The Responsible Corporate Officer Doctrine: Its Comeback and Your Response

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(ACC Chicago)

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Its Comeback and Your Response

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OVERVIEW

THE PAST:  
History of the Responsible Corporate Officer (“Park”) Doctrine

THE PRESENT:  
Reemergence of the Park Doctrine

THE FUTURE:  
Responding to the Expansion of the Park Doctrine
THE PAST:
History of the Responsible Corporate Officer ("Park") Doctrine

Introducing The Park Doctrine

- **The Origin of the Park Doctrine**

- **The Effect of the Park Doctrine**
  - Under the Park doctrine, responsible corporate officers may face criminal liability for failing to prevent or promptly correct violations of the Federal Food, Drug, and Cosmetic Act ("FDCA"), regardless of whether or not that officer was aware of or intended to cause the violation.
  - A corporate officer may be held liable without proof that he acted with intent or negligence, and even if the officer had no knowledge of, and did not participate in, the specific offense.

- **Who Is a Responsible Corporate Officer?**
  - One who holds position of responsibility and authority
  - One who possess the ability to prevent or promptly correct the violation
What Happened In United States v. Park

• Who Were Charged with Violating the FDCA?
  – Acme Markets, Inc., a large national retail food chain
  – John Park, Acme’s chief executive officer (“CEO”)

• Why Were They Charged?
  – Food in two of Acme’s warehouses were exposed to rodent contamination
  – Acme, but not Park, pleaded guilty

• Park’s Defense
  – At trial, Park conceded that providing sanitary conditions for food offered for sale to the public was something that he was “responsible for in the entire operation of the company.”
  – Park argued that he necessarily relied on his subordinates because he was responsible for more than eight hundred stores.
  – Park testified that he did not “believe there was anything [he] could have done more constructively than what [he] found was being done.”

Reasoning Behind The Court’s Ruling

• What did the Supreme Court Hold?
  – Responsible corporate officials have an affirmative duty to seek out and remedy violations. In addition, they have a duty to implement measures that will ensure that violations will not occur.

  – Therefore, those with “responsibility and authority” either to prevent, or promptly to correct a violation may be held criminally liable for violations regardless of “whether or not the person was aware of or intended to cause the violation.”
Prosecutors Rediscovered This Doctrine

• *United States v. Freed* (2006)
  – Susan Freed was the incorporator and a trustee of a campground.
  – She was notified twice that improvements on the campground violated Forest Service regulations, but she did not correct those violations.
  – After being charged, Freed argued that the "responsible corporate officer doctrine only applies to public health and safety regulations concerning dangerous or deleterious devices or products or noxious waste materials."
  – The U.S. Court of Appeals of the Eleventh Circuit explicitly rejected her argument.
  – She was ultimately found guilty as a responsible corporate officer for violations of the National Forest Service regulation.
Harsher Penalties Are Being Imposed

- United States v. Purdue Frederick (2007)
  - Three company officers were prosecuted for the misbranding OxyContin (a prescription opioid pain medication) with the intent to defraud or mislead.
  - One of the executives charged was the late Howard Udell, their General Counsel.
  - They each pleaded guilty to the misdemeanor charge of misbranding, solely as responsible corporate officers for their failure to prevent Purdue’s fraudulent marketing of OxyContin.

The New York Times
Narcotic Maker Guilty of Deceit Over Marketing

By BARRY MEIER
ABINGDON, Va., May 10 — The company that makes the painkiller OxyContin and three of its current and former executives pleaded guilty Thursday in federal court here to criminal charges that it had misled doctors and patients when it claimed the drug was less likely to be abused than traditional narcotics.
What is OxyContin?

OxyContin is a controlled-release form of oxycodone approved by the Food and Drug Administration ("FDA") in 1995 to treat moderate to severe pain when a continuous, around-the-clock painkiller is needed for an extended period of time. Due in part to its potential for abuse and dependence, OxyContin has been classified as a Schedule II controlled substance by the DEA.

Why an Investigation of Purdue?

• Law enforcement believed: (a) OxyContin abuse widespread; (b) resulted in fatalities; and (c) caused secondary crimes. First local, then federal, attention.

• DOJ and local law enforcement prosecuted doctors and street dealers for illegal distribution of OxyContin.

• The DOJ began looking at the company that produced and marketed OxyContin.
Government's Allegations Against Purdue

- Purdue trained its sales force that it was more difficult to extract oxycodone from OxyContin ("O/C").
- Informed doctors that O/C would create fewer chances for addiction than immediate release opioids.
- Trained sales force that O/C had fewer “peaks and troughs.”
- Told health care providers that patients could stop without withdrawal.
- Told health care providers that O/C would not cause a buzz or euphoria.
Addicts Won’t Like OxyContin

Use OxyContin To Weed Out Drug Abusers

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As Reported In Call Notes

OxyContin Gives "No Buzz"

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States In Which OxyContin Was Promoted As Less Abusable Than Other Opioids

Misbranding Blood Level Graphs

- The company trained its sales force to do what FDA said it could not - claim better blood levels without showing actual graph.

- During training sessions, trainers allowed sales representatives to draw unapproved and potentially misleading graphs.
Transcript of Training Videos
Purdue Representative to Physician (Trainer)

• Purdue Rep: “You are not going to have to worry about the addict. Just to give you a little I guess street knowledge and this is kinda well known. Dilaudid is about $47.00 on the street. OxyContin is $3.00 a pill. You are not really going to have to worry about that addict coming in here and abusing the system.”

• Purdue Rep: “The other big advantage is that when you take those patients off the medication, 60 mg or less, you don’t see the withdrawal symptoms.”

Marketing v. The Label

As Marketed
• Addicts Won’t Like It
• Less Abuse Potential
• No Euphoria
• Fewer Side Effects
• No Withdrawal At Doses Less Than 60mg Per Day

On Label
• Reduced Dosing Schedule
Final Settlement

• Felony Guilty Plea by The Purdue Frederick Company, Inc.
• Total Penalties for Purdue = $600 million
• Misdemeanor Guilty Pleas: Responsible Corp. Officers
  – CEO Michael Friedman
  – CMO Paul Goldenheim
  – General Counsel Howard Udell
• Each defendant received 3 years probation, 400 C/S, and collective penalties of $34 million (disgorgement).
• Agreed Statement of Facts to support the plea.

The Conviction and Suspension of the Purdue Executives

• Agreed Statement of Facts:
  – Company representatives made claims despite fact that Oxycontin's approved new drug application "did not claim that OxyContin was safer or more effective than immediate-release oxycodone or other pain medications," and

  – The company "did not have, and did not provide the FDA with, any clinical studies demonstrating that OxyContin was less addictive, less subject to abuse and diversion, or less likely to cause tolerance and withdrawal than other pain medications."
The Conviction and Suspension of Purdue Executives

- Agreed Statement of Facts:
  - The company pleaded guilty to misbranding OxyContin with intent to defraud or mislead, a felony under the FDCA.
  - Three company executives -- CEO, general counsel, and chief medical officer -- pleaded guilty to misbranding OxyContin as "responsible corporate officers," a misdemeanor under the FDCA.
  - Both the company and executives agreed that the court could accept “Agreed Statement of Facts” prepared by the parties as the basis for the guilty pleas.

Harsher Penalties Are Being Imposed

The Story Does Not End Here!
Harsher Penalties Are Being Imposed

42 U.S.C. § 1320a-7(b) permits the U.S. Department of Health and Human Services (“HHS”) to exclude individuals convicted of certain crimes from participation in federal health care programs.

Based on their convictions from *United States v. Purdue Frederick*, HHS moved to exclude two of the three Purdue officers from participation in all federal health care programs, including Medicare and Medicaid, for 20 years. (The number of years was eventually reduced to 12.)

Exclusion Proceeding

• The notices cited two subsections of section 1320a-7(b) as basis for exclusion:
  – (b)(1): permits exclusion if convicted of "a misdemeanor related to fraud ... in connection with the delivery of a health care item or service," and
  – (b)(3): permits exclusion if convicted of "a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance."
Exclusion Proceeding

• March 31, 2008: O.I.G. issued formal notices of exclusion to the three executives.
• HHS also (under section § 1320a-7(c)(3)(D)) increased period of exclusion from 3 to 20 years (later reduced to 12) based on these aggravating factors:
  – Acts were committed over a period of one year or more;
  – Acts had a significant adverse financial impact on health care program beneficiaries; and
  – Acts had a significant adverse physical or mental impact on one or more program beneficiaries or other individuals.

Exclusion Proceeding

• October 28, 2009: Executives filed complaint seeking declaratory judgment that exclusion order was "contrary to law, arbitrary and capricious, an abuse of discretion, and not supported by substantial evidence, in violation of the Administrative Procedure Act, 5 U.S.C. § 706."
Judge Huvelle’s Holding

• December 13, 2010, U.S. District Judge Ellen Huvelle issued a decision rejecting executives motion to set aside exclusion decision.

DC Circuit Decision

• July 27, 2012: split panel decision – affirmed in part, remanded in part
• Majority holds exclusion permissible for misdemeanor misbranding
• **BUT**: Reverses District Court decision and remands to agency for further proceedings.
  – Reversal was based on failure to explain underlying reasons for length of exclusion and departure from “presumptive baseline of three years.”
**Impact of Debarment**

- Debarment prohibits individuals from “providing services in any capacity” to a company or individual that has: **approved or pending drug product application.** 21 U.S.C. § 335a.
- Applicants for drug approval must certify to FDA that they have not used and will not use any services of any debarred individual.
- FDA will not accept for filing any drug product applications from companies who hire or contract with a debarred person – even if that person performs work that is unrelated to the FDA regulatory process.

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**Harsher Penalties Are Being Imposed**

- **Additional Illustrations of Harsher Penalties**
  - In March 2011, Marc Hermelin, the former CEO of KV Pharmaceutical Company, pled guilty to RCO charges for misbranding. He was ordered to pay a $1 million fine, forfeit $900,000 and serve a sentence of 30 days in jail.
  - Later in 2011, former corporate officials of Synthes North America, were each sentenced to nine months in prison after being charged with only a single misdemeanor count under the *Park* doctrine.
Other Enforcement of *Park*: Synthes

- **United States v. Synthes, Inc.**
  - Company charged with conducting unauthorized tests of its bone cement on about 200 spinal surgery patients. Three patients died on the operating table.
  - Product FDA approved for use in the arm, but not in weight-bearing spine.
  - Synthes was charged with training surgeons to use it "off-label" so company could gather data to support its expanded use.
  - Four former Synthes executives pleaded guilty or no contest to related "responsible corporate officer" misdemeanor.
  - First white-collar defendants sent to prison under the Park Doctrine.
  - Prosecutors argued that the four acted knowingly, especially after a Synthes medical consultant warned that the tests amounted to "human experimentation.”

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Enforcement of *Park, Synthes cont.*

- Richard Bohner, 56, led away in handcuffs after sentence imposed by District Court Judge Legrome D. Davis.

- "The court recognized the severity of the harm done in this case, especially with this defendant, who was involved in regulatory affairs." Mary Crawley, U.S. Attorney's Office for the Eastern District of Pennsylvania.
United States v. Abbott Laboratories

• On October 2, 2012 Abbott fined $1.5 billion misdemeanor
  – Misbranding
  – Criminal and Civil
  – Qui Tam
• Deputy Attorney General James Cole said “We are resolute in stopping this type of activity, and today’s settlement sends a strong message to other companies.”
• Corporate Integrity Agreement

As Reported:

• Abbott illegally marketed Depakote for non-approved uses, including as an alternative to antipsychotics to treat dementia patients in nursing homes and for schizophrenia.
• Abbott paid rebates to health care professionals and long-term care pharmacies for increasing their off-label use of Depakote.
DOJ Increases the Pressure –
The Lauren Stevens Indictment

- Lauren Stevens, Vice President and Associate General Counsel for GlaxoSmithKline.
- DOJ alleged: FDA sent a letter to GSK in 2002 requesting certain materials and records re: allegations that company had promoted a drug for an unapproved use. GSK’s antidepressant drug Wellbutrin allegedly promoted for weight loss.
- Stevens was in charge of the Company’s response to FDA’s inquiry and investigation and allegedly led a team of lawyers and paralegals who gathered documents and information.
- Stevens was accused by DOJ of lying to the FDA in a series of letters in 2003 denying the company had promoted a drug for off-label uses.

DOJ Increases the Pressure –
The Lauren Stevens Indictment

- DOJ alleged:
  - Instead of producing slides of potentially illegal off-label marketing, Stevens had a legal memo prepared with pros and cons of producing the slides to F.D.A. One argument against producing the slides was that they would provide “incriminating evidence.”
  - Stevens denied that company illegally marketed a drug, even though it had paid doctors to give questionable promotional talks to other doctors, (one spoke at 511 events in 2001-2).
- Stevens was charged with one count of obstructing an official proceeding, one count of concealing and falsifying documents to influence a federal agency, and five counts of making false statements to the F.D.A. She faced a potential sentence of 60 years in prison.
- Judge dismissed all charges against Stevens after government put on its case.
United States v. Lauren Stevens

• May 10, 2011, Court held:
  – Not guilty on all counts.
  – “I conclude that the defendant in this case should never have been prosecuted and she should be permitted to resume her career.”
  – Case was based on the government’s misreading of privileged communications.

DOJ, A Message Sent Clearly.
Do They View United States v. Lauren Stevens as a Loss?

• Assistant Attorney General Lanny Breuer speaking about the individuals charged in Siemens AG FCPA investigation "This indictment reflects our commitment to holding individuals, as well as companies, accountable for violations of the FCPA."
• "The government has been criticized for not charging individuals,” (Sulaksh R. Shah, a director in the FCPA and anticorruption practice with PricewaterhouseCoopers). "The government is saying: Let this be a warning, companies will pay and individuals will be made accountable."
• "Where the facts and law allow, the Justice Department will pursue individuals responsible for illegal conduct just as vigorously as we pursue corporations," (Tony West, Assistant Attorney General for the Civil Division of the Department of Justice).
Potential Expansion Into Other Industries

• The Park Doctrine Originally Applied to Violations of:
  – The Federal, Food, Drug, and Cosmetic Act ("FDCA")

• Now It Also Applies to Other Public Welfare Statutes:
  – The Clean Air Act
  – The Clean Water Act
  – The Federal Meat Transportation Act
  – National Forest Service Regulations

• It Will Likely Expand to Laws Regulating…
Other Industries

• Environmental.
  – BP.
  – *United States v. Kurt Mix.*

• Financial.
  – *United States v. David Higgs.* Credit Suisse investment banker.
    • "It is a tale of greed run amok," (U.S. Attorney Preet Bharara).
      "They papered over more than a half billion dollars in subprime mortgage-related losses to secure for themselves a big payday at the same time that many people were losing their homes and their jobs."
  – *United States v. Rajaratnam.* Title III wiretaps in insider trading case.

• Construction.
• Government Contractors.
• Airlines.
• Others.

Holland & Knight

THE FUTURE:
Responding to the Expansion of the *Park* Doctrine
Future Enforcement of Park

• March 4, 2010 -- Letter from FDA Commissioner Hamburg to Senator Chuck Grassley
  – Commissioner stated: FDA senior leadership committee established to recommend strategies for enhanced coordination and alignment between Office of Criminal Investigations and other FDA departments.

• May 27, 2010 – Deborah Autor, Director of the Center for Drug Evaluation & Research, Office of Compliance, testified FDA heading toward greater use of criminal prosecution as enforcement tool:
  – “The agency is working to increase our enforcement on the criminal side and to connect carefully what we do on the criminal side with what we do on the civil side.”

Future Enforcement of Park

• October 13, 2010 – Rick Blumberg, Deputy Chief of Litigation, FDA’s Office of Chief Counsel, said criminal investigations will focus on distribution of unapproved new drugs, failure to report unexpected adverse events caused by medical products, and “flagrant” off-label promotion.

• October 12, 2010 – Gene Thirolf, head of the Office of Consumer Litigation, said he anticipates more criminal investigations and prosecutions focused on safety issues, not just off-label promotions.
In-House Counsel Is Becoming The Focus

• Remember, the General Counsel of Purdue was charged under the Park doctrine.

• Kara Stein, a member of the Securities and Exchange Commission (“SEC”), recently mentioned that “gatekeepers” should be held criminally liable to help deter misconduct and prevent fraud.
  – Gatekeepers include officers, lawyers, accountants and auditors—those in a position to identify and report the fraud.

• General Motors Company General Counsel Michael Millikin is under great scrutiny.
  – Millikin’s staff signed off on several wrongful death settlements that pointed to the fatal flaw months before the automaker launched its first recall.

• If the Hide No Harm Act eventually passes, in-house lawyers may be held criminal liable under statutory law as well.

A Broad Array of Laws

• Obstruction.
• Conspiracy.
• Mail and wire fraud.
• False statements.
  – “The FBI’s here, but it’s no big deal. They say they just want to talk to us.”
• False Claims.
• Anti-kickback Act: bribes and gratuities.
• FCPA.
What Can Companies Do in Response?

• **Before the Government launches an investigation:**
  – Implement strong, comprehensive and effective compliance and ethics programs
  – Establish and train employees on about those programs
  – Exercise due diligence to prevent and detect criminal, illegal and otherwise improper conduct. USSG §8B2
  – Promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. USSG §8B2

• **DOJ is required by policy to consider companies’ compliance and ethics programs before bringing criminal charges.**
  – More and more sophisticated analysis of compliance program elements;
  – Emphasis on thoroughness and independence of internal investigations;
  – Promptness and comprehensive nature of corrective actions; and
  – Self-disclosure of improper conduct

After the Government launches an investigation:

• Retain Outside Counsel.
• Implement a Litigation Hold to avoid possible spoliation claims.
Glimmers Of Hope: Constitutionality Challenges

• **Attacks Based on Vagueness**
  – The *Park* doctrine gives the jury too much power.
  – The *Park* doctrine encourages standardless convictions.

• **Violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution**
  – The *Park* doctrine permits the imposition of impose career-ending disabilities without any *mens rea* requirement.

**Questions?**
CONTACT US

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Mark A. Flessner is a partner in Holland & Knight's Chicago office. He has a broad range of industry experience, having represented clients in many areas, including healthcare, retail, manufacturing, insurance and finance. He also has substantial experience investigating wrongdoing within the corporate world.

Mr. Flessner has extensive trial experience — this includes bringing more than 40 cases to verdict and arguing more than 35 cases on appeal. He advises clients on litigation risk and assists clients facing government scrutiny for criminal, civil and regulatory matters. Additionally, Mr. Flessner represents clients facing complex commercial litigation, internal corporate investigations, grand jury inquiries and issues involving the Foreign Corrupt Practices Act (FCPA).

Prior to entering private practice, Mr. Flessner was a federal prosecutor at the United States Attorney’s Office in Chicago for 12 years. He led major investigations involving sophisticated and complex financial funds. His prosecutions included public corruption, bank fraud, insurance fraud, securities fraud, white collar crime, gangs and narcotics cases. Mr. Flessner has also investigated international money laundering, terrorism and cases involving national security.

Representative Engagements

» represented a former partner of WG Trading who has been indicted in the Southern District of New York for participating in an alleged Ponzi scheme; the government alleges a loss of approximately $550 million

» led a team of lawyers who obtained a directed finding at the close of the government’s case in favor of their client, a physician, whom the Illinois Attorney General had indicted on four counts of felony criminal neglect

» represented the former CEO of BDO Seidman in an investigation into whether the Justice Department had interfered with the defendant’s right to counsel by pressuring his former employer to stop paying the ex-CEO’s attorneys’ fees

» led a $7.6 million judgment for a publicly-held insurance company after a five-week trial involving breaches of an asset purchase agreement and a non-compete employment agreement

» assisted a bank in recovering several millions of dollars in loans after the borrower defaulted
» represented an executive of Takeda Abbott Pharmaceuticals in an eleven-defendant, three
month jury trial in which the Justice Department alleged illegal kickbacks
» represented and currently represents clients under investigation by the Securities and
Exchange Commission, the Commodity Futures Trading Commission and other government
agencies
» represents clients under criminal investigation or already under indictment; past clients
include a former Governor of the State of Illinois, securities traders and brokers, banks and
other financial institutions, insurance companies, healthcare providers and pharmaceutical
manufacturers

Mr. Flessner donates significant legal time to *pro bono* activities. He was a lead attorney on a death
penalty habeas corpus petition in Alabama; lead attorney on a high-profile immigration case in
Chicago; and a member of the Federal Defender Panel in the Northern District of Illinois, providing
legal representation to the indigent.

**Honors & Awards**

» Holland & Knight Public and Charitable Service All-Star, 2014
» Recognition for Outstanding Contribution to Law Enforcement from:
  » Department of Justice
  » Federal Bureau of Investigation
  » Drug Enforcement Administration
  » Internal Revenue Service, Criminal Investigations Division
  » United States Postal Inspection Service
  » Chicago Police Department
  » Chicago Joint Task Force on Gangs
  » Director’s Award for Superior Performance, U.S. Attorney General, 1996

**Memberships**

» Just the Beginning Foundation, Board Member
» Economic Club of Chicago, Member of Reception Committee
» National Immigrant Justice Center Human Rights Awards, Chair
» Federal Bar Association, Federal Career Services Division, Chairman
» Leading Lawyers Network, Peer Recommended 2013
» Greater Chicago Food Depository Finance and Legal Community Fundraiser, former Chairman
» Transportation Advisory Board, City of Naperville, former Chairman
» Leadership Greater Chicago, Board Member, Fellow, 1995-1996
» Chicago Council of Lawyers, former Board Member; former Ethics Committee Co-Chair
» West Suburban Mass Transit District, Former Trustee
» Appleseed Fund for Justice, Former Board Member
» Naperville Lightning Soccer Club, Former Board Member
Publications

» Corporate Compliance Answer Book, Settling with the Government Chapter, Practising Law Institute, 2015 Edition
» The Pitfalls of Shifting DOJ Policies, Law360, July 21, 2011
» Subprime Crisis: Lessons Learned, Co-Author, Bloomberg Law Reports: Risk and Compliance, 2009

Speaking Engagements

» Responsible Corporate Officers Doctrine, Health Law Roundtable, Chicago Bar Association, June 25, 2014
» Preventing and Defending Fraud & Abuse/False Claims Act Suits: Health Care Services Sector, Chicago Bar Association - A Tale of Two Sectors: Health Care Fraud & Abuse and False Claims Act Practice in an Era of Increased Government Enforcement, April 23, 2014

Education

» DePaul University College of Law, J.D.
» University of Notre Dame, M.Div.
» University of Illinois at Urbana-Champaign, B.A., Political Science, with distinction

Bar Admissions

» Illinois

Court Admissions

» U.S. Court of Appeals for the Seventh Circuit
» U.S. District Court for the Northern District of Illinois
» U.S. District Court for the Northern District of Illinois, Trial Bar
» U.S. Supreme Court
» U.S. Court of Appeals for the Second Circuit
Martin G. Durkin is a partner in Holland & Knight's Chicago office and a member of the firm's Litigation Section. He focuses on commercial litigation and arbitration, including class actions, financial fraud, corporate investigations and antitrust counseling. He has also represented clients in numerous state and federal actions, including multidistrict litigation.

Mr. Durkin has served as lead trial counsel to leading financial services companies in class actions and mass actions involving claims of securities fraud, Racketeer Influenced and Corrupt Organizations (RICO), fiduciary duty violations and related commercial torts. He represents both plaintiffs and defendants in complex business litigation claims and has tried cases involving common law and Uniform Commercial Code (UCC) contract claims, statutory and common law fraud, breach of fiduciary duty, violations of RICO, state and federal securities laws, and state and federal antitrust laws.

From 2005 to 2012, Mr. Durkin was a member of Holland & Knight's Directors Committee.

Representative Matters

Class Actions and Jury Trials

» Toben v. Bridgestone Retail Operations, LLC – Defeated class certification and obtained summary judgment for national automobile service center in consumer fraud class action challenging fees. The trial court’s judgment was affirmed by the United States Court of Appeals for the Eighth Circuit. (Toben v. Bridgestone Retail Operations, LLC, No. 11-CV 01834, May 13, 2014).


» Defense of an international manufacturer of industrial gases in consolidated class actions and opt-out actions alleging price fixing. The matters were consolidated by the Judicial Panel for Multidistrict Litigation. A jury returned a defense verdict following an extended trial.

» Defense of an international manufacturer of bulk and compressed gas in a nationwide class action for violation of state consumer fraud acts arising from billing practices.
Defense of an international pharmaceutical manufacturer in class action and opt-out actions alleging price fixing and Robinson-Patman Act violations.

Defense of a national financial services company in class action alleging a violation of the Illinois Consumer Fraud Act in the administration of customer accounts.

Financial Services

Defense of a national insurance and investment company in a complex securities fraud and RICO matter arising out of the conduct of a former agent, who pleaded guilty to fraud and financial abuse of the elderly. More than 60 plaintiffs joined in this mass action and sought damages, including punitive damages of more than $1 billion. Following a four-week trial, the jury returned verdicts in favor of the defendant.

Defense of a public pension fund in a breach of a contract action by an investment advisor over the calculation of rates of return.

Lyondell Chemical Company Shareholder Litigation – Defense of a public pension fund in class actions alleging fraud and fraudulent conveyances arising from leveraged buyouts of public companies., U.S. Bankr. Ct., SD NY, 09-10023, and In re Tribune Company Fraudulent Conveyance Litigation, SD NY 11 MD 2296.

Defense of a national financial services company in actions arising from a former registered representative’s operation of a Ponzi scheme and related securities act violations.

Defense of a financial services company in multiple actions alleging violations of state and federal securities laws, unsuitable sales and financial abuse of the elderly.

White Collar Defense and Internal Investigations

Representation of a national charity in the internal investigation of fraud and embezzlement by employees. The investigation resulted in the indictment of three employees.

Representation of a national insurance company in the prosecution of an action to break up a life, health and hospitalization insurance fraud scheme. The representation resulted in the criminal indictment and guilty plea of the person responsible for the fraud.

Representation of executives of target corporations before federal grand juries investigating alleged antitrust violations.

Representation of a former executive of a major construction company in federal false claims act investigation.

Representation of a corporation in response to Civil Investigative Demands issued by the United States Department of Justice, and State Attorneys General.

Mediation and Arbitration

Representation of a radio and cellular communications manufacturer in international arbitration regarding the construction of a communication network in Nigeria.

Representation of a national financial services company in the mediation of claims regarding breach of fiduciary duty and violations of securities laws in sales of annuities and related products.

Representation of a regional bank in arbitration of claims with a transaction processing company following termination of a contract for ATM, and credit and debit card processing.
» Representation of a residential developer in arbitration of financial mismanagement and self-dealing claims brought by investors.

Honors & Awards
» The Best Lawyers in America guide, Commercial Litigation, 2013-2015

Memberships
» American Bar Association - Antitrust, Litigation, and Tort and Insurance Practice

Education
» University of Illinois College of Law, J.D.

Bar Admissions
» Illinois

Court Admissions
» U.S. District Court for the Central District of Illinois
» U.S. District Court for the Northern District of Illinois
» U.S. District Court for the Southern District of Illinois
» U.S. District Court for the Southern District of Indiana
» U.S. Court of Appeals for the Eleventh Circuit
» U.S. Court of Appeals for the Eighth Circuit
» U.S. Court of Appeals for the Seventh Circuit
» U.S. Supreme Court