

# Product Liability

Product manufacturers know that even the most vigilant, safety-conscious companies must be prepared to respond to serious product liability claims. Compared to other torts, the evidentiary burden for plaintiffs is relatively low and potential monetary and reputational harm to defendants can be extraordinarily high.

Cozen O'Connor is a trial firm, first and foremost. We have been defending Fortune 500 companies in significant product liability litigation for more than three decades. Our attorneys are fellows of the American College of Trial Lawyers and the International Academy of Trial Lawyers; ranked by *Chambers and Partners*; and recognized as among the nation's "most influential" trial attorneys who are regularly involved in "significant verdicts."

## SERVICES

We defend single action matters, class actions, mass torts and multidistrict litigation. Attorneys respond to congressional, regulatory and criminal investigations, and appear before state and federal courts, arbitration panels and federal agencies, including the Consumer Product Safety Commission and the Food and Drug Administration.

Cozen O'Connor serves as ongoing national counsel to major corporations in oft-targeted industries. Our attorneys build institutional and brand knowledge, create protocols for fielding claims, minimize overall liability, conserve in-house resources and guide manufacturers through product recalls and withdrawals.

In response to mass tort filings, we work with our clients to develop a national litigation strategy, coordinate multi-jurisdictional discovery, select and prepare experts, and identify critical bellwether cases for priority disposition. Our proactive approach often leads to swift and silent resolutions, minimizing disruption to ongoing business operations.

Our Product Regulatory team works with clients to prevent problems in the first place. We advise on federal and state regulatory compliance (including California's Proposition 65), conduct risk audits and reviews, and counsel on product labeling, advertising, marketing and manuals.

While the design, manufacture, sale, and promotion of many products is now a global endeavor, the majority of U.S. product liability laws are determined by individual states and vary widely across jurisdiction. With offices abroad and lawyers licensed across the United States, Cozen O'Connor has the capacity to respond to product liability matters wherever they arise.

## CLIENTS

**Food & Beverage.** Provide labeling, advertising and regulatory advice to the food, beverage and nutritional supplement industries. Respond to product liability claims, provide crisis management, guide product recalls and litigate business disputes.

**Safety Products.** Lead advocacy on behalf of the smoke alarm industry and serve as national coordinating counsel and national trial firm for an international alarm products manufacture. Our attorneys have tried numerous state and federal cases to verdict, often achieving complete victory.

**Aviation.** Represent aviation clients in multi-jurisdictional product liability, wrongful death and survival actions, personal injury, warranty claims, product recalls and property damage claims.

**Medical & Life Sciences.** Defend developers, designers, suppliers, manufacturers, and users of medical and life sciences products, particularly against claims of personal injury or wrongful death.



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## Related Practice Areas

- Aviation Litigation
- Aviation Regulatory
- Class Actions
- Commercial Litigation
- Construction Law
- Food & Beverage
- Health Care & Life Sciences
- Italy Practice
- Long-Term Care Litigation
- Product Regulatory & Compliance
- State Attorneys General
- Strategic Communications/Reputation Management

## Industry Sectors

- Food & Beverage

**Toxic Torts.** Defend manufacturers and premises owners throughout the country in matters arising out of the release of and exposure to toxic substances, such as asbestos, heavy metals, mold and benzene.

**Additional Focus Industries.** Serve clients with exposures in the areas of sports equipment, automotive and off-road vehicles, construction equipment and building products, oil and gas, firearms and manufacturing equipment.

## Experience

Won summary judgment for a national retailer of nutritional supplements in a case in which the plaintiff alleged that it sold tainted supplements.

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Secured summary judgment for a medical device manufacturer of a spinal device facing a manufacturing defect claim brought by a plaintiff who became a quadriplegic following spinal surgery. Discovery revealed that the surgery was contraindicated, and plaintiff had previously sued and settled with the surgeon, his practice, and the medical facility. We successfully moved to exclude plaintiff's chemical engineer's opinions in their entirety as well as plaintiff's only expert opinion relevant to causation, and the court granted summary judgment in the manufacturer's favor. We were also successful in our opposition to plaintiff's motions to exclude our medical and regulatory experts.

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Obtained a jury verdict in favor of a manufacturer of truck seats in a products liability action in which the client was joined as a third-party defendant. The case centered on career-ending injuries a truck driver claimed to have sustained due to allegedly defective welds in the seat frame, which caused the seat to collapse. The matter went to trial on claims of manufacturing defect and negligence after we won summary judgment before the New York State Supreme Court Appellate Division on claims of breach of warranty and design defect. We convinced the jury that our client bore no fault for the plaintiff's injuries because the seat had been modified by his employer years after its manufacture. The plaintiff sought \$500,000 in lost earnings as well as damages for pain and suffering.

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Successfully litigated and resolved many cases for an international medical technology and services company across a variety of divisions and product lines, including insulin pumps and infusion sets, neurostimulators, implantable cardioverter defibrillators and surgical products.

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Obtained a favorable settlement, in a case before the Los Angeles Superior Court, on behalf of a maker of surgical sutures.

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Successfully litigated numerous cases for medical device manufacturers, including a manufacturer of artificial back discs and a manufacturer of surgical products, and have handled approximately 20 pelvic mesh cases brought against a single manufacturer.

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Successfully defended major pharmaceutical companies in cases that went to trial in New Jersey and Pennsylvania which centered on hormone therapy, on claims that the defendant's drug caused diabetes in the plaintiff, and on claims related to the market withdrawal of the company's pain medication.

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Defended a major snack food manufacturer and spice distributor in foodborne illness actions and commercial claims arising out of the recall of their respective products. In these and other actions, we also provided crisis management services including advising on communication with media, insurers, regulators, suppliers, distributors and customers.

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Obtained extremely favorable resolutions in matters where plaintiffs have alleged injuries caused by our client's products, including: (1) acute myelogenous leukemia by being exposed to various products

containing benzene, (2) fatal injuries caused by a gas cylinder which ignited into a fireball; (3) severe brain damage caused by a fall down an elevator shaft; (4) traumatic amputation of the plaintiff's dominant arm in cardboard baler accident; and (5) severe and permanent injuries suffered in an explosion at a solid waste transfer station, when an aerosol can leaked, filling the building with flammable vapors that were ignited when the plaintiff arrived for work and activated the lights.

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Represented the interest of Del Monte Foods, one of a number of named defendants in a multi-district litigation wherein it was alleged that certain pet food was contaminated and improperly labeled. The plaintiffs and defendants in these multi-district litigation cases, including the five consolidated cases in which Del Monte was a defendant, agreed to a settlement of the class action suits, which involved both U.S. and Canadian claims. Our client's portion of contribution to this settlement was less than 2 percent of the total settlement.

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Obtained a favorable judgment in a case in which the plaintiff was severely burned when the blouse she was wearing came into contact with an open flame on her stove. We convinced the Supreme Court of New York that the case should be dismissed because the plaintiff failed to establish product identification, an essential element of her claim.

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Successfully defended the marketer of a fire-starting gel in a case filed in the U.S. District Court for the Northern District of West Virginia. The plaintiffs, parents of a minor son, alleged that a fire "flashed back" up a stream of gel their son applied to wood in a fireplace, causing the bottle to explode and their son to suffer extensive and severe burns. We engaged experts to demonstrate that the injuries were not caused in the manner alleged, and asserted affirmative defenses of product misuse and parental negligence. The matter resolved confidentially, two days before trial, after the court granted motions in limine to exclude the testimony of the plaintiffs' warnings expert as well as the only test supporting the plaintiffs' theory of the case.

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Obtained a jury verdict in favor of a product manufacturer, defeating multiple claims brought by a thirty-five year-old woman who alleged that she suffered serious and permanent brain damage from carbon monoxide exposure.

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Obtained a judgment for a ladder manufacturer on claims of manufacturing and design defects, where plaintiffs sought millions of dollars in compensatory damages for severe and permanent back and neck injuries allegedly sustained from a fall from a ladder.

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Successfully defended a product manufacturer where plaintiffs sought millions of dollars in compensatory and punitive damages for multiple deaths they attributed to carbon monoxide poisoning from a heater manufactured by our client. The jury found for our client on all claims.

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Aggressively pursued and received a substantial pre-suit resolution on behalf of our client, a Pennsylvania golf club that suffered severe damage to its greens after using a fungicide that was contaminated with an herbicide, which destroyed the greens and required significant remediation measures.

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Obtained a defense verdict on all claims for a manufacturer of consumer safety products after a month-long trial in Alabama state court centering on the death of a young girl in a house fire. The plaintiffs brought claims under the Alabama Extended Manufacturer's Liability Doctrine, and for negligence, wantonness, and breach of the implied warranty of merchantability.

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Obtained a defense verdict after only 2.5 hours of jury deliberation following a month-long trial in plaintiff-friendly Cook County, Illinois, for a leading manufacturer of consumer safety products. We defeated allegations that the product failed to operate in response to a fire, causing the plaintiff to sustain catastrophic injuries, including amputation of one leg, and causing him to be in a drug-

induced coma for approximately six months.

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Defended a restaurant conglomerate in connection with over 300 product liability cases involving a salmonella outbreak, including a class action.

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Represented a manufacturer in a product liability case involving alleged defects in electronic motors and as part of the defense of that case, prosecuted the manufacturer's claims against a third-party defendant, a supplier of motor parts.

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