

A blue-tinted banner image featuring a collage of professional and technological elements. On the left, a group of people in business attire are gathered around a table, looking at documents. In the center, a large white wind turbine stands against a dark blue background. To the right, there is a satellite dish and a staircase. The text "Professional Liability" is overlaid in white, sans-serif font.

## Professional Liability

The defense of professionals accused of negligence or other wrongdoing has always been a significant portion of the RMKB practice. Claims of errors or omissions against professionals present unique challenges requiring sensitivity to the effect on their reputation as well as awareness of issues such as consent clauses and the reduction of available insurance coverage by payment of defense costs that are usually involved in these types of coverages. It requires specialized knowledge in the business of the various professionals.

### **Accountants**

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RMKB has experience in representing accountants in a wide variety of matters. A partner in the New York office has more than ten years' experience in representing accountants in complex malpractice matters such as litigation arising out of the limited partnership/tax shelters of the 1980's, and representation of accounting firms of all sizes in litigation arising out of their work as accountants and auditors of both publicly and privately owned and non-profit companies. This partner has also lectured to many accounting firms on a variety of issues, including securities issues under the Private Securities Litigation Reform Act of 1995 and the potential liability of accountants and auditors in securities matters.

### **Directors & Officers**

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We have defended corporate director/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.

### **Healthcare Professionals**

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RMKB's attorneys represent many of the largest public, private and teaching hospitals in the state, as well as health care providers of all kinds including physicians, nurses, podiatrists, dentists, psychologists, psychiatrists and pharmacists.

Our defense work includes a large number of cases involving brain and spinal cord injuries resulting in quadriplegia, paraplegia, or death. We have also handled many AIDS-related cases, including the defense of a hospital accused of negligence by an employee who became infected by a needle-stick. In the latter case, we won a landmark decision holding that privilege in peer-review committees is applicable to hospital employees as well as to patients.

We have defended health care professionals against homicide charges, in matters involving staff privileges, and in BMQA investigations. And we are as experienced in hospital and regulatory arbitration hearings as in the courtroom.

The field of health care has undergone tremendous change in the past few years with the advent of managed care. We currently represent some large HMO's and partners in this group are well versed in analyzing the potential liability created by the new managed care entities.

### **Insurance Agents and Brokers**

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RMKB regularly represents insurance agents who are sued for professional negligence, breach of fiduciary duties, misrepresentation, and other torts, whether those agents are involved in property/casualty insurance, life and health insurance, employee benefit plans, or financial planning. Examples of this representation include the defense of an insurance broker on allegations of issuing the wrong type of surety bond in a case involving several waste water treatment plants and a Class I waste disposal site in Santa Barbara County. The underlying matter involved 482 plaintiffs and many millions of dollars in claimed damages. This matter was resolved with our client paying a nominal amount toward a global settlement.

### **Lawyers**

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We have defended hundreds of lawyers in allegations of legal malpractice and/or breaches of fiduciary duty. We were primary counsel to the insurer who wrote coverage for the California State Bar and have represented many of the major legal malpractice insurers.

We have defended lawyers in a wide variety of malpractice claims including those arising out of

claims of inadequate criminal representation, breaches of fiduciary duty in failing to disclose certain conflicts of interest, claims of malicious prosecution and abuse of process, claims arising out of estate planning and family law representation, claims alleging substandard representation by bankruptcy and real estate counsel and allegations of security fraud.

### Other Professionals

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In addition to the foregoing, partners in this practice group have experience in defending architects and engineers, securities broker-dealers, homeowners associations, private investigators, and claims professionals.

### Real Estate Agents and Brokers

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We defend a variety of professionals engaged in the real estate industry, including residential and commercial brokers and agents, title companies, escrow agents, appraisers, and mortgage brokers. We receive business not only from many of the professional liability companies who write real estate E&O lines, but also directly from real estate professionals.

### Representative Experience

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**Attorneys:** John A. Koepfel

**Key Issues:** Personal Injury; Construction

**Venue:** Santa Clara County Superior Court; Unlimited Jurisdiction

**Client Type:** Defendant Manufacturer

**Description:** Defended a manufacturer in a case involving a permanent brain injury to a 40-year old chemical engineer who was working on site, at our client's plant, to install a new food processing line. The plaintiff fell approximately 10 feet to a concrete floor, striking his head. The plaintiffs included the victim, his employer and the employer's workers compensation carrier. The plaintiff also sued the steel fabricator responsible for the construction of the platform. To prepare for the trial, safety, economic and medical experts were retained. In addition, a mediator began to meet with the defendants at regular intervals to monitor the process of discovery, analyze prospective settlement negotiations and ensure the proper scheduling of a trial.

**Result:** Our client paid 20% of a multi-million settlement.

**Attorneys:** John A. Koepfel

**Key Issues:** Breach of Contract

**Venue:** Judicial Arbitration & Mediation Services

**Client Type:** Defendant Provider of Telephone, Cable Television and High Speed Internet Service

**Description:** Defended a provider of telephone, cable television and high speed internet services in a commercial litigation action involving an alleged breach of contract that provided for the construction of a broad band telecommunications network in the Bay Area. Counsel for the parties met to agree on mediation issues, and then participated in extended negotiations during mediation. Upon failure to resolve the case at mediation, counsel negotiated strict limits to discovery, briefing and arbitration time. This action went to binding arbitration over a two week period.

**Result:** The award was 80% less than the contractor's last settlement demand.

**Attorneys:** Michael T. Ohira

**Key Issues:** Disability Insurance; Agent

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Insurance Agent

**Description:** The plaintiff purchased two disability policies from two different insurance providers. She later stopped working and became a housewife. The disability insurance agent told her that the policies still provided her with coverage and urged her to continue paying premiums. The plaintiff later became ill and was unable to function as a homemaker. She made two insurance claims and both were denied by the insurers because the policies did not cover homemakers. The plaintiff sued the agent and the insurers alleging negligence, breach of oral contract and fraud. The agent acknowledged making the incorrect representations. The damage exposure was estimated to be as high as \$800,000.

**Result:** The claims against the agent were resolved for \$20,000, considerably less than the projected damages for the case.

**Attorneys:** Michael T. Ohira

**Key Issues:** Life Insurance; Agent; Estate Planning

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Insurance Agent

**Description:** Defended an insurance agent in an action alleging fraud arising from the sale of a flexible premium life insurance policy with a \$60 million death benefit. The policy was purchased as part of a sophisticated tax shelter program known as a family "split dollar" arrangement. Our client was accused of "back dating" the life insurance policy, misrepresenting the policy "illustrations", selling insurance in Alaska without a license and altering an insurance application. The plaintiffs were represented by a law firm from New York.

**Result:** The case settled on the courtroom steps for \$25,000. The settlement demand three months before trial had been \$3 million.

**Attorneys:** Michael T. Ohira

**Key Issues:** Life Insurance; Agent; Premium Financing

**Venue:** USDC: Central District of California; Los Angeles County Superior Court

**Client Type:** Defendant Insurance Agent

**Description:** Represented the defendant, an insurance agent, in an action alleging fraud, rescission and unfair business practices. The litigation arose out of the sale of 8 life insurance policies, with death benefits totaling \$50 million, to a number of former professional basketball players. The agent was accused of misrepresenting the amount required in premiums needed to allow sufficient cash value to pay off within 10 years the interest-only loans taken out by the insureds to finance the policies. The agent coined the program "Capital Maximization Strategy." The case was litigated for over a year. After a successful motion to dismiss, the case was re-filed pursuant to 28 USC §1367(a), in Los Angeles Superior Court.

**Result:** The plaintiffs' demand dropped from \$20 million, to \$6 million, and to \$1 million before being settled for \$700,000 as to our client (a 96% reduction of the original demand).

**Attorneys:** Stephen J. Erigero

**Key Issues:** Real Estate Litigation

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Real Estate Broker

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

**Result:** The case settled for a confidential amount.

**Attorneys:** Stephen J. Erigero

**Key Issues:** Insurance Agents Errors and Omissions

**Venue:** Los Angeles County Superior Court

**Client Type:** Defendant Insurance Agent

**Description:** The plaintiffs, individual doctors and members of a medical group, brought suit against their insurance carrier and their insurance broker alleging that the broker failed to timely procure medical malpractice coverage causing the medical group to shut down causing the medical group to enter into a merger on unfavorable terms in order to continue in practice and meet the requirements of HMO contracts.

**Result:** We settled the litigation for a confidential amount.

**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

**Description:** 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, we 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 affirmed the judgment in favor of clients.

**Attorneys:** Stephen J. Erigero

**Key Issues:** Architects; Construction; Design

**Venue:** Los Angeles Superior Court

**Client Type:** Defendant Residential Home Architect/Designer

**Description:** Defended a home architect/designer in an action for construction defects at a multi million dollar single family residence. We represented the architect that designed the residence. Issues included the vicarious liability of the architect for the structural engineering and the errors of the framing contractor and general contractor in failing to build to the approved plans and specs. The architect was alleged to be responsible for the failure of others including city inspectors to note the failure to construct to the approved design drawings.

**Result:** The case settled for a confidential amount, with the insurer paying the settlement, waiving the deductible and paying additional amounts to settle the insurance coverage action prosecuted by different counsel.

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

**Key Issues:** Insurance Services; Coverage and Monitoring Counsel to Facultative Reinsurer

**Client Type:** Reinsurer

**Description:** Under the terms of regulatory settlements made with the SEC and a Canadian regulatory agency, the target company insured by our client's reinsured agreed to pay certain penalties and additional monies. Specifically, a Canadian subsidiary of the target agreed to pay the agreed-upon amounts in Canada. The regulatory settlement contained no express prohibition against the target company seeking to recoup the settlement payment from insurance.

**Result:** Successfully undertook the necessary legal analysis under Canadian law which demonstrated to our client's reinsured and the target why the payments were outside the scope of our re-insured's policy to the target.

**Attorneys:** Julian Pardo de Zela

**Key Issues:** Malicious Prosecution; Legal Malpractice

**Venue:** California Court of Appeals

**Client Type:** Defendant Law Firm

**Description:** Represented an attorney sued for malicious prosecution.

**Result:** Successfully appealed the court's order denying the Firm's special motion to strike, pursuant to C.C.P. section 42516.

**Attorneys:** Julian Pardo de Zela

**Key Issues:** Legal Malpractice; Breach of Fiduciary Duty

**Venue:** California Court of Appeals

**Client Type:** Defendant Law Firm

**Description:** Represented an attorney sued for legal malpractice and breach of fiduciary duty.

**Result:** Successfully brought a special motion to strike, thereby disposing of four other causes of action against our client.

**Attorneys:** Julian Pardo de Zela

**Key Issues:** Malicious Prosecution; Legal Malpractice

**Venue:** California Court of Appeals

**Client Type:** Defendant Law Firm

**Description:** Successfully appealed an order denying a purchaser and a law firm's special motion to strike a complaint for malicious prosecution in a case alleging fraud and breach of contract in a property sale.

**Result:** Attorney's fees of \$30K+ were awarded to our clients.

**Attorneys:** John A. Koepfel

**Key Issues:** Construction Defect; Real Estate; Fraud; Conspiracy; Professional Liability; Architects

**Venue:** Sonoma County Superior Court

**Client Type:** Defendant Architect Consultant

**Description:** A real estate developer developed a 108 unit apartment complex and sold it to a real estate investment company, Company A. The real estate investment company hired our architectural consultant client to perform a due diligence inspection and report. Within two years, real estate investment Company A sold the apartment complex to real estate investment Company B. Plaintiff, real estate investment Company B sued the developer, the original general contractor and subcontractors, real estate investment Company A as seller and our architectural consultant client for construction defects, negligence, breach of contract and fraud and conspiracy.

**Result:** The case was settled for a fraction of the plaintiff's original demand.

**Attorneys:** John G. Dooling

**Key Issues:** Professional Negligence

**Venue:** Alameda County Superior Court

**Client Type:** Real Estate Broker and its agent

**Description:** Represented a real estate broker and its agent in a professional negligence action filed by the buyers of a high end home in the East Bay. The agent double-ended the transaction. The case involved allegations of negligence, misrepresentation and concealment.

**Result:** The case settled for nominal amount at a mandatory settlement conference.

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

**Key Issues:** Coverage

**Venue:** Superior Court of Arizona, Maricopa County



**Client Type:** Non-Party Insurance Syndicate

**Description:** Frank Selna, an employee of the insured, devised a Ponzi scheme to defraud over 25 investors out of millions of dollars by recommending that they invest in fictitious investment vehicles. These investors filed suit against a number of defendants, including the insured, alleging various causes of action including fraud, conversion and negligent misrepresentation. Based on our review of the allegations in the complaint, we recommended that the client issue a comprehensive reservation of rights letter to the insured noting that Insuring Agreement A - Fidelity, of the applicable policy, was potentially implicated. The reservation of rights letter also stated that certain exclusions were applicable that would limit the amount of Loss subject to coverage.

**Result:** On behalf of the insurer and in a coordinated effort with the insured, we participated in a mediation in which a "global" settlement between the parties was effectuated and also successfully saved the client over 80% of the available limits of liability.

**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:** Defendant Directors of a Privately Held Company

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

**Key Issues:** Enron; Initial Public Offering

**Venue:** Circuit Court for Baltimore City, Maryland

**Client Type:** Defendant Insurance Company

**Description:** In 2008, an international investment bank filed suit against numerous insurance companies in the Circuit Court of Baltimore City, Maryland, including our client, seeking a declaration that it was entitled to over \$500 million of insurance coverage for defense costs and settlement proceeds incurred in connection with numerous underlying litigations in the following claims: (1) Exchange Fund claims; (2) Enron claims; (3) Tax claims; (4) Boston Chicken claims; and (5) Initial Public Offering claims. In connection with each "group" of claims, the bank asserted the following three causes of action against the insurer defendants: (1) breach of fiduciary duty to pay defense costs; (2) breach of duty to pay settlements; and (3) declaratory relief regarding defendants' duty to pay losses. Our client subscribed to an excess layer multi-line blended Financial Institution



Professional Indemnity insurance policy issued to an insured that was later acquired by the investment bank.

**Result:** After several years of litigation, the parties agreed to mediate the dispute two weeks before trial was scheduled to begin. During that mediation, the parties agreed to a negotiated confidential settlement that resulted in our client saving over 90% of its available limits of liability.

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

**Key Issues:** Fiduciary Duty; Trust

**Venue:** Superior Court of California, County of Santa Clara

**Client Type:** Defendant Semiconductor Company and Trustee

**Description:** Represented the defendants, a semiconductor company and trustee, in a claim for breach of fiduciary duty regarding trusts and trust administration.

**Result:** The claims against both of the defendants in the matter were defeated by summary judgment, resulting in a complete defense of the case.

**Attorneys:** John G. Dooling

**Key Issues:** Non-Disclosure; Professional Negligence; Construction Defect

**Venue:** JAMS San Francisco, CA

**Client Type:** Defendant Testing & Inspection Firm

**Description:** Defended a testing and inspection firm in an action for non-disclosure and construction defect. Our client provided periodic special inspection and testing on an extensive re-model of a \$6.5 million home in the Pacific Heights neighborhood of San Francisco.

**Result:** A favorable result was reached at mediation before Bruce Edwards of JAMS.

**Attorneys:** Andrew L. Margulis, Jung H. Park

**Key Issues:** Legal Malpractice Defense

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

**Client Type:** Defendant Law Firm

**Description:** Defended a law firm that represented the plaintiff in an underlying medical malpractice action. The trial resulted in a defense verdict and the client sued the law firm for malpractice.

**Result:** At the close of evidence on the plaintiff's case and after the plaintiff rested, we moved for a directed verdict dismissing the action. The court granted the motion and directed a verdict in favor of our client, the defendant law firm.

**Attorneys:** Andrew L. Margulis

**Key Issues:** Attorney malpractice; patent

**Venue:** US District Court, Eastern District of NY

**Client Type:** Third Party Defendant Law Firm/Lawyer

**Description:** Legal malpractice case arising out of a patent application. Plaintiff invented a video game involving targeted in-game advertising and sought patent protection. Patent application was prepared and filed. Plaintiffs alleged that defendant lawyers/law firm made errors in preparing the patent application and failed to follow through with prosecution of the patent application on a timely basis thereby forfeiting plaintiffs' patent rights in their invention. Plaintiffs sought \$150-200 Million as damages consisting of lost royalties and licensing opportunities for the patent they would have obtained.

**Result:** After nearly a three week jury trial, we moved for a directed verdict following the defendants' case in chief. Immediately prior to the court's ruling on our motion and before the case being delivered to the jury, the defendants withdrew their claims against our clients with no consideration or any amounts being paid to defendants on behalf of our clients.

**Attorneys:** John G. Dooling

**Key Issues:** Secured Lending, Usury, Promissory Note, Security Agreement, U.C.C., Malpractice

**Venue:** County of San Francisco Superior Court

**Client Type:** Defendant private lender

**Description:** Represented limited partnership, managing general partner (a limited liability company), and the managing member of the limited liability company in action by plaintiff lender to recover on a promissory note. Tried defendants' rescission defense to the court and prevailed, resulting in no personal liability for the managing member and plaintiff abandoning his claims against the other defendants through settlement. Plaintiff lender had also been the defendants' attorney in several prior lawsuits.

**Result:** A defense verdict on our affirmative defense for rescission of the promissory note and security agreement, resulting in a settlement in which plaintiff abandoned his remaining claims.

**Attorneys:** Pascale Gagnon, Susan H. Handelman

**Key Issues:** Primary Right, Statute of Limitations, Legal Malpractice

**Venue:** Santa Barbara County, Anacapa

**Client Type:** Attorney and Law Firm

**Description:** Plaintiff sued the attorneys having represented her in workers' compensation matters with her past employee for legal malpractice, amongst others. She contended that they had not secured her the best settlement possible and had agreed to terms with regard to the handling of the settlement funds (trust) that were not in her best interest and leading to her not having free access to the settlement funds -- which were not proper compensation.

**Result:** The action was dismissed at the pleading stage - following three demurrers based on the primary right doctrine applied in relation to the statute of limitation defense. Plaintiff appealed the dismissal and the appeal affirmed the trial court's decision.