



Paul S. Malingagio

Partner

Los Angeles
333 South Hope Street
Forty-Third Floor
Los Angeles, CA 90071

Tel: 213.617.4185
Fax: 213.620.1398
pmalingagio@sheppardmullin.com

PRACTICE AREAS

- Litigation
- Government Contracts, Investigations & International Trade

INDUSTRIES

- Aerospace and Defense
- Financial Services
- Healthcare

OVERVIEW

Paul S. Malingagio is a partner in the Business Trial Group in the Los Angeles office of Sheppard, Mullin, Richter & Hampton LLP, where he specializes in civil litigation, with an emphasis in the trial of complex and technology driven business matters and alternative dispute resolution.

Areas of Practice

General Civil Litigation: intellectual property, patents, trade secrets, unfair competition, corporate securities, real estate, product liability, and financial institutions.

Financial Institutions Litigation: lender liability, security interests, uniform commercial code, commercial loan defaults, attachments, claim and delivery, receivers, judicial foreclosures, injunctions, relief from stay proceedings, non-dischargeability of debt, objections to discharge.

Alternative Dispute Resolution: significant experience with most forms of alternative dispute resolution, including complex arbitration hearings and mediations with the American Arbitration Association and J.A.M.S., arbitration of patent infringement claims, and trials with judges pro tem. Appointed by the Los Angeles Superior Court to serve as the hearing officer in more than two dozen judicial arbitrations.

EDUCATION

- J.D., Loyola Law School, 1979, *cum laude*;
- B.A., University of California at Los Angeles, 1975

ADMISSIONS

- California
- U.S. District Court for the Central, Northern, Eastern and Southern Districts of California
- Ninth Circuit Court of Appeals
- Court of Appeals for the Federal Circuit
- U.S. Supreme Court

EXPERIENCE

Trial and appellate experience includes: jury trials and court trials in Federal and State Courts; complex arbitrations; appellate experience in the California State Court of Appeal, the California Supreme Court, the Ninth Circuit Court of Appeals, the Court of Appeals for

the Federal Circuit and the United States Supreme Court.

Represented various industries in litigation: financial institutions, real estate, aerospace, computer design and manufacture, computer hardware and software sales, retail, healthcare, medical devices and instruments, cosmetics, automotive products and services, construction, motion pictures, music, airlines, plastics, soft drinks.

Representative Litigation and Trial Experience

General Motors Corporation and Allison Engine Company, Inc. v. Northrop Corporation, Northrop Aircraft Division, Marion County Superior Court Case No. 49D05-9902-CP-154 (Indiana State Court)

Mr. Malingagio and one of his partners defended Northrop in this \$75 million superior knowledge and breach of contract action filed in Indiana State Court. The plaintiffs were subcontractors to Northrop for a key component on Northrop's YF-23 advanced tactical fighter aircraft designed and produced for the United States Air Force. During the eight-week jury trial in Indianapolis, Indiana, Mr. Malingagio was responsible for conducting the direct and cross-examinations of percipient and expert witnesses in the fields of aerodynamics, jet propulsion and acoustic fatigue. The experts included a 20-year NASA propulsion specialist, a Ph.D. employed at the Jet Propulsion Laboratory and a tenured professor at Purdue University, in addition to various engineers employed by the plaintiffs and by Northrop.

Kum Suk Kim, Jonathan Joonyean Kim v. Bank One, Los Angeles County Superior Court Case No. BC336027

Mr. Malingagio successfully defended J.P. Morgan Chase (formerly Bank One) at the jury trial of claims for wrongful collection on a credit card account which had been issued erroneously to the plaintiff through identity theft. The jury rendered a defense verdict in favor of Bank One on all causes of action.

AOL Time Warner Cases I & II Coordinated Actions: Regents of the University of California et al. v. Parson, et al. (L.A. Superior Court Case No. BC293848); *California Public Employees' Retirement System v. AOL Time Warner Inc., et al.* (Sacramento Superior Court Case No. 03AS04015); *California State Teachers' Retirement System v. AOL Time Warner Inc., et al.*, (S.F. Superior Court Case No. CGC-03-422609); *Los Angeles County Employees Retirement Association v. Parson, et al.* (L.A. Superior Court Case No. BC303050); Judicial Council Coordination Proceeding Nos. 4332 & 4325

Mr. Malingagio acted as California counsel representing Citigroup Global Markets, Merrill Lynch and Morgan Stanley in defense of federal and state law securities claims arising from the 2001 merger of America Online and Time Warner. Several California-based pension plans "opted out" of the Second Circuit class action and filed four lawsuits in California Superior Court, all of which were coordinated and consolidated in Los Angeles.

Flex-Foot, Inc. and Van L. Phillips v. CRP, Inc., d/b/a Springlite, United States District Court Case No. SACV 97-504 DOC (EEx) (Central District of California)

Mr. Malingagio, as the lead lawyer in a team which included his partners, Gary Clark and Jim Brueggemann, represented Springlite in a series of five patent infringement lawsuits with Flex-Foot, Inc. involving the field of lower leg prosthetics. Multiple claims of infringement of multiple patents were filed by both parties against each other. Pursuant

to the parties' agreement, three claims were tried before arbitration panels of three patent lawyers, with two arbitrations concluding in favor of Springlite and one in favor of Flex-Foot. During the course of this representation, Mr. Malingagio briefed and argued an appeal before the Federal Circuit Court of Appeals in Washington, D.C.

Ossur North America, Inc. and Van L. Phillips v. Freedom Innovations, Inc., United States District Court Case No. CV 03-1414 ET (CWx)

Mr. Malingagio represented Freedom Innovations in defense of patent infringement claims filed by Ossur North America, one of the world's two largest manufacturers of lower leg prosthetic devices. After Mr. Malingagio filed counterclaims and a summary judgment motion raising issues of inventorship, patentability and inequitable conduct, the matter was settled on favorable terms with a license to Freedom Innovations.

United States of America Ex Rel David Peterson and Jeff Kroll v. Northrop Corporation, United States District Court Case No. CV 87 3698KN (GHKx) (Central District of California)

Mr. Malingagio and two of his partners defended Northrop during the jury trial in this \$50 million government contractor procurement fraud case arising out of the Peacekeeper intercontinental ballistic missile program. The United States Attorney's Office prosecuted this case for 10 years, culminating in a two-month jury trial. Mr. Malingagio and his partners obtained a jury verdict in favor of Northrop and an award of attorneys' fees against the United States Government. This result was designated as one of the National Law Journal's "Top Ten Defense Trial Verdicts in 1996."

Larry Rasmussen v. Eugene T. Lombardi, et al., Los Angeles County Superior Court Case No. PC038491

Mr. Malingagio represented one of the two co-owners in a real estate partition action regarding a 200 acre parcel in Los Angeles County. After an eight week superior court trial, judgment was issued in favor of Mr. Malingagio's client to divide the property in kind as opposed to a court-ordered sale as requested by plaintiff.

Downey Savings & Loan Association v. Sears, Roebuck and Co.; Case No. VCV 015597 (San Bernardino County Superior Court)

Representing Sears as the defendant and cross-complainant, Mr. Malingagio obtained a defense judgment for Sears in this four month trial of a breach of contract/fraud action. On post-trial motions, the Court awarded Sears over \$900,000 in attorneys fees and costs, covering 90% of Sears' total litigation expenses.

In Re The Gator Corporation Software Trademark & Copyright Litigation, MDL No. 1517.

Mr. Malingagio and one of his partners represented The Gator Corporation (now Claria Corporation) in defense of trademark and copyright claims in a multidistrict litigation (MDL) action set in Atlanta, Georgia, involving pop up Internet advertising delivered by Gator to its subscribers and targeted at subscribers' particular interests as determined through analysis of their web-surfing behaviors. The multiple plaintiffs argued that delivery of pop-up ads to consumers' computer monitors infringed the plaintiffs' trademarks and copyrights, even though the consumers were Gator subscribers and agreed to receive the pop-up ads.

Matt Knudstrup, Daniel Cimino, Aaron Tyler, Lisa Tyler, Mark Lytwyn v. 2K Sounds, Inc., Lord John Guidon, Michael Blakey, Bruce Gladstone, et al.; Los Angeles County Superior Court Case No. BC277640

Mr. Malingagio prosecuted this shareholder derivative suit against 2K Sounds and its directors to enforce pre-merger buy back rights and for breaches of fiduciary duty. Mr. Malingagio obtained issuance of a writ of mandate from the California Court of Appeal directing the trial court to disqualify counsel for 2K Sounds due to a conflict of interest. The case settled shortly thereafter.

DMX Music, Inc. v. CVS Pharmacy, Inc., Muzak LLC, et al., Los Angeles County Superior Court Case No. BC297752

Mr. Malingagio represented Muzak in defense of claims filed by its major competitor for predatory pricing and unfair competition under California state law. After 15 months of intense litigation, the matter was settled on favorable terms.

Constant v. Texas Instruments, United States District Court (Central District of California)

Mr. Malingagio was co-counsel for Texas Instruments, in a case involving patents on computer chip technology which was litigated from 1985 until 1989. Texas Instruments obtained a favorable summary judgment under Section 102 on the grounds that the patent was anticipated by prior art. The trial court's ruling was upheld through appeals to the Federal Circuit and Petitions for Certiorari to the United States Supreme Court.

Homestead Savings & Loan Association v. Security Pacific National Bank; Case No. 325160 (Sacramento County Superior Court)

Mr. Malingagio defended Security Pacific National Bank in this multi-million dollar, twenty-three count lender liability action filed by Homestead Savings & Loan Association. Three weeks into the jury trial in Sacramento County, the case settled on terms favorable to Security Pacific.

Plastic Recycling Corporation of California v. wte Corporation (American Arbitration Association)

On behalf of the Plastic Recycling Corporation of California, Mr. Malingagio instituted this contractual arbitration before the American Arbitration Association seeking damages and termination of a contract with a failed plastic bottle recycling facility in Northern California. The respondent counterclaimed for fraud and breach of contract, claiming over \$10 million in damages. The arbitration involved 53 days of live testimony before a retired Superior Court Judge and resulted in a termination of the contract and no damages against Mr. Malingagio's client.

Purosil, Inc. v. Agnes Enterprises, Inc. (American Arbitration Association)

Purosil acquired the business operations of Agnes Enterprises in a leveraged buyout ("LBO") transaction. On behalf of Purosil, Mr. Malingagio instituted a contractual arbitration proceeding before the American Arbitration Association seeking rescission of the LBO transaction or alternative monetary damages based on fraud and mistake. Mr. Malingagio conducted a complex hearing involving 41 days of testimony before a retired Superior Court Judge which resulted in an \$800,000 recovery for Purosil.

GE Engine Services – Corporate Aviation, Inc., dba Garrett Aviation Services v. Chartwell Aircraft Co., Inc., et al.

Mr. Malingagio was part of a team representing Chartwell in claims against General Electric and its subsidiary, the Jet Center, alleging that General Electric had breached a \$13 million contract to build out the interior of a new Boeing 737 for use as a luxury private jet. After two weeks of testimony and 300 pages of briefing, the three-arbitrator JAMS panel issued an award in favor of Chartwell.

H. Robert Holmes, et al. v. Avanza Corp., et al; Case No. RCV 10578 (San Bernardino County Superior Court).

Mr. Malingagio defended Avanza Corp. and its officers and directors in this shareholder derivative and breach of fiduciary duty lawsuit filed as part of an attempt to hostilely take over Avanza Corp. After defeating two motions for preliminary injunctions, Mr. Malingagio negotiated a settlement resulting in current management retaining control of the company and purchasing a controlling percentage of the outstanding stock at one-third its pre-litigation price.

Northrop Corporation v. McDonnell Douglas Corporation; United States District Court Case No. 79 04145 R (Central District of California)

Northrop filed an action against McDonnell Douglas ("MDC") alleging breach of contract and antitrust violations arising out of the teaming agreement between the two companies to co produce the F/A 18 jet fighter aircraft for the U.S. Navy. MDC cross-claimed against Northrop alleging that Northrop misappropriated MDC's F/A 18 trade secrets and used them in the design of Northrop's F 20 jet fighter aircraft. Mr. Malingagio worked as part of a team of 15 lawyers representing Northrop. Mr. Malingagio was primarily responsible for Northrop's defense of the claims of trade secret misappropriation, and specifically with respect to the design of the avionics, computers, cockpits, controls and displays in the aircraft. Mr. Malingagio managed and conducted extensive discovery and depositions of percipient and expert witnesses, including numerous avionics design engineers, former military pilots, government officials, a former Deputy Secretary of Defense and U.S. Air Force General (Ret.) Charles E. Yeager. Prior to trial, the case was settled when MDC agreed to pay Northrop in excess of \$50 million.

MAI Basic Four, Inc. v. Jonas & Erickson Software Technologies, Inc.; United States District Court No. 85 07673 PAR (Central District of California)

MAI Basic Four, Inc. ("MAI"), a \$250 million computer hardware manufacturer filed an action against Jonas & Erickson Software Technologies, Inc. ("J&E"), a \$10 million computer software manufacturer, alleging unfair competition, misappropriation of trade secrets and trade libel. Representing J&E with a limited litigation budget, Mr. Malingagio filed a cross-claim, devised and conducted a discovery plan, prevented the filing of a motion for preliminary injunction by MAI, and negotiated an extremely favorable settlement wherein J&E paid no money or other consideration to MAI.

Plastic Recycling Corporation of California v. California Department of Conservation, Division of Recycling; Case No. 366192 (Sacramento County Superior Court)

Mr. Malingagio represented the Plastic Recycling Corporation of California, a consortium of plastic bottle manufacturers, in this Writ of Mandate proceeding to challenge the manner in which California's Division of Recycling implemented the California Beverage

Container Recycling and Litter Reduction Act.

MEMBERSHIPS

- Member, Litigation Section, American Bar Association
- Member, Litigation Section, State Bar of California
- Member, Litigation and Prejudgment Remedies Sections, Los Angeles County Bar Association
- Member, Association of Business Trial Lawyers

ARTICLES

California Prejudgment Money Remedies, West, 1998.