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Mark A. Johnston

MEMBER-IN-CHARGE

Mark Johnston has more than 25 years of litigation experience representing businesses and individuals. He focuses his practice on complex commercial litigation, including class action, environmental, commercial real estate, employment, trademark, government contracts, product liability and insurance coverage matters. Mark regularly litigates commercial claims such as breach of contract, breach of fiduciary duty, corporate fraud, administrative negligence, fraudulent conveyance, unfair and deceptive business practices, tortious interference, and unlawful disclosure of trade secrets. He frequently defends insurance companies in direct action suits in various jurisdictions throughout the country and in class action, bankruptcy, trademark, and coverage cases. Mark has also litigated various employment matters involving discrimination claims, non-compete agreements, executive compensation, and employee benefits.

Mark also has significant aviation experience representing domestic and foreign air carriers in administrative proceedings before the U.S. Department of Transportation, in class action litigation, against passenger and cargo claims under the Warsaw and Montreal Conventions, in commercial and employment litigation cases, in government contract bid protest proceedings before the U.S. General Accountability Office (GAO), and in trademark litigation before the U.S. Patent and Trademark Office (USPTO). Mark frequently assists air carriers and transportation security companies in contracting with various airport authorities. He also represents Part 91 and 135 operators in investigations by the FAA and NTSB and related coverage disputes.

Mark has represented clients in various state and federal trial courts throughout the country as well as in mediation and commercial arbitration. He also has extensive appellate experience; he's litigated appeals before the Supreme Court of the United States and the United States Courts of Appeals for the Third, Fourth, Ninth, Eleventh, and D.C. Circuits as well as state appellate courts in Maryland, the District of Columbia, Georgia and Montana.

REPRESENTATIVE MATTERS

- *Kawashima v. Holder*, 132 S. Ct. 1166 (U.S. 2012). Co-counsel at both the petition and merits stages before the Supreme Court of the United States in case involving deportation orders for two legal aliens convicted of minor tax crimes.
- *Manker v. Zurich Servs. Corp.*, 2014 U.S. App. LEXIS 3833 (11th Cir.

PRACTICE AREAS:

Litigation
Mass Tort Litigation
Product Liability
International
Shale Gas
Aviation
Commercial Litigation
Appellate
Infrastructure and Transportation

STATE ADMISSIONS:

District of Columbia
Maryland

COURT ADMISSIONS:

U.S. District Court for the District of Columbia
U.S. District Court for the District of Maryland
U.S. Court of Appeals for the District of Columbia Circuit
U.S. Court of Appeals for the Fourth Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Appeals for the Eleventh Circuit
Supreme Court of the United States

EDUCATION:

J.D., Tulane University School of Law, 1999
B.A., Lafayette College, 1996

Feb. 28, 2014); *Bing v. Zurich Servs. Corp.*, 332 Ga. App. 171 (Ga. Ct. App. 2015). Summary judgment affirmed for defendant, who provided property risk engineering services to insured, on direct action claims of negligent inspection arising from a catastrophic explosion at a sugar refinery.

- *United Airlines, Inc.*, Comp. Gen. Dec. No. B-411987, B-411987.3 (2015). Successfully represented U.S. airline awarded $24.8 million federal government in bid protest proceeding brought by competing carrier based on claims that the award violated the Fly America Act.
- *Burke v. Air Serv Int'l, Inc.*, 685 F.3d 1102 (D.C. Cir. 2012). Summary judgment affirmed for government contractor defendants on claims arising from injuries sustained during ambush in Afghanistan.
- *Severstal Sparrows Point, LLC v. United States EPA*, 794 F. Supp. 2d 624 (D. Md. 2011); *Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602 (D. Md. 2011); *SPS Limited Partnership, LLLP v. Severstal Sparrows Point, LLC*, 808 F. Supp. 2d 794 (D. Md. 2011). Defended steel mill plant in various environmental matters against state and federal agencies, environmental groups and private litigants involving the effect of a bankruptcy sale order on the scope of a consent decree, as well as the viability of citizen suit claims under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- *Severstal Sparrows Point, LLC v. Energy Envtl. Dev. Co.*, 2010 U.S. Dist. LEXIS 92522 (D. Md. Sept. 7, 2010). Obtained summary judgment on breach of contract and declaratory judgment claims related to industrial waste heat recovery system at a steel mill plant.
- *Miller v. Toyota Motor Corp.*, 620 F. Supp. 2d 109 (D.D.C. 2009); Estate of Thomson v. Toyota Motor Corp., 2009 U.S. Dist. LEXIS 52144 (D. Md. June 12, 2009). Obtained dismissals of product liability and breach of warranty claims for lack of personal jurisdiction against foreign automobile manufacturer for accident in foreign country.
- *RCM Techs., Inc. v. Beacon Hill Staffing Group, LLC*, 502 F. Supp. 2d 70 (D.D.C. 2007). Obtained the denial of temporary restraining order and led the successful defense of non-compete and misappropriation of trade secret claims brought against former employees and their subsequent employer.
- *Kalantar v. Lufthansa German Airlines*, 2007 U.S. Dist. LEXIS 26666 (D.D.C. April 11, 2007). Directed successful defense of international airline against claims of false arrest, defamation, malicious prosecution and civil conspiracy.
- *Brunson v. Kalil & Co.*, 404 F. Supp. 2d 221 (D.D.C. 2005). Secured the dismissal of claim seeking a declaratory judgment in case arising from brokerage agreement for the sale of a television station.

PROFESSIONAL AFFILIATIONS

- District of Columbia Bar

- Maryland Bar Association

COMMUNITY INVOLVEMENT

- District of Columbia Pro Bono Program, representation for indigent clients in child custody and domestic relations disputes.

AWARDS AND RECOGNITION

- Selected for inclusion as The Best Lawyers in America 2023 – 2027 for Litigation – Labor and Employment
- Attained an AV® Preeminent™ rating from Martindale-Hubbell

NEWS AND INSIGHTS

PUBLICATIONS

- "D.C. Enacts Near Total Ban on Non-Competes," Eckert Seamans' Legal Update, March 26, 2021.
- "States Enact COVID-19 Business Liability Protections as Congress Deadlocks," Eckert Seamans' Business Liability Alert December 14, 2020.
- "The End of *Frye-Reed* and Maryland's Formal Adoption of the *Daubert* Standard," Eckert Seamans' Legal Update, September 16, 2020.
- "COVID-19 Legal Updates: Washington, D.C. Mayor Order No. 2020-053," Eckert Seamans' Legal Update, March 25, 2020.