

## Richard A. Dean

### Partner

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#### **education**

Indiana University School of Law  
(J.D.), 1973; Order of the Coif  
DePauw University (B.A.), 1970; Phi  
Beta Kappa

#### **services**

Business Litigation  
Drug & Device Regulatory Issues  
Food, Cosmetics & Dietary  
Supplements  
Mass Tort & Product Liability  
Medical & Pharmaceutical Liability

Richard Dean is a trial lawyer specializing in complex litigation.

He has tried pharmaceutical, antitrust and business litigation cases all over the United States. He has been active in the defense of class action cases.

He is currently focusing on an issue-based practice emphasizing preemption and personal jurisdiction questions. He has been national counsel in several pharmaceutical cases – many involving issues of product recall. He has significant experience in *Daubert* challenges to suspect medical and scientific testimony.

#### **state admissions**

- Ohio (1973)
- Texas (1986)
- District of Columbia (1991)
- Maryland (1992)

#### **federal admissions**

- Supreme Court of the United States
- United States Court of Appeals, Fourth Circuit
- United States Court of Appeals, Fifth Circuit
- United States Court of Appeals, Sixth Circuit
- United States Court of Appeals, Eighth Circuit
- United States Court of Appeals, District of Columbia Circuit
- United States District Court, District of Maryland
- United States District Court, Northern District of Ohio

- United States District Court, Southern District of Ohio
- United States District Court, District of Columbia

## experience

### REPRESENTATIVE DECISIONS

- *Pliva, Inc. v. Mensing*, 131 S. Ct. 2567 (2011). Failure to warn claims against generic drug manufacturers are preempted.
- *In Re Digitek Products Liability Litigation*, No. 2:08-md-01968, 2010 WL 2102330 (S.D. W. Va. May 25, 2010). Consumer class action rejected in Digitek® recall.
- *Myers-Armstrong v. Actavis Totowa, LLC*, 2009 WL 1082026 (N.D. Cal. 2009). Consumer cannot recover purchase price of drug deemed to be adulterated where drug was consumed without incident.
- *Clark v. Actavis Group Hf*, 567 F. Supp. 2d 711 (D. N.J. 2008). Plaintiffs' attempt to amend recall notices were barred by primary jurisdiction since this was within province of FDA.
- *Giddings v. Bristol-Myers Squibb Co.*, 192 F. Supp. 2d 421 (D. Md. 2002). *Daubert* decision barring key plaintiff's expert in breast implant litigation.
- *Kurcz v. Eli Lilly & Company*, 160 F.R.D. 667 (D. Ohio 1995). Class action denied in DES cases.

### REPRESENTATIVE TRIALS

- *Heights Community Congress v. Hilltop Realty, Inc.*, United States District Court for Northern District of Ohio; Federal Housing Act discrimination case; bench trial.
- *Noyola v. McNeil*, United States District Court for Northern District of Illinois; prescription drug case involving claim for inadequate warning; jury trial.
- *Hawkins v. McNeil*, Superior Court for District of Columbia; prescription drug case involving claim for inadequate warning; jury trial.
- *RLH v. SBC*, Superior Court for Orange County California; state antitrust claim; jury trial.

## publications & events

### PUBLICATIONS

- "Primary Jurisdiction – More About That 16th Draft Pick," Drug & Device Law Blog (May 2020)
- "The Supreme Court Addresses Purposes and Objectives Preemption in a Surprising New Context," Drug & Device Law Blog (March 2020)
- "The Impeachment of Justice Samuel Chase and the Rise of Judicial Review," *ABA Litigation*, Volume 46, Number 1 (Fall 2019)
- "Preemption vs. Public Nuisance, in Aviation and Opioids," *Law360* (July 2019)
- "Stop the Presses – Supreme Court Decides a Dormant Commerce Clause Case," Drug & Device Law Blog (July 2019)
- "The 'Newly Acquired Information' Shift in Pharma Litigation," *Law360* (June 2019)
- "*Trump v. Hawaii* Is *Korematsu* All Over Again," *George Mason Civil Rights Law Journal*, Volume 29:2 (Spring 2019)
- "Revisiting the Third Circuit's Struggles With Design-Defect Preemption," Drug & Device Law Blog (November 2018)

- "Cell Phones, Immigration and Why *Wyeth v. Levine* Was Wrongly Decided on 'Purposes and Objectives' Obstacle Preemption," Drug & Device Law Blog (September 2018)
- "Innovator Liability Flunks the Dormant Commerce Clause," Drug & Device Law Blog (July 2018)
- "Corn, Justice Brandeis, Litigation Tourism and Dormant Commerce Clause Revisited," Drug & Device Law Blog (February 2018)
- "The Last Nail in the Coffin of Stream-of-Commerce Personal Jurisdiction," DRI's *For The Defense* (January 2018)
- "Putting the 'Specific' Back in Specific Jurisdiction: The Importance of Claim-by-Claim Jurisdictional Analysis in a Post-*BMS* Landscape," Drug & Device Law Blog (January 2018)
- "How Bristol-Myers Squibb May Transform Class Actions," *Law360* (October 2017)
- "Over-the-Counter Products: Is Implied Preemption a Viable Defense?," DRI's *For The Defense* (September 2017)
- "Design Defect Implied Preemption Is Not Just for Drugs," Drug & Device Law Blog (August 2017)
- "After the BNSF Decision, There's No Place Like 'At Home'," *Law360* (June 2017)
- "New Developments in the Missouri Removal Wars," *Law360* (November 2016)
- "Corn, Justice Brandeis, Litigation Tourism and the Dormant Commerce Clause," Drug & Device Law Blog (July 2016)
- "Design Defect Preemption – It's as Simple as One, Two, Three," Drug & Device Law Blog (March 2016)
- "Disagreeing with FDA Approval Decisions: Practical Consequences of the First Circuit's Celexa Decision," DRI's *RX for the Defense* (June 2015)
- "How to Remove Multi-Plaintiff Cases Involving Personal Jurisdiction Challenges and Avoid Subject Matter Remand," DRI's *RX for the Defense* (March 2015)
- "Daimler (Bauman) as a Removal Tool in Multi-Plaintiff Cases," Drug & Device Law Blog (October 2014)
- "Between a Regulatory Rock and a Hard Place: Does Preemption Provide an Escape?," DRI's *In-House Defense Quarterly* (Fall 2014)
- "Design Defects and Generic Drugs: The Supreme Court Steps In," DRI's *RX for the Defense* (January 2013)
- "Perfecting Tort Design," *Legal Times* (February 1997)

### honors

- *Who's Who Legal*
  - Product Liability Defence (2003, 2005, 2009, 2013-2019)
  - Life Sciences: Product Liability (2010, 2012-2020)
- The Best Lawyers in America® (2014-2020)
  - 2016 Cleveland Lawyer of the Year (Mass Tort Litigation/Class Actions – Defendants)

### in the community

- International Association of Defense Counsel
- Defense Research Institute