



## Business And Commercial Litigation

RMKB's extensive business/commercial litigation expertise reaches into almost every aspect of the business world: From pre-litigation advice in order to assist in business decision-making, to the full spectrum of litigation proceedings (jury trials, court trials, binding arbitrations, mediations, alternative dispute resolution, writs and appeals). Whether in state or federal trial and appellate courts, our litigators bring a substantial depth of expertise and dedicated, results-oriented service to our commercial clients. Such clients include individuals, partnerships, small and large businesses, start-ups and Fortune 500 companies.

Our commercial litigation practice includes: Commercial contract disputes; UCC matters; unfair business practices and antitrust; toxic torts; Proposition 65; environmental contamination; intellectual property (copyrights, trademarks, trade secrets and patents); product liability; labor and employment law disputes (including wrongful termination, discrimination and harassment); partnership and shareholder disputes; false advertising; securities and brokerage litigation; and disputes pertaining to real estate, licensing agreements and service transactions.

### **Contract/UCC**

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The firm has handled a variety of disputes involving breach of contract claims for specific performance. We have acted as counsel in disputes among owners of closely held corporations, joint ventures and partnerships. We are experienced in litigation of long term-commercial leases, equipment leases and other such agreements where remedies are both contractual and equitable. Among others, we have taken contract cases to trial on unusual issues involving requirements contracts, minimum payment guarantees and the interpretation of force majeure clauses.

### **Corporate Governance/Partnership Disputes**

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We have negotiated settlement agreements and corporate integrity agreements with Federal and State agencies. Further, we have successfully designed and implemented corporate integrity and compliance plans, nationally and internationally. Our attorneys have trained employees on corporate governance issues, both through in-person seminars and video taped presentations. We have been involved in major corporate fraud litigation, including health care related investigations. Our attorneys have defended corporate directors and officers in civil and criminal depositions and civil investigation demands. Within 48 hours, we have responded to subpoenas

requesting a substantial number of documents in national cases of white collar crime.

Our experience in small corporate and partnership disputes includes representation of majority and minority shareholders and partners in claims involving securities fraud, unfair competition, unfair business practices, infringement of intellectual property, employment disputes, and white collar crime.

### **Director/Officer Liability (including Non-Profits)**

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We have defended corporate directors & officers in cases of securities fraud, unfair business practices, unfair competition, landmark intellectual property rights, shareholder claims, employment discrimination, and white collar crime. One of our business litigation group's partners, for example, tried and defended the first pregnancy discrimination case to go to verdict in California against a major hospital's board of directors and CEO. Another of our lawyers was counsel to a corporate officer & general counsel in the largest securities fraud case in California history.

Our experience in director/officer issues also includes coverage and claims counsel work for major D&O insurance companies. Several of these engagements have involved complex D&O liability claims involving leading Silicon Valley companies.

As to non-profit organizations and their director/officers, we have represented and advised various types of charitable, religious, educational, and government entities. For example, in our San Jose office, we have defended board members of the largest non-profit developer of community housing in Santa Clara County. One of our attorneys in Los Angeles routinely handles D&O claims against church and school boards under engagement by a national insurer of such non-profits. Another Los Angeles office attorney is general counsel to the NorCal La Crosse Foundation, Inc. In our Redwood City office, we have a senior partner who is very active in several local non-profit associations as a founding director of both the Hong Kong Association of Northern California and Hong Kong Silicon Valley.Com, director of a local private high school, and Chairman of the Board of a local Kai Ming Head Start. Another of our Redwood City attorneys does defense and coverage work for Non-Profit Insurance Alliance of California.

### **Fidelity & Surety**

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The area of fidelity and surety bond litigation requires a high level of skill, experience, and discretion. Although often discussed in the same context as insurance, litigation arising from bonds requires unique knowledge and experience in a different area of the law. Our partners heading up this department manage teams who have this unique knowledge and are dedicated to this specialized and demanding category of work.

Management of fidelity and surety bond litigation creates special problems in California because the matters can involve extra-contractual and bad faith allegations leading to exposures far in excess of the bond amount. When necessary, we combine the unique knowledge and experience of this group with lawyers from our bad faith/extra-contractual practice group to minimize the company's exposure.

On the surety side, we have experience on subdivision performance, payment and maintenance

bonds, Miller Act payment and performance bonds, financial guarantee bonds, notary and oil exploration bonds, and all aspects of construction bonds. In recent litigation, a hospital sued the principal on a bond for allegedly failing to provide and properly install the mechanical parts of a cogeneration plant designed to provide electricity to the hospital and generate excess electricity for sale. The suit claimed that the bonding company had acted in bad faith. We successfully defended the surety company against these allegations and settled the case under the normal bond provisions.

Our fidelity bond experience includes investigation and litigation arising from inventory theft from high tech companies and thefts from financial institutions through sophisticated fraudulent loan schemes involving loan officers, appraisers, and borrowers with ties to organized crime. In one action we represented the issuer of a fidelity bond who refused to pay a \$6.5 Million claim alleging an elaborate scheme involving fraudulent equipment lease transactions. This matter involved both actions on the bond and allegations of bad faith. The case was originally filed in state superior court, but we were able to negotiate a more favorable settlement following removal to federal court.

Bond litigation involves the potential for subrogation against the principal or other wrongdoers once payment is made. We have handled numerous subrogation and collection actions following payment under bonds including actions against banks and other financial institutions for honoring checks and other negotiable instruments bearing forged signatures, and against principals and subcontractors arising out of payment under construction surety bonds.

## Unfair Business Practices

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Our attorneys have handled a wide variety of unfair business practice claims (17200 matters) as well as *Kasky*-related issues (17500) since California's threshold case in this area was handed down in 1998-- *Stop Youth Addiction, Inc. v. Lucky Stores*. The California Supreme Court has recognized that virtually any violation of law for regulation could form the basis for a 17200 claims and nearly all actions of a regulatory nature have included claims under 17200.

In particular, the firm has handled 17200 matters on issues including:

- The illegal burning of hazardous waste
- False advertising
- Improper discharge of pesticides
- Failure to remediate contaminated soil and groundwater
- Bad faith processing of insurance claims
- Price fixing
- Violations of California weight and measure requirements
- Violation of nursing home standards
- Improper labeling of consumer products

## White Collar Crime

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The defense of individuals charged with wire or mail fraud, embezzlement, and other white-collar or corporate criminal activity is handled with skill and sensitivity by Ropers, Majeski attorneys. This practice area is headed by a former Assistant U.S. Attorney and San Francisco District Attorney, with extensive experience in criminal litigation of all kinds.

We have represented a large number of public officials and law-enforcement officers accused of

wrongdoing. Often these cases are a magnet for publicity and one of our functions is to contain the publicity and work with the prosecutors toward a speedy resolution. When possible, we seek to determine whether the criminal charges arose from a misunderstanding or misrepresentation; where financial dealings are involved, we facilitate a prompt restitution of funds so that financial benefit is not an issue.

Over the years, we have defended many police officers and police associations against charges of excessive force, misconduct, and wrongful death. We have also provided the successful defense in the case of a San Francisco police officer charged by the FBI with domestic espionage for the Anti-Defamation League. An individual or corporation accused of a white collar crime needs legal counsel whose approach is not only geared to a successful defense, but is concerned with protecting public or industry image. At Ropers, Majeski, the white collar crime practice group is headed by and staffed with former prosecutors whose knowledge of criminal law in the business area is unsurpassed.

Our white collar representation includes the defense of a Fortune 500 company, health care corporations, serious senior management personnel, physicians, police officers and public officers. The cases include homicide charges, hazardous waste violations, professional licensing problems, and theft of trade secret or confidential information.

Ropers Majeski attorneys are skilled in containing publicity and, where necessary, working with prosecutors for a speedy and sensible resolution of the case. Our investigative techniques are focused toward uncovering key issues that can quickly turn a case in a client's favor. All in all, the Ropers, Majeski white collar crime team has just what a criminal defense needs - experience in protecting a client's image while working towards a prompt and favorable resolution of the matter.

## Representative Experience

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**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Proposition 65, Silicates

**Client Type:** Defendant

The allegations involved silicates; we represented the chief scientist and a corporate officer of a biotech start-up accused of abandoning hazardous wastes at its former research facility.

**Result:**

Following several demurrers to the criminal complaint, the prosecution dismissed all counts against our client.

**Attorneys:** Robert P. Andris

**Key Issues:** Unfair Business Practices; 17200

**Venue:** Contra Costa County Superior Court

This unfair business practices claim under California Business & Professions Code section 17200 and California's Anti-Slack - Fill statutes was resolved by a stipulated dismissal after we filed a motion for summary judgment which demonstrated that our client's packaging procedures were in compliance with California law.

**Attorneys:** Robert P. Andris

**Key Issues:** 17200

**Venue:** Contra Costa County Superior Court

**Client Type:** Defendant Manufacturer

We represented a major manufacturer and a number of its retailers in a Business & Professions Code section 17200/Unfair Advertising law suit based on the accuracy of pregnancy testing kits.

**Result:**

The case was resolved after defendants expert witness testified for more than six days regarding the accuracy and science involved in defendants' products.

**Attorneys:**

**Key Issues:** Equine Law, Contracts, Fraud, Bad Faith

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant Horse Trainer

Represented horse trainer in pre-litigation claim for alleged fraud and bad faith in matter involving sale of show horse.

**Result:**

Matter resolved in favor of client.

**Attorneys:** Robert P. Andris, Jesshill E. Love

**Key Issues:** Trade Secrets; Trademark Infringement

**Venue:** USDC: Northern District Court of California

**Client Type:** Defendants

In this misappropriation of trade secrets and trademark infringement lawsuit, we are currently defending ex-employees of the plaintiff who left the company and opened a competing professional services placement business. We were brought into this action thirty days before a hearing on plaintiff's second motion to compel further discovery responses and request for terminating sanctions.

**Result:**

We filed briefs on the motion and served further discovery responses within two weeks and the motion was ultimately denied.

**Attorneys:** Stephen J. Erigero

**Key Issues:** Real Estate Litigation

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Real Estate Broker

Action for fraud and breach of fiduciary duty against a real estate brokerage based on the action of an independent real estate agent associated with the broker. Plaintiffs were elderly middle eastern immigrants who had amassed over 50 parcels of real estate over several decades. Real estate agent allegedly befriended plaintiffs and used undue influence to cause plaintiffs to list and sell properties providing excessive commissions and extra payments to the real estate agent. Plaintiffs sold most of their properties receiving less than 50 % of net proceeds in several transactions.

**Result:**

Case settled for a confidential amount.

**Attorneys:** Jennifer E. Acheson, Michael J. Brady  
**Key Issues:** Breach of Contract; Bad Faith Claims  
**Venue:** Colusa County Superior Court  
**Client Type:** Defendant Insurer

Represented insurer in an action against claims of breach of contract and bad faith claims handling by insured county hospital. The hospital made a claim under a commercial property policy for property damage and business interruption. The hospital sustained losses as a result of water intrusion through the hospital roof, which was under construction, following a rainstorm. The claim was denied based on policy exclusions for faulty, inadequate and defective workmanship.

**Result:**

The matter was favorably resolved before trial by settlement.

**Attorneys:** Kathleen Strickland  
**Key Issues:** Stereo Equipment; Advertising; False Advertising; Unfair Business Practices  
**Venue:** Los Angeles County Superior Court  
**Client Type:** Defendant Audio Video Equipment Manufacturer

Retained by the CEA, on behalf of their members to defend a class action filed by a consumer advocate company against a leading manufacturer of audio, video, and communications equipment and 56 co-defendants alleging unfair and fraudulent business practices under California Business and Professions Code section 17200, 17500 et seq. According to the suit, there was no standard effective piston area to outside diameter ratio upon which a consumer can rely in assessing the quality and power of a stereo speaker. Therefore, a consumer cannot extrapolate the size of a speaker's EPA and, consequently, its quality and power. The market for these speakers included portable audio, car audio, home audio, and home theater.

**Result:**

Case resolved for less than negligence value after successful motion practice.

**Attorneys:** Geoffrey W. Heineman  
**Key Issues:** Defense of Director and Officer of Private Corporation  
**Venue:** USDC: Southern District of New York  
**Client Type:** Defendant Private Company

Plaintiff was a supplier of fabric based in South Korea and sued client/company and its CEO alleging that client purposely defaulted on its secured loans and "devised a scheme" to sell its assets and avoid liabilities owed to Plaintiff. Plaintiff alleges that the client's sale of its assets to codefendants was the result of a scheme made with actual intent to hinder, delay and/or defraud creditors. The complaint alleged breach of contract, UCC violations under §2-709 (Action for Price), common law unjust enrichment, account stated, conversion, successor liability, and fraudulent conveyance. Plaintiff asked the court to pierce the corporate veil with respect to the individual defendants including the CEO.

**Result:**

The court granted the motion to dismiss filed on behalf of our clients; opposing counsel did not refile an amended complaint even after the court allowed such an amendment following our demonstration to Plaintiff's counsel of the futility of Plaintiff's arguments as to the corporate and individual defendants.

**Attorneys:**

**Key Issues:** Fraud; Deceit

**Venue:** USDC: Central District of California

**Client Type:** Defendants Individuals

Fraud and deceit claims brought against our individual clients as alleged former real estate agents and brokers of co-defendants.

**Result:**

Plaintiff agreed to dismiss claims in exchange for a waiver of costs.

**Attorneys:** Allan E. Anderson, Timothy L. Skelton

**Key Issues:** Breach of Contract; Personal Guaranty

**Venue:** Santa Clara County Superior Court

**Client Type:** Plaintiff Machine Manufacturer

Represented plaintiff business machine manufacturer in breach of contract and personal guaranty action against business machine retailer.

**Result:**

The matter was favorably resolved through settlement.

**Attorneys:** Kathleen Strickland

**Key Issues:** Fraud; 17200

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendants Audio Equipment Manufacturers

Successfully represented 45 stereo manufacturers in defending action alleging fraudulent business practices under BP 17200 and BP 17500 as well as common count allegations of fraud and misrepresentation.

**Attorneys:** Kathleen Strickland

**Key Issues:** Drugs; Fraud; White Collar Crime; Case-control Studies; Clinical Trials; Data Manipulation; FDA

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Biopharmaceutical Manufacturer

Retained by well known Washington D.C. law firm to represent their client, a large biopharmaceutical firm in a criminal matter, and to conduct an internal investigation regarding allegations made by the US Attorneys office that a chemist had falsified data submitted to FDA regarding the results of a clinical trial of a new potential drug. Ultimately, all allegations were proven false, the subpoena was quashed and the individual was not required to testify nor produce records before a federal grand jury and no charges were ever filed. The defendant company was thereafter sold to a pharmaceutical company based in Europe

**Result:**

No indictment, no testimony, no criminal case filed

**Attorneys:** Ernest E. Price, Arnold E. Sklar

**Key Issues:** Trademark Infringement

**Venue:** Federal Court, Central District, Santa Ana

**Client Type:** Defendant Food Manufacturer

Plaintiff, an international manufacturer of potato chips had manufactured and nationally distributed a product using a specific term 1982. Defendant, a competing potato chips manufacturer had used the same term on its own brand of potato chips since 1986. Neither party had obtained federal trademark registrations for the term. The plaintiff filed suit for trademark infringement and false designation of origin. Prior to trial the plaintiff voluntarily dismissed all claims for money damages to avoid a jury trial. Upon receiving survey evidence during a two and one half week bench trial, the court rendered a verdict in favor of the defense determining that the term was generic and thus not protectable.

**Result:**

Settlement negotiations resulted in no agreement to stop use of the term, or payment of monies to the plaintiff. Prior to trial, the plaintiff dismissed all claims for money damages, to avoid jury trial. Two and half week Court trial. Court verdict in defense favor, term deemed generic, free for use by all producers of these types of potato chips. Favorable decision published *Classic Foods Int'l Corp. v. Kettle Foods, Inc.*, 468 F.Supp.2d 1181 (C.D. Cal. 2007).

**Attorneys:** Geoffrey W. Heineman

**Key Issues:** Insurance Coverage; Interpretation of Director and Officer Policy

**Venue:** Los Angeles County, Superior Court

**Client Type:** Defendant Insurance Provider

Interpreted insurance coverage for underlying action seeking to recover for allegations of 1) breach of fiduciary duty; 2) statutory violations of trade secrets; 3) unfair competition; and 4) interference with plaintiffs' prospective economic advantage. The claims centered around the alleged misappropriation of plaintiff's client list, which Plaintiff characterized as a "complex database" that included secretive information such as key decision makers, buying trends, buying history and overall Plaintiff's trends. In addition, as part of the unfair competition causes of action, asserted that the insured was responsible for causing an ex-employee of breaching his fiduciary duties by having him disclose salary information concerning plaintiff's sales force. That disclosure, according to Plaintiff, allowed the insured to hire plaintiff's employees.

**Result:**

Negotiating various insurance coverage issues arising out of the litigation, including late notice, whether the claim was covered under a director and officer liability policy, we assisted our client in reducing the damages it agreed to indemnify during settlement discussions. What originally appeared to be a "policy limits" matter resulted in a payment of less than full policy limits as a result of the coverage defenses developed.

**Attorneys:** Blaise U. Chow, Geoffrey W. Heineman

**Key Issues:** Insurance Coverage; Interpretation of Director and Officer Policy

**Venue:** USDC: District of Connecticut

**Client Type:** Defendant Insurance Provider

We analyzed insurance coverage on two primary issues: 1) whether the value of a subsidiary was substantially inflated; and 2) whether the insured's financial statements and level of operating profitability were materially misrepresented by the failure to properly record the costs associated with warrants to third parties as a cost of sales and the failure to fully reveal the contingent nature of such agreements (including the risks of significant repricing of warrants and the tracking of the warrants against such sales). The damages estimates far exceeded the insurance coverage available among the entire "tower" of insurance. Through multiple rounds of mediation at which the insurers challenged whether the entity was a "subsidiary" or mere "affiliate" in which case there was

no coverage, we mediated and struck a deal allowing our client to pay only a portion of its policy limits even though it appeared that this was a "policy limits" case. We achieved this result by urging various individual defendants to contribute personally towards the settlement, and demonstrating significant coverage defenses which resulted in the insured agreeing to pay amounts within the insurance tower.

**Result:**

Negotiating various insurance coverage issues arising out of the securities class action, including whether a certain entity was insured, whether the individual defendants needed to contribute personally towards the settlement, and whether the insured entity had non-insured exposure, we helped our client reduce the amount of exposure that it was responsible for during settlement. What originally was an excess of "policy limits" case turned into a case where the insurers saved a portion of its limits.

**Attorneys:** Michael J. Ioannou

**Key Issues:** Breach of Lease

**Client Type:** Defendant Real Estate Investment & Development Company

Breach of commercial lease (quarry operation), interference with business advantage, conspiracy to interfere and other related tort claims. Demand prior to trial by plaintiff in excess of \$5,000,000 against buyer defendants. Settlement offer in excess of \$2,000,000. The case was tried for six months before a jury.

**Result:**

Favorable verdict in favor of our client (all tort claims defense and breach of contract claim limited to \$80,000 damage payment).

**Attorneys:** Blaise U. Chow, Geoffrey W. Heineman

**Key Issues:** Defense of Insurance Agents Malpractice

**Venue:** Queens County, New York Supreme Court

**Client Type:** Defendant Insurance Provider

On May 22, 2009 Queens Supreme Court Justice Satterfield granted the motion to dismiss filed on behalf of our client, an insurance agent for an insurer. Plaintiff sued our client for failing to procure adequate umbrella coverage. We moved to dismiss based on statute of limitations grounds. The Court found that the time to have sued our client had lapsed before the action was first filed and therefore the Plaintiff's claim was barred by the statute of limitations (three years) under New York's CPLR. Specifically, the Court found that under the controlling law in the Second Department, the negligence claims asserted accrued when the allegedly inadequate umbrella policy was procured and issued. The Court went on to observe that, even if the date of the accident for which coverage was sought was deemed to be the date of the injury, the result would be the same because the action was not commenced within three years.

**Result:**

The trial court granted our client's motion to dismiss; opposing counsel has filed a notice of appeal

**Attorneys:** Geoffrey W. Heineman, Jung H. Park

**Key Issues:** Coverage

**Venue:** New Castle County, Delaware Superior Court

**Client Type:** Defendant Insurance Company

This was a \$600 million lawsuit which was filed against, inter alia, our client, an insurance carrier. The case was a complex coverage action, involving Plaintiff, a telecommunication provider, and eight insurance carrier defendants. The plaintiff had sought insurance coverage from the insurers on five different insurance towers for multiple shareholder lawsuits. The multiple lawsuits could be divided into three categories. The first category of lawsuits arose out of the plaintiff's efforts to transform the company from a low growth long distance carrier into a rapidly growing telecommunications giant capable of delivering "bundled services." The allegations were based on assertions that the plaintiff and its individual officers and directors artificially inflated stock price by painting an unrealistically positive portrait of the company's financial condition in an effort to ensure the success of the spin off of its wireless operation. The second category of lawsuits arose out of the IPO of the telecommunication providers tracking stock. These lawsuits alleged that the plaintiff and certain of its directors and officer misrepresented and/or omitted material facts in connection with the IPO in violation of the federal securities acts. The third category of lawsuits concerned allegations that the plaintiff and certain directors and officers improperly acquired majority ownership control over a now defunct internet service provider and thereafter, misappropriated the provider's technology to the benefit of the plaintiff and to the detriment of the provider, eventually driving the provider into bankruptcy.

**Result:**

Approximately a month before jury selection was to begin, our client and the one other remaining insurer entered into extensive settlement negotiations which resulted in a resolution our client viewed as a very favorable result.

**Attorneys:** Blaise U. Chow, Geoffrey W. Heineman

**Key Issues:** Professional Liability; Legal Malpractice; RESPA; Fraud; TILA; GBL Sec. 349 Claims

**Venue:** Saratoga County, New York Supreme Court

**Client Type:** Defendant Law Firm

Plaintiffs sought leave to vacate the underlying foreclosure judgment that a law firm successfully obtained for its client. We represented the law firm that was sued as a result of their successful foreclosure prosecution. The Plaintiffs argued that they had discovered "new" evidence that warranted a vacatur, including "concealed mailings," purposeful sending of documents to "improper mailing addresses." The implication was that the Law Firm obtained a default summary judgment on the basis of wrongful conduct. We argued that Plaintiffs failed to establish why this allegedly new evidence could not have been reasonably discovered three years ago. We also argued principles of equity did not warrant vacating the Judgment of Foreclosure because Plaintiffs could not demonstrate any meritorious defense to the foreclosure proceeding, nor could they state a viable claim against the law firm.

**Result:**

The judge granted the motion to dismiss filed on behalf of our clients following briefing and oral argument. No appeal was taken.

**Attorneys:** Ernest E. Price, Arnold E. Sklar

**Key Issues:** Trademark Infringement

**Venue:** USDC:Central District of California

**Client Type:** Defendant Food Importer

Plaintiff, a refrigerated meat producer, began to use a Vietnamese term as a trademark in 1986. Our client and the defendant, an Asian food importer, first used the term in connection with dry foods (noodles, rice) in 1992. In 1999 both parties had obtained federal trademark registrations for the term in different trademark classes. A

suit and counter-claims were filed in 2005. The issues at trial included whether the plaintiff had abandoned the mark, whether plaintiff's delay in objecting to the defendant's use constituted laches and whether the plaintiff could establish damages.

**Result:**

Pre-trial settlement negotiations yielded demands by plaintiff ranging from 1.2 million dollars to 1.4 million dollars. Trial demand prior to opening statement was \$900,000.00. After plaintiff's close of case, plaintiff reduced demand to \$700,000.00. Three week jury trial. Jury verdict in defense favor, \$ 0 (zero) dollars in money damages awarded and finding of no willful infringement. Equitable issues of laches currently on appeal.

**Attorneys:** Allan E. Anderson

**Key Issues:** Fair Debt Collection Practices Act; Rosenthal Act; Bona Fide Error; Summary Judgment

**Venue:** USDC: Central District of California

**Client Type:** Defendant, National Debt Collection Agency

This case involved a Plaintiff who sent a Cease and Desist letter to the Defendant, but the telephone calls continued subsequent to the Cease and Desist letter. Plaintiff's letter contained no identifying information other than the Plaintiff's name. Upon receipt of the Cease and Desist letter, the Defendant searched its records and found no records that matched the Plaintiff's name. A couple of months later, the Defendant received a lawsuit alleging that subsequent to receiving the Cease and Desist letter, it continued to call Plaintiff. the Defendant again searched its records and found no account for Plaintiff. The Defendant contacted Plaintiff's Counsel to advise it had no record matching this Plaintiff. Plaintiff's Counsel then provided Plaintiff's telephone number, which then allowed the Defendant to locate the Plaintiff's account. It was then discovered that the name on the account was misspelled and that is why there were no records found.

**Result:**

The Court granted the motion and held that there was no violation of the FDCPA or Rosenthal Act in the first instance because the Defendant was not sufficiently put on notice to cease communication with Plaintiff based on the content of Plaintiff's letter. Therefore, the continued attempts to contact Plaintiff were not a violation. The Court did not even have to consider the Bona Fide Error affirmative defense.

**Attorneys:** Marta B. Arriandiaga

**Key Issues:** Bad Faith

Failure to defend an underlying lawsuit alleging wrongful termination and discrimination under an Employment Related Practices policy. Successfully argued insured had notice of various potential wrongful employment practices prior to policy inception.

**Result:**

Motion for summary judgment granted in favor of client sued for "bad faith" in federal court.

**Attorneys:** J. Mark Thacker

**Key Issues:** Breach of Contract; Retirement Benefits

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant School District

Our client, school district, was sued by its former chief business officer for breach of contract and past and future retirement benefits.

**Result:**

Summary Judgment Motion and mediation/settlement pending.

**Attorneys:**

**Key Issues:** Breach of contract, fraud

**Venue:** Arizona

**Client Type:** Plaintiffs, investors

Plaintiffs, who did not know each other prior to this suit, lent money to Defendants in connection with an electrical supply company. After Defendants failed to repay the loans it was discovered that there was no company and that Defendants had been borrowing increasing amounts of money from each of the Plaintiffs in order to repay previous loans from the other Plaintiff and deceptively described the funds as return on investment and would then seek an increased amount for the next loan. Eventually, Defendants stopped repaying the loans and claimed that the funds had been lost through the business and that new loans would be needed to resume operations in order to repay Plaintiffs.

**Result:**

Default judgements in excess of \$450,000, plus interest, fees and costs obtained against all Defendants.

**Attorneys:** Allan E. Anderson

**Key Issues:** Fair debt collection practices act; FDCPA; Rosenthal Act; RFDCPA

**Venue:** USDC: Central District of California

**Client Type:** Debt Collection Agency

Plaintiff, a Washington state resident, sued our client, a Minnesota state resident, for alleged violations of the FDCPA. Plaintiff's Counsel pursued the action in California on the theory that our client allegedly had a business office in Southern California, even though no collection activities took place in, or through California. Moreover, Plaintiff's Counsel was aware there was no business office in California as this issue had been raised in another case filed by the same firm against our client.

**Result:**

Plaintiff dismissed the case on threat of a motion to dismiss and to seek FRCP Rule 11 Sanctions against Plaintiff's Counsel.

**Attorneys:** Allan E. Anderson

**Key Issues:** Credit Repair Organization Act; CROA

**Venue:** USDC: Southern District of California

**Client Type:** Defendant, Credit Repair Organization

Plaintiff filed suit against our client alleging various violations of the Credit Repair Organization Act. Through discovery and preliminary law and motion, the parties discovered that the basis of the claim was that Plaintiff failed to follow through with our client's recommendations, which lead to further credit/debt distress to Plaintiff.

**Result:**

Case resolve amicably prior to any significant litigation expense.

**Attorneys:** George G. Weickhardt

**Key Issues:** Banking, Credit Reporting

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Bank

Our client was a credit card issuer, sued for allegedly inaccurate credit reporting. The plaintiff alleged that she had been denied a substantial business loan and a home purchase loan as a result.

**Result:**

The firm obtained summary judgment dismissing the complaint.

**Attorneys:** Lael D. Andara

**Key Issues:** contract, net share, music

**Venue:** N/A

Client was in negotiations with a record company as to his continuing his activities as a music producer and writer in an exclusive capacity. Review and counseled on offered contract. Counsel as to how to obtain copyrights on music compositions.

**Attorneys:** Jeffrey S. Pollak

**Key Issues:** Bad Faith

**Venue:** US Court of Appeals for the Ninth Circuit

**Client Type:** Insurance Company

An unanimous defense verdict in a federal court jury trial of a bad faith claim under a O&O policy, in which the critical issue was whether or not an Insured Person was acting within his Insured Capacity, as defined in the policy.

**Result:**

The 9th Circuit Court of Appeal subsequently upheld the jury's verdict.

**Attorneys:** Robert P. Andris

**Key Issues:** Arbitration

**Venue:** San Francisco County Superior Court

**Client Type:** Manufacturer

This lawsuit involved the alleged breach of an exclusive distribution contract between the manufacturer of health foods and a distributor regarding exportation of such products in China, Hong Kong and Taiwan.

**Result:**

We recently concluded hearings in a binding arbitration in the liability phase of this action, the result of which is still pending.

**Attorneys:** Thomas H. Clarke, Jr., Adrian G. Driscoll, James A. Lassart

**Key Issues:** False Advertising; §17500

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant Auto Auction Company

In this 17200/17500 action involving automobile auctions, a court trial found in favor of our client.

**Result:**

Neither injunctive relief nor restitution was granted.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** False Advertising; §17500  
**Venue:** San Francisco County Superior Court  
**Client Type:** Defendants Health Food Manufacturer

In this 17200/17500 action, we represented two manufacturers of ginseng products accused of mislabeling in violation of Federal Law in a case with over 150 defendants.

**Result:**

We negotiated a de minimis settlement with no admission of wrongdoing. Over half of the defendants are still in litigation 2 years later.

**Attorneys:** Thomas H. Clarke, Jr.  
**Key Issues:** Proposition 65  
**Venue:** San Francisco County Superior Court  
**Client Type:** Defendant Tool Manufacturer

In this Proposition 65 case, the allegations involved PVC handles which supposedly contained lead.

**Result:**

We were able to demonstrate that the products which plaintiff had tested were forgeries of our clients products, and further that the handles of our client's products were lead-free. The case was dismissed.

**Attorneys:** Thomas H. Clarke, Jr.  
**Key Issues:** Unfair Business Practice; §17200  
**Venue:** San Francisco County Superior Court  
**Client Type:** Defendant Importer

In these 17200 actions, our client was accused of selling two products in violation of state standards, an unfair business practice.

**Result:**

We demonstrated that neither was in violation, and thus, the cases were dismissed.

**Attorneys:** Thomas H. Clarke, Jr.  
**Key Issues:** Proposition 65  
**Venue:** San Francisco County Superior Court  
**Client Type:** Defendant Manufacturer

The allegation involved solvents used in glue.

**Result:**

We were able to demonstrate that the exposure level to consumers from our client's products was below the Prop. 65 threshold. The matter was dismissed.

**Attorneys:** Thomas H. Clarke, Jr.  
**Key Issues:** First Amendment  
**Venue:** United States Supreme Court  
**Client Type:** Media Companies

On behalf of two European media companies we filed an amicus brief with the United States Supreme Court in

which we argued that the interpretation of Section 17500 B.&P.C. by the California Supreme Court seriously interfered with the European Union's requirements that companies report on social, environmental, and ethical issues in their annual reports. The brief may be found at this link: [Kasky v. Nike](#)

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Unfair Business Practice; §17200

**Venue:** Contra Costa County Superior Court

**Client Type:** Defendant Consumer Goods Manufacturer

We successfully defended a consumer goods manufacturer in a case related to claims of unfair business practices in the sale of personal care products.

**Result:**

The matter was dismissed.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs Group of Chinese-Americans

We represented a group of five Chinese-Americans who were purchasers of a pill which contained calcium combined with a oxidized form of Vitamin C. The clients were class representatives in an Unfair Business Practices and Consumer Legal Remedies class action against a company that advertised extensively in the Chinese-American community regarding the product. The radio, television, and print media advertisements asserted that the product would provide several dozen benefits, including protecting the intelligence, increasing the I.Q., and "perfecting the structure of the cerebral tissue" of children; healing a herniated disk and curing edema and osteoporosis; providing more energy; healing cartilage, tendons, and muscles; elimination of virtually every ache and pain known to humankind; and, not interfering with any prescription drug. All the claims were false.

**Result:**

The case settled following the first day of trial. Pursuant to the settlement, all consumers were entitled to seek reimbursement of their outlays for the purchase of the product.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Unfair Business Practices; Unfair Competition

**Venue:** California Court of Appeal, First District

**Client Type:** Food & Catering Enterprise

In this Unfair Business Practice Act matter, we represented a food and catering enterprise in an action involving allegations of trade name infringement, unfair competition, and Lanham Act violations.

**Result:**

We obtained a defense jury verdict.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Proposition 65; Silicates

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Cement Products Manufacturer

The allegation involved silicates; we represented a manufacturer of cement products. Laboratory tests demonstrated that the exposure level was below the Prop. 65 threshold.

**Result:**

We recently settled the matter; no payments or penalties were paid.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Clean Air Act

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Circuit Board Manufacturer

We represented a local air pollution control district in litigation against the U.S. Army for creating severe air pollution in the Monterey Bay area during the course of alleged remedial activities to remove unexploded ordnance at Ford Ord.

**Result:**

The matter was ultimately settled with the Army agreeing to stringent burn-control procedures.

**Attorneys:** Adrian G. Driscoll

**Key Issues:** Defective Work

**Venue:** Contra Costa County Superior Court

**Client Type:** Defendant Construction Surety Company

This was a multi-defendant lawsuit in which we represented a surety which had issued construction payment and performance bonds. The claim involved latent defects, which resulted in corrosion damage to large underground diesel storage tanks constructed to provide emergency energy supplies to a critical banking facility. Faced with a multi-million dollar exposure to our client, we identified key defendants early in the case and worked with them to form a settlement package.

**Result:**

Very favorable settlement as well as an order barring cross complaints for indemnity and contribution against the surety by the remaining defendants.

**Attorneys:** John A. Koepfel

**Key Issues:** Product Liability; Breach of Contract

**Venue:** Federal Court in San Jose

**Client Type:** Defendant Corporation

This commercial litigation action involved a combined breach of contract and product liability claim that was tried in a jury trial. Plaintiff, a multinational computer technology and IT consulting corporation, claimed that the defendant provided defective fans for their data storage devices sold to its mainframe customers.

**Result:**

This case settled favorably before final argument after the plaintiff made a \$70 million claim.

**Attorneys:** Ernest E. Price

**Key Issues:** Partnership Act

**Venue:** Los Angeles County Superior Court

**Client Type:** Plaintiff Individuals

A partnership dissolution action representing plaintiff. Issue: disaffected partner's interest and value in restaurant business after being improperly expelled by other partners. Represented plaintiff suing for an accounting.

**Result:**

Pre-trial demand was \$250,000; response \$100,000. One week Court trial—Court found in favor our client plaintiff on all significant issues, valuing clients share of the restaurant at \$154,000 and awarding fees and costs under the Partnership Act (to include expert costs) at \$155,000. Total award to plaintiff, \$309,000.

**Attorneys:**

**Key Issues:** Equine Law

**Venue:** Multiple Jurisdictions

**Client Type:** Equine Industry Professionals

Represented and consulted with numerous industry professionals in business related matters including contracts, equine sales, standard of care, and general liability issues.

**Attorneys:** Allan E. Anderson, Timothy L. Skelton

**Key Issues:** Libel; First Amendment Privileges

**Venue:** Los Angeles County Superior Court, Southwest District

**Client Type:** Defendant Health Care Provider

Represented defendant in a libel suit brought by plaintiff health maintenance organization. Key issues involved First Amendment privileges and mitigation of damages.

**Result:**

The action was resolved in a confidential settlement.

**Attorneys:** Allan E. Anderson, Timothy L. Skelton

**Key Issues:** Breach of Nondisclosure Agreement

**Venue:** Orange County Superior Court

**Client Type:** Plaintiff; Video display developer

Represented plaintiff involving a breach of nondisclosure agreement.

**Result:**

The matter was successfully resolved at mediation.

**Attorneys:** Jeffrey S. Pollak

**Key Issues:** Insurance Coverage under a fidelity/crime policy; bad faith

**Venue:** US Court of Appeals for the Ninth Circuit

**Client Type:** Insurer

A decision from the 9th Circuit Court of Appeals in Los Angeles holding that "direct loss" under a crime policy does not include loss of business reputation, good will or value.

**Result:**

Appeal upheld summary judgment granted to insurer.

**Attorneys:** Jeffrey S. Pollak

**Key Issues:** Arbitration; EPL Policy

**Venue:** AAA arbitration, San Francisco County Superior Court

**Client Type:** Insurer

Denial of an employment dispute brought under an EPL policy. The arbitration panel agreed that there was no coverage for the underlying employment dispute because it did not meet the "claim" definition and was limited only to unpaid contingent bonuses and benefits due the employee.

**Result:**

Arbitration award in favor of the defense.

**Attorneys:** Allan E. Anderson, Timothy L. Skelton

**Key Issues:** Internet; Patent; Infringement; Business Method

**Venue:** USDC: Central District of California

**Client Type:** Internet Service Provider, Defendant

The holder of a patent for interactive television programming sued our client, an Internet coupon company, for patent infringement.

**Result:**

We argued that the patent, a business method patent, was invalid, and in any event, was not infringed by our client's operations. We obtained a dismissal for a waiver of costs.

**Attorneys:** Allan E. Anderson, Timothy L. Skelton

**Key Issues:** Lanham Act; False Advertising

**Venue:** USDC: Central District of California

**Client Type:** Defendant Manufacturer

Plaintiff, a manufacturer of automotive supercharger systems, brought suit against its main competitor. Plaintiff alleged that our client engaged in false advertising with respect to performance claims. Our client brought counterclaims against the plaintiff, claiming similar violations in Plaintiff's advertising.

**Result:**

After defeating plaintiff's motion for a preliminary injunction, and obtaining dismissal of Plaintiff's attempt to add new claims, and conducting expert-supervised testing of the parties' respective advertising claims, the case was resolved.

**Attorneys:** Geoffrey W. Heineman, Eric C. Weissman

**Key Issues:** Fraud; Breach of Contract

**Venue:** Supreme Court of New York, County of New York

**Client Type:** Defendants - Directors of a Privately Held Company

In 1996, Samer and Hussam Hamadeh founded Vault.com, Inc., an internet based company that provides career planning and information about companies and industry developments. In 2006, representatives of a private equity firm ("VSS") approached the Hamadehs and indicated that it was interested in acquiring Vault. After months of negotiations, the parties entered into a Merger Agreement. As part of the Merger Agreement, \$6.899

million in cash of the \$65 million purchase price, as well as \$1.630 million worth of "rollover" Vault stock, were placed into escrow to be used once accounts receivable and other financial figures were finalized. Shortly thereafter, the VSS contacted the Hamadehs and claimed that the the accounts receivable figures were false and misleading by almost \$1 million. As a result, VSS asserted several claims against Samer and Hussam, including fraud and breach of contract, and sought to rescind the Merger Agreement (and the return of the \$65 million purchase amount).

**Result:**

After more than a year of protracted and contentious litigation, the parties were able to reach a negotiated settlement that allowed the Hamadehs to keep the purchase proceeds.

**Attorneys:** George G. Weickhardt

**Key Issues:** Banking, Bankruptcy, Consumer Credit

**Venue:** USDC: Eastern District of California

**Client Type:** Defendant Bank

Plaintiff was a collection agency, which contracted with a credit card issuer (our client) to pursue accountholders who had abused the bankruptcy process. The plaintiff sought over \$500,000 in unpaid fees.

**Result:**

Firm obtained summary judgment dismissing the complaint.

**Attorneys:** George G. Weickhardt

**Key Issues:** Letter of credit

**Venue:** U.S. District Court, Central District of California; U.S. Court of Appeals Ninth Circuit

**Client Type:** Bank

Plaintiff beneficiary of letters of credit issued by JPMorgan Chase sued for alleged wrongful dishonor of \$1.5 million in draws on the letters of credit as well as for fraud.

**Result:**

We obtained summary judgment dismissing the case in the trial court. This was affirmed by the Ninth Circuit on appeal.

**Attorneys:** George G. Weickhardt

**Key Issues:** Fair Credit Reporting Act; Identity Theft; Credit Card

**Venue:** U.S. District Court, Central District of California; U.S. Court of Appeals Ninth Circuit

**Client Type:** Bank

Plaintiff sued credit card issuer, claiming that it wrongfully reported non-payment of unauthorized charges on credit card account and sought to collect debt that arose from identity theft.

**Result:**

Case was won on summary judgment in trial court, and affirmed on appeal by the Ninth Circuit.

**Attorneys:** George G. Weickhardt

**Key Issues:** Fair Credit Reporting Act; Identity Theft; Credit Cards

**Venue:** U.S. District Court, Northern District of California

**Client Type:** Bank

Consumer claimed that credit card issuer was negligent in issuing credit cards to identity thief and reported the status of the credit card accounts inaccurately. Case involved six defendants and approximately fifteen depositions.

**Result:**

Firm obtained summary judgment dismissing case.

**Attorneys:** Andrew L. Margulis, Eric C. Weissman

**Key Issues:** Breach of Contract; Judgment; Execution

**Venue:** New York Supreme Court, County of New York

**Client Type:** Plaintiff Real Estate Developer

Plaintiff, a residential real estate developer hired the Defendant to fabricate, furnish and install granite kitchen counter-tops in a residential building project Plaintiff was developing. Defendant accepted Plaintiff's payments of over \$50,000, but failed to render the appropriate services. Plaintiff filed suit alleging breach of contract.

**Result:**

After failing to abide by multiple discovery orders, the court struck the defendant's answer and entered judgment in favor of plaintiff. After an inquest before the court, whereat plaintiff was able to substantiate its damages, the court entered a final judgment in plaintiff's favor in the amount of approximately \$62,000. We were able to successfully execute on such judgment and recover a substantial amount of the \$62,000 for our client.

**Attorneys:** Geoffrey W. Heineman, Eric C. Weissman

**Key Issues:** Breach of Fiduciary

**Venue:** Kings County, New York Supreme Court

**Client Type:** Defendant Property Management Company

In April 2007, a shareholder and tenant of a residential cooperative apartment in Brooklyn, New York, filed suit against the Board of Directors (the "Board") of the cooperative management association. The plaintiff alleged that the defendants breached their fiduciary duties to her and to the cooperative by engaging in self-dealing and failing to treat all shareholders in a uniform manner. Specifically, the plaintiff alleged that the defendants' breaches of fiduciary duty occurred in the following ways: (i) the president of the management association receives compensation for his services as a board member; (ii) the garage spaces in the building are not assigned pursuant to proper "rules"; and (iii) the defendants engaged in "improper" billing practices. The plaintiff sought monetary damages and injunctive relief.

**Result:**

After more than two years of protracted and contentious litigation, Justice David Schmidt granted the defendants' motion for summary judgment finding that the plaintiff was unable to support her allegations with any evidence. In fact, during oral argument on the motion for summary judgment, Justice Schmidt allowed the plaintiff's counsel to supplement its written filings by presenting evidence to support each instance of an alleged breach of fiduciary duty. Counsel, however, was unable to convince the court that any breach had occurred. Accordingly, Justice Schmidt found that the plaintiff was unable to prove her allegations as a matter of law and granted judgment for our clients.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Class action; Dispute on price fixing and sub-par quality

**Venue:** Federal court of Pennsylvania

**Client Type:** Defendants; A group of Taiwan auto parts manufacturers

Defended a group of auto part manufacturers in Taiwan from unsubstantiated claims on price fixing and sub-par quality of auto part products (i.e. lamps, plates, etc. ) that are shipped to US for US consumers. We successfully defended the case against this Class Action suit by presenting conclusive evidence of the fair pricing and quality of the products. The Federal Court judge reviewed the evidences provided, and ruled in our client, the defendant's favor to have the case dismissed.

**Result:**

Case was dismissed in Federal Court.

**Attorneys:** Michael J. Ioannou, Lita M. Verrier

**Key Issues:** Trade Secret

**Venue:** USDC: District of Colorado

**Client Type:** Defendant; Computer Periperal Distributor

This was a trade secret and unfair competition dispute related to employees leaving plaintiff and joining defendant and involving customer lists in the computer peripheral industry.

**Result:**

A favorable settlement was reached.

**Attorneys:** Michael J. Ioannou, Lita M. Verrier

**Venue:** Circuit Court for the State of Oregon, County of Multnomah

**Client Type:** Plaintiff; Semiconductor

Misappropriation of Proprietary Information and Trade Secrets; Breach of Mutual Non-Disclosure Agreement; Breach of the Implied Covenant of Good Faith and Fair Dealing; Breach of Employment Agreement, Unfair Competition; Breach of Duty of Loyalty, and Declaratory and Injunctive Relief.

**Result:**

Confidential, favorable result for client.

**Attorneys:** Michael J. Ioannou, Lita M. Verrier

**Key Issues:** Copyright Infringement

**Venue:** USDC: Northern District of California

**Client Type:** Plaintiff; Technology IT Services Company

Complaint alleging copyright infringement, unfair competition, misappropriation of trade secrets and declaratory relief related to the selling and licensing of products that enable integration and migration solutions for different business processes across heterogeneous systems by and through intelligent adapters.

**Result:**

Favorable settlement for client.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Piercing Corporate Veil

**Venue:** Federal Court of Northern California

**Client Type:** Defenant; A Taiwan computer mother board manufacturer

A U.S. publicly listed corporation alleged that the parent, a Taiwan publicly listed company, is responsible for its subsidiary work in \$10 million contract damages. The case went to a jury trial, resulting in an unanimous 8-0 victorious verdict for our client.

**Result:**

Unanimous 8-0 verdict in favor of our client.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Class Action; Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs; Chinese American Individuals represented through a Class Action lawsuit

Represented a group of Chinese American individuals in a class action lawsuit. Our clients were incensed by the false representation of calcium health supplement pills marketed widely in the Chinese American communities. The pills claim numerous health benefits, which were false. We certified a class action lawsuit through court approval and through further investigation, found lead exceeding the safety amount in the pills. This new evidence was brought before the defendant, who agreed to settle with our clients before trial.

**Result:**

Represented Plaintiff's interest to reach favorable settlement of false advertisement claims of health supplement pills.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Enforcing a personal guarantee agreement against the manufacturer

**Client Type:** A US company in Santa Clara County

Represented a U.S. company in enforcing a personal guarantee agreement against the owner of a manufacturing company. The owner claimed to have no assets, but hid her assets in Taiwan. Through RMKB's representation, our client sued the owner, who was forced to settled and repay her debt through court actions.

**Result:**

Represented client to recover debt owed from the owner through an executed personal guarantee agreement.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Litigation regarding check kiting scheme

**Client Type:** An individual

The Bank filed claims from our client for bank's client's debts incurred during a check kiting scheme. We represented the client and pointed to fallacy of the irregular incomes of the bank involved. The evidence resulted in a settlement negotiation between our client and the bank.

**Result:**

The bank agreed to drop claims against our client in exchange for our client to not disclose bank fallacies.

**Attorneys:** Chi-Hung A. Chan

**Key Issues:** Fraud and Breach of Contract, Arbitration in China and defend breach of joint venture claim in US

**Venue:** Federal Court of District of Northern California

**Client Type:** Defendant; High tech company in Silicon Valley

Successfully represented our client, the defendant, in a case in which the plaintiff, a Corporation in China, initially filed a brief of arbitration in China. Then the plaintiff also filed a \$20 million lawsuit in the Federal Court of District of Northern California claiming a breach of a joint venture agreement in setting up a factory in China. We represented the defendant to have the brief and lawsuit reviewed and dismissed.

**Result:**

The case was dismissed to client's satisfaction.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Negligence; Misrepresentation

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant; Home Inspection Company

Successfully represented a home inspection company and home inspector as to claims of negligence and misrepresentation. The claims against the firms clients were part of a group litigation filed by a homeowner against the various real estate agents, their brokers, and inspectors who were involved in the sale of the home. The homeowner claimed undisclosed and undocumented defects pertaining to their purchase of their home.

**Result:**

Successfully resolved the matter on behalf of the clients by bringing a motion for summary judgment.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Intellectual Property; Breach of Contract; Defamation; Fraud; Misrepresentation

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendant; Private Client

Successfully represented a local business entrepreneur in a complex partnership dispute between two joint venturers, involving intellectual property. The claims were for breach of contract, defamation, and fraud. We prosecuted on behalf of the client those claims while defending claims of misrepresentation and conversion. We defended those claims at binding arbitration, obtaining a large monetary award from the arbitrator.

**Result:**

Defense case at binding arbitration and successfully prosecuted claims of client.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Breach of Contract; Negligence

**Venue:** Santa Clara County Superior Court

**Client Type:** Plaintiff; Purchaser of Manufactured Home

Successfully arbitrated and obtained a judgment for a client attendant to claims against a general contractor for

failure to relocate a manufactured home pursuant to agreement. The claims against the general contractor were breach of contract, negligence, and fraud (misrepresentation). The facts showed that the general contractor failed to perform as he was required, and in fact, abandoned his duties to the client.

**Result:**

The claims were submitted to binding arbitration and the client was awarded substantial damages, including attorney's fees as the prevailing party.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Real Estate Commission Dispute; Breach of Contract; Interference With Prospective Economic Advantage

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant; Private Client

Successfully represented a commercial business broker in a claim for broker's commission. The claim was that the client and others interfered with another broker's business relationship and defrauded him from his commission. Plaintiff's lawsuit was fraught with a variety of legal issues involving statute of limitations and contractual defenses.

**Result:**

The firm brought a motion for judgment on the pleadings, which ultimately led the way to an expedient resolution of the matter for the client based on the available legal defenses.

**Attorneys:** Thomas M. O'Leary

**Key Issues:** Defamation, Non-Payment of Invoices, Rescission of Loan

**Venue:** USDC: Central District of California

**Client Type:** Defendant Distributor

This case revolved on whether a letter written to a banking factor regarding the reasons for non-payment of outstanding invoices caused the loss of a \$100 million loan which was to be used for product development. Plaintiff was the manufacturer of flat screen televisions that the defendant purchased and marketed to big box retailers in North America. The televisions had a high return rate and a soldering problem caused mechanical difficulties. As a result, the defendant stopped paying on outstanding invoices. The invoices were "factored" meaning a bank lent money to plaintiff based upon the purchase orders. The bank made an inquiry to defendant about the lack of payments and defendant responded in writing why payments ceased. The bank withdrew from a syndicated loan to plaintiff for \$100 million; plaintiff claimed it was because of the content of the letter. Plaintiff asked for \$3 million in damages for the defamation.

**Result:**

Plaintiff demanded \$3 million. Plaintiff was awarded \$375,000 in damages for defamation per se. The intentional interference with prospective economic advantage claim was rejected.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Negligence; Misrepresentation

**Venue:** San Mateo County Superior Court

**Client Type:** Defendant; Home Inspection Company

Successfully represented a home inspection company and home inspector as to claims of negligence and

misrepresentation. The claims against our clients were part of a group litigation filed by a homeowner against the various real estate agents, their brokers, and inspectors who were involved in the sale of the home. The homeowner claimed undisclosed and undocumented defects pertaining to their purchase of their home.

**Result:**

Successfully resolved the matter on behalf of our clients by bringing a motion for summary judgment.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Breach of Contract; Breach of Loan Agreement

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendants; Mortgage/ Broker

Successfully defended claims brought by borrowers against a mortgage broker and a lender, for fraud, breach of contract, racial discrimination, and invasion of privacy. The Plaintiff borrowers asserted that their loan was procured by the fraud of the mortgage brokers and lenders. The lawsuit commenced in Federal District Court and was then remanded to State Court. Following discovery, successfully brought a motion for summary judgment, removing our clients from the case.

**Result:**

The judgment was appealed by the Plaintiff borrowers, and I thereafter defended the appeal at the appellate level. The Sixth District Appellate Court affirming the judgment in favor of our clients.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Intellectual Property; Breach of Contract; Defamation; Fraud; Misrepresentation

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendant; Private Client

Successfully represented a local business entrepreneur in a complex partnership dispute between two joint venturers, involving intellectual property. The claims were for breach of contract, defamation, and fraud. We prosecuted on behalf of our client those claims while defending claims of misrepresentation and conversion.

**Result:**

We defended those claims at binding arbitration, obtaining a large monetary award from the arbitrator.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Breach of Contract; Negligence

**Venue:** Santa Clara County Superior Court

**Client Type:** Plaintiff; Purchaser of Manufactured Home

Successfully arbitrated and obtained a judgment for a client attendant to claims against a general contractor for failure to relocate a manufactured home pursuant to agreement. The claims against the general contractor were breach of contract, negligence, and fraud (misrepresentation). The facts showed that the general contractor failed to perform as he was required, and in fact, abandoned his duties to the client.

**Result:**

The claims were submitted to binding arbitration and my client was awarded substantial damages, including attorney's fees as the prevailing party.

**Attorneys:** J. Mark Thacker

**Key Issues:** Conversion; Fraud

**Venue:** USDC: Northern District of California

**Client Type:** Defendant

An international humanitarian foundation asserted claims based on conversion and fraud, claiming that our clients knowingly received millions of dollars that allegedly had been illegally obtained from it by others in an investment fraud scheme, and further, that our clients actively concealed the funds to avoid recovery by Plaintiff.

**Result:**

We obtained a summary judgment on all claims. On appeal, which we also handled, the 9th Circuit affirmed.

**Attorneys:** Gregory M. Gentile

**Key Issues:** Breach of Contract; Breach of Loan Agreement

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendants; Mortgage Broker/Chubb Insured

Successfully defended claims brought by borrowers against a mortgage broker and a lender, for fraud, breach of contract, racial discrimination, and invasion of privacy. The Plaintiff borrowers asserted that their loan was procured by the fraud of the mortgage brokers and lenders. The lawsuit commenced in Federal District Court and was then remanded to State Court. Following discovery, successfully brought a motion for summary judgment, removing clients from the case.

**Result:**

The judgment was appealed by the Plaintiff borrowers, and we thereafter defended the appeal at the appellate level. The Sixth District Appellate Court affirming the judgment in favor of clients.

**Attorneys:** James A. Lassart

**Key Issues:** Healthcare Co-Payments, Potential Class-Action claiming Co-Payments inappropriately collected between those with insurance plans and those without insurance plans

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant

Plaintiffs sought to pursue a potential class-action against the Defendant public hospital, U.C.S.F. and a major private California Healthcare Provider for overbilling and medical co-payments.

**Result:**

The matter was resolved by successful demurrer and class was not established.

**Attorneys:** Adrian G. Driscoll, James A. Lassart

**Key Issues:** Medical Partnerships; Hospitals; Staff Privileges; Emergency Room Physicians

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Hospital

Defense of hospital sued by emergency room physician following his expulsion from his medical partnership. Pursuant to a contract between the partnership and the hospital, only physician members of the partnership could practice emergency room medicine at the hospital. Plaintiff physician claimed that he was wrongfully denied staff privileges in violation of the California Business and Professions Code and the hospital staff by-laws.

**Result:**

Summary Judgment was granted in favor of the hospital, and later upheld on appeal.

**Attorneys:** Adrian G. Driscoll, James A. Lassart

**Key Issues:** Appeal; Errors of Law; Administrative Law

**Venue:** California Department of Consumer Affairs, Bureau of Automotive Repair; San Francisco County Superior Court

**Client Type:** Plaintiff Small Business Owner

We represented a small business owner who was licensed by the State of California to operate an automotive repair service. The State's Department of Consumer Affairs revoked our client's license following an administrative proceeding before an administrative law judge. We appealed the decision to the Superior Court on the grounds that the administrative law judge did not consider all material evidence, and on the grounds that the ALJ had made errors of law.

**Result:**

We secured a Writ of Mandate from the Superior Court vacating the State's decision and ordering a new administrative hearing.

**Attorneys:** Adrian G. Driscoll, James A. Lassart

**Key Issues:** Public Universities; Government Immunity; Hospitals; Health Insurance; Insurance Co-Payments

**Venue:** San Francisco County Superior Court

**Client Type:** Defendant Public University Teaching Hospital

Potential class action against the hospitals at the University of California (San Francisco) and major private California health insurance providers for alleged overbilling on medical co-payments charged to hospital patients.

**Result:**

A demurrer filed on behalf of the defendant University of California hospitals was sustained at the initial pleading stage without leave to amend grounds of governmental immunity, and a judgment was entered in favor of the University.

**Attorneys:** J. Mark Thacker

**Key Issues:** Cybersquatting; Trademark; Trade Libel

**Venue:** San Mateo Superior Court

**Client Type:** Plaintiff; Trade Name Owners

Defendants were using domain names identical to our clients' trade names for the improper purpose of diverting Internet consumers to defendants' web site where false and disparaging statements are made about our clients.

**Result:**

We obtained a temporary restraining order and preliminary injunction prohibiting the use of the domain names. Ultimately, the matter settled, which included transfer of the domain names to our client.

**Attorneys:** James A. Lassart

**Key Issues:** Construction; Indemnity; Business Litigation

**Venue:** San Francisco Superior Court

**Client Type:** Plaintiff; Property Owners

Plaintiff had an oral contract with defendant to do remodeling work while they were remodeling their property. As a result of shabby workmanship and then its concealment, plaintiffs were held liable by a purchaser case for their non-disclosure of defects based on what the contractor's work. Because of his concealment and shoddy workmanship an indemnity action was filed against the contractor.

**Result:**

Plaintiff homeowners prevailed and the contractor was found liable on the theory of implied indemnity. The matter was then appealed and it was settled for in excess of an amount the jury award in the Court of Appeal.

**Attorneys:** James A. Lassart

**Key Issues:** Breach of Contract, Promissory, Estoppel, Guarantees

**Venue:** Santa Clara County Superior Court

**Client Type:** Plaintiff; Hardware Manufacturer

Defendant agreed to guarantee a loan. Plaintiff made loan based upon the guarantee. Defendants breached with duty to repay and ultimately brought a cross-action along with a third party. On the date of trial, Defendant filed a SLAPP motion to stay the trial.

**Result:**

Prevailed in Trial Court and Court of Appeal; settled at JAMS.

**Attorneys:** James A. Lassart

**Key Issues:** Hospital Health Insurance, Insurance Co-Payments, Erisa

**Venue:** USDC: Northern District of California

**Client Type:** Defendant; Private Hospital

A potential class action against private hospitals and private healthcare insurance providers are alleged overbilling on medical co-payments charged to hospitals.

**Result:**

Motion to dismiss on behalf of Defendant. Private hospital was granted without leave based upon Erisa preemption.

**Attorneys:** James A. Lassart

**Key Issues:** Trust Liability and Trust Litigation, Discovery, Privilege, self-incrimination, fraud, and Coordinated Matter

**Venue:** San Francisco, San Mateo, and Shasta Superior Court

**Client Type:** Defendant; Trustee of an Intervivos, Trust, and an employee of the company

Coordinated civil action against the surviving trustor/trustee, and beneficiary. The trustee was an employee of the employer plaintiffs. Defendant was accused of conversion. Fraud allegations of criminal conduct were pending and required her assertion of her 5th amendment, Constitutional privilege against self-incrimination. The matter was stayed in the Superior Court under a "Pacer" motion and the matter proceeded civilly during the pendency of the criminal charges.

**Result:**

Defendant was granted a stay through Appellate Court action and the matter was ultimately resolved post resolution of the criminal case. Resolved by settlement.

**Attorneys:** James A. Lassart

**Key Issues:** Medical partnerships, Hospital staff privileges, Anesthesiology physicians

**Venue:** Alameda County Superior Court

**Client Type:** Defendant; Hospital

Defense of the hospital sued by an anesthesiology group claiming racial discrimination, breach of contract, breach of covenant of good faith unfair dealing, and interference with economic advantage. Plaintiff physician group claimed wrongful breach of the exclusive service contract to provide services in violation of the Business and Profession Code and other theories.

**Result:**

After a multi-week trial the hospital was awarded a defense verdict. All of the group and individual physician claims were denied.

**Attorneys:** Devin C. Courteau, Geoffrey W. Heineman, Kathleen Strickland

**Key Issues:** Bankruptcy; Asbestos; Contract Obligation; Defense; Indemnity

**Venue:** US Bankruptcy Court Southern District of New York

**Client Type:** Plaintiff Auto Parts Manufacturer

We were retained to represent Remy International, Inc. ("Remy") in the bankruptcy proceeding commenced by General Motors Corporation ("GM"). Remy purchased the assets of the former Delco Remy Division of GM pursuant to an Asset Purchase Agreement ("APA"). The APA, executed by and between Remy and GM, placed certain ongoing indemnity obligations on GM in connection with various litigation and potential claims relating to GM products manufactured and premises occupied during the time period prior to the APA. In the bankruptcy, we assisted Remy secure testimony and documents needed to defend itself in a number of active cases, and subsequently obtained dismissals in all of those actions. We also assisted Remy in successfully pursuing a claim in the bankruptcy for its costs of defense regarding those actions. More importantly we obtained for Remy, as part of GM's confirmed bankruptcy plan, protection from liability for asbestos claims relating to GM products manufactured and premises occupied during the time period prior to the APA. This is a relatively unprecedented achievement in a bankruptcy that does not involve a Section 524(g) trust.

**Result:**

We are assisting the auto parts manufacturer in pursuit of both its Claim in the bankruptcy as well as securing

through the bankruptcy, the testimony and documents needed by our client to defend itself in a number of active litigations

**Attorneys:** Kevin P. Cody

**Key Issues:** Was there an oral contract between the parties for the development of residential real estate? Was the contract breached by the client in failing to transfer the property to the plaintiffs?

**Venue:** Santa Clara County Superior Court

**Client Type:** Individual/ Contractor

Plaintiffs sued client claiming that client failed to perform a contract to acquire and develop residential property, and thereafter build twelve homes on the property. Specifically, plaintiffs alleged that the client failed to transfer the property to plaintiffs after plaintiffs paid a \$200,000 down payment and after the initial site improvement work had been completed by the client. As a result plaintiffs lost millions of dollars of profit they would have received on the sale of the homes.

**Result:**

After plaintiffs' rejected client's \$500,000 settlement offer, the matter was tried to a jury and jury found in favor of the client concluding that material terms had never been agreed to and therefore there was no contract.

**Attorneys:** Kevin P. Cody

**Key Issues:** Did client breach written agreements? Was clients' performance excused?

**Venue:** Santa Clara County Superior Court

**Client Type:** Developer of Commercial Condominiums

Client, a developer of commercial condominiums, was sued by plaintiffs, real estate brokers, who claimed that the client failed to pay commissions earned in the sale of 50 commercial condominium units.

**Result:**

After extensive litigation and multiple settlement conferences, the case settled successfully for the client as the client paid less in commissions than the amounts stated in the written agreements with the brokers.

**Attorneys:** Kevin P. Cody

**Key Issues:** Did defendant employee breach contract? Did defendant title insurance company breach its fiduciary duties to the client? Did client breach separate agreement with defendant employee in failing to pay defendant employee?

**Venue:** Santa Clara County Superior Court

**Client Type:** Developer of Commercial Condominiums.

Client, a developer of commercial condominiums, sued defendant employee who had been working for the client, asserting that employee had failed to pay for a condominium unit transferred to him. Defendant employee claimed the unit transfer was part of his compensation. Client sued defendant title insurance company, asserting that the title insurance company's errors in the handling of the escrow for the unit resulted in the unit being transferred to defendant employee without payment being made for the unit. In a separate cross-claim, defendant employee claimed that the client failed to pay him more than \$100,000 in compensation owed on the

sale of units in a separate commercial condominium project.

**Result:**

After extensive litigation and on the eve of trial, case settled successfully for the client as the client received \$200,000, plus other considerations valued at \$25,000

**Attorneys:** Kevin P. Cody

**Key Issues:** What was the scope of an easement? Did the clients violate plaintiffs' easement rights?

**Venue:** Santa Clara County Superior Court

**Client Type:** Individual Homeowners

The clients and plaintiffs were next door neighbors. Plaintiffs had an easement for ingress and egress running over a portion of the clients' property. Clients undertook some remodel work on their property and plaintiffs claimed that the work violated plaintiffs' easement rights.

**Result:**

After extensive litigation, the matter went to trial and the Court interpreted the easement favorably for the clients.

**Attorneys:** Kevin P. Cody

**Key Issues:** Which party breached \$150,000 written contract for landscaping work? Did either party suffer damages?

**Venue:** Alameda County Superior Court, California

**Client Type:** Landscape Architectural and Construction Firm

Client, a landscape architectural/construction firm, sued defendant and defendant cross-complained against client, with both parties claiming the other breached the landscape construction contract. The client claimed defendant failed to pay according to the terms of the contract. Defendant claimed that he was current on all progress payments and that the client's work was deficient.

**Result:**

After defendant rejected the client's offer that both parties walk away from the matter in exchange for mutual dismissals and insisted that the client pay defendant \$70,000, the matter was tried to the Court and the Court found in favor of the client and awarded the client \$30,000 in damages and all costs of litigation.

**Attorneys:** Kevin P. Cody

**Key Issues:** Did the client breach a contract with homeowners to build the homeowners' home? Were change order costs excessive and/or unapproved? Was the project unnecessarily delayed? Was the construction deficient?

**Venue:** Binding Arbitration

**Client Type:** Developer/ Builder

Client, a developer/builder, filed for binding arbitration after homeowners failed to pay client \$300,000 still owing on the construction of the homeowner's \$1,600,00 home. Homeowners had boasted they would get the home for \$300,000 less than it cost the client to build, asserting that the the project was unnecessarily delayed,

change orders were excessive and/or unapproved and the construction was deficient. The client disputed the homeowners' claims.

**Result:**

After numerous attempts to get the homeowners to mediate, all without success, the matter went to binding arbitration and a panel of three arbitrators found in favor of the client, with the client's recovery being in excess of \$500,000 as the client was awarded not only the \$300,000 still owing on the home, but also all attorney's fees and litigation costs.

**Attorneys:** Kevin P. Cody

**Key Issues:** Ability of client to foreclose on mechanic's lien on property bank had already foreclosed on.

**Venue:** Santa Clara County Superior Court

**Client Type:** Land Improvement Contractor

Client, a land improvement contractor, contracted to perform site improvement work on residential property. Defendant bank financed the project and eventually foreclosed on the property when the developer defaulted. Client sought recovery from defendant, arguing his mechanic's lien was senior to the bank's deed of trust. The bank argued that there were defects in the client's lien claim and therefore the bank's deed of trust had seniority.

**Result:**

The parties quickly agreed to mediation and the matter settled successfully for the client with the client being paid \$60,000.

**Attorneys:** Jennifer E. Acheson, Michael J. Brady

**Key Issues:** Breach of Contract; Fraud; Unfair Business Practices

**Venue:** San Francisco County Superior Court

**Client Type:** Plaintiffs

Represented plaintiffs in an action against owner of piano consignment business, for claims of breach of contract, fraud, and unfair business practices. Prosecution of the matter revealed multiple victims. The matter resulted in a default judgment for money damages and order of replevin/return of the piano. The court refused to set the judgment aside.

**Result:**

Following the defendant's declaration of bankruptcy, the matter resulted in the criminal prosecution of defendants for felony counts of grand theft, embezzlement, and restitution, and coordination with the San Francisco District Attorney.

**Attorneys:** Thomas H. Clarke, Jr.

**Key Issues:** Proposition 65

**Client Type:** Defendant Trade Group

In this Proposition 65 case, the allegations involved silicates. We represented a trade group of 15 companies.

**Result:**

In conjunction with the Attorney General, we obtained a favorable ruling from the Court of Appeals, which rejected an attempt by a private party bounty hunter to intervene. We settled the matter; a de minimis payment was made to plaintiff.

**Attorneys:** Devin C. Courteau, Kathleen Strickland

**Key Issues:** Environmental; Toxic Tort; Landfill; Remediation; Groundwater; Contamination

**Venue:** Macomb County, Michigan Circuit Court

**Client Type:** Defendants Environment Contractor & Municipal Authority

The developers of properties neighboring a landfill brought an action against an environmental contractor for the landfill, municipal authority and five cities alleging that contamination from the landfills has migrated onto their properties and prevented development. The plaintiffs seek millions of dollars in claims from cost recovery for lost profits and contribution pursuant to the Natural Resources and Environmental Protection Act (Michigan's version of CERCLA), as well as tort claims, negligence, trespass and nuisance.

**Result:**

We obtained summary judgment on all of the plaintiff's claims—cost recovery, contribution, injunctive relief, breach of contract, negligence, nuisance, trespass and fraud—resulting in dismissal of the action

**Attorneys:** Michael J. Ioannou

**Key Issues:** Start-up

**Client Type:** Defendant Start-up

Represented defendant who was sued by Boston-based venture capital firm concerning a failed start-up company.

**Attorneys:** Andrew L. Margulis

**Key Issues:** Directors and Officers; Professional Liability; Fidelity

**Venue:** Arbitration--JAMS

**Client Type:** Defendant Insurance Provider

Represented insurer in coverage matter under a blended policy providing directors/officers, professional liability and fidelity coverage issued to a leading insurance company. The insured sought coverage in connection with claims arising out of one of the largest insurance/bond frauds perpetrated by an officer of the insured's subsidiary. Holders of the bonds with values in excess of \$120 million sought payment on the bonds. Coverage was denied and the parties submitted the matter to binding arbitration.

**Result:**

The matter was ultimately resolved after approximately five years of litigation on terms favorable to the insurer.

**Attorneys:** James C. Potepan

**Key Issues:** Constitutional Freedom; Harassment

**Venue:** State Court

A state court lawsuit involving constitutional freedom of expression as a defense to a city tenant harassment ordinance.

**Attorneys:** James C. Potepan

**Key Issues:** Federal Visual Artists Rights Act

**Venue:** Federal Court

A case involving artist's claim of unfair competition and damages under Federal Visual Artists Rights Act.

**Attorneys:** James C. Potepan

**Key Issues:** Trademark Infringement

**Venue:** State Court

A trademark infringement action involving the use of similar names for competing businesses in home warranty industry.

**Attorneys:** James C. Potepan

**Key Issues:** Breach of Contract

**Client Type:** Defendant Water Filtration Product Manufacturer

Defense of breach of contract and prosecution of anticipated patent infringement cross-complaint related to portable water filtration product.

**Attorneys:** Kathleen Strickland

**Key Issues:** Cellular Phone; Radio Frequency, Emissions; Unfair Business Practices; Cancer; Systemic Disease, Causation

**Venue:** Multi District Litigation. USDC Court, Baltimore, Maryland

**Client Type:** Defendant Fortune 50 Cell Phone Manufacturer

Retained by the "home office" of a Fortune 50 large international company who manufactured cell phones sold in the US to nationally defend and monitor six class actions filed by plaintiffs in state and federal court who alleged in addition to personal injury, also alleged unfair business practices. The plaintiffs asserted defendants manufactured, supplied, promoted, sold, leased and provided service for wireless handheld telephones when they knew or should have known that their products generate and emit radiofrequency radiation that causes an adverse cellular reaction and/or cellular dysfunction ("biological injury"). A critical part of the defense involved intensive medical analysis as plaintiffs claimed a full range of injuries including brain cancer and systemic illnesses allegedly associated with the product.

**Result:**

The case turned on Daubert hearings. After a successful Daubert challenge, also prepared product insert labels for handheld devices.

**Attorneys:** Kathleen Strickland

**Key Issues:** Breast Implant; Personal Injury; Wrongful Death; Cancer; Causation; Autoimmune Deficiency

**Client Type:** Defendant Global Technology Manufacturer

As national trial counsel, worked with a team of attorneys assembled nationwide to defend a leading technology & medical products manufacturer in pharmaceutical litigation involving silicon gel breast implants. We served as trial counsel and retained and prepared scientific and medical experts as well as assisted in preparing a punitive damage defense for the company.

**Attorneys:** Geoffrey W. Heineman, Jung H. Park

**Key Issues:** Coverage

**Venue:** Superior Court of New Jersey, Middlesex County and Superior Court of New Jersey, Appellate Division

**Client Type:** Insurance Company

In this action, AT&T Corp. ("AT&T") sought coverage under two insurance towers for five underlying actions. In one of the underlying actions, judgment had already been entered against AT&T in the amount of

\$11,306,986.00. AT&T alleged that all five actions were covered by two insurance towers, triggering the duty to defend and indemnify. In these underlying lawsuits, the claimants allege that AT&T breached various contracts when it failed to make appropriate payments upon cancellation of the claimants' stock options and failed to obligate its former subsidiary to make those payments. These cases have their genesis in the 2000 merger of AT&T and MediaOne and AT&T's assumption of certain obligations under a 1994 MediaOne stock options grant plan (the "1994 Plan"). As part of the MediaOne-AT&T merger, it was agreed that the terms and conditions of the 1994 Plan would be adjusted into options to purchase AT&T stock. However, through AT&T's spinoff of its wireless business and then subsequent merger with Cingular Wireless LLC, the claimants allege that the price offered to the plan participants were not in accordance with the 1994 Plan. The insurers moved to dismiss AT&T's insurance coverage action because the allegations in the underlying actions did not trigger the duty to defend or indemnify. The New Jersey Superior Court agreed with the insurers and dismissed with prejudice all of AT&T's claims. Plaintiff AT&T Corp. appealed from this decision. The New Jersey appellate court affirmed the lower court's decision. The appellate court held that to determine whether coverage exists, the inquiry is whether the allegations of the complaints fall within the insured risk as set forth in the unambiguous insurance policies and that the courts need not inquire into the facts underlying the complaints. The appellate court held that the allegations in the underlying actions are not covered losses and therefore, the insurers had no duty to defend or indemnify. The appellate court agreed with the lower court that the dismissal of the action was not affected by the fact that certain underlying actions may be pending. However, The appellate court did note that if the complaints in the pending actions were amended to allege acts amounting to a covered loss, AT&T could renew its demand for coverage.

**Result:**

The appellate court affirmed the lower court's dismissal of the coverage action.

**Attorneys:** Adrian G. Driscoll

**Key Issues:** Appeal; Guaranty; Deed of Trust; Strategic Litigation Against Public Participation (SLAPP); Indemnity

**Venue:** Santa Clara County Superior Court; California Court of Appeal, Sixth Appellate District

**Client Type:** Plaintiff Equipment Manufacturer

Appeal by defendants from a trial court Order denying defendant's Special Motion to Strike a SLAPP suit (Strategic Litigation Against Public Participation) based on an allegation that the defendant breached his duty to indemnify plaintiffs pursuant to a provision contained in a Deed of Trust securing a guarantee agreement.

**Result:**

Trial court's Order denying defendants' Special Motion to Strike was upheld.

**Attorneys:** Adrian G. Driscoll

**Key Issues:** Trustee Liability; Trust Litigation; Pre-Judgment Attachment; Writ; Appeal; Trust Law; Discovery; Privilege Against Self-Incrimination; Corporate Law; Fraud; Conversion

**Venue:** San Francisco, San Mateo and Shasta Superior Courts; California Court of Appeal, First Appellate District

**Client Type:** Defendant Employee and Trustee of Inter-Vivos Trust

Coordinated civil actions against the surviving trustor, trustee and beneficiary of an inter-vivos trust. As trustee and as employee of one of the plaintiffs in the coordinated actions, defendant was accused of conversion of funds from a third party trust and from her employer. Allegations of criminal misconduct were also made against defendant, who asserted her constitutional privilege against self-incrimination until the criminal charges were

fully resolved. Defendant filed a Petition for Writ of Mandate in the Court of Appeal challenging the trial court's denial of her Motion to Stay the civil actions pending disposition of the criminal charges.

**Result:**

Defendant's Petition for Writ of Mandate was granted and the coordinated actions were stayed pending resolution of criminal charges against defendant.

**Attorneys:** François G. Laugier

**Key Issues:** Settlement of Commercial Dispute

**Client Type:** Spinal Implants Manufacturer

Represented French manufacturer of spinal implants in commercial dispute with US distributor. Coordinated development of the case, prepared international discovery and drafted motions with company executives and local co-counsel.

**Result:**

Obtained favorable settlement for client.

**Attorneys:** Adrian G. Driscoll, James A. Lassart

**Key Issues:** Fiduciary Violations

**Venue:** USDC: Northern District of California

**Client Type:** Defendant Independent Trustee

In this securities class action case, we defended a former Independent Trustee of a federally-regulated mutual fund against allegations of fiduciary violations.

**Result:**

We were able to negotiate a dismissal of the case during trial as to our client only, and we thereafter successfully concluded the difficult process of obtaining an order barring cross-complaints for indemnity and contribution against our client by the non-settling defendants that was effective under the federal, California and Delaware laws which governed the issues in the litigation.

**Attorneys:** Adrian G. Driscoll, James A. Lassart

**Key Issues:** Transfer Dispute

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendant Software Manufacturer

We were retained literally on the night before a hearing on a temporary restraining order in a complex technology transfer dispute in which we had no prior involvement. The injunctive relief sought by plaintiff would have severely damaged or even ruined our client's business.

**Result:**

On extremely short notice, we were able to limit the temporary and preliminary injunctive relief sought by the plaintiff such that it did not significantly interfere with our client's business. Due to a combination of our rapid ability to analyze and defend the case, and our success in quickly identifying and resolving those issues which could be resolved, the plaintiff abandoned the litigation within six months.

**Attorneys:** George G. Weickhardt

**Key Issues:** Class Action

**Venue:** Alameda County Superior Court, Northern Division Unlimited Jurisdiction

**Client Type:** Defendant Bank

Our client had retained a telemarketing firm, which represented that it had received legal advice that it could disseminate pre-recorded messages by telephone. A class action was filed on all recipients of such messages, which were alleged to be actionable under both state and federal law.

**Result:**

After obtaining disqualification of plaintiff's counsel, firm was able to negotiate a reasonable settlement.

**Attorneys:** George G. Weickhardt

**Key Issues:** Appeal; Arson

**Venue:** Sacramento County Superior Court

**Client Type:** Defendant Insurance Provider

The firm was retained to appeal a \$3.2 million judgment against homeowner's insurer in a bad faith case. The insured alleged that the insurer had instigated a criminal prosecution for arson against him in relation to a fire that destroyed his home.

**Result:**

The court of appeal completely reversed the judgment.

**Attorneys:** Michael J. Ioannou

**Key Issues:** Real Estate

**Venue:** Santa Clara County Superior Court

This was a real estate litigation involving a purchase by a retirement development company of the lease hold interests in four assisted-living condominium projects. Landlords claimed the ability to increase rent to fair market value (rent increase dispute in excess of \$1,000,000 per year for lease extensions for the next ten years).

**Result:**

Cases settled pursuant to a favorable confidential settlement and release.

**Attorneys:** Michael J. Ioannou, Lita M. Verrier

**Key Issues:** Anti-trust; Breach of Fiduciary

**Venue:** Santa Cruz County Superior Court

**Client Type:** Cross-complainant Fruit & Vegetable Producer & Supplier

We represented the cross-complainant in this action involving anti-trust, predatory pricing, price-tampering and breach of fiduciary duty asserted against former directors and officers of company client.