




**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

M E M O R A N D U M

DATE: March 3, 2022
TO: Council President Sean Elo-Rivera
FROM: Councilmember Chris Cate 
SUBJECT: Nomination of Robert Brownlie for the San Diego Unified Port Board of Commissioners

It is my pleasure to nominate Robert Brownlie for the San Diego Unified Port Board of Commissioners.

Robert Brownlie concentrates in the representation of corporations and their officers and directors in complex business, securities, and corporate litigation, particularly class action and derivative litigation, and related Securities and Exchange Commission and criminal investigations and enforcement actions. Robert also represents real estate developers, syndicators, and investors in disputes involving the offering of investments in and the management of real estate syndications.

Robert is a recognized leader in the legal profession. He has been repeatedly recommended by The Legal 500 United States for his securities litigation defense practice. He was recognized as among the "Top 50 Lawyers" in San Diego. He has earned the "Super Lawyers" distinction every year since 2007. He has received Martindale Hubble's Highest Rating of AV Preeminent every year since 2003. He has been repeatedly recognized by San Diego Magazine as among San Diego's "Top Lawyers." He has received AVVO's highest rating of 10 out of 10.

Robert has served in leadership positions in a number of organizations. He has served as Co-Chair of the American Bar Association's Securities Litigation Committee and Editor of the Class Actions and Derivative Suits Newsletter. Robert served for a number of years on the Board of Governors of the National Asian Pacific American Bar Association and as its Vice President. Robert served as President of the UC San Diego Alumni Association; President of the Pan Asian Lawyers of San Diego; President of the Asian Business Association, San Diego; and Chair of the Union of Pan Asian Communities' Board of Directors. He was appointed by two different Mayors of the City of San Diego to serve on the Qualcomm Stadium Advisory Board. And, he has served as a board member of the San Diego Regional

Chamber of Commerce, the San Diego Economic Development Corporation, and the San Diego Mediation Center (now known as the National Conflict Resolution Center). Before co-founding Brownlie Hansen LLP, Robert held a number of management positions at one of the largest law firms in the world, including, serving on the firm's United States Policy Committee, serving as the firm's San Diego Regional Managing Partner, and serving as Co-Chair of the firm's Global Securities Litigation Practice Group.

Robert Brownlie would serve the City of San Diego well and his credentials and enthusiasm will be an tremendous asset to the San Diego Unified Port Board of Commissioners. I trust that you will find Robert a well-qualified candidate. Thank you for your consideration.

CC: fb

cc: Honorable Councilmembers
City Clerk Elizabeth Maland
City Attorney Mara Elliott



CITY OF SAN DIEGO

APPLICATION FORM

BOARDS AND COMMISSIONS APPOINTMENT

(If you need more space to answer any of the questions, you may attach additional pages.)

☒ New Applicant

☐ Reappointment

1.

Robert

William

Brownlie

First

Middle

Last

2.

Please list all other names that you have used:

3.

Address: 16548 Nicole Ridge Road, San Diego, CA 92128

Street

City

State

Zip

Please list all the phone, fax, and cell / pager numbers at which you can be reached.

Hm. Phone: () Hm. Fax: () Hm. Cell: (619) 987-4665

Hm. E-mail Address robertwbrownlie5@gmail.com

Wk Phone: (858) 357-8001 Wk. Fax: () Wk. Cell: ()

Wk. E-mail Address: robert.brownlie@brownliehansen.com

If you have resided at your current address less than 10 years, please list all previous residences during the last 10 years.

If you have resided at your current address less than 10 years, please list all previous residences during the last 10 years.

Please see Attachment 1

Street

City

State

Zip

Street

City

State

Zip

4.

In which Council District and Neighborhood do you reside?

5. Position Sought (*Name of Board or Commission*). Please list in order of preference.

A). San Diego Unified Port District Board of Commissioners

B). _____

C). _____

6. Please list all organizations and societies that you have been a member of during the last 10 years.

<u>Entity</u>	<u>Position</u>	<u>From / To</u>
<u>Please see Attachment 1</u>		

7. Please list all volunteer work that you have performed over the last 10 years that is relevant to this position:

Please see Attachment 1

<u>Organization</u>	<u>City / State</u>	<u>Type of Work</u>
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<u>Organization</u>	<u>City / State</u>	<u>Type of Work</u>
---------------------	---------------------	---------------------

<u>Organization</u>	<u>City / State</u>	<u>Type of Work</u>
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8. Educational History:

<u>High School/College/University/Other</u>	<u>City / State</u>	<u>Degree</u>	<u>Maior</u>
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Please see Attachment 1

9. Employment History (*current to last 10 years*).

A. Employer Type of Business

Brownlie Hansen LLP Law firm

Title/Position Duties

Managing Partner

Address: 10920 Via Frontera, Suite 550, San Diego, CA 92127

(858) 357-8001 January 2020 to present

Phone From Date To Date

www.brownliehansen.com

Website of Current Employer

B. Employer Type of Business

DLA Piper LLP (US) Law firm

Title/Position Duties

Partner; San Diego Managing Partner, Co-Chair Global Securities Litigation

Address: 401 B Street, Suite 1700, San Diego, CA 92101

(619) 699-2700 February 1992 to January 2020

Phone From Date To Date

Website of Current Employer: www.dlapiper.com

C. Employer Type of Business

Title/Position Duties

Address

()

Phone From Date To Date

Website of Current Employer

10. Many positions require the appointment of people with special background, experience, or expertise. Please mark the categories for which you qualify.

<input type="checkbox"/> Information Technology	<input type="checkbox"/> Agriculture	<input checked="" type="checkbox"/> Attorney
<input type="checkbox"/> Architecture	<input type="checkbox"/> Construction Industry	<input type="checkbox"/> Arts
<input type="checkbox"/> Engineering	<input type="checkbox"/> Environment Services	<input type="checkbox"/> Finance or Investment
<input type="checkbox"/> Health Care	<input checked="" type="checkbox"/> Higher Education	<input type="checkbox"/> Insurance
<input type="checkbox"/> International Affairs	<input type="checkbox"/> Labor	<input type="checkbox"/> Law Enforcement
<input type="checkbox"/> Small Business	<input type="checkbox"/> Tourism	<input type="checkbox"/> Military Service
<input type="checkbox"/> Land Developer	<input type="checkbox"/> Other	

11. ☒ YES ☐ NO Do you currently or have you ever served in any elected or appointed office or on any local, state, or federal government board, commission, or committee?

US Dist. Court, S.D. Cal.	Merit Selection Committee	2018
Entity	Position	Dates
US Dist. Court, S.D. Cal.	Disciplinary Committee	appr. 2010-2020
Entity	Position	Dates
City of San Diego	Qualcomm Stadium Advisory Board	approx.. 1998-2003
Entity	Position	Dates
Entity	Position	Dates

12. YES ☒ NO ☐ To the best of your knowledge, do you have a spouse, registered domestic partner, or other relative who is currently an employee or appointee of the City of San Diego? If yes, please explain.

13. YES ☒ NO

To the best of your knowledge, have you ever been affiliated (*as a director, officer, partner, trustee, employee, owner, advisor, or consultant*) with any institution, organization, or business entity that might present a potential conflict of interest or the appearance of a conflict of interest with your requested appointment? If yes, please explain.

14. YES ☒ NO

To the best of your knowledge, do you have financial holdings in or receive income from any source or own real property or personal property that might present a potential conflict of interest or the appearance of a conflict of interest with your requested appointment? If yes, please explain.

15. YES ☒ NO

Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If yes, please explain.

16. ☒ YES NO

In the last 10 years, have you been a party to any civil litigation or administrative proceeding as either a plaintiff, defendant, petitioner, respondent? If yes, please explain.

17. YES ☒ NO

To the best of your knowledge, are you currently under federal, state, or local investigation for possible violation of a criminal law or ordinance? If yes, please explain.

18. ☒ YES NO

Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? If yes please explain.

19. Please attach your resume, 3 letters of reference from business and/or personal associates, and any additional information that you believe relevant to the position for which you are applying.

ADDITIONAL INFORMATION

My responses and attachments to this application are full, true, and correct to the best of my knowledge. I understand that I may be disqualified from consideration if I knowingly make false statements on this application or omit material information. As part of its screening process, the City may thoroughly investigate my background, including, but not limited to, my educational record, credit report, employment history, personal references, military records, and criminal records, and make any other inquiries it deems necessary in considering my application for appointment.

I understand that some information related to my application may be subject to disclosure under the California Public Records Act, however, the City will retain the confidentiality of the information to the extent permitted under applicable law.

I authorize any business, institution, or organization to release any records sought by the City in connection with my application. I release the City, its officers, agents, and employees and all individuals, organizations, educational institutions, and employers from all liability in responding to or providing writings or other communications in connection with my application.

I may elect to withdraw from the appointment process at any time.



Applicant Signature

3-2-2022

Date

Thank you for your interest in serving the City of San Diego.

(3-1", 06)

ATTACHMENT 1

Item 3: Previous addresses over the last 10 years:

7359 Rancho Catalina Trail, San Diego, CA 92127

4460 Monaco Street, San Diego, CA 92107

871 Armada Terrace, San Diego, CA 92106

2500 Sixth Avenue, TH 103, San Diego, CA 92103

Items 6 and 7: Organizations and societies, and volunteer work during the last 10 years:

State Bar of California, Member, last 10 years plus

American Bar Association, Member, last 10 years plus

San Diego County Bar Association, Member, (off and on in the last 10 years)

Pan Asian Lawyers of San Diego, Member (off and on in the last 10 years), Judicial Evaluation Committee (last 10 years)

UC Davis Regional Campaign Committee, Member (approximately 2019 to present)

UC San Diego Alumni Association, Board Member (approximately 2012-19), Treasurer (2014), Secretary (2015), Vice President (2016), President (2017-2018)

UC San Diego Foundation, Trustee (2017-2018)

US District Court for the Southern District of California Merit Selection Committee (2018)

US District Court for the Southern District of California Disciplinary Committee (2010-2020)

San Diego Regional Economic Development Corporation, Board Member (approx.. 2015-17)

Item 8: Education History

Montgomery High School, San Diego, California

United States Air Force Academy, Colorado Springs, Colorado (attended, no degree)

UC San Diego, La Jolla, California, BA – Economics

King Hall, School of Law, UC Davis, Davis, California, JD

Item 16:

In 2012, I filed a petition for dissolution of marriage in the San Diego Superior Court

In approximately 2010, I was named as a defendant in a malicious prosecution case by Facebook and Mark Zuckerberg in New York State Court. The case was dismissed, which was affirmed on appeal.

Item 18:

I recall that a state tax lien was filed on a home in the past. I cannot remember when. It was more than 10 years ago. That matter was resolved, and the lien was expunged or removed.

Due to the cost of my divorce, in 2017, I entered an installment agreement with the IRS. There may have been a federal tax lien filed on my home, which was later removed. The taxes subject to the installment agreement have been fully paid.



THE CITY OF SAN DIEGO

CONFIDENTIAL FINANCIAL INQUIRY

FINANCIAL INQUIRY WAIVER: I request and authorize you to furnish the San Diego police Department Background Investigations Unit a complete Credit Report and/or any credit information, and any and all information including confidential or privileged communications, concerning present or past indebtedness. This information is to be used to assist in determining my fitness for the position I am seeking with the City of San Diego. I hereby release you, your employer or others including the San Diego Police Department from any liability or damage, which may result from furnishing the information requested.

Signature _____ of _____ Applicant _____ Date _____

Name of Applicant (Print) Brownlie, Robert William
LAST NAME FIRST NAME MIDDLE NAME (JR./SR., ETC)

Alias or Nickname Bob or Bobby Date of Birth 3-5-1962



Trusted Advisors. Fierce Advocates.



Robert W. Brownlie
Managing Partner

robert.brownlie@brownliehansen.com

Tel. 858.357.8001

Mobile 619.987.4665

www.brownliehansen.com

Robert Brownlie concentrates in the representation of corporations and their officers and directors in complex business, securities, and corporate litigation, particularly class action and derivative litigation, and related Securities and Exchange Commission and criminal investigations and enforcement actions. Robert also represents real estate developers, syndicators, and investors in disputes involving the offering of investments in and the management of real estate syndications.

He argued and won *Grosset v. Wenaas*, 42 Cal. 4th 1100 (2008), a case before the California Supreme Court, clarifying a key standing requirement for derivative suits in California and the choice of law analysis for California-headquartered companies incorporated in Delaware. Robert currently represents The Conrad Prebys Foundation in a case before the California Supreme Court that will address the standing requirements for derivative suits involving non-profit corporations. Additionally, Robert's practice has resulted in over 80 reported decisions.

Robert is a recognized leader in the legal profession. He has been repeatedly recommended by The Legal 500 United States for his securities litigation defense practice. He was recognized as among the "Top 50 Lawyers" in San Diego. He has earned the "Super Lawyers" distinction every year since 2007. He has received Martindale Hubble's Highest Rating of AV Preeminent every year since 2003. He has been repeatedly recognized by San Diego Magazine as among San Diego's "Top Lawyers." He has received AVVO's highest rating of 10 out of 10.

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different Mayors of the City of San Diego to serve on the Qualcomm Stadium Advisory Board. And, he has served as a board member of the San Diego Regional Chamber of Commerce, the San Diego Economic Development Corporation, and the San Diego Mediation Center (now known as the National Conflict Resolution Center).

Before co-founding Brownlie Hansen LLP, Robert held a number of management positions at one of the largest law firms in the world, including, serving on the firm's United States Policy Committee, serving as the firm's San Diego Regional Managing Partner, and serving as Co-Chair of the firm's Global Securities Litigation Practice Group.

REPRESENTATIVE MATTERS

Federal Securities Cases

- *Mauss v. NuVasive, Inc.* NuVasive involved a securities class action lawsuit filed in the US District Court for the Southern District of California for alleged violations of Section 10(b) of the Securities Exchange Act of 1934. The case was filed on the heels of the Company's announcement that it was the subject of an investigation into potential violations of the federal healthcare fraud and abuse laws. The case has been settled.
- *Perrin v. SouthWest Water Company.* *SouthWest Water* involved a securities class action suit filed in the US District Court for the Central District of California for alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and Section 11 of the Securities Act of 1933 arising from a restatement of the Company's financial statements. The district court granted our motion to dismiss the plaintiffs' Second Consolidated and Amended Complaint with prejudice and without leave to amend on all claims as to all defendants. The dismissal of the Section 10(b) claim was affirmed by the Ninth Circuit Court of Appeals. On remand, the district court granted our motion to summary judgment on the Section 11 claim and again denied leave to amend. The decision was affirmed by the Ninth Circuit Court of Appeals.
- *In re REMEC Inc. Securities Litigation.* *REMEC* is a securities class action filed in the US District Court for the Southern District of California. The court granted two motions to dismiss with leave to amend: *In re REMEC Inc. Securities Litigation*, 388 F. Supp. 2d 1170 (S.D. Cal. 2005) and *In re REMEC Inc. Securities Litigation*, 415 F. Supp. 2d 1106 (S.D. Cal. 2006). On the eve of trial, the district court granted our motion for summary judgment. *In re REMEC Inc. Securities Litigation*, 702 F. Supp. 2d 1202 (S.D. Cal. 2010). An appeal was taken by the plaintiffs, but it was voluntarily dismissed by them.
- *In re ArthroCare Corporation Securities Litigation.* This case involves a securities class action suit filed in the US District Court for the Western District of Texas following the company's restatement of its financial statements.
- *In re Heckmann Corporation Securities Litigation.* This case involves a securities class action suit filed in the US District Court for the District of Delaware following the

company's goodwill write-off related to its acquisition of a company in the People's Republic of China.

- *Holzwasser v. Staktek Holdings, Inc.* This case involved a securities class action suit currently pending in the US District Court for the Western District of Texas. After the withdrawal of the original plaintiff, the court denied the motion to intervene of a new plaintiff, dismissed the case and entered judgment for the defendants.
- *In re JNI Corporation Securities Litigation.* JNI involved a securities class action filed by Milberg Weiss in the US District Court for the Southern District of California. Our motion to dismiss the First Amended Consolidated Complaint was granted with leave to amend in *Osher v. JNI Corp.*, 256 F.Supp.2d 1144 (S.D. Cal. 2003), our motion to dismiss the Second Amended Consolidated Complaint was also granted with leave to amend in *Osher v. JNI Corp.*, 302 F.Supp.2d 1145 (S.D. Cal. 2003), and our motion to dismiss the Third Amended Complaint was granted with prejudice and without leave to amend in *Osher v. JNI Corp.*, 308 F.Supp.2d 1168 (S.D. Cal. 2004). The Ninth Circuit Court of Appeals affirmed the dismissal, but reversed and remanded the denial of leave to amend. On remand, the trial court again denied leave to amend and that decision was not appealed.
- *In re Titan Inc Securities Litigation.* We represented an individual defendant in this federal securities case and in state court derivative litigation and in a federal grand jury investigation and investigation by the Securities and Exchange Commission arising from alleged violations of the Foreign Corrupt Practices Act. The civil litigation has been settled. The investigations were concluded with no action taken by the government against our client.
- *Securities and Exchange Commission v. Yuen.* We represented a former officer and board member of Gemstar-TV Guide International in a civil enforcement action brought by the SEC in the US District Court for the Central District of California. Our motion to dismiss, the SEC's second amended complaint was granted with leave to amend in *S.E.C. v Yuen*, 221 F.R.D. 631 (C.D. Cal. 2004). This case has settled.
- *In re Foundry Networks, Inc. Securities Litigation.* Foundry involved a securities class action filed by Milberg Weiss in the US District Court for the Northern District of California. The district court granted with prejudice and without leave to amend our motion to dismiss the fourth amended complaint in *In re Foundry Networks, Inc. Sec. Litig.*, 2003 WL 22077729 (N.D. Cal. Aug. 29, 2003). This case was dismissed without payment while on appeal.
- *In re The Vantive Corporation Securities Litigation.* Vantive involved a securities class action filed by Milberg Weiss in the US District Court for the Northern District of California. The case was dismissed on the first motion to dismiss heard by the court. *In re The Vantive Corporation Securities Litigation*, 110 F. Supp. 2d 1209 (N.D. Cal. 2000).

The decision has been affirmed by the Ninth Circuit Court of Appeals. *In re The Vantive Corporation Sec. Litig.*, 283 F.3d 1079 (9th Cir. 2002) in the first Ninth Circuit decision involving accounting fraud claims under the Private Securities Litigation Reform Act of 1995.

- *Zeid v. Kimberley, et al.* (Firefox Communications, Inc.). *Firefox* involved a securities class action filed by Milberg Weiss in the US District Court for the Northern District of California. It resulted in the first favorable defense decision under the Private Securities Litigation Reform Act of 1995 (*Zeid v. Kimberley*, 930 F.Supp. 431 (N.D. Cal. 1996)) and first dismissal with prejudice in California under the Act. (*Zeid v. Kimberley*, 973 F. Supp. 910 (N.D. Cal. 1997)). The case was appealed to the Ninth Circuit Court of Appeal, which remanded the case to the district court for further consideration. The district court again dismissed the lawsuit. The trial court decision has been affirmed by the Ninth Circuit Court of Appeals.
- *In re CIENA Corporation Securities Litigation*. *CIENA* was a securities class action filed by Milberg Weiss in the US District Court for the District of Maryland. *CIENA* had conducted one of the largest initial public offerings in history. It was subsequently sued by several of its shareholders for securities fraud. The district court granted our motion to dismiss the case. *In re CIENA Corporation Securities Litigation*, 99 F. Supp. 2d 650 (D. Md. 2000). The plaintiffs did not appeal the decision.
- *In re JDA Software Group Securities Litigation*. *JDA* was a securities class action filed by Milberg Weiss in the US District Court for the District of Arizona. The case alleged claims for securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and violations of the Securities Act of 1933. This case was dismissed on the first motion to dismiss heard by the court. The plaintiffs did not appeal the decision.
- *pcOrder.com, Inc. Shareholder Litigation*. This involved a series of case filed in state and federal court in Austin, Texas that initially attempted to block a tender offer to the shareholders of pcOrder.com, Inc. We were retained by the Special Committee of the board of directors of pcOrder.com, Inc. and successfully overcame the shareholders' attempt to block the tender offer. After the tender offer and merger closed, a second series of lawsuits were filed in the US District Court for the Western District of Texas alleging violations of the Securities Act of 1933 in connection with pcOrder.com, Inc.'s initial and secondary public offerings. The court denied plaintiffs' motion for class certification and found that Milberg Weiss was could not adequately represent the class in *Krim v. pcOrder.com, Inc.*, 210 F.R.D. 581 (W.D. Tex. 2002). The dismissal of this case was affirmed by the Fifth Circuit Court of Appeals in *Krim v. pcOrder.com, Inc.*, 402 F.3d 489 (5th Cir. 2005).
- *IPO Laddering Cases*. These cases involve alleged improper conduct by various investment banking firms in connection initial public offerings during 1999 and 2000. We

have been retained by several securities issuers and the directors and officers to defend them in these cases in the US District Court for the Southern District of New York.

- *In re Informix Securities Litigation*. *Informix* was a securities class action filed by Milberg Weiss in the US District Court for the Northern District of California and a shareholder derivative lawsuit in California state court. We represented an individual defendant in all of the cases. This case has been settled without payment by our client.
- *Steckman v. Hart Brewing*. *Hart Brewing* was a securities class action filed in state and federal court in San Diego. It resulted in the first dismissal with prejudice after the enactment of the Private Securities Litigation Reform Act of 1995. The case was dismissed on the initial round of motions. *Steckman v. Hart Brewing, Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 99,420 (S.D. Cal. Dec. 24, 1996). The Ninth Circuit Court of Appeals affirmed the dismissal in *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293 (9th Cir. 1998).
- *Powers v. Proxima Corporation*. These cases involved a series of shareholder class actions filed by Milberg Weiss in state and federal court in San Diego. Several claims, including all claims asserted against some of Proxima's former officers, were dismissed in the first round of motions (*Powers v. Eichen*, Fed. Sec. L. Rep. (CCH) ¶ 99,483 (S.D. Cal. Mar. 13, 1997)) and achieved a stay of discovery while motions for reconsideration were pending (*Powers v. Eichen*, 961 F. Supp. 233 (S.D. Cal. 1997)). The cases have settled.
- *Miller v. NTN Communications, Inc.* *NTN* involved a securities class action filed in federal court in San Diego. We represent NTN and its present and former officers and directors. The district court granted in part and denied in part NTN's motion to dismiss. This case has settled.
- *Lefkowitz v. NTN Communications, Inc.* *Lefkowitz* involved another securities class action filed in the San Diego federal court in which we represented NTN and its present and former officers and directors. We persuaded the plaintiffs to voluntarily dismiss the case for no consideration soon after it was served.
- *Miller v. Telios Pharmaceuticals, Inc.* We represented the directors and officers of Telios Pharmaceuticals in this securities class action filed by Milberg Weiss in the federal court in the Southern District of California alleging misrepresentations in a recent preferred stock offering. The case was settled below policy limits and below cost of defense with insurance benefits.
- *Robbins v. Hometown Buffet*. This case involved a securities class action filed in federal court in San Diego by the Milberg Weiss firm attacking a public offering. We were selected to represent one of the underwriters, Alex. Brown & Sons, Inc. The firm persuaded Milberg Weiss to dismiss the action against our client without payment of any kind.

- *Schneierson v. Aldila, Inc., et al.* This securities class action was filed in federal court in San Diego by the Milberg Weiss firm challenging a public offering. We represented one of the underwriters, Alex. Brown & Sons, Inc. We persuaded the Milberg Weiss firm to dismiss the action against our client without payment of any kind.
- *Benedict v. August Financial.* This case was a securities class action filed in federal court in San Diego. Investors alleged that there were materially misleading statements made in the prospectus upon which they based their decision to invest in a series of real estate limited partnerships. We were selected to represent the law firm sued in the case and won the case on summary judgment.

Mergers and Acquisition and Corporate Fiduciary Litigation

- *Turner v. Victoria.* This case involves an alleged derivative suit against the members of the board of directors of The Conrad Prebys Foundation, a nonprofit public benefit corporation, which is one of the largest charitable foundations ever located in San Diego County. We represent the foundation and have challenged the plaintiff's standing to proceed derivatively on behalf of the foundation. The trial court sustained our demurrers on the grounds that the plaintiff lacked standing and dismissed the case. The court of appeal affirmed the dismissal in *Turner v. Victoria*, 67 Cal. App. 5th 1099 (2021). The case is now pending before the California Supreme Court.
- *Borta v. Lucier.* This case involved a shareholder derivative suit filed in the San Diego Superior Court against the board of directors and management of NuVasive, Inc., alleging breach of fiduciary duty arising from a government investigation and settlement. We challenged the plaintiff's standing to proceed derivatively on behalf of NuVasive through a demurrer. After two rounds, the court sustained our demurrer without leave to amend and entered judgment in favor of defendants and awarded costs against the plaintiff.
- *Garfield v. DTS, Inc.* This case involved a shareholder class action case filed in the Ventura County, California Superior Court seeking to enjoin the closing of a tender offer. The motion for the injunction was contested and, after a hearing, the court denied the Plaintiff's motion. The case was then dismissed.
- *Lehn v. Multi-Fineline Electronix, Inc.* This case involved a shareholder class action case filed in the US District Court for the Central District of California alleging claims under Section 14(a) of the Securities Exchange Act of 1934, claiming that a proxy statement issued for a proposed merger was materially false and misleading. The case was voluntarily dismissed after the claims were mooted.
- *Alexandros v. KOR Electronics.* This case involved a shareholder derivative suit filed on behalf of KOR Electronics filed in the Orange County Superior Court alleging breach of fiduciary duty arising from a recapitalization. After a three week trial, the court found for

the defendants on all claims and ordered the plaintiff to pay attorneys' fees and costs to the defendants.

- *Burt v. Rubio*. This litigation involved shareholder class action cases filed in the Delaware Chancery Court and the San Diego Superior Court alleging breach of fiduciary duty involving the sale of Rubio's Restaurants, Inc. to a private equity fund. The cases were voluntarily dismissed without settlement.
- *Sherman v. Christie*. This case involved a shareholder derivative suit on behalf of SouthWest Water Corporation filed in the Los Angeles Superior Court alleging breach of fiduciary duty following the Company's restatement of its financial statements. The court sustained the defendants' demurrer on the grounds that the plaintiff had failed to adequately allege demand futility. The plaintiff declined to file an amended complaint and the case was dismissed.
- *Hess v. Heckmann*. This case involves a shareholder derivative suit filed in the Riverside County Superior Court on behalf of Heckmann Corporation arising from the Company's acquisition of a company in the People's Republic of China.
- *Grosset v. Wenaas, et al.* This case involved a shareholder derivative suit involving JNI Corporation. The plaintiff sought to recover damages for breach of fiduciary duty and insider trading. The San Diego Superior Court sustained our demurrers with leave to amend, but allowed the case to proceed. The case was dismissed through a special litigation committee's investigation and motion to dismiss. The plaintiff appealed. The Court of Appeal dismissed the appeal because the plaintiff sold his stock in a cash merger of JNI into another company. The California Supreme Court granted review of the decision and later affirmed, holding that standing to bring a derivative suit requires a plaintiff to own stock in the subject company continuously throughout the litigation. *Grosset v. Wenaas*, 42 Cal. 4th 1100 (2008).
- *Stanley v. i2 Technologies, Inc.* This case involved an alleged shareholder class action suit filed in Dallas County District Court that sought to enjoin a shareholder meeting of i2 Technologies, Inc. to consider a proposed merger of i2 Technologies. The court denied the shareholders' motion to enjoin the meeting. The shareholders then voluntarily dismissed their case.
- *Cyber Dyne Liquidating Corporation v. All Optical Networks, Inc.* This case involved a shareholder derivative suit alleging breach of fiduciary duty relating to a "down-round" financing. After three rounds of demurrers arguing that plaintiff lacked standing to proceed because it failed to adequately allege demand futility, plaintiff abandoned the case. Thereafter, our clients sued the plaintiff and its counsel for malicious prosecution and recovered approximately US\$1 million from plaintiffs' counsel.
- *Chen v. Net Solve, Incorporated*. This case was a class action filed in the Travis County, Texas District Court to enjoin the merger of Net Solve, Incorporated into Cisco Systems,

Inc. The merger proceeded and closed unimpeded by the lawsuit. Plaintiffs then voluntarily dismissed the case without settlement or payment.

- *Aites v. Garden Fresh Restaurant Corp., et al.* This case was a class action filed by Milberg Weiss in the San Diego Superior Court and involved an attempt to enjoin the cash merger of Garden Fresh Restaurant Corp. The case was voluntarily dismissed after we filed our demurrer.
- *Bemanian v. Stern, et al.* This case was a class action filed in the San Diego Superior Court and involved an attempt to block a meeting of the stockholders of JNI Corporation for the approval a proposed merger. The case settled for an additional disclosure and an nominal payment of attorneys' fees to the plaintiff.
- *Grossett v. Flanagan, et al.* This case involved a stockholder derivative suit filed on behalf of JNI Corporation in the San Diego Superior Court. This case was dismissed following an investigation by a special litigation committee of the board of directors finding that the pursuit of the action was not in the best interest of the corporation.
- *Ulrich v. Raytel Medical Corporation.* This case filed in the San Mateo County Superior Court involved a class action filed by Milberg Weiss to challenge a going-private merger. After defeating Milberg's attempt to enjoin the merger, we defeated the case through a demurrer that was sustained without leave to amend. The plaintiff chose not to appeal the dismissal.
- *Mizel v. Bennett.* This case was a shareholder derivative suit involving NTN Communications, Inc. in the San Diego Superior Court. Our demurrer to the plaintiff's complaint was sustained without leave to amend. The plaintiff chose not to appeal.
- *Scholl v. Applied Digital Access.* Applied Digital Access involved a series of lawsuits arising from the acquisition of Applied Digital Access filed by Milberg Weiss. After intensive, expedited discovery, we defeated Milberg Weiss' request to enjoin the transaction. The case has settled.
- *In re Chips and Technologies, Inc. Shareholder Litigation.* Chips and Technology involves shareholder class actions filed in Delaware and California seeking to enjoin Intel's acquisition of Chips and Technology. These cases were settled with no payment by the company.

Stock Option Investigations and Litigation

- Successfully defended JDA Software Group and its officers and directors in a shareholder derivative case alleging stock option backdating, which was pending in the Maricopa County, Arizona Superior Court. After successive motions to dismiss for failure to plead standing to proceed derivatively on behalf of the company, the plaintiff voluntarily dismissed the case.

- Successfully defended ArthroCare Corporation and its officers and directors on shareholder derivative cases alleging stock option backdating, which were pending in the US District Court for the Western District of Texas. After successive motions to dismiss, the plaintiffs voluntarily dismissed the cases.
- Conducted an internal investigation of every stock option grant by a software company, which provided sufficient comfort to a Big Four audit firm that the company properly accounted for stock options despite minor discrepancies in record keeping.
- Conducted an internal investigation of every stock option grant by a Fortune 100 company, which provided sufficient comfort to a Big Four audit firm that the company properly accounted for stock options despite minor discrepancies in record keeping.
- Represented a Fortune 100 company in a confidential informal inquiry by the SEC into stock option granting practices, which resulted in the Commission closing the matter without further action or investigation.
- Counsel to a former officer of an Austin, Texas-based company in a shareholder derivative case alleging stock option backdating pending in the US District Court for the Western District of Texas.
- Counsel to a former executive officer of a software company in shareholder derivative cases alleging stock option backdating pending in the US District Court for the Central District of California and the Ventura County, California Superior Court and in connection with a related corporate investigation.
- Shadow counsel to a former executive officer of a real estate development company in a shareholder derivative case alleging stock option backdating pending in the US District Court for the Central District of California.
- Shadow counsel to a former officer of a Dallas-based retail specialty company in shareholder derivative cases alleging stock option backdating pending in Dallas County state court and US District Court for the Northern District of Texas.

Consumer Class Action and Complex Business Litigation

- *Bosa Development*. This case involved a class action suit on behalf of purchasers of luxury high rise condominiums over the method for determining the square footage of individual condominium units. Robert represented the developer. The case settled for a small fraction of the claimed damages.
- *Gholamshadi v. IOS Capital, LLC*. This case involved a class action suit challenging a force placed insurance program relating the lease of business equipment filed in the San Diego Superior Court.
- *Matloubian v. Home Savings of America*. *Matloubian* was a consumer class action filed in San Diego Superior Court involving lender force placed insurance. The plaintiffs alleged claims under the California Unfair Business Practices Act (Business and

Professions Code § 17200) and a variety of common law claims. The case settled on the first day of trial.

- *Lesser v. IKON Office Solutions, Inc.* Lesser involved an alleged consumer class action filed in San Francisco Superior Court involving alleged improper billing practices. The plaintiff alleged claims under the California Consumers Legal Remedies Act (Civil Code § 1770, et seq.) and the California Unfair Business Practices Act (Business and Professions Code § 17200). This case has settled.
- *Devoy v. Safeco Insurance Company.* Devoy involved an alleged consumer class action filed in San Diego Superior Court involving alleged fraud and misrepresentation in the sale of annuity contracts. The plaintiffs alleged claims under the California Consumers Legal Remedies Act (Civil Code § 1770, et seq.) and the California Unfair Business Practices Act (Business and Professions Code § 17200). This case settled after a favorable trial result.
- *Adler v. Prism Solutions, Inc.* Adler is a securities class action filed by Milberg Weiss in California State Court (Santa Clara County) in which we represent Alex. Brown & Sons, Hambrecht & Quist and Cowen & Company. The plaintiffs voluntarily dismissed Alex. Brown & Sons, Hambrecht & Quist and Cowen & Company from the case.
- *Durkin v. Shields.* Durkin involves a malpractice and breach of fiduciary duty lawsuit arising from the settlement of shareholder class and derivative actions filed by Milberg Weiss involving Imperial Corporation of America. We represent the former New York law firm Shea & Gould and its former partners in litigation California and New York federal courts. The case has been to the Ninth Circuit Court of Appeal on an interlocutory appeal. *Durkin v. Shea & Gould*, 92 F.3d 1510 (9th Cir. 1996). The New York federal court granted our motion to dismiss in the New York litigation. *Durkin v. Shea*, 1998 WL 637462 (S.D.N.Y. 1998). The California case has settled.

PUBLICATIONS

- Co-author, "[Delaware Court of Chancery Awards US\\$1.2B, Issues Guidance Re Controlling Shareholders in M&A Deals](#)," DLA Piper Securities Litigation Alert, January 3, 2012
- *Legal Spotlight Commentary on the Globalization of Securities Enforcement, Credit*, April 2009
- "De Lange Arm Van De Amerikaanse Rechter," de Commissaris (Dutch translation of "The Long Arm of the American Law"), October 2006
- Co-author, "Concern Grows Over Exposure to US Lawsuits," *Financial Times*, May 30, 2005 (with Alexopoulos)

- *"Next Stop: The Supreme Court? The Apparent Split in the Circuits Interpreting the Private Securities Litigation Reform Act of 1995," Class Actions & Derivative Suits (ABA), Spring 1999*
- *"Federal Pre-emption as a Possible Response to a New Challenge: Securities Class Actions in State Court," 34 Cal.W. L. Rev. 493, 1998*
- *"A New Forum: Securities Fraud Class Actions in State Court, Class Actions & Derivative Suits," ABA, July 1997*
- *"Corporate Records and Reports," Chapter 10 in California Transaction Forms, 1996*
- *Co-author, "Representing Multiple Parties in Securities Litigation and Arbitration," 819 Securities Arbitration 723 (Practical Law Institute), 1993 (with Weiss)*
- *"Usury Law in California: A Guide Through the Maze," 20 U.C.Davis L. Rev. 397, 1987 (with Rabin)*

MEMBERSHIPS

Professional

- Disciplinary Committee for the US District Court for the Southern District of California
- Co-Chair Derivative Suits Subcommittee, Securities Litigation Committee, American Bar Association
- American Bar Association Class Action and Derivative Litigation Committee
- Advisory Committee, *BNA Class Action Litigation Report*

Civic and Charitable

- Member, San Diego Regional Campaign Committee, University of California, Davis
- Former President and Board Member, University of California, San Diego Alumni Association
- Former Trustee, University of California, San Diego Foundation
- Former Board Member, San Diego Economic Development Corporation
- Former Chair, Qualcomm Stadium Advisory Board (appointed by San Diego City Council)
- Former Chair, Union of Pan Asian Communities
- Former Officer and Board Member, National Asian Pacific American Bar Association
- Former Co-Editor, American Bar Association Class Actions and Derivative Suits Newsletter
- Past President, Asian Business Association of San Diego

EDUCATION

- J.D., University of California at Davis, School of Law, 1988
 - Order of the Coif
 - Phi Kappa Phi
- B.A., University of California at San Diego, Third (now Marshall) College, 1985
 - Economics Major; Political Science and Sociology Minors
 - Provost's Honors List
- Attended, United States Air Force Academy, 1980

EXPERIENCE

- 1994-2020 Partner in DLA Piper LLP (US) and, its predecessor, Gray Cary, and served in the following firm positions: DLA Piper's San Diego Regional Managing Partner from 2008-2014; DLA Piper's Head of San Diego Litigation; Co-Chair, DLA Piper's Global Securities Litigation Group; Member of DLA Piper's Policy Committee; Member of Gray Cary's Executive Committee; Member of Gray Cary's Compensation Committee; Chair of Gray Cary's Securities Litigation Group; Co-Chair of Gray Cary's Business and Technology Litigation Group; Member of Gray Cary's Professional Standards Committee
- 1992-94 Associate at Gray Cary
- 1990-92 Associate at Milberg Weiss
- 1988-90 Associate at Gray Cary
- 1987-88 Teaching Assistant, University of California at Davis, School of Law
- 1987 Summer Associate at Gray Cary
- 1986-87 Research Assistant, University of California at Davis, School of Law

ADMISSIONS

- Supreme Court of the United States
- All California state courts
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Fifth Circuit
- United States District Court for the Southern District of California
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California

■ United States Court of Federal Claims