

# PRODUCT LIABILITY & COMPLEX TORT

Hodgson Russ's Product Liability & Complex Tort practice knows how to best protect your business in the face of tort litigation that can threaten your company's operations, product development, and reputation. With over two centuries of experience, we will partner with you to devise the best strategy to manage and resolve these lawsuits, and to prevent similar ones in the future.

Our team prides itself on its client-centered approach and understanding of your overall business goals. This perspective enables us to effectively defend you and to minimize long-term risk for your business in the future. To that end, our lawyers are active in civil justice reform; we are members of relevant trade associations and defense organizations; we visit our clients' facilities to better learn their operations; and we remain current on industry trends and developments materially affecting our clients' businesses. In the event of a claim or lawsuit, we will conduct comprehensive investigations and consult with highly-qualified experts to develop successful litigation strategies and solutions.

Hodgson Russ works to protect your interests inside and outside the courtroom. Beyond litigation matters, our lawyers also advise and guide clients in the development of product warnings, owners' manuals, contract documents, and other risk mitigation policies and procedures. We counsel clients on their compliance obligations under federal regulations and state statutes, including the labeling and warning requirements of California's Proposition 65. We also have extensive experience helping our clients facilitate product recalls before government agencies, including the Consumer Product Safety Commission, National Highway Traffic Safety Administration, and Food and Drug Administration.

Our lawyers are repeatedly recognized by *Best Lawyers* and *Super Lawyers*. Hodgson Russ itself has been awarded a prestigious "Best Law Firms" Metropolitan Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the following categories: Personal Injury Litigation – Defendants and Product Liability Litigation – Defendants.

## Experience

Our team successfully defends and resolves claims involving catastrophic personal injury, property damage, and wrongful death. We handle claims through every phase of litigation—including motions to dismiss, depositions, summary judgment, bench and jury trials, appeals, and settlement—in both Federal and State courts across the U.S.

## Contacts

Ryan Lucinski  
716.848.1343  
rlucinsk@hodgsonruss.com

Christian Soller  
518.433.2445  
cjsoller@hodgsonruss.com

## Professionals

### Attorneys

Mohammed Alam  
Amanda Burns  
Ryan Cummings  
Joseph Curran  
Meghan DiPasquale  
Emily Florczak  
Cheyenne Freely  
Julia Hilliker  
Patrick Hines  
Scott Jennette  
Joshua Levitt  
Ryan Lucinski  
Jason Markel  
Fallon Martin  
Christopher Massaroni  
Michael Maxwell  
Julia Micolajczak  
Michael O'Neill  
Matthew Parker  
Scott Paton  
Molly Plewinski  
Alexandria Rowen  
Hugh Russ III  
Peter Sahasrabudhe  
Christian Soller  
Eric Ward

## PRODUCT LIABILITY & COMPLEX TORT

We represent clients across a wide range of industries, including suppliers, distributors, and Fortune 100 manufacturers. We specialize in high-exposure, “bet the company” litigation. We are well versed in all types of litigation, from single lawsuits to mass/class actions to multi-district litigation.

Claire Wells  
Anthony Yanez  
Sera Yoon

We have successfully handled a number of product liability and complex tort matters involving:

- Agricultural Equipment
- Appliances
- Asbestos Containing Products
- ATVs/Recreational Vehicles
- Automobiles
- Aviation
- Chemicals
- Child Abuse
- Construction Defects
- Construction Equipment
- Cranes & Aerial Devices
- Diet Supplements
- Dram Shop Act
- Electrical Equipment & Generators
- Electrocutions
- False Arrest/Malicious Prosecution
- Firefighting Foam
- Fires/Explosions
- Food Products
- Forklifts
- Industrial Equipment
- Lawn & Landscape Products
- Lead Paint
- Liquid Nitrogen
- Material Handling Equipment

## PRODUCT LIABILITY & COMPLEX TORT

- Medical Devices & Equipment
- Motorcycles
- Negligent Security
- N.Y. Labor Law
- Pharmaceuticals
- Power Tools
- Pressure Gauges & Vessels
- Railroad Equipment
- Skid Steer Loaders
- Tractors
- Trucks & Trailers

### Representative Matters

On behalf of a major construction company, Hodgson Russ attorneys successfully argued an appeal that expanded case law interpreting a key Industrial Code regulation that often underpins Labor Law § 241(6) claims. The ruling helped limit liability for the client and will do so for other construction companies going forward.

Hodgson Russ successfully settled breach of contract, product defect, and fraud claims, on behalf of an international supplier of industrial heating, fluid, and boiler systems, arising from an industrial fluid system installed at a major European-based international airport.

Secured defense verdict for defendant landlord in a dog bite case in which plaintiff's leg was broken requiring surgery since the Westchester County jury was convinced that the landlord lacked the requisite notice of the dog's vicious propensities.

Secured favorable settlement for Fortune 500 company client in a high exposure, Federal Court products liability suit alleging wrongful death that globally settled for approximately \$4 million.

A victory in federal court by a team of Hodgson Russ attorneys put an end to a seven-year lawsuit and extinguished the risk of our client paying millions in damages and other costs arising from claims of federal and state environmental law violations. The matter involved a facility owned and operated by our client, a manufacturer. Over the course of decades of operation, our client's facility became heavily contaminated with chemical residues. Some of those residues migrated off site into the surrounding community. Hodgson Russ represented this manufacturer in connection with an administrative order on consent entered into with the U.S. Environmental Protection Agency (EPA) and the State Department of Environmental Conservation under the Resource Conservation and Recovery Act (RCRA). Our client is performing the work required by the administrative order and is making extensive efforts to benefit the community. Despite our client's efforts, four families from the surrounding community sued the manufacturer in federal court under the citizen suit provisions of several federal statutes, claiming that our client was not complying with the requirements of various environmental statutes and that EPA was not effectively enforcing them. The families asked the federal court to intervene

## PRODUCT LIABILITY & COMPLEX TORT

and to order our client to do more remediation faster. They also asserted claims for personal injury and property damage. The Hodgson Russ team successfully defeated the plaintiffs' claims in court. In his decision, the presiding judge granted our motion to disqualify the plaintiffs' expert and for summary judgment. The case was dismissed entirely — freeing our client to focus on completing the corrective action program without judicial intervention and to remove a substantial liability reserve from its books. Subsequent efforts by the plaintiffs to revive the suit have also been defeated.

Hodgson Russ attorneys successfully secured indemnification on behalf of a distributor of construction equipment in the defense of products liability claims involving the alleged malfunctioning of gas lines in a particular model of crane.

Hodgson Russ defended a Fortune 100 manufacturer of industrial machinery in a horrific product liability case where the plaintiff became caught in machinery while working in a plant, sustaining serious, permanent, and disfiguring injuries. The case ultimately settled, and our client did not have to pay any part of the settlement.

A Hodgson Russ team led by Ryan Lucinski successfully defended a major construction company, a municipality, and a school district in a lawsuit filed by a union carpenter who fell on "black ice" on a construction site and allegedly sustained career-ending injuries. The plaintiff contended that the defendants were negligent and violated Labor Law § 241(6). At trial, Ryan was able to exclude the testimony of plaintiff's meteorologist and counter with evidence of weather reports that refuted the alleged icy condition at the time of incident. After two weeks of proof, the jury returned a unanimous no-cause verdict in favor of our clients.

Hodgson Russ was appointed by the U.S. District Court for the Western District of New York to be lead counsel in an aviation wrongful death action involving the death of 50 people. The firm also represented seven of the victims' families. Cases were started all over the country, but were consolidated in a multidistrict litigation proceeding in Western New York, where Hugh M. Russ, III, the lead attorney for the Hodgson Russ team, has his primary office. The case has resulted in seven-figure settlements for each of the seven families we represented.

Represented major multinational manufacturers of consumer foods in various general liability, product liability, trade secret and labor litigation matters.

Hodgson Russ attorneys defended a company that makes parts for pressure vessels in an explosion case. The plaintiff suffered horrible injuries, including the loss of all four limbs. Our client was relieved of liability on summary judgment.

Lead counsel for a publicly-traded medical products manufacturer in state and federal court litigation across the U.S., arising out of a Class I FDA recall of implantable medical devices. Ben obtained a successful resolution of claims through motion practice and mediations.

Obtained favorable settlement for two individual clients who were jointly sued for massive personal injuries sustained by plaintiff while maintaining their race track by successfully impleading their insurance company and arguing that the insurance company's initial disclaimer of coverage was inconsistent with the governing policy's terms.

Lead trial counsel defending substantial insurance coverage dispute involving claims exceeding \$100M. Obtained a no-cause jury verdict after seven-week trial, later affirmed on appeal.

## PRODUCT LIABILITY & COMPLEX TORT

A Hodgson Russ client, a manufacturer of electronic security systems, was sued by a plaintiff who claimed to have suffered serious personal injuries after being shocked while exiting a security door controlled by one of our client's systems. Before discovery, we were successful in having the action dismissed on summary judgment based on expert affidavits.

A Hodgson Russ client sold an industrial byproduct that was ultimately used as a mineral supplement in feed. Due to dioxin contamination – which was ultimately traced to our client's plant – the feed was recalled by the FDA. Our client was sued by numerous feed manufacturers for recall expenses. Those claims sounded in breach of contract, breach of warranty, negligence, and product liability. We were successful in having several of the causes of action dismissed and ultimately were able to settle the actions for far less than the damages claimed.

Litigated and secured dismissals or nominal settlements for various manufacturer clients in high exposure asbestos litigation matters pending in Delaware, Rhode Island, Pennsylvania, New Jersey, Illinois, Missouri and West Virginia.

Secured nominal settlement for a Fortune 1000 client in a high exposure Labor Law 240 case that ultimately settled globally for approximately \$7 million, involving a young and catastrophically injured plaintiff.

A Hodgson Russ team led by Ryan Lucinski and Matthew Parker won summary judgment for a Fortune 100 client that manufactures turf and lawn care equipment. The plaintiff was cleaning a compact utility tractor, with a grass dethatcher attachment, when he slipped and got his foot caught in the running thatcher blades, suffering significant injuries that resulted in a below the knee amputation of his leg. During discovery, we adduced evidence that the tractor's seat switch had been bypassed by the plaintiff's employer, which allowed the attachment to remain under power without an operator in the seat. To counter our client's subsequent-modification defense, the plaintiff alleged that the tractor's seat switch was too easy to bypass, but we were able to show that such mechanism was state of the art and a common design among competitor model tractors. The plaintiff sought in excess of \$20,000,000 in damages. The Court granted summary judgment to our client and disposed of the case entirely. No appeal was taken.

For two years, Hodgson Russ attorneys Ryan K. Cummings and Hugh M. Russ, III pursued an appeal that sought to narrow the application of New York Labor Law § 240(1) across the state. The New York State Court of Appeals issued its decision in *Holly v. County of Chautauqua and E.E. Austin & Son, Inc.* In its decision, the court returned to the true intent of New York Labor Law § 240(1) and, by doing so, began to limit the statute's far-ranging impact on owners of construction projects and their contractors throughout New York State.

The 34-year-old plaintiff alleged permanently disabling back injuries requiring a lumbar discectomy following a motor vehicle accident with a tractor trailer leased and operated by client Ginsberg's Foods, a self-insured, 100+-year-old, family-owned food distribution business based in Hudson, New York.

Plaintiff claimed that the tractor trailer signaled left but then turned right, occupying two lanes of travel and sideswiping plaintiff. On Ginsberg's behalf, Christian countered that the tractor trailer driver signaled right, and conceded occupying two lanes, since the circumstances rendered it "practicable" pursuant to Vehicle & Traffic Law Section 1128. Christian pointed to plaintiff's own negligence as the exclusive cause of the accident, for impatiently trying to pass the truck on the right. He also argued that plaintiff's back injuries preexisted the accident.

## PRODUCT LIABILITY & COMPLEX TORT

Following a 5-day jury trial involving 8 witnesses (3 experts), the jury unanimously concluded that the Ginsberg's driver was not negligent.

Plaintiff's counsel had asked the jury during closing arguments to award his client in excess of \$1 million.

A Hodgson Russ team led by Hugh M. Russ, III successfully defended Fortune 500 company 3M in a longstanding product liability suit. The plaintiff alleged that, beginning in the 1970s through the 90s, she was exposed to toxic fumes emitted by a 3M 400C microfilm reader printer that caused her a host of neurological problems, including peripheral neuropathy. She claimed the machine's activator solution and treated paper contained styrene monomer as well as 1,2 and 1,3 butadiene as "impurities" and/or the byproducts of heating the solution and paper. At trial, Mr. Russ was able to exclude the testimony of one plaintiff's expert and to discredit the testimony of another. At the conclusion of the trial, the jury returned a unanimous verdict in favor of 3M, thereby rejecting the plaintiff's strict products liability, failure to warn, breach of warranty, and negligence causes of action.

Hodgson Russ attorneys Ryan Lucinski and Patrick Hines successfully defended a manufacturer of industrial instrumentation in a products liability action venued in Missouri federal court. A farmer sued the manufacturer of an anhydrous ammonia applicator system that failed and exposed him to the noxious gas, causing severe chemical burns and a permanent neurological condition. The applicator manufacturer impleaded our client, alleging that its component pressure gauges caused or contributed to the accident. Hodgson Russ developed evidence in discovery that there were no defects in the client's product; that the gauges had been severely damaged and long required replacement; and that the applicator manufacturer was solely responsible for the selection and assembly of all components that comprised its system. During mediation, the case settled for seven figures, with our client contributing nuisance value.

Hodgson Russ attorney Patrick J. Hines obtained summary judgment dismissing all claims against a construction management client, municipality, and school district. The plaintiff carpenter alleged he was walking on loose rebar laying across two concrete footers, creating a "bridge" between them, when the rebar rolled and he fell off. He brought Labor Law §§ 240(1) and 241(6) claims against the clients, alleging career-ending low back injuries. Hodgson Russ successfully established that the clients were not responsible for supervising the work of plaintiff or his employer, and that the Labor Law statutes and Industrial Code provisions on which plaintiff based his claims were inapplicable. Specifically, Labor Law § 240(1) was inapplicable because the accident did not result from the type of elevation-related risk contemplated by the statute. The Appellate Division, Fourth Department unanimously affirmed the decision on appeal.

Secured summary judgment for large construction management company client in a Labor Law 240 case involving a young, catastrophically injured plaintiff that was ultimately tried in New York County Supreme Court and yielded a jury verdict of approximately \$26 million.

Hodgson Russ successfully represented the defendant in a personal injury case. Following the plaintiff's successful motion for summary judgment on liability based on the mechanics (i.e., rear-end collision) of the motor vehicle accident at issue, a damages-only trial ensued. The plaintiff sought damages of more than \$1 million for pain and suffering and lost wages caused by a cervical disc herniation allegedly sustained in the accident, which required an invasive laminectomy with surgical complications. Fortunately for Hodgson Russ's client, Christian J. Soller successfully convinced the jury that the plaintiff's injuries may have been caused by a subsequent motor vehicle accident in which the plaintiff was involved two

## PRODUCT LIABILITY & COMPLEX TORT

years after the accident at issue. The judge ruled in favor of our client.

PJ Hines, Mike Maxwell and Christa Dines won summary judgment dismissing all of the plaintiff's claims against a longtime manufacturing client of Hodgson Russ. The case involved a forklift collision at the manufacturing plant, which caused catastrophic injuries to a worker. Plaintiff sued the plant on a theory that the design and layout of the facility caused or contributed to the accident. Our team used a comprehensive analysis of illuminance differentials to defeat the theory that "blinding light" from an open door prevented the plaintiff from seeing the forklift coming.

A Hodgson Russ team led by Benjamin Zuffranieri, Jr., Ryan Lucinski, and Patrick Hines won summary judgment in a products liability action venued in Texas state court. The client manufactured high-density lithium thionyl chloride batteries used to power subterranean drilling equipment. The decedent and his employer had misused the product by overheating it, causing catastrophic vent of the battery. The decedent's estate claimed that the client's product was defective because it failed to adequately warn of the dangers associated with overheating the product. The Hodgson Russ team successfully argued that the client's product was a defect-free component of a larger battery assembly designed and built by others, and that the client fulfilled its duty to warn those intermediaries. The estate's case against our client was dismissed in its entirety. At trial, the jury returned a verdict against the remaining defendants in excess of \$25,000,000.

Lead counsel in a significant product liability action venued in Texas State court involving a product explosion causing serious personal injuries and death. The Hodgson Russ team successfully obtained summary judgment dismissing all claims against a component manufacture of drilling equipment. At trial, the jury returned a verdict against the remaining defendants in excess of \$25 million, inclusive of punitive damages claims.

Secured a defense/"no-cause" verdict in Kings County Supreme Court in a high exposure motor vehicle accident trial involving a plaintiff who underwent several spinal surgeries and asked the jury to award him seven figures, since the jury was persuaded that the injuries were attributable to an event other than the accident at issue.

### **In the News**

Coronavirus Resource Center

Lawsuits seek to pin blame for costs of opioid epidemic on drugmakers, pharmacies

*The Buffalo News*, May 10, 2021

You can't sue Pfizer or Moderna if you have severe Covid vaccine side effects. The government likely won't compensate you for damages either

CNBC, December 23, 2020

HFZ hit with suit for \$8.2M in unpaid bills at luxury condo project

*Crain's New York Business*, December 21, 2020

## PRODUCT LIABILITY & COMPLEX TORT

Should Courts Keep Secret IDs of Alleged Child Sex Abuse Victims Filing Lawsuits?

*Buffalo News*, November 16, 2019

3407 Tragedy Changed Attorneys, Too

*Buffalo Law Journal*, November 11, 2014

Attorneys Reflect on Flight 3407 Tragedy

*Buffalo Law Journal*, November 10, 2014

Five Questions with...Hugh Russ III

*Buffalo Law Journal*, July 23, 2014

Hugh M. Russ on the Admission of Disputed Evidence in Flight 3407 Lawsuits

September 4, 2013

Hugh M. Russ Asks NTSB to Reopen Flight 3407 Investigation on Behalf of Victims' Families

July 15, 2013

### Press Releases

Hodgson Russ Partner Hugh M. Russ, III Honored with Bar Association of Erie County's Award of Merit

September 26, 2022

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of Upstate New York Super Lawyers

*Hodgson Russ Press Release*, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*

*Hodgson Russ Press Release*, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings

*Hodgson Russ Press Release*, November 15, 2021

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report/Best Lawyers 'Best Law Firms' Report*

*Press Release*, November 18, 2015

Five Hodgson Russ Attorneys Newly Admitted to NYS Bar, Another Admission Pending

*Press Release*, February 7, 2014

### Publications

Governor Hochul Vetoes Grieving Families Act in the 11th Hour

*Hodgson Russ Product Liability & Complex Tort Client Alert*, January 31, 2023

New York Court of Appeals Reverses Multimillion Dollar Verdict

*Hodgson Russ Product Liability & Complex Tort Alert*, May 10, 2022



## PRODUCT LIABILITY & COMPLEX TORT

Trends in Product Liability Litigation & Legislation in New York - May 2022  
*Hodgson Russ Product Liability Litigation & Legislation Quarterly Update*, May 2022

Trends in Product Liability Litigation & Legislation in New York - January 2022  
*Hodgson Russ Product Liability Litigation & Legislation Quarterly Update*, January/February 2022

Supreme Court Rejects Ford's Proposed Causation-Only Standard for Conferring Personal Jurisdiction in Product Liability Suits  
*Hodgson Russ Torts, Insurance and Products Liability Alert*, March 25, 2021

New York Employment Law  
*New York Law Journal*, October 7, 2020

The Coronavirus and Your Insurance Coverage Questions  
*Hodgson Russ Torts, Insurance & Products Liability Alert*, April 17, 2020

Do I Have Insurance for My Coronavirus Losses?  
*Hodgson Russ Corporate Alert*, March 19, 2020

OSHA'S Electronic Self-Reporting Requirement Provides Data Source For New Site Specific Targeting Inspection Program  
*OSHA Alert*, December 20, 2018

Insurance Update for Florida Residents following Hurricane Irma  
*Torts, Insurance & Products Liability, and Business Litigation Alert*, September 15, 2017

### **Presentations & Events**

Taking and Handling Virtual Depositions  
March 16, 2021

Avoiding (and Surviving!) Contract Disputes – Common Pitfalls of Contract Drafting That Land You in Court  
February 11, 2016

New York State Bar Association Seminar: Intro to Civil Practice Skills - Torts, Personal Injury, and Insurance Law  
Buffalo, NY, October 30, 2015