

## Erik K. Swanholt

### Partner

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With more than 25 years of experience as an adviser, litigator and trial lawyer for Fortune 500 companies and start-ups alike, Erik Swanholt has a broad range of experience spanning multiple disciplines. Erik's primary focus, however, is on advising and representing manufacturers, distributors, and retailers of consumer and industrial products in all areas of their business.

*Consumer Product Safety Practice* – One significant part of Erik's practice is to assist companies with developing best practices for their products. From advising on good manufacturing practices, regulatory compliance programs, and supply chain protocols, to developing compliant marketing plans and labeling strategies, Erik works with companies looking to get to market with new products, or those looking to improve existing practices for products that have been on the market for years. Erik has extensive experience working with testing labs and regulators (including the Consumer Products Safety Commission ("CPSC"), FDA, FTC, OEHHA, CARB, Health Canada and others) to certify or demonstrate regulatory compliance. In this capacity, Erik has led a number of companies through global and U.S. product recalls and countless remediation plans when recall is not necessary.

*Consumer Product Litigation* – The other significant part of Erik's practice is to represent and defend companies in class action and mass litigation or government/regulatory compliance issues relating to their products, including products liability, consumer class action, toxic torts, personal injury, antitrust, contract actions, and regulatory investigations. He has successfully defended businesses sued in state and federal court under myriad statutory schemes, including California's Unfair Competition Laws (UCL), the Consumer Legal Remedies Act (CLRA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Electronic Funds Transfer Act (EFTA) and the Telephone Consumer Protection Act (TCPA), to name a few.

Consistent with his consumer product and products liability experience, Erik is also expert in the Public Readiness and Emergency Preparedness ("PREP") Act. He has advised numerous clients and written and

spoken on the subject many times, including to the House Manufacturing Caucus of the U.S. House of Representatives in late 2019 relating to the COVID-19 pandemic.

Erik's experience crosses nearly every industry including, electronics, safety equipment, food, pharmaceuticals, medical devices, vehicles, aircraft, chemicals, industrial machinery, fashion, financial instruments, home appliances, furniture, silica, asbestos and more.

### **Representative Experience\***

- Represented multiple toy manufacturers and defeated plaintiffs' motion for class certification of dozens of consumer protection claims under the laws of several different states pending simultaneously in the Northern District of Alabama and the Central District of California.
- Represented a home appliances manufacturer and reached a claims-made settlement in a class action lawsuit brought by purchasers of certain front-load washing machines, who alleged that the machines were defective.
- Represented an appliances manufacturer in a series of lawsuits relating to alleged product defect and liability issues with products installed in residential and commercial buildings across the U.S.
- Successfully led nationwide litigation and defense of product liability cases and claims involving hundreds of claims filed across the country against off-road vehicles.
- Represented a fiber optic-based products manufacturer and certain of its directors, officers, and employees, in a shareholder action brought in Los Angeles County Superior Court alleging that they made materially misleading statements regarding their business, prospects, and the departure of its chief executive officer.
- Represented manufacturer of industrial equipment used in mines relating to claims that the equipment had been improperly installed in numerous geographic locations.
- Defended one of the world's leading fruit companies in multiple toxic tort lawsuits brought by agricultural workers from 13 countries claiming that the use of a certain pesticide on banana farms in Latin America, Africa, and the Philippines during the 1970s caused adverse health effects.
- Represented various food and product packaging companies against claims of false advertising, improper labeling (e.g., "all natural") and slack-fill violations.
- Represented one of the world's leading food and beverage companies in connection with antitrust litigation claiming violation of the California Unfair Trade Practices Act and Unfair Competition Act in conjunction with the pricing of vending products.
- Represented manufacturer with respect to claims that factory equipment installed across the country had inadequate warnings and training materials.
- Represented insurance carrier in multijurisdictional dispute with respect to various claims made relating to denial of COVID-19 coverage.
- Represented a pharmaceutical company in a unique products liability matter relating to their \$4 billion a year pharmaceutical product and won the summary judgment.

- Represented a health plan company in an arbitration concerning a contract dispute over termination of a jointly held Medicare health plan and in turn recovered millions of dollars.
- Successfully defended a group of respirator manufacturers in product liability litigation brought by over 50 plaintiffs who had worked at diatomaceous earth mines in California.
- Resolved a multijurisdictional dispute against contractor hired to convert pharmaceutical plant in Spain.
- Represented a pharmaceutical company relating to claims of product and design defect as well as failure to warn regarding effects and efficacy of a pharmaceutical product.
- Represented a large school district in resolving a \$5 million dispute by general contractor and subcontractors over work to improve a school district's air conditioning systems.
- Represented three families defrauded by a company and its agents after seeking assistance with home loan modifications and judgment was obtained against company and individuals involved in foreclosure consultant fraud.
- Represented an individual, who was evicted from his family home after seeking help to satisfy a \$6,000 tax bill.

\*Certain of these matters were handled prior to joining Foley.

## Awards and Recognition

- Selected for inclusion to the Southern California Super Lawyers list in the area of Business Litigation (2009 – 2016)
- Recognized by *The Legal 500* in the field of Product Liability and Mass Tort Defense: Consumer Products (2015)

## Affiliations

- He serves on the Board of Governors for the Association of Business Trial Lawyers.

## Community Involvement

- Erik is a volunteer and frequent pro bono lawyer for Bet Tzedek and Public Counsel. He received the California State Bar's Wiley W. Manuel Award for Pro Bono Services every year from 2005 – 2012. He has served as a volunteer assistant district attorney conducting trials for the Los Angeles District Attorney's Office.

## Presentations and Publications

- Co-author, "[Product Liability Trends in the Automotive Industry](#)," *Dashboard Insights* (April 25, 2023)
- Co-author, "[CPSC Finally Provides Regulatory Certainty on Clothing Storage Units](#)," *Manufacturing Industry Advisor* (April 20, 2023)
- Co-author, "[The CPSC Seeks Information on Gas Stove Hazards](#)," *Manufacturing Industry Advisor* (March 23, 2023)
- Co-author, "[CPSC Provides More Guidance to Online Sellers & Retailers](#)," *Manufacturing Industry Advisor* (March 21, 2023)

- Co-author, “[Does Your Product Use HFCs? Are You Ready for a Phase-Out?](#),” *Manufacturing Industry Advisor* (February 6, 2023)
- Co-author, “[What Is Going On With Gas Stoves?](#),” *Manufacturing Industry Advisor* (January 27, 2023)
- Co-author, “[CPSC Focuses On Child Safety in the Home](#),” *Manufacturing Industry Advisor* (January 20, 2023)
- Co-author, “[The CPSC Promises Higher Civil Penalties and More Aggressive Enforcement](#),” *Manufacturing Industry Advisor* (January 20, 2023)
- Co-author, “[CPSC Presses Onward with Equity Action Plan](#),” *Consumer Class Defense Counsel* (July 22, 2022)
- Co-author, “[Top Legal Issues Facing the Manufacturing Sector in 2022](#),” *Manufacturing Industry Advisor* (July 6, 2022)
- Co-author, “[Recent Activity on Infant and Child Safety](#),” *Manufacturing Industry Advisor* (October 7, 2021)
- Co-author, “[California OEHHA Proposes New Safe Harbor Warnings for Acrylamide in Foods](#),” *Manufacturing Industry Advisor* (September 29, 2021)
- Co-author, “[Questioning Disgorgement Remedies in Light of the U.S. Supreme Court’s AMG Capital Management, LLC v. FTC Decision](#),” *Consumer Class Defense Counsel* (August 31, 2021)
- Co-author, “[‘How to Lose a Class Action Settlement in 10 Ways’ – Recent Decisions Reflect a Trend of Applying Greater Scrutiny to Attorneys’ Fees Requests in Class Action Settlements](#),” *Consumer Class Defense Counsel* (July 7, 2021)
- Co-author, “[CPSC’s New Standard on the Flammability of Upholstered Furniture Now Effective](#),” *Manufacturing Industry Advisor* (July 6, 2021)
- Co-author, “[CPSC Takes First Step to Expand Enforcement](#),” *Consumer Class Defense Counsel* and *Manufacturing Industry Advisor* (April 21, 2021)
- Co-author, “[The CPSC Digs In on Artificial Intelligence](#),” *Consumer Class Defense Counsel* and *Manufacturing Industry Advisor* (March 31, 2021)
- Co-author “[HHS Expands and Clarifies Scope of Immunity Under the PREP Act](#),” *Foley’s Coronavirus Resource Center* (December 29, 2020)
- Co-author “[CPSC Issues COVID-19 Consumer Products Guidance](#),” *Foley & Lardner Manufacturing Blog* (November 24, 2020)
- Co-author “[Proposed SAFE TO WORK Act Offers Protections to Businesses Impacted by COVID-19](#),” *Foley & Lardner Manufacturing Blog* (August 24, 2020)
- Co-author “[Protecting Your Business from COVID-19 Class Action Lawsuits](#),” *Foley & Lardner Manufacturing Blog* (April 29, 2020)
- Co-author “[How the Health and Human Services Advisory Opinion Impacts Liability Immunity for Covered Persons and Covered Countermeasures under the PREP Act](#),” *Foley’s Coronavirus Resource Center* (April 22, 2020)
- Co-author “[PREP Act Immunity in the COVID-19 Era: “Recent Decisions Impacting Your Defenses to Coronavirus-Related Claims](#),” *Foley’s Coronavirus Resource Center* (March 25, 2020)

- Co-author “Liability Immunity for Qualified Coronavirus Countermeasures – How the PREP Act and HHS Declaration Apply,” *Foley’s Coronavirus Resource Center* (Marcy 17, 2020)
- Co-author, “Ignorance Is Not Bliss: ‘Sham Affidavit’ In 9th Circ.,” *Law360* (October 29, 2012)
- Co-author, “12 Angry Tweets: Jurors And Social Media Use,” *Law360* (March 6, 2012)
- Co-author, “Thinking Critically About Arbitration For Complex Civil Cases,” *Bloomberg BNA Corporate Counsel Weekly* (October 12, 2011)
- Co-author, “Work Product Ruling Ignores Realities of Litigation,” *Los Angeles Daily Journal* (March 15, 2010)
- Co-author, “At Your Service? Ruling Makes It Too Easy to Serve Foreign Corporations,” *Los Angeles Daily Journal* (June 18, 2009)
- Co-author, “Have You Been Served? For Foreign Companies, It’s Hard to Tell,” *Los Angeles Daily Journal* (February 18, 2009)

## Sectors

- [Consumer Products](#)
- [Digital Assets, Web3 & NFTs](#)
- [Equipment & Industrial Product Manufacturing](#)
- [Fashion, Apparel & Beauty](#)
- [Manufacturing](#)
- [Sustainability & Product Stewardship](#)

## Practice Areas

- [Business Litigation & Dispute Resolution](#)
- [Consumer Law, Finance & Class Action Group](#)
- [Environmental](#)
- [Litigation](#)
- [Product Liability](#)

## Education

- University of California, Hastings College of the Law (J.D., cum laude, 1998)
- University of California, San Diego (B.A., cum laude, 1993)
  - Political Science

## Admissions

- Erik is admitted to practice law in California and before all federal district courts in California.