

Notable Current and Past Product Liability and Mass Torts Representations

APPEALS

- Quinn Emanuel achieved a significant victory for its client **Hyundai** by successfully petitioning the Ninth Circuit en banc to overturn an unfavorable ruling by the initial panel. Quinn Emanuel represented Hyundai in multi-district class action litigation that was resolved at the district court through a class settlement. After a Ninth Circuit panel issued a decision overturning the district court's approval of the class settlement, we successfully petitioned the Ninth Circuit for rehearing en banc. The en banc court affirmed the district court's approval of the settlement allowing the nationwide resolution to move forward.
- California utilities face increasing and potentially crippling litigation exposure from wildfires. In a major appellate victory for **PG&E** in the California Court of Appeal for the Third District, Quinn Emanuel greatly limited that exposure by eliminating the threat of punitive damages against PG&E for the 2015 Butte Fire. The court held that, in light of PG&E's extensive vegetation management program along its 135,000 miles of powerlines, PG&E could not possibly be found to have consciously disregarded the risk of tree-related wildfires, as would be required to award punitive damages. In addition to saving PG&E from potentially billions of dollars in punitive damages, the decision creates important new California law protecting companies that institute risk management programs from the threat of punitive damages in the future.
- The California Court of Appeals affirmed summary judgment for our client **Coty Inc.** in a case alleging that Coty's talcum powder products contained asbestos. Invoking evidentiary requirements previously imposed primarily in criminal cases, QE successfully persuaded the trial court to exclude a declaration from the plaintiff's expert, who claimed to have found asbestos in a container of Coty talc. The Court of Appeals affirmed this ruling, which makes it difficult for plaintiffs to present direct evidence of exposure in asbestos contamination cases.
- We represent a **major consumer products company** in product liability personal injury cases. The Plaintiff alleged that talc is naturally contaminated with asbestos, and that a cosmetic talcum powder product sold by our client exposed the Plaintiff to dangerous levels of asbestos and caused the Plaintiff's mesothelioma. Our client is defending similar cosmetic talcum powder cases across the country, and disputes that its cosmetic talcum powder product ever contained asbestos. In June, 2016, the jury in the Alfaro case found the Plaintiff was not exposed to asbestos from our client's cosmetic talcum powder. Plaintiff appealed the verdict along with certain pre-trial evidentiary rulings narrowing the scope of opinions Plaintiff's product contamination and exposure expert could offer at trial. In a unanimous decision, the California Court of Appeal

affirmed this jury verdict and the pretrial evidentiary preclusion orders. This case is significant for at least two reasons: (1) it is the first talcum powder verdict on behalf of our client to go up on appeal and (2) this is the first appellate opinion in California affirming a defense verdict in a talcum powder case. The Court essentially adopted our client's position on key evidentiary issues and endorsed science-based defenses. Quinn Emanuel attorneys played a critical role in developing and presenting these evidentiary preclusion motions pretrial and exposing Plaintiff's product contamination and causation arguments at trial as pseudo-science. Finally, Quinn Emanuel attorneys successfully defended our client's pre-trial and trial victories by obtaining a unanimous affirmance on appeal of the verdict and evidentiary rulings in favor of our client.

- We represented **Pfizer** in hundreds of asbestos cases alleging that Pfizer is liable as the "apparent manufacturer" of products manufactured by its former subsidiary Quigley Company. Plaintiffs pursued this "apparent manufacturer" theory because all other claims against Pfizer involving Quigley products were enjoined and channeled to a bankruptcy trust, which Pfizer funded with approximately \$1 billion. Pfizer successfully obtained summary judgment in every "apparent manufacturer" case in which we served as counsel, including cases in state and federal court in Maryland, Pennsylvania and Washington. On May 31, 2016, in a reported decision, the Maryland Court of Special Appeals unanimously affirmed summary judgment, holding that Pfizer was not an "apparent manufacturer" of Quigley products as a matter of law. This decision effectively wiped out over 500 pending cases in Maryland state court and sets a valuable precedent for Pfizer as it continues to fight these cases in other courts around the country.
- We obtained a unanimous decision from the U.S. Court of Appeals for the Second Circuit, affirming partial judgment in a False Claims Act case against **Pfizer**. In this qui tam action, a former employee alleged that Pfizer promoted Lipitor, its top-selling cholesterol-lowering medicine, "off-label," claiming that Pfizer sales representatives and marketing materials promoted Lipitor for use by certain patients whose cholesterol levels were not low enough to warrant treatment based on national cholesterol guidelines. The Second Circuit affirmed the district court's decision to dismiss these claims, rejecting the relator's entire theory of "off-label" marketing. It concluded that cholesterol guidelines summarized in the label merely "provide[d] advice and (unsurprisingly) guidance, 'not mandatory limitation.'" The Court also questioned whether the conduct alleged – off-label marketing by sales representative or through promotional materials—could even constitute a false claim to the government.
- We successfully represented **Colgate-Palmolive Co.** in an appeal to the U.S. Court of Appeals for the Fourth Circuit challenging the denial of Colgate's motions to vacate orders remanding two asbestos-related cases to state court. The court of appeals, sitting *en banc*, agreed with our argument that 28 U.S.C. 1447(d)'s prohibition on "review[]" of remand orders does not preclude "vacatur" of a remand order pursuant to Fed. R. Civ. P. 60(b)(3) due to fraud, misrepresentations, or other misconduct in procuring that order. This ground-breaking decision provides a powerful new tool for the defense bar and ensures that federal courts are not impotent when plaintiffs and their counsel seek to avoid federal jurisdiction through misconduct.

- Our attorneys won one of the most important business cases heard by the U.S. Supreme Court for **State Farm**, *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), which set constitutional limits on punitive damage awards.
- We obtained a 9-0 win in the U.S. Supreme Court for **Shell Oil** in *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659 (2013), which held that the Alien Tort Statute does not apply to alleged violations of international law that take place within the sovereign territory of a foreign nation.
- We obtained a 6-2 win in the U.S. Supreme Court for **Wyeth** in *Bruesewitz v. Wyeth*, 131 S. Ct. 1068 (2011), which held that the National Childhood Vaccine Injury Act expressly preempts state-law design-defect claims against manufacturers of childhood vaccines.
- Our attorneys obtained a 7-2 win in the U.S. Supreme Court for **Metro-North Commuter Railroad Company**, in *Buckley v. Metro North*, 521 U.S. 424 (1997), a landmark case holding that asymptomatic workers exposed to asbestos cannot recover for emotional distress and medical monitoring.

CURRENT REPRESENTATIONS

- We represent a **large consumer products manufacturer** (“the Company”) in a case involving allegations of asbestos contamination in its talcum powder product. With no direct evidence that Ms. Brandt was ever exposed to asbestos from any talcum powder she personally used, Plaintiffs attempted to bridge the evidentiary gap by proffering the testimony of a geology and microscopy expert to testify that Ms. Brandt was exposed to asbestos at levels substantially “above background” from her use of the talcum powder product and the testimony of a pathology expert to testify that her use of the talcum powder product was the sole cause of disease based upon his “above background” findings of the same types of mineral fibers in Ms. Brandt’s biopsied tissue as he found in the talcum powder samples he tested. Following a four-day evidentiary hearing in which QE attorneys obtained devastating admissions from both proffered experts and offered the direct testimony of the Company’s own expert materials science expert demonstrating that Plaintiffs’ proffered experts failed to select and adhere to generally accepted methodologies in formulating their opinions, the Court issued a 22-page Memorandum and Order adopting QE’s rationale for exclusion and granting our client’s *Frye* motions in their entirety.
- We are lead trial counsel for a **major consumer products company** in cases venued throughout the country in which individuals claimed to have contracted asbestos-related diseases from body talcum powders formerly manufactured by our client. Since we became involved in 2010, through aggressive litigation strategy, we have achieved dismissals in many cases, held steady the total number of remaining case filings, and have not suffered a loss in any. In 2013, we won a *Frye/Parker* hearing challenging Plaintiffs’ testing experts in the New York City Asbestos Litigation docket. The judge presiding over that motion noted that the victory was “unprecedented” in New York. Last year, we tried three cases to juries in Los Angeles, and our client obtained complete

defense verdicts in all three cases. We also obtained a summary judgment victory in San Francisco last year.

- We were lead national counsel for **Pfizer Inc.** and **Greenstone LLC** in an MDL proceeding in federal court in Pennsylvania alleging that the use of certain prescription antidepressant medications during pregnancy caused birth defects to infants exposed *in utero*.
- We are representing **SEACOR Holdings, Inc., O'Brien's Response Management, L.L.C.,** and **National Response Corporation** in a large number of cases relating to the DEEPWATER HORIZON oil spill clean-up, all of which have been transferred to and consolidated with an MDL in the U.S. District Court for the Eastern District of Louisiana. In the MDL, the court named us as defense liaison counsel for all defendants that participated as clean-up responders during the response; thousands of claims have been filed against these responders, who were engaged in a variety of aspects of a highly complex clean-up in the Gulf of Mexico, including dispersant operations, skimming of oil, *in situ* burning, vessel decontamination, and onshore/beach clean-up efforts. We previously obtained a significant victory for SEACOR in *In re: Oil Spill by the Oil Rig DEEPWATER HORIZON in the Gulf of Mexico, on April 20, 2010*, No. 2:10-MD-2179, 2011 WL 4829905 (Oct. 12, 2011), *aff'd*, No. 11-31172, 11-31178, 11-31179, 11-31180, 11-31181, 11-31183, 2012 WL 6203601 (5th Cir. Dec. 13, 2012), when the United States Court of Appeals for the Fifth Circuit affirmed the MDL court's dismissal of all claims related to SEACOR vessels' emergency response efforts, including their efforts to extinguish the fire aboard the DEEPWATER HORIZON rig, on foreseeability grounds.
- We are representing a **major chemical manufacturer** with respect to multiple mass tort claims alleging that toxic chemicals have migrated from a CERCLA cleanup site, purportedly causing personal injuries and diminished property values as to over 1,000 people.
- We represented **Pfizer** in litigation alleging occupational exposure to asbestos products manufactured by Pfizer's former subsidiary, Quigley Inc, obtaining summary judgment on behalf of Pfizer. Granting Pfizer motion for summary judgment, the federal district court held that the doctrine of apparent manufacturer was inapplicable because Pfizer had nothing to do with the product beyond applying its trademarks to some of the sales and marketing materials. This order potentially impacts hundreds of similar claims.
- We are representing **Forest Pharmaceuticals, Inc.** and **Forest Laboratories, Inc** in personal injury litigation alleging that the use of Forest's prescription medications during pregnancy caused birth defects to infants exposed *in utero*.
- We currently represent **Vintage Pharmaceuticals, LLC, an affiliate of Endo,** in connection with hundreds of claims alleging personal injuries arising from Vintage's manufacture and distribution of certain generic prescription medications.

- We served as national counsel and lead MDL counsel for **Pfizer** in the defense of thousands of product liability personal injury actions alleging that one of Pfizer’s leading medications caused plaintiffs to develop type 2 diabetes.
- We are currently representing **Intuitive Surgical** with respect to medical device personal injury claims relating to its robotics surgical system.
- We represent affiliates of **Koch Industries** in defense of class actions and governmental lawsuits relating to the storage of petroleum coke, fugitive dust emissions, and state and municipal regulatory challenges.
- We served as lead trial counsel for **Pfizer** in cases around the country related to the use of a medication used to treat gastroesophageal reflux disease. The cases raised cutting edge issues related to the liability of innovator pharmaceutical companies for uses of generic drugs in the wake of the then new law from the U.S. Supreme Court in *Pliva, Inc. v. Mensing* (June 2011). On behalf of Pfizer, we successfully defeated plaintiffs’ assertion of the novel theory of “innovator liability” under which they sought to hold brand-name manufacturers like Pfizer liable for injuries allegedly caused by generic products. Although innovator liability has received mostly negative treatment in state and federal courts elsewhere, it has met with some success in a few state courts, and was untested in New York state court (where Pfizer is headquartered) at the time. The New York Supreme Court granted our motion to dismiss the claims as a matter of law, agreeing with our argument that Pfizer did not owe a duty of care to a consumer of a generic medication manufactured by another company.

NOTABLE PAST REPRESENTATIONS

- We obtained summary judgment for our client, a **major consumer products manufacturer**, in a case alleging that the plaintiff developed mesothelioma as a result of her use of our client’s cosmetic talcum powder product. The plaintiff had proffered testimony from microscopy experts who claimed to have found asbestos in talc drawn from vintage talcum powder containers, and from an industrial hygiene expert who claimed the plaintiff’s exposure to asbestos from talcum powder was sufficient to cause her disease. After we successfully moved to exclude key testimony from these experts and others, the court granted our motion for summary judgment.
- We obtained an order excluding Plaintiff’s product defect and causation experts under Daubert followed by an order granting summary judgment on behalf of our Fortune 500 **consumer products company** client in a case involving allegations of asbestos contamination in talcum powder.
- We obtained summary judgment on behalf of our Fortune 500 **consumer health products company** client in a case involving allegations of asbestos contamination in talcum powder.

- In the federal multidistrict litigation, *In re Zolofit*, several hundred plaintiffs alleged that use of Zolofit, an antidepressant sold by Pfizer, during pregnancy caused children to be born with birth defects. We, as national and lead counsel for **Pfizer**, led a defense team that secured an important appellate ruling in the U.S. Court of Appeals for the Third Circuit, in which the court unanimously affirmed the exclusion of the plaintiffs' key causation expert evidence under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and entry of summary judgment in favor of Pfizer.
- In *Porter v. SmithKline Beecham Corp.*, the plaintiffs alleged that use of Zolofit, an antidepressant sold by Pfizer, during pregnancy caused their child to be born with a birth defect known as omphalocele. We, as national and lead counsel for **Pfizer**, led a defense team that secured an important appellate ruling in the Pennsylvania Superior Court, in which the court unanimously affirmed the exclusion of the plaintiffs' key causation expert evidence under the Pennsylvania Rules of Evidence (which adopts the standard for expert evidence set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)) and entry of summary judgment in favor of Pfizer.
- We represented **Pfizer** in litigation alleging that use of Zolofit during pregnancy has caused birth defects in some children. On December 23, 2016, the Mass Litigation Panel of West Virginia entered an order granting summary judgment in the last two West Virginia cases. At the outset, there were almost 40 cases pending before the Panel, filed by a Texas attorney seeking to avoid the federal multidistrict litigation. In 2014, we had successfully obtained dismissal on grounds of forum non conveniens of 29 cases, while others were voluntarily dismissed, leaving only 4 cases remaining in West Virginia state court. Earlier this year, we successfully moved for summary judgment in two of those cases. The remaining two were scheduled for trial in mid-January, but as a result of consistent pressure applied by us during discovery, Plaintiffs withdrew their liability expert and we moved for summary judgment. Rejecting the Plaintiffs' arguments that an expert witness on the adequacy of the Zolofit label was not required, the Panel granted our motion for summary judgment.
- We represent a **major consumer products company** in product liability litigation regarding a cosmetic talcum powder product once manufactured and sold by our client, and recently received a grant of summary judgment on liability on its behalf. Plaintiff alleged that talc is naturally contaminated with asbestos, and that a cosmetic talcum powder product sold by our client exposed Plaintiff to dangerous levels of asbestos and caused the Plaintiff's mesothelioma. While our client disputes that its cosmetic-grade talc was ever contaminated with asbestos, even taking all of the Plaintiff's allegations as true, Plaintiff only alleged that some, but not all, talcum powder product containers were contaminated. Under well-settled California law, such evidence is too speculative to create a triable issue of fact regarding whether the plaintiff was exposed to asbestos in a product and thus insufficient for a plaintiff to meet her burden at summary judgment. The Superior Court for San Francisco County agreed and granted summary judgment in favor of our client. This is a critical victory for our client and will impact both pending and potential future cases filed against them in California and potentially other jurisdictions.

- We represent a **major consumer products company** in product liability personal injury litigation regarding a cosmetic talcum powder product once manufactured and sold by our client, and recently received a full defense jury verdict on its behalf in the Superior Court for Los Angeles County. Plaintiff alleged that talc is naturally contaminated with asbestos, and that a cosmetic talcum powder product sold by our client exposed Plaintiff to dangerous levels of asbestos and caused the Plaintiff's mesothelioma. Our client disputes that its cosmetic-grade talc was ever contaminated with asbestos. This is Quinn Emanuel's third-straight defense jury verdict on behalf of this client in six months. After each verdict, the jurors have credited the strength and credibility of the defense experts, and Quinn Emanuel's cross-examinations that exposed the analytical gaps in Plaintiff's theories of the key issues of product defect and causation.
- We represented **Pfizer Inc.** in a class action challenging the efficacy of its highly successful antidepressant, Zoloft. Plaintiff claimed she had taken the medication for three years but it had not worked. She sought the return of all monies paid by everyone in California who had taken Zoloft since it was approved in 1991. On August 29, 2014, Judge Lucy Koh of the Northern District of California granted Pfizer's motion to dismiss, with prejudice.
- Our attorneys have served as national coordinating counsel for **State Farm** for hundreds of lawsuits arising out of Hurricane Katrina (and now Storm Sandy), and directed the legal defense at the appellate and trial court levels; representative victories include *Wiley v. State Farm Fire & Cas. Co.*, 538 F.3d 206 (5th Cir. 2009); *Broussard v. State Farm Fire & Cas. Co.*, 523 F.3d 618 (5th Cir. 2008), *Tuepker v. State Farm Fire & Cas. Co.*, 507 F.3d 346 (5th Cir. 2007), and *In re: Katrina Canal Breaches Litig.*, 495 F.3d 191 (5th Cir. 2007), *cert. denied*, 128 S. Ct. 1231 (2008).
- Our attorneys successfully represented **State Farm** in federal and state appellate and trial courts across the country, including the supervision and preparation of winning appellate briefs in the Illinois Supreme Court in *Avery v. State Farm Mutual Automobile Insurance Co.*, 835 N.E.2d 801 (Ill. 2005), which resulted in the reversal and dismissal of a \$1.1 billion judgment against the insurer, and in *Hill v. State Farm Mutual Automobile Insurance Co.*, 166 Cal. App. 4th 1438 (2008), which affirmed summary judgment for insurer in a certified nationwide class action contending the insurer had up to \$47 billion in excess surplus.
- Our attorneys represented **Bovis Lend Lease** and secured a favorable outcome in the World Trade Center MDL mass tort litigation involving thousands of claims made by emergency workers arising out of the debris removal operations following the terrorist attacks of September 11, 2001.
- Our attorneys represented and provided crisis management counseling to a **multinational company** in connection with the Fukushima, Japan nuclear accident.
- We were trial counsel for **Wyeth** in a nationwide bellwether class action in the State of Louisiana, in which plaintiffs claimed that an implantable birth control manufactured by

Wyeth was defectively designed. On the eve of trial, we secured a global settlement ending all matters on terms favorable to defendant.

- Our attorneys represented a **major drug manufacturer** in Fen-Phen (diet drug) litigation involving thousands of individual and class action lawsuits, alleging a variety of injuries, including valvular heart disease and pulmonary hypertension. No judgment was ever entered against our client, and it did not pay any money for any settlements.
- Our lawyers secured a significant victory for **Amgen, Inc.** when the U.S. Court of Appeals for the Ninth Circuit affirmed a district court ruling dismissing with prejudice the plaintiffs' claims that Amgen allegedly engaged in a scheme to promote off-label uses of Amgen's anemia medicines.
- We obtained a significant victory on behalf of **G-I Holdings, Inc.** Chief United States District Judge Garrett E Brown, Jr. and Bankruptcy Judge Rosemary Gambardella, both of the District of New Jersey, confirmed the company's plan of reorganization, which included a global settlement with representatives for present and future asbestos claimants, its largest creditor constituency, to establish a \$775 million asbestos trust under 524(g) of the bankruptcy code.
- Our attorneys represented **Pfizer** and two of its subsidiaries, **Wyeth** and **Pharmacia & Upjohn Company**, in the affirmance of a summary judgment ruling dismissing claims brought against the company in connection with its hormone therapy (HT) medicines. We subsequently were able to leverage this and other victories to achieve a favorable settlement of thousands of individual claims.
- Our attorneys were lead national counsel for **Chiron** with regard to a series of matters relating to the production of its flu vaccine. The allegations led to Congressional, SEC, and federal criminal investigations, as well as product liability and shareholder derivative lawsuits.
- Our attorneys defended **Toyobo**, a major Japanese fiber manufacturer, in federal and state False Claims Act cases, nationwide consumer fraud class actions, foreign claims, suits and investigation by states attorneys general, and personal injury claims arising from the sale of a high-performance fiber used in the manufacture of hundreds of thousands of bullet-resistant vests.
- Our attorneys represented **Cooper Tire** in defense of more than 30 class actions nationwide and a multi-district litigation that arose from claims asserted under state consumer fraud statutes involving the sale of over 170 million tires.
- Our lawyers secured a victory for **Pfizer** in its first personal injury case to go to trial in an MDL involving a neuropathic pain medication. The plaintiff, who alleged the medicine caused the decedent's suicide, voluntarily dismissed the case, with prejudice, after just one day of trial.

- Our attorneys represented **Pfizer** in its successful motion to dismiss a *qui tam* action under the False Claims Act in connection with allegations that the company improperly promoted one of its leading medicines for off-label use. Our attorneys previously secured a dismissal of RICO and consumer fraud claims brought against Pfizer making similar allegations.
- We were lead counsel to **Chartis** in multi-district litigation and several related class actions involving thousands of claims related to defective Chinese manufactured drywall, as well as litigation seeking compensation from the Chinese and German manufacturers of the defective products.
- Our attorneys represented **Pfizer** in its successful motion to dismiss RICO claims alleging Pfizer improperly promoted off-label use for a pain medication.
- We represented **The Home Depot** in a consumer class action and defeated a request for a preliminary injunction and class certification in a federal court action seeking to enjoin The Home Depot from nationwide sales of an allegedly dangerous consumer product.
- We represented major real estate developers, including **KB Home, Dell Webb**, and others, in numerous construction defect class actions and actions seeking recovery for personal injuries allegedly caused by such defects, mold, and related injuries.
- Our lawyers successfully obtained decertification of a nationwide class action alleging that **Compaq's** notebook computers were defectively designed. The decision remains a cornerstone of class action jurisprudence in Texas and elsewhere. *See Compaq Computer Corporation v. LaPray*, 135 S.W.3d 657 (Tex. 2004).
- Our product liability partners bring substantial additional experience to our practice, garnering defense victories (jury verdicts, dismissals, and favorable settlements) for: **DePuy AcroMed Corp.** (medical devices); **AcroMed Corp.** (bone screws); **Mentor Corporation** (breast and penile implants); **Union Pacific Railroad** in FELA litigation (asbestos); **TRW** (steering gears); **American Broadcasting Corporation** (accident); **Lincoln Electric** (welding electrodes); **General Motors** (“no air bags”); and **Cooper Tire** (tires). In addition, one of our partners, as General Counsel for a multinational pharmaceutical company, was ultimately responsible for handling product liability lawsuits globally. Among them were over 900 suits filed in the U.S. alleging a link between the ingestion of a product used for decades by the OTC industry, and hemorrhagic strokes. Six cases were tried to a jury, none of which resulted in a plaintiffs' verdict: The defense won four cases, and the jury was not able to reach a verdict in two cases. All cases were later resolved and the litigation is over.