

# IN CLOSING...

ALSTON & BIRD LLP



**Cari Dawson serves as lead counsel for the economic loss class actions in one of the largest automobile product liability MDLs in the country, *In re Toyota Motor Corp. Unintended Acceleration, Marketing, Sales Practices, and Products Liability Litigation*. Diversity & the Bar spoke to her about her experience.**

## **Why were you chosen to lead Toyota's defense in this case?**

I believe I was chosen because of my expertise in litigating class actions, passion for developing creative legal strategies, ability to assemble and manage a multi-disciplinary team of talented attorneys, and my tenacity and strong work ethic.

I would not have had the opportunity to be chosen by Toyota if I had not participated in the National Bar Association's Corporate Leadership Forum at the 2009 Annual Convention in San Diego, California. I was invited to do a presentation on class actions for participants attending the NBA's Corporate Leadership Forum. Chris Reynolds, general counsel of Toyota, was one of those participants. I spoke with him about doing an in-house CLE for his legal department on class action issues relevant to Toyota and the automobile industry generally. Shortly thereafter, Toyota was hit with three class actions in two different states seeking economic damages for alleged defects in the electronic throttle control system in its vehicles and was interviewing outside counsel to serve as defense counsel for those cases. At Chris's invitation, I assembled a team, and we participated in that selection process. We made our presentation to members of Toyota's legal department and provided materials outlining our specific litigation strategies. We were ultimately selected by Toyota as its lead counsel for those economic loss class actions.

With the full support of Alston & Bird, I have been able to actively participate in conferences, programs, meetings, and events organized by the MCCA, NBA, and many other terrific organizations. Through relationships developed within those organizations, I have been given opportunities for legal work. Toyota is the most high-profile and largest opportunity to date, thanks, largely in part, to the NBA's Corporate Leadership Forum.

**Two significant victories for Toyota during the MDL were the dismissal of the majority of New York and Florida claims and the defeat of Plaintiffs' Motion for Application of California law to the class actions. Why are these rulings important for manufacturers?**

The majority of jurisdictions, including New York and Florida, have ruled that plaintiffs have no legally recognizable claims when the alleged defect has not manifested itself in the product they own. It was this majority rule which resulted in the MDL Court granting, in large part, Toyota's motion to dismiss under New York and Florida Law. This ruling is useful to manufacturers facing "no injury" class action claims because it limits the number of putative class members who can seek recovery.

The Court's denial of application of California law was significant because it foreclosed the possibility of certification of a single nationwide class under California law in the MDL and limited the scope of Toyota's liability by precluding non-Californians from pursuing their claims under the more permissive laws of California.

While defense lawyers will argue that even under California law, a plaintiff's product must have either manifested the defect or the product is substantially certain to malfunction during the useful life of the product, plaintiff's counsel will point to select cases indicating that owners of a product can recover economic damages even if the product functions properly and does not manifest the alleged defect.

**You've said that your team was very diverse. How did that diversity help you in this case?**

Team members were affiliated with multiple practice groups in eight different offices, spanned three different generations, and were approximately 60 percent women and 30 percent minorities. With a core team of over 90 individuals, each with his and her own unique experiences, perspectives, skills, and talents, we were able to handle myriad issues and draw upon those talents to assist us in the litigation and in our relationships with our

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client and Toyota outside counsel in related matters.

There are the very practical skills and talents of a diverse team, such as having a team member who is Japanese-born, speaks, reads, and writes Japanese, and helps team members to understand Japanese culture; to software engineer team members who assist with technical and engineering issues; to intellectual property team members who routinely draft source code protective orders; to former CPA and economics major team members who can analyze vehicle pricing data and econometric models. Simply put, all of our unique, individual differences made us stronger as a team.

Further, a matter of this scale, complexity, and magnitude requires a team that is not only committed to the engagement, but also dedicated to each other, supportive of one another and invested in each other. While it may seem counterintuitive, I believe the diversity within the team contributes to our cohesiveness, collegiality, and our ability to work hard and play hard together.

And, there are the equally, if not more important, diverse "people" skills and personalities of our team members, which contributed to our team's positive relationships with the client and other outside counsel, all of whom have different personalities and working styles. The end result is greater coordination and collaboration, which ultimately result in a higher quality work product for Toyota. **D&B**