

James F. Bogan III

Partner

1100 Peachtree Street NE
Suite 2800, Atlanta, GA USA 30309
t 404.815.6467 | f 404.541.3133
jbogan@kilpatricktownsend.com



Services

Antitrust Litigation
Appellate Litigation
Class Action Defense
Complex Commercial Litigation
Cybersecurity, Privacy & Data
Governance
Government & Regulatory
Litigation
Product Liability
Trade Secrets

Industries

Health & Life Sciences
Media & Entertainment
Technology

Jay Bogan concentrates his practice on complex commercial litigation, with particular emphasis in class action, business tort, and civil RICO cases. He is the leader of the Kilpatrick Townsend Class Action Team and the Editor of the KT Class Action Blog. He has substantial experience representing clients before federal and state trial and appellate courts and arbitration tribunals, as well as coordinating the efforts of in-house and outside lawyers in significant multi-jurisdictional litigation. He is the past Chair of the firm's Technology and Trade Secret Litigation Team, the past Chair of the State Bar of Georgia's Appellate Practice Section, and the past Chair of the Business Torts & Civil RICO Committee (American Bar Association, Section of Antitrust Law).

Mr. Bogan was named to *Georgia Trend's* "Legal Elite" in 2008 for Business Law and again in 2012 for Technology Law. He is listed in the 2009 and 2010 editions of *Chambers USA: America's Leading Lawyers for Business* for Appellate and General Commercial Litigation and again in the 2013, 2014, 2015, 2016, 2017 and 2018 editions for General Commercial Litigation. Mr. Bogan is listed as #1 in the 2011 and 2012 editions of *Chambers USA: America's Leading Lawyers for Business* for General Commercial Litigation. He has been recognized as a Georgia "Super Lawyer" in the areas of General Litigation and Class Action/Mass Torts in 2009 and for Business Litigation in 2019, 2020 and 2023 and also in 2017 and the eight years immediately preceding by *Super Lawyers* magazine. Mr. Bogan is recognized in the 2018 and the nine years immediately preceding editions of *The Best Lawyers in America®* for Commercial Litigation and again in the 2023 and the four immediately preceding editions for Appellate Practice, Commercial Litigation, Intellectual Property Litigation, and Technology Law. Mr. Bogan was recommended in 2017 and the five years immediately preceding by *Legal 500 US* in the area of Trade Secret Litigation. He is AV® rated by Martindale-Hubbell.*

Experience

Major breach of license and trade secret misappropriation case for aerospace defense contractor: Lead counsel representing aerospace defense contractor Lockheed Martin in a major breach of license and trade secret misappropriation case alleging that the competitor-defendant (L-3 Communications) misused the client's trade secrets, consisting of technical data relating to the P-3 U.S. Anti-Submarine Warfare Aircraft. We obtained a \$30 million-plus jury verdict for the client, which is the largest trade secret verdict ever obtained in the State of Georgia. The case ultimately was settled after the trial was concluded.

Major breach of supply contract case for telecommunications firms: Lead counsel representing telecommunications companies BellSouth Telecommunications and BellSouth Products in breach of supply contract case for the supply of telephone equipment in which supplier alleged breach claims against BellSouth in excess of \$300 million. The case ultimately settled after we defeated supplier's claims for preliminary injunctive relief after 3-day hearing in the Northern District of Georgia.

Southern Mills Inc. d/b/a TenCate Protective Fabrics v. Insight Holding Group LLC (significant contract litigation in federal district court and in arbitration): Obtained a major victory for the firm's client Southern Mills d/b/a TenCate Protective Fabrics in a complex arbitration proceeding involving a contract for the sale of flame-resistant (FR) fabric for the manufacture of FR battle dress uniforms for the U.S. Military. Southern Mills had contracted with an entity named Insight Holding Group (IHG) to promote the sale of Southern Mills' FR fabric to the U.S. Military and had obligated itself to pay IHG almost \$20 million on a going-forward basis in commissions for the sale of those FR fabrics. Southern Mills alleged, however, that it was misled into entering the contract by IHG's CEO concerning the nature of his relationship with Southern Mills' largest customer, and we sought to relieve Southern Mills of any future obligations under the contract. A panel of arbitrators agreed with Southern Mills and rejected IHG's claim for over \$20 million under the Southern Mills/IHG contract, based on the contractual doctrines of impossibility of performance and frustration of purpose. After the panel entered its award, we defeated IHG's efforts to set aside the award in federal court decisions that were ultimately affirmed on appeal by the Eleventh Circuit.

Consumer fraud class action litigation against international cement manufacturer: Represent Argos in consumer fraud litigation pending in the Northern District of Florida and in an ongoing arbitration proceeding, in which the class plaintiffs alleged that the fuel and environmental charges imposed by Argos were deceptive under Florida's Deceptive and Unfair Trade Practices Act. We initially secured an order from the federal court denying class certification. Class counsel subsequently sought to add a new class representative. We were able to initiate arbitration of the new class representative's claims and ultimately defeat the new claims in arbitration.

Settlement fraud litigation for global chemical manufacturer: Represented global chemical manufacturer DuPont in "settlement fraud" cases alleging federal RICO, fraud and related claims arising out of the alleged

fraudulent inducement of hundreds of settlements of product liability claims in the early 1990s. Between 1996 and 2000, numerous plaintiffs asserted "settlement fraud" claims against our client in federal district courts in Hawaii, Florida and Georgia and in Hawaii and Florida state courts. The cases resulted in appeals to the Eleventh and Ninth Circuit Courts of Appeals, as well as appeals on certified questions of state law before the Delaware, Florida, and Hawaii Supreme Courts. The cases resulted in the creation of new law under state common law fraud principles, with respect to the enforcement of settlement agreements, and under the Federal RICO statute. The Eleventh Circuit cases were ultimately dismissed and the Ninth Circuit cases were ultimately settled on terms favorable to our client.

In re: Teflon products liability litigation: Jointly represented DuPont in the "Teflon" multi-district consumer fraud litigation. The multi-district litigation consolidated over 24 separately-filed class action lawsuits in which the putative classes of consumer plaintiffs sought the recovery of approximately \$5 billion based on DuPont's alleged failure to disclose purported defects in "Teflon" non-stick cookware. In December 2008, the Southern District of Iowa ruled that none of the putative classes would be certified.

Bryan v. BellSouth Telecommunications (class action litigation in Georgia and North Carolina federal district and appellate courts): Lead counsel representing BellSouth in a putative class action in which the plaintiffs alleged that BellSouth's customer billings with respect to Universal Service Fund charges were deceptive. We obtained the dismissal of the claims on the merits in Atlanta federal district court, which decision was upheld on appeal by the Eleventh Circuit Court of Appeals. After the Georgia litigation was resolved, plaintiffs filed a substantively-identical class action in North Carolina state court. We obtained an injunction from the North Carolina federal district court enjoining the plaintiff from re-litigating the class claims in a separate state court action, which decision was affirmed by the Fourth Circuit Court of Appeals.

Lawsuit against insurance broker and major insurance carriers for bid-rigging and other market misconduct: Served as lead counsel in litigation against our client Office Depots insurance broker and several major insurance carriers, including AIG, Travelers, Zurich and ACE, alleging that various agreements between the carriers and the broker providing for payment of so-called "back end" or "contingent" commissions violated Florida law. The lawsuit included claims for breach of fiduciary duty, RICO, antitrust conspiracy and other Florida state law claims. The Florida trial court issued what was the first significant ruling upholding the state law causes of action that had been alleged.

BellSouth Corp. v. Forsee (trade secret/restrictive covenant litigation before Georgia trial and appellate courts and in arbitration): The firm served as lead counsel for BellSouth in a highly-publicized dispute involving Sprint's hiring of the second highest-ranking corporate officer at BellSouth to serve as Sprint's then-CEO. The case involved claims for breach of non-competition and nondisclosure agreements and "inevitable misuse" of trade secrets. We obtained an injunction in arbitration from the arbitrator (former FBI Director William Webster)



prohibiting the executive's disclosure of confidential information to Sprint and limiting his executive activities at Sprint to prevent the misuse of BellSouth's trade secrets.

Consumer fraud class action litigation for advertising company in federal district court in New Jersey, New York and California: Achieved a major victory by defeating class certification in a significant class action filed against YellowPages.com. This result was preceded by procedural victories in terms of having separately-filed class actions transferred to the Southern District of New York, and was followed by a ruling by the Second Circuit denying interlocutory appellate review of the district court's order denying class certification. The first of these cases, filed in New Jersey state court, was removed by YellowPages.com to the District of New Jersey. Two follow-on class actions were then filed against YellowPages.com in the Southern District of California. As for the New Jersey case, we persuaded the New Jersey federal district court to transfer the action to the Southern District of New York, enforcing a forum selection clause in the Terms and Conditions between YellowPages.com and its advertising customers. Kilpatrick Townsend was then able to persuade the Southern District of California to transfer the follow-on class actions to the Southern District of New York, on (among other grounds) the "interest of justice" element of the federal venue statute. Through such procedural moves, we were able to achieve an "MDL-like" consolidation of separate but related class action lawsuits filed in different federal district courts. On the class certification issue, the district court ruled that YellowPages.com's sales practices and its individual customers' experiences were too varied to support class certification.

Served as lead counsel and secured the denial of class certification in TCPA class action against Cingular Wireless: Served as lead counsel for Cingular in Georgia trial court in case alleging "spam-fax" claims under the federal Telephone Consumer Protection Act (TCPA) and seeking class-wide damages of \$750 million. The trial court's denial of class certification was affirmed on appeal by the Georgia Court of Appeals. This victory was significant because Georgia had been a leading jurisdiction favoring the certification of class actions under the TCPA.

Education

University of Virginia School of Law J.D. (1989)

University of Virginia B.A. (1985) English, *high distinction*

Admissions

Georgia (1989)

Court Admissions

District of Columbia Court of Appeals

Georgia Court of Appeals

Superior Court of Fulton County



Supreme Court of Georgia

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Second Circuit

U.S. District Court for the Middle District of Georgia

U.S. District Court for the Northern District of Georgia

U.S. Supreme Court

Professional & Community Activities

American Bar Association, Former Chair of Section of Antitrust Law's Business Torts & Civil RICO Committee

State Bar of Georgia, Former Chair of Appellate Practice Section

State Bar of Georgia, Former Chair of Eleventh Circuit Appellate Practice Institute

American Bar Foundation, Fellow

Litigation Counsel of America, Fellow

Chattahoochee National Park Conservancy, Board Member

Insights

[News Releases](#)

Kilpatrick Townsend Recognized in the 2023 JD Supra Readers' Choice Awards

March 6, 2023

[Webinars](#)

Current Issues in Class Action Litigation – Uninjured Class Members

November 16, 2022

[Publication](#)

SCOTUS Displays Short Memory in Rejecting the Prejudice Requirement for Waivers of the Right to Arbitrate

September 19, 2022

[Publication](#)

BIPA Class Actions: Liability of Third-Party Vendors

September 16, 2022



[News Releases](#)

Kilpatrick Townsend Earns Top Recognitions in 2023 Edition of The Best Lawyers in America®

August 18, 2022