

PETER S. LUBIN
DITOMMASO♦LUBIN
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Admitted to the Illinois Bar, 1983; Admitted to United States District Courts, Northern District of Illinois, Eastern Division, Southern District of Illinois, Central District of Illinois, Peoria and Rock Island Divisions, District Court of Maryland, and Western District of Michigan; United States Courts of Appeal for the Second, Third, Fifth, Seventh, Tenth, Eleventh and District of Columbia Circuits; United States Supreme Court.

EDUCATION

University of Chicago Law School
(J.D. 1983)

Dartmouth College
(A.B. 1980)

PROFESSIONAL AFFILIATIONS

AV rating in Martindale-Hubbell; Super Lawyers; Leading Lawyers Network; American Inns of Court, Markey-Wigmore Chapter (selected by then Chief Judge of Seventh Circuit to be a charter member); Chicago Council of Lawyers (past member, Committee on Professional Responsibility); DuPage County and Chicago Bar Associations; Illinois State Bar Association.

AWARDS AND APPOINTMENTS

Commendation from DuPage Legal Assistance Foundation due to First Cy Pres Award provided to the Foundation of over \$100,000 from certain class-actions.

Trial practice skills teacher to students at the University of Chicago Law School Mandel Legal Aid Clinic.

Member of the Visiting Committee of the University of Chicago Law School. 2006-2010.

In 2008, DiTommaso ♦ Lubin received the first “Law Firm of the Year” awarded by the DuPage County Bar Legal Assistance Foundation for the Firm’s “commitment to the ideals of the legal profession.”

PROFESSIONAL EXPERIENCE

Sole, Lead or Co-Lead Attorney:

Dealer Termination, Franchise, Securities, Trademark, Copyright or Trade Secret Litigation

Flynn Beverage Inc. v. Joseph E. Seagram & Sons, Inc., United States District Court Central District of Illinois, Rock Island Division, Judge McDade. 1992-1994. Wrongful termination of 27 year liquor distributorship involving statutory and common law franchise claims. Represented Flynn Beverage. Sought over \$2 million in damages and recovery of attorney fees. Seagram's fifty page motion to dismiss denied. See 815 FSupp 1174. Case settled: terms confidential. Opposing counsel: David W. Ichel (Simpson Thacher & Bartlett) and T. Mark McLaughlin (Mayer Brown Rowe & Maw).

Flynn Beverage Inc. v. Jim Beam Brands Inc., Circuit Court of Rock Island County, Judge Conway. 1993-1995. Similar claims to those discussed above except claimed over \$2.5 million in damages. Beam's motion to dismiss denied in a 5 page memorandum opinion. Case settled: terms confidential. Opposing counsel: Kimball R. Anderson and Scott Szala (Winston & Strawn).

Dedicated v. Volkswagen, United States District Court Northern District of Illinois, Judge Kennelly. 2001. Termination of Volkswagen parts carrier. Represented Dedicated. Volkswagen's motion to dismiss, asserting lack of written evidence of a contract, denied. See 201 FRD 337. Case settled: terms confidential. Opposing Counsel: Randall Oyler (Barrack Ferrazzano).

McVicker v. John Doe Corp., Texas Arbitration through American Arbitration Association. 1990-1992. Wrongful termination of and fraudulent inducement to purchase franchises for entire New York City area. Represented former franchisee. At outset of case defendant, a multi-billion dollar international conglomerate, offered \$10,000 to settle. After extensive discovery and shortly before the start of the hearing, defendants agreed to a settlement whereby they returned the entire purchase price of the franchises of \$300,000 along with an additional \$50,000. Opposing counsel: David Butler (Piper Rudnick).

Meade v. VirtualSellers.com, Circuit Court of Cook County Chancery Division, Judge Nowicki. 1999-2000. Represented co-founder of start-up internet company who was allegedly defrauded out of his interest in the company just before it was sold to a publicly traded company. Seeking 1,000,000 shares in publicly traded company worth between 2 and 7.5 million dollars based on then market prices. Settled after an injunction hearing and denials of defendants' motions to dismiss. Terms confidential. Opposing Counsel: Ceasar Tabet (Tabet, DeVito & Rothstein) and Stephen Voris (Burke Warren Mackay & Serritella)

Asch and Associates v. Churilla, Circuit Court of Cook County, Chancery Division, Judge Foreman. 1993-1994. Former employee charged with stealing a customer list to start a rival insurance agency. Represented former employee defendant. Court denied plaintiff's motion for a temporary restraining order. Court later granted summary judgment dismissing plaintiff's claims with prejudice, and awarded defendant sanctions (half the attorneys fees billed to defendant and all of his costs). Defendant later filed claims for malicious prosecution against Asch and his

counsel in federal court. That case was settled for \$45,000. Opposing counsel: James D. Montgomery (former Corporation Counsel of the City of Chicago).

McCool v. Strata Oil Company, United States District Court Northern District of Illinois, Eastern Division, Judge Bua. 1989. Securities fraud and RICO: purchasers of oil and gas partnerships claim to have been defrauded into purchasing oil and gas partnerships. Represented ten plaintiffs. Case dismissed by trial court without any discovery being permitted. Overturned on appeal; *see* 972 F2d 1452. Co-lead counsel: David Roston (Alzheimer & Gray). Opposing counsel: Cary Fleischer (Chuhak & Tecson).

Berthold v. FKPT, United States District Court Northern District of Illinois, Judge Andersen. 1999. Represented plaintiff who terminated its German licensee of trademarked typeface fonts for use in computer software. The fonts were part of a large German font library that was over 140 years old. Claims and counter-claims included claims under German and American law, and international discovery issues. Settlement permitted plaintiff to terminate German licensee and licensee waived all claims to rights in fonts. Opposing Counsel: Caroline Clark (Pennie & Edmonds); Chuck McGirdy (Piper Rudnick).

Virtual Realty Group v. Virtual Realty Network, United States District Court Northern District of Illinois, Eastern Division, Judge Nordberg, 1995. Represented owner of “Virtual Realty” mark in trademark infringement action. Defendant and its partner Intel had invested hundreds of thousands of dollars in advertising and promoting the “Virtual Realty” mark that did not belong to them. They claimed there was no possibility of consumer confusion between their computerized home loan mortgage brokerage services, and plaintiff’s Internet based real-estate brokerage services. Case settled before injunction hearing. Defendant agreed to immediately discontinue using the mark, and to pay money damages and plaintiff’s attorneys fees. Opposing Counsel: Russell Pelton (Oppenheimer Wolff & Donnelly).

ROI v. Translogic, United States District Court Northern District of Illinois, Eastern Division, Judge Norgle. 1988. Attempted Monopolization Claims. Represented defendant Translogic. Motion to dismiss half of plaintiff’s antitrust claims granted. Case settled. *See* 702 FSupp 677. Co-counsel: Arnold & Porter. Opposing counsel: Paul Slater (Sperling Slater & Spitz).

DevTech v. Rolfes, Circuit Court of DuPage County, Judge Wheaton. 1992. Claim that computer software designer/former employee stole trade secrets and acted in a manner that damaged plaintiff and defendant’s joint copyright in certain software. Represented defendant (software designer/former employee). Plaintiff dismissed all claims on the verge of a preliminary injunction trial when judge indicated that she intended to rule in defendant’s favor on a motion to exclude key witnesses for plaintiff. Plaintiff agreed to divide equally with defendant all profits from jointly owned software. Opposing counsel: Edward Ruberry (Bolinger Ruberry & Garvey).

Berthold v. Linotype, United States District Court for the Northern District of Illinois, Eastern Division. 2002. Represented plaintiff. Claim that font software company violated copyright laws in illegally copying software code for its own font software. Case settled. Opposing Counsel: Jim McGurk, Paul Stack and Robert Filpi (Stack & Filpi).

Berthold v. FKPT, United States District Court for the Northern District of Illinois, Judges Lindberg and Gettleman. 2001. Represented Plaintiff. Obtained default judgment and injunctive relief against German Company for trademark infringement and breach of settlement agreement

and then enforced such judgment against third-party German corporations and nationals living and doing business here. Case settled with third parties agreeing to injunctive relief protecting plaintiff's trademarks and discontinuing sale of infringing products here and in Germany. Opposing Counsel: Robert Filpi and Paul Stack (Stack & Filpi) and Robert Joseph (SNR Denton).

Breach of Contract, Partnership, Corporate Control Disputes, Probate and Employment Litigation

IPC v. Edward Gray Corporation, Circuit Court of Peoria County, Judge McDade. 1988-1989. Construction Contract: local Peoria sub-contractor claimed that Chicago based general contractor entered into a \$3 million sub-contract from a car telephone. Represented general contractor defendant. Court entered summary judgment in defendant's favor on all of plaintiff's claims based on "smoking gun" documents uncovered by defendant in discovery. Opposing counsel: Stephen Gay (Husch & Eppenberger).

DiMucci v. DiMucci, Circuit Court of Cook County, Chancery Division, Judges Forman, Flynn and Billik. Pending. Family partnership and corporate control dispute involving hundreds of millions of dollars in real-estate development assets. Represent 50% owner allegedly frozen out of companies. Involves questions of breach of fiduciary duty and issues involving Florida and Illinois corporation law and issues regarding charging alleged excessive fees totaling tens of millions of dollars. Trial is now proceeding before Judge Billik. Filed a supervisory order before the Presiding Judge of the Chancery Division regarding the alleged improper additional appearance of Mr. Cherry as co-counsel for defendants. The Court entered a lengthy opinion requiring Mr. Cherry to withdraw his appearance. Co-Counsel: Brian Garelli (Garelli & Associates). Opposing Counsel: George Collins and Adrian Vuckovich (Collins & Bargione), Myron Cherry (Myron Cherry & Associates).

Leslie Hindman and Salvage I v. Beale, Circuit Court of Cook County, Chancery Division, Judge Siebel. 2003. Represented plaintiffs Hindman and Salvage I in alleged breach of fiduciary duty case involving multi-million dollar damages claims. Case Settled. Terms Confidential. Co-Counsel: Michael Froy (SNR Denton). Opposing Counsel: Larry Karlin and Ben Randall (Katz, Radall, Weinberg & Richmond).

Estate of Hudson, Circuit Court of DuPage County, Probate Division. Judge Popejoy. Pending. Complex estate case. Representing guardian of minor child. Dispute over personal and business assets against estate administrator and surviving spouse. Case involved local and overseas proceedings with claims seeking to recover millions of dollars in funds and business assets allegedly owned by the Estate. Case settled with business returned to the Estate and defendant agreeing pay a substantial portion of our client's fees. Opposing Counsel: Douglas Tibble (Brooks Adams & Tarilis) and Richard Cowen (Stahl Cowen)

Wuttke v. Fitzsimmons, Circuit Court of Cook County, Law Division. Judge McNamara. Pending. Representing real-estate lawyer plaintiff in libel action against lawyer who is also City of Chicago Police Captain, or false and malicious statements made to ARDC and University of Illinois and other parties, which, plaintiff alleges, is part of longstanding pattern and practice by defendant of defaming and attempting to intimidate lawyers and others. Opposing Counsel: Vincent J. O'Brien.

Heatherly and Newton v. Rodman & Renshaw, NASD Arbitration. 1993-1996. Represented former Sales Managers of Rodman's Mortgage Backed Securities Department on claims for breach of substantial bonus contracts, and failure to pay finders fees. 2 day hearing. Arbitration award for claimants; claimants awarded all actual damages sought. Heatherly's appeal on statutory attorneys fees denied with dissent supporting our position. 678 NE2d 591. Opposing Counsel: John Murphy (Baker & McKenzie).

Bark v. Emsco, United States District Court for the Northern District of Illinois, Eastern Division. Judge Kokoras. 1994. Represented plaintiff, doctor who had headed emergency room of large Chicago Hospital in sex discrimination, libel and retaliatory discharge claim seeking over \$1 million in damages and attorneys fees. Defendants' motion to dismiss denied. Case settled for a confidential sum following several written opinions by the Court adopting plaintiff's positions. See 1994 WL 502786; 1994 WL 280077. Defendants also provided a full written retraction and apology regarding all libelous statements. Opposing Counsel: Donald C. Shine (Nisen & Elliott).

Jane Doe v. John Doe Corp., United States District Court for the Northern District of Illinois, Eastern Division. 1997. Represented plaintiff, assistant to CEO of a subsidiary of a Fortune 500 company. Sexual battery and hostile environment sex discrimination claims against the President of a subsidiary of the Fortune 500 company that worked at the headquarters. \$100,000 settlement for emotional distress without filing suit after executive admitted the crux of the charges in pre-filing mediation.

Jane Doe v. John Doe Car Dealer, United States District Court for the Northern District of Illinois, Eastern Division. 1998. Represented plaintiff, who was top performing salesperson at car dealership in sex discrimination case. Case settled for \$45,000.

Cusack v. Paul Revere Insurance, United States District Court for the Northern District of Illinois, Eastern Division, Magistrate Judge Guzman. 1995. Represented plaintiff. Paul Revere refused to pay employment disability benefits of over \$200,000. Brought declaratory judgment and bad faith failure to pay insurance claims. Case settled immediately after the complaint was filed: terms confidential. Opposing Counsel: Joseph Hasman (Peterson & Ross).

Shelton v. Will County, United States District Court for the Northern District of Illinois, Eastern Division. 1999. Race Discrimination. Client reinstated to his job with full credit towards his pension benefits and received settlement of \$50,000 in back pay for the period he was off the job. Opposing Counsel: Michael Condon (Hervas, Sotos, Condon & Bersani)

Hirst v. Rockwell International, EEOC Charge. 1995-1996. Represented senior executive in breach of contract and sex and age discrimination claims. Rockwell demoted executive based on trumped up conflict of interest charges because her husband worked for a competitor, even though executive/wife had fully disclosed the nature of her husband's relationship each year during the over 10 years that she worked for Rockwell, and Rockwell had always agreed that there was no conflict. Case settled: terms confidential. Co-Counsel: Holly Hirst (Piper Rudnick).

North American Philips v. Filson et al., United States District Court for the Northern District of Illinois, Eastern Division, Judge Grady. 1996. Represented defendants, former No. 2 and 3 executives at Philips's most profitable American subsidiary in a case charging those executives, the former president of the subsidiary, and their three wives with forming a travel agency to wrongfully take \$900,000 from Philips. Executives filed counterclaims for libel for Philips

falsely accusing them of selling millions of dollars in defective product, and retaliatory discharge for reporting alleged antitrust violations and price-fixing. Case settled immediately after counter-claims filed: terms confidential. Co-lead Counsel: Matthew Kennelly (Cotsirilos Stephenson Tighe & Streiker). Opposing Counsel: Robin Cohen (Anderson Kill Olick & Oshinsky).

Duncan v. Baxter Healthcare Corp., Circuit Court of Lake County, Judge Hoogasian. 1990. Wrongful termination: plaintiff claimed that she was fired because she filed a workers' compensation claim and sought over \$100,000 in lost wage damages and punitive damages and attorney fees. Represented defendant Baxter. After discovery, plaintiff agreed to dismiss all her claims with prejudice in return for Baxter agreeing not to file a sanctions motion seeking recovery of attorneys fees from plaintiff and her counsel due to plaintiff's fraudulent damages claims. Opposing counsel: Alan Blum.

Appleby v. Mrs. Illinois Pageant, Circuit Court of Cook County, Chancery Division. Judge Hett. 1999. Represented Mrs. Illinois Pageant in suit filed by runner-up to reverse pageant results, and crown her the winner. Plaintiff's lawsuit thrown out on summary judgment. Plaintiff paid a large portion of defendant's attorneys fees to settle sanctions claim.

Obos v. Cubs, Circuit Court of Cook County, Law Division. 2003. Represented plaintiff in battery and reckless retention of security guard claims. Case settled. Terms confidential. Motion to add punitive damages detailed 9 year history of abuse by Chicago Cubs security guard who attacked numerous other patrons and used excessive force resulting in repeated lawsuits. This case was featured in an investigative report on Fox News regarding the Cubs's failure to fire this rogue security guard. Opposing counsel: Scott Bentivenga (Bollinger Ruberry & Garvey).

Karth v. McConnell, Circuit Court of Cook County, Law Division. Judge Goldberg. 2006-2007. Represented defendant in breach of contract, equitable and wage claim dispute involving alleged damages of \$700,000. Breach of contract claim dismissed as violating statute of frauds. Case dismissed with prejudice based on motions to dismiss and for summary judgment. Opposing Counsel: Michael D. Gerhardt (Gerhardt, Gomez, and Haskins).

Biancos v. Eggert, Freeland and CMR Interiors, United States District Court, Northern District of Illinois, Magistrate-Judge Valdez. Pending. Representing a real estate owner in his breach of contract case against lessees who performed renovations to the leased premises. Plaintiffs allege that defendants failed to obtain proper building permits and that the renovation does not comply with Chicago building codes. Settlement with certain defendants agreeing to increase rental payments and paying a large share of clients' fees and costs, and other defendants agreeing to pay money damages. Opposing Counsel: Terrance Buehler (Buehler & Williams), Peter Berk (McDonald Hopkins, LLC) and Robert Rosenfeld.

Costello v. Orozen, Circuit Court of DuPage County, Judge Abraham. 2007. Represented construction company defendant in a breach of contract case involving the installation of a practice putting green on the grounds of plaintiff's mansion. Case settled for a small fraction of money sought after we obtained evidence rebutting plaintiff's claims from one of his own experts. Opposing Counsel: Greg Adamo and Ken Vanko (Clingen, Callow & McLean, LLC).

Motorola v. Aderhold, Circuit Court of Cook County, Chancery Division, Judge Arnold. 2009-2010. Represented defendant former Motorola vice-president in covenant not to compete and trade secret case. Case settled on confidential terms, before any discovery, after court granted

motion to dismiss and ordered re-pleading of trade secret claims. Opposing Counsel Arthur Howe (Schopf & Weiss)

Anderson et al v. Moy-Gregg, Circuit Court of DuPage County, Chancery Division, Judge Popejoy and Judge Sheen. 2010-2011. Represent corporation and alleged majority owners in a corporate control dispute regarding the intent and meaning of stock gift. Opposing Counsel: Louis Bernstein.

BleuChip International Inc. v. Aulds, Circuit Court of DuPage County, Chancery Division. 2009. Represented corporation and its CEO as plaintiffs in a claim against the corporation's President. Case settled on confidential terms shortly after suit was filed. Opposing Counsel: Bruce Menkes (Mandel, Menkes LLC)

Legal Malpractice Litigation

Rykaczewski v. Cesario & Walker, Circuit Court of DuPage County. 1999. Attorney malpractice claim. Represented plaintiffs, litigants whose trial attorney allegedly improperly hired their expert witness for trial on a contingency fee despite ethical rule prohibiting such an arrangement. The trial court ruled that the expert witness could not testify thus causing the litigants to lose their case. Malpractice case against litigant's attorney settled for \$375,000 following non-binding mediation. Opposing Attorney: Jeffrey Zehe (Clausen Miller).

Markel v. Weiss, Circuit Court of Cook County, Law Division, Judge Gillis. 1996. Attorney malpractice claim. Represented plaintiff, the buyer of a business who lost over \$300,000 due to his attorney's alleged failure to follow the form book in the sale of a business transaction. After deposing the attorney defendant, defendant requested a non-binding mediation with former Judge Brian Crowe acting as mediator. Case settled for \$200,000 which represented nearly all that remained in the attorney malpractice insurance policy. Opposing Counsel: Thomas Browne (Hinshaw & Culbertson).

Ettswold v. Economy Ins. and Orner & Wasserman, Circuit Court of Cook County, Law Division, Judge Gillis. 1996. Insurance bad faith and legal malpractice claims arising from \$350,000 judgment entered against Ettswold in a car accident case. The judgment entered against Ettswold was \$250,000 in excess of her insurance policy limits. One month after filing suit on Ettswold's behalf, her insurance company, Economy settled by paying the plaintiff in the car accident case \$190,000 to release all his claims against Ettswold for the \$250,000 in excess of her insurance policy limits. As part of the settlement, Economy also agreed to pay all of Ettswold's attorneys' fees. Opposing counsel: Norton Wasserman (Orner & Wasserman) and Jack Martin (Touhy & Martin).

Ardebili v. Taha, et al, Circuit Court of Cook County, Chancery Division, Judge Mason. 2007-2008. Representing business purchaser plaintiff in Legal Malpractice, Consumer Fraud, Rescission, Negligent Misrepresentation, Breach of Contract and Common Law Fraud claims stemming from the attempted purchase of a business. Case settled financial terms confidential. Opposing Counsel: Nicholas Albuquerk (Law Offices of J. Nicholas Albuquerk), Sana'a Hussien (Cohen & Hussien) and Amy Ezeldin.

Consumer Fraud

Butera v. General Motors et al, United States District Court Northern District of Illinois, Judge Coar. 2005-2006. Client purchased a certified used Cadillac Escalade SUV for \$45,000 which turned out to be a rebuilt wreck with hidden frame damage. Case settled with General Motors and Dealer paying client \$25,000 for loss in value to car and excess interest payments (which was \$4,000 in excess of the loss amount determined by our expert). The remainder of the amount paid to our client was for his time and energy spent to rectify situation. Defendants also paid all of our attorneys fees and costs so that client received all his damages since our fees and costs were paid by the defendants. Opposing Counsel: Toby Schisler (Dinsmore & Shohl, LLP); John P. Palumbo (Langhenry, Gillen & Lundquist)

Browns v. Corvette Collection, Circuit Court Will County, Judge Kinney. 2006-2007. Client purchased what was advertised as a “collector’s numbers’ matching” 1965 Corvette for an investment. Car in fact was not a “collector’s” car and its numbers were not matching. Case settled. Client returned car and received full refund of \$30,000 purchase price plus \$10,000 in damages for lost investment opportunity and aggravation. All of our attorneys fees and costs were paid by the defendant. Opposing Counsel: Douglas Ziech.

IWOI, LLC v. Monaco Coach Corporation, et al, United States District Court, Northern District of Illinois, Judge Dow. Pending. Client purchased as new, a 2006 Beaver Monterey 36 RV for over \$250,000. In its Magnuson-Moss, breach of warranty and Illinois Consumer Fraud Act claims, plaintiff alleges that Monaco constructed the motor home on a bent frame allegedly causing the steering to veer and substantially impairing the value of the motor home. Opposing Counsel: Paul E. Wojcicki (Segal, McCambridge, Singer & Mahoney, Ltd.).

Class Action Litigation

Woodsmoke v. Woodsmoke, United States District Court Northern District of Illinois, Eastern Division, Judge Kocoras, 1992.

Woodsmoke v. Woodsmoke, Circuit Court of La Salle County, Judge Denny, 1993.

Condominium association brought in excess of \$10 million claim for alleged construction defects, fraudulent sale of condominiums, embezzlement and RICO violations against developers. Represented developer defendants. Federal claims dismissed with prejudice for lack of standing. State case dismissed for lack of standing. Co-counsel: Michael Siavelis (Johnson & Bell). Opposing counsel: Marshall Dickler.

Consolidated Dartmouth Class Action Litigation, Circuit Court of Cook County, Chancery Division, Judge Curry. 1990-1993. Consumer fraud, RICO, and Truth in Lending Act: low and middle income homeowners claimed that money center banks conspired to sell at least half a billion dollars in second mortgages to them at inflated prices. Represented the NBD Banks. In a 32 page opinion, Judge Curry consolidated all the cases to his docket, and then dismissed the class action claims with prejudice. Co-lead defense counsel/Citibank: Craig Varga and John Ledsky (Varga Berger Ledsky & Hayes). Opposing counsel: Lawrence Walner (Walner & Associates), Daniel Edelman and Catherine Combs (Edelman Combs & Lattuner).

Downing v. the NBD Banks and Oxford Credit Co., Circuit Court of Cook County, Chancery Division, Judge Hofert. Consumer fraud and Truth in Lending Act: same allegations as above involving a smaller and different loan portfolio. 1991-1992. Represented the NBD Banks. Case settled without any pleadings being filed. Another defendant paid the entire settlement amount. The NBD Banks received a complete release of all claims without contributing any settlement monies. Co-lead counsel/Oxford: Arthur Radke (Hefter & Radke). Opposing counsel: Lawrence Walner (Walner & Associates) and Daniel Edelman (Edelman Combs & Lattuner).

EEOC v. Enco, United States District Court Northern District of Illinois, Eastern Division, Judge Norgle. 1987. Race discrimination in hiring practices: EEOC brought a class action alleging over \$5 million in actual damages. Represented defendant, a local Chicago manufacturer. Moved to dismiss based on EEOC's inexcusable delay in waiting to file action. EEOC settled for \$30,000, without taking any discovery, rather than having to explain its inexcusable delay to the Court. Co-Lead counsel: Bennett Epstein (Foley & Lardner).

Stamos v. Prime Cable of Chicago, Circuit Court Cook County, Chancery Division, Judge Schiller. 1999. Lead counsel in class-action against cable company for return of millions of dollars in excessive late fees. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class. Opposing counsel: John George (Daley & George); Kevin M. Forde (Kevin M. Forde, Ltd.) Richard Patch (Coblentz Patch Duffy & Bass).

Marszalek v. Mutimedia, Circuit Court of Kane County, Judge Nottolini. Lead counsel in same type of class-action as *Stamos* against a different cable company. 1998. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class after class certified in contested proceedings. Opposing counsel: Jack Crowe (Winston & Strawn); Richard Patch (Coblentz Patch Duffy & Bass).

Beckman v. Triax, Circuit Court of Kane County. 2000. Lead counsel in same type of class-action as *Stamos* against Triax. Case settled with a substantial reduction in late fees and refunds worth millions of dollars paid to the class. Opposing counsel: Jack Crowe (Winston & Strawn); Richard Patch (Coblentz Patch Duffy & Bass).

Chmils v. TCI, Circuit Court of Cook County, Judge Jaffe. 1999. Lead counsel in same type of class action as *Stamos* against TCI. Statewide class action with over a million class members certified in contested proceedings. Directed verdict for defendants following 17 day trial. When appeal was pending, case settled as part of nationwide settlement where we were lead counsel. Late fees in Illinois and across the country reduced substantially as a result of settlement. Opposing counsel: Richard Werder (Jones Day Reavis & Pogue) and Paul E. Freehling (Seyfarth Shaw).

Out of State Cable Late Fee Class-Actions. 2001-2004. Same type of class-action as *Stamos*. Participating as lead or co-counsel in over 20 such cases against various cable companies including TCI/AT&T, Cox, Time-Warner, Comcast, Charter/Marcus and Jones Cable. I was in charge of coordinating all the different cases across the country, and my partner took the lead role in the national settlement negotiations with TCI/AT&T and Charter/Marcus. Two TCI cases in Washington DC and Maryland where we assisted lead counsel Philip Friedman (who is our co-lead counsel in all the cable late fee cases) were tried to multi-million dollar verdicts in plaintiffs' favor with injunctive relief barring the illegal fees. The first Maryland case went up to the Court of Appeals (Maryland's highest court) where the judgment in the class's favor of over \$6,000,000

and injunctive relief reducing the \$5 late fee to 10 cents was affirmed. ***Burch v. United Cable Television of Baltimore Ltd.***, 732 A2d 887 (Md 1999). The judgment in the Washington DC case was also affirmed on appeal. ***District Cablevision Ltd. Partnership v. Bassin***, 2003 WL 21664513 (DC). Since the victories in Maryland and Washington DC, loss in Illinois at the trial level, and appellate victories and losses in other states including victories in Louisiana, Texas and Minnesota (***TCI Cablevision of Dallas, Inc. v. Owens***, 8 SW3d 837 (Tex 2000) and a loss in Mississippi following class certification (***Hill v. Galaxy***, 184 FRD 82, and 176FSupp2d 636 (ND Miss 1999 and 2001), we entered in two separate national settlements involving over 10 million cable customers with AT&T and Charter/Marcus, which have resulted in permanent reduction of cable late fees throughout the country, and vouchers paid for overcharges resulting in millions of dollars in savings and voucher payments to the classes. We also reached state wide class-action settlements against Cox Cable in Nevada and Arizona, and a state-wide class-action settlement with TCI in California. We currently have a class-action pending against Time Warner in Indiana, following our victory in the Indiana Supreme Court on the voluntary payment issue. ***Time-Warner v. Whiteman***, 802 NE2d 886 (Ind Sup Ct. 2004). In December 2003, following the ruling in ***Dua v. Comcast Cable of Maryland, Inc.***, 805 A2d 1061 (Md 2002), and the trial court granting the class's motion for partial summary judgment and on the eve of trial, Comcast entered into a class-wide settlement of ***Maisonette v. Comcast*** an identical case to ***Dua*** with a larger number of class members. Comcast agreed to refund 97% of the class's money damages, including prejudgment interest, for a total payment of 13.589 million dollars to the class fund. Co-counsel included: Philip Friedman and Michael Hyman (Much Shelist Freed Denenberg Ament & Rubinstein). Opposing Counsel on the above cases included: Jones Day Reavis & Pogue, LeBoeuf, Lamb, Greene & MacRae, White & Case, Coblenz Patch Duffy & Bass, and Sullivan & Cromwell.

Oakbrook Terrace Hotel Overcharge Class Actions, Circuit Court of DuPage County. 2000-2004. Claims against all Oakbrook Terrace Hotels (Hilton, Marriott, La Quinta, Comfort, Wyndham and Starwood) for including non-tax ordinary vendor charges in the tax line item of customer bills. Class certified in ***Comfort*** and ***Hilton*** cases following a contested hearings, and appointed lead class counsel in that case; appellate court rejected Hilton's statutory occupancy tax defense in an interlocutory appeal to the 2nd District Appellate Court. 788 NE2d 789. ***Comfort***, ***Wyndham***, ***Marriott***, ***Starwood*** and ***La Quinta*** cases settled on a class-wide basis with between 60% and 70% of damages paid into the settlement fund. Summary judgment was entered in the class's favor in the ***Hilton*** case and was affirmed on appeal with the class receiving all of its damages and ***Hilton*** being ordered to pay all of class counsel's fees as additional damages. Opposing counsel: Howard Foster (Johnson & Bell); Dennis Powers and Sonya Naar (DLA Piper); Mark Blocker (Sidley Austin, Brown & Wood); Ira Helfgot; Peter Ordower.

Extended Warranty Class Actions. 1995-2001. Represented plaintiffs in approximately 25 class-actions in state and federal court in Illinois against car dealers, finance companies and car manufacturers regarding alleged misrepresentations in financing documents. All 25 cases have settled following a favorable ruling we received from the 2nd District Appellate Court. See 683 NE2d 1194.

Leiner v. Century, Circuit Court of Dupage County. Lead counsel in certified national class-action against maker of child car seats regarding alleged consumer fraud in misrepresenting the safety of the car seats. Settled following certification of nationwide class in contested proceedings.

Erickson v. Ameritech, Circuit Court of Cook County. Judge Flynn. 2004. Consumer fraud claims for failure to disclose that voice mail includes phone charges in addition to the monthly fee. Case settled on class-wide basis with refunds available to all class members along with injunctive relief barring the deceptive practices. Appointed co-lead counsel after spear heading efforts with the Citizens Utility Board to have a class-wide settlement (providing unsatisfactory relief) rejected by the Court. Crain's Chicago Business listed the new settlement we helped achieve as the 3rd highest settlement/verdict in Illinois in 2004. Co-Counsel Robert Kelter (General Counsel Citizens Utility Board) Opposing Counsel: Leslie Smith (Kirkland & Ellis).

Johnson v. US Bank, Circuit Court of Dupage County. Judge Popejoy. 2004. Consumer fraud and Illinois statutory claims relating to repossessing cars without providing statutorily mandated disclosures. Case settled with 541 class members receiving the right to collect a \$400 refund, and to have their substantial deficiency balances with US Bank averaging approximately \$6,600 each written off.

Sampson v. Western Sierra, Federal Court for the Northern District of Illinois, Judge Zagel. Represented defendant. 2003-2004. Fair Credit Reporting Act class-action claims against national finance company. Case settled on individual basis on terms favorable to defendant following court granting Western Sierra's motion for summary judgment rendering judgment in Western Sierra's favor dismissing the class-action claims with prejudice. See: 2004 WL 406992. Opposing Counsel: Daniel Edelman and Adam Berger (Edelman Combs & Lattuner).

Ramsell v. Infinity Broadcasting, Circuit Court of Dupage County. Judge Webster. 2002-2004. Consumer Fraud and breach of contract claims relating to Infinity refusing to provide a refund to concert goers after it cancelled a Doobie Brothers's concert. Defense summary judgment motions denied. Class certified in contested proceedings. We were appointed lead class counsel. Case settled with full cash refunds to class members. Opposing Counsel: Peter John and Summer Heil (Williams Montgomery & John)

Dale v. Daimler Chrysler Corporation, Circuit Court of Boone County, Missouri. Judge Roper. Pending. Consumer Fraud and breach of warranty claims relating to defective window motors in Durangos for a five year period. Chrysler's motion for summary judgment denied. State-wide class certified. We were appointed lead class counsel. Chrysler's appeal of class certification rejected by Missouri appeals court. 2006 WL 1792414. Opposing Counsel: John W. Rogers (Bryan Cave)

Hyde v. Aspen Marketing Services, Inc., Federal District Court of Maryland. 2004-2006. Judge Bennett. Settled. Represented defendant one of the largest marketing companies in the country. Plaintiff sought \$100,000,000 in damages in a Fair Credit Reporting Act putative class action. Opposing Counsel: Scott Borison (Legg Law Firm)

Crandall v. Mobile Management Co., Inc. et al, Circuit Court Lake County Illinois. 2004. Judge Tonigan. Case settled. Represented defendant one of the largest mobile home companies in the Mid-West regarding alleged illegal late fees. Opposing Counsel: Daniel Edelman (Edelman, Combs and Lattuner)

Walsh v. Swiss Bank, Circuit Court of DuPage County. Judge Elsner. 2005-2007. Represented plaintiff class in consumer fraud action concerning improper liening of workers' compensation claims by loan and finance company. Case settled for removal of liens and reductions in the

amounts due on the loans. Cy pres monies for uncollected class claims paid to Mandel Legal Aid Clinic.

Krey v. Aspen Marketing Services, Inc., Grace v. Aspen Marketing Services, Inc., Connolly v. Aspen Marketing Services, Inc., Federal District Court Northern District of Illinois. 2005-2007. Settled. Judges Kennelly, Coar and Filip. Cases settled. Defended Aspen, a national marketing firm, in Fair Credit Reporting Act Class Actions. Opposing Counsel: Edelman, Combs and Lattuner.

S37 Management, Inc. v. Advance Refrigeration, Inc., Circuit Court of Cook County, Chancery Division, Judge Hall. Pending. Class Certified. Representing plaintiff in class action claims against company for including alleged non-tax charges in the tax line item of customer bills. Opposing Counsel: Robert Mahoney (Wessels & Pautsch, PC) and James K. Borcia (Tressler, Soderstrom, Maloney & Priess, LLP).

Morales et al v. Verve Global, Circuit Court of DuPage County, Chancery Division, Judge Popejoy. Pending. Class Certified. Representing class of students who took a medical sonography course for claimed violations of the Illinois vocational schools and consumer fraud acts involving alleged misrepresentations concealing that the course would not lead to work in the field. Opposing Counsel: Rishi Agrawal.

Boudas v. Abercrombie & Fitch, Federal Court for the Northern District of Illinois, Judge Feinerman. Pending. Representing plaintiffs that received a \$25 purchase reward card that did not contain an expiration date but which defendant claimed should have contained an expiration date and will no longer honor. Opposing Counsel: Brian J. Murray (Jones Day).

Jass v Barbizon, Circuit Court of Cook County, Chancery Division, Judge Novak. Pending. Representing plaintiff putative class representative/student who took a modeling and acting course. Plaintiff alleges violations of the Illinois vocational schools and consumer fraud acts involving alleged misrepresentations concealing that the course would not lead to work in the field. James Figliulo and James Bowhay (Figliulo & Silverman, P.C)

Takova v. S37 et al, Circuit Court of Cook County, Chancery Division, Judge Riley. Pending. Represented defendant landlords in putative class action claiming violations of Illinois security deposit statutes. Case settled on an individual non-class basis following motion to dismiss for mootness. Opposing Counsel: Aaron Krolik and Mark Silverman.

Junk Fax Class Actions, Circuit Courts of Cook, McHenry and DuPage Counties. Pending. Representing plaintiffs in a number of class actions involving alleged violations of the Telephone Consumer Protection Act. Cases include ***Dembo v. McAssey Corporation***, Circuit Court of Cook County, Chancery Division, Judge McGann. Pending. Case settled for \$1.4 million to the class. Each class member had a right to claim \$225.

Telecommunications Network Design v. Paradise Distributing, Circuit Court of Cook County, Chancery Division, Judge McGann. Pennsylvania Court of Common Pleas. Pending. Representing plaintiff class in TCPA/junk fax case, where \$4,000,000 judgment has been entered for plaintiffs in Illinois case. Also prosecuting related declaratory judgment action in Pennsylvania against insurance company to collect judgment under policy.

Angela Imbierowicz v. OnStar Corporation, United States District Court, Eastern District of Michigan. 2007. Pending. Representing putative plaintiff in class claims alleging consumer fraud, breach of contract and warranty case stemming from OnStar cancelling use of its system for certain car models that use analog signals. Consolidated to a Panel for Multi-District Litigation that includes plaintiffs and counsel from across the United States. Timothy Daniels (Figari & Davenport LLP) and Michael Cooney (Dykema Gossett).

Walczak v Onyx Acceptance Corporation, Circuit Court of Lake County, Chancery Division, Judge Hoffman. Pending. Class Certified. Class certification order affirmed by the Appellate Court. 365 IllApp3d 664. Represent class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 class members able to claim up to \$2000, forgiveness of automobile debt totaling \$11.5 million and credit repair for each class member worth \$1500 per class member. Opposing Counsel: Joshua Threadcraft and Rik Tozzi (Burr & Forman)

Assisted my former partner Francis J. McConnell:

White Collar Criminal and Civil Securities Litigation

United States v. Lytle, United States District Court Northern District of Illinois, Eastern Division, Judge Shadur. 1984-1988. Criminal: federal wire fraud and misapplication of bank funds. Represented defendant Lytle with John Powers Crowley and Matthew Kennelly. Government attorneys were Joseph Duffy, Ted Helwig and Mark Rotert. Five week jury trial. Hung jury. Lytle subsequently pled guilty to a single count of misapplication of bank funds.

Continental Illinois National Bank Securities Litigation, United States District Court Northern District of Illinois, Eastern Division, Judges Grady and Shadur. 1982-1989. Securities and negligence: class derivative action alleging misrepresentation in financial reporting in purchase of Penn Square oil and gas participation loans (underlying litigation); suit by D&O Carriers to deny coverage based on alleged dishonesty of Lytle. Represented defendant Lytle, former head of Continental's Mid-Continent Division. Case settled. Opposing counsel: Lowell Sachnoff (Sachnoff & Weaver) for FDIC; Keck Mahin & Kate for D&O Carriers.

United States v. Mark P. Fontana and Dieter Mueller, United States District Court Milwaukee, Wisconsin, Judge Evans. 1985. Criminal: claim of federal wire fraud and misapplication of bank funds relating to international banking transactions, and sale of airplanes in various countries. Represented defendant Fontana. Three week jury trial. Principal defendant found guilty. Fontana found not guilty.

Class Action and Antitrust Litigation

Will v. Comprehensive Accounting Corp., United States District Court Northern District of Illinois, Eastern Division, Judge Plunkett. 1983-1985. Antitrust tying and breach of franchise contracts. Claim that franchisor improperly forced 13 of its accounting practice franchisees to purchase unwanted and overpriced data processing services. Represented all 13 franchisees. Six week jury trial. Not guilty on antitrust tying count. Six plaintiffs won and six plaintiffs lost on breach of contract claims. See 775 F2d 665. Opposing counsel: Edward Foote and Duane Kelly (Winston & Strawn).

Fontana Aviation v. Cessna Aircraft, United States District Court Northern District of Illinois, Eastern Division, Judge Bua. 1983-1984. Antitrust: claimed that Cessna acted in restraint of trade when it destroyed a custom avionics dealership. Represented plaintiff. Three week jury trial. Not guilty. *See* 617 F2d 478. Opposing counsel: Alan Becker (Kirkland & Ellis).

Corrugated Container Antitrust Litigation, United States District Court Houston, Texas, Judge Singleton. 1983-1985. Antitrust: price fixing conspiracy. Represented opt-out corporate plaintiffs, Pillsbury, Green Giant, U.S. Gypsum and Dean Foods Company. Settled as to all defendants except CCA. Pillsbury earned half its corporate profits for one year from the settlements. Settlement amounts: Pillsbury (\$8.5 million); U.S. Gypsum (\$1 million); Dean (\$850,000). Twelve week jury trial as to CCA. Jury found price fixing conspiracy, but no damages. *See* 756 F2d 411. Opposing counsel: CCA-Sanford Litvak (former head of the Antitrust Division of the United States Department of Justice and former General Counsel of the Walt Disney Company).

Pillsbury v. Conboy, United States Supreme Court. 1983. Constitutional Law/Fifth Amendment Privilege: Whether prior grant of immunity extends to a civil deposition? *See* 459 US 248. Represented Pillsbury. Supreme Court upheld assertion of privilege. Opposing counsel: Michael Coffield (Coffield Ungaretti & Harris).

Dean Foods Company v. Clinton, State Court Arkansas. 1984. State Constitutional Law/Interference With Property Rights: Whether Arkansas minimum milk pricing statute was an unconstitutional infringement on property rights? Represented Dean Foods Company. Court found statute unconstitutional. Attorney General's office did not appeal court's finding.

Assisted Lead Counsel:

Antitrust Class-Action Litigation

Vinegar Antitrust Litigation, United States District Court Northern District of Illinois, Western Division, Judge Roszowski. 1989-1992. Antitrust price fixing case. Represented plaintiff class. Settlement achieved prior to trial worth at least \$6 million to the class. Lead Counsel: Perry Goldberg (Alzheimer & Gray). Opposing counsel: Howery & Simon; Whitman & Ransom; Jones Day Reavis & Pogue; and Caldwell Wickersham & Taft.

Glass Containers Antitrust Litigation, United States District Court Northern District of Illinois, Eastern Division, Judge Will. 1989-1982. Antitrust price fixing case. Represented plaintiff class. Settlement achieved prior to trial worth at least \$70 million to the class. Lead counsel: Gig Specks (Alzheimer & Gray). Opposing counsel: SNR Denton; Kirkland & Ellis; Brown & Bain; Sidley Austin, Brown & Wood.

NCAA Rules Violation Hearing

NCAA v. Iowa State, NCAA Disciplinary Board. 1986. Represented Iowa State as special counsel in six month investigation of numerous and serious alleged recruitment violations

involving the football and basketball programs. Purpose of investigation, in the case of the football program, was to find further violations so that the University could strengthen its settlement position with the NCAA by showing its commitment to enforcing the NCAA's rules. Purpose of the investigation, in the case of the basketball program, was to refute the NCAA's meritless charges. Defended the University at two day NCAA disciplinary hearing. Basketball program found not guilty. Football program found guilty, but only put on probation because the University self-disclosed significant new evidence uncovered in our investigation, and thus demonstrated its commitment to the NCAA's rules. Lead counsel: Michael Slive (now Commissioner of Southeastern Conference). Opposing counsel: David Burst (Chief Investigator for the NCAA)