

David R. Buchanan

Partner



A senior partner at Seeger Weiss, Dave represents individual and corporate plaintiffs in state and federal courts throughout the country. His practice focuses on litigating and trying complex commercial and product liability matters.

Dave's docket involves a wide variety of cases, including pharmaceutical injury, product liability claims, trade secrets, commercial disputes, pension challenges, securities and investment fraud, and consumer claims. Though the scope of his cases is broad, they are usually large, national, high-stakes cases, generally destined for trial. By their nature, they are often centered in federal multi-district proceedings or analogous state coordinated proceedings, where Dave is often selected by his co-counsel or appointed by the courts to lead them as liaison counsel, lead counsel, or a member of plaintiffs' executive/steering committee.

Dave's scientific background is a ready asset featured in the technical and pharmaceutical cases in which he often focuses. He is likewise known for his extensive experience in the discovery and preservation of electronic information, and has served as a consultant in this capacity for many other law firms. He is frequently invited to speak to an array of audiences and conferences—directed to practicing plaintiffs' and defense attorneys, judges, students, and professional organizations—on issues concerning trial practice, discovery, and complex and products liability litigation.

Selected Representations

- *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, MDL No. 2545 (N.D. Ill.). Trial counsel in first three bellwether trials in this multi-district litigation concerning cardiovascular injuries suffered by men following their use of prescription testosterone products. Highlights: Lead Trial Counsel in *Konrad v. AbbVie Inc.*, No. 1:15-cv-00966 (N.D. Ill.), which resulted in a \$140+ million verdict for a 49-year old Tennessee man who used AndroGel for two months and suffered a heart attack. Trial counsel for 49 year-old Oregon man who suffered a heart attack following use of AndroGel (*Mitchell et al. v. AbbVie Inc. et al.*, No. 1:14-cv-09178 (N.D. Ill.)) – \$150+ million verdict for Mr. Mitchell in the first trial; \$3.2 million verdict for plaintiff on re-trial.
- *In re National Football League Players' Concussion Injury Litig.*, MDL No. 2323 (E.D. Pa.). Appointed to the Plaintiffs' Executive Committee by the Hon. Anita Brody. Co-lead negotiations on behalf of plaintiffs in this highly visible and contentious multidistrict litigation on behalf of retired players against the National Football League. Helped negotiate settlement resulting in substantial monetary awards for injured players (up to \$5 million per player for the most severe injuries) and a medical testing program. The settlement, valued at more than \$1 billion, was overwhelmingly supported by the class, and thereafter approved by Judge Brody and affirmed by the U.S. Court of Appeals for the Third Circuit; the United States Supreme Court declined further review.
- *In re Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La.); *In re Vioxx Prods. Liab. Litig.*, No. 619 (N.J. Super. Ct. Atlantic Cty). Served as Court-appointed Liaison Counsel (New Jersey proceedings), co-chair of discovery (MDL proceedings), and trial counsel in several bellwether trials against Merck & Co. concerning heart attacks caused by its arthritis drug, Vioxx. Through his role in both the New Jersey and MDL proceedings,

Dave helped develop and lead the overall litigation strategy for the approximately 27,000 separate cases pending against Merck & Co., and, together with partner Christopher Seeger, successfully co-tried the bellwether case, *Humeston v. Merck & Co., Inc.*, case no. ATL-L-2272-03, N.J. Super. Ct. Atlantic County, which resulted in a \$47.5 million verdict for the Humestons for his Vioxx-related heart attack. Months later, Dave joined with the negotiating committee to help secure the \$4.85 billion settlement from Merck for the many people injured by the drug.

- *In re Pfizer Inc. Securities Litig.*, No. 04-cv-9866 (S.D.N.Y.). Served as class and science counsel in this federal securities fraud action against Pfizer on behalf of investors relating to misrepresentations and omissions concerning Pfizer's drugs, Bextra and Celebrex. Dave played a leading role in developing the expert slate to overcome Pfizer's early science challenge, led with partner Christopher Seeger plaintiff's presentation and examinations during the seven day *Daubert* hearing, and was later asked to serve as co-trial counsel in the trial of the case. Following pre-trial motion practice and ensuing appeals, the case settled, resulting in a \$486 million cash settlement fund for the class of aggrieved investors.
- *In re Accutane Litigation*, No. 271 (N.J. Super. Ct. Atlantic Cty). Since 2005, Dave has served as Liaison Counsel and trial counsel for plaintiffs suffering from ulcerative colitis and Crohn's disease as a result of their use of Roche's acne medicine, Accutane. Several bellwether trials in the multi-county coordinated proceedings have occurred among the several thousand pending cases, thus providing important harbingers to the parties for the broader litigation, e.g.: *McCarrell v. Hoffmann La Roche, Inc.*, No. A-4481-12T1 (N.J.) (trial counsel for Alabama man developing ulcerative colitis shortly after stopping Accutane; \$2.5 million verdict in first trial; \$25.5 million jury verdict in re-trial); *Kendall v. Hoffman La Roche Inc.*, No. 36 A. 3d 541 (N.J.) (trial counsel for Utah woman who developed ulcerative colitis after stopping Accutane; \$10.4 million verdict in first trial; \$1.4 million verdict in re-trial); *Rossitto & Wilkinson v. Hoffmann La Roche, Inc.*, Nos. L-7481-10 and L-1311-08 (N.J.) (lead trial counsel in consolidated trial for this New Jersey woman (Ms. Rossitto) and Utah man (Mr. Wilkinson) concerning their development of ulcerative colitis and resulting complications following the use of Accutane; \$18 million verdict for plaintiffs; verdicts vacated on appeal, with further appellate proceedings pending). These contentious proceedings have similarly resulted in several landmark decisions from the New Jersey Supreme Court and the New Jersey Appellate Division—in which Dave has served as appellate counsel—on legal issues of wide import, including choice of law, the discovery rule applicable in products

liability claims, the presumptions afforded under the New Jersey Products Liability Act, and the admissibility of expert scientific testimony.

- *Zylon Corp. et al. v. Medtronic, Inc. et al.*, No. 650523/2008 (N.Y. Supreme). Represented inventor, Zylon Corp. and its principal, in theft of trade secret and unfair competition case against Medtronic, Inc. in New York Supreme Court, Commercial Part. Plaintiffs' contention: through a series of agreements designed to provide Medtronic an opportunity to evaluate Zylon's proprietary technology, Medtronic accessed, misappropriated, commercialized, and, later, claimed as its own Zylon's proprietary process for making "zero fold"—or extremely low profile—angioplasty balloons. Following protracted and contentious proceedings, Dave served as trial counsel with partner Terrienne Benedetto and co-counsel of behalf of the inventor in the multi-week trial. The parties resolved the litigation on the eve of closing statements.
- *In re Depuy ASR Hip Implants Litig.*, MDL 2197 (N.D. Ohio); *In re Depuy ASR Hip Implants Litig.*, No. 293 (N.J. Super. Ct. Bergen Cty). Appointed Lead Counsel by the Hon. Brian R. Martinotti for the coordinated New Jersey proceedings against Johnson & Johnson and subsidiary Depuy Orthopaedics on behalf of thousands of victims who received Depuy's defective ASR hip replacement, which resulted in revision/replacement surgeries, infections, and further complications. Dave led discovery in the state proceedings (and further assisted with MDL discovery), and was selected as co-lead and lead counsel for the first MDL and state bellwether trials, respectively. Plaintiffs reached a global settlement—now estimated at approximately \$3 billion—as Dave's first New Jersey bellwether trial was set to commence.
- *In re Stryker Rejuvenate & ABG II Modular Hip Implant Litig.*, No. 296 (N.J. Super. Ct. Bergen Cty). Appointed to the Plaintiffs' Steering Committee by the Hon. Brian R. Martinotti in claims against Stryker Corporation and its subsidiary Howmedica Osteonics Corp. related to its defective Rejuvenate and ABG II hip replacement system. The plaintiff-patients suffered severe injuries and complications following their hip replacement surgeries, in many cases, resulting in revision surgeries and related or ensuing complications. The litigation resolved favorably (and on an expedited basis) through an innovative bellwether mediation program, from which a global resolution valued at more than \$1 billion followed.

- *In re Gadolinium-Based Contrast Agents Prods. Liab. Litig.*, MDL 1909 (N.D. Ohio); *In re Gadolinium Contrast Agents Litig.*, No. 279 (N.J. Super. Ct. Middlesex Cty). Represented numerous injured patients in a mass tort against GE Healthcare, Bayer Healthcare Pharmaceuticals, Mallinckrodt, and others, concerning harm caused from exposure to their Gadolinium-based contrast dyes used in medical imaging. The plaintiff-patients developed a severe, disfiguring, debilitating—and in many cases, fatal—condition known as Nephrogenic Systemic Fibrosis, or Nephrogenic Fibrosing Dermopathy (NSF/NFD)—following routine imaging exams that employed Gadolinium-based imaging agents. Dave was appointed Federal-State Court Liaison by the Hon. Daniel Polster for the MDL proceedings, and Liaison Counsel, by the Hon. Jamie D. Happs, for the New Jersey coordinated proceedings. Following extensive discovery, the litigation resolved by settlement on favorable terms for plaintiffs' injured by defendant's products.
- *In re Rezulin Prods. Liability Litig.*, MDL No. 1348 (S.D.N.Y.). Member of discovery team in MDL and coordinated state-court proceedings against Warner Lambert and Pfizer for liver injury claims suffered by hundreds of consumers due to the withdrawn diabetes drug, Rezulin. Served as bellwether trial counsel in *Morgado v. Warner Lambert, Pfizer, et al.*, No. 403243/01 (N.Y. Supreme), which resulted in \$2 million verdict for Mrs. Morgado, and set the stage for global resolution of the broader claims in the litigation.

Bar Admissions

New Jersey

New York

Pennsylvania

United States District Courts for the Southern and Eastern Districts of New York, and District of New Jersey

United States Court of Appeals for the Second and Third Circuits

Various Federal Courts around the country, via specific and *pro hac vice* applications

Education

Benjamin N. Cardozo School of Law, J.D., *magna cum laude*, 1993

— *Cardozo Law Review*, Editor, 1992-1993

— Samuel Belkin Scholar, 1991-1993

University of Delaware, B.S., 1990, Chemistry and Biology
— U of D Fightin' Blue Hens Football, Offensive MVP, 1989

Memberships & Associations

- International Society of Barristers, 2016 – present
- Summit Council, 2013 – present
- New York State Trial Lawyers (NYSTLA), Board of Governors, 2007 – 2016; member 2000 – present
- New Jersey Association for Justice (NJAJ), Board of Governors, 2010 – 2011; member 2003 – present
- American Association for Justice (AAJ), member, 2000 – present; Litigation Group Chair, various years
- The National Trial Lawyers, member, 2010 – present
- American Bar Association, Litigation Section

Community Involvement

- Oasis – Haven for Women and Children, Paterson, NJ
- Eva's Kitchen, Paterson, NJ
- Don Bosco Prep, Trustee; President's Award recipient
- Wyckoff Parks & Recreation Foundation, Board member

Recent Speaking Engagements

Pharmaceutical Litigation Trial Strategy
Summit Council
Minneapolis, MN, May 11, 2018

Mass Tort Trial Strategy: Testosterone Litigation
National Trial Lawyers Summit
The National Trial Lawyers
Miami, FL, February 5-6, 2018

Mass Tort Trial Strategy: Testosterone Litigation
MTMP Fall Conference
Mass Torts Made Perfect (MTMP)
Las Vegas, NV, October 19, 2017

Technology Assisted Review (TAR) Best Practices conference
Duke University School of Law (Duke Law) Center for Judicial Studies
Durham, NC, September 22, 2017

Mass Tort Boardwalk Seminar
New Jersey Association for Justice (NJAJ)
Atlantic City, NJ, April 27, 2017

Mass Tort Litigation Update
NJ Institute of Continuing Legal Education
New Brunswick, NJ, March 28, 2017

Mass Tort Boardwalk Seminar
New Jersey Association for Justice (NJAJ)
Atlantic City, NJ, November 20, 2015

Implementing the Discovery Proportionality Standard – Best Practices Conference
Duke University School of Law (Duke Law) Center for Judicial Studies
Washington, D.C., November 13-14, 2014

HarrisMartin's Mass Tort Litigation Conference
HarrisMartin Publishing, JW Marriott Essex House
New York, NY, April 04, 2014

E-Discovery: The Who, What, When, Where & How
New York State Trial Lawyers Association
New York, NY, April 3, 2013

Federal State Coordination
DRI Drug & Device Conference
New Orleans, LA, May 10-11, 2012

Johnson & Johnson DePuy Hip Implant Litigation Conference
HarrisMartin Publishing
Durham, NC, November 17, 2010

Notable Decisions

McCarrell v. Hoffmann La-Roche Inc., 227 N.J. 569 (2017)

In re Accutane Litigation, 451 N.J. Super. 153 (App. Div. 2017)

In re Accutane Litigation, 2017 WL 3138003 (App. Div. July 25, 2017)

Kendall v. Hoffmann-La Roche Inc., 209 N.J. 173 (2012)

Publications

“Confidentiality in Mass Torts: New Rules, New Issues, New Perspectives”
New Jersey Lawyer, August 2011

“Rules 33 and 34: Defining E-Documents and the Form of Production”
(With Adam I. Cohen, James C. Francis IV, and Paul M. Robertson)
Fordham Law Review, 73 *Fordham L. Rev.* 33 (2004).

Practices

[Drug Injury](#)

[Defective Products](#)

[Class Action Claims](#)

[Whistleblower Claims](#)

[Catastrophic Injury](#)

[Toxic Exposure](#)

[Personal Injury](#)

[Commercial Litigation](#)

Dave’s practice also includes environmental litigation; consumer, insurance and securities fraud; and antitrust.

Contact

dbuchanan@seegerweiss.com

New York

[P: 212-584-0700](tel:212-584-0700)

[F: 212-584-0799](tel:212-584-0799)

77 Water Street
8th Floor
New York, NY 10005

New Jersey

[P: 973-639-9100](tel:973-639-9100)

[F: 973-639-9393](tel:973-639-9393)

55 Challenger Road
6th Floor
Ridgefield Park, NJ 07660