

CAPABILITIES

Sonnenschein is a national leader in offering coast-to-coast experience, sophistication and exceptional depth in handling class action defense and other bet-the-company litigation on behalf of financial and insurance industry clients. Staffed with seasoned litigators and former insurance regulators, our lawyers are relentless advocates for our clients' interests.

For more than 70 years, we have partnered with insurance companies to understand and respond to their business and legal needs. We offer outstanding qualifications and a long-standing familiarity with insurance, financial products and

investments, the nuances of the laws impacting these products, and the industry as a whole.

Our team brings significant industry experience litigating fraud, contract, coverage, bad faith, consumer protection acts, antitrust, Racketeer Influenced and Corrupt Organizations Act (RICO), civil conspiracy, breach of fiduciary duty and employment claims, among others. Additionally, our litigators have had great success arbitrating matters with the National Association of Securities Dealers (NASD) and other organizations. What follows is a small sampling of that experience.

Selected Representations

Since 1995, Sonnenschein has served as national coordinating and lead trial counsel to **Prudential Financial** in one of the most complex litigated and regulatory matters in American corporate history. Sonnenschein worked hand-in-hand with Prudential's in-house team to counsel the company's board of directors and senior management in navigating more than two dozen putative nationwide class actions, a federal multi-district litigation in New Jersey, multiple state regulatory investigations, including a 35-state task force effort plus individual investigations by several other state departments of insurance and attorneys general, an inquiry by the U.S. Attorney's Office for the Southern District of New York, a formal NASDR probe and multi-year negotiation, more than 1,300 individual federal and state court actions, and dozens of NASD agent arbitrations. Sonnenschein constructed a strategic and tactical defense for Prudential that included: (i) navigating the New Jersey Department of Insurance to form a multi-state task force to consolidate and lead dozens of incipient independent state investigations, (ii) working with the multi-state task force to craft a strong settlement, (iii) using the multi-state settlement to leverage the private class plaintiffs' bar into a national class settlement, and (iv) leveraging the impending class settlement approval to achieve settlement with "hold-out" aggressive states and, later, thousands of individual plaintiffs.

Sonnenschein obtained for **Prudential Financial**, in the U.S. Court of Appeals for the Third Circuit, approval of a national

class certification and settlement of life sales practices claims, and thereafter, for the same client, defeated class certification of three separate putative "opt-out" litigation classes, each involving multiple plaintiffs' counsel and multi-day evidentiary hearings, in state courts in Beaumont and Austin, Texas, and in Monterey, Calif., where plaintiffs in friendly state court venues were raising the very same class allegations that had been certified in the nationwide class settlement.

Numerous other carriers have turned to Sonnenschein as chief trial counsel and national coordinating counsel for other consumer fraud and life sales practices class actions, individual litigations, and regulatory and compliance matters, including: **Ohio National Life Insurance Company, First Colony Life Insurance Company (Genworth Financial), the Horace Mann Companies, Country Life Insurance Companies and Ameriprise Financial**. And, we have been engaged to defend or counsel additional companies on similar life sales practices litigations, including **Fireman's Fund Insurance Company, Allianz, Lincoln Benefit Life, Phoenix Home Life, American General Life Insurance Company and Unitrin/United Insurance Company of America**. The breadth and depth of our experience in this area is, we believe, unparalleled.

For more than 30 years, we have represented **Allstate Insurance Company** in class actions on scores of issues

The ethical rules of some states require us to identify this material as attorney advertising. Prior results do not guarantee a similar outcome.

Insurance Class Action Litigation

throughout the U.S. As the company's principal outside class action counsel, we have defended or coordinated the defense of the company in state and federal court matters involving such issues as aftermarket parts, diminished value, credit discrimination, medical payments and modal premiums. Moreover, Sonnenschein has coordinated the defense of Allstate in major catastrophes, such as the thousands of individual, mass and class actions arising in three states as a result of Hurricanes Katrina and Rita. As a result of this relationship, Sonnenschein attorneys consistently have been on the leading edge of issues confronting the property and casualty (P&C) industry.

In April 2004, after a three-week jury trial involving diminished value claims in auto insurance, we obtained a complete defense trial verdict for **Allstate** in one of the very few certified multi-state class actions to be tried, in circuit court in St. Clair County, Ill. Plaintiffs in the case, who had sought nearly \$400 million in damages, alleged that Allstate had breached its policy contracts by failing to pay "diminished value"—the amount a vehicle purportedly loses in value after full repairs have been made. The class included approximately 387,000 Allstate policyholders from 29 states and the District of Columbia.

We serve as national coordinating counsel for other major P&C insurance carriers, who have faced more than 30 class actions involving the use of aftermarket automobile parts and the payment of "diminished value" in auto repair claims, including some in notoriously difficult jurisdictions. **The Travelers Companies, Country Companies, Farmers, Horace Mann and Metropolitan Life Property & Casualty** have retained Sonnenschein to coordinate class actions pending in a dozen states.

Sonnenschein defeated class certification in a putative class action brought against **UniCare**, a subsidiary of **WellPoint Health Networks**, on behalf of two plaintiff classes and alleging a defendant class. The complaint alleged ERISA and common law violations arising from the asserted disconnect between UniCare's negotiated rates with providers and the terms of various UniCare individual, small group and large group health insurance plans. Sonnenschein was retained after the case had been pending for two years. Within six months, we developed a new defense strategy, completed discovery, briefed class certification and won the case. The court denied certification of all classes.

Sonnenschein is representing **WellPoint Health Networks** against a putative nationwide class action pending in southern Illinois, challenging the merger through which WellPoint acquired RightCHOICE as well as RightCHOICE's subsequent withdrawal from the market. The remaining claims include breach of contract (i.e., breach of Illinois HIPAA, which plaintiffs contend was incorporated as a contract term) and violation of the Illinois Consumer Fraud Act.

Sonnenschein has achieved repeated successes for our client **Genworth Financial**, including:

- Defeat of a putative nationwide class action in the U.S. District Court for the Middle District of Florida charging improper life insurance sales. No class was certified, and the case was resolved with the two named plaintiffs only.
- A New York state court class action alleging deceptive sales practices and breach of contract in connection with long-term care policies. The New York trial court denied class certification and granted summary judgment on virtually all counts.
- State court class actions in Madison County, Ill., and New York concerning life insurance policy dating and the purported collection of premiums during a time when there allegedly was no risk to the insurer. The latter resulted in the New York Court of Appeals' November 2005 affirmance of the trial court's decision dismissing the complaint and the First Department Appellate Division's opinion to the same effect (*Katz v. American Mayflower Life Insurance Company of New York*).
- Reversal of a multimillion-dollar Oklahoma jury trial judgment, and complete dismissal by the Tenth Circuit Court of Appeals, in *Gillogly v. GECA*, in which plaintiff alleged breach of contract and bad faith failure to pay/punitive damages for failure to honor a long-term care policy contract for "nursing home" coverage. The Tenth Circuit accepted our arguments and gave broad support to the insurer's effort to provide coverage only for properly licensed facilities.
- Defeat of a putative class action in the Western District of Washington alleging improper sales of tax-deferred annuities into qualified retirement plans, *Calvin v. Federal Home Life*. The central assertion was that deferred annuity contracts are inappropriate investments for tax-favored

arrangements and qualified plans. Using a third-party equitable estoppel theory, we successfully moved to compel the named plaintiff into arbitration and secured dismissal of the class action.

We represent AEGON, Inc., subsidiary **Life Investors Insurance Company of America** in a putative nationwide fraud class action challenging the pricing and actuarial assumptions underlying a number of Life Investors' long-term care policies, as well as in a federal court challenge to its long-term care policy licensing requirements.

Sonnenschein represented **GEICO** in a class action brought in Los Angeles Superior Court challenging its insurance underwriting and rating practices in California, resulting in a favorable settlement.

Sonnenschein served as national coordinating counsel to **Royal & SunAlliance** in a series of federal and state class actions across the country involving alleged common law fraud, RICO and antitrust violations with respect to workers' compensation retrospective premiums. In many of these cases, Royal successfully moved for dismissal, or class certification was denied. In a particularly significant victory for our client, the U.S. Court of Appeals for the Fifth Circuit issued a seminal decision reversing the certification of a nationwide RICO fraud class and holding, among other things, that individualized issues regarding proximate cause and reliance would swamp any common ones. Shortly after this victory, these cases settled on a nationwide basis. Sonnenschein also represented Royal in defending and prosecuting claims involving credit enhancement for nearly \$1 billion in subprime student loans, CDOs and commercial leases, and other complex financial products.

Sonnenschein represented California's largest workers' compensation insurer, the **State Compensation Insurance Fund**, and obtained a defense verdict after a five-week jury trial in San Francisco Superior Court. The plaintiff, a medical provider, had claimed that the fund had failed to afford it "fair procedure" and had interfered with its business by denying it admission to the fund's Preferred Provider Network.

In 2005 and 2006, in state court in Los Lunas, N.M., after a multi-week evidentiary trial and a full-day argument, Sonnenschein defeated a 35-state class certification motion alleging that **Prudential Financial** had failed to disclose APR percentage in connection with modal premiums charged to life insurance policyholders. This case is one of nearly two dozen similar actions brought against insurers throughout New Mexico state courts by the same group of plaintiffs' attorneys. To date, we believe it is the only New Mexico state trial court decision denying multi-state class certification.

“ This powerhouse litigation firm is known for its “*sophisticated and thorough*” work in insurance and its ability to pull together a sterling set of resources. The firm fields a wide range of specialists, which it can use to staff complex cases. Its recent track record ranges from involvement in the WTC litigation to Hurricane Katrina-related issues. Matters are handled by a number of offices at any one time and practitioners are said to “*work tirelessly and creatively to help manage disputes*” and “*create briefings that are strong and impressive.*” Key areas of interest are bankruptcy and insolvency in insurance companies, class actions and catastrophic loss in both appeals and litigation. The firm also has strength in personal lines insurance and in regulatory proceedings.”

–*Chambers USA*
America's Leading Lawyers
for Business, 2007

Insurance Class Action Litigation



Sonnenschein serves the legal needs of many of the world's most admired businesses, nonprofits and individuals. With offices across the U.S. and in Brussels and a global reach throughout the Americas, Asia, Europe and the Middle East, we are well positioned to help our clients prosper and grow.

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