

# Daily Journal

February 12, 2014

## TOP VERDICTS OF 2013

### TOP DEFENSE RESULTS

## McHale v. Silicon Valley Law Group

**W**hen a jury decided that Silicon Valley Law Group wasn't liable for allowing a client to enter into a transaction with a fraudulent investor, defense attorneys at Lerch Sturmer LLP hoped the verdict would send a message.

"You can't blame attorneys for every bad decision that follows on a transaction in question," said lead trial counsel Jerome N. Lerch.

"Lawyers advise," added co-counsel Debra S. Sturmer. "The clients make decisions."

Silicon Valley Law Group's former client Janet Dashiell and her company, 1031 Advance, went bankrupt after she sold her business to Edward H. Okun, later convicted of running a Ponzi scheme. Dashiell's company, which used real estate transactions to minimize capital gains taxes, went bankrupt in the process.

The bankruptcy trustee for the failed company — represented by New York-based lawyers at Golenbock Eiseman Assor Bell & Peskoe LLP — filed

suit against Silicon Valley Law Group for negligence, asking a jury for \$36 million plus costs and fees.

The trustee claimed the firm failed to stress the importance to Dashiell of attaining financial statements from Okun before selling the business to him. *McHale v. Silicon Valley Law Group*, CV10-4864 (N.D. Cal., filed Oct. 27, 2010).

But Silicon Valley Law Group's attorneys argued that the firm had been trying to put together the deal in good faith.

The firm had conducted due diligence, asking for information four times, it claimed. But the client, seeing the promise of \$2.5 million and a big employment opportunity at the larger company, wanted to move forward more quickly. "She pressed to get the deal done and, in our view, she said, 'I want this deal to go through, stop,'" Lerch said.

"They didn't get further information, deal goes through, and, lo and behold, after four months the scheme is unraveled and Dashiell's company is bankrupt."

#### case INFO

#### Negligence

Northern District of California

U.S. Magistrate Judge Joseph C. Spero

**Defense attorneys:** Lerch Sturmer LLP, Jerome N. Lerch, Debra S. Sturmer, Jason O. Balogh

**Plaintiff's attorneys:** Golenbock Eiseman Assor Bell & Peskoe LLP, Michael S. Devorkin, Jacqueline G. Veit



JEROME N. LERCH



DEBRA S. STURMER

Trustee attorney Michael Devorkin said he decided not to appeal because of the difficulty in overturning a factual finding. He also noted that it was the last claim in the bankruptcy — his firm already recovered \$137 million, including \$27 million from other law firms, he said.

"We respect the jury's verdict, but we have a difference of opinion about the high standard we think lawyers should be held to," Devorkin said."

— Hadley Robinson

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ATTORNEYS AND COUNSELORS AT LAW

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Case Name	Type of Case	Court	Judge(s)	Defense Attorneys	Plaintiff's Attorneys
Jackson et al. v. AEG Live LLC	Wrongful death	Los Angeles County	Superior Court Judge Yvette M. Palazuelos	O'Melveny & Myers LLP, Marvin S. Putnam, Jessica Stebbins Bina, Kathryn Cahan, Tad Allan, Sabrina H. Strong	Panish, Shea & Boyle LLP, Brian J. Panish, Kevin R. Boyle, Deborah Chang, Robert S. Glassman, Jennifer S. Farrell
Moser v. Encore Capital Group et al.	Breach of confidentiality agreement	Southern District of California	U.S. District Judge Janis L. Sammartino	Cooley LLP, Michael A. Attanasio, Ryan E. Blair; Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg PC, Thomas V. Reichert, Terry W. Bird, Preston Lim, Jason D. Kogan.	Procopio Cory Hargreaves & Savitch LLP, Anthony J. Dain, Fredrick K. Taylor, Robin L. Phillips; Kyle Ludwig Harris, Frederic Ludwig III.
McHale v. Silicon Valley Law Group	Negligence	Northern District of California	U.S. Magistrate Judge Joseph C. Spero	Lerch Sturmer LLP, Jerome N. Lerch, Debra S. Sturmer, Jason O. Balogh	Golenbock Eiseman Assor Bell & Peskoe LLP, Michael S. Devorkin, Jacqueline G. Veit
Bellows et al. v. Bellows et al.	Elder abuse	Mendocino County	Superior Court Judge David E. Nelson	Gordon & Rees LLP, Stuart M. Gordon, James R. Reilly	Jeffrey J. Allen; O'Brien Watters & Davis LLP, Michael G. Watters; Anderson Zeigler Disharoon Gallagher & Gray, Daniel E. Post
Gutierrez et al. v. Balch Petroleum et al.	Personal injury	Fresno County	Superior Court Judge Kristi C. Kapetan	Gordon & Rees LLP, Miles D. Scully and J. Todd Konold; Walsworth, Franklin, Bevins & McCall LLP, Karen Sullivan and Helen Luetto	David M. Feldman
Mallen v. Alphatec Holdings Inc. et al.	Securities class action	Southern District of California	U.S. District Judge Roger T. Benitez	Latham & Watkins LLP, Peter A. Wald, Colleen C. Smith, Michele D. Johnson; Wilson Sonsini Goodrich & Rosati PC, Nina F. Locker, Steven Guggenheim, Jessica L. Snorgrass, Joni L. Ostler; Wilmer Cutler Pickering Hale and Dorr LLP, Randall R. Lee, John F. Batter III, John J. Butts, Nolan J. Mitchell	Glancy Binkow & Goldberg, Lionel Z. Glancy; Cohen Milstein Sellers & Toll PLLC, Julie G. Reiser, Steven J. Toll; Law Office of David N. Lake APC, David N. Lake
Name.space Inc. v. ICANN	Trademark infringement, unfair competition	Central District of California	U.S. District Judge Percy Anderson	Jones Day, Jeffrey A. LeVee, Kathleen P. Wallace, Eric P. Enson	Morrison and Foerster LLP, Adam J. Hunt, Craig B. Whitney, Mark R. McDonald, Michael B. Miller
Nuance Communications Inc. v. ABBYY USA Software House Inc.	Patent infringement	Northern District of California	U.S. District Judge Jeffrey S. White	Finnegan, Henderson, Farabow, Garrett & Dunner LLP, Erik R. Puknys, Gerald F. Ivey, Lily Lim, Joseph E. Palys, Douglas A. Rettew, John M. Williamson, E. Robert Yoches, Anna Balishina Naydonov, Zhenyu Yang	Morrison & Foerster LLP, James P. Bennett, Michael A. Jacobs, Brooks M. Beard, Alison M. Tucher, Patrick Zhang, Danielle Coleman, Kelly Lowenberg, Christopher J. Weiner; Wilson Sonsini Goodrich & Rosati PC, M. Craig Tyler, James C. Yoon, Christopher Grewe, Holly Baudler, Henry Pan, Chris Wilson
In re Tobacco Cases II	False advertising, product liability	San Diego County Superior Court	Judge Ronald S. Prager	Munger, Tolles & Olson LLP, Gregory P. Stone, Sean Eskovitz, Martin D. Bern, Blanca F. Young, Daniel B. Levin, Bethany W. Kristovich, Keith R. D. Hamilton II, Jeslyn A. Miller	Robinson Calcagnie Robinson Shapiro Davis Inc., Mark P. Robinson Jr., Kevin F. Calcagnie, Scot D. Wilson; Simon, Peragine, Smith & Redfearn LLP, Robert L. Redfearn; Dougherty, Hildre & Haklar, Thomas Haklar
NetAirus Technologies LLC v. Apple Inc.	Patent infringement	Central District of California	U.S. District Judge John A. Kronstadt	Milbank, Tweed, Hadley & McCloy LLP, Mark C. Scarsi, Christopher J. Gaspar, Chris L. Holm, Hannah L. Cannom, Ashlee Lin	Niro, Haller & Niro, Raymond P. Niro, Dean D. Niro, Robert A. Conley, Tahiti Arsulowicz; Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP, Mark B. Mizrahi,