



→ John M. Landry

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John M. Landry is a special counsel in the firm's Los Angeles office. He is a member of the firm's Business Trial Practice Group.

Areas of Practice

John practices in a broad spectrum of subject areas with emphasis on class action defense, antitrust and securities litigation. John also has experience in accountants' liability litigation, corporate control contests and responding to Securities and Exchange Commission investigations. He has represented Microsoft, Philip Morris, Merrill Lynch, Merck, Medco Health Solutions and Citibank.

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

Experience

Represented *J.C. Penney* in putative consumer class action in federal court alleging false advertising conduct related to alleged defective jewelry products. Mr. Landry assisted in all aspects of opposing class certification, including expert witness discovery. The matter resolved while the class certification motion was pending.

Represented *Amgen* in major federal securities fraud class action brought by pension fund. Mr. Landry assisted in challenging the district court's class certification order in appeals to the Ninth Circuit and U.S. Supreme Court.

Represented *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. Mr. Landry was brought in to handle issues 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.

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.

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.*

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.

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.

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. 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*, a breast implant distributor, in a product liability 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.

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 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.

Articles

- American Pipe Tolling and Successive Class Claims
Los Angeles Daily Journal, 06.28.2018
- Never Say Never: The Ninth Circuit's Misguided Categorical Approach to Individual Damages Questions When Assessing Rule 23(B)3 Predominance
The Journal of the Antitrust, UCL and Privacy Section of the State Bar of California, Fall 2016
- Delaware Court of Chancery Addresses the "Cleansing Effect" of Stockholder Approval In Post-Closing M&A Damages Actions
Transaction Advisors, 09.2016
- Co-author, "The New Normal: The Need for Damages Proof to Certify Consumer Classes Post-Comcast," *Bloomberg BNA Class Action Litigation Report*, March 28, 2014
- Co-author, "The Contract Is King: The U.S. Supreme Court's Two Recent FAA Decisions," *Bloomberg BNA Class Action Litigation*, September 27, 2013
- Co-author, "Pre-suit Investigation Is Key to Caremark Claims," *Law360*, December 2012
- "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 *Stare Decisis*?" *Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 17, No. 1, Spring/Summer 2008
- Co-author, Speculation, Overdeterrence, and Consumer Standing in *Walker Process* Litigation: A Response to Professor Leslie, *Southwestern Journal of Law and Trade in the Americas*, Vol. 13, No. 2, 2007
- "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, December 2007
- "Possible Limitations on Securing Corporate Governance Reforms Through Class Action Settlements," *The Wall Street Lawyer*, March 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, December 1, 2004
- Co-author, "The Future of Loss Causation," *Securities & Commodities Regulation*, Vol. 20, No.11, November 2004

- "Courtroom Closure: New York Refines Its Approach," *New York Law Journal*, September 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, March 1995
- Co-author, "How Foreign Governments Gain Access to U.S. Information," *Money Laundering Law Report*, Vol. 4, No.3, October 1993
- Co-author, "Responding to Extraterritorial Investigations," *ABA Section of Business Law*, August 1993

Antitrust Law Blog Posts

- "U.S. Supreme Court Lets Natural Gas Act Preemption Seep Away," May 7, 2015

Class Action Defense Strategy Blog Posts

- "If At First You Don't Succeed: The Ninth Circuit Invites Successive Class Actions By Extending *American Pipe* Tolling To Absent Class Members' Own Class Claims," June 9, 2017
- "Eighth Circuit Reverses District Court for Ignoring Price-Impact Evidence That Rebutted the Fraud-on-the-Market Presumption and Defeated Class Certification," May 6, 2016
- "Plaintiffs' Full Refund Theory of Restitution Under California's Unfair Competition Law Goes Up in Smoke in Latest *Tobacco II* Opinion," December 1, 2015
- "The Ninth Circuit Declares That Individualized Damages Issues Alone Never, Ever Preclude Certification of a Rule 23(b)(3) Class," October 8, 2015
- "Creative Construction: The Ninth Circuit Relaxes Removal Statute's Timeliness Test in Class Action Fairness Act Cases," April 15, 2015
- "The Second Circuit Holds That *Comcast* Does Not Require Automatic Denial of Rule 23(b)(3) Class Certification in Cases Presenting Individualized Damages Issues," February 26, 2015
- "Removing All Doubt: The First Circuit Clarifies the Conditions Triggering the 30-Day Removal Window When the Earlier, Initial Pleading Does Not Disclose Grounds for Removal," November 17, 2014
- "Ninth Circuit Concludes That Common Issues Do Not Predominate Where Retailer's In-Store Signs and Oral Sales Statements Place Each Putative Class Member's Exposure to Misleading Statements in Doubt," February 13, 2014

Corporate & Securities Law Blog Posts

- "Caremark Claim to Proceed Against Directors of Ice Cream Manufacturer Following *Listeria* Outbreak" rel="noopener" href="https://www.corporatesecuritieslawblog.com/2019/07/caremark-claim-listeria-outbreak/">"Delaware Supreme Court Allows *Caremark* Claim to Proceed Against Directors of Ice Cream Manufacturer Following *Listeria* Outbreak," July 29, 2019
- "Second Circuit Holds That Issuer's Alleged Statements Concerning Its Regulatory Compliance Efforts Do Not Constitute Material Misstatements," March 12, 2019
- "Ninth Circuit Splits From Other Circuits, Holding That a Negligence Standard Applies to a Claim Challenging Tender Offer Disclosures Under Section 14(e)," April 26, 2018
- "Delaware Court of Chancery Dismisses Post-Closing Disclosure Claims for Damages, Cautioning That Such Claims Are Best Pursued Pre-Closing," October 6, 2016

- "Delaware Court of Chancery Addresses the "Cleansing Effect" of Stockholder Approval In Post-Closing M&A Damages Actions," September 2, 2016
- "Tenth Circuit Upholds Nevada Law By Denying Stockholders Standing to Bring Claims on Behalf of Nevada Corporation," July 1, 2016
- "Delaware Chancery Court Rejects MBO Merger Price as Best Evidence of Fair Value in Appraisal Proceeding," June 9, 2016
- "Eighth Circuit Reverses District Court for Ignoring Price-Impact Evidence That Rebutted the Fraud-on-the-Market Presumption and Defeated Class Certification," May 6, 2016
- "'Dead Hand Proxy Puts' Garner Increased Stockholder Scrutiny In Delaware," June 10, 2015
- "Delaware Supreme Court Holds That a Stockholder Plaintiff Must Plead a Non-Exculpated Claim to Avoid Section 102(b)(7)-Based Dismissal When Seeking Damages From Independent and Disinterested Directors," May 19, 2015
- "Delaware Supreme Court Confirms Chancery Court's Broad Authority to Impose Use Restrictions on Information Obtained From Section 220 Books and Records Inspections," January 5, 2015
- "District Court Cites Recent "Evolution" of Rule 23 Standards to Deny Class Certification Motion in Securities Action Based Upon Allegedly Misleading Registration Statement," April 1, 2014
- "Fifth Circuit Holds That Securities Fraud Defendants May Not Rebut the Fraud-on-the-Market Presumption at the Class Certification Stage Through Evidence of No Price Impact," June 21, 2013
- "Delaware Supreme Court Affirms Preclusive Effect of Non-Delaware Dismissals and Rejects Irrebuttable Presumption That a Derivative Plaintiff Who Fails to Conduct a Section 220 Inspection Is an Inadequate Representative," April 23, 2013
- "Second Circuit Reverses Class Certification Order, Holding That a Clearing Broker's Alleged Knowledge of Fraud Against Shareholders, Absent Direct Involvement, Is Insufficient to Create a Duty of Disclosure," March 27, 2013
- "United States Supreme Court Holds that Class Action Securities Fraud Plaintiffs Need Not Prove the Materiality of the Alleged False Statements or Omissions to Support Certification of a Class, Resolving Circuit Split," March 7, 2013
- "Delaware Chancery Court Holds That a Stockholder Inadequately Represents a Corporation in Derivative Litigation When He or She Files a *Caremark* Claim Without First Making a Section 220 Books and Records Demand," November 14, 2012
- "Delaware Chancery Court Rejects Stockholder's Section 220 Books and Records Demand Based Upon Failure to Demonstrate "Credible Basis" for Inspection," November 14, 2012

Speaking Engagements

"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

Memberships

American Bar Association

California Bar Association

Los Angeles County Bar Association

Practices

Antitrust and Competition

Litigation

Securities Litigation

Antitrust Counseling and Compliance

California Antitrust and Unfair Competition Law

Consumer Protection

Private Civil Antitrust Litigation

Education

J.D., University of California, Hastings, 1988, Articles Editor, *Hastings Law Journal*

B.A., Fordham University, 1984, *cum laude*