

REPRESENTATIVE BUSINESS LITIGATION, INVESTOR & CLASS ACTION CASES

Martin v. Merrill Lynch (2010-present). United States District Court for the Northern District of California. Class action on behalf of financial advisors whose vested deferred compensation was forfeit under pension plans when the advisors left to work for competitors.

Advanced Microtherm v. Norman Wright Mechanical Corporation (2009-present). United States District Court for the Northern District of California. Defending vendor of HVAC equipment in large 8-year old antitrust monopolization and conspiracy case. Case tried to jury verdict October 28, 2010 following 7.5-week trial where plaintiffs requested \$34 million in damages before trebling and attorney's fees. Jury was out 3 hours and came back with a total defense verdict.

Shaffer v. Merrill Lynch (2009-present). JAMS arbitration. Represented broker whose deferred compensation over 24-year career was forfeit until we obtained an award finalized Dec. 10, 2010 for \$3.8 million, including the value of his account balances, other damages, punitive damages and attorney's fees.

Juarez v. Jani-King et al. (2009-present). United States District Court for the Northern District of California. Defense of janitorial franchise companies in connection with California class action for alleged violation of wage and hour laws.

Vectren Communications Services Inc. v. City of Alameda (2008-present). United States District Court for the Northern District of California. Representing plaintiff investor in complex bond and installment sale transaction related to the City of Alameda's broadband telecom system. Case tried to jury verdict March 3, 2010, resulting in \$1.9 million verdict for client.

Dr. Bronner's Magic Soap v. Hain Celestial, et al. (2008-present). San Francisco Superior Court and United States District Court for the Northern District of California. Representing cosmetic manufacturer against unfair competition and Lanham Act claims brought by soap manufacturer. Bronner claims that defendants are unfairly using the term "Organic" in connection with their cosmetic products. Motion for judgment on the pleadings granted for defense on unfair competition claims based on plaintiff's lack of standing; motion to dismiss on Lanham Act also granted and case stayed.

Pokorny v. Quixtar et al. (2007-present). United States District Court for the Northern District of California/9th Circuit. Represent major Quixtar/Amway distributors and principals in national RICO class action alleging illegality of Quixtar business model.

State of California (by and through the City of San Francisco) v. Check 'N Go et al. (2007-present). San Francisco County Superior Court. Representing California affiliates of national finance company in defending representative B&P Code section 17200 action construing installment and pay-day loans in California.

Broadband Holdings v. Norwest (2004-present). San Francisco Superior Court. Lead counsel in representation of former directors and venture capital shareholders in breach of fiduciary duty and fraud action involving purchase of assets of YIPES from bankruptcy proceeding and formation and funding of successor company. Obtained summary judgment against lead plaintiff.

Fitzgibbons v. Dollar Financial Group et al. (2007-2010). Alameda County Superior Court. Represented franchisor and parent companies in consumer class action brought under consumer protection statutes arising out of the operations of WeThePeople self-help legal form centers. Case settled in 2010

Filtration Development Company, LLC et al. v. Andrew Greene et al. (2007-2010). Marin County Superior Court. Action between owners of technology company supplying filters to military helicopters, regarding profits and control of company, its technology and its affiliates. Case settled favorably to client by sale of company and allocation of purchase price, after bench trial on equitable ownership issues. Case tried by of-counsel Sommers & Schwartz.

United States v. Swanson (2007-2008). United States District Court for the Northern District of California. We successfully defended our client in a criminal antitrust price-fixing case involving the dynamic random access memory (DRAM) industry after a month long jury trial. All of the other corporate and individual defendants had plead guilty, and the government focused all of its energies on convicting our client. The case was closely watched by the legal community, and after days of deliberation, the jury announced that it was hung, with 10-2 in favor of acquittal. The Department of Justice dismissed the case. Our success was due in large part to our ability to establish and master a multi-million document database and cull key information from that.

Hoffman v. American Express Travel Related Services, Inc. (2005-2007). Alameda County Superior Court, Complex Litigation Department. Represented American Express in a nationwide class action claiming that it improperly charged the class for travel insurance. The case involved difficult damage calculations in terms of ascertaining the fact of damage and amounts thereof through computer analyses and use of various computer codes. The firm worked closely with experts retained to assist it in this process.

Grafton Partners v. PricewaterhouseCoopers; Grafton Partners v. Union Bank of California; Peregrine v. Sheppard, Mullin, Richter & Hampton (2001-2007) (also known as the PinnFund litigation). Alameda County Superior Court. In this case, which ended in 2007, we represented a class of investors victimized by a Ponzi scheme. The schemers were essentially judgment proof and, working with the SEC and its receiver, and a bankruptcy trustee, we crafted litigation and strategies to pursue third (deep pocket) parties that we claimed enabled the scheme to go forward. We recovered in excess of \$100 million in settlements for the class from a major California bank, an international accounting firm, and several law firms after several years of hard-fought litigation. The case was also the subject of several Court of Appeal opinions and a California Supreme Court opinion.

SEC Investigation re Software Revenue Recognition (2005-2006). Represented CFO, General Counsel, and two former employees regarding internal and SEC investigation of revenue recognition and restatement issues concerning business software.

Savaglio v. Wal-Mart (2003-2006). Alameda County Superior Court. Represented world's largest retailer in class action over breaks and mealtime claims under state law. Case tried before a jury in Alameda Complex Department in 2005.

In Re Crown Vantage Litigation (2002-2006). United States District Court for the Northern District of California. Represented former Chief Executive Officer and Chairman of the Board, plus other officers and directors, in alleged \$500 million fraudulent conveyance and fiduciary duty action involving the formation and sale of assets from James River to Crown Vantage, Inc. Coordinated and worked closely with co-defense counsel from ten other firms. Obtained complete victory for our client in August 2006 when the Ninth Circuit affirmed the trial court's dismissal of the entire director/officer/professional case.

In Re Conservatorships (2004-2005). Kern/Marin County Superior Courts. Represented American Heart Association in connection with petitions for substituted judgment in conservatorship proceedings. Children of conservatees sought to overturn trust documents largely in favor of charities. Case settled on highly successful basis.

Gold Fields, Ltd. v. Harmony Gold Mining Company, Ltd. (2004-2005). United States District Court for the Southern District of New York. Provided strategic advice to South African mining company in connection with highly publicized hostile take-over bid. Matter involved assistance in valuation of client in light of various misrepresentations.

In re Tri Valley Growers (2002-2005). United States District Court and United States Bankruptcy Court for the Northern District of California. Special Litigation Counsel for Creditors Committee of large agricultural cooperative. Investigated potential claims against directors, officers, and grower/member/shareholders, lending institutions, accountants. This resulted in litigation in the bankruptcy court against a certified defendant class of TVG's former grower/members, which was successfully settled, and resolved a \$70 million lien claim. BartkoZankel then prosecuted litigation against TVG's former accounting firm (in the San Francisco Superior Court) and former directors and officers (in the United States District Court) that resulted in a settlement of approximately \$34.5 million for the Estate. The lawsuit against the directors and officers resulted in a stipulated judgment which was then used against the D & O insurance company. In the course of this litigation, the firm had to create various damage models based on the value of TVG at certain key times, and worked extensively with experts to come up with workable damage calculations.

Key Equipment v. TCC (2002-2005). Santa Clara Superior Court. Prosecuted action for breach of equipment finance lease and purchase agreements, involving over 5000 equipment leases, purchased for approximately \$500 million. Case successfully resolved prior to trial.

Valani v. Lycos, Inc. (2004). United States District Court for the Northern District of California. Representing (with Ropes & Gray) Lycos in action brought by shareholders in acquired company for claims related to earn-out compensation based on internet unique hits methodology.

Solectron v. NETRO (2003-2004). American Arbitration Association. Representing computer manufacturer to recover inventory cost for excess chip and assembly components from contracting party.

In re Daisy Systems Corporation (1998-2004). United States District Court for the Northern District of California. Professional negligence jury verdict and judgment of \$108 million against investment banking firm Bear Stearns, reduced by the trial judge to \$36 million. The opinion on the appeal before trial is a leading authority nationally on the existence of fiduciary duty between a corporation and its expert advisors. In re Daisy Systems Corp., 97 F.3d 1171 (9th Cir. 1996). Case involved sophisticated damage calculations with the use of experts to come up with appropriate valuation of Daisy Systems, and what it would have been worth had a merger not taken place.

In Re Evelyn Press (2002-2003). San Francisco Superior Court. Successfully represented the University of San Francisco in \$8 million will contest, alleging undue influence and lack of testamentary capacity. Highly favorable settlement obtained two days before trial.

Lewis v. WI Harper Group (2002-2003). Santa Clara County Superior Court. Represented Asian/American venture fund in action brought by technology company founder regarding collapse of company.

PT Indopac Perdana Finance v. Putra and Made Oka Masagung (2002-2003). United States District Court for the Northern District of California. Represented defendants in a suit brought by an Indonesian company against Indonesian clients also resident in the US regarding the Bank of San Francisco. On behalf of defendants, we were successful in causing the case to be dismissed on the ground that Indonesia was the proper forum.

SEC Investigation re Software Revenue Recognition (2002-2003). Represented software video game company in SEC investigation of revenue recognition issues.

Gluecode, Inc. v. Storie Partners, LP (2001). Los Angeles County Superior Court. Represented venture fund partner in claims by portfolio company re funding commitments. Case resolved at JAMS.

Barron v. Finet Holdings Corporation (1999-2000). San Francisco County Superior Court. Represent current officers and directors of internet lending company in suit by former executive charging directors with breach of fiduciary duty and fraud in awarding stock options and issuing stock.

United States of America v. Pfizer, Inc. (1999-2000). United States District Court for the Northern District of California. Defense counsel in criminal price-fixing case relating to sodium gluconate, an organic chemical used as an industrial cleaning agent. Case ended with plea bargain. Prior thereto, there was significant analysis of market share and projected sales and profits. Case was followed by private antitrust cases where were transferred.

Edward J. DeBartolo Corporation v. DeBartolo (1998-2000). San Francisco County Superior Court and United States District Court for the Eastern District of Ohio. Represented current owners of San Francisco 49ers football team against co-owner, alleging co-owner and affiliated companies breached fiduciary duties and seeking \$100 million in damages and control of the team. Strategy led to negotiated settlement and division of assets.

Forge v. National Semiconductor (1997-2000). Santa Clara Superior Court. Representation of National, Cyrix and their directors in six-week class action trial alleging breach of fiduciary duty and violations of Sections 11 and 12 of the Securities Act of 1933. Plaintiffs alleged that defendants made misstatements in a prospectus issued in connection with the merger of National and Cyrix concerning National's abilities to manufacture Cyrix's microprocessors; \$240 million in damages asserted. Jury returned defense verdict after 3 hours of deliberation. Named by *Daily Journal* as top defense jury trial victory in California in 2000.

In re American Honda Motor Co., Inc. Dealership Relations Litigation (1994-2000). United States District Court for the District of Maryland. Represented American Honda Motor Co. in nationwide consolidated class actions filed by Honda dealers under RICO, claiming that Honda was part of a bribery scheme to allocate Honda cars to favored dealers. The case involved novel class action issues due in large part to the RICO claims, and the court eventually certified a class with conditions. Case involved allegations of bribery of high Honda officials by other dealers to obtain hot-selling Accords in the 1980's. Extensive damage analyses were undertaken with regard to both class certification issues and individual damages allegedly suffered by dealers as a result of misallocations. The case was eventually settled.

KK Motors, Amo Marine, Volvo Penta, and Couch v. Brunswick (1999). United States District Court for the Districts of Minnesota, Northern Virginia, and Tennessee. Representation of defendants in four related antitrust class action cases; plaintiffs sought damages in excess of \$1 billion based on allegations of monopolization and restraint of trade in connection with the sale of marine stern drive and inboard engines. Global settlements achieved.

Scherman v. Hofmann Construction Co., Inc. (1999). American Arbitration Association. Represented partner in real estate development firm in claims for breach of contract and breach of fiduciary duty claims. Successful result in purchase of client's interest.

Jill E. Lawrence v. Bay Alarm Company (1998-1999). Alameda County Superior Court. Represented home burglar alarm company in consumer class action alleging unfair advertising of residential systems. After reviewing our briefs opposing motion to certify class, plaintiff made reasonable settlement offer, which was accepted. After contentious negotiations with CGL insurer, we were able to obtain full reimbursement of all recoverable attorneys fees expended by the client and the settlement.

Alfa-Laval v. Helm Concentrate (1998). JAMS Arbitration. Represented Alfa-Laval, a manufacturer of equipment for aseptic processing of tomato paste. Defendant claimed equipment was defective and sought \$25 million. After five-week arbitration, arbitrators awarded judgment for client for \$900,000, rejecting defendant's damage claim.

Asbestos Management v. McFerren (1998). San Francisco Superior Court. Represented the plaintiff in a two-week jury trial against its former Operations Manager who had embezzled in excess of \$200,000. Defendant claimed that he was a partner in the business and was entitled to one-half of the profits. Jury found in favor of client and judgment entered for \$190,000.

King v. O'Neal (1998). Contra Cost Superior Court. Defense of trustee and charitable beneficiaries under a will and trust against claims of extrinsic fraud made by son and daughter of decedent. Defense judgment entered after two-day court trial, resulting in disposition of \$1.1 million.

Moorman v. Southmark (1998). San Mateo County Superior Court. Represented limited partners in class action challenging "roll-up" of various real estate limited partnerships based on claims for breach of fiduciary duty by general partners and officers. Case eventually settled favorably.

Walden Partners II, LLP v. William Tai (1998). San Francisco County Superior Court. Represented departing venture capital fund partner in claims against other partners involving various technology funds, including internet investments in the U.S. and Asia. Case resolved favorably to client through repurchase.

Shenyang v. Baker & McKenzie et al. (1997-1998). San Francisco County Superior Court. Represented several major law firms arising out of international shareholder litigation. Summary judgment obtained after focused discovery of mainland Chinese chairman of plaintiff company.

Franchise Dispute Cases II (1995-1998). Alameda County Superior Court. Represented franchisor of 7-11 convenience stores in class action brought by franchisees alleging breaches of contract in not paying amounts due for rebates, discounts and allowances from vendors and suppliers. Class was eventually certified and case was settled on a nationwide basis.

Central Bank Shareholders Litigation (1995-1998). Alameda County Superior Court. Represented former president and chairman of bank in class action securities case and related Justice Dept. investigation. Also prosecuted cross-complaint for professional negligence against bank's accounting firm. Civil case settled as jury was being selected.

Esplanade LLC v. Homart Development Co. (1996-1997). United States District Court for the Central District of Los Angeles. Represented shopping center limited liability corporation against a subsidiary of Sears for failure to timely redevelop mall. Resulted in discounted option to purchase property.

In re Meris Laboratories Litigation (1994-1997). Santa Clara County Superior Court. Santa Clara County derivative suit as well as SEC and HUD investigations and consent decrees related to manipulation of share prices, internal investigation of executive conduct, alleged accounting irregularities, and validity/implementation of prior settlement/escrow. Case resolved by settlement in 1997 at JAMS subject to bankruptcy plan implementation.

Agrical, Inc. v. Deloitte & Touche, et al. (1992-1996). Fresno County Superior Court. Represented major law firm re international investments brought against professionals including big-five accounting firm. International discovery and judicial assistance re complicated financial transactions involving Italian, Swiss, and Liechtenstein entities.

In re Kemper Corporation (1994-1995). SEC investigation related to sufficiency of risk disclosure to shareholders preceding a 1993 write down of \$460 million in company's \$2.1 billion real estate portfolio, resulting in corporate securities consent decree. Firm represented director of related real estate company.

United States v. Sarno, et al. (1992-1995). United States Court of Appeal, Ninth Circuit. Federal investigation and subsequent criminal trial regarding false statements to federally insured bank for \$15 million financing of real estate project. Detailed analysis and briefing of materiality of pro-forma statements, bank complicity, and good faith reliance on accounting professionals' advice under GAAP. Case reported at 73 F.3d 1470 (9th Cir. 1995).

Lundgren v. Volcano Telephone Co. (1989-1995). American Arbitration Association. Represented shareholder in dispute with other shareholders with respect to ownership of \$40 million telephone company. Hotly contested arbitration lasting weeks. Successful result for client.

Haskell v. Time, Inc. (1994). United States District Court, Eastern District Court of California. Major claim for false and misleading advertising against Reader's Digest and other publishers based on sweepstakes mailings. Case reported in 857 F.Supp. 1392 and (E.D. Cal. 1997) 965 F.Supp. 1398. (by W. Edlund while at PM&S).

Homestake v. Deloitte & Touche (1994). San Francisco Superior Court. Representation of Deloitte at a six-week jury trial and on appeal against claims of malpractice in connection with the review of client-prepared tax return.

Stevens Group v. Sobrato Development Companies (1994). Santa Clara County Superior Court. Represented one of largest real estate developers in Silicon Valley in breach of contract claim to convey commercial property and breach of fiduciary duty. Two week jury trial with favorable result to client.

Shahvar v. ASP Computer Products, Inc. (1993-1994). Santa Clara County Superior Court. Represented founder of technology company against other directors and shareholders for breach of fiduciary duty and seeking dissolution. Case involved complex accounting issues and trial of valuation issues. Case reported in 25 Cal.App.4th 653 regarding extent of litigation privilege issue.

Sobrato v. Granum (1993). American Arbitration Association. Represented general partner in dispute with other general partner involving claims of breach of fiduciary duty relating to the division of Silicon Valley commercial property. Resulted in favorable settlement after various hearings before arbitration panel.

White v. Wormald (*Grinnell Fire Systems*) (1993). Alameda County Superior Court. Represented Grinnell in connection with claims for back injury after employee shook a ladder that the plaintiff was standing on, causing the plaintiff to fall and ultimately to be placed on disability retirement at 42 years old. At a two-week jury trial where liability was conceded, established that the injury was not as significant as claimed and was largely attributable to previous injuries. Jury returned a verdict less than settlement offer and Grinnell was awarded costs as prevailing party.

In re Market Franchise Cases (1985-1993). Alameda County Superior Court. Represented franchisor of 7-11 convenience stores in class action brought by franchisees alleging breaches of contract and usury with respect to open account financing transactions. Class was eventually certified, and after appeals to the California and U.S. Supreme Court, case was arbitrated as a class action and eventually settled.

Chevron Corp. v. Pennzoil Co. (1992). United States Court of Appeals, Ninth Circuit. Pennzoil control attempt against Chevron growing out of investment of Pennzoil-Texaco settlement proceeds. Case reported in 974 F.2d 1156. Related securities class litigation against Chevron: Katz v. Chevron Corp. (1994) 22 Clap. 4th 1352; Kats v. Chevron (1992) Del. Ch. Civil No. 11724; Kats v. Chevron Corp. and Bourke v. Chevron Corp. (N.D. Cal (1992) 1992 U.S. Dist. Lexis 13635. (by W. Edlund while at PM&S).

Cities Service – Gulf litigation (1992). Represented Chevron in resolving class litigation and in private trial by "opt out" shareholders (1993) growing out of 1982 terminated merger acquisition of Cities (acquired by Occidental) by Gulf (acquired by Chevron). (by W. Edlund while at PM&S).

Hall v. Seiko (1987-1990). Santa Clara County Superior Court. Represented founder of company against foreign shareholders, claiming breach of fiduciary duty. Case required extensive foreign discovery. Settled favorably to client after summary judgment.

In Re Financial Corporation of America Securities Litigation (1984-1988). United States District Court for the Central District of California. Represented former President of American Savings & Loan Association, sued as a defendant in federal class action securities cases in addition to SEC investigation. The case was eventually settled.

Truta v. Avis Rent A Car Sys. (1987). Court of Appeals of California, First Appellate District, Division Two. Represented Avis; leading case on rental car companies using collision damage and "insurance" provisions which were attacked as unfair competition and violation of Consumer Legal Remedies Act. Case reported in 193 Cal.App.3d 802. (by W. Edlund while at PM&S).

Kirkpatrick v. FCA, American Savings (1985-1987). Sacramento County Superior Court. Represented former chief executive officer of American Savings & Loan Association in a number of suits claiming that bank and borrowers were joint ventures. Issues also included liability of individual officers and coverage under D & O and CGL policies, the subject of separate declaratory relief actions. Client eventually settled shortly before trial after summary judgment was denied. We eventually prevailed on D & O insurer to pay for settlement, and obtained defense costs from CGL carrier.

Reader's Digest Assn. v. Superior Court (Synanon) (1984). Marin County Superior Court. Synanon sued Reader's Digest based on an article about local newspaper winning Pulitzer Prize for exposure of Synanon. Leading case on summary judgment in defamation/privacy litigation and liability standards for defamation of public person. Key opinion on review of denied summary judgment by writ. Case reported in 37 Cal.3d 244, cert.

denied (1986) 478 U.S. 1009. Denied summary judgment was vacated and reversed by mandamus. (by W. Edlund while at PM&S).

Timberlane Lumber Co. v. Bank of America (1976). United States Court of Appeals, Ninth Circuit. Leading case on extraterritorial jurisdiction of U.S. antitrust laws. Case reported in 549 F.2d 597, on remand (N.D. Cal. 1982), 1984-1 Trade Cases Par. 65,998, (N.D. Cal. 1983) 574 F.Supp. 1453, affirmed (9 Cir. 1984) 749 F.2d 1378, cert. denied (1985) 472 U.S. 1032. (by W. Edlund while at PM&S).

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