



## David DeGroot

### Special Counsel

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### PRACTICE AREAS

- Bankruptcy and Restructuring
- Finance
- Intellectual Property

### INDUSTRIES

- Construction and Infrastructure
- Digital Business
- Financial Services
- Insurance

### OVERVIEW

Mr. DeGroot is Special Counsel in the Finance & Bankruptcy Practice Group in the firm's San Francisco office.

### Areas of Practice

Mr. DeGroot represents businesses in complex litigation, focusing on licensing, insurance, intellectual property, contract disputes, and toxic torts. He has experience in cases involving fraud, breach of contract, unfair competition, patents, business torts, mergers and acquisitions, creditors' rights, and bankruptcy. He has extensive experience in all aspects of civil litigation, both in federal and state courts, including prejudgment remedies, discovery, trial, appeals, arbitration and mediation.

Mr. DeGroot works with clients in a variety of industries, including financial institutions, insurance, software, construction, semiconductors, and real estate.

Mr. DeGroot has practiced at Sheppard Mullin since 2001. He began his litigation practice at Pillsbury Madison & Sutro in 1993. From 1998 to 2001, he represented small business and technology clients in a solo practice. Before law school, Mr. DeGroot was a city planner in New York City.

### EDUCATION

- J.D., Boalt School of Law, 1993, *Prosser Award in Federal Courts, Moot Court Board, Moot Court Oral Advocacy Award, Taught legal writing section*
- B.A., Yale University, 1986

### ADMISSIONS

- United States Supreme Court
- California State Courts
- Ninth Circuit Court of Appeals
- United States District Courts for the Northern, Central and Eastern Districts of California
- Eastern District of Kentucky

### EXPERIENCE

Mr. DeGroot has represented clients in a number of high-value disputes. Some of his recent matters include:

- Successfully settling a dispute involving font software, where the client's licensee had underpaid royalties by millions of dollars. Multi-million dollar settlement achieved early in litigation, reducing risk and cost for an international client;
- Vindicating a client's ownership in patents by defeating an opponent's claim to a right of first refusal to purchase the patents. Claim had been brought in bankruptcy court but was stayed in favor of proceedings in another forum, where arguments developed by his team led court to grant summary judgment in client's favor;
- Negotiating resolution of property tax fraud allegations made by San Francisco tax authorities against apartment investment trust. Mr. DeGroot convinced authorities to abandon fraud claim;
- Defending large institutional client in toxic tort matter involving the *Queen Mary*. Coordinated team efforts on two cases brought to the firm six weeks before trial and helped negotiate fair settlements of high-risk claims;
- Serving as main outside litigation counsel for publicly-listed real estate investment trust, handling toxic tort, insurance coverage, and contract matters;
- Representing an insurer in connection with a coverage dispute involving 30-year old policies. After taking matter over from another firm, Mr. DeGroot developed new, key evidence from third parties that allowed his client to shift \$5 million in potential liability to another carrier and that led the court to grant summary judgment rejecting claim for \$10 million of coverage for a two-week policy extension;
- Obtaining a summary judgment in a declaratory relief action in federal court preventing a client's former adversary in a securities litigation from reviving counterclaims in a distant forum where a co-party had suffered a multi-million dollar adverse judgment;
- Assisted in obtaining a favorable jury verdict allowing client to keep seven-figure insurance benefits in the face of an insurer's fraud allegations. After judgment, Mr. DeGroot drafted an appellate brief that resulted in the Court of Appeal's affirming the jury verdict and vacating an arbitration award due to an arbitrator's undisclosed conflicts. This result led to his client's receiving an additional monetary settlement from its insurer;
- On behalf of the trustee of a bankrupt art gallery, successfully settling the claims of the gallery's largest creditor valued at over \$2 million; and
- Preparing a dozen briefs in state and federal appellate courts and arguing two cases before the Ninth Circuit Court of Appeals.

## MEMBERSHIPS

- Federalist Society, San Francisco Lawyers Chapter; President, 2007-present; Board Member, 1995-present
- Member, San Francisco Bar Association
- Member, Association of Business Trial Lawyers

## ARTICLES

- Mr. DeGroot wrote on the importance of upholding settlement agreements in an article criticizing a decision of the California Court of Appeal in *Greentree Financial, Inc. v. Execute Sports, Inc.*, 163 Cal.App.4th 495 (2008). The court had disallowed entry of judgment based on a settlement agreement on the basis that a liquidated damages provision that provided for full payment of a creditor's obligation constituted an unenforceable penalty. He noted that the decision would cause confusion, reduce the number of settlements, and make resolution of cases more difficult and expensive for cash-strapped debtors.

*Courts Should Honor Settlements, Not Overturn Them*,  
Daily Journal, June 19, 2007.

- Mr. DeGroot published an article on the use and misuse of contractual attorneys fee clauses, describing where parties should and should not use such clauses in their agreements. While these clauses are usually intended to discourage litigation, he wrote that they often have the opposite effect by discouraging settlement and encouraging parties to keep cases going in order to obtain fee awards.

*Money Matters*, The Recorder, February 21, 2006.

- He wrote an article on the use and misuse of case authority. The article discusses how to use case authority effectively and ethically.

*Words v. Deeds*, The Recorder, August 10, 2007.

- Mr. DeGroot wrote on the ethics of judicial challenges during a September 2007 controversy where a San Francisco criminal court judge was effectively removed from her post by blanket challenges. He criticized the public defender's office for misusing the statute allowing for peremptory challenges of judges in a way that threatened judicial independence.

*Breall Protest Way Off Base*, The Recorder, September 21, 2007.

- Addressing the U.S. Supreme Court case on global warming – *Massachusetts v. E.P.A.* – Mr. DeGroot observed that the Court's action directing the Environmental Protection Agency to create regulations for carbon dioxide emissions from cars both violated typical standing requirements and gave Congress an excuse not to legislate on global warming issues itself.

*Court Let Congress Off Easy*, The Recorder, April 20, 2007.

- Mr. DeGroot is also a past co-author of Ninth Circuit sections of the Libel Defense Resource Center's 50-State Surveys of Media Libel Law and Media Privacy and Related Law.