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—BTI Consulting*

**EDUCATION**

Washington University School of Law, J.D., 1985

Washington University at St. Louis, B.A., 1982

**OTHER EXPERIENCE**

Bryan Cave LLP

**ADMISSIONS**

Kansas  
Massachusetts  
Missouri

**PETER W. HERZOG III**

**Partner**

pherzog@wtotrial.com | P 314.326.4129

**Peter Herzog has defended two certified class actions at trial and has won dismissal or defeated certification more than 100 times. His practice is focused on consumer class action defense and complex commercial litigation. Peter is a two-time BTI Consulting Client Service All-Star and is ranked in Band 3 in Chambers USA for Nationwide Consumer Class Action Defense**

**HIGHLIGHTS**

- Defeated a nine-figure class action for a major insurer in Washington.
- Won Eighth Circuit affirmance for a major insurance company to uphold WTO's trial court victory in a motion to dismiss. Following oral arguments, the panel ruled that WTO's client complied with state laws regarding the settlement of total loss claims.
- Defeated a third class certification attempt brought by plaintiffs in four states against Volvo in an overly broad putative class action alleging defects in eight Volvo model sunroofs.
- Won a groundbreaking \$1.25B remote trial for an electric co-op against its generation and transmission provider.
- Facilitated a rural electric cooperative's withdrawal from membership in a wholesale cooperative. WTO's client achieved settlement for hundreds of millions of dollars below the wholesaler's demand and can now acquire substantially cheaper and renewable green energy sources for its members.
- Won complete victory for Hillsdale College in a closely watched dispute against the University of Missouri over the misuse of a deceased alumnus's \$5 million donation.
- Obtained dismissal of a putative class action lawsuit against Volvo involving alleged misrepresentation and false labeling related to safety features.

**INDUSTRIES**

- Automotive
- Consumer Products & Services
- Energy

**PRACTICE AREAS**

- Class Actions
- Commercial Litigation
- Antitrust & Competition
- Appellate

# PETER W. HERZOG III

## BIOGRAPHY

Peter Herzog has defended two certified class actions at trial and has won dismissal or defeated certification more than 100 times. His practice is focused on consumer class action defense and complex commercial litigation. Peter is a two-time BTI Consulting Client Service All-Star and is ranked in Band 3 in Chambers USA for Nationwide Consumer Class Action Defense.

Peter defended Ford in a four-month, \$2 billion, certified class action trial in Sacramento, California in 2007, which settled on the day of closing arguments for a no-cash, coupon-based agreement. He also served on the trial team that obtained a complete defense verdict in an \$800 million certified class trial in St. Clair County, Illinois in 2004.

In 2012 and 2014, Peter earned the BTI Client Service All-Star recognition for delivering superior service to large corporate clients. Super Lawyers has ranked Peter in class actions, mass torts, and appellate practices and he maintains an AV rating from his peers, the highest designation possible through Martindale-Hubbell.

Prior to joining WTO in January 2015, Peter was a partner at the St. Louis office of Bryan Cave LLP.

## CASES

- Defeated class certification and won summary judgment a month before trial in a nine-figure, 80,000 member class action brought against a major insurer in Washington. The plaintiffs claimed WTO's client violated an insurance regulation governing how insurers must value total loss vehicles.
- Won Eighth Circuit affirmance for a major insurance company to uphold WTO's trial court victory in a motion to dismiss. Following oral arguments, the panel ruled that WTO's client complied with state laws regarding the settlement of total loss claims.
- Defeated a third class certification attempt brought by plaintiffs in four states against Volvo in an overly broad putative class action alleging defects in eight Volvo model sunroofs. The ruling is a significant setback to plaintiffs in the 11-year-old case that the court described as "tortured."
- Won a \$1.25 billion exit fee dispute for an electric distributor against its generation and transmission provider.
- Facilitated a rural electric cooperative's withdrawal from membership in a wholesale cooperative. WTO's client achieved settlement for hundreds of millions of dollars below the wholesaler's demand and can now acquire substantially cheaper and renewable green energy sources for its members.

# PETER W. HERZOG III

- Won complete victory for Hillsdale College in a closely watched dispute against the University of Missouri over the misuse of a deceased alumnus's \$5 million donation.
- Obtained dismissal of a putative class action lawsuit against Volvo involving alleged misrepresentation and false labeling related to safety features.
- Won Second Circuit affirmance for a Michelin subsidiary upholding summary judgment from the Southern District of New York. The case involved fraud perpetrated by a former employee and a third party.
- Representing Michelin and Goodrich Corp. against claims brought by more than 100 plaintiffs alleging groundwater contamination by benzene and other chemicals from a long-closed tire manufacturing plant in Oklahoma. Claims include nuisance, trespass, unjust enrichment, and RCRA violations.
- Successfully resolved a putative class action against Yahoo! involving alleged violations of the Illinois Eavesdropping Statute.
- Obtained dismissal of two putative class action lawsuits for Yahoo! in Ohio state court alleging that daily fantasy sports contests on the website amounted to illegal gambling.
- Won a precedential, Third Circuit opinion for Volvo that vacated a district court's order to certify classes in six states to pursue claims that the sunroof drains in all Volvo models manufactured from 2003 to the present are defective. The circuit court remanded the case with instructions to "rigorously analyze predominance in the first instance."
- Won Fifth Circuit affirmance of a trial court's summary judgment for Michelin in a case alleging that Michelin and General Motors conspired to prevent the plaintiff from obtaining Michelin racing tires for use in the American Le Mans racing series. The original complaint included antitrust claims, which were dismissed, and unfair competition claims that survived until discovery, when no evidence supporting such claims was produced and the trial court granted summary judgment.
- Won summary judgment for Michelin in a case alleging that Michelin and General Motors conspired to exclude the plaintiff from participation in The American Le Mans racing series.
- Won dismissal of a nationwide class action alleging defects in two Scion vehicles.
- Defeated motions to certify nationwide, statewide, and issues classes in multidistrict litigation involving the chemical bisphenol A (BPA).

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- Defended Ford Motor Co. in a four-month certified class action trial involving \$2 billion in consumer fraud claims. On the day set for closing arguments, the plaintiffs agreed to a no-cash, coupon-based settlement for the California class and classes in three other states with pending parallel actions.
- Successfully defended before the Seventh Circuit a Rule 12 dismissal of all claims relating to a proposed nationwide class action arising out of the 2005 United States Grand Prix in Indianapolis.
- Won the seminal New Jersey decision on ascertainable loss in consumer fraud actions and affirmed summary judgment in favor of Mercedes-Benz.
- Won summary judgment in favor of Mercedes-Benz and won appeal of summary judgment based on the plaintiff's inability to prove ascertainable loss.
- Won a complete defense jury verdict for Ford in a six-week, certified class action trial in Illinois.
- Won a Rule 12 dismissal of a proposed nationwide class action against Michelin and won appeal of the dismissal in the Fourth Circuit Court of Appeals.
- Won summary judgment against named plaintiffs in a proposed nationwide class action against Mercedes-Benz.
- Obtained decertification of a certified nationwide class action against Ford.

## REPRESENTATIVE CLIENTS

- CNA - National Trial Counsel for CNA Insureds  
Ferrellgas, LP  
Ford Motor Company  
Michelin North America - National Trial Counsel  
Toyota Motor Sales, USA  
Volvo Cars of North America  
Yahoo!

# PETER W. HERZOG III

## BAR & COURT ADMISSIONS

- Not admitted in Colorado
  - Kansas
  - Massachusetts
  - Missouri
  - U.S. Court of Appeals, 1st Circuit
  - U.S. Court of Appeals, 7th Circuit
  - U.S. Court of Appeals, 8th Circuit
  - U.S. Court of Appeals, 9th Circuit
  - U.S. District Court, D. Massachusetts
  - U.S. District Court, E.D. Missouri
  - U.S. District Court, W.D. Michigan

## LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

- Chambers USA
  - Nationwide Product Liability & Mass Torts, 2023
- Consumer Class Action Defense, National, 2022
- BTI Consulting Group
  - Client Service All-Star, 2012, 2014
  - Missouri & Kansas Super Lawyers
    - Class Actions/Mass Torts, 2005-2012
  - The Best Lawyers in America
    - Commercial Litigation, 2018-2024
    - Mass Tort Litigation / Class Actions - Defendants, 2018-2024
  - Martindale-Hubbell AV® Peer Review Rated
  - American Bar Association
  - Missouri Bar Association
  - Massachusetts Bar Association
  - Defense Research Institute

## ARTICLES & PRESENTATIONS

### Articles

- "Thinking of Making a Gift to Your Alma Mater? Think Twice," The American Spectator, (December 16, 2021).
- Co-Author, "Trial by Webcam: Tips From a Firsthand Experience," Law360, (May 28, 2020).

## PERSONAL INTERESTS

- Family, sports