

Class Action Group Of The Year: White & Case

By **Emily Field**

Law360 (February 8, 2023, 2:02 PM EST) -- White & Case LLP's class action group scored important wins last year in defeating class certification for clients involved in securities, fintech and consumer products, securing the firm a place among Law360's 2022 Class Action Groups of the Year.

The team successfully persuaded a California federal judge in January 2022 to hold off on certifying a proposed class of Toshiba Corp. investors suing the Japanese conglomerate over an alleged \$2.6 billion accounting fraud on the basis that their shares weren't bought on an exchange in the U.S.

White & Case attorneys proved that the shares were actually purchased in Japan, so the Securities Exchange Act of 1934 couldn't be applied under the U.S. Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd.*, and therefore the investors couldn't meet the typicality requirement for a class action, partner Eric Grannon said.

"This is an important precedent for other non-U.S. companies whose shares trade only outside the U.S.," Grannon said. "Those companies don't have control over American depository receipts being created from stock sold overseas and should not be haled into a U.S. court on that basis."



Eric Grannon



Bryan Merryman



Jack Pace

Although that case involved an overseas company facing a class action in an American court, the firm's global footprint with more than 2,400 attorneys in offices in 30 countries makes it well-positioned to serve non-U.S. companies facing class actions and representative actions for the first time as they become more common in the U.K. and Europe, attorneys said.

"It's part of the White & Case DNA to see the practice on a global basis," said partner Jack Pace, "and with class actions — at least on a national basis."

Another notable win came in litigation brought by "meme stock" investors who alleged that broker-dealer Apex Clearing Corp. caused their losses when it temporarily blocked them from buying three of the most volatile stocks during the meme stock frenzy of early 2021.

After four tries, the investors failed in their final attempt to plead claims against client Apex when a Florida federal judge early in 2023 tossed their suit seeking to hold them liable for losses and declined to give them another shot at amending their complaint.

The investors' previous complaint was dismissed because U.S. District Judge Cecilia M. Altonaga found that the claims hadn't been properly consolidated in multidistrict litigation.

White & Case's global approach also ensures that lawyers from the firm get trained from the beginning on how to work on class action matters, according to Pace.

"It's part of our training model that we get people involved in class action work from day one," Pace said. "They're really good cases to train people on, and we've been doing it for a long period of time."

Another strategy that the firm uses in litigating class actions is challenging class certification, which Grannon said is often the best option for a defendant to defeat the suit, as plaintiffs use the leverage of certification to reach a settlement.

"We work from the start of a case to figure out how we can use the rigorous requirements of Rule 23 of the Federal Rules of Civil Procedure to defeat or at least substantially narrow the alleged class," Grannon said.

Other important wins for the firm also came in product liability cases involving allegations over the presence of heavy metals in Gerber baby food and deceptive practices over the marketing of prescription pet food made by Purina.

What won the dismissal of the pet food case was that the plaintiffs couldn't argue that the marketing caused pet owners to buy the food, because it was specifically prescribed by veterinarians to treat health problems, partner Bryan Merryman said.

"That's a good example of coming up with a unique way to put the client in the best place to defend the case," Merryman said.

And in a case over the labeling of Poland Spring brand sparkling water, the firm at first was inclined to settle it for a minimal amount, until the opposing attorney let slip that it was a trial run for cases that would be later brought over other flavors and brands of sparkling water.

"It became a test case to stop numerous other lawsuits, not just against our client, but against the industry," Merryman said. "What I thought was interesting about the cases was the need to prevail early and prevent an onslaught of those cases."

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