




**YEAR IN
REVIEW** **2022**



As we approach PLAC's 40th Anniversary, we are pleased to present our report of PLAC's work in 2022. As a specialty bar, PLAC brings together a global, diverse, select network of professionals who help domestic and multinational companies stay at the forefront of emerging issues.

EXECUTIVE SUMMARY

PLAC and its commonwealth of more than 600 members, both in-house and outside counsel, work on behalf of our member companies to help them manage, anticipate, and navigate the ever-changing landscape of risk management. As always, we focus on advocacy to shape both the common law and rules affecting that legal landscape. But our work expands beyond advocacy to allow our members to share the benefits of their talent and experience through educational programming, networking events, industry-focused initiatives, and talent development opportunities.

ADVOCACY CONNECTION/ENGAGEMENT EDUCATION PROFESSIONAL DEVELOPMENT



ADVOCACY

PLAC continued our tradition of high-quality advocacy in the courts, engaging distinguished appellate counsel to address issues of critical importance to product manufacturers.

In 2022, PLAC's **Case Selection Committee** considered thirty-nine amicus requests and filed twenty-seven briefs, including two in the U.S. Supreme Court, nine in the U.S. Courts of Appeal, twelve in the state supreme courts, and four in the state intermediate courts of appeal.

In addition to our advocacy in the courts, PLAC's **Healthcare and Lifesciences Technology (HLTh) Group** assembled an **MDL Task Force** that is working to effect change in the rules for MDL litigation. The Task Force submitted a **letter** to the MDL Subcommittee to the Federal Rules Advisory Committee urging changes that would provide better clarity and options for MDL litigation.

39
amicus
requests

27
briefs
filed

2
U.S. Supreme
Court

9
U.S. Courts
of Appeal

12
State
Supreme
Courts

4
State Int.
Courts of
Appeal



CONNECTION/ENGAGEMENT

In 2022, PLAC continued to cultivate its strong network of practitioners and industry experts that enabled members to form trusted relationships and engage in informal problem-solving, offer leadership on current issues, and expand industry and practice-area contacts. In addition to our general programming, PLAC's industry-specific groups sponsored webinars, roundtable discussions, and gatherings that focused on risks facing members in those industries. PLAC's industry groups include the **CASE Mobility Group**, focused on emerging issues in the automotive industry, and the **HTLh Group**, addressing concerns shared by members in the pharmaceutical, medical device, and life sciences industries. These groups, along with PLAC's **Women's Forum**, provided members with opportunities for focused engagement with other legal counsel – whether in corporations or private practice – who face similar issues and challenges in their professional lives. All PLAC events and programs are offered in the context of **a uniquely select environment where defense counsel** can trade ideas and develop strategies without concern that the discussion will be disclosed to members of the plaintiffs' bar.



EDUCATION

PLAC broadened its member engagement to tap the deep expertise and perspectives of our members who provide thought-leadership and share best practices on the leading edge of risk. PLAC hosted two **in-person conferences** to bring together expert speakers on topics of critical importance to our members in all industries. We also presented **webinars and virtual roundtable sessions** on targeted topics such as PFAS, leveraging legal analytics in state courts, the reputational impact of litigation, and defending electronic vehicles. Our **Case Selection Committee** held a first-ever virtual town hall session focused on developments and trends in the courts.



PROFESSIONAL DEVELOPMENT

Along with the **Women's Forum**, PLAC's **Future Leaders Program** and the **Diversity and Inclusion Committee** provided PLAC members with enhanced opportunities to strengthen the talent pool, prepare to meet future challenges, and build a diverse, sustainable bench to help our corporate members prepare both their in-house and outside counsel teams to meet future challenges.



READ ON FOR MORE DETAILS ABOUT OUR ACCOMPLISHMENTS IN 2022.



ADVOCACY IN THE COURTS

In 2022, PLAC's **Amicus Program** continued its tradition of outstanding advocacy, filing twenty-seven briefs on issues of critical importance to product manufacturers, suppliers and sellers.

U.S. Supreme Court

Two briefs filed in the U.S. Supreme Court addressed fundamental issues regarding expert testimony and personal jurisdiction. In *3M v Amador*, No.21-1110 (U.S. filed March 10, 2022), PLAC urged the Court to review the standard for admission of expert testimony for member 3M. PLAC challenged the Eighth Circuit's decision that expert testimony should be allowed unless it is so "fundamentally unsupported" by a factual basis that it is of no help to the jury. PLAC's brief argued the Eighth Circuit standard conflicts with both Supreme Court precedent and FRE 702. The Supreme Court denied 3M's petition for cert.

In its other Supreme Court brief, PLAC advocated for review of general personal jurisdiction consent. In *Mallory v Norfolk Southern Rwy*, No. 21-1168 (U.S. filed September 2, 2022), PLAC argued that basing general jurisdiction on a state registration to do business statute nullifies the "at home" requirement for many businesses due to the interstate nature of the modern economy, facilitates forum shopping, and burdens courts and juries.



U.S. Courts of Appeal

In the U.S. Courts of Appeal, PLAC filed nine briefs in six different circuits, addressing a range of issues of importance to our members.

Highlights include:

- A brief to the Ninth Circuit on the standards for proving design defect in consumer fraud and breach of warranty cases and certification of an implied warranty class in cases alleging design defect. *Braverman, et al v BMW N America, LLC*, Nos. 21-55427 & 21-55428, (9th Cir. filed Feb. 9, 2022).
- Three briefs addressing bankruptcy rights of defendants in multi-district litigation. *In re: Purdue Pharma*, No.22-110 (2nd Cir. filed Feb 18, 2022); *In re: LTL Mgmt*, No. 22-2003 (3rd Cir. filed Aug 22, 2022); *In re: Aearo Technologies*, No. 22-2606 (7th Cir. filed Dec 19, 2022).
- A brief to the 11th Circuit supporting defendant's successful request for *rehearing en banc* of a decision denying FIFRA preemption of failure to warn claims. *Carson v Monsanto*, No. 21-10994 (11th Cir. filed Aug 10, 2022).
- A brief challenging liability under a public nuisance theory in opioid litigation pending in the Northern District of Ohio. *In re: Opiate Litigation*, No. 22-3750 (6th Cir. filed Dec 8, 2022).



State Court Filings

PLAC appeared in twelve cases pending in ten different state supreme courts as well as another four cases in the state intermediate courts of appeal. PLAC advocated for limitations under state law on punitive damages, *Burt v Turk*, No.13 WAP 2022 (Penn filed June 9, 2022), medical monitoring, *Brown v Saint-Gobain Performance Plastics*, No. 2022-0132 (New Hamp. filed July 8, 2022) and public nuisance, *State of DE v Monsanto*, No. 279, 2022 (Del. filed Nov. 18, 2022). In the Nevada Supreme Court, PLAC challenged a novel deceptive trade practices theory, *Rowan v Philip Morris*, No. 84-805 (Nev. filed June 24, 2022), *rev denied*, and in the California Court of Appeals, a novel “failure to develop product” theory. *Gilead Science TDF Litigation*, No. A16558 (Cal. App. 1st Dist. filed Oct 12, 2022).

In three jurisdictions, PLAC addressed the important issue of compliance with industry standards in negligent design cases. *Werner v Sullivan*, No.18 EAP 2022 (Penn. filed July 18, 2022); *Vanderventer v Hyundai*, No. 2020 AP 001052 (Wisc. filed Dec. 9, 2022) and *American Honda Motor Co v Milburn*, No. 21-1097 (Tex. filed Sept. 15, 2022).

Four cases addressed causation under state law, including three in the context of the learned intermediary defense. See, *Himes v Somatics*, No. S273887 (Cal. filed Nov. 18, 2022); *Apyx v Doring*, No 2022 CA 1089 (Co. Ct of App. filed Nov 22, 2022); *Rennick v Teleflex*, No. 2020 AP 001454 (Wisc. filed Dec. 16, 2022).

12
cases

10
Supreme
Courts

4
state intermediate
courts of appeal

Decisions

58%
success rate
on merits briefs

33%
success rate
on petitions

In 2022, the courts issued decisions in eighteen cases PLAC had briefed. Two decisions were handed down by the U.S. Supreme Court, four by the U.S. Courts of Appeal, eleven by state supreme courts and one by a state intermediate court of appeals. In all, the decisions split into nine wins and nine losses, but our success rate on merits briefs was 58% while the success rate on petitions for review was 33%.



PLAC SUPPORTED COMPANIES IN INDUSTRIES AS DIVERSE AS...



HEALTHCARE



PHARMACEUTICALS



AUTO



MEDICAL DEVICES



AGROCHEMICAL



TOBACCO



MANUFACTURING



CONSUMER PRODUCTS

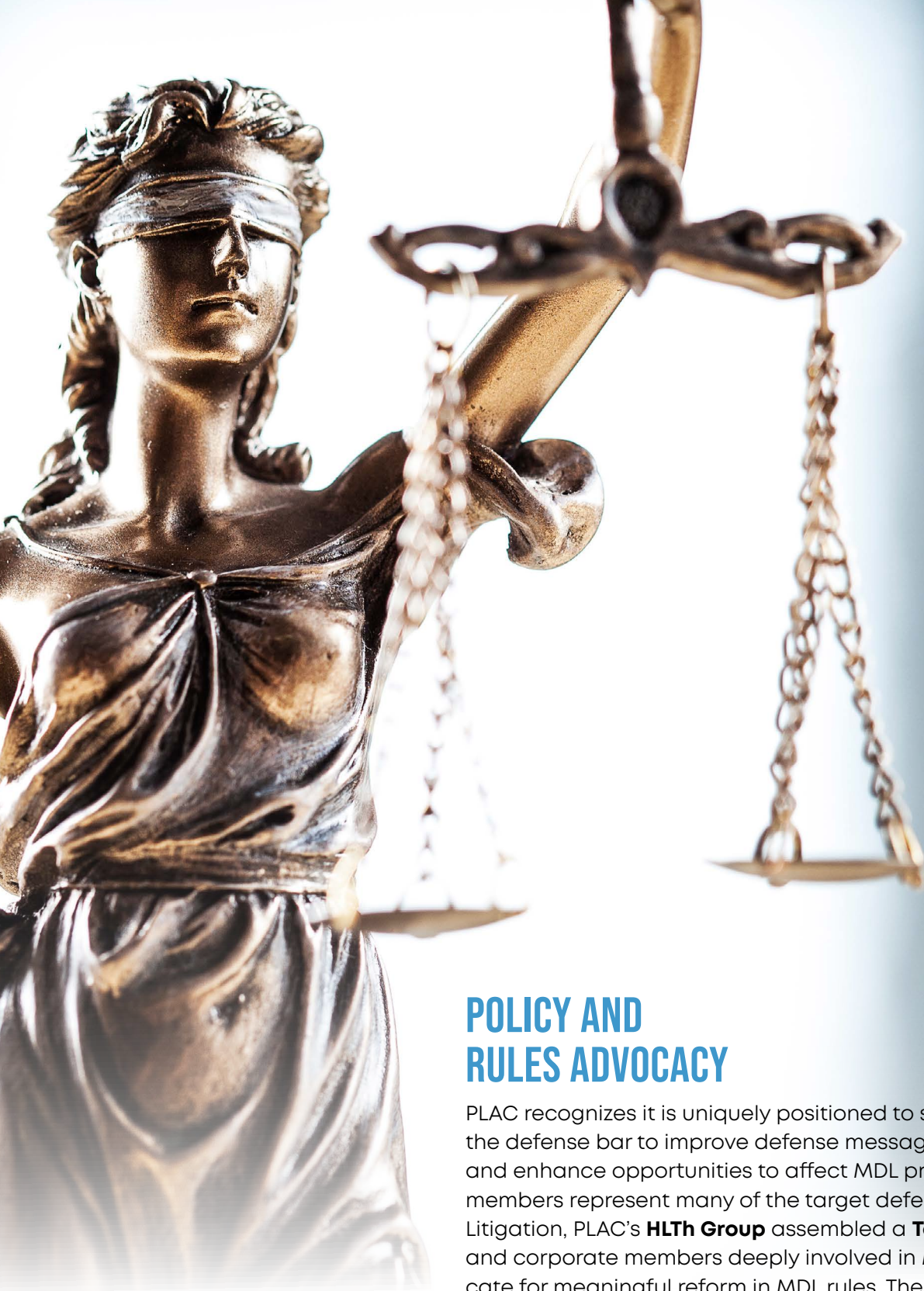


RAILROADS



CONSTRUCTION

14



POLICY AND RULES ADVOCACY

PLAC recognizes it is uniquely positioned to serve as a voice for the defense bar to improve defense messaging, align on strategy, and enhance opportunities to affect MDL processes. Since PLAC members represent many of the target defendants in Multi-District Litigation, PLAC's **HLTh Group** assembled a **Task Force** of sustaining and corporate members deeply involved in MDL practice to advocate for meaningful reform in MDL rules. These members include defendants in some of the largest MDLs on the federal docket, making PLAC a unique and powerful voice for improvements to the MDL process. In a first-ever collaboration, the PLAC **Task Force** coordinated with Lawyers for Civil Justice (LCJ) to craft letters to the Federal Rules Advisory Committee to maximize the impact of defense bar voices and perspectives.

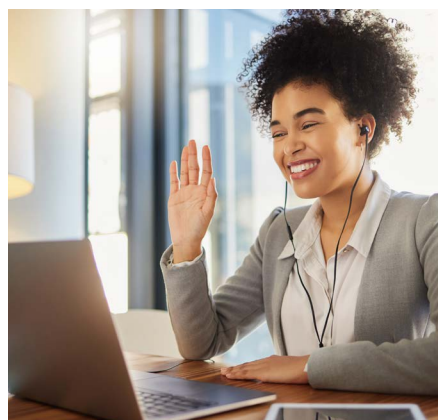


CONNECTION AND ENGAGEMENT

Membership in PLAC is offered exclusively to companies and their counsel who practice in defense-only firms. Our members value this aspect of the organization and agree it distinguishes PLAC from other defense bar organizations. The opportunities to connect allow members from all industries to share ideas and develop strategies in confidence.

A further enhancement of this unique environment is the establishment of certain special interest groups within PLAC. These include two industry-specific groups – the **CASE Mobility Group** focused on issues of concern to the transportation industry – and the **HLTh Group** focused on members in the medical device, pharmaceutical and life sciences industries. Each of these industry groups had active programming in 2022 and plan much more in 2023.

The CASE Mobility Group, launched in September 2021, provides a clearinghouse for PLAC members to gain insights into the cutting-edge areas of “Connected” motor vehicles, “Automated” driving, “Shared,” and “Electric” mobility.





CASE approaches are reshaping not only the underlying transportation they facilitate, but also the ways companies approach product liability litigation and government investigation defense. In 2022, the group hosted regular presentations by industry experts on litigation and government investigation defense topics, insurance matters, and related subject areas.



Last year PLAC announced a new working group focused specifically on issues critical to the companies in the drug, device and life sciences industries. The **Healthcare and Lifesciences Technology (HLTh) Group** provides PLAC members a singular opportunity to tackle legal challenges common to these companies. Led by a Steering Committee of distinguished practitioners, the **HLTh Group** sponsors regular sessions – some in-house only, some with outside counsel, academics, and experts – to develop concrete solutions to concrete problems, provide holistic views of the challenges, and fashion creative approaches to mitigate risk of product-related issues.



PLAC's **HLTh Group** launched its corporate roundtable series last year, bringing in-house counsel together in a virtual meeting format to discuss current topics and unique issues facing member companies in the pharmaceutical, medical device, and life sciences industries counsel and to share best practices and strategies for managing legal risk in this highly-regulated and heavily litigated environment. Each corporate roundtable is hosted by an experienced corporate counsel who moderates the discussion on a topic of his or her choice. In the inaugural meeting, held in September 2022, our host from Pfizer led a session on *PREPARING FOR THE REPUTATIONAL IMPACT OF LITIGATION*, discussing the challenges and approaches to managing information about litigation matters for both internal and external audiences.



The **HLTh Group** also assembled a **Task Force** of outside and in-house counsel with deep experience in Multi-District Litigation to evaluate common issues and challenges facing defendants in MDLs and to develop strategies for effective, consistent approaches to these cases. The **Task Force's** first undertaking was a review and analysis of a May 13 report and June supplemental report by the MDL Subcommittee of the Federal Advisory Committee on Civil Rules. The reports discussed proposed rule changes related to the MDL process through amendments to Rules 16(b) and 26 (f). PLAC's **MDL Task Force** prepared and submitted a Comment Letter to the Advisory Committee in advance of its meeting on October 22, 2022. PLAC's letter advocating for early screening of claims and addressing certain other provisions of the Subcommittee's proposal can be found [here](#).



new ideas energy initiatives

The women members of PLAC have added new ideas, energy and initiatives to a part of the organization that has increased five-fold as the number of women practitioners serving PLAC Corporate members has grown. Now led by a Steering Committee of Corporate and Sustaining members, **PLAC's Women's Forum** is strengthening connections, providing support and career development, and bringing new perspectives to its members through both virtual and in-person meetings.

In 2022, the **Women's Forum** hosted a well-attended networking reception and moderated discussion and organized a main-stage presentation of product liability trailblazers at the Fall Conference. It also sponsored the first-ever **Women's Forum** dine-around in Park City as well as an inaugural regional meeting in Minneapolis.

The 2022 **Women's Forum** events were received enthusiastically by members and the network will build on its momentum with more programming and events in 2023.



EDUCATION: EXPERTISE AND BEST PRACTICES

Through PLAC's educational programming, members share their experiences, expertise, and best practices to expand their understanding of litigation trends and developments, understand and anticipate their risk profile, and be better prepared to meet future challenges.

Conferences – PLAC conferences focus on presenting cutting-edge issues and innovative approaches to defending product liability suits. These events allow attendees to earn CLE credits while providing excellent opportunities to meet and network with other PLAC members. In 2022, PLAC hosted two highly successful in-person meetings – a **Spring Conference in West Palm Beach, FL** and a **Fall Conference in Park City, UT**.

Webinars – PLAC offers virtual presentations throughout the year on a variety of topics, many of which qualify for CLE. In 2022 PLAC hosted 10 **webinars** on topics including PFAS, leveraging legal analytics in state courts, the reputational impact of litigation, and defending electronic vehicles.

Roundtables – A significant benefit to our corporate members is access to the valuable network of other in-house counsel who are facing – or have faced – issues similar to the ones corporate counsel deal with every day. To bridge the gap between PLAC's two semi-annual conferences and to provide more opportunities for corporate counsel to engage on “hot topics,” in 2022 PLAC began hosting quarterly corporate roundtables via Zoom. The sessions are open to all PLAC corporate members and other invited in-house counsel.

Town Hall – PLAC's **Case Selection Committee (“CSC”)** held its first town hall meeting to review PLAC's amicus briefs filed in 2021 and discuss issues and trends in 2022. This 90- minute open-floor forum provided an opportunity for PLAC members to engage directly with the committee, ask questions, and gain understanding about specific cases and general issues, as well as to develop a better understanding of **CSC** deliberations.



PROFESSIONAL DEVELOPMENT

In 2022, PLAC provided enhanced opportunities for its members' professional development through its **Future Leaders Program**, its **Diversity and Inclusion Committee**, and the **Women's Forum**. Each of these initiatives strengthen the talent pool and help build a diverse, sustainable bench to help our corporate members meet their recruitment and retention goals for both their in-house and outside counsel teams.

PLAC's **Future Leaders Program** was developed to provide an alternate path to Sustaining membership for senior associates and junior partners who have been practicing between four (4) and twelve (12) years. PLAC Future Leaders have the opportunity to work with seasoned PLAC Sustaining members and Corporate members on various projects to enhance their trial skills, practice their client counseling skills, understand and refine their writing and advocacy skills, and network with both current and future leaders of the product liability defense bar.



In 2022, Future Leaders participated in a highly successful mock expert deposition exercise that also included "Next Gen" experts from PLAC sponsor Exponent and ten PLAC Sustaining members. Participants were divided into three teams with each Future Leader paired with a Sustaining member mentor to prepare a cross examination while each Next Gen expert was prepared by a Sustaining member who also defended the deposition. Recorded segments of the depositions were then played at a dedicated session just before the Fall Conference. At the session, four experienced Sustaining members provided commentary and feedback on the deposition segments, providing both the direct participants and the audience members valuable insights into effective use of experts.



The **Future Leaders Program** will continue to build on these successful events in 2023. The schedule of events for the coming year can be found [here](#).

PLAC also launched a **Publications Project** in 2022 to select and publish articles regarding legal, industry, and related topics of interest to the PLAC membership. PLAC is recruiting Sustaining members with relevant expertise to serve as primary authors of articles that will meet the high standards of quality and scholarship expected of PLAC. The program involves Future Leaders who provide research, drafting and editing support to the lead author.





DIVERSITY AND INCLUSION COMMITTEE

PLAC maintains an ongoing commitment to fostering a diverse and inclusive membership that reflects the best of PLAC's community of counsel and companies. With greater diversity and inclusion, our organization is more effective and brings more varied perspectives, experiences, backgrounds, talents and interests to the practice of law. We are committed to fostering an environment in which each member of PLAC is not only supported, but able to thrive.



In 2022 PLAC's **Diversity and Inclusion Committee** continued working to address issues facing our members and to make our organization a better and more welcoming place for all PLAC members. The committee established a mission statement on diversity and inclusion and integrated this commitment into our application process. The committee contributed to conference programming and continued its outreach efforts with minority bar organizations to identify opportunities for collaboration and strengthen our networks.

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We welcome your comments and questions, and are happy to discuss any of our programs and initiatives in further detail.

Thank you to our members – we could not do this important work without your support.

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