

ROBINS  KAPLAN LLP

QUARTERLY

Tackling Tough Business Litigation Matters

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PROPOSED \$590 MILLION OPIOID SETTLEMENT FOR TRIBAL NATIONS

BY TARA SUTTON



In January of 2018, Robins Kaplan LLP filed a lawsuit against the nation's largest opioid manufacturers and distributors on behalf of three Tribal Nations in South Dakota. It was one of the first complaints filed by a Tribe over the opioid epidemic. Hundreds of additional Tribes have now followed suit — along with cities, states, and counties — resulting in the largest piece of civil litigation in United

States history. The unprecedented level of participation by Tribes is a testament to the painful suffering so many Tribes have endured because of the opioid epidemic in their communities.

Early in the litigation, Robins Kaplan LLP was appointed to serve on the plaintiffs' Tribal Leadership Committee. In that capacity, Tara Sutton and Tim Purdon have tenaciously advocated for the firm's Tribal clients and on behalf of all Tribes. Tara Sutton spent months participating in mediation sessions to reach a resolution that recognizes the disparate impact Tribes have suffered.

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Lawsuit Against the Nation's Largest Opioid Manufacturers and Distributors

Read on to learn about the largest piece of civil litigation in United States history.

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Can You Keep a Secret?

Anne Lockner tells us when businesses should and shouldn't keep secrets.

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The latest and greatest at Robins Kaplan.

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REWRITING THE ODDS

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On the strength of this work, Robins Kaplan LLP is pleased to announce a proposed \$439 million settlement of the national opioid litigation claims by Tribes brought against AmerisourceBergen Corp., McKesson Corp., Cardinal Health, Inc. (“Distributors”) and a proposed \$150 million settlement of the national opioid litigation claims by Tribes brought against the following companies: Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc.; N/K/A Janssen Pharmaceuticals, Inc. (“Janssen”); Johnson & Johnson; and Ortho-McNeil-Janssen Pharmaceuticals, Inc. The proposed settlement, which must be agreed to by the sovereign governments of Tribes, comes at a critical time to address the addiction and prevention needs of residents, as drug overdose deaths in the U.S. rose nearly 30 percent in 2020, according to preliminary data from the Centers for Disease Control.

Janssen has agreed to resolve the Tribal claims for \$150,000,000, payable over two years. The Distributors resolved the Tribal claims for \$439,964,500, payable over seven years. The agreement includes a provision by which all federally recognized Tribes will be eligible to participate in both settlements, regardless of whether the Tribe has previously filed suit against the settling Defendants. These two settlements are initial, partial settlements while Tribal opioid claims against several other Defendants remain pending in the consolidated multi-district litigation venued in federal court in Cleveland, Ohio.

\$590M

**RESULTING IN THE LARGEST PIECE
OF CIVIL LITIGATION IN UNITED
STATES HISTORY**

“This initial settlement for Tribes in the national opioid litigation is a crucial first step in delivering some measure of justice to the Tribes and reservation communities across the United States that have been ground zero for the opioid epidemic”

- Tara Sutton, chair of Robins Kaplan LLP's Mass Tort Group.

Ms. Sutton acted as one of the lead negotiators for the plaintiffs' Tribal Leadership Committee in the negotiations with the settling Distributors. Tim Purdon, the co-chair of Robins Kaplan LLP's American Indian Law and Policy Group, added, “At Robin Kaplan, we were one of the first to identify the opportunity for Tribes to exercise their sovereignty by bringing suit, just as state attorneys general did, against the companies that created and drove the opioid epidemic. This is the first time in history that Tribal Nations in these numbers have participated in nationwide mass tort litigation at this scale.” The Robins Kaplan LLP American Indian Law and Policy Group was co-founded by Purdon, the former United States Attorney for North Dakota, and Brendan Johnson, the former United States Attorney in South Dakota, when the two joined the firm in 2015.

The historic settlement reached by the Tribal Leadership Committee garnered national attention and was covered by *CBS News*, *NBC News*, *The Wall Street Journal*, *Associated Press*, *The Star Tribune*, *The Washington Post*, and *CNN*.

AS PUBLISHED IN THE ROBINS KAPLAN JUSTICE REPORT



TIM PURDON



CAN YOU KEEP A SECRET? AND SHOULD YOU?

BY ANNE LOCKNER



One of the perceived benefits of closely held corporations is their ability to keep secrets. Indeed, closely held corporations can legally hide a great deal of information. Family businesses are especially likely to keep certain information “within the family,” so to speak. Publicly traded companies, in contrast, are required to disclose material information, including the number of shares owned, bought, and sold by its directors and officers; its financial condition; the salaries and bonuses paid to its executive; and its risks and potential liabilities, including lawsuits and claims that could materially affect the company. A closely held corporation need not disclose this kind of information publicly.

That’s why closely held family businesses often create a culture of secrecy that can undermine the long-term viability of the company. Therefore, it’s important to understand the conditions when secrecy may be a good thing and when it should subordinate to more transparency.

FOR THESE COMPANY MATTERS, SECRECY CAN BE GOOD—INDEED, NECESSARY:

Attorney Communications. Secrecy is both good and necessary when trying to preserve a company’s attorney-client privilege. All companies, at some point, are going to need legal advice. To ensure that the advice, and the communications involved in giving it, remain privileged, those communications must be kept private and disclosed only to those individuals who have a need to know it. The law can vary by state as to whom can be communicated with and still maintain the privilege, but the point is that a company should not disclose the advice of its lawyers to all employees and certainly not to anyone outside the company.

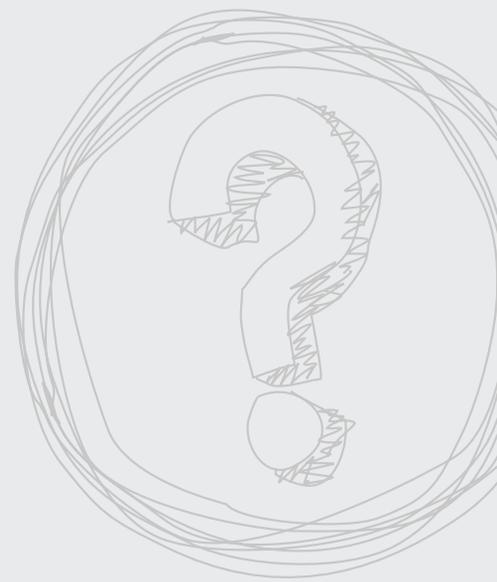
Trade secrets. Almost all companies keep some level of trade secrets. Trade secrets are defined as information that has either actual or potential independent economic value by virtue of not being generally known, has value to others who cannot legitimately obtain the information, and is subject to reasonable efforts to maintain its secrecy. An obvious example is the Coca-Cola recipe, but any number of objects and matters can be trade secrets: a company’s strategic plan, pricing, and terms of its supplier contracts are

just some examples of information often considered trade secrets. But a trade secret will lose that status if a company takes no steps to keep it secret. So, to protect this sensitive information, companies should ensure that it is marked confidential, stored in a secure fashion, and protected so that only people with a need for the information have access to it.

Confidential information. Trade secrets are only one of many types of confidential information. Others include salary information, health information, customer lists, and systems and processes used by a company—essentially anything that one knows only by virtue of being employed at a company. But a company needs to make known to its employees what it considers the company’s “confidential” information and would be well served by issuing clear policies and confidentiality agreements. If a company’s work requires sharing its confidential matters with a third party— such as a supplier or a potential strategic partner—it should require a non-disclosure agreement or, “NDA,” which contractually obligates the other party to maintain the confidentiality of the information disclosed. And, the scope of any such disclosures should be limited only to the information necessary to accomplish the task at hand. Any information or documents exchanged should also be marked “Confidential.”

IN OTHER INSTANCES, SECRET-KEEPING CAN BE COUNTERPRODUCTIVE AT BEST AND HARMFUL AT WORST. CONSIDER THINKING TWICE ABOUT KEEPING COMPANY SECRETS IN THE FOLLOWING SCENARIOS:

Secrets regarding succession planning. While succession-planning decisions need not be broadcast on social media channels, family and other closely held businesses are well served by honestly discussing how the process will look and be undertaken. A company should discern who may have expectations about their future roles in the company, and those expectations should be managed accordingly. While some may feel disappointed with the ultimate decision, allowing some transparency into the process will help ensure a fair decision and minimize the likelihood that the ultimate successor will be undermined by a poorly perceived process.



A company needs to make known to its employees what it considers the company’s “confidential” information and would be well-served by issuing clear policies and confidentiality agreements.

Secrets kept from your lawyers. As mentioned above, every company will need advice from an attorney at some point. The advice received is only as good as the information conveyed to the lawyer giving it. If a company keeps secrets from its attorneys, the advice will be less helpful and could potentially backfire, depending on the nature of the secret. For instance, if a company has been colluding with its competitors to fix prices but keeps that information from its attorney, then the attorney is likely to recommend a more aggressive strategy than she would if aware of the improper conduct. Moreover, the company's failure to disclose that information in a timely fashion could void participation in the Department of Justice's leniency program, which allows the co-conspirator who first self-reports and meets certain criteria to avoid criminal convictions and resulting fines and incarceration. You hired the attorney for a reason; be sure to allow them to best serve you by giving them all the material information they need.

Secrets regarding employee performance. Whether they are performing poorly or beyond your wildest imagination, employees should not be kept in the dark about how you view their performance. It's especially unfair to the employee to withhold candid feedback on whether they're meeting expectations, how they can do better, and whether they have a future with your organization. Not only is it the right thing to do from a management perspective, having a clear record of accurate feedback will also mitigate risk of employment claims.

A black and white photograph showing a close-up of a hand holding a piece of paper. The paper is held by the thumb and index finger, and the word "CONFIDENTIAL" is printed in red capital letters on the paper. The background is dark and out of focus.

**You hired the attorney for a reason;
be sure to allow them to best serve you by giving
them all the material information they need.**

CONFIDENTIAL

FRONT AND CENTER

ROBINS KAPLAN LLP ANNOUNCES 2022 PARTNERS

Robins Kaplan LLP is pleased to announce that **Timothy Billion**, **Charlie Gokey**, **Christina Lincoln**, **Benjamin Linden**, and **Tony Schrank** have been promoted to partner, effective January 1, 2022.

“I’m proud to welcome this exceptional group of attorneys to the firm’s partnership,” said Ronald J. Schutz, Chair of the Executive Board. “They have done a remarkable job advocating for our clients and driving success at Robins Kaplan, and I look forward to seeing how they shape the future of our firm.”

Timothy Billion (Sioux Falls and Minneapolis) practices in the firm’s Business Litigation Group. He has represented clients in a wide variety of cases, including trust and fiduciary litigation, contract and fraud claims, earn-out disputes, class action lawsuits, personal injury claims, constitutional litigation, internal investigations, and criminal proceedings. Tim also advises tribes across the country.

Charlie C. Gokey (Minneapolis) represents companies and individuals in complex civil litigation. His practice focuses in significant part on the health care industry, and in particular litigation targeting large-scale fraud, often with tens or hundreds of millions of dollars in dispute. Charlie also maintains an active defamation practice, and has litigated significant First Amendment and other constitutional matters in state court and at all levels of the federal judiciary.

Christina M. Lincoln, MLIS (Los Angeles) is an advisor and experienced trial attorney with the firm’s Insurance and Catastrophic Loss Group and represents insurers from across the United States and abroad with first-party property claims involving complex, multi-million dollar catastrophic losses. As a Management Liability Insurance Specialist (MLIS), Christina also specializes in advising and representing insurance company clients with claims under different professional lines/management liability policy packages, with a particular emphasis on directors and officers (D&O) liability insurance. She is a member of the firm’s Women in Insurance industry group, the Diversity, Equity, and Inclusion (DEI) Committee, and the Women of Robins Kaplan (WoRK) working group.



TIMOTHY BILLION



CHARLIE C. GOKEY



CHRISTINA M. LINCOLN



BENJAMEN C. LINDEN

Benjamin C. Linden (Minneapolis) is a commercial litigator focusing on high tech disputes involving information systems and computer technology. Ben has experience litigating and advising clients in a wide variety of areas including patent infringement, trade secret misappropriation, licensing, outsourcing, breach of contract, and intellectual property monetization. He has experience in both patent monetization and patent litigation.



TONY SCHRANK

Tony Schrank (Minneapolis) is a personal injury and wrongful death trial attorney who helps clients that have been injured or lost a family member due to another party's fault. Tony has worked his entire career in the personal injury/wrongful death field. He has handled approximately 100 depositions, argued dispositive and significant motions, first chaired arbitrations, been successful at mediations and tried cases to verdict.

“I’m proud to welcome this exceptional group of attorneys to the firm’s partnership.”

- RONALD J. SCHUTZ, CHAIR OF THE EXECUTIVE BOARD

ROBINS KAPLAN JOINS WANTON INJUSTICE LEGAL DETAIL AS A FOUNDER

Robins Kapan LLP is proud to join the Wanton Injustice Legal Detail (WILD), an affiliate non-profit organization to Twin Cities Diversity in Practice (TCDIP), as a founder.

WILD provides a platform through which volunteer attorneys within TCDIP can actively combat anti-Black racism and all forms of racism through direct support and partnerships with existing community organizations. By harnessing the collective expertise of TCDIP member organizations and volunteer attorneys, WILD seeks to amplify and support the work of community organizations across the Twin Cities to create a community free of all forms of racism. As a founder, Robins Kaplan will join WILD on the front lines of these efforts.

“Our firm’s support of WILD is an additional demonstration of our efforts to collaboratively address racism and foster equity, both in our organization and in our community,” said Rita Holmes-Bobo, Director of Diversity, Equity and Inclusion.

Find more information about WILD [here](#).



Minnesota Lawyer

HONORS EIGHT ROBINS KAPLAN ATTORNEYS AS 2021 ATTORNEYS OF THE YEAR

Robins Kaplan LLP is pleased to announce that Patrick Arenz, and a team of attorneys including Jeff Gleason, Munir Meghjee, Jamie Kurtz, Nathaniel Moore, Jason Pfeiffer, Haynes Hansen, and Jaime Wing have been named 2021 Attorneys of the Year by Minnesota Lawyer. This annual award recognizes recipients' leadership skills, involvement in noteworthy cases, and commitment to public service.

Arenz is recognized for his role as lead trial counsel in a personal injury case where his team secured a \$27.8 million jury verdict on behalf of Dr. Richard Tholen, a top Twin Cities plastic surgeon, who endured an amputated leg after Assist America refused to evacuate him for proper medical care. This verdict has been reported as the largest personal injury verdict in Minnesota history. This is the second time that Arenz has been recognized amongst Minnesota Lawyer's Attorneys of the Year.

The trial team consisting of Gleason, Meghjee, Kurtz, Moore, Pfeiffer, Hansen, and Wing are recognized for their involvement in the RightCHOICE Managed Care, Inc. et al v. Hospital Partners, Inc. case, in which they represented Blue Cross and Blue Shield of Missouri and other Blue Cross Blue Shield plans in litigation against defendants who conspired to defraud the healthcare insurers. The defendants and their co-conspirators took control of a Critical Access Hospital in Unionville, MO called Putnam County Memorial Hospital, and used the hospital to bill our clients \$18 million for lab tests performed by their laboratory in Colorado. By billing the tests through the hospital, they obtained substantially inflated reimbursements. The Robins Kaplan team secured a jury verdict for compensatory and punitive damages totaling \$25.6 million.

All attorneys were honored at a dinner event at the Hyatt Regency Hotel on February 17, 2022.





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KAPLAN LLP

800 LASALLE AVENUE
SUITE 2800
MINNEAPOLIS MN 55402

QUARTERLY

In re LIBOR-Based Financial Instruments Antitrust Litigation (MDL 2262)

BY STACEY SLAUGHTER



In multi-district litigation stemming from the alleged manipulation of the LIBOR interest-rate benchmark, on December 30, 2021, the Second Circuit reversed the district court and found that plaintiffs can establish personal jurisdiction through defendants' participation in a conspiracy operating in the United States. *Schwab et al. v. Lloyds et al.* (SDNY). The plaintiffs alleged that the defendants, some of the largest financial institutions in the world, colluded to fix U.S. Dollar LIBOR, a financial benchmark used to set floating rates in loans and other financial products, during the 2007 financial crisis. Following the Second Circuit decision, the defendants filed a cert petition with the U.S. Supreme Court. Robins Kaplan represents the direct action plaintiffs Principal Financial and certain Principal Funds in the MDL.

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