Presenting the Company Story:
Developing an accurate account of company conduct and refuting plaintiff’s “profits over people” theme

Thursday, October 11, 2012

Ellen K. Reisman
Nancy G. Milburn
Heather French
Hon. Marina Corodemus
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Tab 1: Agenda
Presenting the Company Story: Developing an accurate account of company conduct and refuting plaintiff’s “profits over people” theme

Thursday, October 11, 2012
9:00 – 10:30 a.m. PDT
12:00 – 1:30 p.m. EDT

Agenda

12:00–12:05 p.m.  Introduction

12:05–1:20 p.m.  Presentation and Discussion

Speakers:
Ellen K. Reisman, Arnold & Porter LLP, Los Angeles
Nancy G. Milburn, Arnold & Porter LLP, New York
Heather French, Vice President and Deputy General Counsel at American Capital, Ltd.
Hon. Marina Corodemus, Corodemus & Corodemus LLC

1:20–1:30 p.m.  Question-and-Answer Session

1.5 hours of CLE credit is pending.
Tab 2: Presentation Slides
Presenting the Company Story:
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Thursday, October 11, 2012

Judge Marina Corodemus (ret.)
Corodemus & Corodemus

Judge Marina Corodemus is a retired Judge who presided over the Mass Tort Court in New Jersey for 10 years. She is now managing partner in her own national dedicated Alternative Dispute Resolution Firm handling exclusively mediation, arbitration and special master work in State and Federal Courts. She is a neutral with CPR, AAA, a Past Executive and Board Member of Sedona Conference, AI advisory committee for Aggregate Litigation, and chair of the Annual Mass Tort Conference with Judge Marina Corodemus. Judge Corodemus was named a Winner of the Best Individual Mediator of 2012 by the National Law Journal.

Heather French
Vice President and Deputy General Counsel, American Capital, Ltd.

Heather French joined American Capital, a publicly traded private equity firm, in May 2004 as Vice President and Associate General Counsel, and was promoted to Deputy General Counsel in January 2008. She is responsible for handling litigation, labor and employment, and intellectual property matters at American Capital. Prior to joining American Capital, Ms. French was a Counsel in the Washington, D.C., and McLean, Virginia offices of Akin Gump Strauss Hauer & Feld LLP, where her practice focused on complex commercial and employment litigation, as well as labor and employment counseling on a myriad of issues.

Nancy Milburn
Arnold & Porter LLP, New York

Nancy Milburn is a partner in the New York office of Arnold & Porter LLP where she practices in the area of complex civil litigation. She has represented clients in product liability, mass tort and consumer protection matters, including class actions, individual actions, and government public nuisance actions. She has also handled complex commercial tort and business litigation, and bankruptcy litigation. From 1987 to 2000, Ms. Milburn served as an Assistant United States Attorney in the Southern District of New York. She worked in the Civil Division of the U.S. Attorney’s Office where she tried numerous civil jury and nonjury cases.

Ellen Reisman
Arnold & Porter LLP, Los Angeles

Ellen Reisman is a partner in the Los Angeles office of Arnold & Porter LLP. For over 25 years, Ms. Reisman has represented major pharmaceutical, medical device, and biotech companies in defending product liability litigation, settling product liability litigation, and taking proactive measures to prevent such litigation. She has been the lead negotiator for high-profile class action and inventory settlements. Ms. Reisman has also worked with her pharmaceutical and medical devices clients to address US and international regulatory issues that frequently arise in parallel with product liability litigation. She has also been retained in litigation and settlement matters involving consumer products and frivolous aspects of environmental mass torts. Ms. Reisman also brings an in-house perspective to advising clients and litigating cases, having served as Associate General Counsel of American Home Products Corporation from 1999-2001.
Experience in Mass Tort/Class Action Litigation

- Lead Paint
- Tobacco
- Diet Drugs
- Chinese Heparin
- Deepwater Horizon
- Norplant
- Mechanical Heart Valves
- Toxic Spills
- Radiation Exposure

Factual Issues Typical in Cases Involving Mass Torts

- Adequacy of Warning
- Recall
- Manufacturing and/or Design Defect
- Marketing Behavior
- Adequacy of Testing
- Label/Off Label Use
Aspects of Company’s Defense

- Responsible Communications
- Telling the Affirmative Company Story
- Addressing Damaging Documents and Deposition Testimony
- Addressing Bias Against Corporate Defendants

Responsible Communications

- Establish Core Communication Group
  - Legal
  - Technical/scientific experts
  - Others (e.g., IT, PR, HR)
- Consider Outside Participants
  - Outside counsel (litigation, regulatory)
  - Outside technical/scientific experts
  - Public relations
  - Others (e.g., customers, vendors, joint defendants)
Responsible Communications

- Establish Standard Call/Meeting Routine
- Clearly Delineate Responsibilities (e.g., liaison with technical staff, HR, IT, senior management, etc.)
- Considerations Include
  - Privilege issues
  - Insurance
  - Employee communications
  - Confidentiality restrictions/concerns

Goal is Written Communications That:
  - Accurately state facts;
  - Avoid misinformation; and
  - Are respectful of co-workers.

5 Basic Principles
  - Remember the company’s mission and values;
  - Determine the best form of communication;
  - Accurately state the facts;
  - Express opinions only if you’re an expert; and
  - Consider how others will read what you write.
Responsible Communications

- Company’s Mission and Values
  - Making quality products
  - Improving quality of life
  - Safety

- Best Form of Communications
  - Written or oral?
  - The meaning of our verbal messages comes from:
    - 7% Words
    - 38% Voice Quality
    - 55% Non Verbal Clues

Responsible Communications

- Accurately State the Facts
  - Use clear, precise, direct, objective language
  - Clarify or eliminate areas open to misinterpretation
  - Avoid “loaded” words and phrases, jokes, and “unforgettable one-liners”

- What Leads to Misinterpretation?
  - Ambiguous language
  - Inappropriate format
  - Misleading tone
  - Unarticulated assumptions
  - Unexplained background facts
Defending Mass Tort Litigation and Class Actions

Responsible Communications

- How to Avoid Inaccuracies:
  - Make clear when you’re raising a question
  - Define terms
  - Don’t speculate
  - Write, review and revise, let it sit, review it again, let it sit, have someone else review it, and finally, revise and send/file

- Save Jokes for Coffee Breaks!

Responsible Communications

- Express opinions only if you are an expert
  - Limit opinions to your expertise
  - Limit opinions to your job area

- Even if you are an expert, when giving your opinion:
  - Get as much information/data as possible
  - Articulate your assumption/facts
  - Avoid conclusory statements
  - Watch out for “legal opinions”
  - Make it clear it is your opinion, not incontrovertible fact
  - Do not act as if your opinion is more important than it is
Defending Mass Tort Litigation and Class Actions

**Responsible Communications**

- Consider how others will read what you write
  - Does it accurately state the facts?
  - Would someone without your knowledge/background misunderstand?
  - The New York Times Test

**Talking to the Press**

- Pros and cons of telling the company story in the press
- What can/can’t employees be told about speaking to the press

- General Rule: First Amendment/state freedom of speech protections do not place significant limitations on private employers (e.g., Korb v. Raytheon Corp., 574 N.E. 2d 370 (Mass. 1991); Shovelin v. Central N.M. Elec. Coop., Inc., 850 P.2d 996 (N.M. 1993))

- National Labor Relations Act may protect discussions of working conditions as “concerted activity.”

- Confidentiality Restrictions/Protections
Defending Mass Tort Litigation and Class Actions

**Responsible Communications**

- **Employee Use of Social Media**
  - What restrictions are permissible?
  - Multiple NLRB decisions finding Facebook discussions to be protected “concerted activity.”
  - Must address workplace concerns, be directed at other employees, and attempt to obtain their support in order to be protected.
  - Influence of social media on court proceedings

**Legal Hold Action Plan**

- **Risks of Failure**
- **Sanctions for Spoliation**
- Recent 2d Circuit opinion *(Chin v. Port Authority of N.Y. & N.J.*) rejecting argument that a failure to institute a litigation hold is gross negligence *per se* and adopting a case-by-case approach to sanctions for spoliation.
Telling the Affirmative Company Story

- In an Ideal World, Company:
  - is compliant with all applicable regulations/laws;
  - has adequate processes, procedures, personnel;
  - acted appropriately when learning of adverse events, product failures, other issues/problems;
  - acted promptly; and
  - acted consistently with science/medicine/law FACTS.

Potential Issues

- Use of regulatory counsel/consultants (privilege issues)
- How to preserve privilege while being able to tell story?
- What goes on a privilege log?
- Whistleblowers (recent US$104 million award by IRS)
Addressing Damaging Documents and Deposition Testimony

- Have to assume all damaging documents will be produced
- Prior to litigation, finish the story: respond, follow-up on damaging emails, documents
- *In limine* Motions
  - Inflammatory but irrelevant documents

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Addressing Damaging Documents and Deposition Testimony

- Bring Witnesses to Trial if Deposition Testimony or Documents are Troublesome
  - Jury sees demeanor
  - Opportunity to explain documents/testimony
  - Make affirmative points
- Use Expert Testimony
Addressing Bias Against Corporate Defendants

- “Taking Responsibility”
  - Pros and cons
  - Tends to work most effectively in cases where medical causation is a driver
  - Legal effect
- Corporate Representative at Trial
- Voir Dire – Is the trial decided there?
- Effect of Trial Counsel?
  - Local versus national
  - Use of plaintiffs’ counsel
- Effect of Biases in the Venue

QUESTIONS
Tab 3: Speaker Biographies
Ellen K. Reisman
Partner

Ellen Reisman, who is resident in the Los Angeles office, is a senior partner in Arnold & Porter LLP’s Product Liability Litigation practice group. For over 25 years, Ms. Reisman has represented major pharmaceutical, medical device, and biotech companies in defending product liability litigation, settling product liability litigation, and taking proactive measures to prevent such litigation. She has litigated some of the largest mass tort matters in history, supervising hundreds of lawyers throughout the country. She has also been the lead negotiator for high-profile class action and inventory settlements. Ms. Reisman has also worked with her pharmaceutical and medical device clients to address US and international regulatory issues that frequently arise in parallel with product liability litigation. She has also been retained in litigation and settlement matters involving consumer products and medical aspects of environmental mass torts. Ms. Reisman also brings an in-house perspective to advising clients and litigating cases, having served as Associate General Counsel of American Home Products Corporation from 1999-2001.

Representative Matters

- From 1997-2010, she was one of the lead lawyers defending Wyeth (formerly American Home Products Corporation) in the diet drug litigation. As such, Ms. Reisman coordinated local/regional counsel defending tens of thousands of diet drug cases around the country, was a lead negotiator for Wyeth in National Diet Drug Class Action Settlement (Brown v. American Home Products, No. 99-20593, E.D. Pa.), and was the architect and lead negotiator in the Diet Drug "Global Settlement Process," resolving over 60,000 opt-out cases; and managed the Arnold & Porter team of over 100 lawyers.

- From 1990-present, Ms. Reisman has represented Pfizer in product liability and other matters involving the Bjork-Shiley Heart Valve, including the implementation of a class action settlement and international regulatory issues.

- Ms. Reisman currently represents Scientific Protein

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Laboratories and American Capital Strategies, Ltd. in product liability litigation and regulatory matters involving contaminated heparin from China.

- Ms. Reisman has served as trial counsel to a manufacturer of consumer products, in which the company was victorious in defeating claims of patent infringement.
- Ms. Reisman advises multiple pharmaceutical and consumer products clients on settlement issues and avoidance of product liability exposure.
- She has met with regulatory agencies worldwide on behalf of pharmaceutical and regulatory clients.
- She works extensively on medical and regulatory litigation expert development.

**Rankings**

- Named to the *Top 250 Women in Litigation* 2012 Edition
- Southern California Super Lawyers List 2012 for Personal Injury Defense: Products
- *PLC Which Lawyer?* 2012 recommended for Life Sciences: Product Liability
- *The Best Lawyers in America* 2011 for Mass Tort Litigation
- Legal Media Group’s *Guide to the World’s Leading Product Liability Lawyers* 2010
- *The Legal 500 US* 2009 for Product Liability and Mass Tort Defense
- *Chambers USA: America’s Leading Lawyers for Business* 2007 for Products Liability
- *American Lawyer’s* “45 under 45” 2003

**Professional and Community Activities**

- Current member of Sedona Conference Working Group on Punitive Damages.
- Board Member, Woods Services, Inc., Langhorne, Pa., a nonprofit facility for developmentally challenged children and adults.

**Presentations**
- Ellen K. Reisman "CPSA - Buyer Beware, Medical Devices" HB Litigation Conferences, Judicial Teleconference Series with Hon. Marina Corodemus, October 2011
- Ellen K. Reisman "The Ethics of Settling Class Actions" DRI Class Action Seminar, July 2011
- Ellen K. Reisman "Panel: Making the Decision to Settle and Devising Novel End-Game Strategies" ACI: 11th Annual Drug and Medical Device Litigation Conference, December 2006
- Ellen K. Reisman "Panel: Settlement Strategies for Big Time Litigation - When to Hold 'Em and When to Fold 'Em" ABA: Toxic Torts & Environmental Law Meeting - Science & The Law, April 2006
- Ellen K. Reisman "Panel: Balancing Expectations and Ethics in Class Settlements" ABA: 9th Annual Institute on Class Actions, October 2005
Nancy G. Milburn  
Partner  

Nancy Milburn is a partner in the New York office where she practices in the area of complex civil litigation. She has represented clients in product liability, mass tort and consumer protection matters, including class actions, individual actions, and government public nuisance actions. She has also handled complex commercial tort and business litigation, and bankruptcy litigation.

From 1987 to 2000, Ms. Milburn served as an Assistant United States Attorney in the Southern District of New York. She worked in the Civil Division of the US Attorney’s Office where she tried numerous civil jury and nonjury cases. She was Chief of the Tax Unit, in which capacity she handled several major Chapter 11 proceedings in U.S. Bankruptcy Court for the Southern District of New York. She served as Deputy Chief of the Civil Division from 1992-2000.

Representative Matters

- Member of trial team that won a favorable jury verdict in *State of Rhode Island v. Atlantic Richfield Company, et al.*, a lead pigment public nuisance suit filed by the Rhode Island Attorney General

- Member of team that represented Atlantic Richfield Company in a lead pigment suit brought by a state-wide class of Maryland property owners

- Represents corporation in multidistrict litigation alleging violation of state consumer protection statutes based on sales of gasoline at retail on a non temperature compensated basis

- Represented New York and California restaurant associations in challenges to the constitutionality of menu labeling ordinances that require chain restaurants to post calorie information on menus and menu boards.

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Rankings

- New York Super Lawyers 2011 for General Litigation

Articles


Presentations


Advisories

- "FDA Answers Questions on When and How to Comply With New Restaurant Menu Labeling Law" Aug. 2010
- "State and Local Menu Labeling Laws Present Compliance Challenges" Nov. 2009
- "House Passes Nationwide Menu Labeling Legislation" Nov. 2009
Heather French

Vice President and Deputy General Counsel
American Capital, Ltd.

Heather French joined American Capital, a publicly traded private equity firm, in May 2004 as Vice President and Associate General Counsel, and was promoted to Deputy General Counsel in January 2008. She is responsible for handling litigation, labor and employment and intellectual property matters at American Capital. Prior to joining American Capital, Ms. French was a Counsel in the Washington, D.C. and McLean, Virginia offices of Akin Gump Strauss Hauer & Feld LLP, where her practice focused on complex commercial and employment litigation, as well as labor and employment counseling on a myriad of issues.

Ms. French received her B.A., with distinction, from the University of Wisconsin-Madison and her J.D. from the Georgetown University Law Center, where she served as an Editor of the Georgetown Journal of Legal Ethics and a member of the Georgetown Moot Court Team. Ms. French is a member of the District of Columbia and Virginia Bars.
Judge Marina Corodemus

Judge Marina Corodemus is a retired Judge who presided over the Mass Tort Court in New Jersey for 10 years. She is now managing partner in her own national dedicated Alternative Dispute Resolution Firm handling exclusively mediation, arbitration and special master work in State and Federal Courts. She is a neutral with CPR, AAA, a Past Executive and Board Member of the Sedona Conference, ALI advisory committee for Aggregate Litigation, and chair of the Annual Mass Tort Conference with Judge Marina Corodemus.

Judge Corodemus was named the Winner of the Best Individual Mediator of 2012 by the National Law Journal.
Tab 4: Practice Overview
PRODUCT LIABILITY LITIGATION

Product liability exposures rank as key drivers defining the litigation risk profile of many US and international businesses. With more than 100 lawyers who focus on product liability litigation and counseling, Arnold & Porter LLP’s Product Liability Litigation practice has the breadth of experience and proven track record of outstanding results to assist clients in meeting such challenges. Whether they are defending against lawsuits claiming a product is defective, developing and marketing a new product, or searching for an innovative strategy to resolve an entire litigation portfolio, clients depend on our lawyers for zealous and strategic advocacy and effective solutions.

For a number of years, Arnold & Porter has been consistently ranked by Chambers as one of the leading product liability firms in the US and the UK. Our cases frequently involve novel legal concepts and issues of first impression together with complex procedural issues. We have extensive experience dealing with sophisticated scientific, regulatory, and technical issues, particularly the types of issues that emerge in litigation involving drugs and medical devices.

We are dedicated, first and foremost, to achieving our clients’ strategic business objectives. Arnold & Porter lawyers understand that litigation must be managed efficiently and cost-effectively and we partner with clients in innovative ways to achieve those goals. We also have extensive experience with programs that can greatly minimize litigation risks, such as product safety counseling, product liability audits, and product liability due diligence for major transactions.

The firm has leading practices in matters before the US Consumer Product Safety Commission (CPSC) and in matters arising under state consumer protection laws, such as California’s Proposition 65. Our team, which includes a former General Counsel of the CPSC, regularly assists clients in matters covering the spectrum of CPSC actions -- recalls, enforcement actions, and regulatory matters -- as well as in litigation that can arise from product safety matters.

California Proposition 65

Arnold & Porter has one of California's largest and most experienced Proposition 65 practices, encompassing a dozen lawyers in our San Francisco, Los Angeles, and Silicon Valley offices. Our lawyers have represented hundreds of manufacturers, distributors, retailers, and trade associations in a wide range of industries. Our lawyers often handle cases involving newly emerging legal and scientific claims, and we have experience in multiparty representation in cases concerning issues of industry-wide significance. Our lawyers have also handled litigation challenging regulations and chemical listings under Proposition 65. The lawyers in our Proposition 65 practice have strong litigation defense experience involving environmental and consumer product claims, including class actions, both in California and around the country.

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Because of the breadth and depth of our experience, we are well prepared to assist clients in litigation and in the development of compliance strategies.

Unlike many of the law firms with significant Proposition 65 practices, Arnold & Porter has leading practices in related areas of law such as consumer product safety; consumer protection law; EU product regulation; environmental law; food, drug, and cosmetic regulation; product liability litigation; and unfair competition and trade practices law. We understand how the requirements of federal regulators such as the FDA and FTC, states such as Washington and Maine, and international standard-setting bodies interact with Proposition 65 and related consumer product regulatory issues. With this comprehensive experience, we offer an integrated approach in providing legal responses to both complex and relatively straightforward issues alike.

We focus on developing and implementing clear strategies that will achieve our clients' business and litigation objectives. Along with this strategic thinking, we bring experience, dedication, and zealous advocacy to bear on our clients' Proposition 65 and chemical litigation needs.

**Chemicals and Toxic Tort**

We represent a broad spectrum of businesses around the globe that manufacture, process, distribute, and use chemical substances, pesticides, biochemicals, and antimicrobial products, including nano-scale materials and genetically modified materials. Such industries have been targeted in private litigation from a variety of sources relating to toxic tort and products liability, intellectual property, or environmental and occupational health and safety considerations. Further, these sectors increasingly are subject to a variety of existing and emerging regulatory requirements worldwide.

Our lawyers routinely advise clients concerning their obligations pursuant to the full range of national and international environmental requirements concerning the regulation of commercial chemicals, pesticides and biocides, and the industrial and consumer products that contain these substances. Our experience advising clients in these sectors covers not only litigation matters, but also the regulatory requirements of all the major pertinent federal statutes in the US, including TSCA, FIFRA, EPCRA, and OSHA, as well as state regulatory programs such as Proposition 65 in California and international requirements such as REACH.

Our toxic tort litigators have proffered, deposed, and debunked many of the field's leading experts in a multitude of scientific and other expert disciplines. We have defeated class certification in federal and state cases across the US. Our experience enables us to counsel clients on ways to minimize exposure after liability-creating conduct has occurred, but before litigation is initiated. We help clients analyze and assess exposure; consider proactive measures; unify, simplify, and ensure the accuracy of the company's public "voice"; get on top of the scientific and technical issues; and develop, if need be, an integrated, coherent litigation strategy.

Our toxic tort team has been recognized among the strongest anywhere, and several of our lawyers have been singled out for high commendation in the fields of toxic tort, class action, and product liability defense. Outside of our environmental toxic tort litigators, the firm has a deep bench of lawyers who have been lead or national counsel to numerous companies in major
mass tort litigations, including Wyeth (formerly American Home Products), Philip Morris USA and its parent Altria, Atlantic Richfield Company, The Red Cross, Motorola, and Hoffmann-LaRoche.

Class Actions
As a premier class action defense firm, we handle class actions related to consumer protection/false advertising, antitrust, product liability, securities, distributor disputes, and environmental matters, among other areas. We draw on the full litigation resources of our firm, including a deep bench of experienced class action attorneys, to litigate in state and federal courts throughout the United States. We also have substantial experience with the intersection of class action claims and arbitration clauses.

Our clients include such leading firms as ARCO/BP, Bank of America, GEICO, General Electric, GlaxoSmithKline, Honeywell, Kmart, Monsanto, Philip Morris, Roche, VeriSign, Visa, Wyeth, and many others.

Representing defendants in class action litigation demands a level of resources, strategic skill, and legal acumen that is the hallmark of our firm. We have devised many innovative ways to defeat class actions, advancing new legal theories to bar or limit plaintiffs' legal claims, extricating clients from inappropriate and unfavorable forums, and highlighting conflicts between class members.

In many class actions, the decision on class certification is pivotal, and we have succeeded in extraordinary victories. In one case alleging consumer fraud by a major retailer, Arnold & Porter came into an ongoing case and succeeded in having a class decertified. On behalf of Philip Morris, we have prevailed against class certification repeatedly, for example, defeating certification of a statewide class of smokers of "light" cigarettes in Oregon and a putative nationwide class in New York for purposes of assessing damages. We prevented class certification in suits charging an insurance company with consumer fraud, as well as in product liability and toxic tort cases.

Consumer Product Safety
The firm has leading practices in matters before the US Consumer Product Safety Commission (CPSC) and in matters arising under state consumer protection laws, such as California's Proposition 65. Our team, which includes a former General Counsel of the CPSC, regularly assists clients in matters covering the spectrum of CPSC actions—recalls, enforcement actions, and regulatory matters—as well as in litigation that can arise from product safety matters. We also assist companies with product safety matters under the jurisdiction of the National Highway Traffic Safety Administration (NHTSA) and the FDA.

Recent significant representative matters:

- **Recall Implementation.** We have assisted clients in implementing numerous voluntary recalls, covering a wide variety of products such as toys, recreational equipment, household appliances, light fixtures, fire protection devices, building materials, electronic equipment, lithium-ion batteries, furniture, cigarette lighters, and motor vehicle equipment—including a recent worldwide recall in which the notification of roughly 30 regulatory authorities was coordinated with the announcement of the recall in the US. We
do so cost-effectively, in a manner that helps our clients protect consumers, minimize business disruption, and reduce potential exposure in product liability and consumer protection act lawsuits.

- **Coping with the new reality of life under the Consumer Product Safety Improvement Act.** We are representing numerous manufacturers, distributors, and retailers of consumer products, drugs, and cosmetics in helping them to understand, comply with, and adapt their operations to address groundbreaking CPSC reform legislation that was enacted in August 2008.

- **Avoiding Unnecessary Recalls and Defeating Class Certification.** We represented a leading retailer in securing a decision from CPSC that a product our client distributed need not be recalled and in successfully defending a consumer class action that had sought to require our client to conduct a nationwide recall of the product.

- **Enhancing Internal Controls.** We have assisted manufacturers and retailers in enhancing their internal controls to help ensure compliance with CPSC notification requirements.

- **Overcoming Child-Resistant Packaging Hurdles.** We have represented several drug companies in overcoming child-resistant packaging issues, including in one case resolving a packaging concern that threatened to block introduction of the company’s first drug in the US.

**FTC and State AG Consumer Protection Enforcement**

Consumer complaints in response to marketing or promotion initiatives may trigger a letter or subpoena from a regulatory agency. Arnold & Porter has a depth of experience in handling Federal Trade Commission (FTC) and state attorneys general investigations relating to privacy, advertising, and consumer protection issues. Our team includes key alumni from the regulatory agencies, including the former FTC chairman and former head of the Bureau of Consumer Protection.

We have assisted clients from virtually every type of industry in connection with many FTC and state attorneys general investigations. We have negotiated consent orders with the FTC, as well as represented clients in federal litigation with the FTC in connection with the enforcement of those orders.

We handle the defense of such investigations aggressively and creatively, while still maintaining a professional and respectful relationship with the regulatory staff. Indeed, many of our lawyers are alumni of these agencies. Having the right regulatory team in place is even more important in today’s litigation environment because, increasingly, regulatory action leads to consumer and competitor litigation -- and one problem becomes many.

**Pharmaceuticals**

Arnold & Porter LLP is a leader in defending companies in mass tort and product liability litigation involving pharmaceutical products. The firm regularly serves as national counsel to our pharmaceutical clients, managing and coordinating the defense of large-scale, high-stakes products liability litigation across the United States. We have successfully litigated and tried cases in many of the toughest jurisdictions in the country and against some of the most prominent plaintiffs’ attorneys.
Experience. We have substantial experience in mass tort and personal injury litigation involving pharmaceutical products and medical devices, including class actions, MDL proceedings and state coordinated proceedings. Our lawyers have years of experience in the major issues companies face in pharmaceutical product liability litigation, including electronic discovery, making the most of the learned intermediary defense, defending against medical monitoring and consumer fraud claims, federal preemption defenses, and innovative settlement strategies.

Strategic thinking. Arnold & Porter lawyers recognize that there is no recipe for handling pharmaceutical mass tort litigation, and we approach each case from a fresh and creative perspective. We apply an innovate mindset at every juncture of litigation, including strategies for early case disposition, minimizing cost and burden in discovery, using the available legal tools to maximize chances of success at trial, and employing cutting-edge settlement techniques.

Trial focus. We have deep trial experience in both federal and state courts, with a proven record of successfully defending our clients at trial in pharmaceutical product liability cases. We plan our trial objectives early and approach every phase of a case with those objectives in mind.

Medical and scientific testimony. Our lawyers have extensive experience with the medical and scientific aspects of pharmaceutical product liability litigation, such as working with medical expert witnesses. We understand that developing the best-qualified expert witnesses is only part of the equation, and that success requires scientific and medical testimony to be presented in an understandable and persuasive way to judges and juries.

Multidisciplinary approach. Arnold & Porter litigates from a broad base of knowledge about the regulatory and business issues facing pharmaceutical and medical device companies. Our litigators work closely with and are able to draw from our firm’s wide-ranging FDA and healthcare practice.

Business savvy. Our lawyers have a solid understanding of the technical, regulatory, and business issues that affect our pharmaceutical clients. Based on this foundation, we partner with our clients to develop litigation strategies that best serve their business priorities and minimize costs.

Representative Pharmaceutical/Medical Device Product Liability Matters

Arnold & Porter LLP has been a leader in pharmaceutical and medical device product liability cases for nearly three decades. Representative matters include:

- National counsel to Bristol-Myers Squibb and Sanofi-Aventis US in litigation related to Plavix.
- National counsel to Bristol-Myers Squibb in litigation related to Abilify, including consumer fraud claims.
- National counsel to Wyeth on all aspects of the diet drug litigation. Over 80 state and federal jury and bench trials, many first-chaired, throughout the United States. Many resulted either in defense verdicts or nominal recoveries for plaintiffs.
- Counsel for Scientific Protein Laboratories and American Capital in Heparin litigation, including international fact investigation.
- National counsel to American Red Cross in the HIV litigation. Defended hundreds of cases nationwide, including trying five cases to defense verdicts.
- Co-national counsel to Pfizer Inc./Shiley Incorporated in the Bjork-Shiley Convexo-Concave (BSCC) mechanical heart valve litigation, including negotiation and implementation of a class action settlement.
- National counsel for Hoffmann-La Roche in the Versed litigation.
- National counsel for Pfizer Inc. in the Feldene litigation.