

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 has an enviable 40-year track record defending product liability and mass tort actions. Our practice is among the largest and most diversified in the United States, with seasoned product liability litigation and government/industry compliance attorneys in 41 offices across the United States.**

We draw on this experience and business savvy to guide clients in a coordinated response to any product crisis, which these days usually has international implications. We leverage our participation in Legalign Global, an international alliance of leading law firms, to ensure a coordinated response to clients in crisis not only in the United States but also in foreign jurisdictions.

We represent U.S.-based businesses and have for decades been at the forefront of representing foreign manufacturers confronting exposures arising from a variety of U.S. product liability lawsuits. In addition, we have counseled clients across a broad spectrum of industries and products on government compliance matters. Our clients include domestic and international corporations headquartered in North and South America, Europe and the Far East.

## Representative Industries

- Agricultural and farm equipment
- Aircraft and aviation products
- Automotive products
- Boats and marine products
- Chemical and toxic products
- Children's products
- Consumer electronics
- Construction equipment / building products
- Firearms
- Food products
- Household appliances
- Industrial machinery
- Medical devices
- Mining equipment
- Office equipment
- Pharmaceuticals
- Recreational products
- Recreational vehicles
- Scaffolding, cranes and aerial devices
- Sporting goods and equipment
- Technology and electronic products

## PRODUCT LIABILITY CRISIS MANAGEMENT

Product liability exposures are a major factor in the litigation risk profile of many U.S. and global corporations. If not defended properly from the outset, complex product liability matters and mass torts can move quickly from distracting, to unmanageable, to crippling – or worse. These matters can extend beyond legal defense to the business effects on risk management, insurance coverage, brand image, financing, financial reporting, corporate governance, future corporate transactions and communications to shareholders. Moreover, they rarely are limited to one court or jurisdiction. A single claim may have nationwide and often international implications.

Frequently, Wilson Elser is hired to try large, complex product liability matters, mass torts in various jurisdictions and cases involving catastrophic injuries. Our strategies for defending class action litigation are varied and always in keeping with our clients' objectives.

Possible actions include:

- Obtaining early dismissals of the named plaintiffs' claims through motions to dismiss based on such defenses as the statute of limitations, lack of standing or injury, or failure to state a claim
- Moving early for summary adjudication and/or proactively defeating class certification through effective, focused early discovery
- Obtaining early stays of the proceedings under the doctrines of primary jurisdiction and federal preemption
- Removing class actions from state to federal court
- Moving to consolidate and transfer multiple class action filings to the U.S. Panel on Multidistrict Litigation when appropriate, rather than opposing a class action format
- Achieving favorable settlements
- Proceeding to trial, when necessary.

Whether a claim is straightforward and local or complex and multijurisdictional, our international footprint ensures a coordinated, cost-effective approach to virtually any product liability matter.

Our attorneys work as integrated teams, marshaling resources required to properly advise our clients and to mount vigorous defenses for their products. This shared knowledge ensures a coordinated, cost-effective approach to any crisis, whether it arises out of a product's design, manufacture or marketing; noncompliance with industry standards; or reporting requirements.

## PRODUCT RECALL & GOVERNMENT REGULATORY COMPLIANCE

In today's global economy, product manufacturers are subject to compliance with a complex regulatory landscape that can vary not only from product to product but also based on the company's role in the distribution chain (e.g., manufacturer, importer, distributor). The difficulty of navigating that regulatory landscape is further compounded by differing obligations from one jurisdiction to the next and strict penalties for failing to comply. Understanding the unique challenges is critical to ensuring diligent and good-faith compliance within mandatory time frames.

Our attorneys have considerable experience guiding clients through product recalls and managing the crises that typically trigger these complicated processes, with extensive experience on regulatory bodies including:

- U.S. Consumer Product Safety Commission (CPSC)
- U.S. Food and Drug Administration (FDA)
- National Highway Traffic Safety Administration (NHTSA)

Our colleagues in Legalign Global also have extensive experience with the corresponding federal agencies in Australia, Canada, Europe and Latin America.

We offer our clients prompt, experienced and intelligent engagement soon after a crisis develops, with careful guidance to ensure good-faith compliance from one jurisdiction to another. When circumstances dictate, we are quite literally at our client's side facing regulatory bodies, the press or the public anywhere in the country or around the world. Whether it involves preparing corrective action plans and coordinating recall processes or providing guidance on press releases, insurance coverage and liability issues, our attorneys are ready to provide efficient, high-quality service when a crisis develops.



## Case Studies

- **We defended a global medical device manufacturer** in nearly 300 lawsuits arising out of a claim that its medical devices incorporated contaminated drug components sourced from China. We were able to tender the cost of defense to the supplier's insurer, which repaid the client's substantial deductible and incorporated the client into all releases obtained from injured plaintiffs. Our client had all fees paid and paid nothing to settle lawsuits.
- **Our team negotiated an extremely expedited reporting compliance with the CPSC** in a matter involving an anomaly in the client's design. We worked with the client to identify the location of all affected units, halt distribution, and eventually to replace the units in consumers' possession.
- **We served as the auditor approved by the National Highway Traffic Safety Administration** for a motor vehicle company. As part of the company's consent decree with NHTSA, we examined the company's policies, interviewed personnel, and analyzed the systems used to put the policies into practice. We also assisted in implementing new and updated procedures to confirm current and future compliance with government requirements. As a result of these efforts, the government concluded that the company complied with its obligations under the consent decree.

- **We secured a defense verdict in a product liability lawsuit on behalf of a personal watercraft manufacturer.** The plaintiff claimed she fell off the rear of the watercraft and sustained significant injuries and alleged the personal watercraft was defective because it failed to incorporate alternative designs and warnings that alerted users to the risk of falling off the rear and being injured by the jet thrust. After a two-week trial, the jury found that the product was not defective for lack of a "passenger lanyard," and jet thrust did not cause her injury. This was the watercraft industry's first "orifice injury" trial in the United States.
- **We successfully navigated an inquiry by the FDA** that spawned a secondary inquiry by Health Canada threatened our client's product line. Marketing modifications by all seven industry competitors were implemented without the necessity of a formal investigation or, worse yet, a Department of Justice case.

- **After mounting a strong defense in a wrongful death, products liability suit involving a golf cart,** our team persuaded the court to rule in favor of our client. The court found that the warnings alleged to be deficient were in fact open and obvious and that there was no evidence that alleged defects in steering and brakes existed at the time the golf cart left our client's control. We prevailed on appeal to the Illinois Supreme Court.
- **Through a coordinated effort we secured the efficient disposition of a matter in defense of a manufacturer of gas pool heaters.** We pointed to the fact that the manufacturer did not participate in the installation or inspection of the heater in question. The court therefore agreed that the manufacturer owed no duty to patrons who claimed injury from exposure to gas and entered summary judgment in favor of our client.

