

## DAN BRODY

PARTNER

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### EDUCATION & HONORS

Harvard Law School, 2001, J.D.

Member, *Harvard Journal of Law and Technology*

University of Utah, 1997, B.A., *summa cum laude*, Major in Economics; graduate of University of Utah Honors Program

### AWARDS & RECOGNITION

Recognized as one of Colorado's "Rising Stars," Colorado SuperLawyers, 2011 and 2012

Named a "Texas Super Lawyer–Rising Star" by Law & Politics and Texas Monthly, 2006–2007

Phi Beta Kappa

### ADMISSIONS

Colorado

Massachusetts

Texas (inactive)

### NOTABLE EXPERIENCE

***Massachusetts Mutual Life Ins. Co. Residential Mortgage-Backed Securities Litigation*** (D. Mass., 2016-2017)

Represented MassMutual in its actions under the Massachusetts Uniform Securities Act, against underwriters Credit Suisse and Goldman Sachs, arising from their sales of residential mortgage-backed securities to MassMutual in 2005-2007. Credit Suisse settled after four weeks of trial, taking an additional \$79.5 million charge to earnings because of the settlement payment. Goldman Sachs settled shortly thereafter.

***Microsoft/Yahoo! Contractual Counseling*** (2012-2015)

Advised Microsoft relating to its Search Alliance with Yahoo!. The parties successfully restructured the Alliance at its five-year anniversary.

***Alliant Techsystems, Inc. v. Spirit AeroSystems, Inc.*** (Utah State Court, 2015)

Trial counsel for Spirit in contract dispute with ATK concerning components that ATK manufactures for the center fuselage of Airbus's A350 jetliner.

***In re Optical Disk Drive Products Antitrust Litigation*** (N.D. Cal., 2011-2015)

Counsel for Hewlett-Packard in antitrust MDL regarding a price fixing conspiracy engaged in by Hewlett-Packard's suppliers of Optical Disk Drive products.

***Li, et al. v. ConocoPhillips Co.*** (S.D. Tex., 2012-2016)

Trial counsel for ConocoPhillips in tort action brought by multiple Chinese fishermen plaintiffs for alleged harm from a June 2011 oil release from the Penglai-19-3 offshore oil field operated by ConocoPhillips China in Bohai Bay, China. Obtained dismissal of all claims.

***In re International Game Technology Shareholders' Litigation*** (Nevada State Court, 2014-2015)

Trial counsel for defendants International Game Technology (IGT) and its board of directors in shareholder litigation related to IGT's merger with GTECH S.p.A.

***Crescent Resources Litigation Trust v. Duke Energy Corp.*** (W.D. Tex., 2013)

Trial counsel for Duke Energy in a \$1.2 billion fraudulent conveyance case brought against it by a litigation trust created out of the bankruptcy of Duke's former wholly-owned real estate development subsidiary, Crescent Resources. The case settled on favorable terms after co-counsel at Fulbright successfully obtained a partial summary judgment dismissing the majority of federal fraudulent conveyance claims.

***FGIC Ad Hoc Group of Investors*** (2012-2014)

Advised ad hoc group of investors, comprised of hedge funds and insurance companies, in nine Countrywide residential mortgage-backed securities trusts insured by Financial Guaranty Insurance Company (FGIC) in facilitating a \$950 million settlement among Bank of America, FGIC, and BNY Mellon as Trustee for the nine trusts. The settlement, the first of its kind involving a mono-line insurer and bondholders working together to resolve mortgage repurchase claims, provides for more than \$355 million in direct recoveries from Bank of America to the RMBS Trusts, while FGIC received almost \$585 million. Bondholders also will recover, along with all other FGIC creditors, a share of the approximate \$585 million FGIC recovery when it makes future distributions to policyholders as part of its Plan of Rehabilitation.

***Microsoft v. Yahoo!*** (Arbitration, 2013; S.D.N.Y., 2013)

Prevailed in an emergency arbitration seeking a preliminary injunction ordering Yahoo! to transition to Microsoft's Bing Ads in Taiwan and Hong Kong. Defeated Yahoo!'s petition to vacate award in federal court.

***In re Flat Panel Antitrust Litigation*** (N.D. Cal., 2011-2013)

Counsel for Hewlett-Packard in antitrust MDL regarding a price fixing conspiracy engaged in by Hewlett-Packard's suppliers of TFT LCD products.

***Frank McCourt v. Bingham McCutchen LLP*** (Mass. Supp., 2011-2014)

Represented Frank McCourt, the former owner of the Los Angeles Dodgers, in connection with his legal malpractice claims against Bingham McCutchen LLP arising out of Bingham's negligent preparation of Mr. McCourt's postnuptial agreement, allowing his former wife to claim ownership of 50% of the Dodgers franchise, which sold for \$2.15 billion. Obtained dismissal of an unprecedented declaratory judgment action brought against Mr. McCourt by Bingham, seeking a determination that the firm did not commit malpractice and did not proximately cause Mr. McCourt's damages.

***Johnson Controls v. Saft Groupe*** (Del. Ch., 2011; S.D.N.Y., 2011)

Counsel for Johnson Controls, Inc. in its dispute with Saft Groupe S.A. related to the parties' joint venture Johnson Controls-Saft Advanced Power Solutions LLC, which developed and manufactured lithium-ion batteries for hybrid and electric vehicles. Successfully opposed Saft's motion for a temporary restraining order brought in S.D.N.Y. and successfully arbitrated the scope of the parties' rights to make public statements about the formation of their joint venture. Resolved case through favorable settlement for Johnson Controls under which it acquired Saft's interest in the joint venture.

***Alexsam, Inc. v. IDT Corporation*** (E.D. Tex., 2010-2013)

Represented IDT Corporation in two related patent infringement actions involving systems for activating pre-paid gift cards and phone cards. Won judgment as a matter of law on some claims in the district court and reversal of the jury's verdict of infringement on other claims on appeal to the U.S. Court of Appeals for the Federal Circuit. The second case settled favorably after a bench trial but prior to the court entering judgment.

***Vonage Securities Counseling*** (2010)

Provided Vonage with advice and counseling on securities litigation issues.

Advised a major petrochemical firm on structuring fixed-to-floating interest rate hedges.

Advised various clients on "integrated call spread" convertible debt issuances.

Advised Halliburton Co. on its issuance of \$1.2 billion of contingent convertible debt.

Advised JP Morgan on its underwriting of contingent interest convertible debt.

Advised a large media conglomerate on structuring various investments in derivative products, including several interest rate swap agreements with non-U.S. commercial banks.

Represented a major electric utility before IRS Appeals on issues related to the valuation and hedging of power sale agreements, including issues related to the marking-to-market of futures contracts.

Represented a major petrochemical firm before the IRS (including both IRS Exam and IRS Appeals) on issues related to the tax treatment of debt instruments similar to Debt Exchangeable for Common Stock.

Represented a major electric utility before the IRS's Office of Chief Counsel (Financial Institutions and Products) on tax issues related to the utility's planned multi-billion dollar asset securitization. Representation resulted in a formal change to IRS policy that allowed the securitization to be completed.

Advised Halliburton Co. on certain tax issues related to the Chapter 11 petition filed by several of its subsidiaries, including the treatment of capitalized bankruptcy costs.

Obtained a favorable IRS private letter ruling under Internal Revenue Code section 355 for Halliburton Co. in connection with its spinoff of KBR, Inc.

Obtained a favorable IRS private letter ruling under Internal Revenue Code sections 368(a)(1)(D) and 357(c) for a major drilling services provider.

Represented an individual in a tax-related lawsuit against the United States in U.S. District Court, based on an "Innocent Spouse Relief" claim.

Advised CenterPoint Energy on its \$3.65 billion sale of Texas Genco Holdings to Kohlberg Kravis Roberts & Co., The Blackstone Group, Hellman & Friedman, and Texas Pacific Group, as reported in *The American Lawyer*, October 2004.

Represented Halliburton Co. in its spin-off and IPO of KBR, Inc.

Represented the Crow Tribe of Indians in connection with its strategic alliance with the Australian-American Energy Company for the development of a \$7 billion coal-to-liquids project on the Crow Reservation.

Advised CenterPoint Energy on its refunding and remarketing of several tranches of municipal bonds.

Represented a major electric utility in its bid to acquire a large natural gas pipeline network.

Advised an offshore hedge fund on structuring alternatives for inbound U.S. investment.

Advised a commercial real estate developer on the formation of a large investment partnership.

Represented Platte River Ventures I, L.P. in connection with the \$1.1 billion IPO of Intrepid Potash, Inc.

Represented Caltius Partners in connection with its mezzanine lending and related equity investment in each of Bulk Handling Systems, Diversified Human Resources, and Griplock Systems.

Advised a major electric utility on its refinancing of a \$118 million credit facility.

Represented a petrochemical services company in its redemption and reissuance of preferred stock and issuance of first and second lien debt.

Represented a large residential real estate developer in its issuance of trust preferred securities.

Represented Real Goods Solar, Inc. in connection with its \$55 million IPO.

## **ACKNOWLEDGEMENTS, PRESENTATIONS, AND PUBLICATIONS**

Panelist, ABA Financial Transactions Committee's panel on Internal Revenue Code section 475, ABA Section of Taxation Midyear Meeting, San Diego, February 2006.

Principal author, ABA Section of Taxation's submission to the IRS regarding proposed regulations under Internal Revenue Code section 475. See, "ABA Tax Section Comments on Possible Securities and Commodities Safe Harbor," *Tax Notes Today*, Dec. 7, 2005 (2005 TNT 236-17).

Contributor, ABA Corporate Tax Committee's submission to the IRS regarding IRS Notice 2004-18. See, "ABA Members Comment on Treatment of Capitalized Transaction Costs," *Tax Notes Today*, April 15, 2005 (2005 TNT 75-34)

## **NEWS**

Bartlit Beck Files ODD Price Fixing Case for Hewlett-Packard  
10.2013