

# OUR PRACTICE

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## Class & Collective Actions

**Baker Donelson's trial lawyers have an enviable record of success in defending class and collective actions across a wide range of industries. We know the strategies for preventing certification, both offensive and defensive, and if certification is granted, we have the experience and resources to effectively and efficiently manage the litigation. When it comes to class and collective actions, we know there is no one-size-fits-all recipe for success. Whether negotiating a structured settlement, preventing or appealing certification, managing pre- and post-certification discovery, or selecting the right jury – we find success for our clients where others fall short.**

Our attorneys have handled class and collective actions involving hundreds of thousands of individuals. Whether across a state, a region, or the nation, there is no substitute for organization and client communication. We know that, and we prioritize it. We leverage industry-leading technology to give clients instant, secure access to discovery documents and litigation work product, so that they can track progress and ask questions. We deliver such information through customized, secure extranets built to specification. We also deploy this technology to local and regional counsel to efficiently assist with multijurisdictional litigation management. We team up with our professional litigation support staff for trial preparation and discovery management.

We are proud to have among our ranks some of the most notable and outstanding trial lawyers in the United States – seasoned attorneys with substantial experience in every manner of class, collective, or multiparty action. They include attorneys listed in *The Best Lawyers in America*® and *Chambers USA*. Many are licensed to practice before the U.S. Supreme Court and before multiple state and federal courts of appeals, and several have served as judicial clerks with state or federal trial courts or courts of appeal. We are members of organizations dedicated to maintaining the highest standards of litigation practice, such as the American College of Trial Lawyers, the College of Labor and Employment Lawyers, DRI, the American Board of Trial Advocates, and the International Association of Defense Counsel. Our team boasts the former co-chair of the Nashville Bar Association; current management chair of the American Bar Association Equal Employment Opportunity subcommittee Employment Law and Civil Rights Committee; members of the Tennessee Bar Association, Labor and Employment Section; and recipients of our internal Pro Bono Award.



## Case Studies

- Minimal Damages in \$1.2 Billion Class Action Trial - Class Action Litigation



## Representative Matters

### Antitrust & Competition Law

- Lead counsel in a multi-defendant class action defending a poultry processor against a putative nationwide class of broiler growers bringing claims under antitrust laws and the Packers and Stockyards Act alleging suppression of broiler grower compensation by the industry through information sharing and/or no-poach or non-solicitation agreements.
- Lead counsel in a multi-defendant class action defending a poultry processor against a putative nationwide class of hourly and salaried poultry workers bringing claims under antitrust laws alleging suppression of plant worker compensation and/or benefits by the industry through information sharing, serving as liaison counsel for a large group of defendants.

## **Commercial/Business Litigation**

- Successfully defended a health care provider group in a putative class action lawsuit by a state municipal association alleging violations of the federal RICO Act. Won a motion to dismiss the entire complaint on Article III standing grounds.
- Prevailed on a motion to dismiss on behalf of a doctor and his corporation in a federal class action lawsuit alleging that they unlawfully engaged in the corporate practice of medicine.
- Won a motion to dismiss on behalf of a large insurance syndicate in a federal class action lawsuit brought by food and beverage vendors. The vendors alleged the company wrongfully denied coverage for losses incurred during government-mandated business closures caused by the COVID-19 pandemic, but the court dismissed the class action claims with prejudice.
- Secured dismissal of a highly publicized putative class action lawsuit in federal court asserting claims under the Equal Protection Clause against a county. After discovery, reached a settlement on the sole remaining individual claim brought by the would-be class representative for less than the remaining defense costs.

## **Data Protection, Privacy, and Cybersecurity**

- Defended an automotive OEM against a \$7.5+ billion class action filed in Florida challenging session replay software that allegedly tracks users' activities on websites. Shortly after we were granted an early-stage stay of discovery, plaintiff voluntarily dismissed case (no settlement).
- Defending an automotive OEM against a class action brought under the California Invasion of Privacy Act (CIPA) in state court.
- Defending a regional health care entity in a pending class action filed in Tennessee state court alleging violation of Tennessee's State Wiretapping Act.
- Successfully defended a national online retail client against multiple Video Privacy Protection Act (VPPA) class actions filed in New York and Florida; cases were dismissed at the motion to dismiss phase before a class could be certified.
- Obtained a dismissal of a putative class action lawsuit against a hospital client alleging state and federal law privacy and security violations arising from the criminal convictions of several former associates who shared patient personal identifying information after being treated for injuries following automobile accidents.

## **Environmental**

- Represented a TVA engineering contractor in a putative class action arising out of the collapse of the Kingston Fossil Plant ash pond, successfully opposing certification of a proposed class of 5,000 property owners seeking over \$900 million in alleged lost property value from the spill, and subsequently secured dismissal of the action on derivative immunity grounds.
- Ongoing defense of multiple class action lawsuits addressing matters ranging from alleged contamination related to buried lead-sheathed cables to refinery releases.
- Defended pesticide manufacturer in opposing certification of proposed class of property owners affected by historic wastewater discharges to creek. Following Rule 23 certification hearing, class certification was denied by U.S. Magistrate Judge and, on appeal, by U.S. District Court Judge (federal court).
- Defeated class certification in a class action arising out of the release of a chemical that allegedly dispersed throughout a community, and successfully defended a subsequent mass action with more than 5,000 plaintiffs.
- Served as lead counsel in defending a manufacturer and seller of hand sanitizers in a consolidated mass action involving Prop 65 warnings. The plaintiff alleges the hand sanitizers made by numerous defendants contain an ingredient that requires a warning under California Prop 65 and that the defendants owe statutory penalties for failing to comply.

## **Financial Services**

- Won a motion to dismiss on behalf of a state bank in a putative class action lawsuit arising out of the bank's assessment of non-sufficient funds fees. Subsequently settled the case on favorable terms.

- Obtained summary judgment on behalf of claimants to \$200 million in publicly traded stock held by a retirement plan.
- Served as lead counsel for a servicer that successfully moved for judgment on the pleadings and won dismissal of a class action alleging violations of the Fair Debt Collection Practices Act (FDCPA).
- Defeated a class action claiming FCRA violations arising out of alleged improper access of credit reports; the federal court granted a motion to dismiss for lack of standing, finding that the alleged injuries (invasion of privacy, related emotional distress, and increased risk of data breach) were insufficiently concrete.
- Successfully moved to dismiss a class action against a national bank in which the plaintiff alleged violations of the federal Fair Credit Reporting Act (FCRA).
- Successfully defended banks against class claims relating to the processing of loan applications pursuant to the Paycheck Protection Program.

### **Labor & Employment**

- Decertified a nationwide collective of current and former employees alleging "off the clock" and misclassification violations under the Fair Labor Standards Act.
- Successfully settled two nationwide collective and class action lawsuits on behalf of an online food delivery company. The company was sued by delivery drivers alleging violations of the Fair Labor Standards Act, as well as state wage and hour laws, and seeking recovery of unpaid wages for thousands of potential plaintiffs.
- Successfully negotiated a favorable settlement in response to a collective action filed challenging a hospital client's decision not to compensate employees for time spent getting required COVID-19 tests.
- Implemented arbitration programs and agreements for multi-state employers that reduce, if not eliminate, multi-party, collective, and class litigation.

### **Product Liability**

- Defended a major domestic automotive manufacturer in a putative class action in the Central District of California involving allegations of defective exhaust manifolds in best-selling trucks. Motion to dismiss was granted in its entirety.
- Represented a major domestic automotive manufacturer in a putative class action in the Eastern District of Michigan involving allegations of defective shifter bushings in a series of vehicles. Motion to dismiss was granted in its entirety on prudential mootness grounds.
- Successfully moved to compel arbitration on behalf of a major retail chain sued in a federal consumer products liability class action lawsuit for selling an allegedly defective automobile accessory online. The court dismissed the class action complaint entirely and compelled the plaintiff to individual arbitration, agreeing that the terms of service on the retailer's website constitute a binding contract to arbitrate.
- Served as lead defense counsel in a national class action suit involving allegedly defective roofing materials. Secured dismissal of class action based on statute of repose.
- Defended a consumer class action in Florida against a national retailer alleging mislabeling of CBD products. Successfully resolved case prior to class certification, after removal and filing of dispositive motions.
- Served as lead counsel defending a consumer class action brought in the U.S. District Court for the Central District of California against a major manufacturer and seller of pet products. The plaintiff brought the suit under California consumer protection statutes alleging the defendant misled purchasers about the safety and efficacy of the products. After extensive discovery, motion practice, and expert witness disclosures, the matter was resolved on favorable terms.
- Served as lead defense counsel in a consumer class action filed in U.S. District Court for the Central District of California against a leading manufacturer and seller of home air purifiers. The suit alleged the manufacturer violated California consumer protection statutes by misrepresenting the efficacy and performance of its air purifiers and filters. The plaintiff claimed the purifiers did not meet recognized

industry standards for removal of particles in the air, and the defendant used those specifications to sell its products. After exchange of test results and extensive negotiations, the matter was settled and dismissed without engaging in protracted litigation.

- Served as lead counsel in defending a major national brand of salad dressings in threatened class actions in California and New York. The complaint alleged our client's "no artificial preservatives" label was false and misleading under the California and New York consumer fraud statutes because the products contained artificially manufactured citric acid, a common ingredient added to many products to enhance the flavor and serve as a mild preservative. The threatened litigation was resolved prior to suit after extensive negotiations regarding the recipes for the products and the manufacturing processes.