

Daily Journal

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TOP VERDICTS OF 2016

The largest and most significant verdicts and appellate reversals handed down in California in 2016

TOP DEFENSE VERDICTS

Himelsein Mandel Fund Management LLC v. Fortress Investment Group LLC

case
INFO

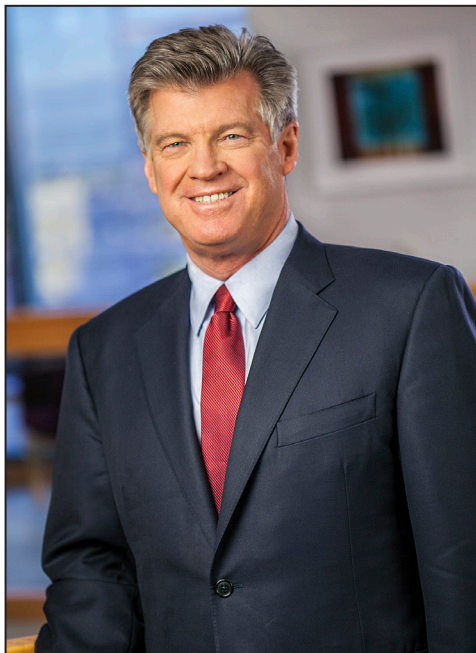
Breach of fiduciary duty

Los Angeles County

Superior Court Judge Ann I. Jones

Defense lawyers: Munger, Tolles & Olson LLP, Brad D. Brian, Lisa J. Demsky, Michael R. Doyen, Bradley S. Phillips, Jeffrey Y. Wu, Laura D. Smolowe, Marja-Liisa Overbeck, Emily B. Viglietta, Jordan D. Segall, Bryn A. Williams

Plaintiff lawyers: Glaser Weil Fink Howard Avchen & Shapiro LLP, Patricia L. Glaser; Simpson Thacher & Bartlett LLP, Michael D. Kibler



BRAD D. BRIAN



LISA J. DEMSKY

Following a four-week bench trial, Brad D. Brian, Lisa J. Demsky and the Munger, Tolles & Olson LLP team prevailed in defending against claims brought by HM Ruby Fund LP, a life settlement hedge fund, alleging breach of fiduciary duty, breach of contract, unfair competition, negligent misrepresentation, promissory estoppel and fraud. The fund claimed that Fortress Investment Group LLC reneged on a promise to extend a \$65 million credit facility, declared an improper default and misappropriated HM Ruby's proprietary business information.

The case boiled down to witness credibility, and that emphasized the importance of properly conducting videotaped trial depositions that would be played in court, Brian and Demsky said. "You might be asking questions in discovery mode if the witness will be available for trial, but here you had to be more judicious in asking because it will be viewed by the judge," Demsky said.

Added Brian, "Many lawyers take long discovery depositions, but here you need to think very carefully about how what you ask is going to play in court. You need to make everything very understandable."

The team knew it would be facing off against powerhouse lawyers Patricia L. Glaser of Glaser Weil Fink Howard Avchen & Shapiro LLP and Michael D. Kibler of Simpson Thacher & Bartlett LLP. They contested several key legal issues, including choice of law and enforceability of the parties' contractual jury waiver clause. The judge ruled on summary judgment that the parties' contracts would be enforced as written under the law the sophisticated parties had chosen. She also rejected HM Ruby's claim that despite a requirement that any modification be in writing the parties had orally

agreed to amend the agreement to provide an additional \$20 million in funding.

Emails were key. "I started trying cases a long, long time ago," said Brian, "when the evidence came through conversations and phone calls. Now it's emails. We waded through millions of pages to find the important ones. It's hard for a witness to walk away from what he or she wrote."

"Then you have to be familiar with them sufficiently to have them readily in mind," Demsky said. "If you are examining a witness who says what isn't so, you have to be nimble enough to instantly confront him with his email to contradict what he just said."

"We had very, very excellent trial lawyers on the other side," Brian said. "It was satisfying to prevail."

— John Roemer