



Bruce B. Kelson

Partner

bkelson@schnader.com

Offices: San Francisco, CA, New York, NY

Phone Numbers: 415-364-6744, 212-973-8144

Chair of the Securities Litigation Practice Group, Mr. Kelson focuses his practice on securities litigation and other complex commercial litigation for U.S. and foreign clients. He represents clients in securities class action and shareholder derivative litigation, internal investigations, SEC and other regulatory investigations and proceedings (including FCPA matters), M&A transaction-related issues and litigation, director and officer liability and corporate governance issues and litigation, antitrust and unfair competition litigation, and other commercial litigation. He has extensive experience in federal and state courts and arbitral forums in California, New York, Delaware and other states. His clients span a range of industries including financial services, real estate, venture capital, sports and fitness, software and technology, among others.

Mr. Kelson previously practiced with a global law firm in its New York and San Francisco offices, and was also a partner in the San Francisco and Palo Alto offices of a California-based national firm.

Representative Matters

Recent Commercial and Corporate Governance Litigation

- Represent fitness gym franchise company against state court fraud and contract claims brought by alleged former partial owner bought out prior to company sale new investor/majority owner.

- Represent founders of music distribution business in corporate governance/control disputes with foreign private equity investor and in related state and federal litigation involving supermajority voting provisions in shareholder agreement; obtained favorable settlement through a buyout of investor and dismissal of all litigation.
- Represent nutritional supplement makers in state and federal class actions asserting mislabeling/false advertising under California UCL and CLRA and other claims; obtained dismissals on theories of equitable abstention and primary jurisdiction doctrine and nationwide settlement of remaining claims. (In one case, client obtained a significant recovery against plaintiffs' counsel on defamation claims arising out of statements made in YouTube video.)
- Represent angel investor in lighting technology company in connection with corporate governance disputes (voting procedures, selection of new CEO, a pursuit of merger strategy, etc.); obtained requested remedial measures and payment of fees from majority investors.
- Represent public film distribution company in Delaware litigation involving reverse termination fees arising out of counterparty buyer's breach of a merger agreement.

Recent SEC Enforcement Defense

- Represent former co-owner/co-manager of oil & gas investment and development entities in SEC investigation.
- Represent former sales executive of enterprise software company in SEC investigation relating to the acquisition by leading technology company.
- For real estate investment firm, and public REIT, private investment fund and broker-dealer affiliates and related individuals, obtained termination with no enforcement action in SEC investigation involving numerous claims centering on securities offerings and investment program operations.
- For Nevada private company and officers, obtained termination with no enforcement action in SEC investigation involving numerous securities offering and disclosure issues (following Wells Notice and Wells Submission).

Recent Securities Litigation Matters

- Represent California bank holding company in shareholder "merger objection" litigation and related "disclosure only" settlement arising out of acquisition of Texas bank holding company.
- Represent VC investors and directors on portfolio company board in connection with shareholder derivative claims, special committee investigation and corporate governance issues; obtained payment of fees in Delaware litigation following a refusal of shareholder claims
- Represent the bank holding company in shareholder class action alleging violations of federal securities laws and fiduciary duties of disclosure in connection with a proxy statement regarding reverse stock split; defeated TRO application regarding shareholder vote and obtained dismissal of all claims (2009 WL 4911850) and voluntary dismissal of Ninth Circuit appeal.
- Represent Brazilian businessman/investor as a plaintiff in state court action against founders of

"Christian-themed entertainment" company, on fraud claims under California securities laws and common law; matter proceeded to trial in L.A. Superior Court, resulting in the favorable jury verdict and a significant award of compensatory and punitive damages.

- Represent public real estate services company in an internal investigation involving undisclosed letter agreements and related accounting and financial reporting issues, and in connection with the restatement of financial statements and related SEC inquiries.

Selected Prior Representative Matters

- Represent media company and directors and officers in federal securities and ERISA litigation and Delaware fiduciary duty litigation relating to exchange offer and split-off of subsidiary; obtained dismissal of all securities law claims (504 F. Supp. 2d 151), ERISA claims (2007 U.S. Dist. LEXIS 85831), and fiduciary duty claims (2008 WL 308450, aff'd, 965 A.2d 676).
- Represent Canadian graphics chip maker and directors and officers in shareholder derivative action in California state court; obtained dismissal of majority of claims based on Canadian law applicable under "internal affairs" doctrine and voluntary dismissal of remaining claim.
- Represent California and China-based telecommunications equipment manufacturer in connection with internal investigation regarding accounting irregularities, and in related SEC investigation, securities class actions and shareholder derivative litigation. Also represented company in private arbitration regarding termination of professional services agreement with cell phone handset distributor/consultant
- Represent companies, directors and officers in internal investigations, SEC proceedings and federal and state shareholder derivative litigation regarding stock option practices.
- Represent computer and software companies and directors and officers in securities class action and shareholder derivative cases relating to financial reporting, restatements and other disclosure issues; obtained dismissals or favorable settlements
- Represent software company and directors and officers in shareholder derivative case relating to IPO pricing and underwriter allocation of shares in other IPOs, and in connection with related New York AG investigation.
- Represent investment banks and individual bankers in connection with shareholder "merger objection" actions relating to M&A transactions and financial advisor engagements
- Represent investment bank and individual banker as financial advisor and valuation expert to debtor software company in connection with bankruptcy litigation, in contested hearing/trial of business valuation issues, and with respect to contested issues regarding advisor/expert fees.
- Represent investment bank and individual bankers in federal court fraud and breach of fiduciary duty action relating to financial advisor engagement involving acquisition.
- Represent pharmacy benefits manager (PBM) and parent pharmaceutical company in class and representative plaintiff actions brought by retail pharmacy entities in state and federal courts alleging antitrust and unfair competition violations as to PBM practices and drug pricing.
- Represent software services company and directors and officers in breach of fiduciary duty litigation relating to application of California shareholder appraisal rights statutes in connection with corporate merger; case dismissed on eve of trial, dismissal upheld on appeal.
- Represent Swiss industrial company, as parent of medical device companies, in nationwide medical

device (joint implant) products liability litigation in federal and state courts, as to jurisdictional and intercorporate liability (alter ego) issues; resolved by nationwide global settlement and by dismissal of opt-out/non-covered cases.

- Represent German automotive parts manufacturer and U.S. affiliates in asbestos/products liability actions, as to jurisdictional and successor liability issues; obtained voluntary dismissals or dismissals on jurisdictional motions.
- Represent Italian mobile phone services provider and U.S. subsidiary in employment contract litigation by former CEO in California state court; defeated TRO and settled on favorable terms.
- Represent various companies in connection with NYSE, NASD and FINRA inquiries regarding pre-announcement stock trading and related subpoenas in SEC enforcement actions.
- Represent Federal Home Loan Bank in internal investigation regarding billing practices of outside vendor/consultant and related issues.
- Represent pharmacy benefits manager in AAA arbitration brought by retail pharmacies for breach of contract and to enforce alleged inspection/audit rights; defense award on all claims.
- Represent electronics company in federal antitrust class action relating to alleged price-fixing and monopolization in electron power tubes industry; settled on very favorable terms.
- Represent Swiss/NY private bank broker-dealer in NASD arbitration brought by individual derivatives traders on fraud, breach of contract and employment-related claims.
- Represent Swiss private bank and French bank affiliates in litigation relating to "Prime Bank Notes"; obtained dismissal based on lack of personal jurisdiction and *forum non conveniens*.
- Represent Austrian industrial company in breach of contract/warranty action involving hydroelectric generator at California hydroelectric power facility; settlement on eve of trial.
- Represent pharmacy benefits manager and pharmaceutical company in federal multidistrict antitrust litigation involving pricing of pharmaceutical drugs.

Publications and Newsletters

- "The SEC's *Expanded Powers and Remedies* in the SEC-Friendly Forum of Administrative Proceedings," Newsletter, October 4, 2011.
- "When 'Unfinished Business' Really Means 'Lost Business': Ninth Circuit Finds A Claim Stated For Securities Fraud Based On Undisclosed Risks Involving Contract Backlog," June 20, 2008.
- "*United Rentals Denied Specific Performance, Cerberus Walks*: Use of Forthright Negotiator Principle a Cautionary Tale for M&A Professionals," The M&A Lawyer, Vol. 12, Issue 3 (March 2008), and Newsletter, May 13, 2008.
- "In Closely Watched Stoneridge Case, U.S. Supreme Court Rejects 'Scheme Liability' Theory and Declines to Extend Securities Fraud Liability to Secondary Actors in Context of Private Litigation," Newsletter, January 17, 2008.
- "California's Fourth District Court of Appeals Applies the 'Injury in Fact' and 'Causation/Reliance' Elements of the UCL Standing Requirement to Uphold Dismissal of UCL Claim at Pleadings Stage," Newsletter, January 14, 2008.

Speaking Engagements

- "Anti-Corruption: What You Must Know About the Foreign Corrupt Practices Act," ALFA International 2014 International Client Seminar, March 7, 2014.
- "Distressed Debt Litigation: Causes, Concerns, Risks and Prevention," IMN Conference on Distressed Debt Investing & Risk Management: Navigating the Post-Subprime World, September 18, 2008.
- 23rd Annual M&A Institute (regarding Material Adverse Change clauses in Merger Agreements and current issues and disputes), November 15, 2007.

Education

- Vanderbilt University Law School, J.D., 1993
- Dartmouth College, A.B., cum laude, 1987

Languages

- German

Bar Admissions

- California
- New York

Court Admissions

- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. District Court for the Central District of California
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York
- U.S. District Court for the District of Colorado
- U.S. Court of Appeals for the Ninth Circuit

Practices

- Business Governance Litigation and Shareholder Disputes

- Class Action
- Criminal Defense
- Financial Services Litigation
- Internal Investigations, Ethics & Compliance
- International
- International Matters
- Litigation
- Real Estate Transactions
- Securities Litigation

Industries

- Sports