



PRODUCT LIABILITY, FIRE AND LIFE SCIENCES

GROUP CHAIR



Frank J. Ciano

We represent clients in all types of product liability disputes. We believe we must understand the technical aspects of any product that requires our involvement. Our lawyers work in unison with clients on product design issues, product liability audits, reviewing insurance coverage, and analyzing warning labels and instructions. We also provide counsel at all stages of the recall process and counsel about potential litigation risks in product distribution, including risk-limiting contract language. Our team applies a tailored defense to the three major types of product liability claims: manufacturing defect; design defect; a failure to warn. We examine proximate cause, product misuse or modification. We further look at every angle in the chain of distribution and liability of others, such as a manufacturer, designer or supplier. We currently serve as national coordinating counsel for several Fortune 500 companies. Our team is accessible 24/7/365 to clients, local counsel and experts to handle emergency matters. We utilize cost-effective e-technologies to manage company documents, client discovery, expert transcripts, local counsel training, national motions and demonstrative exhibits.

Our group maintains close relationships with the top-notch experts. We have prepared and presented witnesses to tell their company history with the use of juror-friendly interactive demonstrative exhibits. We have defeated attempts to pierce the corporate veil to reach a parent company. We regularly handle multidistrict litigation (MDL). Our team has broad expertise employing creative initial and long-term procedural and substantive dispositive strategies, including strategies to limit initial discovery. In this regard, we apply focused analysis of causation through *Daubert* proceedings to exclude “junk science” expert testimony.

APPELLATE ADVOCACY

The appellate outcome of product liability, fire and life science matters is equally important to the

outcome of a trial or lower court proceeding. Appeals often have precedent setting significance with impact far beyond a single matter. Success at the appellate level requires different skills than those applied at trial. It is important to understand the appellate bench, and the perfection of the record.

Our lawyers' analytical, writing, and oral advocacy skills are honed for success on appeal. Our lawyers have served as judicial law clerks to trial and appellate court judges, providing insight into the working of the priorities and decision-making of the bench.

Our Product Liability, Fire and Life Science lawyers work closely with our Appellate Practice Group - teaming together to often parachute into matters handled by separate trial counsel. We are regularly sought in this regard to serve as appellate monitoring counsel during trial. Clients also engage us to write amicus curiae briefs, and to work with other trial counsel to ensure that product liability, fire and life science matters are properly postured for appeal.

CHILDREN'S PRODUCTS

Millions of children's toys, cribs, playpens and other children's products are sold in the marketplace each year. Companies who manufacture defective toys, cribs, children's clothing, and playpens are held to the highest standards of quality and safety because the end users of those products are in a vulnerable population. Our lawyers understand that plaintiffs seek to demonstrate that manufacturers do not adhere to these standards. We devote ourselves toward researching components of manufacturing, distribution and use of each children's product. We have successfully defended matters involving playpens, cribs, and toys alleged to contain choking hazards/lead paint, as well as claimed danger from motorized toys.

CLASS ACTION DEFENSE

Achieving success in product liability class action matters requires strategy for early dismissal, defeating class certification, Rule 23(f) appeals of class certification decisions, and precluding plaintiffs' expert witnesses. This strategy must work backwards from the desired result to be successful. We understand the constantly evolving standards for class certification in the product liability arena. We have been able to convince parties and courts that certification must be denied. In this regard, we understand that class actions can often be favorably resolved with a comprehensive and irrevocable settlement. Often, carefully negotiated settlements of class actions are true "wins" in that they avoid years of litigation cost, uncertain risk and potential reputational harm. We also recognize the need for coordinated strategy against the setting of regulatory inquiry, government action, or criminal prosecutions. Our team comprehends that a major lawsuit and media exposure can be distressing and can adversely impact public perception and future revenues. We work with our clients from day one to mitigate brand reputational harm.

CONSTRUCTION DEFECT

The product liability team represents owners, contractors and other project participants in claims that arise out of property damage to projects during construction or after project completion. Many construction contractors and subcontractors have found themselves on the receiving end of a complaint about the quality of the result of their work. Project managers and construction executives need lawyers who are experienced with the defenses available in the event of a complaint that work is defective. We apply knowledge of the nuances of the Sprenkle Doctrine, betterment doctrine, discharge by prior material breach, as well as notice and opportunity to cure. Our team has years of knowledge with examining causation issues, spoliation of evidence, and the failure to mitigate.

Our Product Liability, Fire and Life Sciences Practice Group lawyers who focus on construction disputes work closely with team members in our Construction Practice Group.

CONSUMER PRODUCTS

Our lawyers advise on Consumer Product Safety Commission (CPSC) regulations and requirements, including reporting, and all aspects of national product recall campaigns. We monitor CPSC developments, helping clients avoid legal actions. We work in collaboration with clients to develop warning labels, packaging, package inserts and material safety data sheets that communicate information on safe use and potential product hazard.

We represent manufacturers, distributors and retailers of consumer products such as clothing, children's sleepwear, electrical appliances, swimming pool equipment, household appliances, glass products and candles, among many others. Our team assists with issues including:

- Should a recall be conducted
- Determining the scope of a recall
- Offer to consumers as compensation
- CPSC or other agencies filings
- Implementation and tracking a recall
- Media strategy surrounding a recall

We have advised and defended clients in high-profile matters before the FTC, federal and state investigations, enforcement actions, including before the Office of Civil Rights, and private and class actions based on consumer protection statutes and regulations.

CHEMICALS AND TOXIC MATERIALS

Toxic chemicals and materials have made their way into all types consumer goods, houses, buildings, work materials, and more. From lead paint on toys to chemicals used in the construction of our homes and workplaces, these substances can give rise to wide ranging injuries. Injuries arising from toxic materials or chemicals can give rise to different types of legal actions, including standard product liability lawsuits as well as "toxic torts." Some toxic chemicals and materials have been phased out of production in the U.S., including lead-based paints, DDT, and asbestos. However, even after manufacturers stop using a given substance, lawsuits over injuries arising from years of prior exposure can continue for some time.

Our lawyers believe in spotting issues horizontally and vertically for such matters. We apply multi-jurisdictional know-how of issues such origins and types of damages. We have represented clients in matters concerning hazardous substance release from one property to another; the chemical and substance exposure in manufacturing operations; and the contamination of navigable waters and drinking water.

Our Product Liability, Fire and Life Sciences Practice Group lawyers who focus on toxic material and environmental issues work closely with team members in our Toxic Tort and Environmental Practice Group.

DRUG AND MEDICAL DEVICE

Dangerous or defective medical devices — such as faulty surgical instruments, implants, pacemakers, and prosthetics — can give rise to a product liability claim if a person who undergoes surgery or uses a medical device is injured or dies as a result. Although closely monitored by the U.S. Food and Drug Administration (FDA), a product's design, manufacturing process, or marketing strategy can lead to liability claims. In most instances, state lawsuits over federally-approved medical devices face stringent legal obstacles and often receive increased national attention. We have decades of experience defending claims arising from high-risk medical devices such as stents and defibrillators. Our team defends pharmaceutical manufacturers, distributors and retailers in complex, single-plaintiff, mass tort and class action

matters pending in federal and state courts. We serve as local, regional and national counsel involving, medical monitoring claims, the possibility of punitive damages.

E-DISCOVERY

Our product liability lawyers advise clients in developing pre-litigation policies and procedures. We counsel clients on implementing effective technologies to manage and dispose of data defensibly and consistently with emerging best practices. Our team also advises on preserving documents and data effectively where there is a duty to preserve. We work with clients to explain defensible disposal before a duty to preserve arises. Once a duty to preserve arises, we work hand-in-glove with clients on legal holds and their scope. Our managing partner, John Jablonski, is nationally recognized in this arena. He is the Editor of Arkfield's Best Practices Guide for Legal Holds, and the former chair of the Defense Research Institute's E-Discovery Committee.

Our commitment to innovation and technology allows us to provide a distinct competitive advantage for our clients. We recognize the potentially crippling costs of discovery, particularly e-discovery, in major litigation and are committed to employing creative, cost-saving solutions that will maximize value to our clients without compromising excellence. While many firms have made a decision to create in-house operations with costly overhead from space, full-time staff, and benefits, we have created key vendor relationships that effectively act as if they are "in-house" but bear their own overhead. This way we effectively manage our client costs. We require efficiency, value, responsiveness, and quality of these vendors.

Our Product Liability, Fire and Life Science lawyers who addressing e-discovery issues work closely with team members in our Cyber, Technology and Social Media Practice Group.

ESCALATORS AND ELEVATORS

Lawsuits filed in response to injuries from elevator or escalator accidents include allegations of improper design or design defect. In these cases, counsel for the elevator/escalator manufacturer must examine the actions of the property owner, the property manager, and the elevator/escalator maintenance company. Because of the complexity of elevators and escalators, isolating the cause of an accident can be difficult. Our team investigates all aspects of an injury, and involves nationally recognized experts to determine the cause of the accident. These experts can range from individuals who consult on questions of maintenance to engineers that deal with design or even metallurgists who provide an opinion regarding component failure.

EQUIPMENT AND MACHINERY

Our lawyers have significant experience defending manufacturers of construction equipment, power tools, household appliances, motorized vehicles and industrial machines against allegations of product defect, breach of warranty, property damage, consumer fraud, failure to warn, wrongful death and other personal injury matters. We handle all phases of litigation and have extensive trial experience, in both state and federal court, having taken many cases to successful "no-cause" verdicts. We also prepare and provide guidance to manufacturers with respect to warnings and labels for their equipment and machines.

FIREARMS, ALCOHOL AND TOBACCO

When facing litigation with industry-wide ramifications, the manufacturers of firearms, ammunition and ordnance require counsel who is well-versed not only in alternative legal strategies but also public relations and risk management.

A leader in the defense of regulated products, our team provides innovative solutions honed over decades representing major players in tobacco, alcohol and firearms.

Firearm manufacturers are coming under increasing liability for injuries and deaths resulting from their products. Assault weapons, handguns and sporting rifle manufacturers, and the companies that insure them, turn to our team when facing personal injury or wrongful death claims litigation. Our clients include many of the world's largest manufacturers and distributors of firearms and related products. We do not just say we can handle firearm manufacturer liability defense cases — we offer our clients a proven record of successful case outcomes and trial results. We have long partnered with gun makers in high-stakes litigation alleging design defects, novel nuisance claims, and negligent marketing and distribution practices.

FIRE SCIENCE

We set ourselves apart from other firms because of our extensive experience in fire and product liability litigation. We litigate fire cases by striving to ensure that a fire's origin and cause are correctly identified at the fire scene before litigation ensues. During litigation, we apply fire science principles to secure the best possible results for our clients.

We apply timely insights on a wide variety of topics facing insurance professionals, experts, and lawyers who handle explosion and fire-related claims. We address the stringent requirements of NFPA 921 and NFPA 1033 and appreciate how claims are affected. We work with engineers to use state-of-the-art tools and technologies in site documentation and artifact inspections. We have achieved success in addressing difficult issues affecting personal jurisdiction, foreign manufacturers, and key insurance and indemnity issues. Our team has developed methods of determining whether death was caused by fire or some other event when evaluating claims for conscious pain and suffering.

FOOD AND DRUG

Food poisoning (also called "food-borne illness") arises when foods are contaminated with bacteria, viruses, parasites, or other toxins. While FDA regulations and recalls are meant to prevent tainted foods from reaching consumers, sometimes items do make it into the supply chain. Injuries caused by food-borne illnesses have become one of the most common personal injury claims. Our lawyers have deep knowledge of the different sources and types of food poisoning, including E. coli, Listeria, Norovirus, and Salmonella. We have handled everything from "one-off" incidents to large-scale exposures.

Our Product Liability, Fire and Life Science lawyers who work on food and drug issues regularly team with our Retail, Food, Beverage and Hospitality Practice Group.

INSURANCE COVERAGE

We solve complex insurance problems for product liability matters. Our team has deep experience in coverage advice and litigation of "bet-the company" cases. In any multi-party/multi-claim/multi-insurer loss the roadmap to who pays first and next is often anything but clear. Clarity requires early assessment of all policies, product completed endorsements, additional insured endorsements, and contractual documents. Often a resolution is complicated by self-insured retentions, deductibles or solvency of the insured. Our lawyers have written seminal authorities on these issues. More importantly, they have been in the trenches advising clients on the nuance of when to litigate and when to negotiate these issues. We understand that no one wants surprises from coverage effecting or increasing the value of underlying product liability claims.

Our Product Liability, Fire and Life Sciences Practice Group lawyers who focus on insurance issues work closely with team members in our Insurance Solutions Practice Group.

PHARMACEUTICAL

Modern medical research has produced a wealth of medications that can improve health and extend both the length and quality of life. Some medications on the market pose potential risks, however, and many people allege injury as a result. Those who are allegedly injured from dangerous drugs may bring products liability lawsuits against pharmaceutical companies on the grounds of failing to test or manufacture drugs properly.

We counsel pharmaceutical companies with respect to oversight by the FDA and compliance with the Food, Drug & Cosmetics Act and the accompanying regulations. Our group assists manufacturers, distributors and importers on regulatory requirements in connection with food, food additives and dietary supplements. Our clients seek our advice on these issues during the development, marketing and distribution phases of our clients' products.

We partner with clients in drafting and negotiating agreements, including master service agreements, clinical trial agreements and patient informed consent forms. We also assist clients in responding to inquiries from the FDA and counsel on HIPAA and Medicare compliance issues.

MASS TORTS

Key tools in early recognition of large loss exposure include warranty claims, field service reports, accident reports and Consumer Products Safety Commission recalls. Perhaps the clearest warning sign of a product in danger is that it has attracted national "deep pocket" plaintiffs' firms.

Manufacturers, suppliers, distributors, and retailers have long recognized the need to establish guidelines for managing high volumes of litigation with various individual law firms spread around the country. But in mass tort situations, that structure is often inadequate. What's needed instead is a centralized litigation management structure that develops a successful, sustainable defense and returns dividends from one lawsuit to the next.

Many companies don't recognize the threat of mass tort litigation soon enough because they fall into one or more of the following traps:

- Dismissing the litigation as a fad, thinking it will go away if you win the first few cases
- Assuming you can keep the litigation quiet by settling the first cases to avoid the publicity of a trial
- Believing the insurance carrier shares your interest and will take care of the litigation
- Underestimating plaintiffs' lawyers or their experts' ability to create a design flaw in what seems to be a perfectly fine product with widespread commercial acceptance

We have decades of experience defending companies on complex matters related to asbestos, benzene, tobacco, breast implants, pharmaceuticals, chemicals, radiation, pollution, silica and mold in both personal injury and property damage cases. At the core of our national counsel engagements is our vast experience handling the multitude of issues and variations in state law that surround mass tort claims. We have managed tens of thousands of cases, for hundreds of clients, involving difficult issues such as disease causation, theories of non-identification liability and "third generation" liability. The group has developed and implemented case management and resolution programs involving thousands of pending and potential claims in state and federal court, including the administration of claims resolution programs.

Our Product Liability, Fire and Life Sciences Practice Group lawyers who focus on mass torts issues work closely with team members in our Toxic Tort and Environmental Practice Group.

PRODUCT RECALL

Our team assists companies involved in manufacturing, importing, and distributing consumer products, recall implementation, and government reporting requirements. Our many appearances in front of the CPSC staff allow us to anticipate the issues that arise with frequency during an investigation. We are uniquely qualified as a result to assist companies, through triage response, and developing thorough processes to address the investigation.

SPORTS AND RECREATIONAL PRODUCTS

Recreational activities, from skiing and white water rafting to mountain climbing and mountain biking, involve inherent and other risks that provide challenge and excitement, enticing individuals to participate. The inherent risky nature of recreational activities, our litigious society and individuals' failure to accept responsibility for themselves, are all factors which have made overall risk management practices critical to the viability of those engaged in the business of manufacturing or selling recreational products. We know that risk management spans all aspects of a business: developing and testing products, drafting brochures, contracts and other documents, obtaining adequate insurance, and a host of other things. In every claim we explore product misuse and product modification/alteration as valuable defenses.

VEHICLE DEFECT AND RECALL

It's important to distinguish auto product liability cases from traditional auto accident cases where injury is a result of a negligent driver or similar cause. These are cases that can specifically be traced to defects in the automobile itself. Recent examples of such auto defects include ignition defect, airbags and brakes. Auto product liability claims can arise from a number of factors, including manufacturing, design or due to problems occurring during shipping or distribution.

Typical categories of auto product liability cases include:

- Rollover and roof crush defects
- Crashworthiness
- Faulty specific parts

Determining the specific defect that caused the harm is essential to the success of any auto products liability case. Our lawyers make it their utmost priority to conduct a careful and thorough investigation at the outset of any case to identify the specific nature of the defect at issue. This investigation typically requires working with experts, performing extensive tests on the vehicle or component at issue, and navigating often-complex legal hurdles.

Our Product Liability, Fire and Life Sciences Practice Group lawyers who focus on motor vehicle issues work closely with team members in our Transportation Practice Group.