

LAWDRAGON

A Team Taking Corporations to Task: Complex Litigation At Keller Rohrback



Derek Loeser, Lynn Sarko and Gretchen Freeman Cappio

By Emily Jackoway

With lawsuits over social ills from prescription opioid abuse to e-cigarette sales to kids and rampant car thefts of vehicles lacking basic locking technology, local governments and individuals frequently turn to courts to solve problems they haven't been able to fix themselves.

And when they do, they seek the help of firms like Keller Rohrback, a titan of the plaintiffs' class action bar, to champion their causes. The firm specializes in high-stakes litigation and class actions, with a focus on cases vital to the public interest.

Increasingly, governments are saying, "I'm mad as hell, and I'm not going to take it anymore," says Managing Partner Lynn Sarko.

Keller Rohrback, whose complex litigation group goes back more than 35 years, generated a fever of national attention with its most recent achievement: a historic \$725M settlement in a class action suit against Facebook and parent company Meta.

The litigation arose out of the Cambridge Analytica scandal, in which the now-defunct consulting firm that worked with Donald Trump's 2016 presidential campaign gained access to the personal information of approximately 87 million Facebook users.

The settlement, granted preliminary approval at the end of March, is the largest privacy class action settlement in the U.S. to date.

Partner Derek Loeser was appointed co-lead counsel in the litigation, which he describes as hard-fought from the outset. That was back in 2018, when news of the data privacy concerns first broke. "Facebook and their counsel at Gibson Dunn have enormous resources and every aspect of the case was a battle," says Loeser. The Keller Rohrback attorneys are seasoned in such David versus Goliath challenges.

Sarko's early career at the firm was defined by his role in a more than \$5B verdict in the Exxon Valdez oil spill in Prince William Sound in 1989. Sarko represented local fishermen, landowners and businesses in the litigation, seeing first-hand how litigation can impact individuals' lives.

Sarko founded the firm's Complex Litigation group in 1986, a few years prior to the Exxon litigation. Since then, the group has obtained more than \$75B in verdicts and settlements. With offices in Seattle; Phoenix; Portland, Oreg.; Missoula, Mont.; Santa Barbara; Oakland and New York City, the firm takes a national approach in its quest to hold corporations to account.

The firm's attorneys have been involved in virtually every hot-button class action case of late, from New York to California and states and territories in between. Loeser says of joining the practice 20 years ago, "It's satisfying to be in a place where we wake up every morning, look at what's going on, then try to take on that conduct and help people that are victimized by it."

THE KEY: AN UNBEATABLE CREW

In order to take on cases of that magnitude, you need a strong team. The team at Keller Rohrback is the firm's "special sauce," says partner Gretchen Freeman Cappio.

"This is the kind of place where we all really value each person's unique contribution, passion for the law, experience and skill set," she says. "It's a very respectful place where collaboration makes us all better lawyers. Rather than competing with each other, we compete with the other side."

The kinds of cases the team litigates require working in large teams both internally and with other firms; it would be impossible to achieve national victories against such formidable adversaries alone. Being able to work well internally propels the attorneys into vital working relationships in the class and mass action space.

When asked about the key to maintaining that collaborative environment since the group's founding, Sarko simply replies, "Ted Lasso."

He's referring to the hit Apple TV show, where a positive American football coach is tapped to lead a British soccer team. Much like that team, Sarko explains, the firm's lawyers win together and lose together. When he says together, he means everyone – the firm places an emphasis on uplifting the roles of early-career attorneys.

***“Collaboration makes us all better lawyers. Rather than competing with each other, we compete with the other side.*”**

Loeser and Cappio agree that Sarko's lack of ego as head of the practice has allowed the team to succeed as much as they have by putting others forward.

"We strive to have a meritocracy that is not based on seniority and to let people, when they are capable, run as fast and as hard as they want. That's a very special part of Keller Rohrback," says Cappio. In one recent matter, an associate, Adele Daniel, successfully argued a dispositive motion in a case that had been ongoing for years. Instead of leaving the job to a senior attorney by default, Sarko explains that the partners instead asked, "What's best for the case? What's best for winning?"

Keller Rohrback prides itself on having a diverse, deep bench with stellar attorneys at all levels – from junior associates to seasoned partners with decades of experience. As Sarko puts it, "We have a great team and are excited about the future of the firm."

DEDICATING IT ALL: THE OPIOID CRISIS

That mindset has generated a number of victories, including in the National Prescription Opiate Litigation, which has dominated the mass action space nationwide for years. Keller Rohrback has been in the trenches since the beginning.

"It was the most complicated matter I've been involved in, and I've been involved in a lot of complicated cases," Sarko says. "This took lots of talent, perseverance, a great court system, and it showed that our system of justice can make something work." The plaintiffs in the MDL are represented by attorneys from more than 25 different firms across the country. The attorneys say they've come together to litigate a massive undertaking at the behest of government entities tired of seeing their constituents fall victim to corporate greed.

Before the MDL was created, Loeser was representing claimants in Washington – some of the first to file in the country. Sarko and Cappio, meanwhile, were working with entities like the state of Arizona – the first state to have every governmental entity inside its borders sign off on a settlement, from the capital to the smallest town.

Arizona, Cappio explains, is a political microcosm of the U.S.: The state contains beliefs of every shade at each of those levels of government. Achieving a settlement there shows the power the justice system holds when governments come together against a common adversary.

Once cases around the country were combined in the national MDL, says Sarko, the commitment to working together across political lines reached a new scale.

The firm was appointed to multiple leadership positions in the MDL, with Sarko joining the Plaintiffs' Executive Committee and Loeser serving on the Expert and Law & Briefing committees. Loeser led the charge against a major opioid manufacturer, Mallinckrodt, which filed for bankruptcy court protection during the litigation, and agreed to pay \$1.7B to resolve the MDL claims. The firm also helped develop and pursue the case against Walmart.

When the firm was filing the first cases, the partners agreed that the magnitude of the litigation demanded an unprecedented investment of resources; some partners have spent more than half their time on opioid cases in the past few years.

Their efforts have paid off: To date, they've won a staggering \$50B-plus. Under the 2021 and 2022 National Settlements, the majority of the money will be used for abatement – treatment, education and prevention – to prevent the crisis from continuing to spread.

Outside of the monetary components of the settlements, the attorneys say they're proud that many of the companies sued in the lawsuits have been driven out of business or forced to change their business practices.

A \$230M settlement with Johnson & Johnson, for example, led to the end of the company's sale of opioids in the U.S. This is, says Sarko, "a case in which the collective plaintiffs have wrestled the defendants to the ground."

Their commitment has paid off not just in the litigation, but personally, as well. "It is remarkable that when individuals show up to take on corporations, there's a place in this country where that can happen," Loeser marvels. "It's really exciting to be a part of that."

CURRENT CASES: TEEN VAPING

Loeser is equally passionate about the firm's involvement in the cases against e-cigarette and vaping giant JUUL. As in the opioid litigation, the firm represents multiple

government entities whose constituents have been impacted by JUUL and other vapor products' alleged marketing toward young people.

"JUUL thought it had found this goose laying golden eggs, which was addicting kids to nicotine," Loeser says. He has a personal connection to the cases – Loeser's children were in high school at the time vaping devices began to appear in classrooms. The idea that corporations could be targeting children lit a fire in his heart – and his partners' – to seek justice.

The JUUL MDL is also massive in scale, with more than 10,500 personal injury cases, 1,500 city and school district cases, a large consumer class action and 32 tribal cases. Keller Rohrback partner Dean Kawamoto was appointed co-lead counsel in the case. According to press reports, last December, just before trial, JUUL agreed to pay at least \$1.7B to settle the personal injury, consumer class action and county, school district, and tribal cases. An agreement in principle has also been reached with Altria, one the major investors in JUUL and one of the largest tobacco companies in the world, for \$235M to settle the personal injury, consumer class action, and county and school district cases. Neither JUUL nor Altria have admitted any wrongdoing as a result of the litigation, and says they are working to combat underage use of the products through these settlements. The recoveries will, as in the opioid cases, go toward abatement.

When it comes to crises affecting young people, JUUL isn't the only major company the firm is pursuing.

In new matters, the firm has begun representing school districts in litigation against many of the most popular social media platforms, alleging that teenagers' use of these apps has contributed to the growing teen mental health crisis. Defendants named in the suits so far include the parent companies of Facebook, Instagram, TikTok, Snapchat and YouTube.

The cases contend that the platforms' marketing and algorithms are tailored to keep teens engaged on the platforms despite risks to mental health. The matters are in early stages, and the firm is, yet again, getting in on the ground floor: The team represents Seattle Public Schools, the first school district in the nation to sue social media companies.

Social media usage among teens has spurred on other cases, as well.

In what the team describes as the "opposite of lawyer-driven litigation," multiple cities and other government entities have approached the firm about the rampant rise of thefts of certain models of Hyundai and Kia cars.

The thefts have skyrocketed in popularity thanks to the ease of execution. Due to a lack of engine immobilizers, some models of the brands' cars – often manufactured between 2015 and 2021 – can be stolen with a simple USB cable. Currently, Cappio and the team

are representing numerous cities and have been appointed to lead the governmental track in litigation against the car manufacturers.

“It is remarkable that when individuals show up to take on corporations, there’s a place in this country where that can happen. It’s really exciting to be a part of that.”

“It’s just like in the JUUL case and in the opioid cases, where you have a widespread problem and cities are being forced to pick up the bill,” Cappio says. “Kia and Hyundai made deliberate decisions to cut corners on basic locking technology which made their vehicles easier to steal. As a result, there are crime waves all across the country.”

And, due to the confluence of ease of access and viral fame, it’s often young people – even those too young to drive – who are stealing the vehicles. Not only is prosecuting these crimes expensive for cities, Cappio explains, but it is tragically leading impressionable young people into the justice system at an early age.

HELPING THE PUBLIC AND THE PLANET

Since the Exxon case, Sarko has continued to work in the environmental litigation space – and the rest of the team has, as well. Cappio is currently representing the city and county of Denver, Colo., in their claims against a spate of chemical companies they allege contaminated property with per- and polyfluoroalkyl substances known as “forever chemicals.” The case alleges that these toxic chemicals, used in a fire extinguishing agent, contaminated land and drinking water in the area. Denver is joining thousands of other individuals and cities in similar actions.

The Denver case comes on the heels of another recent environmental win Sarko, Loeser and others on the team spearheaded last year. In that case, the team represented the state of Oregon in a suit against Monsanto over the manufacture of products using another variety of forever chemicals called polychlorinated biphenyls, or PCBs.

The attorneys argued that Monsanto marketed the chemicals despite knowing of their toxicity as far back as the 1930s. The chemicals were used in common household items including electrical equipment, paint and caulking, and eventually spread into local soil, waters and wildlife. The case resulted in a \$698M settlement – the largest environmental damage case in Oregon history. Currently, the team is representing the states of Maryland and Delaware and the city of Seattle in further cases against Monsanto.

“The work of the team on the case, including partners Dan Mensher and Yoona Park, was tremendous. It was really exciting to see our environmental group hold Monsanto accountable for creating a massive public health problem in Oregon,” Loeser says.

INTEGRITY IN BATTLE

In a world as cutthroat as the plaintiffs' class action bar, Keller Rohrback defines itself by collegiality and respect with opposing counsel in the face of mammoth competitors.

The attorneys are dedicated to ensuring their wins never come at the price of integrity. The team places tremendous importance on following the rules and respecting their team, opposing counsel and the court at large. "We're not lawyers that are going to go push the envelope on ethical behavior, taking advantage of our co-counsel or the court. It's about building trust with the court like we build it with our colleagues," says Loeser.

But that respect should never be mistaken for ambivalence; the anger they've noted governments are feeling on behalf of their constituents is matched by the attorneys' passion for justice.

When getting involved in cases as high-profile and complex as these, the attorneys know they are likely devoting the next several years of their lives to litigation. When we get involved in this kind of litigation, says Loeser, "It inspires us. We know we are going to be working around the clock for years, but it's worth doing."

www.lawdragon.com