

LAWDRAGON

In Conversation with Tara Sutton, Head of The Mass Tort Practice at Robins Kaplan

By Matthew Heller

Mass tort litigation can be a daunting challenge for any attorney. But it's become bread and butter for Tara Sutton, a partner in the Minneapolis office of Robins Kaplan who cut her teeth as an associate in cases against Big Tobacco and is now chair of the firm's Mass Tort Group.

In the Big Tobacco litigation, Sutton was part of a Robins Kaplan trial team that represented the State of Minnesota and Blue Cross and Blue Shield of Minnesota and broke new ground by alleging antitrust and consumer fraud claims against cigarette makers. Hours before a jury was to begin deliberations, the defendants, which included Philip Morris Cos. and R.J. Reynolds Tobacco Co., agreed in May 1998 to a historic \$6.6B settlement.



After a few years working on patent cases, Sutton agreed to head up Robins Kaplan's mass tort practice. In that role, she was lead trial counsel in the bellwether products liability trial alleging the Parkinson's drug Mirapex caused compulsive gambling, winning a jury verdict of \$8.2M in July 2008; helped to negotiate \$590M in settlements for Native American tribes in a national opioid litigation against drugmaker Johnson & Johnson and the three largest U.S. drug distributors; and, earlier this year, tried a case for the State of Minnesota over the marketing practices of e-cigarette maker Juul that settled for \$60.5M on the eve of closing arguments.

Sutton's current caseload includes a lawsuit that alleges the manufacturer of a compressed gas product used to clean computer keyboards is liable for a fatal auto accident that allegedly was caused by a driver losing control of his vehicle after "huffing" gas from a canister of CRC Industries' "Duster" product. A Minnesota judge in September denied the defense team's motion for summary judgment.

Hoffler recently spoke to Lawdragon about the "huffing" case and other highlights and challenges from her career as a mass tort litigator.

Lawdragon: What inspired you to become a lawyer?

Tara Sutton: When I was in junior high, I think sixth grade, they had us write down what we wanted to be when we grew up in an envelope. And they let us open that envelope when we graduated from high school. The letter in the envelope said I wanted to be a lawyer. So I think it's something that I always wanted to be. For some reason, I just thought it would be a great career because I love to read and I love to write, and I like to, frankly, argue and win. So it just seemed to fit with my personality, even though I didn't have a very good idea what a lawyer did growing up. And I kind of held onto that dream throughout college. I knew I was always headed to law school.

LD: What areas have you practiced in at Robins Kaplan?

TS: I started out in business litigation and then I had the opportunity when I was a second-year associate to join the tobacco litigation team at Robins Kaplan. For four years, my life was completely subsumed by working on what was then a very cutting-edge, revolutionary case against the tobacco industry on behalf of the State of Minnesota and Blue Cross and Blue Shield of Minnesota. That took literally working more 3,000-plus hours a year and through our trial in 1998, which we settled on the eve of closing arguments. At that time, taking on the tobacco industry was a monumental task. They had never paid a single dime in damages to anyone and, even in the late nineties, they were still denying that cigarette smoking had ever injured a single person or that it was addictive. It was very intense and all-consuming litigation, and I did it as an associate.

Then, after I was done with that, I did patent litigation for five years. I had a number of trials and was part of our intellectual property department. Then, in 2006, I took over the mass tort department at Robins Kaplan, and I've been doing that ever since.

LD: What do you find most fulfilling about working on mass torts?

TS: I think it's the most rewarding legal work that I have done because you are getting to help people in situations where probably the single worst thing has happened to them. Whether I'm representing people who are injured or, as I've been doing lately, representing parents and family members of people who have lost a family member because of a horrible accident, you're helping people through that process. You can never provide complete justice but you're helping them come to some peace with what happened to them and

allowing them the resources, hopefully through a settlement or a trial, to have a fresh start or take care of their needs.

LD: What was it like working on the tobacco case as such a young lawyer?

“ The tribal nations were not part of the tobacco litigation, so they were not part of that recovery. We felt really strongly that that was a mistake that needed to be corrected in the opioid litigation.

TS: Initially, we were not as big of a team as you would've thought representing the State of Minnesota. It was two partners and me. It obviously grew over time – more than a dozen attorneys at Robins Kaplan ended up working on the case – but as an associate, trying to make sure that I had a position of responsibility was very important to me. So, from the very beginning, I tried to know all aspects of the case, work overtime, so I got some of the best work on the case and got to be involved in the critical decisions and strategy from the outset. I was the only associate in the well of the courtroom during the trial on either side. It was an amazing opportunity, but it took a lot of work to get that opportunity.

LD: What were some of the challenges you faced?

TS: One of them was the attorney-client privilege. We sensed that the tobacco companies were hiding critical scientific research behind lawyers. And they were. Major law firms were directing the scientific research into health effects and addiction of cigarettes, and they were directing it in order to call it privileged in litigation. So the battle that lasted years was the argument that the tobacco companies were using attorney-client privilege to shield discoverable information. And we eventually won that argument and established the crime-fraud exception to attorney-client privilege, which was very difficult. That battle eventually went to the U.S. Supreme Court during the middle of our trial. And we prevailed. The tobacco companies, as a result, handed over 30,000 pages of documents that were previously being withheld on claims of privilege. The documents revealed in greater detail what the tobacco companies knew and when they knew it. The documents showed that the tobacco industry knew that nicotine was addictive and tobacco was causing cancer before the medical community, before even the Surgeon General's report of 1964. But they'd been hiding it behind lawyers and law firms. And it was a real mic-drop moment in my career, and really for the whole litigation, and something that is still talked about today.

LD: You also worked on the mass tort litigation over Juul's marketing of e-cigarettes?

TS: Yes, and what I'm proud about with the Juul case is we didn't wait decades to bring it. Juul came into the market in Minnesota in 2017 and we filed our litigation in 2019. And I think that really slowed down Juul's efforts to market to kids and it felt like we got on top of that problem very quickly. Minnesota was the first state to go to trial against Juul – and

the only state to take the tobacco industry to trial in the 1990s. So it was very déjà vu, but in a very good way.

LD: Why is it so important for cases like these to reach trial?

TS: The best way to get information to be made public about what's happening behind closed doors in a corporation, especially a corporation that's targeting children, just like the tobacco companies did, is to have a public airing of that information before a jury. Even though defendants like Juul and the tobacco companies don't like that, that's the way our system works. If you want to get things made public quickly, the best way to do it is in a courtroom with jurors.

““ *You can never provide complete justice but you're helping them come to some peace with what happened and allowing them the resources to have a fresh start.*

LD: Are you one of those lawyers that's really passionate about going to trial, really enjoys going to trial?

TS: Yes, I love it. What I love about trial is it's one time in your life where you can focus on one thing. In order to be a successful trial lawyer, you have to shut out everything else, which can be tough on your family and your spouse. But you're all in. You live, breathe, sleep your case. And there's just the adrenaline of being in a courtroom, and you have to make decisions very rapidly. You can't agonize over them. It's all split-second. And it's fun and it's really hard, but there's no experience quite like it. You're always in the moment, and that's what's so incredible about it.

LD: Like the tobacco case, the Juul case settled during trial. What did you think about that?

TS: It would've been really fun to have taken the case to verdict but, like in tobacco, it was in the best interest of the client – the people of Minnesota – to settle the case when we did settle it and get the injunctive relief that we were able to achieve. Ensuring that Juul and its partner Altria wouldn't be able to market e-cigarettes in the way that they had marketed them in the past was really critical.

After the tobacco settlement, all the billboards came down. The advertising in the convenience stores came down. Advertising in magazines stopped. Juul was a little different because the social media aspects of what they were doing is a different marketing tool, and probably a more effective marketing tool than even what the tobacco industry did. Getting that shut down, their social media presence aimed at children, was really, really important to the state. They would “seed” their product on social media with influencers and celebrities. It's just a whole different way of marketing than tobacco companies had done. Unfortunately for young people, they were really good at it.

LD: How did you get involved in the opioid litigation?

TS: We have a tribal practice where we represent tribes mostly in the Upper Midwest and Great Plains states on all sorts of matters. And we had heard from our clients very early on about how the opioid epidemic was devastating Indian Country. The tribal nations were not part of the tobacco litigation, so they were not part of that settlement or that recovery. We felt really strongly that that was a mistake that needed to be corrected in the opioid litigation, that tribal nations needed to have a voice, they needed to have their own settlement separate and apart from the states and the cities and the counties. And it needed to be a culturally sensitive settlement that allowed the money that came from the opioid manufacturers to be used for needs that were unique to Indian Country, which is what we were able to do.

LD: Are there any other cases that maybe don't get as much press but that you are really excited about?

TS: It's not a mass tort but over the past year and a half, I've been litigating over something that I feel really passionately about, and that people don't appreciate the risks of. It's called electronic dusting spray, the product that you use to spray crumbs off your computer keyboard. What a lot of people don't understand is that this product contains a chemical – difluoroethylene, or DFE. It's 100 percent DFE, which is an intoxicant. If you huff it, that is, spray it in your mouth, you get this immediate feeling of euphoria. And most times when you do this, you'll pass out. So you get this immediate high and then you lose consciousness. It's an almost completely unrestricted product that's sold in big box stores and it's the cheapest high that's out there, cheaper than alcohol or drugs. A can costs a couple of dollars. And it is a growing public health epidemic. It's mostly young people who purchase this product, not to use it to clean their keyboard, but to get high. And because it's so addictive, they typically go into a Walmart or a Home Depot, get in their car after they purchase it, huff it, and start driving.

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So, the cases that we've been doing tragically involve horrible accidents where someone huffs while driving and they strike and kill an innocent bystander. I've been representing a dozen families who have lost family members because of these huffing accidents. We've been suing the manufacturer in those because the misuse of this product is foreseeable and known by the manufacturers for decades. So far, we've been able to resolve a number of our cases on behalf of victims of huffing. We are just slowly chipping away at the problem using accepted tort law principles to attack a unique but devastating problem.

LD: What trends have you been seeing recently in the mass tort space?

TS: The cases, I think, are being fought harder and longer, and all sorts of bankruptcy techniques are being used to try to evade liability. In the past, I felt like both sides could come together to find an earlier resolution and settlement of cases. Now the tail on these cases has become much longer and more costly and less efficient, and that's a trend that I'm concerned about, and I think judges are concerned about.

LD: You've been with Robins Kaplan since you were a summer associate. What's kept you at the firm your whole career?

TS: The reason I chose Robins Kaplan at the beginning is it had a commitment to providing the best legal services not just to companies, but to individuals. You don't hear that from every law firm, and I knew that Robins Kaplan was different. It was really a baked-in part of the culture of the firm, that everyone deserves the best lawyers. Not just companies, but people too. That really resonated with me, and it's proven to be correct at every stage, and that's why I stayed here.

LD: How would you describe your style as a lawyer?

TS: I try to be very transparent and I don't like to play games. Hopefully, people know where I stand, and I think that's helped me in settling cases. That's kind of my reputation – being a fair broker and recognizing both the weaknesses and strengths of my case. I think that if you ask my peers, they would tell you that I'm extraordinarily straightforward and I don't play games or hold things back.

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