



## Class Action/Complex Litigation

RMKB's class action team offers an integrated and multi-jurisdictional approach to protect clients involved in major class action cases. Our attorneys draw on decades of experience across a broad range of industries to provide strategic counsel for every phase of a class action case – from the initial filing and class certification to litigation in both state and federal courts to mediation, ADR, settlement and appeal.

With six offices spanning both coasts, RMKB can handle both regional and national class action cases, as well as those involving multiple parties.

RMKB's class action lawyers have represented consumer and medical product manufacturers, healthcare entities, hospitals and mortuary companies, as well as other industries that are typically prone to complex class action litigation.

Whether our clients find themselves targeted by former employees facing an unmerited threat to their reputation or defending against product liability claims – no matter what the legal issue – RMKB's team will bring to bear a class action defense strategy designed to resolve cases effectively and cost efficiently.

### Representative Experience

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**Attorneys:** J. Mark Thacker

**Key Issues:** Product Liability Actions; Medical Device Manufacturer

**Venue:** Coordinated in San Diego Superior Court; Original venues for trial

**Client Type:** Medical Device Manufacturer

**Description:** More than forty individual product liability actions against numerous manufacturers were coordinated in San Diego Superior Court. Each plaintiff alleged that she/he developed a life threatening allergy as a result of exposure to latex gloves, used extensively in medical procedures. We represented a major manufacturer of medical devices. We were responsible for managing, supervising and litigating more than 40 individual product liability actions in coordinated litigation throughout California. Specific responsibilities included: developing and implementing all aspects of defense strategies through trial; coordinating defense strategies with nationwide litigation; acting as lead defense counsel on behalf of all defendants in selected cases (appointed by Defense Steering Committee).

**Result:** All actions against our client eventually settled after we obtained a defense verdict (11-1) in one action after an eight-week trial in Alameda Superior Court.

**Attorneys:** Kathleen Strickland

**Key Issues:** Stereo Equipment; Advertising; False Advertising; Unfair Business Practices

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Audio Video Equipment Manufacturer

**Description:** Retained by the CEA, on behalf of their members, to defend a class action filed by a consumer advocate company against a leading manufacturer of audio, video, and communications equipment and 56 co-defendants alleging unfair and fraudulent business practices under California Business and Professions Code section 17200, 17500 et seq. According to the suit, there was no standard effective piston area to outside diameter ratio upon which a consumer can rely in assessing the quality and power of a stereo speaker. Therefore, a consumer cannot extrapolate the size of a speaker's EPA and, consequently, its quality and power. The market for these speakers included portable audio, car audio, home audio, and home theater.

**Result:** The case resolved for less than negligence value after successful motion practice.

**Attorneys:** Kathleen Strickland

**Key Issues:** Breast Implant; Personal Injury; Wrongful Death; Cancer; Causation; Autoimmune Deficiency

**Client Type:** Defendant Global Technology Manufacturer

**Description:** Worked as national trial counsel with a team of attorneys assembled nationwide to defend a leading technology & medical products manufacturer in pharmaceutical litigation involving silicon gel breast implants. We served as trial counsel and retained and prepared scientific and medical experts as well as assisted in preparing a punitive damage defense for the company.

**Attorneys:** Kathleen Strickland

**Key Issues:** Cellular Phone; Radio Frequency, Emissions; Unfair Business Practices; Cancer; Systemic Disease, Causation

**Venue:** Multi District Litigation. USDC Court, Baltimore, Maryland

**Client Type:** Defendant Fortune 50 Cell Phone Manufacturer

**Description:** Retained by the "home office" of a Fortune 50 large international company who manufactured cell phones sold in the US to nationally defend and monitor six class actions filed by the plaintiffs in state and federal court who alleged unfair business practices and personal injury. The plaintiffs asserted that the defendants manufactured, supplied, promoted, sold, leased and provided service for wireless handheld telephones when they knew or should have known that their products generate and emit radiofrequency radiation that causes an adverse cellular reaction and/or cellular dysfunction ("biological injury"). A critical part of the defense involved intensive medical analysis as the plaintiffs claimed a full range of injuries including brain cancer and systemic illnesses allegedly associated with the product.

**Result:** The case turned on Daubert hearings. After a successful Daubert challenge, we also prepared product insert labels for handheld devices.

**Attorneys:** Gerald G. Knapton

**Key Issues:** Class Action Fees

**Venue:** Northwest Area

**Client Type:** Large Restaurant Chain

**Description:** A large restaurant chain tentatively agreed to settle a class action matter involving calculations of overtime wages, but its accountants and litigation counsel required assurances that the fees requested by class counsel were not unreasonable by a lodestar method. We met with counsel and prepared a report on the amount of fees and costs which could be supported as reasonable and class counsel accepted the suggested number.

**Result:** Both parties compromised on the amount recommended.

**Attorneys:** Geoffrey W. Heineman, Jung H. Park

**Key Issues:** Coverage

**Venue:** New Castle County, Delaware Superior Court

**Client Type:** Defendant Insurance Company

**Description:** Represented an insurance carrier in a \$600 million lawsuit involving a complex coverage action involving the plaintiff, a telecommunication provider, and eight insurance carrier defendants. The plaintiff had sought insurance coverage from the insurers on five different insurance towers for multiple shareholder lawsuits. The multiple lawsuits could be divided into three categories. The first category of lawsuits arose out of the plaintiff's efforts to transform the company from a low growth long distance carrier into a rapidly growing telecommunications giant capable of delivering "bundled services." The allegations were based on assertions that the plaintiff and its individual officers and directors artificially inflated stock price by painting an unrealistically positive portrait of the company's financial condition in an effort to ensure the success of the spin-off of its wireless operation. The second category of lawsuits arose out of the IPO of the telecommunication providers tracking stock. These lawsuits alleged that the plaintiff and certain of its directors and officer misrepresented and/or omitted material facts in connection with the IPO in violation of the federal securities acts. The third category of lawsuits concerned allegations that the plaintiff and certain directors and officers improperly acquired majority ownership control over a now defunct internet service provider and thereafter, misappropriated the provider's technology to the benefit of the plaintiff and to the detriment of the provider, eventually driving the provider into bankruptcy.

**Result:** Approximately a month before jury selection was to begin, our client and the one other remaining insurer entered into extensive settlement negotiations which resulted in a resolution our client viewed as a very favorable result.

**Attorneys:** Kathleen Strickland

**Key Issues:** Environmental; Toxic Tort; Landfill; Remediation; Groundwater; Contamination

**Venue:** Macomb County, Michigan Circuit Court

**Client Type:** Defendants Environment Contractor & Municipal Authority

**Description:** The developers of properties neighboring a landfill brought an action against our client, the environmental contractor for the landfill, and five cities alleging that contamination from the landfills has migrated onto their properties and prevented development. The plaintiffs seek millions of dollars in claims from cost recovery for lost profits and contribution pursuant to the Natural Resources and Environmental Protection Act (Michigan's version of CERCLA), as well as tort claims, negligence, trespass and nuisance.

**Result:** Obtained summary judgment on all of the plaintiff's claims, resulting in dismissal of the action

**Attorneys:** Pamela E. Cogan (Retired)

**Key Issues:** Bad Faith

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Insurance Company

**Description:** Defended an insurance company in a claim in which the plaintiff was a company that ran tours nationally and internationally. The tour guides filed a class action wage and hours claim, including claims that the tour guides were improperly excluded from participating in the company's 401K plan. The tour company tendered its defense under the employee benefit liability coverage of its business insurance policy. The defense fee incurred exceeded one million dollars. The insurer refused to defend or indemnify and the insured filed suit for breach of contract and bad faith. The defense fees claimed were over \$1 million.

**Result:** Proved that there was no duty to defend or indemnify the insured, and the court granted summary judgment for the insurer, which the Ninth Circuit affirmed on appeal.

**Attorneys:** Kevin P. Cody

**Key Issues:** Should Class be Certified? Was Product Defective? Did Putative Class Sustain Damage?

**Venue:** Alameda County Superior Court

**Client Type:** Defendant Manufacturer of Fiber Cement Roofing Shakes

**Description:** Defended a manufacturer of fiber cement roofing shakes in a claim in which the plaintiffs sued, individually and on behalf of class, claiming that the shakes were defective in that they deteriorated prematurely, and as a result leaked and caused damage to the homes in which they were installed.

**Result:** Successfully defeated the plaintiffs' motion for certification, after which case settled for a small sum.

**Attorneys:** Kevin P. Cody

**Key Issues:** Should Matter be Certified as a Class Action? Was Product Defective? Was Implied Warranty Breached? Did Putative Class Sustain Damages?

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendant Furnace Manufacturer

**Description:** Defended a furnace manufacturer in a suit in which the plaintiffs sued, individually and on behalf of

class, claiming that furnaces manufactured by our client (hundreds of thousands) were defective in that they were prone to causing accidental fires.

**Result:** The court certified the case, and on evening of the trial the case settled.

**Attorneys:**

**Key Issues:** Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs Group of Chinese-Americans

**Description:** Represented a group of five Chinese-Americans who were the purchasers of a pill which contained calcium combined with a oxidized form of Vitamin C. Our clients were class representatives in an Unfair Business Practices and Consumer Legal Remedies class action against a company that advertised extensively in the Chinese-American community regarding the product. The radio, television, and print media advertisements asserted that the product would provide several dozen benefits, including protecting the intelligence, increasing the I.Q. and "perfecting the structure of the cerebral tissue" of children, healing a herniated disk, curing edema and osteoporosis, providing more energy, healing cartilage, tendons, and muscles, eliminating virtually every ache and pain known to humankind, and not interfering with any prescription drug. All of the claims were false.

**Result:** The case settled following the first day of trial. Pursuant to the settlement, all consumers were entitled to seek reimbursement of their outlays for the purchase of the product.

**Attorneys:**

**Key Issues:** Class Action; Dispute on Price Fixing and Sub-Par Quality

**Venue:** Federal Court of Pennsylvania

**Client Type:** Defendant Group of Taiwan Auto Parts Manufacturers

**Description:** Defended a group of auto part manufacturers in Taiwan from unsubstantiated claims on price fixing and sub-par quality of auto part products (i.e. lamps, plates, etc. ) that were shipped to US for US consumers.

**Result:** Successfully defended the case against the Class Action suit by presenting conclusive evidence of the fair pricing and quality of the products. The federal court judge reviewed the evidences provided, and ruled in our client, the defendant's favor to have the case dismissed.

**Attorneys:** Michael J. Brady

**Key Issues:** Bad Faith

**Venue:** USDC: Central District of California

**Client Type:** Defendant Insurance Company

**Description:** Defended an insurance company in a bad faith for failure to pay the fidelity claim brought by one of Italy's largest banks. The underlying claim arose out of the activities of the famous sports entrepreneur Bruce McNall, who allegedly swindled various Southern California banks out of millions. We arranged for the insurance company to do an extensive investigation of countless witnesses, including experts and built a strong case for the

validity of the denial.

**Result:** A federal judge ultimately granted summary judgment based upon the "thoroughness" of the investigation, even though mistakes may have been made by the company. The matter was completely dismissed, and the dismissal was affirmed by the Ninth Circuit.

**Attorneys:** Kevin P. Cody, J. Mark Thacker

**Key Issues:** Should Class be Certified? Was Product Defective? Did Putative Class Sustain Damage?

**Venue:** San Joaquin County Superior Court and USDC: Eastern District of California

**Client Type:** Defendant Manufacturer of Aluminum Windows

**Description:** Defended a manufacturer of aluminum windows in a matter in which the plaintiffs sued, individually and on behalf of a class, claiming that the entire product line of windows (more than one million) manufactured by our client was defective in that the windows were prone to leaking, that there was a breach of express and implied warranties and that the windows caused or would cause damage to all homes in which the windows were installed. The plaintiff sued in both the San Joaquin County Superior Court and the U.S. District Court.

**Result:** Though both courts certified the classes in each case, the cases settled favorably for our client as evidenced by comparison to other class action settlements involving similar aluminum window products.

**Attorneys:** Kathleen Strickland

**Key Issues:** Mobile Home Park; Mobilehome Residency Law; Habitability; Translation Act; Eviction

**Venue:** County of Los Angeles Superior Court

**Client Type:** Defendant Mobilehome Park Owner

**Description:** Represented owner of a mobilehome park in action filed by approximately 240 residents claiming dozens of violations of the Mobilehome Residency Law, and asserting claims for nuisance, breach of the warranty of habitability, and violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200, et seq.), amongst other causes of action.

**Result:** This matter was settled to the satisfaction of our client.

**Attorneys:**

**Key Issues:** Class Action

**Venue:** Alameda County Superior Court, Northern Division Unlimited Jurisdiction

**Client Type:** Defendant Bank

**Description:** Our client had retained a telemarketing firm, which represented that it had received legal advice that it could disseminate pre-recorded messages by telephone. A class action was filed on behalf of all recipients of such messages, which were alleged to be actionable under both state and federal law.

**Result:** After obtaining disqualification of plaintiff's counsel, our firm was able to negotiate a reasonable settlement.

**Attorneys:** Stephan Choo, Kathleen Strickland

**Key Issues:** Class Action; Product Liability; Breach of Warranty; Unfair Competition; Fraudulent Inducement

**Venue:** U.S. District Court, Northern District of California

**Client Type:** Defendant, Telecommunications

**Description:** Represented international corporation who designed and sold through various distributors telecommunications cable that was manufactured by a third party. A worldwide class action was brought against Defendant for alleged defects in the cable, with claims of negligence, breach of implied and express warranty, and breach of various states' consumer protection/fraud acts.

**Result:** The Court denied the Plaintiffs' motion for class certification in its entirety. The Court held that the proposed nationwide class (formerly worldwide) for the express warranty claim could not be certified because the laws of each putative class member's state (or foreign country) of residence applies, and conflicts with those laws meant that common issues did not predominate (Rule 23(b)(3)). Plaintiffs' reply brief conceded a nationwide fraudulent inducement class could not be certified due to the same predominance issue, but proposed Rule 23(c)(4) issue classes with a national class for breach of express warranty. After determining that a conflict of law analysis precluded a nationwide breach of express warranty class, the Court rejected Plaintiffs' proposed 8 issue classes, finding a lack of commonality, typicality, superiority, manageability, and adequacy of representation by the proposed class representatives (i.e., the Plaintiffs). Plaintiffs have sought relief from the Ninth Circuit Court of Appeals.

**Attorneys:** Geoffrey W. Heineman, Kathleen Strickland

**Key Issues:** Bankruptcy; Asbestos; Contract Obligation; Defense; Indemnity

**Venue:** US Bankruptcy Court Southern District of New York

**Client Type:** Plaintiff Auto Parts Manufacturer

**Description:** Retained to represent Remy International, Inc. ("Remy") in the bankruptcy proceeding commenced by General Motors Corporation ("GM"). Remy purchased the assets of the former Delco Remy Division of GM pursuant to an Asset Purchase Agreement ("APA"). The APA, executed by and between Remy and GM, placed certain ongoing indemnity obligations on GM in connection with various litigation and potential claims relating to GM products manufactured and premises occupied during the time period prior to the APA.

**Result:** Assisted Remy in securing testimony and documents needed to defend itself in a number of active cases, and subsequently obtained dismissals in all of those actions. We also assisted Remy in successfully pursuing a claim of bankruptcy for its costs of defense regarding those actions. More importantly we obtained for Remy, as part of GM's confirmed bankruptcy plan, protection from liability for asbestos claims relating to GM products manufactured and premises occupied during the time period prior to the APA. This is a relatively unprecedented achievement in a bankruptcy action that does not involve a Section 524(g) trust.

**Attorneys:** Kathleen Strickland

**Key Issues:** Groundwater; Drinking Water; Contamination; TCE; PCE; Perchlorate; PUC; Cancer; Epidemiology; Causation; Punitive Damages

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendants International Corporations

**Description:** Served as shared counsel to three international corporations in various industries and as Liaison

Counsel to the court in 15 mass tort actions coordinated before the LA Superior Court's Complex Litigation Department in Central Civil West. The 15 actions were filed by over 1000 plaintiffs, alleging personal injury, wrongful death and property damage, and named as defendants over 50 industrial manufacturing companies and 7 public and private water purveyors. The injuries were alleged to have been caused by contaminated drinking water due to underground TCE, PCE perchlorate, dioxane and NDMA as the primary contaminants. After the trial court sustained a demurrer based on the issues of primary jurisdiction and preemption, the case went before the California Supreme Court on those issues.

**Result:** Obtained a dismissal of the claims of approximately 500 plaintiffs and settlement of the claims of the remaining approximately 500 plaintiffs for less than \$200 per plaintiff. Our display of leadership skills in this matter resulted in an invitation to participate in the Complex Litigation Symposium II presented by the Los Angeles Superior Court Judges handling complex litigation with a role critiquing the Judges re: their handling of complex litigation in California courts.

**Attorneys:**

**Key Issues:** Class Action; Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs Chinese American Individuals Represented Through a Class Action Lawsuit

**Description:** Represented a group of Chinese American individuals in a class action lawsuit. Our clients were incensed by the false representation of calcium health supplement pills marketed widely in the Chinese American communities. The pills claimed numerous health benefits, which were false. We certified a class action lawsuit through court approval and through further investigation found lead exceeding the safety amount in the pills.

**Result:** Represented the plaintiff's interests to reach a favorable settlement.

**Attorneys:** Spencer C. Martinez, Kathleen Strickland

**Key Issues:** Class Action, Business litigation

**Venue:** San Bernadino County Superior Court

**Client Type:** Major National Retail Chain

**Description:** Plaintiff alleged that he purchased a battery-powered self-balancing scooter (commonly referred to as a "hoverboard") from our client, a large national retailer of electronics and other products, and that the hoverboard spontaneously caught fire when its end-user attempted to charge its battery. Plaintiff commenced a putative class action generally alleging products liability and breach of warranties, on behalf of himself and all similarly-situated purchasers of hoverboard products from our client over a period spanning several years.

**Result:** We promptly investigated the veracity of the plaintiff/ putative class representative's claim that he purchased the allegedly defective hoverboard from our client, including through pointed written discovery, and determined that it was factually impossible that plaintiff indeed purchased the product from our client. We thereupon promptly engaged the plaintiff in settlement discussions directed to both the plaintiffs' claims and those of the putative class. The matter was promptly resolved upon terms that were extremely favorable to our client, without the need to engage in costly discovery going further into the merits of the product liability claim or plaintiff's class action allegations.

