

Class Action Litigation

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As a principal focus of our litigation practice, KMK's Class Action / Multi-District Litigation (MDL) Practice has established the reputation for being aggressive and nimble in defending complex litigation. We partner with our clients in these "bet the company" cases, and provide extensive experience, proven case management strategies, and exceptional service at Midwest hourly rates and through alternative fee arrangements.

KMK has an established reputation and a proven track record of success in defending securities, ERISA, antitrust, wage and hour / employment discrimination, environmental / nuisance / tort, and other types of class action / MDL cases.

Clients frequently hire us to defend them in class action cases pending in federal and state courts around the country (see the listing of current class action cases and representative matters below). We work with local and liaison counsel, but we centrally manage the litigation to provide consistent and trusted case handling.

We work with our clients to aggressively, creatively, and effectively defend class action litigation with agreed-upon strategies, efficient case management and staffing, sophisticated litigation software and e-discovery capabilities, and litigation budgets or project budgeting. We work to win cases with limited disruption and distraction to our clients' business operations. We monitor class action developments around the country, report on some of those developments in the KMK Class Action & Complex Litigation Blog, help create new law on occasion, and maintain a database of research and information so we do not reinvent the wheel with every new case.

We control our internal firm costs by maintaining a single-city office and investing instead in people and technology. Clients do not pay for the overhead of multiple offices, the costs of coordinating attorneys working in multiple offices, or disparate rates within a defense team. Our one office philosophy allows us to provide the same or better quality service as big-city, multi-office firms — at Midwest billing rates. At KMK, we handle class action and MDL cases at significantly less litigation expense.

When you need to partner with a law firm on your next "bet the company" case and want to avoid the stereotypical and expensive "Big Law" approach to defending these cases, consider a proven alternative — KMK's Class Action / MDL Practice.

REPRESENTATIVE CASES

Securities

Local 295 / Local 851 IBT Employer Group Pension Trust and Welfare Funds and District No. 9, et al. v. Fifth Third Bancorp, et al., Cons. Case No. 1:08-CV-421 (S.D. Ohio) (defending securities "stock drop" class action litigation) (James E. Burke,

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Joseph M. Callow, Jr., Jennifer J. Morales).

In re Atricure, Inc. Securities Litigation, Case No. 1:08-CV-00867 (S.D. Ohio) (defending securities class action litigation) (James E. Burke)

Slone v. Fifth Third Bancorp, et al., Case No. 1:03-CV-211 (S.D. Ohio) (defended securities class action litigation) (Patrick F. Fischer, Joseph M. Callow, Jr.).

Thiemann v. OHSL Financial Corp., et al., Case No. 1:00-CV-793 (S.D. Ohio) (defended securities class action litigation) (James E. Burke, Rachael A. Rowe, Jennifer J. Morales).

ERISA

Fish, et al. v. Greatbanc Trust Co., et al., Case No. 1:09-CV-1668 (N.D. Ill.) (defending clients against ERISA breach of fiduciary duty / prohibited transaction claims; ESOP litigation) (Michael L. Scheier, Danielle M. D'Addesa).

Dudenhoeffer v. Fifth Third Bancorp, et al., Case No. 08-CV-00538 (S.D. Ohio) (defending client against class action claims for alleged breaches of fiduciary duty in "stock drop" litigation) (James E. Burke, Joseph M. Callow, Jr., Jennifer J. Morales, Danielle M. D'Addesa).

Shirk v. Fifth Third Bancorp, et al. ("Shirk I"), Case No. 05-CV-00049 (S.D. Ohio) (defended client against class action claims for alleged breaches of fiduciary duty in "stock drop" litigation; summary judgment granted for Defendants on all claims) (Patrick F. Fischer, Joseph M. Callow, Jr., Danielle M. D'Addesa).

Shirk v. Fifth Third Bancorp, et al. ("Shirk II"), Case No. 05-CV-00049 (S.D. Ohio) (defended client against class action claims for alleged breaches of fiduciary duty in "excessive fees" claims; summary judgment granted for Defendants on all claims) (Patrick F. Fischer, Joseph M. Callow, Jr., Danielle M. D'Addesa).

Hutchison v. Fifth Third Bancorp, et al., 2005 WL 2493287 (S.D. Ohio), *aff'd.*, 469 F.3d 583 (6th Cir. 2006), *cert. denied*, 551 U.S. (June 25, 2007) (successfully defended breach of fiduciary duty claims invoking ERISA preemption) (Patrick F. Fischer, Joseph M. Callow, Jr.).

Antitrust

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, Case No. 05-MD-1720 (E.D.N.Y.) (defending client on claims related to credit card interchange fees) (Patrick F. Fischer, Richard L. Creighton Jr., Drew M. Hicks).

In re: Processed Egg Products Antitrust Litigation, Case No. 2:08-MD-02002 (E.D. Pa.) (defending client on claims related to alleged conspiracy to fix the price of shelled eggs and egg products) (Joseph M. Callow, Jr., Brian M. Babb).

Anthony Williams v. Duke Energy Int'l, Inc., Case No. 1:08-CV-46 (S.D. Ohio) (defended client on antitrust class claims; court granted Defendants' motion to dismiss) (James E. Burke).

Exhaust Unlimited v. Cintas Corp., et al., Case No. 02-614 (S.D. Ill.) (defended client on claims of price fixing related to environmental charges; defeated class certification) (Gregory M. Utter, Joseph M. Callow, Jr.).

Employment / Wage and Hour Litigation (and collective actions)

Class Action Litigation (Continued)

Serrano / EEOC v. Cintas Corp., Case No. 04-CV-40132 (E.D. Mich.) (defending client on claims related to gender discrimination in hiring involving over 300 facilities across the U.S.) (Gregory M. Utter, Rachael A Rowe).

Veliz v. Cintas Corp., Case No. C-03-1180 (N.D. Cal.) (and related arbitration proceeding) (defending client on claims of misclassification / FSLA wage and hour violations) (Gregory M. Utter, Rachael A Rowe).

Flores v. Cintas Corp., Case No. BC400422 (Cal Superior Ct. Los Angeles Cty.) (defending client on various claims under various California Labor Code Sections related to payroll check requirements and under the California Business and Professions Code 17200) (Gregory M. Utter, Rachael A. Rowe, Benjamin G. Stewart).

Chin v. Republic Indemnity Co. of America, Case No. GCG 05437973 (Cal. Superior Ct. San Francisco Cty.) (defended client on claims of misclassification / wage and hour violations) (Joseph M. Callow, Jr.).

Nuisance / Trespass / Environmental Tort / Tort Defense

Green v. Griffin Ind. Inc., et al., Case No. 2004-CV-79741 (Fulton Cty. Supr. Ct. Georgia) (defending client in nuisance / negligence class action filed by residents near one of its facilities) (Joseph M. Callow, Jr., Danielle M. D'Addesa).

Martin, et al. v. Behr Dayton Thermal Products LLC, et al., Case No. 3:08-cv-00326) (S.D. Ohio); *Spears, et al. v. Chrysler LLC, et al.*, Case No. 3:08-cv-00331) (S.D. Ohio); *First Property Group LTD, et al. v. Behr Dayton Thermal Products, et al.*, Case No. 3:08-cv-00329 (S.D. Ohio) (defending nuisance claims; matter stayed) (Daniel E. Izenson, Brian M. Babb, Danielle M. D'Addesa).

Freeman v. Cincinnati Gas & Electric Co., Case No. 1:05-CV-179 (S.D. Ohio) (defended clients in Clean Air Act / nuisance / trespass mass-tort class action) (Louis F. Gilligan, Danielle M. D'Addesa)

Wilson v. Interplastic Manufacturing Co., et al., Case No. 97-CI-851 (Kenton Circuit Court, 1st Div., Ky) (defended client in nuisance / negligence mass-tort class action) (Louis F. Gilligan, Danielle M. D'Addesa)

Business / Banking

Schulte v. Fifth Third Bank, Case No. 1:09-CV-0655 (N.D. Illinois) (defending client on class claims regarding overdraft fees) (Patrick F. Fischer and Drew M. Hicks).

Segal v. Fifth Third Bank, N.A., et al., Case No. 07-CV-348 (S.D. Ohio), Case No. 08-03576 (6th Cir.) (defended client on class claims of breach of fiduciary duty; claims dismissed based on application of SLUSA preemption) (Patrick F. Fischer, Joseph M. Callow, Jr., Rachael A. Rowe, Brian P. Muething).

Charlton v. Fifth Third Bancorp, Case No. 1:08-CV-703 (S.D. Ohio) (defended client on class claims regarding overdraft fees) (Patrick F. Fischer, Joseph M. Callow, Jr., Drew M. Hicks).

Manville Personal Injury Settlement Trust v. Cintas Corp., Case No. A0906822 (Hamilton Cty. Ohio) (defended shareholder derivative litigation alleging wrongdoing by entire Board of Directors) (Gregory M. Utter, Jamie M. Ramsey).

UNITE HERE v. Cintas Corp., Case No. 06-CV-7061 (S.D.N.Y.) (defended shareholder litigation seeking injunction and declaratory judgment related to SEC violations) (Gregory M. Utter, Rachael A. Rowe, Jamie M. Ramsey).

Other

Class Action Litigation (Continued)

In re: Bill of Lading Transmission and Processing System Patent Litigation, MDL No. 1:09-md-2050 (S.D. Ohio) (defending patent claims in consolidated proceedings) (James E. Burke, Jennifer J. Morales).

State of Ohio v. DEY, Inc., et al., Case No. A0402047 (Hamilton Cty. Ohio) (defended *parens patriae* class action claims involving prescription drug prices to Ohio Medicare and Medicaid) (James E. Burke, Jennifer J. Morales).

Stuart v. Dominion Homes Financial Services, Inc., et al., Case No. 2:06-CV-137 (S.D. Ohio) (defended client on class claims under Ohio and federal consumer credit protection laws arising from the alleged failure to procure FHA insurance on residential subdivision) (James E. Burke).

Chesher v. Neyer, et al., Case No. 1:01-CV-566 (S.D. Ohio) (defended client on class claims of alleged civil conspiracy, intentional infliction of emotional distress, and violation of Section 1983 of the Civil Rights Act) (Louis F. Gilligan, Jamie M. Ramsey, Danielle M. D'Addesa, Christy M. Nageleisen).

Research Solvents & Chemicals, Inc., v. Cintas Corp., Case No. 01-CV-273 (Jefferson Cty. Circ. Ct. Ala.) (defended national class action associated with environmental fee charges) (Gregory M. Utter, Joseph M. Callow, Jr., Rachael A. Rowe).

NEWS

- Keating Muething & Klekamp Wins Historical Award of Attorneys Fees from EEOC in Employment Discrimination Case
- KMK Files Class Action Complaint on Behalf of Residents and Businesses within the Village of Camden
- Keating Muething & Klekamp PLL Announced that Litigation Partner Rachael A. Rowe to Have Dual Role as She Joins Its Labor & Employment Group

PUBLICATIONS

- Class Suit Alleging Bank Breached Duties Is Barred by SLUSA, Sixth Circuit Decides, *BNA Class Action Litigation Report*, November 13, 2009
- Court Tosses Fifth Third Workers' Fees Claim Filed Shortly After Limitations Period Expired, *BNA Pension and Benefits Daily*, October 6, 2009
- Employer Stock: Fifth Third's Retention of Employer Stock Wasn't a Fiduciary Breach, Court Decides, *BNA Pension and Benefits Daily*, March 3, 2009