



John M. Landry

Special Counsel

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PRACTICE AREAS

- Antitrust and Trade Regulation
- Litigation

OVERVIEW

John M. Landry is special counsel in the firm's Los Angeles office. He is a member of the firm's Antitrust and Trade Regulation practice group.

Areas of Practice

Mr. Landry practices in a broad spectrum of subject areas with emphasis on antitrust and securities litigation. Mr. Landry also has experience in accountants' liability litigation, corporate control contests and responding to Securities and Exchange Commission investigations. His clients have included Microsoft, Philip Morris, Merrill Lynch, Merck, Medco Health Solutions and Citibank.

EDUCATION

- J.D., University of California, Hastings College of Law, Articles Editor, Hastings Law Journal, 1988
- B.A., Philosophy, cum laude, Fordham University, 1984

EXPERIENCE

Represents *Amgen* and other defendants in a putative ERISA class action arising from defendants' decision to offer Amgen stock as an investment option in company-sponsored pension plans. Plaintiffs allege, inter alia, that defendants should have known during the alleged class period that investment in Amgen was no longer prudent and thereby breached fiduciary duties under ERISA. The case was dismissed at the pleading stage, and is now on appeal. Mr. Landry was brought in specifically to assist Amgen in defending the case on appeal.

Represented *Black & Decker* in an action brought under California's Cartwright Act alleging that Black & Decker had terminated plaintiff's retail tool distributorship at the behest of plaintiff's rival, another Black & Decker distributor. Mr. Landry handled all aspects of the case, which resolved favorably in 2006.

Represented *Microsoft* in defending a lawsuit brought by Sun Microsystems alleging monopolization and tying violations of the federal antitrust laws. The case was filed in 2001 and a settlement was reached in 2004. Mr. Landry's role consisted of briefing motions to dismiss, opposing preliminary injunctive relief and working with Microsoft's expert witnesses.

Represented *Medo Industries*, a subsidiary of Pennzoil/Quaker State, in a case brought by

a rival alleging that Medo was attempting to monopolize a nationwide market for automotive air fresheners and had engaged in unfair competition in violation of California law. The case settled on favorable terms in 2002.

Represented *International Rectifier Corporation* in a major securities class action. Mr. Landry took a leading role in the effort to defeat class certification. The case settled favorably while defendants' opposition to the class certification motion was pending.

Represented *Medco Health Solutions, Inc.* in a class action suit brought by California retail pharmacists against the pharmacy benefits management industry based on alleged violations of state law, including California's Business & Professions Code Section 17200 *et. seq.* The case is presently pending in federal district court.

Represented *Credit Suisse* in Enron-related securities litigation brought by several investment funds in California state court. Mr. Landry was involved in developing defense strategies and conducting key offensive discovery of individuals responsible for the plaintiffs' investment decisions.

Represents *Asiana Airlines* in a federal multi-district class action alleging a global conspiracy by air cargo carriers to fix fuel and other surcharges in violation of the Sherman Act, state law, and European competition law. Mr. Landry handles various aspects of this case including working with Asiana's expert consultants.

Represented *Walt Disney Studios Home Entertainment LLC* in a class action by retail video store owners against studios and Blockbuster alleging a price discrimination claim under California's Unfair Practices Act. Mr. Landry worked on various aspects of the litigation which settled in 2007.

Represented *Philip Morris U.S.A.* in defending nationwide class action antitrust cases pending in state and federal courts. The plaintiffs alleged Sherman Act Section 1 violations for cigarette price-fixing by the major manufacturers. The cases were filed in 2000 and the federal direct purchaser claims were dismissed after Philip Morris and the other defendants obtained summary judgment. The team led the briefing in the district court and in prevailing on appeal. Mr. Landry's role included developing Philip Morris' economic expert proof and opposing class certification in several state court purchaser actions. Mr. Landry continues to represent Phillip Morris in a remaining state court case.

Represented *RITA Medical Systems, Inc.* and its directors in class action litigation brought by certain shareholders seeking to enjoin a merger. Mr. Landry handled all aspects of the litigation including negotiating a settlement that allowed the merger to proceed without delay in 2007.

Represented *KPMG* in an action in California arising out of the World Bazaars Inc's bankruptcy case. Mr. Landry handled all discovery and summary judgment proceedings. In 2007, the case was settled favorably while KPMG's summary judgment motion was pending.

Represented *Zero.Net*, an internet incubator and holding company, and several of its directors and affiliates, in federal securities fraud litigation brought by key investors who sued after the collapse of the company's stock price. Mr. Landry handled all aspects of the litigation, including developing a loss causation defense and defeating plaintiffs' early efforts to attach the client's California assets. After narrowing the pleadings, and conducting discovery, John settled the litigation in a manner favorable to the client.

Represented *Synetic Inc.* and coordinated its responses to a formal investigation by the Securities and Exchange Commission regarding suspected illegal trading by an outside director and his alleged tippees. Tasks included negotiating significant limitations on discovery requests and advising the client on attorney-client privilege issues.

Represented *Medco Containment Services Inc.* and two of its subsidiaries in several shareholder lawsuits filed in Delaware Chancery Court arising from Merck and Co., Inc.'s announced \$6 billion acquisition of Medco in 1993. Claims against Medco directors included breach of fiduciary duties and securities violations. After defending numerous depositions, Mr. Landry negotiated a resolution of each litigation, which included structural changes to the transactions, on terms favorable to Medco.

Represented *Merrill Lynch* in major securities litigation brought by a number of large institutional investors (including Harvard's endowment fund) arising from Merrill Lynch's sale of certain notes issued by Lomas Financial Corporation. Mr. Landry assisted in drafting motions to dismiss, discovery requests and motions to compel discovery. These cases were settled on terms favorable to Merrill Lynch and Mr. Landry assisted in preparing the settlement documents.

Represented *Medco Containment Services Inc.* in responding to an investigation by the Securities and Exchange Commission of suspected insider trading in Medco shares prior to a merger announcement. Tasks included conducting an investigation for the client and preparing extensive chronologies as requested by the SEC.

Represented *KPMG* in a major accountants' liability action arising from KPMG's role as auditor for Orange County from 1992-1994. After seeking bankruptcy protection in December of 1994, the County sued KPMG for alleged breach of contract and negligence relating to investment losses of \$1.8 billion in the County's portfolio. Mr. Landry's role in the case consisted of organizing and managing KPMG's discovery of significant third party witnesses, including various water districts and school districts which had placed funds in the County's investment pool.

Represented *Merck and Co., Inc.* in *In re Brand Name Prescription Drug Litigation*, one of the largest private antitrust litigations ever brought in the United States. Plaintiffs, independent and chain store pharmacies, through class actions and individual lawsuits, sued the entire brand-name prescription drug industry, alleging that defendants conspired to fix prescription drug prices in violation of Section 1 of the Sherman Act and that they engaged in price discrimination in violation of Section 2(a) of the Robinson-Patman Act. In the class actions, Mr. Landry managed offensive and defensive discovery. Among other things, Mr. Landry supervised numerous associates and contract attorneys, conducted key depositions of executives of the leading plaintiff drug store chains, including Walgreens and Rite Aid, defended depositions and argued several pivotal discovery motions. In 1997, Merck settled the class cases on a favorable basis.

Represented *Porex Technologies Corp.*, a former distributor of silicon gel breast implants and a defendant in multi-district breast implant litigation. Mr. Landry advised Porex with respect to its litigation strategy and settlement discussions. In counseling Porex regarding its potential exposure arising from this litigation, Mr. Landry also negotiated with Porex's insurance carriers regarding the funding of defense and indemnity costs and advised Porex with respect to public disclosure of the litigation and its impact on the financial condition of the company.

Represented *Porex* in an insurance coverage dispute. Porex and its primary insurance

carrier sued Mitsui, the insurer of the manufacturer of the breast implants distributed by Porex, with respect to certain insurance policies in which Porex was named as an additional insured. Mr. Landry conducted deposition discovery of Mitsui representatives and drafted memoranda in opposition to several dispositive motions. Porex obtained a favorable settlement from Mitsui in January 1998.

Represented *Northern Telecom* in a product failure case. After AT&T sued the Human Resources Administration of the City of New York (the HRA) to collect outstanding long distance bills for calls fraudulently charged to the HRA, the City impleaded Northern Telecom, Inc., the manufacturer of the HRA's telephone switch, through which the unauthorized calls were made. Mr. Landry defended Northern Telecom against the HRA's claims for alleged defective manufacture and design and breach of contract. In addition to conducting discovery, Mr. Landry drafted the motion for summary judgment which, in 1993, disposed of the entire case against Northern Telecom. The reported decision is a leading case on the economic loss rule, a principle which bars recovery in tort where defendant's negligence did not result in personal or property damage.

HONORS

- Member, Executive Committee of the California State Bar's Antitrust and Unfair Competition Law Section (through 2010)
- Chair, Executive Committee of the Antitrust and Unfair Business Practices Section of the Los Angeles County Bar Association

MEMBERSHIPS

- American Bar Association
- California Bar Association
- Los Angeles County Bar Association

ARTICLES

- Fact Pleading After *Ashcroft v. Iqbal*, *The Antitrust Source*, October 1, 2009
- Is Obama the New Trust-Buster?, *Los Angeles Daily Journal*, June 12, 2009
- Co-author, "One Hundred Years in the Making: The Cartwright Act in Broad Outline," *Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 17, No. 2 Fall 2008
- Co-author, "The Ninth Circuit's *linkLine* Decision: A Flawed Application of Intracircuit Store Derisis?," *Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 17, No. 1 Spring/Summer 2008
- "What Every Lawyer Should Know About U.S. Antitrust Law," *County Bar Update*, a publication of the Los Angeles County Bar Association, Vol. 27, No. 11 12.2007
- "Possible Limitations on Securing Corporate Governance Reforms Through Class Action Settlements," *The Wall Street Lawyer* 03.2006
- "Undoing The Ninth Circuit's *Chroma Lighting* Decision: Is *Volvo* Too Much, Too Little, Too Late?," *Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 15, No. 2 Fall/Winter 2006
- "The Plight of Nascent Competitors in the Ninth Circuit After *Bourns v. Raychem*," *Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 13, No. 1, 12.1.2004
- Co-author, "The Future of Loss Causation," *Securities & Commodities Regulation*, Vol. 20 No.11, 11.2004

- “Courtroom Closure: New York Refines Its Approach,” *New York Law Journal*, 09.1997
- Co-author, “Hospital Group Purchasing and Efforts to Reduce Supply Prices: Antitrust Considerations and the Issues Raised by In re Brand Name Prescription Drugs Antitrust Litigation,” *Antitrust Developments for Healthcare Providers*, American Bar Association 03.1995
- Co-author, “How Foreign Governments Gain Access to U.S. Information,” *Money Laundering Law Report*, Volume 4 No.3 10.1993
- Co-author, “Responding to Extraterritorial Investigations,” *ABA Section of Business Law*, 08.1993

SPEECHES

- "The ABC's of Antitrust, and California's Unfair Competition Law and Consumer Legal Remedies Act," co-presenter, 2010 Cyber Institute, sponsored by the State Bar of California, March 9, 2010
- "A Primer on California Competition Law," co-presenter, 82nd Annual Meeting of the State Bar of California, September 12, 2009
- "Setting the Bounds of Section 2 Liability: Understanding *linkLine* and its Potential Implications," co-panelist, Antitrust and Unfair Business Practices Section of the Los Angeles County Bar Association, November 20, 2008
- "Antitrust Issues in the Entertainment Industry," panel moderator, Golden State Antitrust and Unfair Competition Law Institute, October 24, 2008
- "The Future of Minimum Resale Price Maintenance: Navigating the Treacherous Waters of a Post-*Leegin* World," co-presenter, 81st Annual Meeting of the State Bar of California, September 28, 2008
- “An Overview of Antitrust and Unfair Competition Law,” co-presenter, The State Bar of California Section Education Institute, January 2008
- “E-discovery Panel: Update on 2006 Amendments To The Federal Rules of Civil Procedure,” University of California Hastings College of the Law and Heller Ehrman LLP, January 2008