

Mile Markers

Alston & Bird Notches Victories Along the Road of Toyota Multidistrict Litigation



From L-R: Richard Hays, Managing Partner, Alston & Bird; Webster Burns, Vice President and Assistant General Counsel, Toyota Motor Sales, USA, Inc.; Cari Dawson, Partner, Alston & Bird; Sandra Phillips, Vice President and Assistant General Counsel, Toyota Motor Sales, USA, Inc.; Christopher Reynolds, General Counsel and Chief Legal Officer, Toyota North America

For more than three years, a multi-practice Alston & Bird team led by partner Cari Dawson represented leading international automobile manufacturer Toyota in the Unintended Acceleration (UA) Marketing, Sales Practices and Products Liability Multi-District Litigation (MDL) in the Central District of California. Dawson served as lead counsel for the economic loss class actions in the UA MDL. At the outset of the proceedings, the UA MDL consisted of nearly 200 class actions transferred from nearly every state, Puerto Rico, and claims of plaintiffs from 14 foreign countries. Parties in the MDL sought certification of nationwide, state-wide and global classes. The firm also served as the lead counsel for all state court class actions relating to UA, including the coordinated California class action proceedings, as well as a civil enforcement action filed by the Orange County district attorney and insurance subrogation claims. The consolidated class actions in the UA MDL and coordinated California proceedings included claims of consumer protection, false advertising, unfair and deceptive business practices, breach of express and implied warranty, and unjust enrichment. Monetary damages under diminished value and benefit of the bargain theories, as well as injunctive relief, were sought.

Dawson and her team achieved several significant early victories that favorably positioned Toyota during the first two-and-a-half years of this litigation. At the outset, Alston & Bird obtained the MDL forum desired by Toyota in March 2010, when Dawson argued before the Judicial Panel for Multi-District Litigation for consolidation in the United States District Court for the Central District of California of all pending economic loss class actions and personal injury and wrongful death lawsuits arising out of widely publicized recalls and allegations of problems in the vehicles' electronic throttle control system. This important and highly contested facet of the case, featuring more than 24 lawyers representing a variety of interests, was covered by *The Wall Street Journal* as "the legal world's equivalent of speed-dating."

In June 2011, the plaintiffs' claims were dealt a major blow when the Alston & Bird team defeated their efforts to apply California law to all the economic loss class action claims in the MDL. This win was extremely significant because it foreclosed the possibility of certification of a single nationwide class under California law and limited the scope of Toyota's liability by precluding non-Californians from pursuing their claims under the more permissive laws of California. There was substantial national media coverage of this victory, including in the *National Law Journal* and *Law360*.

In December 2011, the Alston & Bird team successfully won a dismissal of all complaints brought against the automotive manufacturer by foreign plaintiffs from 14 countries as part of the MDL. This came on the heels of a similar dismissal in April of that year, after which the plaintiffs were given an opportunity to amend and re-file their claims.



Continuing this success, in May 2012, the firm achieved another substantial victory when the court granted in part Toyota's motion to dismiss claims in the Second Amended Master Consolidated Complaint under Florida and New York law, the two bellwether states in addition to California. As reported by *Bloomberg*, Dawson argued that "[c]ourts have held that being compensated for defects that are not manifested is speculative, unfair and bad economics." She continued that plaintiffs don't have the right to sue "for a harm that may never occur." The court agreed, ruling that plaintiffs in Florida must have experienced a manifested defect to state any claim. Similarly, New York plaintiffs must have experienced

a manifested defect or recognized loss on the sale of a vehicle in order to state a claim. The courts' rulings had important implications on the dismissal of other "no injury" claims beyond New York and Florida and significantly narrowed the number of people who could bring claims—since less than one percent of Toyota owners claimed to have experienced UA.

In late December 2012, Toyota made a business decision to turn the page on this legacy legal issue, and the presiding judge gave preliminary approval to a settlement of the economic loss class actions in the federal MDL. Final approval of the settlement was granted in July 2013.

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