

Class Action Group Of The Year: Perkins Coie

By **Jess Davis**

Law360, Dallas (January 14, 2014, 9:13 PM ET) -- Perkins Coie LLP secured an influential appellate decision on confidential source allegations in securities litigation against The Boeing Co. and defeated class certification in a string of high-profile consumer claims, earning it a spot among Law360's Class Action Practice Groups of the Year.

The Seventh Circuit in March affirmed dismissal of a shareholder class action against Boeing that alleged it made misleading statements during development of its Dreamliner aircraft, in an opinion authored by U.S. Circuit Judge Richard A. Posner that laid out the proper scrutiny confidential source allegations should face under the Private Securities Litigation Reform Act and the mandatory nature of Rule 11 sanctions review when a PSLRA complaint is dismissed. Perkins Coie is representing Boeing's ongoing pursuit of sanctions against Robbins Geller Rudman & Dowd LLP, after the court the firm's attorneys made accusations about a confidential source though none of the lawyers had spoken to the source."

The class action group also racked up a number of wins for General Mills Inc., which faced putative consumer class action claims about the marketing and labeling of some of its popular snack foods, including Cheerios and Fruit Roll-Ups. And in August, it defeated class certification for a proposed class of 24,000 merchants who claimed hundreds of millions in damages against First Data Corp. over leases of its credit card terminals, with a judge ruling the merchants lacked common evidence that would support classwide status.

"Class actions typically, given their nature, are going to be higher stakes than the average litigation matter," practice group chair Sarah Crooks said. "The way we consistently achieve success is assembling teams with specific expertise for that area."

Several years ago the firm decided to develop a team specializing in food-related class actions, work that paid off with several big wins for General Mills in 2013. In January 2013, plaintiffs withdrew remaining claims against the company in a putative nationwide class action involving the labeling of its Fruit Roll-Ups and Fruit-by-the-Foot snack products, after a judge earlier ruled a majority of the claims were preempted under the federal Nutrition Labeling and Education Act.

The same day the Fruit Roll-Ups claims were dropped, plaintiffs dismissed their remaining individual claims against General Mills stemming from its marketing of the cholesterol-lowering benefits of its Cheerios cereal, after the firm won summary judgment in a multidistrict litigation consolidating five putative nationwide class actions. The court found no proof the customers suffered damages from their Cheerios purchases. And in February and April, plaintiffs voluntarily dismissed remaining claims **involving**

Yoplait Greek yogurt after General Mills successfully argued a challenged ingredient was permitted under U.S. Food and Drug Administration regulations.

Perkins Coie's food-focused team, which includes a lawyer specializing in FDA regulations, continually monitors related consumer litigation and holds workshops to stay at the top of its game, said David Biderman, who leads the firm's mass tort and toxic tort defense group. He said after the U.S. Supreme Court's rulings in Wal-Mart v. Dukes and in AT&T Mobility v. Concepcion tightening the boundaries of class actions, plaintiffs lawyers are increasingly focused on classes not involving contracts that might contain arbitration clauses, like products claims stemming from food, health care products and supplements.

"We focus on trying to eliminate the case before class certification and have had a lot of success on that front," Biderman said. "In consumer class actions, if it's one case that's left, the claim is typically worth under \$5 or \$6."

The firm also defeated class certification in a high-stakes wage-and-hour case against Comcast Corp. alleging the company failed to pay overtime to more than 2,000 call center employees and that it had engaged in deceptive practices under the Washington Consumer Protection Act in soliciting their employment. Perkins Coie said plaintiffs' counsel in a handful of other states were waiting in the wings to file similar suits for Comcast's other call centers if class certification was granted, putting more pressure on them to secure a win. A judge in April ruled though that the plaintiffs did present common questions, they were not susceptible to classwide proof and said calculating damages would require individualized assessment, making it impossible to proceed as a class.

Crooks said recent federal precedent has given defense lawyers more tools to attack class certification before a case ever gets to a federal jury and that much of the firm's work after the 2011 Dukes decision has involved motions to decertify a class or, post-verdict, continuing to raise the issue of whether certification was proper. But though in many areas and many of the firm's cases, judges have said they "haven't found the right glue" to keep classes together, she said some state courts like those in California and Oregon are interpreting federal precedent in ways that can make local battles more contentious than in federal court.

Based in Portland, Crooks said Multnomah County, Ore., judges have been "very liberal" in trying to find ways around the Dukes decision, for example, and that Oregon law is still developing in a way that "tends to be more pro-consumer."

"State courts and judges are trying to find ways to help plaintiffs get through those hurdles," Crooks said. "The fights in state court can provide a more interesting example of how the case law is going to develop."

--Editing by Chris Yates.