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J. Kenneth Wainwright, Jr.

AREAS OF PRACTICE: Business and Commercial Litigation
Business Counseling
Product Liability
Toxic Torts
Uniform Commercial Code

EDUCATION: Boston College Law School (J.D., *cum laude*, 1975)
Executive Editor, Boston College Environmental Affairs Law
Review, 1974-1975
Boston College (A.B., *summa cum laude*, 1970)

BAR ADMISSIONS: Michigan (1975)
New Jersey (1978)
U.S. District Courts:
Eastern District of Michigan (1975)
Western District of Michigan (1976)
District of New Jersey (1978)
Eastern District of Kentucky (1986)
District of Colorado (1998)
U.S. Court of Appeals, Sixth Circuit (1985)

EMPLOYMENT: Shareholder, Harvey Kruse, P.C., 1997-Present
Chief Litigation Counsel, AlliedSignal, Inc. (now Honeywell
International, Inc.), 1984-1997

EXPERIENCE: Mr. Wainwright joined Harvey Kruse, P.C. in 1997 following a thirteen year career with AlliedSignal, Inc. (now Honeywell International, Inc.). As Chief Litigation Counsel and Assistant General Counsel, he was responsible for dispute resolution, litigation and the legal aspects of product safety and government relations arising from the operations of AlliedSignal's Automotive Sector, a \$6 billion, world-wide supplier of airbags, seatbelts, hydraulic and antilock braking systems, heavy vehicle pneumatic and antilock brake systems, collision avoidance systems, friction materials, turbochargers and engine components.

Developing and implementing a comprehensive strategy for the defense of 50,000 friction material asbestos cases while at AlliedSignal, Ken and his team directed 54 local and 3 regional law firms in nationwide toxic tort litigation, resolving more than 21,000 cases -- 93% without payment. In other areas, he successfully managed 1,700 business and commercial, general tort, civil rights, environmental and product liability matters, including more than 350 seatbelt and airbag cases.

Currently, Mr. Wainwright serves as national coordinating counsel for several clients in product-related litigation throughout the United States and Canada. He has litigated cases in 41 States, 2 U.S. Territories and supervised cases in 6 Canadian Provinces. Besides his substantial automotive product litigation experience, Mr. Wainwright has represented pharmaceutical, medical device, chemical and machinery manufacturers, national franchisers, construction contractors and engineering firms in product liability, toxic tort, Uniform Commercial Code and contractual disputes.

Ken also represents clients in product recalls and administrative investigations by the National Highway Traffic Safety Administration, Consumer Product Safety Commission and the Land Transport Safety Authority (New Zealand). An advocate for civil litigation reform, Mr. Wainwright has testified before the United States Senate and several state legislatures. He has participated in organizations such as the Product Liability Alliance, Product Liability Advisory Council, National Association of Manufacturers, Michigan Manufacturers Association and Business Roundtable Lawyers Advisory Committee.

Drawing upon his corporate background, Mr. Wainwright is well-versed in “preferred,” “regional” and “convergence” counsel networks, alternative dispute resolution, incentivized fee arrangements and computerized litigation management systems.

On several occasions he overcame the unique challenges posed by adverse media publicity in product litigation, handling sensitive lawsuits or administrative investigations involving commercial transit and school bus accidents, the flammability of child car seats, several cases alleging “inertial release” of seatbelt buckles, “infant death” and “out-of-position occupant” airbag inflation injuries, and class actions involving antilock

brake systems.

MEMBER:

American Bar Association
Litigation Section;
Tort Trial And Insurance Practice Sections
State Bar of Michigan
New Jersey State Bar Association (1978-1984)
American Corporate Counsel Association
Defense Research Institute
Product Liability Advisory Council

MILITARY SERVICE:

United States Army, Military Police Corps (1970-1972)

**REPRESENTATIVE
TRIAL & APPELLATE
DECISIONS:**

Traub v. The Bendix Corporation Directed successful defense of a \$52 million “greenmail” derivative action, securing summary judgment for The Bendix Corporation. Supreme Court of New York, Law Division (Manhattan). Affirmed, Supreme Court of New York, Appellate Division.

Allied Corporation v. Union Carbide Corporation Tried private ADR “mini-trial” on behalf of Allied Corporation in Bhopal-related *force majeure* contractual dispute, recovering \$2.5 million from Union Carbide Corporation.

Sturlese v. AlliedSignal, Inc. Achieved complete victory for Honeywell International in \$15.5 million personal injury, paralysis claim involving the crash of an “ultra light” recreational aircraft. Cameron Parish (Louisiana) District Court. Affirmed, Louisiana Third Circuit Court of Appeals. Certiorari denied, Louisiana Supreme Court.

Parsa v. Key Safety Systems, Inc. Summary judgment awarded to Key Safety Systems, Inc. in \$10 million wrongful death case alleging “inadvertent release” of seatbelt buckle causing the death of a 47 year old psychiatrist, earning \$400,000 per year at the time of the accident. Successfully argued that liability was barred by the “component part supplier” defense. Cuyahoga County (Ohio) Common Pleas Court.

McDonald v. Honeywell International, Inc. Summary judgment (affirmed on appeal) for Honeywell International, Inc. in auto liability action arising under the “closed head” injury exception to Michigan’s automobile liability “verbal threshold.” Argued successfully that a doctor’s Affidavit failed to satisfy statutory requirements. Oakland County (Michigan)

Circuit Court. Affirmed, Michigan Court of Appeals. Leave to Appeal denied, Michigan Supreme Court.

Key Safety Systems, Inc. v. Textron Fastening Systems; Key Safety Systems vs. Protogage Tool and Die, Inc. Received several Preliminary Injunctions enforcing a Tier One automotive supplier's terms and conditions against sub-component manufacturers refusing to manufacture or ship parts, claiming "commercial impracticability" based upon rapid and dramatic steel and plastics price increases. Successfully demonstrated that under fixed price, "requirements" contracts typical in the Automotive Industry, the sub-suppliers assumed the risk of raw material price increases and argued "irreparable harm" to our client's reputation and business relationships if supply interruptions prevented the client from providing federally required, life-saving seatbelts and airbags to its OEM customers. Macomb County (Michigan) Circuit Court; Oakland County (Michigan) Circuit Court; Wayne County (Michigan) Circuit Court.

OM Group, Inc. v. Delphi Corporation and Delphi Automotive Systems Following protracted negotiations and a voluntary facilitation, recovered \$2.2 million for a Tier One automotive supplier, successfully overcoming a *force majeure* defense to a highly unusual, "fixed quantity" contract for the supply of catalytic materials. Oakland County (Michigan) Circuit Court.

In re Bendix Type One Seat Belt Buckles Successfully avoided NHTSA recall of seven model years' seatbelt production for alleged buckle spring failures. Administrative Proceeding. National Highway Traffic Safety Administration.

AlliedSignal, Inc. v. Dana Corporation Directed recall cost-recovery litigation against antilock brake hose supplier, recovering \$5 million following private ADR "mini-trial" before executives of the involved corporations. United States District Court, Northern District of Indiana.

McNees v AlliedSignal, Inc. Secured dismissals without payment for airbag manufacturer in a series of seven emotionally charged, "infant death" airbag cases, including unique "zero dollar, take nothing" result for the client in a mandatory Michigan Case Evaluation.

Salyers v. Allied Corporation; Jarrell v. Allied Corporation;

Moore v. Allied Corporation Successfully opposed class certification and obtained summary judgment in \$4 million ERISA claim, establishing AlliedSignal's right to integrate the payment of workers' compensation and pension benefits. U. S. District Court, Eastern District Of Kentucky.

In re Fisher-Price and AlliedSignal, Inc. Avoided three million unit NHTSA recall of child car seats. Administrative Proceeding. National Highway Traffic Safety Administration.

[Client Identity Withheld] Avoided brake manufacturer's involvement as target of Transport Canada investigation into motor coach accident reported to have the largest death toll in that nation's history. Administrative Proceeding. Transport Canada.

LTV Corporation v. The Bendix Corporation Favorably resolved \$6 million Uniform Commercial Code breach of warranty claim against The Bendix Corporation involving heavy duty winches installed on North Sea oil drilling platforms. Skagit County (Washington) Circuit Court.

Arnold Miller, P.A. v General Motors Corporation Secured dismissal with prejudice of all claims against an automobile manufacturer for alleged "consumer fraud" and "unfair trade practices" in connection with fuel economy advertising, Superior Court Of New Jersey, Law Division (Morris County).

Preslaff v. Pfizer, Inc. Established precedent that the "discovery rule" does not preclude pharmaceutical manufacturer's statute of limitations defense in a wrongful death case. Superior Court Of New Jersey, Law Division (Essex County). Affirmed, Superior Court Of New Jersey, Appellate Division.

Consumers Power Company v. Bechtel Corporation and Bechtel Power Corporation As a junior member of a five-lawyer team, defended architect-engineer and prime construction contractor in \$300 million suit involving the design and construction of a nuclear power plant. U.S. District Court, Western District Of Michigan.

Serve as General Counsel to a global manufacturer of highly engineered Catalytic Materials for automotive applications, providing legal advice on a wide range of commercial and contractual issues involving requirements contracts, purchasing

disputes, international joint ventures and bailments of high-value, platinum group precious metals.

In re: Inertial Release Of Type One Seat Belt Buckles Led Legal/Engineering team responding to nationally-televised adverse publicity (CBS News, “*Street Stories*”) and NHTSA investigation concerning the alleged “inertial release” of seatbelt buckles. Administrative Proceeding. National Highway Traffic Safety Administration.

In re: Friction Material Asbestos Litigation (JPMDL) Organized and led automotive industry coalition opposing multi-district litigation of friction material asbestos cases. Federal Judicial Panel On Multidistrict Litigation.

REPRESENTATIVE CLIENTS

AlliedSignal Canada, Inc.
AlliedSignal, Inc.
Bendix Commercial Vehicle Systems, LLC
Honeywell International, Inc.
International Catalyst Technology, Inc.
Key Plastics, LLC

Quality Safety Systems Company
The Bendix Corporation
Umicore Autocat USA, Inc.

**PUBLICATIONS AND
SPEECHES:**

“Spring Valley: Public Purpose and Land Use Regulation in a Taking Context,” 3 Boston College Environmental Affairs Law Review 327 (1974)

ALI-ABA Seminar, “*The Role Of Corporate Counsel In Litigation*” (1986).

ABA National Convention (Tort and Insurance Practice Section) “*The Future Of Tort Litigation: The Year 2000 And Beyond*” (1991).

Several in-house training seminars for clients addressing: advertising review guidelines, warranty claims administration, guidelines for written communications, record retention, product liability issues for engineers and managers, responding to governmental subpoenas and information requests, the in-house “expert witness” and testifying as a corporate representative.