive consequences; fear of future injury; and medical monitoring in jurisdictions around the country.
- Litigated class action involving claims of persons allegedly exposed to trace amounts of a previously unregulated chemical. Claims included medical monitoring, property damage, personal injury, and punitive damages.
- Represented major chemical company in a class action arising from alleged hazardous emissions from a manufacturing plant.
- Represented a major cellular telecommunications provider in class actions alleging harmful radiation from cell phones.

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- Successfully represented a workers' compensation insurance carrier in a series of state court antitrust class actions alleging price-fixing of insurance rates. Obtained dismissal on Rule 12 motions affirmed by higher courts.
- Represented a property/casualty insurer in consolidated attorneys general parens patriae and class actions alleging conspiracy to exclude pollution claims from coverage. Obtained ruling by US Supreme Court on insurance industry antitrust exemption that resulted in favorable settlement of the litigation.
- Represented one of the nation's leading banks in a class action alleging deceptive practices in the sale of credit insurance. After favorable ruling by New Jersey appellate court, obtained settlement without paying any money.
- Represented a major property/casualty insurer in a series of state court class actions alleging various types of unfair claims handling practices, including use of "crash parts" in automobile repairs not manufactured by original manufacturer, and denial or limitation of reimbursement to medical providers based on provider fee database.
- Represented a workers' compensation insurance carrier in a class action alleging price-fixing and boycotts in the sale of coverage. Obtained dismissal based on antitrust immunities, affirmed by US Court of Appeals for the First Circuit.
- Represented a homeowners' insurer in class action alleging price-fixing. Obtained dismissal based on antitrust exemptions affirmed by Eleventh Circuit.

Financial Services

- Acted as counsel for lenders in class actions alleging securities fraud/fraudulent conveyance violations. After discovery, client won a take-nothing verdict against class plaintiffs on a motion to dismiss recently affirmed by the Eleventh Circuit.
- Represented a national brokerage firm in a series of cases arising from the failure of a charitable gift annuity investment fraud, which led to investor losses. After securing dismissal of securities and consumer fraud claims, defeated class certification on aiding and abetting conversion and breach of fiduciary duty and negligence claims.

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- Acted as counsel to various lenders against a series of class actions alleging RICO, fraud, and consumer protection law violations in connection with collateral protection insurance programs employed by lenders to protect against customers' failing to insure automobiles and boats. All cases were settled on terms very favorable to the clients.
- Acted as counsel to a securities issuer in a class action in the Eastern District of Virginia involving allegations of securities laws violations. Client won a take-nothing verdict, which was affirmed by the Fourth Circuit.
- Represented a national accounting firm in a class action securities and professional malpractice litigation arising from the bankruptcy of a major homebuilder. After a 66-day jury trial, the matter ended in a defense verdict.
- Acting as national counsel to a financial services institution facing pending class action and individual suits alleging sale of abusive tax shelters.

Employment/ERISA/Labor

- Represented the defendant investment management firm in an action brought by several related Taft-Hartley funds asserting breach of fiduciary duty claims in connection with certain mortgage derivative investments. After a 12-day bench trial, the district court rendered a decision in which we prevailed on all but one claim, totaling less than 5 percent of plaintiffs' claimed damages, and also denied plaintiffs' attorneys' fee request. The Ninth Circuit affirmed all the rulings entered in our favor, and, on our cross-appeal, reversed the district court's computation of damages on the one issue on which plaintiffs prevailed, which thereafter was settled.
- Currently representing the nation's largest pharmaceutical benefits management firm in a putative nationwide class action, charging violations of ERISA's fiduciary responsibility provisions in developing and managing prescription drug benefit programs for ERISA plans.
- Currently represent defendants in a putative class action charging the defendants with, among other things, breach of fiduciary duty in their failure to eliminate a mandatory employee contribution feature in a over-funded defined benefit pension plan. That action was dismissed on our motion and is currently on appeal.

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- Served as co-lead counsel for the defendant and a number of related entities in a class action brought by former financial advisors who claimed that they were wrongfully denied benefits due to their classification as independent contractors rather than employees. The matter ultimately settled.
- Represented an ESOP valuation firm in a putative class action brought against a number of defendants by ESOP plan participants. The action charges that the defendants breached ERISA fiduciary duties in connection with an ESOP's acquisition of employer stock in a closely held corporation. Case was dismissed based on our motion for summary judgment.
- Served as lead counsel for the defendant's Taft-Hartley pension plans in a complex, multi-party action brought by the Department of Labor and two plaintiff classes involving significant investment-related issues under ERISA's fiduciary responsibility provisions, and third-party claims against the plans' former counsel, auditor, and custodial bank. The matter was ultimately settled.

Antitrust

- Presently defending major chemical company in a multi-product treble-damages federal class action litigation, which has been consolidated for pre-trial preparation in Kansas City, Missouri. Class and merits discovery have been bifurcated, and class certification issues are likely to be resolved during 2006.
- Have represented antitrust defendants in consolidated federal class action involving residential doors and farm-raised catfish, as well as related state indirect purchaser class actions.
- Served as trial counsel in antitrust case alleging price-fixing in the commercial explosives industry.

Federal Regulation

- Defended all aspects of 14-year class action against major oil company involving federal oil price regulations, including 5-week jury trial, multiple appeals, and settlement.

Healthcare and Pharmaceutical Regulation

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- Counsel to major trade association on antitrust and regulatory matters, in a massive multidistrict proceeding, and in a related FTC investigation.