



Alan D. Kaplan

Partner; Chair, Product Liability Practice Group

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Alan Kaplan advises Fortune 500 manufacturers, privately-owned businesses, retailers, transportation companies, food distributors and logistics providers in product liability litigation, class action defense and complex commercial litigation involving a wide range of concerns, including breach of contract, breach of warranty, fraud, misrepresentation, business torts, UCC disputes, construction disputes and insurance-related matters.

As chair of Herrick's Product Liability Practice Group, Alan frequently counsels clients in due diligence investigations, as well as government investigations by the Consumer Product Safety Commission, the Food and Drug Administration and the Department of Transportation. Alan also has an active practice defending major commercial real estate owners, sponsors and developers in construction defect claims and litigation commenced by condominium boards and associations in New York.

Alan is well regarded for his ability to successfully resolve difficult and unusual disputes through both trial and appellate litigation, and alternative dispute resolution, including negotiation, arbitration and mediation. He is a veteran litigator who began his career as a prosecuting attorney, subsequently served as regional trial counsel for several prominent companies, and has been involved in more than 100 trials and reported decisions in state and federal courts. For many years Alan has been rated a leading product liability lawyer by Thomson Reuters' *Super Lawyers*, which identifies lawyers who have achieved a high degree of excellence and professional achievement.

Services

- Business Litigation
- Litigation
- Alternative Dispute Resolution
- Construction and Development
- Product Liability
- Real Estate Litigation & Dispute Resolution
- Insurance & Reinsurance
- Turkey

Education

- Boston University School of Law (J.D.)
- The Johns Hopkins University

Memberships & Associations

- Defense Research Institute
- American Bar Association

- Past Chairman, Automotive Product Liability Committee
- New York City Bar Association
 - Co-Chair, Food Law Committee
- Sporting Goods Manufacturers Association Legal Task Force
 - Past Member

Publications

April 27, 2020

Beware of COVID-19 “Miracle Cures”

August 1, 2016

Driverless Cars: Safer? Maybe. Liability Targets? For Sure
Product Liability Law & Strategy

October 2012

Practice Tip: Common-Law Indemnification
LJN’s Product Liability Law & Strategy

December 2010

Ex-Parte Interviews of Former Employees: The Product Memo That Never Goes Away
LJN’s Product Liability Law & Strategy

April 2008

Will Metal Bats Make a Hit? Product Liability and Legislation of Baseball
LJN’s Product Liability Law & Strategy

June 2005

Beware of Judicial Exceptions to Federal Rule of Evidence 407
LJN’s Product Liability Law & Strategy, Volume 23, Number 12

March 2002

Product Liability in the Face of Negative Publicity: Getting the Jury to Focus
LJN’s Product Liability Law and Strategy

December 1999

Is Dismissal an Available Sanction for Thwarting a Causation Defense?
International Association of Defense Counsel

Matters

Fotografiska Park Avenue Flagship

Represent Fotografiska, a Swedish photography destination, in connection with establishing its NYC flagship location at 281 Park Avenue South, New York.

Cooper Tire & Rubber Company - Product Liability Litigation

On August 5, 2019, Justice Alison Tuitt of the New York Supreme Court, Bronx County, granted longtime Herrick client, Cooper Tire’s motion for summary judgment in a product liability action that has been pending for over 8 years. This case emanates from a tragic and highly publicized accident involving multiple fatalities in 2010 where a church van experienced a rollover after a left rear tire failure. Cooper Tire manufactured the failed tire and asserted from the outset that it was not defectively manufactured or designed, nor was it the proximate cause of the incident. The Court, while keeping Ford Motor Company in the

case on various theories of product liability, dismissed all claims and cross-claims against Cooper Tire, finding that the tire it manufactured had been misapplied, misused and abused, leaving it in a different condition than it had been at the time of its manufacture in 2003.

The Goodyear Tire & Rubber Company - Product Liability Litigation

Represent Goodyear in product liability matters involving tires, rims, hoses, inflation tools, roofing products, retail stores and related real estate issues.

Continental Tire - Product Liability Litigation

Representing Continental Tire North America, Inc. - the North American operations of global automotive manufacturing company Continental AG - in product liability matters.

Cooper Tires - Product Liability Litigation

Represent Cooper Tires with its product liability matters.

Former Owners of Acquired Business - Litigation to Recoup Monies Held in Escrow

Representing the former owners of a designer and distributor of mechanical and chemical fastening products acquired by a Fortune 500 manufacturer of industrial tools and household hardware in litigation to recoup monies held in an escrow account as indemnification payments for post-closing risks. Dispute involves issues related to import tariff and customs duties imposed by Canadian authorities on products imported by the acquired business from the Republic of China.

Ireland-based Technology Company - Advisory Firm's Breach of Contract Claims Dismissed

Secured the dismissal of all claims against an Ireland-based software company and its US subsidiary filed in New York state court by an advisory firm alleging our client had breached the terms of a service agreement in which the plaintiff was to either find a buyer for the company or find entities willing to provide financing. Asserting breach of contract, fraudulent inducement and unjust enrichment, among other causes of action, the plaintiff further alleged that the agreement was breached just prior to a transaction which would have entitled the plaintiff to a significant fee. In its order, the court agreed that the plaintiff had failed to establish jurisdiction over the Ireland-based parent and that the U.S.-based entity was never a party to the agreement at issue.

Manufacturer - All Claims Dismissed in JAMS Arbitration Initiated by Former CEO

Achieved total victory for a promotional products manufacturer and distributor, defeating all claims asserted in an arbitration for breach of employment and shareholders agreements, breach of fiduciary duty, and shareholder oppression initiated by the company's former CEO and former majority shareholder. The panel found that the claimant had indeed been properly terminated, referencing numerous instances in which the claimant charged the client for non-business related expenses or used company resources to conduct side businesses for the sole benefit of the claimant's friends and relatives. Finding the remaining claims meritless, the panel ultimately found our client, as the prevailing party, entitled to recover the full costs of the arbitration, including legal fees.

Manhattan Developer - Construction Delay Issues

Advising one of the premiere developers of Manhattan luxury residential condominiums in connection with a construction agreement and construction delay issues involving the general contractor and a subcontractor on a new \$450 million luxury condominium tower.

Sponsor - Brooklyn Waterfront Residential Tower Construction Defect Dispute

Negotiated a favorable settlement on behalf of the sponsor of a luxury condominium tower on Brooklyn's waterfront to resolve construction defect claims by the condominium's board.

Public Utility - Interference Work Dispute

Advising a major public utility company on a dispute and possible arbitration involving over 1,600 invoices for interference work related to a major public improvement project for the City of New York.

Technology Company - Licensing Dispute

Represented the developer of an innovative insurance product in New York State court litigation arising from the alleged breach of a licensing agreement which gave our client exclusive access to certain data that serves as the foundation for the new product. All claims were voluntarily dismissed under a settlement agreement, and the parties entered into a new, more favorable, licensing agreement.

Real Estate Contractor / Investor - Partnership Dispute

Representing an experienced contractor and real estate investor in litigation with a former business partner over proceeds from the sale of two Brooklyn properties.

Defense of Consolidated Personal Injury Actions from Passenger Van Rollover

Representing a leading tire manufacturer in multiple personal injury and wrongful death actions consolidated in Bronx Supreme Court. The actions seek damages from our client and other defendants in connection with a rollover accident involving a 15-passenger transport vehicle.

Condominium Sponsor - Construction Defect Dispute with Construction Manager and Contractors

Representing the sponsor of a Brooklyn, NY condominium development in litigation with the project's construction manager and contractors arising from claims by the condominium's board of managers that work in accordance with an offering plan under which the condominium's units were sold was not adequately performed.

Negotiated Settlement Resolving Construction Defect Dispute with Luxury Residential Tower's Board

Represented the sponsor of a luxury Manhattan residential condominium tower in assessing and resolving damage claims asserted by the building's board of managers in connection with alleged construction defects, violations of construction specifications, failure to comply with the offering plan, and breaches of various warranties. Negotiated a favorable settlement that resolved the dispute amicably and avoided potentially disruptive and costly litigation.

Multinational Cosmetics Company - Favorable Resolution to Breach of Contract Action

Represented a multinational cosmetics company in litigation filed in New York federal court by a Washington, DC area retailer asserting breach of contract, detrimental reliance, and tortious interference claims, which sought monetary damages and a preliminary injunction preventing our client from violating a retailer agreement that allegedly required it to supply cosmetic products to the plaintiff. After obtaining an order denying the plaintiff's motion for a preliminary injunction, Herrick negotiated a settlement on favorable terms that resolved the litigation.

Manufacturer - Summary Judgment in Breach of Contract Action

Successfully represented a Queens, NY-based packaging manufacturer, obtaining summary judgment in a New York state court breach of contract action against a former customer who failed to pay for goods ordered and received.

Ireland-based Company - Dismissal for Lack of Jurisdiction

Successful defense of an Ireland-based entity in litigation asserting fraud and breach of warranty claims arising from alleged misstatements and omissions of material facts made in the shareholder's agreement of a venture formed to lay an undersea telecommunications cable between Ireland and Wales. Secured the client's dismissal from the action based on lack of personal jurisdiction.

Product Manufacturer - Class Action

Represented a product manufacturer in a federal class action involving claims of consumer fraud and product liability.

Global Automotive Manufacturer - Dismissal of All Claims in Product Liability Litigation

Herrick successfully defended the North American operations of a global automotive manufacturing company in product liability litigation involving claims based upon implied and express warranties, strict liability and negligence, all premised upon alleged property damage to a vehicle and consequential damages to a construction business caused by allegedly defective tires. The court dismissed all claims against our client, finding that the causes of action were barred under the economic loss doctrine.

Successful Defense in Multi-Plaintiff Litigation Alleging Fraud, FLSA and Civil RICO Violations

Defended individuals and related corporations affiliated with a global network of yoga studios in a highly publicized lawsuit in Arizona federal court in which more than two dozen plaintiffs asserted claims including fraud, undue influence, unfair and deceptive business practices, emotional distress, FLSA violations and civil RICO violations. Following a ruling dismissing the majority of claims, this litigation was ultimately terminated when all remaining causes of action asserted in an amended complaint were either dismissed by the court or withdrawn by the plaintiffs.

Former Corporate Officer - Successful Defense of Fraud and Unjust Enrichment Claims

Successful defense of a former corporate officer in suits filed in New York and Wisconsin state courts arising from an investor's claims of fraud and unjust enrichment in connection with alleged misrepresentations about the sales, revenues and future prospects of a business in which the plaintiff had invested.

Borrower - Lending Liability

Represented a borrower regarding management of escrow fund for continuing care retirement community.

Corporate Litigation

Assistance with post-closing indemnification issues following sale and merger.