
JUNE 26, 2017

AGENDA ITEM 5
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Resolution No. 2017-04: Resolution of the California Secure Choice Retirement Savings Investment Board Relating to the Approval to Amend Agreement CSCRSIB02-14 with K&L Gates, LLP for Legal Services

Background

Agreement CSCRSIB02-14 (“Agreement”) between the California Secure Choice Retirement Savings Investment Board (“Board”) and K&L Gates, LLP for legal services was executed to identify and advise on legal issues regarding the development and implementation of the California Secure Choice Retirement Savings Program (“Secure Choice” or “the Program”).

The Board will require continued legal advice necessary to ensure Secure Choice will comply with federal and state law as Secure Choice staff and the Board begin to develop and implement the Program. Due to the need for continued legal advice, Secure Choice staff recommends the Board authorize the Executive Director to execute an amendment to the Agreement to extend the term from June 30, 2017 to March 31, 2018, increase the maximum amount of the Agreement from \$510,000 to \$710,000, and include three additional attorneys in the Agreement to allow K&L Gates, LLP sufficient time and resources to continue to provide necessary legal services.

Staff Recommendation

Secure Choice staff recommends the Board approve Resolution No. 2017-04 of the California Secure Choice Retirement Savings Investment Board relating to the approval to amend agreement CSCRSIB02-14 with K&L Gates, LLP for legal services.

Attachments

- Attachment #1: Resolution No. 2017-04
- Attachment #2: Contract amendment documents (STD 213A, Attachment B.1 – Rates, and attorney resumes)

RESOLUTION NO. 2017-04

RESOLUTION OF THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD RELATING TO THE APPROVAL TO AMEND AGREEMENT CSCRSIB02-14 FOR LEGAL SERVICES

WHEREAS, the California Secure Choice Retirement Savings Investment Board (the “Board”) is established under Senate Bill (SB) 1234 and SB 923 (Chapters 734 and 737, 2012; codified under Government Code section 100000 et seq.) and was mandated to conduct a market analysis and feasibility study to determine whether the necessary conditions for implementation of the California Secure Choice Retirement Savings Trust Act (the “Act”) can be met, provided that the Board shall conduct the market analysis and feasibility study only if sufficient funds to initiate and complete the required market analysis and feasibility study are made available through a nonprofit or private entity, or from federal funding;

WHEREAS, Government Code section 100043 provides that the Board shall not implement the California Secure Choice Retirement Savings Program (the “Program”) if the Individual Retirement Account or Individual Retirement Annuity (collectively “IRA”) arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the Program is an employee benefit plan under the federal Employee Retirement Income Security Act;

WHEREAS, the Board deemed it necessary to contract with a law firm to provide the Board with legal services to satisfy the statutory provisions and advise on legal issues regarding the market analysis and feasibility study and thus entered into Agreement No. CSCRSIB02-14 (the “Agreement”) with K&L Gates, LLP for the necessary legal services;

WHEREAS, it is necessary for the Board to engage with the federal regulatory agencies and continue to provide legal analysis and advice to the Board to determine whether the necessary conditions for implementation of the Act can be met; and

WHEREAS, an amendment to the Agreement is necessary to increase the maximum amount of the Agreement, extend the term, and include three additional K&L Gates, LLP attorneys to allow K&L Gates, LLP to continue to provide legal services for the Board;

NOW, THEREFORE, BE IT RESOLVED that the Executive Director, or in his or her absence, the Deputy Executive Director, is hereby directed and authorized to prepare and take whatever steps necessary to execute an amendment to the Agreement to increase the maximum amount of the Agreement from \$510,000 to \$710,000, extend the term to March 31, 2018, and include three additional attorneys.

Attest: _____
Chairperson

Date of Adoption: _____

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 11 Pages

AGREEMENT NUMBER CSCRSIB02-14	AMENDMENT NUMBER 9
REGISTRATION NUMBER	

- This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
California Secure Choice Retirement Savings Investment Board
CONTRACTOR'S NAME
K&L Gates, LLP
- The term of this Agreement is 2/20/15 through 3/31/18
- The maximum amount of this Agreement after this amendment is: **\$710,000.00**
Seven Hundred Ten Thousand Dollars and Zero Cents

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:



The maximum amount of this Agreement is increased by \$200,000, for a total maximum amount of \$710,000.

Attachment B.1 - Rates is revised to add three (3) additional attorneys, as attached hereto (1 page).

Resumes of the three (3) additional attorneys are attached hereto (10 pages).

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i> K&L Gates, LLP		
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING William P. Wade, Partner		
ADDRESS 10100 Santa Monica Blvd., 7th Floor Los Angeles, CA 90067		
STATE OF CALIFORNIA		
AGENCY NAME California Secure Choice Retirement Savings Investment Board		<input type="checkbox"/> Exempt per:
BY <i>(Authorized Signature)</i> 	DATE SIGNED <i>(Do not type)</i>	
PRINTED NAME AND TITLE OF PERSON SIGNING Katie Selenski, Executive Director		
ADDRESS 915 Capitol Mall, Rm. 435, Sacramento, CA 95814		

Attachment B.1 – Rates (**Revised**)

William A. Schmidt (Partner)	\$892	James D. Gallagher (Associate)	\$323
David E. Morse (Partner)	\$675	Michael D. Davalla (Associate)	\$319
Susan I. Gault-Brown (Partner)	\$625	Matthew J. Rogers (Associate)	\$306
Michael A. Hart (Partner)	\$637	Gwendolyn A. Kelly (Associate)	\$318
William P. Wade (Partner)	\$760	Katherine M. Morton (Associate)	\$289
Trayne S. Wheeler (Partner)	\$637	Rikki A. Sapolich (Associate)	\$476
Andras P. Teleki (Partner)	\$616	Kristina M. Zanotti (Associate)	\$488
Diane E. Ambler (Partner)	\$786	Ruth E. Delaney (Associate)	\$408
C. Dirk Peterson (Partner)	\$735	Steven B. Levine (Associate)	\$323
Eric S. Purple (Partner)	\$659	<u>Theodore J. Angelis (Partner)</u>	<u>\$630</u>
<u>Gerald A. Novack (Partner)</u>	<u>\$630</u>	<u>Lorraine Massaro (Partner)</u>	<u>\$775</u>

DESCRIPTION OF CHARGE =====	STANDARD CHARGE =====	UNIT BASIS =====
Photocopying/Image Printing	\$0.20	Each copy
Color Copying/Printing	\$1.00	Each copy
CD Burning	\$25.00	Per CD

Legal Research: The Contractor pays for Lexis and Westlaw under monthly fixed fee contracts. The actual, monthly fixed fee is allocated to all users of the database each month, and client charges for such usage are directly proportional to the actual research conducted on their behalf.

Contractor will be reimbursed for out-of-pocket costs directly attributable to the work performed under the Agreement, such as courier costs (Federal Express, UPS, etc.) and long distance telephone calls. All costs will be itemized on the invoice.



Theodore J. Angelis

OVERVIEW

Theo Angelis is an intellectual property and appellate litigator who appears in trial and appellate courts, in administrative tribunals, and in arbitration proceedings throughout the United States.

Mr. Angelis' unique experience—as an intellectual property litigator who co-chaired the firm's appellate practice and has an active appellate practice—allows him to craft and present especially persuasive and compelling arguments. He also provides clear and strategic advice to clients facing unsettled or complex legal issues, and he assists them in efficiently solving problems and minimizing risk.

Mr. Angelis has litigated patent and other IP matters before the U.S. District Courts in California, Delaware, Illinois, Louisiana, Minnesota, New York, Oregon, Nevada, New Jersey, Pennsylvania, Texas, and Washington, as well as the Patent Trial and Appeal Board and International Trade Commission. Mr. Angelis' appellate practice focuses primarily on the Federal and Ninth Circuits, as well as the D.C. Circuit, where Mr. Angelis served as a law clerk. Mr. Angelis also regularly handles appeals in state appellate courts.

Mr. Angelis has received numerous awards and honors. He is listed in the *Best Lawyers in America* and as a *Washington Super Lawyer*, and he recently was recognized by the King County Bar Association as Mentor of the Year. Earlier in his career, the King County Bar Association named him Outstanding Young Lawyer. Mr. Angelis served as the editor of the *Washington Lawyer's Practice Manual* for many years, and while in law school served as articles editor for the *Yale Law Journal* and managing editor of the *Yale Law & Policy Review*.

Mr. Angelis is a frequent speaker and presenter on strategic litigation issues, not only related to patent and IP litigation but also legal ethics, privacy for electronic communications, internal investigations, developments in Internet law, and effective litigation strategies.

PROFESSIONAL BACKGROUND

- Clerkship, Hon. Stephen F. Williams, U.S. Court of Appeals for the District of Columbia Circuit, 1999-2000

PUBLICATIONS

- The Federal Circuit Affirms the Patent Trial and Appeal Board's Invalidation of All Claims of a Gilenya® Patent, IP Litigation Alert, 22 May 2017
- *Sandoz v. Amgen*—Biosimilars at the Supreme Court—Oral Argument Intellectual Property Alert, 28 April 2017
- To the Federal Circuit, Some PTAB Petitioners Have No Appeal Whatsoever, Pharma and BioPharma Litigation Alert, 27 January 2017
- Remicade® Update: Double Patenting Redoubles in Post-Gilead Biosimilar Case, IP Litigation Alert, 20 September 2016
- Humira® Update: Big Guns Take Aim at Top-Selling Biologic, IP Litigation Alert, 19 August 2016
- ANDA Filing May Subject a Pharmaceutical Company to Personal Jurisdiction in Patent Infringement Suits Anywhere in the U.S., IP Litigation Alert, 6 June 2016
- Federal Circuit Holds That an Offer to Sell a Drug Product Was a Patent-Invalidating Offer for Sale under Pre-AIA § 102(b) Even Though the Offer Lacked "Safety and Liability Terms", IP Litigation Alert, 1 June 2016
- What You Need to Know About the Recent Federal Circuit Rule Changes, IP Litigation

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PRIMARY PRACTICE

- IP Litigation

SECONDARY PRACTICES

- Appellate Litigation
- Complex Commercial Litigation and Disputes
- Energy
- Indian Law (North America)
- Interactive Entertainment
- Oil & Gas
- Payment Systems
- Pharma and BioPharma Litigation

Alert, 29 April 2016

- Critical Briefing: Cyber Threats, Crimes, and Security, K&L Gates Webinar, 11 June 2013
- Internet and Technology Law – Practical Guidance for the Washington Practitioner, 2012
- Indian Law, Washington Lawyers Practice Manual, 2012
- Rule 11, Washington Civil Procedure Deskbook, 2007
- Investing Public Money in Private Markets: What are the Right Questions?, Framing The Social Security Debate: Values, Economics, & Politics (Douglas Arnold, Michael Graetz, & Alicia Munnell, eds., 1999), 1999

PROFESSIONAL/CIVIC ACTIVITIES

- Co-Chair, IP Litigation Committee of the Federal Bar Association of the Western District of Washington.
- Chair, King County Bar Association Fair Campaign Practices Committee
- Member, King County Bar Association's Leadership Committee
- Member, Attorney General's Task Force on Unaccompanied Children
- Leadership Tomorrow, Class of 2008

ADMISSIONS

- Bar of Washington
- Supreme Court of the United States
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Eastern District of Washington
- United States District Court for the Western District of Washington

EDUCATION

- J.D., Yale Law School, 1999, Articles Editor *Yale Law Journal*, Managing Editor *Yale Law & Policy Review* Thomas Tang National Moot Court Competition, Best Oralist
- M.Sc., University of Oxford, 1996, Comparative Social Research, Marshall Scholar
- M.Sc., London School of Economics and Political Science, 1995, (economics) Public Policy, Marshall Scholar
- B.A., Claremont McKenna College, 1994, *summa cum laude* (government/psychology), Phi Beta Kappa, Student Body President

ACHIEVEMENTS

- Listed in *Best Lawyers in America* (Since 2013)
- Listed in *Washington Super Lawyers* (Since 2014)
- Citizen of the Year (2016) by St. Demetrios Greek Orthodox Church
- King County Bar Association Mentor of the Year (2012)
- King County Bar Association's Outstanding Young Lawyer (2006)
- Recipient of NWIRP Amicus Award (2011) (awarded to *Castillo* litigation team)
- Selected to the Washington Rising Stars List (2004-2009, 2011, 2012)

REPRESENTATIVE EXPERIENCE

Select Patent litigation

- *Cooper v. Square, Inc.* (N.D. Ill., PTAB, Fed. Cir., and S. Ct.). Theo served as lead counsel for Square in proceedings before the District Court, Federal Circuit, and U.S. Supreme Court, in a case involving mobile payment technology. He also assisted with proceedings before the PTAB. Theo obtained a stay of the district court proceedings pending resolution of the PTAB's ruling, and after the PTAB invalidated all of the asserted claims, Theo successfully defended that ruling on appeal before the Federal Circuit. Theo subsequently convinced the Supreme Court to deny certiorari after it took the unusual step of ordering Square to respond to Cooper's cert. petition.
- *Unwired Planet v. Square* (D. Nev. and PTAB). Theo served as Square's lead counsel before the U.S. District Court and as co-counsel at the PTAB in a case involving location based technology and wireless network infrastructure. After discovery and *Markman*, Theo obtained a stay of the District Court proceedings pending completion of the pending PTAB proceedings. Theo argued for Square before the PTAB and obtained an order invalidating all asserted claims. Theo then served as appellate counsel at the Federal Circuit until Unwired Planet abandoned its appeals.
- *Intellicheck Mobilisa, Inc. v. Wizz Systems LLC* (W.D. Wash.). Theo served as lead counsel for plaintiff in a case involving mobile document authentication technology. Theo obtained a favorable *Markman* ruling.
- *Lexos Media IP, LLC v. Recreational Equipment, Inc.* (E.D. Tex.). Theo served as REI's lead counsel before the U.S. District Court in a case involving ecommerce technology.
- *Genaville LLC v. Recreational Equipment, Inc. et al.* (E.D. Tex.). Theo served as lead counsel for REI in a case involving ecommerce technology.
- *Coqui v. Nordstrom, Target, and Cabela's* (E.D. Tex.). Theo served as lead counsel for Nordstrom, Cabela's, and Target in a case involving electronic gift card technology deployed using mobile devices.
- *Cequint Inc. v. Apple, Inc.* (D. Del.). Theo represented Cequint Inc. in asserting claims against Apple, Inc. for infringement of two patents related to Caller ID and wireless infrastructure technology.
- *Carnegie Mellon University v. Marvell* (W.D. Pa.). Theo was part of the team representing Carnegie Mellon University before the U.S. District Court. The team obtained a trial verdict of \$1.17 billion, and the matter subsequently settled for payment of \$750 million. Theo managed all briefing and motions practice during the trial.
- *Eastman Kodak Co. v. Apple Inc. and Research in Motion* (U.S.I.T.C.), (N.D. Tex.), and (W.D.N.Y.). Theo represented Eastman Kodak Company in asserting claims against Apple, Inc. and Research In Motion (RIM) involving Kodak's digital capture patents.

Additional Appellate Experience

- *Panagacos v. Towery* (9th Cir.) – Theo represents Army Force Protection Chief Tom Rudd in a *Bivens* action brought by protesters. He obtained dismissal of the majority of protesters' claims during the initial appeal, and he obtained dismissal of the other claims on summary judgment after remand.
- *Marina Homeowners Association v. The Stratford At The Marina, LLC* (Wash. Ct. App. Div. I). Theo successfully overturned \$2 million judgment entered against client—while represented by other counsel—under the Washington CPA, Washington Condominium Act, and various common law causes of action.
- *Castillo v. Skwarski et al.* (9th Cir. and W.D. Wash.). Theo represented plaintiff in successful *Bivens* action against Department of Homeland Security ("DHS"). The case was settled by the Ninth Circuit Mediator while the government's appeal was pending. The settlement included a large monetary payment and written apology, as well as a prior commitment to alter DHS practices. The settlement led Northwest Immigrants Rights Project to award K&L Gates its Amicus Award for 2011, and the case was featured at the

National Hispanic Bar Association's annual meeting.

- *United States v. Philip Morris USA, Inc.* (D.C. Circuit). Theo represented a major investment bank in analyzing the United States' RICO action against all major tobacco companies. Successfully predicted outcome of interlocutory appeal on unsettled RICO remedies issue.
- *Microsoft Corp. v. Synergy6 et al.* (Wash. Ct. App Div. I). Theo successfully defeated numerous attempts to obtain interlocutory review of trial court rulings regarding personal jurisdiction, constitutional limits on statutory damages, and discovery rulings. The case ultimately settled for a \$7 million dollar payment to Microsoft, which was the largest payment every in an anti-spam case.
- *State v. Athan* (Wash. Supreme Court). Represented Washington State Bar Association as *amicus curiae* arguing that police should not be allowed to pose as a suspect's lawyer to gather incriminating evidence.
- *Smith v. Behr Process Corp.* (Wash. Ct. App. Div. II). Represented Behr Process Corporation, as newly appearing appellate counsel, seeking to overturn a default judgment entered as a discovery sanction.
- *Pro bono appeals*. Regular supervision and participation in pro bono appeals, primarily in the U.S. Court of Appeals for the Ninth Circuit.

Other Constitutional and Governmental Litigation and Advice

- *JEFM v. Lynch* (W.D. Wash.). Represented a class of unaccompanied minors who entered the United States as children and not assigned counsel to represent themselves in Immigration Court. The class brought Due Process and statutory claims. The case is pending before the Ninth Circuit on the government's challenge to the District Court's jurisdiction to hear the children's challenge.
- *Microsoft v. Synerg6, Inc. et al.* (King County Super. Ct.). Successfully defended Microsoft against defamation claims arising from statements made during joint press conference held by New York Attorney General Eliot Spitzer and Microsoft General Counsel.
- *Sanders v. City of Seattle* (King County Super. Ct.). Successfully represented Westlake Center and defeated argument that Seattle Monorail's public easement through Westlake Center was a public forum.
- *Vanmoor v. Alexa Internet* (D.D.C.). Defeated defamation claims against Amazon.com's Alexa Internet service.
- *Skagit County v. Samish and Swinomish Tribes* (Interior Board of Indian Appeals). Represented Skagit County in complex land use litigation related to development of lands that tribes sought to convert from fee status to Federal Trust land.
- *C-Tran*. Represented public transit authority in developing policies for non-commercial advertising on buses and other public transportation.
- *City of Blaine*. Represented City in resolving claims related to exhumation of native remains during construction of sewage treatment plan on Semiahmoo.

Intellectual Property Litigation and Advice

Theo focuses a substantial portion of his practice on intellectual property litigation, with a special emphasis on cyber and technology law. Mr. Angelis not only represents clients in high profile litigation involving patent, trademark, and copyright infringement, but also provides counseling regarding emerging issues and unsettled legal issues, and pending legislation. Mr. Angelis provides guidance on all manner of cyberlaw issues and the use and misuse of intellectual property online. Topics of recent consultations include: agreements and policies related to cloud computing services; possible causes of action against sophisticated hackers; privacy for digital communications, and domain cybersquatting. Mr. Angelis has also worked with federal, state, and international governmental agencies in the battle against internet misconduct. He speaks frequently on emerging trends in internet law and challenges inherent

in seeking to protect computer systems and intellectual property. Representative engagements include:

Internet and Cyber Law

- Represented major cloud computing provider in analysis of key policies and agreements related to cloud services.
- Represented Microsoft Corporation in nationwide Internet safety and security litigation efforts, including extensive litigation in anti-spam, anti-phishing, anti-spyware, child protection, and related enforcement efforts.
- *Doe v. Project Fair Bid, Inc.* (W.D. Wash. 2011). Served as lead counsel for venture capital funds sued in nationwide class action arising from investments in penny auction website.
- Represented anti-spyware software developer—in litigation and disputes in both Europe and the United States—against charges that its software had malicious features.
- Advised major wireless carrier regarding issues related to wireless updates of software.
- Advised major smart phone manufacturer in questions related to its social networking.



Lorraine Massaro

OVERVIEW

Ms. Massaro has been engaged in the practice of corporate and finance law since 1977. She has extensive transactional experience in a wide spectrum of sophisticated corporate finance matters, including cross-border transactions; trade receivable and mortgage-backed securitizations; asset-based lending; senior, mezzanine and subordinated debt securities and loans; preferred securities of numerous different structures; mergers and acquisitions; venture capital; joint ventures and strategic alliances; exchange offers; recapitalizations; consensual restructurings of public debt; secured and unsecured syndicated loans; distressed debt and loan trading; energy project financings; off-balance sheet structured financings and other debt and equity financings in the domestic and international, public and private markets; as well as global and domestic, SEC-registered offerings; Regulation S offerings; and Rule 144A and other private securities offerings by U.S. and foreign issuers.

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PRIMARY PRACTICE

- Banking & Asset Finance

SECONDARY PRACTICES

- Capital Markets
- Corporate Debt Securities
- Corporate, Acquisition and Asset-Based Finance
- Corporate/M&A
- Debt Capital Markets
- Derivatives & Structured Products
- Energy & Infrastructure Projects and Transactions
- FinTech
- Marketplace Lending
- Private Equity
- Project Finance
- Securitization and Structured Finance
- Telecom, Media and Technology

Ms. Massaro worked with investment bank financial institution clients during the initial creation of the securitization of private label mortgage loans, which devolved into the securitization of numerous other asset classes and structures in her practice which are commonly used today. Recently, Ms. Massaro has been heavily engaged in transactions involving standard financings by smaller financial institutions and specialty lenders of solar projects. She has also represented a global financial institution in the use of Solar Renewable Energy Certificates as collateral for a loan. She was a founding member of the project team working with the Department of Energy's National Renewable Energy Laboratory which is an organization charged with the standardization of solar deal documents and related legal and structural issues intended to result in the widespread availability of securitization as a cost-effective financing technique for solar energy and to expedite the entry of traditional commercial bank lenders and other funding sources to the solar energy area.

She regularly represents investment banks, commercial banks, issuers, venture capital investors, institutional lenders and borrowers. In addition, she has worked extensively with public and private (including start-up) companies as general outside counsel, including in respect of governance, securities laws compliance, general corporate housekeeping, disclosure issues, financings and mergers and acquisitions.

PUBLICATIONS

- CFTC Proposes Rules on Swap Execution Facilities Pursuant to Sections 723 and 733 of the Dodd-Frank Act, Derivatives Alert, February 21, 2011
- NY Court of Appeals Affirms that Lender Reliance on Borrower Financial Representations without Independent Due Diligence Not Per Se Unreasonable, Finance Alert, August 20, 2010
- SEC Changes Foreign Private Issuer Registration Exemption, Corporate Alert, December 12, 2008
- Cover from the Storm: Federal Regulators Promote Covered Bonds to Stabilize Capital Markets, Structured Products and Depository Institutions Alert, August 7, 2008
- CSX Ruling Creates Reporting Uncertainty for Equity Derivatives Market, Hedge Funds and Derivatives Alert, June 20, 2008
- Leveraged Buyouts (LBO) - Book 12 in the Encyclopedia of Private Equity and Venture Capital, published by VC Experts, Inc., 2006
- Sarbanes-Oxley Act: Planning & Compliance, November 2005
- SEC Adopts Public Securities Offering Reforms, August 2005

K&L GATES

- SEC Proposes Significant Public Securities Offerings Reforms, Securities Law Commentary, December 2004

PROFESSIONAL/CIVIC ACTIVITIES

- New York Bar Association
- American Bar Association
- New York City Bar Association - Structured Finance Subcommittee

ADMISSIONS

- Bar of New York

EDUCATION

- J.D., Columbia Law School, 1977, (Harlan Fiske Stone Scholar)
- B.S., State University of New York at Stony Brook, 1972, (*magna cum laude*)



Gerald A. Novack

OVERVIEW

Mr. Novack has over 40 years of experience trying a variety of complex matters in the state and federal courts, before the American Arbitration Association and its International Centre for Dispute Resolution, and the American Stock Exchange. In addition, he has argued before numerous state and federal appellate courts. His cases have involved, among other things: the financial services sector; the False Claims Act; the securities and commodities laws; insurance coverage disputes; the oil and gas industry; complex industrial equipment warranty disputes; the mobile phone industry; professional liability claims against law firms; investment banking; indemnification of corporate officers and directors; breach of contract, business torts and breach of fiduciary duty claims; intellectual property disputes; representation of lawyers in law firm breakup disputes; the valuation of real estate and shares in closely-held corporations; unfair competition and trade secret disputes; defamation claims; aviation; shipping; banking; publishing; antitrust; estates and trusts; mortgage foreclosures and lender liability suits; international sales contracts; federal tax refund litigation; and the Foreign Sovereign Immunities Act.

Among other matters, Mr. Novack was recently lead counsel in a widely reported oil refinery dispute between the firm's client and Petrobras, Brazil's national oil company. The dispute ended with Petrobras paying the firm's client a lump sum of \$820,500,000 to satisfy judgments and claims in our client's favor.

On the defense side, Mr. Novack was lead counsel in obtaining the dismissal of a \$2 billion False Claims Act action brought against various banking institutions that allegedly obtained billions of dollars in low interest rate loans by making false certifications to the Federal Reserve Banks.

Mr. Novack is listed in the 2017 edition of Best Lawyers in America, in the field of Commercial Litigation.

PROFESSIONAL BACKGROUND

Mr. Novack's professional background includes:

- Partner with K&L Gates
- Special Assistant Attorney General, State of New York
- Law Clerk, Hon. James Gibson, New York Court of Appeals

PUBLICATIONS

- Limiting the Buyer's Market Damages to Lost Profits: A Challenge to the Enforceability of Market Contracts, *Harvard Law Review*, 1979
- Commercial Damages: A Guide to Remedies in Business Litigation, New York: Matthew Bender, 1986 (chapter contributor), 1986
- *Gustafson v. Alloyd Co.*: Limiting Section 12(2) Liability to Public Offerings, *The Review of Securities and Commodities Regulation*, November 8, 1995

ADMISSIONS

- Bar of New York
- Supreme Court of the United States
- United States Court of Appeals for the District of Columbia Circuit

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PRIMARY PRACTICE

- Complex Commercial Litigation and Disputes

SECONDARY PRACTICES

- Appellate Litigation
- Insurance Coverage
- International Arbitration
- Latin America
- Professional Liability
- Securities and Transactional Litigation

- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Third Circuit
- United States District Court for the Eastern District of Michigan
- United States District Court for the Eastern District of New York
- United States District Court for the Southern District of New York
- United States Tax Court

EDUCATION

- J.D., Brooklyn Law School, 1969, (*cum laude*; Editor, *Brooklyn Law Review*)
- B.A., Rutgers University, 1966

REPRESENTATIVE EXPERIENCE

Appellate Cases

- *Bishop v. Wells Fargo & Company*, 823 F.3d 35 (2d Cir. 2016) (False Claims Act).
- *Siga Technologies, Inc. v. Pharmathene, Inc.*, 67 A.3d 330 (Delaware Supreme Court) (2013) (pharmaceutical industry contract dispute).
- *Petrobras America, Inc. v. Astra Oil Trading NV*, 2012 WL 1068311 (Tex. App. - Hous. (1 Dist.)) (confirmation of \$639 million arbitration Award).
- *Transcor Astra Group S.A. v. Petroleo Brasileiro S.A. - Petrobras*, 2011 WL 386781 (5th Cir. February 3, 2011) (Foreign Sovereign Immunities Act; oil refinery purchase).
- *Talisman Capital Talon Fund, Ltd. v. Gunnerman*, 2010 WL 2851734 (9th Circuit July 21, 2010) (intellectual property dispute).
- *EcoEnergy Solutions, Inc. v. Gunnerman*, 2009 WL 2524976 (Nevada Supreme Court) (July 31, 2009) (intellectual property ownership dispute).
- *Underhill Inv. Corp. v. Fixed Income Disc. Advisory Co.*, 2009 WL 808317 (3d Cir. Mar. 30, 2009) (financial services industry finder's fee claim).
- *Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282 (2007) (First Amendment; non-justiciability of corporate election of religious corporation).
- *Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v. Congregation Yetev Lev D'Satmar, Inc.*, 9 N.Y.3d 297 (2007) (First Amendment; non-justiciability of real estate dispute involving religious corporation).
- *American Continental Properties, Inc. v Lynn*, 32 A.D.3d 700, 822 N.Y.S.2d 1(1st Dep't 2006) (defend architectural malpractice claims).
- *Metropolitan Steel Industries, Inc. v. Perini Corporation*, 23 A.D.3d 205, 803 N.Y.S.2d 549 (1st Dep't 2005) (claims against professional engineering firm).
- *DiRienzo v. Philip Services Corp.*, 232 F.3d 49 (2d Cir. 2000) (securities fraud class action).
- *Waldman v. Village of Kiryas Joel*, 207 F.3d 105 (2d Cir. 2000) (action seeking dissolution of municipality on ground its existence violates First Amendment because of allegedly excessive involvement of local religious leaders in village government).

K&L GATES

- *Wieder v. Skala*, 272 A.D.2d 58, 707 N.Y.S.2d 829 (1st Dep't 2000) (wrongful termination suit against law firm by former associate).
- *Honzawa v. Honzawa*, 268 A.D.2d 327, 701 N.Y.S.2d 411 (1st Dep't 2000) (malicious prosecution action against law firm).
- *Alas Int'l, Ltd. v. Ramiz*, 263 A.D.2d 364, 692 N.Y.S.2d 378 (1st Dep't 1999) (dispute over ownership of airline).
- *Dan's Supreme Supermarkets, Inc. v. Redmont Realty Co.*, 261 A.D.2d 353, 690 N.Y.S.2d 272 (2d Dep't 1999) (long-term commercial lease dispute).
- *McMahan & Co. v. Dunn Newfund I, Ltd.*, 230 A.D.2d 1, 656 N.Y.S.2d 620 (1st Dep't 1997) (commodity pool operator claim against broker-dealer).
- *Deane v. Skadden, Arps, Slate, Meagher & Flom*, 227 A.D.2d 247, 642 N.Y.S.2d 280 (1st Dep't 1996) (legal malpractice action).
- *Friedman v. Beway Realty Corp.*, 87 N.Y.2d 161, 638 N.Y.S.2d 399 (1995) (valuation of corporate shares in dissenters' rights proceeding).
- *STV Group, Inc. v. American Continental Properties, Inc.*, 216 A.D.2d 376, 628 N.Y.S.2d 525 (2d Dep't 1995) (claim for sanctions against law firm).
- *Chapnick v. Cohen*, 203 A.D.2d 362, 609 N.Y.S.2d 681 (1st Dep't 1994) (dispute with architect).
- *Pacific Dunlop Holdings Incorporated v. Allen & Company, Incorporated*, 993 F.2d 578 (7th Cir. 1993) (securities fraud action).
- *Donovan v. Secretary of Health & Human Servs.*, 28 Fed. Cl. 459 (U.S. Court of Federal Claims 1993) (National Childhood Vaccine Injury Act proceeding).
- *Heffernan v. Pacific Dunlop GNB Corp.*, 965 F.2d 369 (7th Cir. 1992) (indemnification of corporate officers and directors for securities law claims).
- *Chapple v. Levinsky*, 961 F.2d 372 (2d Cir. 1992) (fraudulent conveyance action).
- *In re Corya*, 175 A.D.2d 162, 572 N.Y.S.2d 51 (2d Dep't 1991) (Surrogate's Court surcharge proceedings against executors for alleged fraud).
- *Marine Engineers Benevolent Ass'n v. Burnley*, 936 F.2d 284 (6th Cir. 1991) (proceedings for revocation of shipowner's coastwise trading privileges).
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- *Global International Airways Corp. v. The Port Authority of New York and New Jersey*, 727 F.2d 246 (2d Cir. 1984) (charter airlines' challenge to enforceability of Port Authority of NY and NJ aircraft noise rules).
- *New York State Urban Development Corp v. Marcus Garvey Brownstone Houses, Inc.*, 98 A.D.2d 767, 469 N.Y.S.2d 789 (2d Dep't 1983) (mortgage foreclosure of state-subsidized housing projects).
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