

## Class Action Group Of The Year: Keller Rohrback

By **Jake Maher**

*Law360 (February 1, 2024, 3:02 PM EST)* -- Keller Rohrback LLP scored big wins against companies like Facebook — in multidistrict litigation stemming from the Cambridge Analytica data privacy scandal — and Juul — in litigation over the e-cigarette company's marketing practices toward minors — earning the firm recognition as one of Law360's 2023 Class Action Groups of the Year.

"What is the secret? The secret, I think, is being honest," Lynn Sarko, managing partner of the firm, told Law360, reflecting on the year's accomplishments. "Do good lawyering. Make sure the court and the judge trust you. Never, ever deceive the court — always be truthful. And fight hard."

A Northern California federal judge gave final approval in October to a \$725 million settlement between Facebook and a class of 250 million users, the largest amount awarded in a data privacy class action and the most money Facebook has ever paid to settle a private class action, according to Keller Rohrback.

The class allegations stem from the March 2018 revelation that a third-party app developer had taken personal data from about 87 million unsuspecting Facebook users and sold it to Cambridge Analytica, a U.K.-based political consulting firm hired by former President Donald Trump's 2016 campaign. Cambridge Analytica filed for bankruptcy shortly after the scandal came to light.

Derek Loeser, a Keller Rohrback partner, served as co-lead counsel in that case.

Loeser highlighted the perseverance it took to see the case through despite "scorched earth litigation" tactics: Facebook and its counsel at Gibson Dunn & Crutcher LLP were sanctioned almost \$1 million for misconduct in delaying discovery.

"One approach that some defendants take to defending these cases is to make it as chaotic as possible," Loeser told Law360. "And so it really is important in that situation to have a plan and to implement it and to keep people focused instead of getting angry and losing your mind because, as the judge said in that case, we were sort of being gaslit from the start."

Almost 18 million members of the 250 million-person class submitted claims as of September 2023. Loeser said the high rate is partly attributable to anger among Facebook users about the scandal.



"There's only so many apologies that you can hear before you realize that there's some big problems," Loeser said.

Keller Rohrback also notched a victory in litigation against Juul Labs Inc. in 2023, with firm partner Dean Kawamoto representing a group of municipal governments alleging they spent resources combating Juul use in their schools. Juul and the plaintiffs, which included families of adolescents and Native American tribes, came to a \$255 million settlement just before a bellwether trial was about to begin. It was approved in September.

Kawamoto said the large multidistrict litigation against Juul combined elements of a class action, mass tort case and public health litigation, bringing unique logistical challenges.

"What was interesting and complicated is that when you have these three different litigations, you need to find a way to combine and litigate them," Kawamoto said. "The strategy adopted in Juul was what we, the co-leads, termed a 'force field' approach, which was the idea that all of these cases were going to move forward simultaneously, because they were going to reinforce and support each other."

The multipronged approach is a "preview" of the future of class actions, Kawamoto said.

"The sort of historical class action, which is a case on behalf of injured consumers or investors for economic loss — I think those will still be important, and they're certainly still going to exist," Kawamoto said.

He added that he thinks "increasingly you're going to see a hybrid model where you've got a class action-plus-personal injury case-plus-government in the cases, and to successfully litigate that case, you're going to need firms that are, for lack of a better term, interdisciplinary."

Keller Rohrback also landed a major blow against PacifiCorp in June, when a jury found the company negligent in causing several wildfires in Oregon around Labor Day 2020.

"I think they're going to teach [this] in business school about, if you're a corporation, how to mess up," Sarko said.

He traced the wildfires' origins to PacifiCorp's acquisition by Berkshire Hathaway, subsequent bad conduct and a failure to be a "good corporate citizen" when litigation started.

"Guess what? When you're stubborn and you won't take responsibility, and you push your case to trial — this jury found them negligent, reckless, willful misconduct and liable for punitive damages," Sarkos said.

Sarko put special emphasis on the role the jury played in the case.

"Juries are a breath of fresh air," Sarko said, able to apply common sense and see through efforts at obfuscation.

The Portland jury found PacifiCorp liable for damages to the class, and awarded the named plaintiffs nearly \$90 million in economic, noneconomic and punitive damages. A consolidated trial for damages for the rest of the 5,000-member class started in January, and PacifiCorp's internal estimates for total liabilities resulting from the fires are as high as \$10 billion.

Keller Rohrbach and its co-lead counsel also ended nearly seven years of litigation last year through a \$44 million settlement with Walgreens, resolving claims from a class of consumers who bought faulty finger-prick blood tests. from Theranos, the company founded by convicted fraudster Elizabeth Holmes.

"We do have to be in these cases for the long haul, for sure," said Gretchen Cappio, a partner at the firm, reflecting on the many "chapters" that litigation went through in its seven years.

The firm also saw preliminary approval granted for a case in which it, along with other firms, represents a class of consumers who bought Kia and Hyundai cars with defective engines that could burst into flames. The deal will cover reimbursements for repairs and extended warranties for about 2.1 million vehicles, Keller Rohrbach said.

2023 was a banner year for Keller Rohrbach. Sarko and Cappio credited the firm's success with its culture of professionalism, both within the firm and with co-counsel, and its willingness to take on the biggest challenges.

"It's a pleasure to not only work on meaningful, impactful cases that make a difference in people's lives and in our communities, but also to work with people who really value teamwork," Cappio said.

Sarko echoed that some of the firm's achievement can be attributed to the attitude of its people.

"I always say, we play well in the sandbox and we keep a common goal," Sarko said. "We are fearless, but keep your sword at your side until you need to use it."

--Additional reporting by Lauren Berg. Editing by Caitlin Wolper.