

Businesses continually strive to strike a balance between furthering their objectives and managing the accompanying risks. Yet, even with the soundest strategies, this delicate equilibrium can be jarred by a sudden catastrophe that threatens business momentum, customer confidence and even a company's financial foundation.

Combining proactive defense capabilities with years of proven litigation experience, Wilson Elser handles crisis management and emergency response for countless clients. Specifically with respect to **transportation accidents, product contamination and recalls, cyber-attacks** and other **catastrophic events**, we offer the highest-caliber representation in the industry and among insurance markets.

For several of our practice areas and in many key venues nationwide, we assemble "go teams," comprising combinations of attorneys, accident reconstructionists, independent adjusters, investigators, forensic experts, diagnostic engineers, criminal defense attorneys, public relations experts and other specialists. They typically are on site and fully engaged within hours – or even minutes – of an event. As best serves our clients' needs, we also draw on the vast resources of the broader firm, including 41 offices in the United States, another in London and dozens of key international locations afforded by our founding membership in Legalign Global™.



**Wilson Elser assembles and mobilizes appropriate attorneys and support personnel in short order following a catastrophic event and before the onslaught of related claims. In some instances, including major hurricanes, floods and other natural disasters, we are able to take steps prior to the event, strengthening our arguments with important predictive information and increasing the likelihood of favorable resolutions for our clients in ensuing cases.**

Our approach is based on 40 years' experience in related matters, a national footprint comprising 41 offices and an ability to work "cross-practice" with colleagues firmwide. These collaborations frequently spawn innovative resolutions to some of the challenging issues arising from high volumes of related law suits

We make frequent use of alternative dispute resolution (ADR) in defending catastrophic-event claims. Our mediation and arbitration services reduce claim and loss expenses and can avoid extra-contractual claims. As best advances our clients' defense, we conduct mock trials and engage fully in jury selection to shape the most effective strategy, overcome prejudices and assess exposure.

We also frequently call on the skills of specialized investigators and forensic experts in such areas as engineering design, biomechanics, full-scale burn testing, accident reconstruction, forensic failure analysis and information technology.

## INCIDENT SCENE MANAGEMENT

A swift, coordinated and proactive response during the first 24-48 hours following a catastrophe is critical. It very often determines the extent of adverse business impact, potential government enforcement actions or the outcome of subsequent litigation. Wilson Elser maintains a firmwide emergency response capability that clients can rely on when confronting the challenges created by catastrophic events, including:

- Major storms and resulting floods
- Earthquakes
- Construction accidents
- Railroad accidents
- Trucking and cargo accidents
- Aviation accidents
- Premises security breaches
- Transportation and motor carrier accidents
- Cyber breaches
- Elevator/escalator accidents
- Drilling rig, gas plant, refinery and pipeline fires and explosions
- Toxic spills and chemical discharge.

We seek cost-effective results for our clients through early assessment and negotiations, alternative dispute resolution methods or summary judgment motions. When early resolutions are not possible, we have the skill and experience to resolve cases in court. In fact, we count among our ranks some of the finest trial attorneys in the country.

## GO TEAMS

Upon notification of an incident at any time of the day or night, our "go teams" respond immediately to counsel clients, interview witnesses and direct the preservation of evidence under work product privileges, which may prove vital to the defense of claims. We determine the facts and the need for specialized attorney representation. We work with the clients to contain business impacts and help ensure that all litigation-related issues are addressed on an expedited basis.

When necessary during the course of our response, we work with the media through our media crisis management specialists to curtail uninformed speculation and safeguard our clients' reputations and businesses.

## INTERNAL & GOVERNMENT INVESTIGATIONS

When catastrophic events occur, government inquiries frequently follow. Our attorneys are (often literally) at our clients' sides through every stage of internal investigations as well as investigations by regulatory agencies. We actively respond to requests for information and negotiate the resolution of citations. We also handle document collection, walk-throughs, testimony, preservation of attorney-client privileges and work product protections. In instances of aviation or railroad-related investigations, we assist clients in adopting proven processes and procedures and serve as liaison to key regulatory agencies, most notably including the National Transportation Safety Board (NTSB). We are intimately familiar with the NTSB "party process" and routinely facilitate the selection of party coordinators and representatives, the flow of information and documents, and representation at NTSB interviews. For accidents involving surface/ground transport of people and/or cargo, we carefully investigate Department of Transportation compliance relative to possible safety violations, hours of service, driver competence and other related concerns.

With respect to catastrophes impacting workplace safety and health or involving reportable spills and releases, our attorneys have a commanding knowledge of applicable Occupational Safety & Health Administration (OSHA) regulations.

## LITIGATION

Our trial-tested attorneys handle disaster-related litigation of any type for clients of any size, from privately held or family businesses to Fortune 500 companies. That said, we understand that a "one size fits all" approach to handling litigation ensures only a poor fit with client objectives. This is why we undertake each matter with a critical eye, assessing the case individually and weighing the available options. We begin with a risk assessment that weighs settlement, alternative dispute resolution and trial options; and devise strategies designed not only to win at trial but also to prepare for or withstand possible appeals.

When early resolutions are not possible, we do not hesitate to try cases in court. Our capable team of trial attorneys, among some of the most accomplished in the country, enjoys an enviable record of advancing our clients' objectives before federal and state judges.

## Cyber Breach

Decisions made immediately following a data breach can significantly impact outcomes. Following reports of a breach, our attorneys begin a triage process – typically on site – designed to limit exposure. Every breach has a distinctive set of characteristics and surrounding circumstances and our experience allows us to respond swiftly and categorically.

We regularly conduct forensic analyses, deploying experts specially chosen to enhance protection of privileged and confidential communications, determine the cause of the breach and identify what data was at risk. Results guide the implementation of measures designed to comply with legal obligations and prevent additional data intrusion.

As dictated by the nature of the breach, we will communicate with operational, legal and executive leaders; advise if and when to involve law enforcement; craft notification letters based on the varying requirements of states and countries; provide recommendations on assistance to individuals whose sensitive information may have been exposed; and deploy public relations strategies in communicating with stakeholders and the press.

**Case Studies**

**Wilson Elser is unafraid to take on the most challenging catastrophic casualty cases. We have been involved in the legal aftermath of several high-profile natural and man-made disasters. Our engagement is swift – with “go-teams” immediately on scene – and our strategies remarkably effective in mitigating damages to the insurance carriers we represent and their insureds.**

■ **Chinese Drywall Class Action Litigation.** We represented the insurer of major domestic homebuilders in litigation involving thousands of claimants, including lawsuits commenced by individual homeowners and class actions. After our initial assignment, our client was named along with other insurers in a class action commenced by homeowners in the Eastern District of Louisiana. We jointly arrived at a strategy designed to (1) avoid adverse decisions that could negatively affect the client’s positions in other litigation or positions it might take in the future, (2) preserve the effectiveness of its arbitration clauses contained in the policies and (3) analyze coverage positions that might negatively impact subrogation rights. Appointed to the Insurers’ Steering Committee, we contributed significant input in the drafting of the settlement agreement, thus advancing our client’s claims objectives.

■ **Superstorm Sandy.** When Superstorm Sandy was but a troublesome blip on the radar, Wilson Elser began planning defense strategies for its clients. As media attention started to grow regarding the storm’s trajectory, we mobilized our paralegals, attorneys and experts to begin recording important information that, among other findings, informed our understanding of waterlines and wind speeds at different elevations that impacted insured structures. Following the storm, we consulted with meteorologists and engineers to more precisely define this data, critical to our evaluation of incoming claims. Our vigilant attention to the development of the storm in real time assisted us in addressing critical coverage issues that developed in litigation.

■ **Massey Energy v. Houston Casualty Co., et al.** A slurry pond at a major Kentucky coal mine owned by Massey collapsed, flooding multiple mines and causing significant damage to the facility and business interruption losses. Massey’s claims against its insurers exceeded \$50 million. We were retained at the claim stage to represent a consortium of insurers, which agreed (following our investigation) to offer an eight-figure amount to settle the matter, although this was far from Massey’s claimed damages. Litigation ultimately ensued. Significantly, Massey’s counsel did not bring a bad faith claim as they admitted that, notwithstanding our insurers’ refusal to pay any portion of the claim, we had always operated in good faith. A favorable settlement was ultimately reached on behalf of our clients.

■ **Fatal Construction Accident.** A 30-year-old welder sustained fatal injuries while performing work in connection with a project to alter the water filtration system at a client’s industrial facility. Wilson Elser was contacted and immediately mobilized an emergency response team to investigate the accident and contemporaneously preserve crucial evidence, arriving at the scene at the same time as the OSHA investigators. We collaborated closely with OSHA throughout the investigation, which included participation in OSHA’s interviews of our client’s employees and ensuring that information and documents prepared in furtherance of our internal investigation were protected by the attorney-client privilege. The team’s efforts allowed swift formulation of the client’s defense and pursuit of risk transfer from the independent contractors hired to perform the subject project. Ultimately, the final OSHA report confirmed no willful or egregious behavior on the part of our client. The \$10 million settlement demand, on behalf of the decedent and his widow, was reasonably resolved for \$4 million, with some contribution by the contractor defendant based on its contractual obligation to indemnify our client.

