

Abtl REPORT

NORTHERN CALIFORNIA

Volume 10 No. 1

NOVEMBER 2000

Appellate Practice for Trial Lawyers

My purpose in this article is to demystify practice before the Court of Appeal. In sum, my advice is: Have a clear idea of why you are before the Court of Appeal. Learn the working methods and rules of the court, and have a firm grasp of the craft that will help you achieve your goal.

The concept of knowing why you are in an appellate court requires that you have thought it through and concluded the possible benefits outweigh the cost in time, effort and money. If appellant, ask first whether the issue you wish to present is appealable. Not all orders of a trial court are appealable; indeed most are not. Second, ask whether there is any realistic possibility of success. The fact that you, or more likely your client, think the decision below was "wrong" in a factual sense is virtually never a good reason to appeal, because the Court of Appeal cannot redetermine factual questions. If you are respondent, you are along for the ride.

But even then, there are motions to dismiss as well as settlement options in appellate court.

The first rule of recognizing where you are is to realize

Continued on Page 5



Justice Daniel J. Kremer

Trying (and Winning) the Big Case

As business trial lawyers, we usually wear our "litigator" hats, engaging in difficult discovery battles, protracted depositions, and extensive motion practice. Once in a while, however, the client will direct you to try the Big Case you've been working on for the last two years. Sometimes, the client will actually mean it. When you're about to pick a jury in a major case, get ready for substantial personal sacrifices, but also be ready for one of the most rewarding and challenging experiences of your professional career. Trying the Big Case is why many of us became trial lawyers in the first place. And whether it's your first or tenth big trial, following some basic rules will go a long way towards victory.

We recently had the occasion to try a securities class action case brought under Sections 11 and 12 of the Securities Act of 1933. The case arose out of a merger between a large Silicon Valley technology company and a small designer of X86 microprocessors. The named plaintiffs, representing a class of approximately 25,000 shareholders, asserted that statements made in the prospectus misrepresented our client's ability to manufacture the microprocessors following the merger. Plaintiffs had originally sought damages of more than \$240 million. They demanded settlement payments of \$60 million or more. Defendants made no settlement offer.

The case was tried for six weeks in the Santa Clara Superior Court with over three weeks of testimony and thirty witnesses. The jury deliberated less than three hours before returning a special verdict in favor of our client and rejecting plaintiffs' claims. Based on this and



Benjamin K. Riley

Also in this Issue

Mark C. Mazzarella	Impression Formation and Management for Lawyersp. 3
Peter J. Benvenuti	On CREDITOR'S RIGHTS.....p. 7
Zela S. Claiborne	On MEDIATIONp. 9
Mary E. McCutcheon	On INSURANCEp. 11
Douglas R. Young	Letter from the Presidentp. 12

Continued on Page 2

Continued from Page 1

Trying (and Winning) the Big Case

other trials, here are my suggestions for trying and winning the Big Case, along with specific ideas applicable to securities class actions.

Jury Selection

As early as possible, think about your jury. Will the case be tried in federal or state court? Will you need a unanimous jury or just nine of twelve? In our case, we were lucky to try the action in Santa Clara County Superior Court, probably the most "tech" savvy jurisdiction in the United States. Of the 15 jurors and alternates, 6 had engineering backgrounds, and 9 of the 15 jurors had at least four years of college. All of the jurors had invested in the stock market and understood that the value of stocks went up and down.

In my experience, even with long trials, the Bay Area counties and federal courts offer many sophisticated, well-educated jurors. These jurors — especially those with engineering or other tech backgrounds — will understand the essence of complex concepts and facts. They normally won't be swayed or convinced by overly emotional appeals by the plaintiffs that are not founded upon hard evidence. They will be attentive to, and appreciate hearing from, detailed witnesses, even in highly technical areas. While your presentation must always be clear, the jurors will not require over-simplification and they won't appreciate needless repetition. Treat jurors with the same respect you would treat any other professional colleague, recognizing that they need some time to come up to speed in the new area that you are presenting.

In a Big Case that you believe is going to trial, it is normally advisable to retain a jury consultant. While jury selection ultimately comes down to the trial lawyer's gut judgment, a consultant will give you additional data points to consider. Given the cost of trying the Big Case, the additional expense of a jury consultant is well worth the price. And while you're at it, consider holding a mock jury presentation organized by your consultant. While not predictive of the results of your trial, these exercises force the trial lawyers to prepare their openings and closings weeks before the start of the trial, and allow you to test reactions to particular witnesses and themes of the case. Depending on the result, you will still have sufficient time to modify the focus of your case if warranted by the mock juries' reactions. These mock jury exercises, while expensive, will probably cost less than 2 to 3 days of trial in a large case and provide meaningful data for preparing and presenting your case.

Have the jury consultant prepare a jury questionnaire for you and submit it with your pre-trial papers. In our case, the plaintiffs' estimate for the length of the trial (grossly overestimated in our view) was eight weeks. Given this estimate, the judge had to question over 200 jurors for hardship to obtain the 45 jurors needed for the *voir dire* process. The judge agreed that a questionnaire would be helpful; any juror who wasn't excused for hardship was asked to fill out the questionnaire and return the

next day. In this way, we had one evening to review the questionnaires and tailor our *voir dire* questions. The responses to the questionnaire were invaluable in ferreting out areas of possible bias toward the client — areas that might not have been uncovered in two to three minutes of *voir dire*.

Perhaps the most important point to remember is that — after all the input from the consultant, the questionnaire, and the trial team — the trial lawyer should decide whether to strike a juror based on his or her reaction to the specific juror. Personal reaction to a juror will normally be a better predictor than standard assumptions based on profession, education, income, or background. Jury selection is really "jury de-selection," so always consider whether any particular juror has any personal agenda or personality quirks that may cause him or her to react badly to your client or witnesses or not get along with other jurors. Weigh each juror against the jurors or pool of jurors who could be seated next. While trial lawyers must always be wary of the lawyer-juror or technical-juror with "too much" expertise in the area presented by the case, normally the greater concern should be jurors who appear to be loners, complainers, or just plain unhappy with life. More times than not, even if they possess many of the qualities you may be looking for in a juror, these jurors will find some reason to buck the opinions of the rest of the jury and create problems for your client in deliberations.

Organization

I recently tried a one day court trial in Chicago federal court where five minutes before the trial was to commence, opposing counsel arrived at court with 6 boxes of documents, 1 paralegal and 1 associate. I was accompanied by my local counsel, my trial book, and one small binder of exhibits that we had already provided to counsel and the court. While I certainly didn't relax, I had a good idea that opposing counsel was not fully prepared and would not use his limited time wisely.

In trial, you must appear ready and on top of the tasks confronting you. This requires tremendous organization and constant re-organization. Even in the largest case, I always prepare (and have with me at all times) only three binders. The first binder contains the key pre-trial pleadings: the relevant complaint, answer, summary judgment memorandum, expert disclosures, and crucial discovery responses. The second binder contains the motions *in limine*. And the third binder contains the trial pleadings: witness contact information, exhibit lists, trial briefs, *voir dire* and jury questionnaire, special verdict, evidentiary motions, jury instructions, and a section for trial notes. If you cannot fit these materials into three neat binders, you're carrying too much.

In the Big Case, create a witness binder for each witness, including sections for your examination outline, notes, deposition summary, condensed deposition transcript, and possible exhibits for the examination.

You should be careful to keep your counsel table clean and organized at all times. This not only allows you to

Continued on Page 3

find things more quickly, it sends the message to the jury that you're on top of the case and not wasting their time. At the end of every trial day, clean up the court room and your counsel table before leaving. The clerk will appreciate this, and you'll avoid leaving in the courtroom that crucial piece of paper you need at 11 p.m. that night. Finally, do your filing in your trial binders every evening after trial, and discard unnecessary drafts.

Strong organizational skills promote excellence in advocacy. If you don't have everything you need at your fingertips (discarding materials that have been superceded), you damage your credibility and effectiveness with the court and the jury.

Technology and Demonstrative Evidence

Use technology and demonstrative evidence at every opportunity. As in most Big Cases, all the exhibits in our trial were stored on computer. A technical consultant retained by both sides operated the system and was able to instantly call up any document, zoom in on key sentences, and highlight them as appropriate. The consultant also provided us with the capability to pull up documents by bar codes, but I found it easier to have the consultant handle the computer while I concentrated on my examinations. Impeachment can now easily be done with video clips from the deposition, but make sure your impeaching testimony is immediately available or you risk losing the jury. I've found it as, or perhaps more, effective to read the impeaching testimony to the jury.

Develop charts or computer animations to explain difficult concepts, especially with experts. Power Point is the program of choice, but other programs and old fashioned blown-up charts can be equally effective, especially when used in combination.

Pay particular attention to demonstrative evidence during your opening statement and closing argument. In our case, plaintiffs' counsel prepared a seamless Power Point slide show to accompany their 3-hour closing argument. Demonstrative slides of the verdict form were intermixed with key documents, video deposition testimony, and quotes from trial transcripts. Also consider showing pictures of each key witness as you explain the importance and credibility of his or her testimony. In a multi-week trial, jurors will be hard pressed to remember the testimony of each witness. Showing the witness' picture during your summation greatly reinforces the testimony.

But don't get carried away by technology. In our case, plaintiffs' Power Point closing was so pervasive and polished that it overshadowed the lawyer's argument. You should be front and center, making eye contact with the jury and persuading them with your analysis. The demonstrative presentation reinforces your argument, it should not direct it.

Securities Damages Analysis

In preparing for and trying our case, we learned a powerful argument for attacking the plaintiffs' "stock drop" damages in a securities case. The plaintiffs identified an

Continued on Page 8

Impression Formation and Management for Lawyers

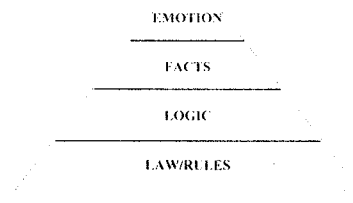
What do marketing, advertising and public relations professionals have in common with trial lawyers? We all make a living selling ourselves, our clients and our ideas. A notable difference is that marketing, advertising and public relations professionals are trained to understand and emphasize what counts most — the decision making process.

Sure, there are some trial lawyers who understand the importance of the basic principles of persuasion and actually use them on a regular basis. But they are a distinct minority. They are also the minority that: (1) land more clients, even though they don't have the intelligence and technical skills (not to mention grace and beauty) that the rest of us enjoy; and (2) frequently prevail over much more legally proficient trial lawyers.

Unfortunately, even with the introduction of trial advocacy programs in most U.S. law schools over the past few decades, law students (and later trial lawyers) continue to be exposed almost exclusively to the approach to legal persuasion that is represented by this graphic:



Mark C. Mazzarella



Beginning as law students, and throughout our years of legal practice, most of us are trained to understand and emphasize the legal holdings of applicable cases — the law. To a lesser extent we consider the rationale for decisions — the logic. On rare occasions, we may consider how the facts influence the analysis — but not often, and certainly not often enough. But how much thought is given to how emotional responses to those facts have affected the decision maker's "analytical" processes? The answer is usually, "None."

No wonder our closing arguments are packed with analysis — not emotion. If we were to produce a Coors Light commercial, we would forget the beautiful women and the studly men playing beach volleyball while enjoying ice cold "Silver Bullets." Instead, we'd talk about the 16

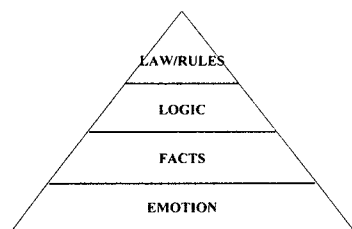
Continued on Page 4

Continued from Page 3

Impression Formation and Management

grades of hops available and stress why one was selected. We'd note the critical differences between stainless steel and copper vats. And, most importantly, we'd make sure the jury was intimately familiar with the role of yeast in the process. That'll make them line up at the 7-11 on the next trip to the beach!

Marketing folks know what most of us trial lawyers don't — people buy based upon emotion and justify with facts. Or, as Elmer Wheeler wrote: "Don't sell the steak — sell the sizzle." They understand that the decision-making process is based on just the inverse of the pyramid we learn to rely upon as lawyers. Their pyramid looks like this:



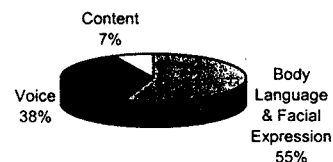
They understand that actions are influenced primarily by emotions, not analysis. That's not surprising, considering that 90% of the brain's activity is non-conscious or emotional; only 10% is rational and cognitive; and even that 10% is hopelessly polluted by the 90% that isn't. In every instance in which you sell yourself, your client or your case, keep the right pyramid in focus. Start with an emotional foundation and build on it with facts, logic and finally the law — not the other way around.

As others form impressions of you, their assessment of your trustworthiness, caring, humility and capability are most important — generally in that order. These qualities, which Jo-Ellan Dimitrius and I call "Compass Qualities" in *Put Your Best Foot Forward*, are projected through a combination of seven different means, which we call "the Seven Colors." Much as a seven-color printer transfers the best possible image on a piece of paper when each color is carefully applied, we, and our clients, can enhance our impressions if we fully utilize each of our "Seven Colors:"

- Personal Appearance
- Body Language
- Voice
- Communication Style
- Content
- Actions
- Environment

Trial lawyers tend to stress content, often to the exclusion of the remaining six Colors. But research and experience demonstrate that this is a horrible mistake. For example, in a frequently cited study, Albert Mehrabian found that when conflicting signals are projected by various means, content yields to the other "Colors."

Mehrabian Study - Sources of Impression Formation



Richard Nixon's campaign team came to the same painful realization after the 1960 televised presidential debates. Nixon was the distinct winner with the radio audience where content, and to a lesser degree voice, reigned supreme. But the television audience witnessed Nixon's nervousness, sweat dripping through his pancake makeup, and favored Kennedy's calm, charismatic confidence. The power of emotions over logic has been demonstrated in presidential elections. The Gallup Poll has asked voters to rate each candidate on likeability, and the winner in every election since 1960 was the candidate who was rated most likeable.

If you discount the importance of any of the Seven Colors, you should reconsider your biases. If you don't, you'll dig a hole from which you can't be extracted by even the most eloquent legal argument.

In an article of this length, I couldn't begin to address all of the ways that trial lawyers can influence positive or negative reactions. There are, however, a few characteristics that research indisputably demonstrates impact every impression. We call those that enhance each of the Compass Qualities — trustworthiness, caring, humility and capability — "Magic Pills," and each of those that detract from them "Toxic Traits." If you do nothing but incorporate healthy measures of "Magic Pills" and avoid "Toxic Traits," you will be way ahead in the Impression Management process.

Our own research and analysis of other studies has identified 5 "Magic Pills" that stand out because they are available to almost everyone, don't cost anything, always help positive impressions and, unless taken in massive overdoses, never detract from a good image. They are:

Eye Contact: No trait is more quickly and uniformly identified with positive or negative qualities than good or bad eye contact. Those with good eye contact are thought to be more honest, friendly, likeable and confident. In informal settings, eye contact during 60% — 70% of the time is optimal. Lesser degrees of eye contact are deemed evasive; and greater intensity can be threatening. In professional settings, where more intense communication is expected, eye contact during 70% - 80% of the time is optimal.

Smiling: Most of us don't naturally possess Tom Cruise's engagingly broad smile. But studies show that almost any smile is better than none. Smiling reflects friendliness, which engenders likeability. And if we like people, we tend to find them to be more trustworthy, humble and capable.

Handshake/Greeting: If you're surprised that the hand-

Continued next page

shake/greeting makes our short list of "Magic Pills," we were too. But the research demonstrates that the emotional bond created by a warm handshake and greeting can't be ignored. Shake hands when you say "Hello," and when you say "Good-bye."

Posture: Like eye contact, good posture projects trustworthiness, confidence and capability. Your "bearing" predisposes your audience to deference and respect. Stand tall, shoulders back, stomach in and head erect.

Enthusiasm: Enthusiasm, and the energy it projects, is contagious. Think back to those teachers, coaches and bosses who had the greatest influence on you, chances are they all conveyed a sense of enthusiasm for whatever they did.

Just as each of the "Magic Pills" will enhance your impression, "Toxic Traits" can be fatal.

Offensive Physical Acts: A positive impression can be dashed by a single act that others find offensive. At the top of the list is anything that smacks of bad hygiene — dandruff, bad breath, body odor, and wrinkled or soiled clothing. Some things just aren't meant to be shared. And I'm not just talking about belching and passing gas. Sniffing, wiping your nose, picking at any part of your body, scratching, coughing without covering your mouth and picking debris from under your fingernails have much the same effect. If you must do any of these things, at least leave the room.

Unappealing Word Usage: You may think it's macho, whether you're a man or a woman, to use profanity. But studies are uniform that profanity almost never makes a good impression. Likewise, bad grammar and trendy sayings may seem "with it," but they seldom enhance your impression.

Insensitive Communication: More than anything else, others want you to affirm their importance. Harsh criticism, even in private, or any public criticism, is perceived poorly. As Publilius Syrus said 2,000 years ago, "Speak well of your friend in public, admonish in secret." Judgmental comments, biting humor, gossip, sarcasm and discussion of overly personal topics also lessen others' impressions of you. People like, and are drawn to, positive individuals, and are afraid of, and repelled by, those who favor the negative.

Aggressive Behavior: Intimidation of any kind seldom promotes positive impressions. Whether reflected in the invasion of others' personal space, domination of conversations or harsh attacks, most people react adversely to any form of aggressive behavior, even if addressed toward others. There are occasions when a full frontal assault on a witness who is dishonest or argumentative may seem justified. But, if you are truly confronted with such a case, you are almost always better off letting the judge and jury draw that conclusion themselves, rather than force-feed them.

Pettiness: It may be tempting to get down and dirty with opposing counsel or a witness, but remember what grandpa used to say, "When you wrestle with a pig you get muddy and the pig just enjoys it." Take the high road and others will appreciate your class. Be quick to applaud others' successes, and reluctant to dwell on your own.

Continued on Page 6

Continued from Page 1

Appellate Practice for Trial Lawyers

the Court of Appeal is an intermediate court, situated between the trial courts and Supreme Court. An intermediate court is bound by findings of fact in the court below and by determinations of law from the courts above. In other words, do not expect an intermediate appellate court to function either as a trial court or a Supreme Court. It is not institutionally cut out for either task.

A second element of knowledge of place is knowledge of the working methods of the court and the implications that has for your case. The court's working methods and internal procedures are eminently discoverable. The Court of Appeal clerk's office has two documents describing them: an appellate fact sheet, and a manual describing the court's internal operating procedures and policies. Both are worth obtaining and reading.

It is also important to have a sense of the sheer size of the caseload of the court and its implications for your case. When I came to the court, I quickly learned that each member of the court was expected to and did author some 90 written opinions a year. That number has inexorably increased — to 100, 110, 120 and now to more than 150 per justice. In each case, before the court's opinion is filed, the briefs and record must be read, research done, colleges consulted, oral argument held and the opinion written. Those 150 opinions are multiplied by three since for every case a justice authors, he or she participates in two others with very nearly the same level of attention required. Add that to the 300 or so writ applications that any one justice is likely to consider yearly and it is apparent that each justice participates in more than 1,000 adjudications per year. If one happens to be the presiding justice, another 25 to 30 motions are considered daily in addition to a variety of administrative work. The lesson is that there is not an abundance of time available to consider your presentation. If it is to be effective, it must be forceful and to the point.

Next, an appellate attorney must know the rules of court, both local and statewide. The consequences of not doing so can include sanctions, having one's brief stricken or, perhaps worse, discounted. The rules of court control form and, to a significant degree, content. Attorneys should pay special attention to rules 13 and 15. Rule 13 requires a "statement of the case," setting forth the nature of the action, the relief sought, a summary of the facts and the judgment of the court below. The statement must be accurate and confined to matters in the record. Rule 15 controls the presentation of argument in the briefs, requiring each point to be separately headed and requiring citations to the record for any fact. The topical headings should be written to form an outline of the case.

Probably the central and most overlooked aspect of briefing is application of the standard of review — that is, the point of view from which the Court of Appeal considers your case. There are essentially three standards of review: substantial evidence (review of a factual determination of a trial court with deference to that finding), *de*

Continued on Page 6

Continued from Page 5

Appellate Practice for Trial Lawyers

novo (review of an issue on which there is not conflicting evidence and which the Court of Appeal is in as good a position to decide as the trial court), and abuse of discretion (review of a determination that the trial court is free to make within certain limits). Knowing which of these applies will focus the brief's presentation.

The initial and very often the only impression of your case comes from the briefs. The principles of effective briefing are straightforward: Be clear, concise and candid. Communication is an attorney's first duty. Points should be clear to an intelligent layperson on a first reading. If not, redraft. Second, a brief should be concise. While the rules allow up to 50-page briefs, it is mistake to use them without cause because the justice in most cases simply hasn't the time to read lengthy briefing and few cases merit it. The vice of an overlong brief is that it encourages skimming by the reader with the danger that a buried valid point may be missed. Finally, a writer should be utterly candid, stating the worst with the best as this the most effective form of advocacy and anything else will surely be discovered, and will destroy credibility perhaps with effects beyond the particular case.

Write effectively. Be brief and well organized. Keep the essential points in mind. Frame the issue to be decided, summarize the relevant facts and rulings, state the applicable law, and argue it.

All too often these few precepts are not followed. Appellate justices shudder at these common examples of ineffective briefing:

The Perry Mason brief. This is a brief that reargues the case as if the author were before a new jury and there had never been a trial or decision. This brief confuses the role of the trial and appellate courts to the writer's (and client's) disadvantage.

The Rosenkranz and Guildenstern are Dead brief. As in the Tom Stoppard play presenting Hamlet from the point of view of two minor characters, this brief sets the unfortunate reader down in the midst of a complex, ongoing drama without a hint as to what has gone on before. This brief is the product of a practitioner who has been living with the case for years and assumes everyone else has been as well. The danger is that the reader is driven to the opponent's brief in the hope it will afford a clue as to what the case is about.

The Book of Job brief. This brief argues that absolutely nothing in the case proceeded properly and that error occurred at every turn from the call of the case to the motion to tax costs. This brief appears to be the recycled contents of the various trial briefs. The vice of a brief that fails to emphasize the strong points of a case is that it wearies the reader who may miss a valid point buried among the chaff.

Finally, the principles of oral argument are the same as for briefing: Know where you are and why, and go about your craft carefully with an eye on the goal. Know the

working methods of the court. Does it conference? When? How long does the court allow for oral argument? In my view, the Court of Appeal, Fourth Appellate District, Division One's method of conferencing emphasizes the value of oral argument. Our method is to ask one justice to prepare a draft opinion that is distributed to a three-justice panel one week before oral argument. There is no pre-argument conference so there is no pre-argument tentative agreement to the draft. A post-argument conference is held immediately following oral argument, with the effect that the attorneys are essentially participants in the decisionmaking process and are involved in forming the court's opinion rather than simply trying to change it.

Ask yourself whether a case should be argued, because oral argument has a cost to the attorney, to the court and, not least, to the client. If the case is clearly either "a winner" or "a loser," there is not much to be gained by oral argument. If, on the other hand, the case is "close" or there is new authority, oral argument is appropriate.

Appellate attorneys facing oral argument should prepare carefully, and should know the both the law and the record. Attorneys should welcome questions by the panel, which highlight the points of the case that concern the court. An appellate advocate is well advised to read the bench. If an attorney is ahead on points, he or she can only lose them by continuing to talk. Instead, the attorney should accept victory graciously and be seated.

Justice Daniel J. Kremer is Presiding Justice, Fourth Appellate District, Division One, in San Diego.



Continued from Page 5

Impression Formation and Management

If you've ever wondered why a witness you knew was lying was believed by the jury, or why your opposing counsel was deified in post-verdict interviews, the answer may lie in the physiological concepts of "cognitive dissonance" and "cognitive consistency." Once people have formed an impression, they tend to reject anything that is inconsistent with that impression (no matter how logical), and to accept anything consistent with the impression (no matter how illogical). If you, and your clients have created the emotional reaction by others that you are trustworthy, caring, humble and capable, you will predispose them to buy what you have to sell — yourselves; just as those marketing gurus predispose their T.V. audience to buy their product, not by selling the beer, but by selling the emotionally attractive lifestyle.

In the next issue of the ABTL Report, I'll move beyond the basics of Magic Pills and Toxic Traits to discuss how you can "manage" the impressions others form of you and your clients. I'll discuss the stereotypes we all harbor, their influence on Impression Formation, and how to accentuate the positive stereotypes and minimize the negative ones. But that's for next time.

Mark Mazzarella is a partner in the San Diego law firm of Mazzarella, Dunwoody & Caldarelli LLP.



PETER J. BENVENUTTI

On CREDITOR'S RIGHTS

Almost all civil litigators and state court judges know about the automatic bankruptcy stay. Bankruptcy Code § 362. Most know that that the stay is very broad in scope — enjoining a wide range of legal proceedings and other debt enforcement actions against the bankruptcy debtor — and that acts in violation of the stay can trigger severe monetary sanctions. In most federal judicial circuits (including the Ninth), actions in violation of the automatic stay are absolutely *void*, not merely voidable. Hence, to continue with litigation or other debt enforcement proceedings in violation of the automatic stay is likely to be a waste of time and money, at best.

But whether the automatic stay applies to a particular activity or proceeding is not always easy to decide. For example, the stay bars actions to recover claims against the debtor, but not claims *by* the debtor. How then to classify an action by the debtor as plaintiff with counterclaims which might result in an affirmative recovery by the defendant? The stay prevents proceedings to recover or exercise control over property of the bankruptcy estate. But how about a declaratory relief or interpleader action in state court to determine the rights of the debtor and others in property (say funds in escrow, or rights under an insurance policy) to which the debtor and others assert conflicting claims? Or funds deposited by the debtor in the court's registry which the court has — pre-bankruptcy — ordered paid to another party? What about the sometimes factually ambiguous statutory exceptions to the automatic stay? For example, is an action by a governmental agency to compel a debtor to spend money on environmental clean-up within the "police powers" exception of § 362(b)(4), or is it instead an action to enforce a financial obligation (and hence not excepted)?

When this kind of question arises in an action pending in state court, can the non-debtor party ask that court to rule that the stay is inapplicable, and safely rely on such a ruling? There is some case authority supporting this approach. Some courts (including some bankruptcy courts) have held that a non-bankruptcy court can decide whether the stay applies to litigation pending before it, and that such a decision is not subject to collateral attack in the bankruptcy court.

Recently, however, the Ninth Circuit has categorically rejected this view, holding in a unanimous *en banc* decision that *only the bankruptcy court* can authoritatively decide whether the automatic stay applies. *In re Gruntz*, 202 F.3d 1074 (9th Cir. 2000).

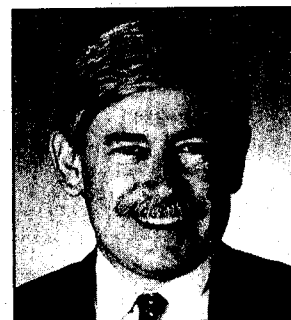
Robert Gruntz was prosecuted in LA Municipal Court during his 1988 bankruptcy case, and convicted, for failing to pay child support. He asserted in state court that the

prosecution was barred by the automatic stay, but lost in both the trial court and on appeal. *People v. Gruntz*, 29 C.A. 4th 412 (1995). After conviction but before sentencing he filed an adversary proceeding in bankruptcy court seeking a TRO to suspend the criminal proceedings; the TRO was denied. After the conviction was affirmed, Gruntz filed a second adversary proceeding in bankruptcy court for a declaration that the conviction was void because in violation of the automatic stay.

When the bankruptcy court dismissed Gruntz's second adversary proceeding as collaterally estopped by the state court criminal conviction, he appealed to the district court. It affirmed based on the *Rooker-Feldman* doctrine, which bars lower federal courts from reviewing most final decisions of a state court. Gruntz, motivated no doubt by the dual desires to avoid doing time and to remove an impediment to issuance of his law license, appealed to the Ninth Circuit. In a published split decision, the Ninth Circuit reversed, holding that the state courts do not have *any* jurisdiction to decide the applicability of the automatic stay, and thus Gruntz's adversary proceeding was not barred by either collateral estoppel or *Rooker-Feldman*. *In re Gruntz*, 166 F.3d 1020 (1999). In an amended opinion, the panel — still divided — modified its rationale slightly to hold that state courts do not have preclusive jurisdiction to decide the applicability of the stay, and again reversed and remanded to the bankruptcy court to decide if the stay applied.

Id., 177 F.3d 728. On request of the state authorities, the Ninth Circuit granted rehearing *en banc*, withdrew the prior opinions, and held unanimously that, because the automatic stay plays such a central role in the federal bankruptcy process, only "the federal courts have the *final authority* to determine [its] scope and applicability...." *Id.*, 202 F.2d at 1083 (emphasis added). Unfortunately for Mr. Gruntz, his victory on the jurisdictional question was a hollow one. The Court of Appeals ruled against him on the merits, and held that, as a matter of law, the automatic stay doesn't bar any criminal prosecution, even if its alleged object is debt collection.

Under *Gruntz*, a decision by a state court that the automatic stay doesn't apply is apparently always open to second guessing by the bankruptcy court. The lesson for litigators, especially in the Ninth Circuit, seems pretty clear. If there is any doubt whether the automatic stay applies to your lawsuit, ask the bankruptcy court to resolve it, or you may find the debtor years later asking the bankruptcy court to set aside your client's judgment and to nullify all your efforts in the meantime. On the other hand, if you're sure that the stay doesn't apply, and that any bankruptcy judge will agree with you, go right ahead and ask the state court to let you try your case.



Peter J. Benvenuti

Mr. Benvenuti is a shareholder in the firm of Heller Ehrman White & McAuliffe LLP. pbenvenuti@hewm.com

Continued from Page 3

Trying (and Winning) the Big Case

expert who developed a damages model positing that most of the class members sold their stock when the stock price was at its lowest.

We moved *in limine* to exclude plaintiffs' expert and limit the trial to liability and causation. We argued that if plaintiffs prevailed at trial on liability, the court could then hold a proof of claim proceeding in which damages could be easily calculated based upon the sell price of each claimant. We first contended that the expert's damage analysis was pure speculation and not based on fact. Similar analyses had been excluded by other courts. Our second — and more powerful argument — was that, even if plaintiffs' prevailed and established damages at trial, they would still need to obtain proofs of claim from the class members in order to distribute the money. And what was to happen to any portion of the damage award that exceeded the claims made by class members? Given the speculative nature of the expert's damage study and the need in any event to hold a proof of claim proceeding, we argued that the jury should only consider liability and causation.

After a long argument, the plaintiffs conceded our point and withdrew their damages expert; the judge ruled that the jury would not consider damages. In so doing, we believed that our clients' potential exposure was cut by more than one-half, given our belief that most of the class members did not simply sell when the stock went down. Since so few of these stock drop cases are actually tried, it may not be immediately apparent to either plaintiff or defense counsel that there is no real justification for allowing the jury to decide damages. Try pushing the point that a post-verdict proof of claim proceeding must follow any verdict of liability and thus damages should be excluded from the jury's charge, and your position at the settlement table and at trial may be greatly enhanced.

Burden of Proof Under Sections 11 and 12

The other substantive securities lesson we learned in the trial was the bizarre proof standard under Sections 11 and 12 of the Securities Act of 1933. The falsity portion of the statutes appear very strict and straightforward: any false or misleading statement made in connection with the sale of stock is actionable. If the plaintiffs can meet this standard, they then must prove the materiality of the misrepresentation or omission.

Causation arises next. Under the case law and the ABA model jury instructions, it appears that plaintiffs have little obligation to prove a connection between the allegedly false statement and the stock drop. Instead, the statutes appear to place the burden of "negative causation" on the defendants who must try to prove that the stock drop resulted from causes other than the alleged misrepresentation or omission. In our case, incorrectly from our view, the judge simply required the plaintiffs to prove that they incurred a loss when the stock price dropped — a fairly incontrovertible fact.

The strange result of these rulings was that the jury never heard anything about damages or causation in

plaintiffs' case. Causation was only raised with the defense and rebuttal cases and, given the exclusion of plaintiffs' damages claim, there never was any testimony on the amount of damages. To avoid jury confusion, we emphasized in closing argument that although the jury would not be asked to determine damages, the damages that plaintiffs were seeking were quite large and thus the jury had to carefully consider its liability and causation findings. The practice point is that, when trying a Section 11 or 12 case, be prepared for a strange allocation of the burden of proof where the defendants must *disprove* causation.

Experts

Experts are always one of the biggest minefields you face in trial — even apart from the invariable surprises arising during testimony. The first, and perhaps most precarious step, is expert disclosure. In state court, your disclosures under Section 2034 must be broad enough to encompass various areas of possible testimony, but still be as specific as possible. In federal court, the expert reports should fully summarize each area of opinion. At deposition, your expert needs to mention every area on which he or she intends to opine. You'll want to box in the opposing expert in deposition to establish that he has not prepared opinions in certain key areas.

Despite counsel's best efforts, virtually every expert is challenged at trial as trying to offer opinions beyond the scope of his designation. Expect opposing counsel to bring a motion to exclude certain testimony or to interrupt your direct examination to *voir dire* your expert on the disputed areas. Be ready to cite where (or where not) the opinion is covered in the designation and the deposition. Argue that the supposedly "new" testimony is simply the result of continued analysis after the deposition that the expert testified she would do, or is simply an additional basis for the same opinion expressed in the disclosure and deposition. Finally, if there is a new area of testimony your expert intends to offer, advise opposing counsel and the court as soon as possible, and make a full disclosure of the new area and the need for expressing it.

Teamwork

One of the most enjoyable parts of trial is the camaraderie developed and experienced by the trial team. When you spend 15 hours or more with your team 6 days per week for 6 weeks, you need to get things organized quickly and well. Frankly, you need to develop a sense of family. There's little in our career as trial lawyers quite as exhilarating (especially after the fact) as rushing off to 9:00 a.m. court with three evidentiary briefs, two new jury instructions, and direct examination outlines for the day's two witnesses, while pulling the witnesses in tow. Obviously, you did only a fraction of the work required to compile and prepare this information. Talented paralegals were up most of the night analyzing and pulling the documents. Support personnel handled the rush copying. And dedicated attorneys did the research and drafting and helped prepare the witnesses.

Continued on Page 10

ZELA G. CLAIBORNE

On MEDIATION

In my mediation practice, I see many techniques a lawyer might use in order to represent a client effectively and reach settlement. The following techniques may be especially useful in moving beyond impasse:

Look for a Solution that May Not Involve Money

This is one of the most common and useful negotiating techniques and comes into play when the party being asked to pay money either has none or refuses to pay. Can that party provide services in lieu of money? Would an apology help? Do the parties have other disputes which could be resolved as part of a package?

Brainstorm About Solutions

Suggest solutions that would be acceptable to your client and ask opposing counsel to do the same. This technique is useful when mediation negotiations have broken down but the parties still appear to be motivated to settle. Work with the mediator to develop the ideas that are most promising. This is something of a scattershot approach, but the parties very often will begin to develop an approach that leads to a final resolution.

Look to the History of the Parties

Ask questions to see whether the parties have worked together successfully in the past and whether they might benefit by doing so in the future. Perhaps a settlement can be fashioned around that opportunity.

Request Another Joint Session

Mediations usually begin with a joint session of all parties and move to separate caucuses with each party. Sometimes, in separate caucus with the mediator, parties describe completely different versions of a key point or incident, and that becomes a stumbling block in the negotiations. Rather than sticking to one position and asking the mediator to shuttle back and forth to look for the "truth," it may be more efficient to request that the parties be brought back together to discuss their positions. Try, at least, to clarify areas of disagreement. Examine the evidence each party can use to back its position.

Take 'Time Out'

When the discussion gets really heated, ask for time out. Give your client time to cool down and consider the downside of not settling.

Ask for Some Evaluation

Often a mediator will start out facilitating communication between the parties but, at some point, will provide some evaluation. Discuss the risks of taking the case to trial or arbitration. Requesting such a discussion with the

mediator may help you and your client weigh the price of not settling and, in turn, may inspire a creative approach to settlement.

Suggest a Meeting of the Warring Individuals

Particularly when the parties once were friends or had a good business relationship before the dispute arose, they may need to have a frank conversation to build some level of understanding before a settlement can be reached. This discussion should be facilitated by the mediator and should take place only with the permission of counsel. Since this technique is quite an extreme measure, it requires great tact and should not be attempted unless other options have been exhausted.

Break Up the 'Gang'

Sometimes a party will be represented by a large contingent, some of whom were involved in the subject project and some of whom may be officers of the company or others with no direct experience in the disputed events. Such a group can make negotiations difficult because they often have developed strong views regarding the case and, instead of hearing the other side's position and reevaluating their own views, tend to reinforce each other in taking the "party line." Suggest that each side be represented by one or two key decision-makers separate from the rest of the group. An appropriate representative might be someone like the company president, who can evaluate the costs and risks of the case and make a sound business decision about settlement.

Move the Difficult Expert to the Sidelines

Again, this technique requires great tact. Sometimes, one party's expert focuses only on the strength of his or her client's position and makes settlement difficult. This problem may arise because the expert has not yet had to develop the proof to back his or her theories, because the expert enjoys arguing with the expert on the other side, or for a number of other reasons. Whatever the reason, the expert may have a personal agenda that does not encourage looking for practical solutions that might be more satisfying than taking the risk of trial/arbitration. Try meeting without the experts and focus on some solutions that would make good business sense.

Exchange Information and Try Again

Sometimes the parties will make great progress during a mediation negotiation, but cannot settle because some crucial information is not available. Agree to an information exchange, set a timetable for it, and establish a date for another meeting to try to reach settlement of the case. Often, the very process of an exchange of information will cause the parties to reevaluate their positions and reconsider possible resolutions.

Ms. Claiborne is a mediator and arbitrator on the National Roster of the American Arbitration Association. zclaiborne-med-arb@lmi.net



Zela G. Claiborne



Continued from Page 8

Trying (And Winning) The Big Case

Make sure you do everything possible to foster the team approach. Have fun. Include everyone in meals, and have frequent team meetings to get input from the entire team. Allow junior associates to examine witnesses. Try to have the team take as much of the weekend off as possible. A team that works well together and enjoys the process will probably litigate the case best, and will greatly assist in obtaining the desired result.

Building your team also means involving your witnesses and clients. In the Big Case, in addition to the 10 to 15 lawyers, paralegals and support staff involved in trying the case, you may have 30 or more witnesses who will either testify or are vitally interested in the outcome. I have found that e-mail distribution lists work well for keeping a large group well informed. Prior to trial, I load all interested persons' e-mail addresses into my notebook, and then send out brief status reports every 3 or 4 days. In this way, witnesses are immediately apprised when they might testify or how fast the trial is moving, and everyone quickly learns of key rulings or testimony. Initially, most busy engineers and business people believe they have far more important things to do than drop everything and run to court at your call. If you constantly involve them with the case and show them how important they are to the process, they are much more likely to meet your scheduling needs and be strong witnesses.

Client Information

A simple and related point is keeping your client constantly informed. Trial is full of crucial decisions, surprise testimony, and confounding trial rulings that knock out your brilliantly planned examination. No matter how well you plan and present the case, you don't make or control the basic facts or law. Twelve jurors or the judge will decide the matter, not you. And if you actually try cases frequently, you're not going to win them all.

The client's key officers need to be part of every step of the process so they can share insight and understand the difficulties and vagaries of jury trial. Before any trial, send the client a privileged case assessment that frankly discusses the strengths and weaknesses of the case. If at all possible, have the general counsel or other key officer of the client present during the trial. A strong client representative is essential because it lets the jury know how important the case is, humanizes a large company or partnership, and brings one of the client's key decision makers into the team.

Trial Advocacy

There are some simple advocacy guidelines I have found helpful in trying the Big Case. The first point is that, even if you are preparing for your first trial or don't frequently get to trial, your training in civil litigation has given you most of the skills you need to succeed. Like most of what we do, the keys to winning at trial are hard work, diligence, and strong organizational skills. The lawyer who knows the facts and law best, timely follows

up on important points, and keeps everything flowing logically and efficiently, will likely be the person the jury will ultimately rely upon. Following the careful and diligent procedures you use everyday to stay on top of your cases will take you a long way towards matching any adversary.

Of course, the best trial lawyers do more than work hard. Experience before juries in multi-week trials brings confidence and the skill to discern important issues from minor ones and to focus your case strategically to best present the key points. However, perhaps the most important point I have learned from trying cases with superb trial lawyers like Paul Renne and Joe Russoniello is the importance of adhering to the truth. No case or client is worth sacrificing your principles or career. Juries sense when witnesses are lying or hiding key information. Tell your client that the best way to lose a case — whether at trial or at deposition — is to lie or obfuscate. Similarly, if your client answers untruthfully or incompletely at deposition, or constantly says she doesn't know, she either will be seriously compromised on cross-examination at trial or at the very least will not be of much use to you as a witness. Don't be afraid of letting your witness tell her story if asked the appropriate questions at deposition or at trial. There are many different honest perspectives and ways to present the "truth," but the bottom line facts remain. You must present and deal with the facts — good and bad — straightforwardly during discovery so that you can use them to persuade at trial.

The best trial lawyers are gracious and even-handed, even under the intense pressure of the Big Case. The rancor we often encounter in civil depositions has no place at trial. If you have major difficulties dealing with opposing counsel during discovery, it will spill over to trial and the jury and judge will know it. My sense is that the attorney who can't get along with opposing counsel cannot fully serve his or her client. Hard-ball litigation will lead to major disputes on minor issues at trial and hurt your credibility before the judge or jury. Antipathy or worse may well affect your impartial analysis. While our adversary system invariably leads to confrontation, counsel should do his or her best to get beyond disputes with opposing counsel, and should treat adversaries with professional respect. A good working relationship with opposing counsel starts with meeting your discovery obligations and avoiding pointless motions to compel. In part, the confidence to avoid and solve discovery issues comes from trial experience that teaches you how to gauge what is really important to a case and what is not.

In sum, have the confidence to follow your gut and let the witnesses tell their story, and you will go a long way to becoming a credible and persuasive advocate for your client the next time you get up in front of the jury in that Big Case.

Mr. Riley is a partner in the San Francisco office of Cooley Godward LLP.



MARY E. MCCUTCHEON

On INSURANCE

A company defending a securities class action often must deal with a formal investigation by the SEC as well. While Directors & Officers Liability insurers generally pay for the costs of defending the class action, they often resist paying fees relating to the SEC investigations.

As always, review the policy language. Some D&O policies expressly extend coverage to the costs of responding to SEC investigations. Even a policy which is silent on the issue, however, may provide coverage.

The insurers often will contend that an investigation by the SEC, even one conducted pursuant to a formal notice by the Commissioner, does not qualify as a "Claim" under the policy. A "Claim" is generally defined to include "any judicial or administrative proceeding initiated against [the directors, officers, or the company] in which they may be subjected to a binding adjudication of liability for damages or other relief..." With the advent of entity coverage, "Claim" is also defined to include "any judicial or administrative proceeding initiated against...any of the Directors or Officers or the Company with respect to a Securities Action..." "Securities Action" is defined as "...any Claim based upon, arising out of, or in any way involving the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the SEC..."

Note that a "Claim" includes the "initiation" of any administrative proceeding. An SEC proceeding commences with, i.e., is "initiated by," an investigation. With a formal order of investigation, the SEC has the full panoply of legal powers at its disposal, including the powers to issue subpoenas and take sworn testimony. It follows that the legal services performed in the course of the investigation are those typically associated with an "administrative" or "judicial" proceeding. And it certainly cannot be denied that an SEC investigation "involves" the "rules or regulations of the SEC."

Moreover, the investigation is the first stage of a proceeding which "may" result in a binding adjudication of liability. The purpose of the investigation is to determine whether the company or individual directors or officers have violated federal securities laws. Based on the investigation, the SEC decides whether to issue a "Wells" notice, which provides the target of the investigation with an opportunity to respond to the SEC's charges. After the response is considered by the SEC, the SEC decides whether to file a formal "Complaint" in an administrative or court proceeding. So, once an investigation has begun, the insured is involved in, and must incur legal costs for, a proceeding which may well result in a "binding adjudication of liability."

In *Polychron v. Crum & Forster Ins. Co.* (8th Cir. 1990) 916 F.2d 461, the Court of Appeal recognized that a grand jury investigation arguably constituted a "claim" under the policy, relying in part on the fact that the grand jury had subpoena power:

[T]he grand jury's investigation and the questioning by the Assistant United States Attorney amounted, as a practical matter, to an allegation of wrongdoing against Mr. Polychron, for which he prudently hired an attorney. The [insurance company] defendants' characterization of the grand jury investigation as mere requests for information and an explanation underestimates the seriousness of such a probe. As later events proved, the plaintiff was the target of the investigation.

Id. at 463.

There are also practical reasons why these fees should be covered. In many cases, the Complaint is filed simultaneously with a consent decree which has been negotiated between the SEC and the target. Accordingly, if the insurer need not pay defense costs until the "Complaint" is filed, there will be virtually no defense costs to pay, as a vast amount of work that goes into the determination of whether there is liability, including essentially all the SEC's discovery, is performed at the "investigation" stage of the case.

Moreover, investigation expenses are usually incurred at the same time the insured is defending a securities class action. D&O insurance provides coverage for a "Loss," which often is defined to include "costs, charges and expenses incurred by [the insureds] in connection with any Claim." In many instances the efforts necessary to defend against the class action are so intertwined with the efforts necessary to compile documents and interview witnesses in the course of the SEC investigation that, as a practical matter, both efforts are part of the same defense. Although there is little case law directly on this subject, *Pepsico, Inc., v. Continental Casualty Co.* (S.D.N.Y. 1986) 640 F. Supp. 656, 666, found coverage for the cost of SEC and grand jury investigations in addition to the class action securities litigation "because the litigation and investigations [are] each directed at the same allegedly fraudulent activity." Moreover, an adverse outcome to an investigation can jeopardize the defense of the class actions. Adequately preparing witnesses for SEC testimony or reviewing documents in response to SEC subpoenas can be a crucial step in preventing a finding of liability in the class action. So even if the insurer contends that investigation costs are not covered under the D&O policy, an attorney submitting the costs to an insurer for payment should take great pains to point out how costs that might be called investigation costs in fact benefited the defense of the civil action.

An insured who purchases liability insurance for claims "arising out of...the rules or regulations of the SEC" should be able to expect that major and basic expenses such as legal research regarding charges raised by the SEC, representation at interviews requested by the SEC, or review of documents compiled by the SEC, are part of the protection purchased.

The author wishes to acknowledge the assistance of Anthony D. Giles of Farella Braun & Martel LLP in preparing this column.

Ms. McCutcheon is a partner in the firm of Farella Braun & Martel LLP. mccutchem@fbm.com



Mary E. McCutcheon



Letter from the President

The end of the year offers an opportunity to reinstate an ABTL tradition: the Letter from the President. For me, this is an opportunity to reaffirm the principles our members share, and to thank those who have contributed to our successes this year.

The persons who participate in the ABTL are those in our profession who have chosen to work in and around courtrooms. They are, for the most part, persons of courage, for there are easier disciplines within the practice of law. No calling in the law could be more important, however. When we step into a courtroom as an advocate, we carry the hopes, fears and destinies of the persons, institutions, causes or principles we represent. Much depends upon our preparation, our judgment, and our presentation. Judges are not in any way immune from this reality, either: preparation, judgment, compassion, and hard work characterize the best in the judicial officers in whose courtrooms we work.



Douglas R. Young

We learn to be trial lawyers by example.

The craft is selflessly passed from experienced lawyer to less experienced lawyer, and from one generation to the next. Along the way, the luckiest among us also move beyond technical proficiency to a higher level of commitment to the clients and the process. The ABTL plays an important role at every stage. Through our programs judges find a platform from which to advise trial lawyers how best to conduct matters in their courtrooms; trial lawyers find common ground from which to explore both tried-and-true techniques and emerging trends in the conduct of trials; and lawyers and judges alike share a forum where approaches to courtroom advocacy can be taught, debated, and refined.

That the ABTL of Northern California has been successful in carrying on the traditions begun by Art Shartsis and our founding Board is a tribute to those who have worked so hard to keep the shared promise of the organization alive: the members who faithfully attend our dinner meetings; our officers — including, this year, Steve Taylor, Rob Fram, and Susan Creighton, each of whom provided superb leadership; our board members (listed in this newsletter), who volunteer their time and their collective wisdom to ABTL governance issues; and Charles Rice, who has so diligently edited and published our newsletter over the years. And inasmuch as the ABTL would have little to offer if it did not have programs of

high quality each month, we must recognize Jon Streeter (our lead program co-chair) and Jerry Roth (who gave Jon welcome assistance) for organizing the outstanding programs we have enjoyed this year. Tricia Fitzpatrick, who worked with me and my firm in organizing the day-to-day functioning of the organization, also deserves recognition and a heartfelt "thank you" for her superb organizational and event-planning skills.

It has been an honor to serve the ABTL of Northern California as its president this year, and now to join the ranks of its ex-presidents. This year has seen the ABTL of Northern California continue to grow and develop as an institution, and we should all be confident that this year's efforts will be complemented and improved upon next year under Steve Taylor's able leadership. Meanwhile, may it always be said of us that we fulfill our courtroom roles — whether as advocates or as jurists — responsibly, with a public spirit that acknowledges the needs of the poor and underrepresented in our society, and with integrity, vigor, humility, humor, and common sense.

Douglas R. Young is a partner with Farella Braun & Martel LLP.

ASSOCIATION OF BUSINESS TRIAL LAWYERS

abt
l

NORTHERN CALIFORNIA

235 Montgomery Street, 30th Floor
San Francisco, California 94104
(415) 954-4400 • www.abtlnorcal.org

OFFICERS

Douglas R. Young, *President*
Stephen E. Taylor, *Vice President*
Robert D. Fram, *Secretary*
Susan A. Creighton, *Treasurer*

BOARD OF GOVERNORS

Denise Alter • John J. Bartko
William Bernstein • Leslie Caldwell
Hon. Maxine M. Chesney • Hon. Alfred G. Chiantelli
Eugene Crew • Sarah G. Flanagan
David Fleisig • Robert A. Goodin
Howard A. Janssen • Hon. Laurence D. Kay
Nancy J. Koch • Hon. John H. Kraetzer
Patrick J. Mahoney • Roderick A. McLeod
Robert L. Mitchell • Hon. Carol Middlesteadt
Portia Moore • Hon. Marilyn Hall Patel
Alfred C. Pfeiffer, Jr. • Frank M. Pitre
Lindbergh Porter, Jr. • Paul A. Renne • Charles R. Rice
Dirk M. Schenckan • Hon. Mark B. Simons
Claude M. Stern • Jon Streeter
Robert J. Stumpf • Hon. James Ware

EDITORIAL BOARD — ABTL REPORT

Charles R. Rice, *Editor*
(415) 421-6500
Zela G. Claiborne • Barry P. Goode • Rachel Krevans
Mary E. McCutcheon • Peter J. Benvenuti