

Commercial Class Action Litigation

Practice Overview





Class actions pose potentially significant risks to companies in all industries. Daunting in size, scope, and potential damages, class action litigation can adversely impact an entity's finances as well as its business operations and reputation in the marketplace. Given the complex nature of class action litigation, defense counsel must identify and quickly evaluate all potential legal and business ramifications in order to develop and execute an effective defense strategy.

Seyfarth Shaw LLP's Commercial Class Action Litigation Practice Group has extensive experience defending clients in complex, multi-jurisdictional cases, particularly those that deal with allegations of consumer fraud, unfair business practices and unfair advertising.

We defend class actions through our comprehensive knowledge of procedural rules, evidentiary standards, and substantive law. We approach each case with a comprehensive, organized, and cost-effective strategy that takes into account the short-term and long-term consequences of potential defense options. We find ways to mitigate potential risks from the outset, while providing clients with an organized and cost-effective approach to defending class actions. By marshaling our collective knowledge and experience, and leveraging our knowledge through a team-based approach and state-of-the-art technology, we can help minimize exposure in these types of lawsuits and work efficiently toward a successful resolution for our clients.

Most importantly, we understand the importance of being responsive and reliable. We are well aware that longstanding client relationships are built on trust. Throughout the course of litigation, we communicate with our clients effectively, timely and with complete candor. We encourage clients to participate in the planning and decision-making processes, and thus, partner with our clients to achieve the best possible result.

Our attorneys approach each case with a comprehensive, organized, and cost-effective strategy that takes into account the short-term and long-term consequences of potential defense options and helps mitigate potential risks from the outset.

About Our Team

National Presence. Seyfarth is prepared from day one to drive innovation and excellence across a national platform. With offices strategically located across the country, we have the ability to form integrated teams to defend our clients from coast-to-coast — whether that means seamlessly conducting discovery in multiple states or defending against “copycat” cases that frequently appear in the wake of initial class action filings.

Evolutionary Practice. Seyfarth recognizes that class action law is by no means stagnant. Our attorneys work tirelessly to ensure that we stay abreast of the latest procedural and substantive developments. We also believe it’s critical to keep our clients abreast of these changes. To that end, Seyfarth launched its Consumer Class Defense law blog on consumer class actions as a unique resource for executives and corporate in-house counsel to obtain timely developments, trends and game-changing decisions in the area of consumer class action law. The blog addresses procedural issues, such as arbitration, class action waivers and certification, as well as legal developments in the area of consumer fraud, statutory damages and consumer financial litigation. The blog is located at: www.consumerclassdefense.com.

Revolutionary Case Management. Seyfarth’s Class Action Practice Group is composed of strategic, fast-thinking litigators who argue effectively and persuasively. We understand the need to achieve results in the most cost-effective manner possible. Our firm has made a significant investment in technology that permits us to achieve litigation efficiencies for our clients, and we have broad experience working with litigation support personnel, both inside and outside the firm, so that we can streamline the litigation process and make the most effective use of resources.

These efforts have not gone unnoticed. In 2013, Seyfarth received the Innovative Law Firm of the Year award from the International Legal Technology Association for our integrated service delivery provided to clients through our SeyfarthLean® Client Solutions

Group. Seyfarth also received the Innovative Project of the Year award, recognizing our work on SeyfarthLink, the client collaboration platform developed jointly by our Client Solutions Group and Information Technology Department.



U.S. NEWS & WORLD REPORT AND BEST LAWYERS — NATIONAL RECOGNITION

In U.S. News & World Report and best Lawyers 2013 “Best Law Firms” rankings, Seyfarth was awarded rankings in Mass Tort Litigation/Class Actions - Defendants (National, Chicago and San Francisco).

Protecting Your Interests From Day One

From Consumer Fraud, Consumer Finance to Food and Supplemental Labeling issues, Seyfarth has developed subject-matter expertise to ensure its clients will receive not only excellent litigators, but a firm that understands its clients' business and can provide strategic insight.

Consumer Fraud

Seyfarth Shaw's Class Action Litigation Practice Group has extensive experience defending clients involved in complex, multi-jurisdictional consumer class actions, particularly those that deal with false advertising. Attorneys in our Commercial Class Actions Practice Group also defend cases involving credit cards, debit cards, gift card expiration practices, loyalty programs and cash reward benefits, and call recording. Our attorneys have experience across a broad spectrum of industries, including retail, food and beverage, banking, insurance, entertainment, telecommunications, and manufacturing.

Some examples of our experience includes cases brought under the following:

- State Consumer Fraud and Deceptive Practices Acts
- Telephone Consumer Protection Act
- Song-Beverly Act
- Qui Tam/Taxpayer Suits
- Privacy Statutes
- Fair and Accurate Credit Transactions Act

Consumer Financial Services Litigation

Seyfarth Shaw represents clients in virtually every type of bank and lending litigation, including multi-jurisdictional consumer class actions, individual consumer and commercial litigation and matters pending in bankruptcy and probate courts. We also regularly handle investigations and enforcement actions by state Attorneys General and state and federal regulators such as the Consumer Financial Protection Bureau.

Success For Our Clients in Consumer Fraud Class Actions

TCPA CLASS CERTIFICATION DENIED

As part of its rewards program, an entertainment company reached out with automated messages to thousands of its customers to provide information related to unique offers and opportunities. The plaintiff alleged that these practices violated the Telephone Consumer Protection Act (TCPA), and sought to certify a class seeking damages in excess of \$10 million.

- ▶ Seyfarth developed a defense strategy that identified not only the lack of ascertainability of the class members, but the infirmity of the underlying allegations

Result: Motion for class certification denied.

CALIFORNIA CONSUMER CLASS DECERTIFIED

After a class was certified against a local golf course, the client retained Seyfarth to attack the certification order.

- ▶ Seyfarth engaged in a fact-intensive effort with its client to identify new theories and combat the commonality position asserted by the Plaintiff.

Result: The court decertified the class and the matter was promptly settled.

BTI LITIGATION STANDOUT

Seyfarth earned multiple litigation honors in the latest research report from BTI Consulting Group – BTI Litigation Outlook 2014 – in its annual litigation study.

Based on the feedback of 300 in-house counsel, Seyfarth ranks among the top litigating firms in the country and was again selected to BTI's "Honor Roll" in the Most Feared Litigation Firms category.

Practicing in state and federal courts and before arbitrators throughout the United States, our lawyers use their deep industry knowledge to represent numerous financial institutions including several of the largest national banks. Our cases often involve complex questions of first impression such as federal preemption, enforceability of class action waivers, and the propriety of statutory penalties that become draconian when aggregated. We also handled many critical “test” cases with de facto systemic exposure, such as Massachusetts residential mortgage cases in which a major national bank established federal preemption of certain state attempts to impose suitability or best interest requirements upon its mortgage products under Massachusetts state law.

Encompassing virtually every claim brought against lenders and depository institutions, our experience includes compliance with state and federal laws and regulations such as TILA, TISA, HOEPA, RESPA, FCRA, ECOA, FDCPA, and EFTA; unfair and deceptive acts and practices claims; challenges to fees, interest rates and other contract terms; redlining and other discrimination issues; force-placed and other insurance issues. Our lawyers regularly speak and publish on developments in consumer financial services law, and also counsel clients on regulatory compliance and litigation avoidance strategies.

We have:

- Represented several issuers in class actions, state Attorney General cases and regulatory investigations concerning debt suspension and other fee products.

AMERICAN BANKER BIG IDEA FOR BANKING IN 2013

In the January 2013 issue of *American Banker Magazine*, our Consumer Financial Services Litigation group’s use of SeyfarthLean is featured as the No. 5 “Big Idea for Banking in 2013.” The article recognizes Seyfarth for its unique Six Sigma-based approach, explaining that these efforts “have cut [Seyfarth client] costs between 15 and 50 percent” and “could reap big savings” for U.S. banks.

- Favorably settled numerous simultaneous class actions brought against major credit card issuer alleging inadequate disclosure of foreign currency conversion practices.
- Favorably settled class actions against issuers alleging damages based on use of cut-off time for crediting payments by mail.
- Obtained summary adjudication on behalf of major credit card issuer in putative class action alleging improper expiration of frequent flyer miles.
- Favorably settled class action alleging inadequate disclosure of interest compounding practices.
- Favorably settled numerous separate class actions seeking to invalidate credit card debt incurred through Internet or other gambling activities.
- Achieved a favorable nationwide class action settlement for a captive manufacturer automotive finance company in a case of first impression nationally involving alleged violations of the Consumer Leasing Act.



Food, Beverage and Supplement Labeling and Safety

In recent years, consumers and governmental agencies have turned their focus to the food, beverage and supplement industries, asserting claims of consumer fraud and deceptive trade practices against industry leaders for purportedly misleading statements regarding the products they sell. Seyfarth was ahead of the curve with years of experience counseling clients regarding governing regulations and potential trends in consumer litigation. We have a core of dedicated attorneys that specialize in food, beverage and supplemental labeling and safety issues with significant experience representing clients before regulatory entities and in jury and bench trials and appellate proceedings before state and federal courts throughout the country.

We assist clients facing issues ranging from litigation to regulatory agency inquiries and recalls, and in various forms of alternative dispute resolution proceedings. Many of our attorneys have in-depth knowledge of a comprehensive range of medical, scientific and other relevant disciplines. The group also has a network of highly respected scientific and technical experts who can break down complicated ideas and scientific terminology—for presentation to judges and juries.

eDiscovery and Information Governance

Seyfarth is one of the few law firms with a truly dedicated eDiscovery and Information Governance practice group—one that began well before the Federal Rules of Civil Procedure were amended in 2006. Seyfarth's eDiscovery and Information Governance attorneys represent clients in all facets of electronic discovery and information governance, including pre-litigation preparedness and the preservation, collection, review

Success Handling Class Actions Involving Food, Beverage and Supplement Products

ALLEGED FAILURE TO PROPERLY LABEL NUTRITIONAL FACTS ON FROZEN FOOD PRODUCTS

- ▶ Represented national grocery chains in putative national class action alleging unfair business practices and false advertising claims concerning nutritional information on various frozen food products.

We successfully moved to dismiss fraud claims against retailers, and defeated Plaintiffs' motion to certify the class.

Result: The case was then dismissed for lack of jurisdiction under CAFA. Judgment was entered for all defendants.

ESTABLISHING PREEMPTION OF CLAIMS ATTACKING PRODUCTS CERTIFIED AS ORGANIC

- ▶ Nationwide class actions against dairy producer and numerous retailers, alleging violations of numerous state consumer protection statutes based on the production by Aurora—and sale by retailers—of private label milk and milk products alleged to be improperly labeled as "USDA Organic." Motion to dismiss based on federal preemption granted, and case dismissed as to all defendants; Plaintiffs appealed to the Eighth Circuit. We presented oral argument on behalf of retailers.

Result: In a published decision, the Eighth Circuit Court of Appeals affirmed the district court's dismissal of all claims attacking the organic certification of the products and their organic labeling based on federal preemption.



and production of electronic information in litigation. They also handle information governance issues related to data security, privacy and records management. We craft practical and defensible approaches to meet discovery obligations in litigation and to comply with statutory and regulatory schemes while managing the costs and the realities of operating a business in today's economy. Our long-standing experience has kept us at the vanguard in serving as national eDiscovery counsel for clients in thousands of cases.

Our attorneys have training, technical knowledge, and experience in a wide range of IT related areas, including computer software engineering, network administration, and data storage. In addition to technical knowledge, we stay on top of the existing and emerging technologies available for the preservation, collection,

review, and production of electronically stored information in order to recommend the most reliable, practical, efficient, and cost-effective solutions to our clients.

SeyfarthLean: Driving Value With Innovation

One of the biggest challenges facing the legal services market today is the need to develop a common definition of "value" between law firms and their clients.

The heightened emphasis on value may be a relatively new development, but the issue itself is not new. At Seyfarth, we are continuously looking for better ways to meet our clients' needs for value and efficiency, while maintaining high quality with our legal services.

Based on that goal, we have built a distinctive client service model — called *SeyfarthLean* — that combines the core principles of Lean Six Sigma with robust technology, knowledge management, process management techniques, alternative fee structures and practical tools.

The broad, systemic use of such a model across multiple practice areas reflects a fundamentally different approach to delivering legal services. This approach manifests itself with tangible processes and special tools, as well as the more intangible and fundamentally different way of thinking about how to deliver legal services.

Applying *SeyfarthLean* to our Consumer Class Action Defense practice, as well as every practice throughout the firm, helps drive down the costs of legal services by identifying and eliminating inefficiencies, and delivering quality work that decreases client costs by 15-50%.

eDISCOVERY IN LITIGATION

Several co-defendants in an antitrust class action faced incredible eDiscovery obstacles when significant and potentially costly issues arose as to whether the parties would be required to cease the rotation of all of their backup tapes as part of their duty to preserve evidence.

- ▶ We quickly analyzed the true costs relating to the backup tapes and found that the cost of ceasing the rotation of tapes was significant. We educated the Court of the myriad issues concerning backup tapes, prepared affidavits supporting the cost and prevailed against the argument that "defendants are destroying information that might be relevant."

Result: The court ultimately issued an order allowing the defendants to continue to overwrite tapes as they would in the ordinary course of business, resulting in a cost savings of nearly \$20 million per year.



Innovative Firm of the Year

Seyfarth awarded Innovative Law Firm of the Year & Innovative Project of the Year by the International Legal Technology Association (ILTA).

About Seyfarth Shaw

Seyfarth Shaw LLP ("Seyfarth") was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including commercial litigation, labor and employment, construction, corporate, employee benefits, environmental, government contracts, intellectual property, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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