

## LESTER C. HOUTZ

PARTNER

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Les Houtz has represented clients in a wide variety of cases, including matters involving accountants' liability, fraud and securities litigation, antitrust, and pharmaceutical product liability.

### EDUCATION & HONORS

University of Pennsylvania Law School, 1988, J.D., *cum laude*

University of Pennsylvania, 1985, M.A., Political Science

Lebanon Valley College, 1973, B.A.

### AWARDS & RECOGNITION

Order of the Coif

Editor, *University of Pennsylvania Law Review*

Winner of Keedy Cup, the Law School's top moot court honor

### ADMISSIONS

Colorado

### CASES TRIED OR OTHERWISE TAKEN TO JUDGMENT

#### ***Aeromexico v. de Prevoisin***

Represented defendants in a case alleging misappropriation of funds by the CEO of Aeromexico. The case was tried in Colorado state court in May 2008. Judgment for clients, affirmed on appeal.

#### ***TIMET v. Globe***

Represented TIMET in a breach of contract case in Nevada state court against a raw material supplier who provided contaminated silicon for use in the manufacture of titanium metal. The case settled during trial in November 2005.

***Svoboda v. Bayer Corp.***

Represented Bayer in a personal injury case in Florida state court in March 2005 alleging that Alka Seltzer Plus caused a stroke. Jury verdict for Bayer.

***Hardy v. Bayer Corp.***

Represented Bayer in a personal injury case in Utah state court in February 2005 alleging that Alka Seltzer Plus caused a stroke. Jury verdict for Bayer.

***Schwartz v. QUALCOMM***

Represented QUALCOMM in an action brought in Colorado state court by eighty-seven former employees alleging fraud and breach of contract in connection with unvested stock options. Obtained dismissal or summary judgment as to eighty-one plaintiffs. Remaining plaintiffs settled before or during trial in January 2003.

***Wedel v. Colorado MEDtech***

Represented Colorado MEDtech in a case alleging securities fraud and breach of contract in connection with plaintiff's sale of a medical device company to client in exchange for stock in client. The case went to arbitration for two weeks before JAG in Denver in October 2001. Ruling for client on all counts.

***Precor v. Life Fitness***

Represented Life Fitness in a dispute between two manufacturers of exercise treadmills. Precor claimed design patent infringement; Life Fitness claimed utility patent infringement. Jury verdict rendered against client on both claims in U.S. District Court in Seattle in October 1999. On appeal, the Federal Circuit reversed as to Precor's claim against Life Fitness.

***In re MAXXAM Shareholders Securities Litigation***

Represented plaintiffs in a shareholder derivative case concerning self-dealing transactions involving a real estate development project in Rancho Mirage, California. The case was tried in Delaware Chancery court, and in April 1997 the Court found liability against defendants. The case settled prior to a determination of damages.

***Kahn v. Tremont Corporation***

Represented defendants in a shareholder derivative suit challenging a related-party stock purchase transaction. The case was tried in Delaware Chancery Court in June 1995, with a decision in favor of clients on all claims. The case was reversed and remanded by the Delaware Supreme Court. The case settled in the course of the trial on remand in the Chancery Court.

***Sutrak Air Conditioning Sales Corp. v. Carrier Corp.***

Represented Carrier in antitrust and patent-infringement case involving bus air conditioning systems. Partial summary judgment was granted in Carrier's favor dismissing the antitrust claims. Patent, trade dress, and federal anti-dumping claims were tried in U.S. District Court in Denver in 1995. Jury verdict for Carrier on all claims.

***Walter v. Phillips Petroleum***

Represented Phillips in a case filed by a family burned in a home propane gas explosion. Phillips made the odorizing agent added to propane so people can smell a gas leak. The case was tried to a jury in U.S. District

Court in Denver in 1992 after five other defendants had settled. Comparative fault verdict assigned 4% liability to Phillips.

## **OTHER REPRESENTATIVE CASES**

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

Represented MassMutual in its actions under the Massachusetts Uniform Securities Act, against underwriters Barclays, Credit Suisse, Goldman Sachs, and RBS, arising from their sales of residential mortgage-backed securities to MassMutual in 2005-2007.

### ***USG Wallboard Antitrust Litigation***

Represent defendant USG in class action and opt-out antitrust cases in Philadelphia federal court.

### ***Flat Screen Antitrust Litigation/Optical Disk Drive Antitrust Litigation***

Represented plaintiff Hewlett-Packard Company in antitrust litigation against foreign computer component suppliers in federal court in San Francisco.

### ***In re Metropolitan Securities Litigation***

Represented defendant Ernst & Young in a class action case in Washington federal court bringing claims under Section 11 of the Securities Act.

### ***In re Genetically Modified Rice Litigation***

Represented defendant Bayer CropScience in a class action case in Missouri federal court involving genetically modified rice.

### ***Seroquel Litigation***

Represented defendant AstraZeneca in various cases alleging personal injuries by users of Seroquel.

### ***Paskowitz v. Boulder Investment Advisers et al.***

Represented defendants in a class action case in Colorado federal court bringing claims under the Investment Company Act. Plaintiff sought damages and an injunction against a proposed Rights Offering. Plaintiff dismissed his claims with prejudice.

### ***Vioxx Litigation***

Represented defendant Merck in various cases alleging heart attacks and other personal injuries by users of Vioxx.

### ***AIMCO Litigation***

Represented AIMCO in various cases involving disputes over AIMCO's property insurance program for residential rental properties.

### ***Barnot v. Mercury Marine* and *Lazo v. Mercury Marine***

Represented Mercury Marine in class actions in Texas and Florida state courts brought by purchasers of OptiMax outboard engines. Plaintiffs alleged misrepresentation, breach of warranty, and product defect. The cases settled.

***HEI v. Colorado MEDtech***

Represented Colorado MEDtech in case filed in U.S. District Court in Colorado. The case was filed in conjunction with a hostile takeover attempt and sought to invalidate the company's poison pill and other bylaw provisions. Two follow-on shareholder class action suits were also filed in state court, alleging breach of fiduciary duty by the company's directors in resisting the HEI takeover attempt. All three suits were dismissed.

***In Re IntelCom Group, Inc. Securities Litigation***

Represented IntelCom Group, Inc. and individual defendants in a federal securities fraud class action case in U.S. District Court in Colorado. Plaintiffs alleged that the defendants failed to disclose material information about a subsidiary's disbarment from federal government contracting. The case settled.

***In re Corporate Express Securities Litigation***

Represented director defendant in consolidated shareholder class action litigation challenging the merger of Corporate Express and Buhrmann NV. The cases were filed in Colorado state court. Claims against client were dismissed.

***Mailers Data v. Siemens et al.***

Represented defendant NCR Corporation in a class action antitrust suit in Florida state court involving service of high-speed computer printers. Plaintiffs were independent service organizations, brokers, and end-users. The case settled.

***Schwartz v. Celestial Seasonings***

Represented defendants in class action securities fraud case in U.S. District Court in Colorado. Plaintiffs alleged that defendants failed to disclose material information concerning a contract with Perrier Corporation. The case settled.

***M Life Insurance Company v. Hoagland***

Represented dissenting former shareholders of an agent-owned reinsurance company in a corporate valuation case in state court in Denver. Clients disagreed with the company on the value of their shares following a merger, and the parties engaged in a statutory appraisal proceeding to determine the fair value of the shares. The case settled prior to trial.

***Seinfeld v. Baroid Corp. et al.***

Represented the defendant directors of Baroid in a class action lawsuit in Delaware Chancery Court challenging the merger of Baroid Corp. and Dresser Industries. Plaintiffs agreed to dismiss their claims after defendants filed a motion to dismiss.

***TIMET v. Boeing***

Represented plaintiff in a suit in Colorado state court seeking over \$600 million in damages for breach and repudiation of a ten-year contract for the sale of titanium metal to Boeing. The case settled.

***StorMedia v. Maxtor***

Represented individual defendant in litigation in Colorado state court over a contract under which StorMedia was to supply rigid magnetic disks to Maxtor for use in disk drives. Both parties brought fraud and contract claims against the other. Claims against client were dismissed.

***TIMET v. Elkem***

Represented plaintiff in a breach of contract and warranty action in U.S. District Court in Pittsburgh arising from defendant's supplying of contaminated raw materials (chromium powder) for use in the production of titanium metal. The case settled shortly before trial.

***Seinfeld v. Simmons***

Represented defendants in a shareholder derivative action in Chancery Court in Bergen County, New Jersey concerning a series of securities transactions. Plaintiff challenged the fairness of an open-market share repurchase program and a Dutch auction self-tender offer. The case settled prior to trial.

***NL Industries v. Commercial Union Ins. Co. et al.***

Represented NL in an insurance coverage suit seeking a declaration of the insurance companies' liability for NL's environmental cleanup costs at over 200 sites nationwide. The case was pending in U.S. District Court in New Jersey and settled before trial.

***Hermanson Family Limited Partnership v. Ben & Jerry's Homemade, Inc.***

Represented Ben & Jerry's in litigation filed in state court in Colorado relating to a Ben & Jerry's franchise shop in Denver. Plaintiff commercial real estate owner alleged that Ben & Jerry's wrongfully interfered with its commercial lease contract with a Ben & Jerry's franchisee. The case settled prior to trial.

***UCLA Faculty Disciplinary Proceeding***

Represented UCLA faculty member before the faculty Privilege and Tenure Committee concerning charges of violating University regulations governing scientific research. The charges were dismissed pursuant to an agreement between the faculty member and the University.

***Gould v. NL Industries***

Represented NL in a CERCLA contribution action filed in U.S. District Court in Portland, Oregon. NL was the former owner of a secondary lead smelter in Portland; the other parties to the case were the subsequent owner of the smelter, neighboring property owners, and suppliers of lead to the smelter. The case settled prior to trial.

## **BIG WINS**

Bartlit Beck Wins Two High-Profile Pharmaceutical Cases for Bayer Corp.