

# Product Liability & Complex Tort

Practice Overview





# Product Liability & Complex Tort

The ability to defend products against attack in individual and multi-plaintiff lawsuits effectively and efficiently is a critical business objective for every successful manufacturer, distributor, and retailer in today's market. Such disputes can have large-scale financial and public relations consequences, can disrupt business strategies and goals, and can implicate entire product lines — the lifeblood of companies that make and sell products and depend on the reputation of those products.

Seyfarth Shaw LLP's Product Liability & Complex Tort Practice Group helps clients manage and lower the risks of such potentially damaging claims. The litigation and counseling experience of our attorneys allows us to handle complicated cases efficiently and successfully in jury and bench trials, in appellate proceedings before state and federal courts, and in proceedings regarding complaints and recalls involving regulatory agencies.

Our Product Liability & Complex Tort group defends *Fortune* 500 companies in a broad range of product industries in individual and multi-plaintiff lawsuits, proceedings involving regulatory agencies, recalls and various forms of alternative dispute proceedings.

## Coordinated Litigation Approach

We regularly defend national and international manufacturers, distributors, and retailers against individual and multi-plaintiff product liability and tort lawsuits. In an area in which disputes can be straightforward or complex, local in scope or national, and where attendant risks may be circumscribed or “bet-the-company,” our attorneys work closely with clients to develop and implement the appropriate strategy tailored for the situation at hand. Equally important, we craft innovative yet practical solutions to the most challenging problems. We understand that managing complex product liability and tort litigation requires a coordinated legal strategy that is sensitive not only to the demands of litigation but also to the regulatory, congressional, and public relations concerns that often arise during a product liability crisis.

As a national law firm with ten offices across the United States, our clients frequently rely on us to handle large multi-state litigation. Team members in various offices nationwide work together to monitor ongoing activities related to major litigation or industry trends and serve as national counsel for our clients. We also have been called upon by our clients to coordinate the work of various regional and local counsel from other firms. To manage multiple cases and multiple legal teams effectively and efficiently, we develop standardized systems and procedures, including form pleading and discovery requests, and motion and brief templates for use by our attorneys and local and regional counsel.

## Depth of Experience

As a result of our extensive experience, many of our attorneys have developed in-depth knowledge of a comprehensive range of medical, scientific, and other substantive disciplines. Our group also has a network of highly respected scientific and technical experts with jury experience across the country on which we rely to break down complicated ideas and scientific terminology. When warranted, we also work with public relations firms to form strategies to protect our clients in the court of public opinion.

Our attorneys have developed in-depth knowledge of a comprehensive range of medical, scientific, engineering, manufacturing, and other substantive disciplines, and a network of respected experts.

## Litigation

If and when litigation ensues, our attorneys first thoroughly assess the underlying claim to determine the potential exposure facing our client. Once we pinpoint potential risks, we evaluate the client goals and develop an appropriate strategy to meet those needs in the most cost-effective way possible. We develop strategies that encompass quick resolutions, including use of alternative dispute resolution proceedings, if and when appropriate. Our group employs the latest technologies — including databases, data analyzing software, and extranets — to streamline paperwork, reduce costs, and ensure clients and attorneys working on the litigation can stay current through every step of the process. Where appropriate, we utilize Seyfarth Shaw’s nationally recognized eDiscovery & Information Governance team.

We assist clients in the full range of product liability and general tort actions, including:

- Strict liability
- Breach of warranty
- Fraud
- Common law negligence
- Alleged violations of California’s Proposition 65, the Consumer Product Safety Act and Improvement Act of 2008, and the Federal Hazardous Substance Act
- Uniform Commercial Code (UCC) warranty claims for economic loss
- Claims under various state consumer and trade practices acts
- Comparative fault, contribution, and indemnity claims

- Personal injury actions involving the Federal Employer Liability Act
- Medical malpractice
- Premise liability
- Toxic exposure to chemicals and other substances
- Occupational Safety and Health Administration enforcement actions

## Creative Legal Analysis and Litigation Strategy

Our attorneys combine creative legal analysis and litigation strategy with extensive knowledge of the relevant industry and a thorough understanding of the laws and science at issue.

## Broad Industry Experience and Product Range

We represent clients involved in the manufacturing, distribution, and selling of a wide range of products, including:

- Medical devices
- Pharmaceuticals
- Food products
- Lead-containing products
- Supplements and nutraceuticals
- Construction and farm equipment
- Chemicals
- Known and alleged carcinogens
- Machinery
- Mechanical and computerized devices
- Paint
- Blood products
- Cosmetics
- Elevators
- Cranes
- Tires
- Refrigeration system coolants
- Over-the-counter health aids and devices
- Contact lenses

## NATIONAL COUNSEL FOR HIGH-VOLUME LITIGATION

Two major medical device companies were facing more than 800 cases nationwide involving complaints—primarily by healthcare workers—that natural-rubber latex gloves caused severe, life-threatening allergies. As National Counsel for the companies, our attorneys were deeply involved in all aspects of these cases, including:

- ▶ Implementation of initial strategy and discovery
- ▶ Visiting Malaysian plantation and manufacturing sites to acquire in-depth knowledge of the business from planting to packaging
- ▶ Development of the expert witnesses
- ▶ Participation on national trial teams
- ▶ Liaison counsel for all defendants in federal and multi-district litigation proceedings in Philadelphia and coordinated proceedings for all California state latex cases

**Result:** Due to aggressive pre-trial and trial strategies—and success in the first wave of trials—the plaintiff’s bar lost its zeal for the cases, and prior million-dollar-per-case settlement demands were reduced to demands in the tens of thousands per case. Group settlements were soon reached for terms very favorable to our clients.

## AGENT ORANGE LITIGATION

An agricultural company and other manufacturers of Agent Orange were being sued in the “third wave” of Agent Orange litigation by U.S. Vietnam veterans and Vietnamese nationals, including civilians, former members of the Viet Cong, and others. U.S. Vietnam veterans claimed their alleged Agent Orange illnesses had become apparent only after the fund established by the 1984 settlement of the initial class action had been exhausted. The Vietnamese nationals alleged the defendant manufacturers were liable for plaintiffs’ injuries because the manufacturers had committed war crimes and violated other rules of international law by making and selling Agent Orange for use in Vietnam. Our attorneys brought motions for summary judgment.

**Result:** The U.S. District Judge granted our team’s motions for summary judgment and dismissed the remaining 25-30 Agent Orange cases pending, asserting that the government contractor defense barred the state- or nation-based tort law claims of the U.S. veterans and Vietnamese nationals. The judge also held there was no basis under the law of any nation or state or under any form of international law for any of the Vietnamese nationals’ claims of war crimes or international law violations. Both sets of plaintiffs appealed to the U.S. Court of Appeals for the Second Circuit. The Second Circuit affirmed the summary dismissal of the claims against the manufacturers.

- Asbestos
- Silica
- Metals
- Welding rods
- Vehicles
- Automated doors
- Aviation equipment
- Guns and ammunition
- Plastic products
- Bottles

Seyfarth attorneys also represent pharmaceutical, biotechnology and device companies, and research organizations, in the development, approval, manufacture and marketing of products regulated by the FDA. They counsel clients and assist in defending and resolving inspection, compliance, recall and enforcement actions taken by the FDA and other federal and state agencies. Seyfarth attorneys have extensive experience in product liability matters involving regulated drug, device and food products.

Our attorneys also have significant experience handling toxic tort litigation that does not emanate from products per se, such as environmental toxic torts, groundwater contamination, and similar events.

### Indemnification and Contribution

Issues concerning indemnification and contribution can play a critical role in product liability cases involving multiple parties. Our product liability and complex tort attorneys understand when it is important to keep these intramural disputes between defendants on the sidelines, and not in front of plaintiffs’ lawyers or juries. Nevertheless, we have extensive experience successfully pursuing and defending such claims. We also work closely with our clients to develop proper documentation procedures that allow for a more effective and streamlined approach to prosecuting or defending such claims.



## CONSTRUCTION EQUIPMENT

Our attorneys represent a manufacturer of construction equipment in product liability actions in the Chicago area. During a recent trial, plaintiff claimed that the absence of a traction interlock system rendered the manufacturer's equipment unreasonably dangerous and the cause of his catastrophic injuries. Other manufacturers include traction interlock system on similar equipment.

**Result:** After a five-day jury trial, plaintiff asked for \$1.75 million. The jury returned a complete defense verdict.

In another trial for the same manufacturer, plaintiff claimed the equipment that injured him was unreasonably dangerous because it failed to include a back-up alarm. A back-up alarm was optional but not standard equipment.

**Result:** After a six-day jury trial, the jury returned a complete defense verdict.

## Prevention

Proper procedures, documentation, and compliance are effective ways businesses can reduce their risk of lawsuits. Our attorneys frequently work with clients to minimize risks of litigation through extensive counseling and audit work focusing on:

- Facilities and equipment safety compliance
- Labeling, including warnings and instructions
- Employee training
- UCC disclaimers
- Advertising
- Product literature
- Product recalls and modifications

As a result, we provide our clients the ability to head off certain unwelcome and expensive claims before they arise and begin to drain time and resources away from the real business of the company.

## Benefit To You

Seyfarth Shaw's Product Liability & Complex Tort Practice Group combines creative legal analysis and litigation strategy with extensive knowledge of the relevant industry and a thorough understanding of the laws and science at issue. Our incisive business perspective and exceptional management skills allow us to handle large, complex cases and manage the sensitive external publicity and media relations needs that this kind of litigation can produce, while minimizing the impact on our clients' business operations.



## About Seyfarth Shaw

Seyfarth Shaw LLP (“Seyfarth”) was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, product liability and toxic tort, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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