

▶ CLASS ACTION

Williams Kastner represents a wide-range of clients in class action lawsuits. Our experience and record of success in class action defense is extensive and includes a variety of matters ranging from consumer fraud and consumer protection to securities fraud. Our labor and employment team of attorneys has represented numerous employers in class action suits. Our trial lawyers have demonstrated creativity, tenacity, skill and success in the courtroom.

Our Hands-On Experience Includes:

- Obtaining dismissals prior to certification
- Defeating and obtaining class certification
- Bifurcating class certification discovery from discovery on the merits of the case
- Using class action rules to resolve mass actions
- Creative settlements
- Resolving objections to settlement
- Fairness hearings
- Drafting notices to class members
- Claims administration
- Managing opt-out litigation

Our Class Action Trial Experience:

Consumer Fraud

Wilcox Farms/False Advertising In *Schneider, et al. v. Wilcox Farms, Inc.*, Williams Kastner defended a consumer class action alleging false advertising and violation of state consumer protection acts in a Federal court action filed in the summer of 2007. Our firm was retained by Unigard, the insurer for Wilcox Farms. The purported class included Washington, Oregon, California and Utah purchasers of eggs produced by Wilcox Farms and fortified with omega-3 fatty acids. Original damages claim exceeded \$40 million. Issues involved complex analysis of FDA regulations and the science of fatty acids. Experts were retained and deposed on scientific, advertising, consumer knowledge and damages issues. After the defendants filed a summary judgment motion, case settled for less than \$150,000 and the defendant's agreement to specify on its egg cartons the amounts of each type of omega-3 fatty acid contained in the eggs. No payments were made to class members; the settlement funds reimbursed class counsel for costs advanced and for a small percentage of their time.

General Motors Corporation Williams Kastner represented General Motors as local counsel in Washington in class action litigation related to alleged defective speedometers in light trucks, and included claims of Consumer Protection Act violations, consumer fraud, negligent misrepresentation and breach of

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warranty. Similar cases against General Motors were filed in Oregon, California and South Carolina and the cases were consolidated for discovery in multidistrict litigation before Judge Coughenour in the United States District Court for the Western District of Washington. Williams Kastner was retained as local counsel for General Motors. National Counsel for General Motors was Sedgwick, Detert, Moran & Arnold.

Northern Life Insurance Co./Fixed Annuity Class Action Williams Kastner represents Northern Life Insurance Co. in an 18,000 person statewide class action. Plaintiffs sought a nationwide class of over 400,000 members, but the trial court denied certification of a nationwide class. In March 2007, after 5½ years of litigation and extensive discovery, the trial court dismissed all of the plaintiff's claims at summary judgment. The case is on appeal. Williams Kastner served as local counsel.

Nutri-System/Gall Bladder Disease Williams Kastner lawyers represented Nutri-System in a consumer fraud case asserting that the Nutri-System diet failed to disclose that weight loss was usually regained shortly after ending the diet and that the diet caused gall bladder disease. A Connie Chung "exposé" seemed to act as a catalyst for the litigation, and approximately 7500 lawsuits were filed. The Court consolidated 13 Oregon cases, some of which included class allegations, and then bifurcated the key causation issue of whether the diet program caused gall bladder disease. Williams Kastner lawyers tried that issue and obtained a defense verdict, which was followed by a dismissal of the remaining claims. The case was listed as one of the top 10 defense wins of the year by the National Law Journal.

Conoco-Phillips/Debit Card Holds Williams Kastner represented Conoco-Phillips in a putative statewide consumer fraud class action regarding holds placed by banks on the accounts of customers who purchased gasoline using debit cards. Williams Kastner was counsel for Conoco-Phillips.

Union 76/Contaminated Heating Oil Williams Kastner served as counsel for Union 76 in *Skinner v. ARCO, et al.* This case involved a class of 10,000 members who allegedly received contaminated heating oil. Williams Kastner led the defense of the consumer class action filed against home heating oil manufacturer and its distributor (our client) in Pierce County Superior Court. Plaintiffs alleged defect in oil caused furnace damage. Case settled after court denied class counsel's motion to certify class.

Bristol Myers-Squibb/Breast Implant Litigation Williams Kastner lawyers represented Bristol Myers-Squibb in approximately 1000 cases filed in Oregon, some of which sought but never pursued class action standing, and most of which asserted consumer fraud on the FDA claims. Eventually, we were able to persuade U.S. District Judge Robert E. Jones to hold a Rule 104 hearing on the sufficiency of any evidence that breast implants cause disease in women. After impaneling his own panel of experts in the fields involved, Judge Jones ruled that there was no reasonable or reliable evidence that breast implants cause disease other than some potential local injury such as from a rupture of the implant. This ruling was instrumental in largely ending the litigation on a national level.

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Clark County Impact Fee Litigation After Clark County admitted overcharging impact fees for residential building permits and interpleaded the overcharges, Williams Kastner was selected by the court to represent county developers who paid the fees, one of two classes certified by the court to compete for the funds (the other class consisted of the owners of the properties for which the fees were paid). The case settled favorably to the developers, who received approximately two-thirds of the disputed funds, with interest.

Sherman Homes v. City of Olympia Williams Kastner represented a certified class consisting of Thurston County residential developers who successfully alleged that the City imposed unconstitutional impact fees on projects outside the City limits which connected to utility services provided by the City. Once liability was established, a stipulated judgment was entered in the amount of the claimed refund, plus interest.

Luxury Vacation Condominium Time Shares Consumer fraud case involving Hawaiian time shares. Plaintiffs who signed up for time shares in Hawaii claimed they had been provided with false information, including the fact that the company selling the times shares was financially insolvent at the time of sale. Williams Kastner filed a motion to dismiss the claim—this was initially denied, then renewed by the trial judge two years later *sua sponte*. With the motion to dismiss pending, a settlement class was formed, and the case was settled.

Truth in Lending Act Consumer fraud class action involving errors on behalf of a successful local business in the calculations of monthly installment payments owed to it by customers. A motion was filed in federal district court in Denver to certify a national class action lawsuit against the business by a national plaintiff class action firm. Williams Kastner countered with a motion to dismiss the case due to a lack of damages. The case settled for nuisance value.

Fair Debt Collections Practices Act Consumer fraud class action involving an alleged violation of the Fair Debt Collections Practices Act. Plaintiffs brought an expensive class action suit in federal court in Spokane, WA. In response to the suit, Williams Kastner filed a motion for partial summary judgment for the defendant, a small, locally owned business. The plaintiffs promptly settled with the two other defendants and released Williams Kastner's client from the settlement, without the client contributing any monies.

Aust, et al v. Northwest Natural Products Williams Kastner represented Northwest Natural Products in a consumer class action case in Clark County Superior Court. Our firm negotiated a settlement. The settlement class was certified.

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Hammer v. Columbia Title Agency Williams Kastner represented Columbia Title Agency in a consumer class action case in Clark County Superior Court. Our firm negotiated a settlement. The settlement class was certified.

Body Recovery Clinic, LLC v. Auto Injury Solutions, Inc. Williams Kastner represents Auto Injury Solutions, Inc. in a consumer class action case in King County Superior Court. Case is ongoing but there is a tentative settlement agreement. There will be a settlement class certified if the court approves the settlement agreement.

Constitutional Rights

Smith, et al., v. City of Corvallis, Oregon Williams Kastner represents the plaintiffs and putative class of homeless persons whose property was destroyed by the city of Corvallis. The claim is for violation of constitutional rights.

Drivers Privacy Protection Act

Ampco System Parking/Putative Class Action In *Rodrique v. Ampco System Parking*, Williams Kastner represented Ampco System Parking in a putative class action filed by plaintiffs against several defendants based on alleged violations of the Federal Driver Privacy Protection Act. As a result of the possibility of statutory penalties, the defendants each faced exposure of several billion dollars. These cases have been litigated around the country with mixed results. Utilizing the revised pleading standards enunciated in *Twombly* and *Iqbal*, Williams Kastner moved for dismissal for plaintiffs' failure to state a claim and for lack of standing. Judge Marsha Pechman of the Western District of Washington granted our motion to dismiss the complaint and after plaintiffs filed an amended complaint, again granted our motion to dismiss the complaint. Plaintiffs have appealed the dismissal to the Ninth Circuit. October, 2010.

Environmental

Hawk's Prairie Landfill Class Action Williams Kastner represented the Ostrom Company. The lawsuit involved odor and nuisance complaints relating to landfill operations in Thurston County.

Mica Bay Property Owners v. Idaho Department of Transportation and Scarsella Brothers, Inc. Williams Kastner represented Scarsella Brothers regarding a Clean Water Act case involving erosion from a highway construction project allegedly impacting a portion of Lake Coeur d'Alene. The case was litigated in Idaho state court.

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Pierce v. Heath Consultants, Inc. Western District of Washington Cause No. 10-585 (Hon. Thomas S. Zilly). Williams Kastner is representing Heath Consultants, Inc. Plaintiffs are employees of underground gas/utility locating company who allege they were required to drive in company trucks directly to and from worksites each day, and at the end of the workday return home and plug in their testing equipment to recharge the equipment. Plaintiffs allege they were not compensated for time spent traveling to and from the worksite, and routinely worked in excess of 40 hours per week without overtime compensation.

Plaintiffs filed suit March 5, 2010, and despite the fact that plaintiff did not specify the amount of damages, Williams Kastner successfully removed the matter to federal court under diversity jurisdiction. Plaintiff's attorneys are Martin Garfinkel and Adam Berger. Plaintiff counsel attempted to obtain extra time for the class certification deadline, but Williams Kastner resisted, and wound up with a trial date in 2012, and a class certification motion deadline of 12/31/10, and as a result we will have the advantage of a substantial amount of time to conduct discovery after certification, should the lawsuit proceed as a class action.

Arrow Marine Service, Inc. Williams Kastner defended Arrow Marine in a putative class action seeking allegedly unpaid overtime. The case settled before class certification.

Wells Fargo Sick/Vacation Time Class Action Williams Kastner represented Wells Fargo in a class action filed on behalf of all Wells Fargo employees affected by a PTO policy Wells Fargo implemented several years ago. Wells Fargo did away with its old system of separating sick days and vacation days and allowing employees to accrue unused sick days. Plaintiffs claim they were damaged as a result of losing their unused sick days. The named plaintiffs in the suit filed a motion for class certification, but Williams Kastner lawyers convinced the court to hear a motion for summary judgment before ruling on the class certification motion. The Court granted a summary judgment to Wells Fargo, and the case is now on appeal at the Oregon Court of Appeals.

Hughes Aircraft Company Williams Kastner represented Raytheon Company in *Caproni et al. v. Hughes Aircraft Company*, the purported class of 250 sought to set aside "exempt" status. Utilizing a salary basis test, the estimated damages could have exceeded \$750,000. The case settled before class certification.

Super Stores of America/Unpaid Overtime Williams Kastner represented Super Stores of America in a class action. A purported class of 121 drivers sought alleged unpaid overtime in the amount of \$400,000. Case was settled before class certification.

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Tri Med Ambulance/Unpaid Overtime In *Hill, et al. v. Tri Med Ambulance, Inc.*, Williams Kastner represented Tri Med in a class action. The class action sought unpaid overtime compensation in the amount of more than \$1 million dollars on behalf of 200 employees. The issue was whether the employees were “exempt.” The action was settled after certification for less than \$50,000.

Puyallup School District/Discrimination In *Thomas, et. al v. Puyallup School District*, Williams Kastner defended the school district in a class action for 55 plaintiffs alleging race discrimination. The case settled.

Aero Construction Williams Kastner represented trucking company Aero Construction in class action litigation alleging unpaid off-the-clock work at the beginning and end of the work day. The matter was settled before the purported class was certified.

Personal Injury/Medical Monitoring

Seabest Corporation/E-coli Williams Kastner represented Seabest Corporation, one of the largest franchisees of Jack in the Box restaurants, in E-coli illness personal injury cases. Our firm served as national counsel for Seabest for claims throughout the western United States.

There was a class settlement of a number of small personal injury claims which included a provision for a medical monitoring trust, in case some of the children developed future medical problems from their E-coli exposure.

Pharmaceutical/Medical Device

Bayer Corporation/PPA Williams Kastner represented Bayer Corporation in a PPA economic damages class action and personal injury class action. Class certification was denied in these cases and the cases were dismissed.

Sofamor-Danek/Bone Screw Litigation Williams Kastner represented Sofamor-Danek in a number of bone screw cases asserting fraud on the FDA, and other consumer and fraud claims in connection with the marketing of bone screws for use in spinal surgery, which FDA approval only existed for their use in long bones. The cases were either dismissed or settled for nominal amounts following rulings (consistent with rulings from other jurisdictions including the panel on multi-district litigation) that the plaintiffs had no standing to assert fraud on the FDA.

Alpha Therapeutics/Blood Products Williams Kastner served as counsel for defendant Alpha

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Therapeutics, which manufactured and supplied blood products called Factor 8 and 9. The purported class included all hemophiliacs against blood banks and manufacturers and suppliers of blood factor products. Class certification was denied.

Products Liability

Thor Industries Williams Kastner represented Thor Industries (manufacturers of Airstream and Four Winds RVs) in an attempted nationwide class action in federal court regarding unbraked towing capacity issues. Class certification was denied and the case was dismissed.

DR Horton Williams Kastner represented a subsidiary of DR Horton (publicly held home builder) as corporate and coverage counsel in a defective nail class action settlement involving several hundred homeowners in Washington State Superior Court.

Fen-phen Litigation Williams Kastner attorneys served as local counsel for a producer of phentermine, representing it in several of these cases in Oregon. One or more involved class action claims, but none of those allegations was decided locally. The cases involved consumer and fraud on the FDA claims as well as claims of injury due to either primary pulmonary hypertension or heart valve damage. We obtained a state court ruling that the makers of phentermine were not responsible for injuries caused by the co-prescribed drug fenfluramine and all claims against our client were dismissed.

Aventis Pasteur/Childhood Vaccine Litigation Several of these cases were filed in Oregon state and federal courts alleging autism from childhood vaccinations, and consumer fraud or fraud on the FDA. Williams Kastner represented Aventis Pasteur. All the cases, including a class action, were dismissed either on the basis of the statute of limitations or on the ground that any claim must first be made in the special federal Vaccine Court.

Securities

SunAmerica Securities Williams Kastner served as counsel for SunAmerica Securities in federal court in the case of *Getty v. Sun America Securities*. This case involved the second largest alleged security law ponzi scheme in Washington state with claims exceeding \$26 million. The class was certified and the case settled.

Washington Public Power Supply System Bonds Williams Kastner represented a national

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securities broker in a federal court case involving the largest municipal default in the country at the time. There were complex securities law issues pertaining to bonds used to finance the construction of nuclear power plants.