



## John Kingston

Partner

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### PRACTICES

- Business Litigation
- Class Action

### EDUCATION

- Boston University School of Law, J.D., magna cum laude, 1999, Editor, Law Review, Edward F. Hennessey Distinguished Scholar, G. Joseph Tauro Scholar, Paul J. Liacos Scholar
- Phillips University, B.A., 1995, Snodgrass Award

### ADMISSIONS

- Missouri
- Illinois USDC, Southern District
- Missouri USDC, Eastern District
- Missouri USDC, Western District
- US Ct Appeals, 4th Circuit (Covers MD, NC, SC, VA, WV)
- US Ct Appeals, 6th Circuit (Covers KY, MI, OH, TN)
- US Ct Appeals, 8th Circuit (Covers AR, IA, MN, MO, NE, ND, SD)

### REPRESENTATIVE CLIENTS

- TracFone Wireless, Inc.
- Bunzl USA, Inc.
- Charter Communications, Inc.
- SupplyOne, Inc.

### AFFILIATIONS

- Fellow, Litigation Counsel of America
- Missouri Organization of Defense

John handles a wide variety of commercial litigation in state and federal courts across the country.

John has tried jury trials and bench trials in Missouri, Illinois, New York and other states (involving claims on issues ranging from patent infringement to civil conspiracy). He has briefed and argued appeals in state and federal appellate courts and in the Supreme Court of Missouri.

A vigorous and resourceful advocate, John guides his clients through all stages of litigation—including investigation, discovery, trial and appeal. He works closely with his clients to understand the core issues of each dispute and to develop and deploy a litigation strategy to efficiently achieve their goals.

John routinely works with cross-disciplinary legal teams in specialized practice areas. He is adept at understanding industry-specific disputes and persuasively presenting his clients' positions to judges and juries that are not industry experts. John has handled expert witness discovery, preparation and trial examination in cases involving, e.g., patent claims, fiduciary claims, tax claims, securities fraud claims, class action claims and claims of professional malpractice.

John is a Senior Fellow in the Litigation Counsel of America, a peer-selected honorary society for trial lawyers representing less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishments in trial work and superior ethical reputation. John is also a member of the Diversity Law Institute, a nonprofit international association of lawyers and law firms committed to diversity in all aspects of the legal profession and justice systems of the United States and Canada.

John is a former law clerk to the Hon. Boyce F. Martin, Chief Judge of the United States Court of Appeals for the Sixth Circuit and to the Hon. Carol E. Jackson, Chief Judge of the United States District Court for the Eastern District of Missouri.

### Experience

- **Maryland Heights, et al., v. TracFone Wireless, Inc. and Springfield, Missouri v. TracFone Wireless, Inc.**

Suing on behalf of a class of several hundred Missouri municipalities, the City of Maryland Heights sought back taxes on TracFone's

#### Lawyers

- Missouri Bar Association
- Bar Association of Metropolitan St. Louis

#### EMPLOYMENT

- Thompson Coburn LLP Partner, 2008-Present Associate, 2003-2007
- U.S. District Court for the Eastern District of Missouri Clerk for Chief Judge Carol E. Jackson, 2002-2003
- U.S. Court of Appeals for the Sixth Circuit Clerk for Chief Judge Boyce F. Martin, 2001-2002
- Bryan Cave LLP Associate, 1999-2001

wholesale and resale sales of prepaid wireless service. TracFone and the class reached a mutually agreeable settlement after TracFone obtained summary judgment against the class on its claim for back taxes on wholesale sales.

Opting out of the class, the City of Springfield likewise sued TracFone for back taxes. In similar license tax litigation, Springfield had traditionally received a substantial individual settlement premium over its projected payments as a class member. The lawsuit proceeded to trial on damages after TracFone refused to pay Springfield's typical premium.

John first chaired the Springfield trial, which was the first in the nation involving an adjudication of the proper methodology for identifying internet access charges among bundled services for the purposes of the Internet Tax Freedom Act. The final judgment was slightly more than half of TracFone's last settlement offer (and an amount substantially below the City's projected recovery had it remained in the class).

- **Triad Packaging, Inc. v. SupplyOne, Inc.**

John first chaired a two week jury trial on behalf of Philadelphia-based SupplyOne, Inc. in Statesville, North Carolina. SupplyOne had been sued by a local manufacturer seeking more than \$4 million dollars for alleged breach of contract, fraud, and antitrust violations. SupplyOne denied the plaintiff's claims and asserted its own counterclaim for breach of contract. At trial, the jury determined SupplyOne was owed more than \$70,000. After the plaintiff appealed, SupplyOne cross appealed. John argued the appeal to the United States Court of Appeals for the Fourth Circuit, which eventually sided with SupplyOne. Ultimately, the plaintiff that sued SupplyOne for \$4 million paid SupplyOne more than \$350,000.

- **Bettcher Industries, Inc. v. Bunzl USA, Inc.**

An Ohio manufacturer sued Bunzl in Toledo, Ohio, for patent infringement. John joined the trial team shortly after the presiding judge concluded (in the context of a preliminary injunction hearing) that there was a "substantial likelihood" that the plaintiff would prevail on its patent claims at trial. After a two-week trial, the jury found otherwise—returning a defense verdict on all eleven counts of plaintiff's patent infringement claim.

- **Minority Shareholder Representation**

Although his focus is commercial litigation, John has represented various minority shareholders seeking to exit closely held corporations. In the last three instances, John's investigation uncovered management misconduct that artificially depressed the value of his client's ownership interest. In all three instances, after the shareholders filed suit based on the misconduct revealed by the investigation, their recovery was more than quadruple the originally proposed buyout price. Disclosure of the parties' identities is precluded by the terms of the applicable settlement agreements.

