CLASS ACTIONS

OVERVIEW

In the last 15 years alone, we have handled more than 1,000 class action lawsuits across the United States. We offer depth of talent in every U.S. office and have defended class claims in all areas of substantive law in virtually every jurisdiction in the United States and Canada. Our teams are led by trial lawyers whose experience extends beyond defeating class certification and winning on the briefs, by trying high-risk cases before juries. We believe that front-line trial experience and perspective is crucial for managing every stage of litigation.

SECTOR FOCUS

Class action defense is not monolithic. We structure our teams around the industries and practice areas that are relevant to our clients. Under this client-first approach, we invest in knowing our clients’ businesses and legal needs to develop a global perspective for their litigation. For each case, we rely on deep experience in critical industries, including financial institutions; professional and college sports organizations; health care, life sciences and pharmaceuticals; automotive, aviation, trucking and railways; insurance; food & agriculture; retail; manufacturing; franchising; and consumer services, among many others.

NATIONWIDE EXPERIENCE

- Antitrust
- Consumer Fraud
- Data Privacy, Telecommunications & Collections
- Employment Class and Collective Actions
- ERISA and ESOP
- UK & EU Class Actions
- Financial Services
- Food, Ag & Nutrition
● Insurance

● Shareholder Securities and M&A

● Pharmaceutical and Medical Devices

● Sports

● Toxic Tort

MEET THE TEAM

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AREAS OF FOCUS
Toxic Tort
Consumer Fraud
Financial Services Class Actions
Food, Ag and Nutrition Class Actions
Data Privacy, Telecommunications and Collections
ERISA and ESOP
Pharmaceutical and Medical Devices
Sports Class Actions
Shareholder Securities and Mergers & Acquisitions
Employment Class and Collective Actions
Antitrust Class Actions
Multi-District Litigation and National Coordinating Counsel
Insurance Class Actions
UK & EU Class Actions

EXPERIENCE

Here are a few select examples across practice groups and sectors.

▪ **Defense Judgment in Certified Class Action for American Century Companies.** We won a defense judgment after a three-week trial in a certified class action seeking more than $30 million in damages based on alleged mishandling of assets in retirement funds.

▪ **Numerous Victories for AARP.** We won summary judgment in a case alleging that AARP received illegal insurance commissions by endorsing a Medicare Supplement insurance program and licensing intellectual property to an American multinational managed healthcare and insurance company. The most recent victory, in California federal court, was the latest in a string of victories by BCLP, including before the Second Circuit, Fifth Circuit, Ninth Circuit, Central District of California, Eastern District of Pennsylvania, Southern District of Florida, Southern District of New York and Southern District of Texas.

▪ **Summary Judgment Victory for a large American tax preparation company.** We won summary judgment in putative class actions alleging violations of the Fair and Accurate Credit Transactions Act (FACTA) seeking $4 billion in statutory damages. The victory was affirmed by the Eighth Circuit on appeal.

▪ **Summary Judgment for Food Manufacturer and Grocery Chain.** We won summary judgment on behalf of a major food manufacturer and one of the largest grocery store chains in a putative class action in California alleging unfair competition, false advertising and breach of
warranty by a consumer who claimed he did not get the benefit of his bargain from frozen vegetables packed by the manufacturer and sold under the grocery store brand name.

- **Defeated Certification of Nine-Figure Putative Class Action.** We defeated class certification in a putative class action raising claims under California’s unfair competition and false advertising laws in a nine-figure consumer fraud class action against a workplace solutions company in the Northern District of California. The Ninth Circuit affirmed the denial of certification.

- **Defeated Certification of Nationwide Class in Consumer Protection Case.** We defeated class certification in a putative nationwide class action brought in Florida against a beverage carbonation company alleging illegal price escalations. We then defeated the plaintiffs’ motion for reconsideration of the denial of class certification and their request for an interlocutory appeal under Rule 23(f).

- **Defeated Certification of California Wage & Hour Class Action.** We defeated class certification against one of the largest pharmacy retailers in the United States in a case involving various wage and hour claims under California law. The potential classwide exposure exceeded $200 million, and the favorable certification ruling resulted in a discounted settlement in exchange for dismissal of an appeal.

- **Dismissal of Nationwide Class Action for World’s Largest Supplier of Heating Elements.** We won a dismissal with prejudice of a putative nationwide class action for Tutco, LLC, the world’s largest supplier of electric resistive heating elements, alleging that the plaintiffs overpaid for allegedly defective HVAC units.

- **Dismissal in Securities Class Action.** We won a dismissal with prejudice in a securities law class action challenging the accuracy of proxy statements brought under Sections 14(a) and 20(a) of the Securities Exchange Act of 1934. On appeal, the appellate court affirmed the dismissal and used the case to clarify which body of law courts within the Eleventh Circuit must follow in determining whether a lawsuit is direct or derivative.

- **Dismissal in Baby Powder Class Action.** We won a dismissal with prejudice of a putative class action alleging client failed to warn about the risk of ovarian cancer associated with baby powder, allegedly causing the plaintiff to pay more for the product than it was worth. The court rejected the claim because the plaintiff had received the benefit of her bargain: safe and effective baby powder for her intended use.

- **Global Class Action Win.** Our French Competition and Distribution Team advised on one of the first class actions lodged by a consumer association. This was one of the first-ever class actions launched in France. The Paris Court of First Instance ruled in favor of our client.

- **Representation of NHL Clubs in Concussion Class Action.** We served as lead counsel for all 30 NHL clubs in the concussion multidistrict litigation and nationwide class action. After the court
denied class certification, we continued to represent the clubs in individual concussion lawsuits filed by former hockey players.

RELATED INSIGHTS

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Can multiple claimants use the same claim form in group actions?
A recent decision in the Birmingham County Court has added to the body of case law growing around the test for listing multiple claimants on the same claim form. In Angel and others v Black Horse Limited, unreported, 8 September 2023, County Court at Birmingham, a case involving over 5,000 claimants bringing claims against 8 finance companies, the claimants had issued proceedings using 8 claim forms (one against each defendant). HHJ Worster held that in this case it was impermissible under CPR 7.3 to use a single claim form for all the claims against the same defendant. The judge therefore ordered the claimants to sever their claims from the common claim forms. HHJ Worster relied heavily on the guidance given by the High Court in Abbott v Ministry of Defence [2023] EWHC 1475 (KB) on the CPR 7.3 "convenience test", which concerns whether multiple claimants may use a single claim form. These cases ...

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Genetic privacy: the next target in class action litigation for Illinois employers

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Oct 18, 2023
Georgia appellate court signals adoption of federal precedent for state pattern jury instructions
The Georgia Court of Appeals recently considered a challenge to Georgia’s preponderance-of-the-evidence pattern jury instruction, which is based upon a repealed version of Georgia’s prior evidence code. Reading from the preamble to the current version of the code, the court found it “must look to federal caselaw in determining Georgia’s legal definition of this evidentiary standard.” Following this decision, Georgia litigants should consider replacing the preponderance-of-the-evidence pattern jury instruction with a definition aligned with federal precedent. Litigants should also consider whether to rely on other pattern instructions to the extent those instructions are still based upon the repealed evidence code and inconsistent with federal precedent.

Insights
Oct 02, 2023
The long term implications of PFAS for real estate in the UK

Poly- and Perfluoroalkyl substances ("PFAS") are widely present in soil and groundwater, and the negative human health consequences of this are starting to be understood. There are important implications for anyone with interests in real estate in the UK. This Insight analyses the risks of PFAS in the UK under UK law.

Insights
Sep 14, 2023

Raising the stakes in activist shareholder claims

The High Court has ordered that ClientEarth pay Shell's costs in connection with all aspects of ClientEarth's unsuccessful application for permission to continue a derivative claim against Shell and its directors. This is a departure from the default position in derivative proceedings. Usually, the company will not be awarded any costs incurred in making submissions in opposition to, or attending any hearing of, a shareholder's application at the permission stage. This judgment therefore raises the stakes for activist shareholders who are considering bringing a derivative claim.

Insights
Sep 12, 2023

New Group Litigation Order issued together with the potential development of a new "GLO Lite" procedure for the collective case management of claims

The High Court has made a Group Litigation Order (GLO) in the class action proceedings of Tongue & Ors v Bayer Public Ltd Company & Ors [2023] EWHC 1792 (KB). This appears to be only the second GLO made by the High Court in 2023. In its judgment, the Court made a number of important comments about the factors it took into account when exercising its discretion to make a GLO. It also referred to a form of collective case management it named "GLO Lite", which indicates that a new informal practice for managing class actions is developing in the High Court.

Insights
Aug 30, 2023

Município de Mariana v BHP Group: the English High Court casts its jurisdictional net wider in the Fundão Dam class action proceedings

In the High Court's recent judgment in Município de Mariana & Ors v BHP Group (UK) Limited & Anor the Court found that England was "clearly the appropriate forum" to determine whether Vale SA, a Brazilian company, should share liability with the BHP Group in a class action claim being brought in the English High Court as the result of the 2015 Brazilian Fundão Dam disaster. The claim was brought as a CPR Part 7 High Court action, with a large number of claimants listed on one claim form, and is not a representative action or subject to a Group Litigation Order.