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July 18, 2011

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E. LEROY TOLLES  
(1922-2008)

<sup>1</sup>A PROFESSIONAL CORPORATION

Via E-mail and Federal Express

Kirk E. Miller  
Chief Counsel  
Citizens Redistricting Commission  
1130 K Street, Suite 101  
Sacramento, CA 95814

Re: Request for Information re Litigation Counsel

Dear Mr. Miller:

We are pleased to have the opportunity to respond to the Request for Information of the Citizens Redistricting Commission with respect to its need for Litigation Counsel. We set forth below the information requested in Sections VI, VII, and VIII of the RFI. If there is additional information that you need or you have questions about any of the information we are providing, please let us know.

We would be willing to take on this representation in conjunction with another law firm, but we would expect to be designated lead counsel or, at a minimum, co-lead counsel.

1. Personnel

The initial team that we propose includes the undersigned, Brad Phillips, who would be the lead lawyer; David Dinielli, Michelle Friedland, Grant Davis-Denny, John Rappaport, and Richard Chen. Other lawyers in the firm would be available to assist on an as-

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needed basis. Attached hereto at Tab 1 are copies of current biographies of each of us, some of which are also available on our firm's website at [www.mto.com](http://www.mto.com).

2. Firm General Description

Attached hereto at Tab 2 is a general description of our firm. There is additional information about our other attorneys and our practice available on our website at [www.mto.com](http://www.mto.com).

3. Experience

a/c. Appellate Experience

**Brad Phillips**

I have argued before the United States Supreme Court, the California Supreme Court, and the federal Courts of Appeals in the cases listed below.

1. *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011). I represented the intervenor-defendants in consolidated federal court actions that challenged the constitutionality of certain provisions of Arizona's Clean Elections Act, under which publicly funded candidates would receive supplemental public funds based upon the spending of their privately financed opponents and independent expenditure groups. I argued the case in the Ninth Circuit and the United States Supreme Court on behalf of both my clients (the intervenor-defendants) and the State of Arizona.

2. *In re Wilson*, 3 Cal.4th 945 (1992); *People v. Wilson*, 3 Cal.4th 926 (1992). I argued this appeal and petition for writ of habeas corpus in a death penalty case, under appointment by the California Supreme Court. In an opinion by Justice George, the Court granted the habeas petition and unanimously vacated the conviction, holding that trial counsel's failure to object to the admissibility of the testimony of a jailhouse informant and an investigator constituted ineffective assistance of counsel and was prejudicial.

3. *People v. Hale*, 44 Cal.3d 531 (1988). I argued this appeal in a death penalty case, under appointment by the California Supreme Court. In an opinion by Chief Justice Lucas, the Court unanimously reversed the conviction, holding that, although the issue had not been raised before or during trial, the trial court had a sua sponte obligation to hold a hearing to determine whether the defendant was competent to stand trial and, having failed to do so, lacked jurisdiction to try him.

4. *People v. Wharton*, 53 Cal.3d 522 (1991). I filed an amicus curiae brief and argued in the California Supreme Court in a death penalty case, on behalf of the California Psychiatric Association.

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5. *Gerken v. Fair Political Practices Comm'n*, 6 Cal.4th 707 (1993). I argued an original petition for writ of mandamus seeking enforcement of a campaign finance reform initiative.

6. *Taxpayers to Limit Campaign Spending v. F.P.P.C.*, 51 Cal.3d 744 (1990). I represented the sponsors of Proposition 68, defending the enforceability of that comprehensive campaign finance reform initiative. I argued the case in the California Supreme Court.

7. *Association of Christian Schools International v. Stearns*, 362 Fed.Appx. 640, 2010 WL 107035 (9th Cir.), *cert. denied*, 131 S.Ct. 456 (2010). I represented the University of California in a federal action, filed in 2005, that challenged the University's adoption and application of the "a-g" high school curriculum requirements for eligibility for admission to UC. The lawsuit alleged that UC's policies and decisions, including policies regarding teaching evolution in biology courses, discriminate against the plaintiffs on the basis of their religion and asserted claims under the Speech and Religion Clauses of the First Amendment and the Equal Protection Clause. We obtained summary judgment in 2008, the Ninth Circuit Court of Appeals affirmed in 2010, and the Supreme Court denied certiorari that same year. The case raised very important issues concerning the discretion of public universities to make academic decisions, particularly with respect to admissions. I argued the case in the Ninth Circuit.

8. *Rick-Mik Enterprises, Inc. v. Equilon Enterprises LLC*, 532 F.3d 963 (9th Cir. 2008). I represented the defendant (a subsidiary of Shell Oil Company) in this federal antitrust action. The plaintiff dealer alleged that Equilon had violated the antitrust laws by requiring that gasoline dealers purchase credit card processing services from Equilon as part of a Shell franchise. We obtained a dismissal with prejudice at the pleading stage, which was affirmed by the Ninth Circuit. The Ninth Circuit's opinion addresses important issues concerning market power, tying claims and pleading requirements under the antitrust laws. I argued in the Ninth Circuit.

9. *Polygram Holding, Inc. v. Federal Trade Comm'n*, 416 F.3d 29 (D.C. Cir. 2005). I represented the defendant and appellant in this antitrust proceeding before an Administrative Law Judge, the FTC, and the D.C. Circuit. The FTC alleged that Polygram and Warner Music had violated the antitrust laws by agreeing, as part of a joint venture, not to advertise certain recordings during the launch of a new recording by the same artists. The case involved significant issues concerning the degree of proof required in a Rule of Reason case under the Sherman Act and the legality of certain joint venture agreements. I argued the case to the full Commission and to the D.C. Circuit.

10. *Rudin v. Simon & Schuster* (9th Cir.) (unpublished). I argued in the Ninth Circuit in this libel and trademark infringement case. The plaintiff, Mickey Rudin, who had been Frank Sinatra's lawyer, claimed that Kitty Kelly had damaged his reputation by including his name in the Acknowledgments to her biography of Sinatra, thereby implying that he had

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disclosed confidential client information to her. The case raised novel issues under both libel and trademark infringement law. The district court granted summary judgment, and the Ninth Circuit affirmed.

11. *California Pro-life Council v. Scully*, 164 F.3d 1189 (9th Cir. 1999). I argued this case in the Ninth Circuit, defending the constitutionality of Proposition 208, California's comprehensive campaign finance reform initiative.

In addition to these cases that I briefed and argued, I was the principal author of the appellees' brief in the California Supreme Court in *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 (2001), which addressed summary judgment standards in antitrust cases; and I have filed amicus briefs in the California Supreme Court in *Martinez v. Regents of the University of California*, 50 Cal.4th 1277 (2010), involving the legality of a State law exempting certain persons from paying nonresident tuition without regard to whether they reside in California; and *Hebrew Academy of San Francisco v. Goldman*, 42 Cal.4th 883 (2007), involving application of the statute of limitations to defamation actions (on behalf of the University of California), as well as various briefs on petitions for review to the California Supreme Court.

I have filed merits briefs in the United States Supreme Court in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), involving the constitutionality of the McCain-Feingold campaign finance reform law; and *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006), involving the application of the *per se* doctrine under the federal Sherman Antitrust Act; amicus briefs in *Citizens United v. Federal Election Commission*, 558 U.S. \_\_\_\_ (2010), concerning the constitutionality of limits on corporate spending in election campaigns; *Davis v. Federal Election Commission*, 554 U.S. 724 (2008), concerning the constitutionality of a portion of the Bipartisan Campaign Reform Act of 2002; *Baze v. Rees*, 128 S.Ct. 1520 (2008), involving the constitutionality of Kentucky's lethal injection protocol; *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), involving the constitutionality and legality under the Voting Rights Act of Indiana's voter identification law; *Goodman v. Georgia*, 126 S.Ct. 877 (2006), involving the constitutionality of Congress's abrogation of the states' sovereign immunity in the Americans with Disabilities Act; *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), involving the question whether a State may, consistent with the First Amendment, provide a sign language interpreter for a child attending a sectarian school; and *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), involving whether the Rehabilitation Act of 1973 requires school districts to provide catheterization and other special services to handicapped children to enable the children to remain in an integrated school setting; and various briefs on petitions for writs of certiorari.

I have also argued on numerous occasions before the California Courts of Appeal and submitted many additional briefs to the federal and state courts of appeal. I would be happy to provide descriptions of those additional cases if that would be helpful.

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### **David Dinielli**

David, who clerked for Cynthia Holcomb Hall on the Ninth Circuit Court of Appeals, has argued

1. *Notti v. Cook Inlet Region, Inc.*, 31 Fed.Appx. 586, 2002 WL 464716 (9th Cir. 2002). Mr. Dinielli argued this case in the Ninth Circuit on behalf of Appellee Cook Inlet Region, Inc., an Alaska Native Corporation. The issue on appeal involved the scope of removal jurisdiction when a state-law claim necessarily depends on an issue of federal law.

Mr. Dinielli also has been the principal author of numerous briefs in United States Supreme Court and the state and federal courts of appeal. These are some recent examples: Mr. Dinielli represented Activision/Blizzard in *Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729 (2011), which invalidated a California statute making it a crime to sell violent video games to minors. He represented Fox Entertainment Group, Inc., writing the principal brief in *Brantley v. NBC Universal, Inc.*, --- F.3d ---, 2011 WL 2163961 (9th Cir. 2011), which rejected an antitrust challenge to the television industry's practice of selling channels in bundles. He represented the founder and CEO of Public Storage, Inc. in *Potter v. Hughes*, 546 F.3d 1051 (9th Cir. 2008), affirming dismissal of a shareholder derivative lawsuit challenging the propriety of certain related-party transactions. He represented Twentieth Century Fox in an appeal from the denial from a request for an injunction to the release of a motion picture, *Quarles v. Twentieth Century Fox Film Corp.*, 180 Fed.Appx. 686 (9th Cir. 2006). Mr. Dinielli, as co-counsel to the ACLU of Southern California, represented a civil rights plaintiff in *United States v. Old Baldy Council of Boy Scouts of America*, 227 Fed.Appx. 665 (9th Cir. 2007), which challenged the Boy Scouts' receipt of public funds earmarked for organizations that do not discriminate. He represented Verizon in *Cundiff v. Verizon California, Inc.*, 167 Cal. App. 4th 718 (2008), a case about the distribution of unclaimed funds in a class action settlement. In *Eddins v. Redstone*, 134 Cal. App. 290 (2005), Mr. Dinielli represented Universal Studios Home Entertainment LLC, defending summary judgment for the home entertainment industry in an antitrust case alleging a conspiracy with Blockbuster, Inc. And in *Strauss v. Horton*, 46 Cal.4th 364 (2009), he, along with Michelle Friedland, represented the petitioners challenging the constitutionality of Proposition 8 in the California Supreme Court.

### **Michelle Friedland**

Michelle, who clerked for Justice Sandra Day O'Connor on the U.S. Supreme Court, and who then taught at Stanford Law School for two years before joining MTO, has argued

1. *Palmer v. Valdez*, 560 F.3d 965 (9th Cir. 2009). Ms. Friedland argued this case in the Ninth Circuit on behalf of appellant Will Moses Palmer, a state prisoner alleging that his Seventh Amendment right to a jury trial had been violated in a civil rights action in which Mr. Palmer had alleged that he had been the victim of excessive force. The case involved novel questions about the scope of the unconstitutional conditions doctrine.

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Ms. Friedland has also submitted numerous briefs to the U.S. Supreme Court, California Supreme Court, and federal Circuit Courts. For example, Ms. Friedland represented the petitioners in *Strauss v. Horton*, 46 Cal.4th 364 (2009), the challenge in the California Supreme Court to Proposition 8's ban on same-sex marriage. Ms. Friedland's amicus briefs to the United States Supreme Court include briefs on behalf of the American Bar Association in *Medellín v. Dretke*, 544 U.S. 660 (2005), *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006), and *Medellín v. Texas*, 552 U.S. 491 (2008)—cases relating to the rights of criminal defendants under the Vienna Convention. Ms. Friedland has also submitted merits briefs to the Ninth Circuit, including in *John Doe I v. Abbott Laboratories*, 571 F.3d 930 (9th Cir. 2009), and *Association of Christian Schools International v. Stearns*, 362 Fed.Appx. 640, 2010 WL 107035 (9th Cir.)

### **Grant Davis-Denny**

Grant, who clerked for Judge Richard A. Paez on the Ninth Circuit Court of Appeals, has submitted briefs in the U.S. Supreme Court in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011), *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), *Davis v. Federal Election Commission*, 554 U.S. 724 (2008), and *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007); in the Ninth Circuit in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010) and *John Doe I v. Abbott Laboratories*, 571 F.3d 930 (9th Cir. 2009); and in the California Court of Appeal in *Morales v. California Department of Corrections and Rehabilitation*, 168 Cal. App. 4th 729 (2008).

### **John Rappaport**

John, who clerked for Justice Ruth Bader Ginsburg on the U.S. Supreme Court, and who then served as a Deputy Federal Public Defender before joining MTO, has argued:

1. *Corrales v. Neven*, 327 Fed.Appx. 32, 2009 WL 1321314 (9th Cir. 2009). Mr. Rappaport briefed and argued this case in the Ninth Circuit on behalf of appellant George Anthony Corrales, a state prisoner alleging that the trial court violated his Sixth Amendment jury rights when it removed from his jury the lone juror holding out for his acquittal.

2. *United States v. Leslee Manderson*, 307 Fed.Appx. 34, 2008 WL 5341850 (9th Cir. 2008). Mr. Rappaport argued this case in the Ninth Circuit on behalf of co-defendant and co-appellant Leslee Jean Manderson, who challenged her sentence for bankruptcy fraud.

Mr. Rappaport also authored the reply brief in *Peterson v. Hall*, Nos. 08-55280, 08-55165 (9th Cir.) (pending), addressing an ex post facto claim; has submitted to the California Supreme Court a number of habeas petitions in capital cases; and has been counsel on a petition for writ of mandate or prohibition to the California Court of Appeal.

### **Other MTO Lawyers**

Other MTO lawyers have argued at least the following cases before the California Supreme Court. The firm has argued many other cases before various federal and state appellate courts.

1. *Johnson v. American Standard, Inc.*, 43 Cal.4th 56 (2008), which addressed whether California should adopt the sophisticated user defense in product liability actions involving failure to warn claims.
  2. *Southern California Edison Co. v. Peevey*, 31 Cal.4th 781 (2003), which addressed whether the California Public Utilities Commission's refusal to increase utility rates as wholesale power costs rose was preempted by the federal filed-rate doctrine.
  3. *Viner v. Sweet*, 30 Cal.4th 1232 (2003), which addressed standards for proof of causation in legal malpractice actions.
  4. *People v. Cunningham*, 25 Cal.4th 926 (2001), a death penalty appeal which raised numerous issues.
  5. *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 (2001), which addressed the standards for summary judgment both generally and specifically in antitrust cases. *Aguilar* is not the leading authority with respect to summary judgment standards under California law.
  6. *Hotel Employees and Restaurant Employees Int'l Union v. Davis*, 21 Cal.4th 585 (1999), which addressed the constitutionality of Proposition 5, which authorized various forms of gaming in tribal casinos.
  7. *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434 (1997), which addressed whether, in order for a claim to "arise from" in-state contacts for purposes of personal jurisdiction, the claim must have a proximate cause or only a "but for" relationship to the contacts.
  8. *Macias v. State of California*, 10 Cal.4th 844 (1995), which addressed whether manufacturers of malathion had a duty to provide health warnings to the public in connection with state governmental entities' spraying of the chemical in urban areas.
  9. *People v. Louis*, 42 Cal.3d 969 (1987), a death penalty appeal which raised numerous issues.
- b/c. Federal Cases Involving Constitutional or Public Policy Issues

The firm has litigated many federal court cases in which a judgment was entered and that involved constitutional or public policy issues. I have set forth below some

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representative such cases, including mostly ones that have been handled by the members of our proposed team. We would be happy to provide additional examples, if that would be helpful.

1. *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011). Grant Davis Denny and I represented the intervenor-defendants in consolidated federal court actions that challenged the constitutionality of certain provisions of Arizona's Clean Elections Act, under which publicly funded candidates would receive supplemental public funds based upon the spending of their privately financed opponents and independent expenditure groups.

2. *Vasquez v. Rackaukas*, Case No. SACV 09-1090 VBF(RNBx), United States District Court, Central District of California. The firm represented a class of individuals challenging the enforcement against them of a civil gang injunction without first providing them with a pre-deprivation hearing before a neutral decision-maker. Following class certification and a multi-week trial, the federal court held, on May 10, 2011, that enforcement of the injunction against class members violated their due process rights.

3. *Association of Christian Schools International v. Stearns*, 362 Fed.Appx. 640, 2010 WL 107035 (9th Cir.), *cert. denied*, 131 S.Ct. 456 (2010). Michelle Friedland and I represented the University of California in a federal action, filed in 2005, that challenged the University's adoption and application of the "a-g" high school curriculum requirements for eligibility for admission to UC. The lawsuit alleged that UC's policies and decisions, including policies regarding teaching evolution in biology courses, discriminate against the plaintiffs on the basis of their religion and asserted claims under the Speech and Religion Clauses of the First Amendment and the Equal Protection Clause. We obtained summary judgment in 2008, the Ninth Circuit Court of Appeals affirmed in 2010, and the Supreme Court denied certiorari that same year. The case raised very important issues concerning the discretion of public universities to make academic decisions, particularly with respect to admissions.

4. *Morales v. California Department of Corrections and Rehabilitation*, 168 Cal. App. 4th 729 (2008). Grant Davis-Denny and I represented two condemned inmates in a state court challenge to the legality of California's lethal injection regulation based on the Administrative Procedure Act. We obtained summary judgment and a permanent injunction, which were affirmed by the California Court of Appeal.

5. *Diouf v. Chertoff*, United States District Court, Central District of California, Case No. CV 07-03977 TJH. I represented the plaintiffs, two immigrants, in this federal case that alleged both classwide claims for declaratory and injunctive relief and individual damages claims arising from federal immigration agencies' forcible drugging of immigration detainees without medical reason and without a court order. After the court denied the government's motion to dismiss, the defendants reversed their policies and the case settled.

6. *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003). I was co-counsel for the congressional sponsors of the Bipartisan Campaign Reform Act of 2002,



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defending the constitutionality of federal legislation regulating “soft money” and “sham issue ads.” I was a principal author of the Supreme Court brief and argued part of the case in the three-judge district court in the District of Columbia.

7. *Common Cause v. Jones*, 213 F. Supp. 2d 1106 (C.D. Cal. 2001); 213 F. Supp. 2d 1110 (C.D. Cal. 2001); 235 F. Supp. 2d 1076 (C.D. Cal. 2002). I represented the plaintiffs in a federal court equal protection and voting rights challenge to the constitutionality of the use of pre-scored punch card voting machines (of “hanging chad” fame) in California. We obtained favorable rulings and then a consent decree requiring the State to replace the machines before the 2004 presidential primaries.

8. *Diana Doe v. Los Angeles Unified School District*, 48 F.Supp.2d 1233 (C.D. Cal. 1999). I defended the Los Angeles Unified School District (“LAUSD”) in a challenge to its implementation of Proposition 227, which mandated English immersion and largely prohibited bilingual education. The court denied the plaintiffs’ motion for a preliminary injunction, and the case settled on terms favorable to LAUSD.

9. *California Prolife Council v. Scully*, 164 F.3d 1189 (9th Cir. 1999); *California Prolife Council v. Scully*, 989 F. Supp. 1282 (E.D. Cal. 1998): I represented the Intervenor-Defendants, the sponsors of Proposition 208, as lead counsel in one 3-week district court trial, then in the Ninth Circuit, and then in a second 2-week trial of the constitutionality of California’s comprehensive campaign finance reform initiative. The case was mooted by passage of the Legislature-sponsored Proposition 34, which repealed Proposition 208.

10. *Castaneda v. Regents*, Case No. CV-99-0525-SI (Northern District of California): I defended the University of California in this federal class action, which alleged that, following the passage of Proposition 209, the University’s admissions policies resulted in disparate impact discrimination in violation of regulations promulgated under Title VI of the Civil Rights Act of 1964 and that the University had engaged in intentional discrimination in violation of the Equal Protection Clause. The case settled on terms favorable to the University.

11. *Pedro A. v. Dawson*, San Francisco Superior Court Case No. 965089; *League of United Latin American Citizens v. Wilson*, 908 F.Supp. 755 (C.D. Cal. 1995). I represented the LAUSD in various lawsuits challenging the constitutionality of the K-12 provisions of Proposition 187, which would have denied a public education to undocumented children and the citizen children of undocumented immigrants.

d. Legal Work on Behalf of Public Agencies, Boards, or Commissions

The firm has provided legal services to the following public agencies, boards, and commissions, among others:

The Board of Regents of the University of California

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The Board of Regents of the University of Michigan

Los Angeles Unified School District

City of Los Angeles

County of Los Angeles

Metropolitan Transit Authority of Los Angeles County

Los Angeles Coliseum Commission

Natural History Museum of Los Angeles County

Clarke County (Las Vegas) School District

East Whittier City School District

e. Experience with the Voting Rights Act

We do not have direct experience in litigating issues with respect to redistricting. We do have substantial experience, however, with the Voting Rights Act generally and with many election-law issues. I set forth below the experiences of the members of our proposed team that seem most relevant, substantively, to handling redistricting litigation on behalf of the Commission.

**Brad Phillips**

a. Counsel for the plaintiffs in *Common Cause v. Jones*, 213 F. Supp. 2d 1106 (C.D. Cal. 2001); 213 F. Supp. 2d 1110 (C.D. Cal. 2001); 235 F. Supp. 2d 1076 (C.D. Cal. 2002). This was a federal court equal protection and voting rights challenge to the use of pre-scored punch card voting machines in California.

b. Counsel for Clean Elections Institute, Inc. in defending the constitutionality of Arizona's public financing law. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011), discussed above.

c. Counsel for Senators McCain and Feingold and Representatives Shays and Meehan in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), concerning the constitutionality of the Bipartisan Campaign Reform Act of 2002.

d. Counsel for the sponsors of California Proposition 208, a comprehensive campaign finance reform initiative, in *California Prolife Council v. Scully*, 164 F.3d 1889 (9th Cir. 1999).

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e. Counsel for Common Cause in *Griset v. F.P.P.C.*, 8 Cal.4th 851 (1994), defending the constitutionality of a requirement that candidates and those supporting or opposing a candidate identify themselves on mass mailings to prospective voters.

f. Counsel for petitioners in *Gerken v. F.P.P.C.*, 6 Cal.4th 707 (1993), an original petition for writ of mandamus seeking enforcement of a campaign reform initiative.

g. Counsel for the Commission to Draft an Ethics Code for the City of Los Angeles in *Johnson v. Bradley*, 4 Cal.4th 389 (1992), concerning the enforceability of public financing provisions enacted in Los Angeles.

h. Counsel for the sponsors of California Proposition 68, a comprehensive campaign finance initiative, in *Taxpayers to Limit Campaign Spending v. F.P.P.C.*, 51 Cal.3d 744 (1990).

i. Counsel for Common Cause as *amicus curiae* in *Davis v. Federal Election Commission*, 554 U.S. 724 (2008), concerning the constitutionality of a portion of the Bipartisan Campaign Reform Act of 2002.

j. Counsel for several Congressmen as *amici curiae* in *Citizens United v. Federal Election Commission*, 558 U.S. \_\_\_\_ (2010), concerning the constitutionality of limits on corporate spending in election campaigns.

k. Co-Chair, Lawyers' Committee for Civil Rights Under Law, Washington, D.C., 2008-present, with responsibility for oversight of entire organization, including the Voting Rights Project. As a member of the Board of Directors, I participated in the work of the Lawyers' Committee in connection with congressional reauthorization of the Voting Rights Act.

l. Chair, California Common Cause, 1992-1996.

m.. I have also represented and advised numerous public entities with respect to various civil rights and related laws, including the University of California with respect to Proposition 209 and the Los Angeles Unified School District with respect to Proposition 187, Proposition 209, and Proposition 227.

#### **Grant Davis-Denny**

a. Counsel for international election scholars as *amici curiae* in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), a challenge to Indiana's requirement that voters present photo identification at the polls.

b. Counsel for members of Congress *amici curiae* in *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007).

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c. Counsel for Common Cause as *amicus curiae* in *Davis v. Federal Election Commission*, 554 U.S. 724 (2008), concerning the constitutionality of a portion of the Bipartisan Campaign Reform Act of 2002.

d. Counsel for Common Cause as *amicus curiae* in *Thalheimer v. City of San Diego*, 2010 WL 1201885 (S.D. Cal. Mar. 23, 2010).

e. Counsel for Clean Elections Institute, Inc. in defending the constitutionality of Arizona's public financing law. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011), discussed above.

f. Author of *Divergent Disclosure: The Value of Uniformity in State Campaign Finance Disclosure Laws*, 4 Election Law Journal 282 (2005) (paper presented at the 2004 Midwest Political Science Association Conference).

g. Author of *The Constitutionality of Regulating Coordinated Issue Advocacy: A Reply to James Bopp, Jr. and Heidi K. Abegg's The Developing Constitutional Standards for 'Coordinated Expenditures'*, 2 Election Law Journal 267 (2003).

h. Author of *Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of Buckley v. Valeo*, 50 UCLA Law Review 205 (2002).

i. Chair of California Common Cause when the initiative that created the Citizens Redistricting Commission was passed.

j. Advised numerous corporate clients on compliance with campaign finance laws.

k. Assisted Professor Jonathan Zasloff with his work on the commission that was responsible for drawing the Los Angeles School Board electoral district lines.

l. Keynote speech at the Nexus Symposium "Citizens Divided on *Citizens United*: Campaign Finance Reform and the First Amendment."

m. Panelist for *University of San Francisco Law Review* panel "Corporate Personhood: the First Amendment Rights of Corporations in the Wake of *Citizens United*."

n. Panelist for Federalist Society 5th Annual Western Conference, "After the 2010 Election: What's Next for Campaigns and California."

o. Supervised a Southern California Election Protection call center during the 2008 general election.

p. Taught seminar at UCLA on campaign finance reform

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f. Experience with Electronic Discovery

Since 1996 MTO has had one of the most forward-looking and technically advanced discovery support divisions of any law firm in the country. Initially conceived as national counsel support for a Fortune 20 company with significant serial litigation needs, the support group has evolved with the technology and law in the e-discovery area. MTO support currently includes about 100 individuals, with approximately half of these individuals focusing almost exclusively on discovery management quality control and review. The team consists of over 20 staff attorneys, 15 automated litigation support technologists and a variety of other specialists, paralegals, clerks and other support professionals. Most of the support team members have been with MTO for over 11 years. During that time, these individuals have collectively participated in document discovery work for hundreds of national and international cases in a wide range of capacities and the screening, review and/or production of over 30 million pages of hardcopy documents and hundreds of terabytes (the equivalent of over 1 billion pages) of data collected from thousands of diverse locations and custodians, largely under extraordinary time pressures. We further estimate that we have drafted hundreds of thousands of privilege log entries, as well. They have received repeated accolades from clients, co-counsel, and industry leaders for their extraordinary experience, professionalism, diligence, commitment, precision, creativity and efficiency.

The MTO support division has been involved in virtually all types of litigation including patent litigation, products liability litigation, securities investigations and class actions. Because the team is largely made up of long-standing full-time employees, we are able to leverage technical and substantive knowledge across multiple cases for single clients and across our client base in general. We are also able to transition smoothly from discovery into pretrial preparation mode or any other support or reference need that our clients may require. MTO uses many leading industry technologies for the management of discovery processes and document review. While MTO has extensive knowledge of virtually all leading database technologies and document-review solutions, MTO maintains the flexibility to utilize any technology preference of our clients and to identify precisely the best technologies for any given project. The overall focus of the MTO support team is on active project management to drive maximum efficiency and defensibility of process, within a managed budget. As such, the MTO team is actively involved in utilizing advanced technologies for data analysis, early case assessment, data culling, document review and production. The team is trained in analyzing scope issues, sampling, applying batching logic, leveraging data analytics and other techniques. MTO has also built detailed templates and workflow processes around such strategies, resulting in more predictable, meaningful and cost-effective results.

The MTO Support team is highly configurable and can utilize a number of different staffing models to address the specific needs of its clients for document-review support in a cost-effective manner. In general, most matters are assigned a specialized discovery staff attorney who acts as a discovery project manager throughout the life of the matter. These staff attorney project managers are well versed in MTO standards and practices, case-specific

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requirements and industry options and standards. The project manager applies this knowledge in the generation of a technology and staff plan and a cost projection at the outset of each document review. Depending on the timing and scale of the review the plan may include reviewer resources from our large internal existing staff of highly trained regular full-time employees of the firm. These employees are experienced document reviewers, are billed at extremely competitive rates and are comfortable with a wide range of review technology platforms. In the event that additional resources are needed, MTO will incorporate leased workers into the review process after training and under careful supervision at all times. The Automated Litigation Support team can provide the entire range of technical support required from the inception through the conclusion of a matter, including design of the document-review process and workflow, quality control and technical-review infrastructure and trial-presentation support if required. MTO recognizes that document reviews can be extremely expensive. In all of our staffing we endeavor to minimize costs and fees wherever possible, while maintaining very high standards for work quality.

4. Conflicts of Interest

I currently represent plaintiffs, including the United Farm Workers, in a matter adverse to the State of California and Cal-OSHA. Other attorneys in the firm likely represent clients in matters adverse to various State agencies.

I did unpaid work on behalf of the Obama Presidential campaign during 2008, some of which may have been on behalf of the Democratic National Committee.

Other attorneys and employees of our firm (or members of their immediate families) may have conflicts of interest as described in Government Code §8252 or subsection 4 of section VI of the RFI.

5. Fee Arrangements

We propose to perform the required work at a 10% discount off our regular hourly billing rates. The current hourly rates of our proposed team members are, respectively, Brad Phillips: \$825; David Dinielli: \$675; Michelle Friedland: \$650; Grant Davis-Denny: \$560; John Rappaport: \$515; and Richard Chen: \$375. Those rates are subject to adjustment in future years.

6. References

Eric George, Browne Woods George LLP, [REDACTED]  
Los Angeles, California 90067 [REDACTED] (reference for Grant Davis-Denny).

Nigel Jacques, Senior Counsel, Shell Oil Company, One Shell Plaza, 910  
Louisiana St., [REDACTED] TX 77002 ([REDACTED]) (reference for Brad Phillips).

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Randall Kender, Senior Vice President, Litigation, Fox Group, [REDACTED]  
the [REDACTED] Los Angeles, CA 90067 ([REDACTED] (reference for David Dinielli).

Sean Kennedy, Federal Public Defender, Office of the Federal Public Defender,  
[REDACTED] Los Angeles, CA 90012 [REDACTED] (reference for John Rappaport).

[REDACTED] Catherine Lhamon, Directing Attorney, Impact Litigation, Public Counsel, [REDACTED]  
South [REDACTED] Los Angeles, CA 90005 [REDACTED] (reference for Brad Phillips).

Mary O'Grady, Osborn Maledon, [REDACTED]  
Floor, Phoenix, AZ 85012 [REDACTED] (reference for Brad Phillips and Grant Davis-Denny).  
(Ms. O'Grady is the former Solicitor General of the State of Arizona, on behalf of which Brad  
Phillips argued in the United States Supreme Court in *Arizona Free Enterprise Club's Freedom  
Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 WL 2518813 (June 27, 2011).)

Jennifer Oosterbaan, Senior Counsel, Commercial Litigation, Abbott  
Laboratories, [REDACTED] Abbott Park, IL 60064 [REDACTED]  
[REDACTED] (reference for Michelle Friedland).

Christopher R. Patti, Chief Campus Counsel, University of California Berkeley,  
[REDACTED] Berkeley, CA 94720 [REDACTED] (reference for Brad Phillips  
and Michelle Friedland).

Christopher Stoll, Senior Staff Attorney, National Center for Lesbian Rights, [REDACTED]  
[REDACTED] San Francisco, CA 94102, [REDACTED] (reference for David  
Dinielli and Michelle Friedland).

Daniel P. Tokaji, Professor of Law, The Ohio State University Moritz School of  
Law, [REDACTED] Columbus, Ohio 43210 [REDACTED] (reference for Brad Phillips).

Thank you very much for the opportunity to be considered for this important  
work. Please let us know if there is additional information that you need.

Sincerely,



Bradley S. Phillips

Attachments



Munger, Tolles & Olson LLP  
Los Angeles • San Francisco  
[www.mto.com](http://www.mto.com)



***“There is an old two-part rule that often works wonders  
in business, science, and elsewhere:  
(1) Take a simple, basic idea and  
(2) take it very seriously.”***

**– Charlie Munger**

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## ABOUT MTO

In 1962 seven lawyers founded Munger, Tolles & Olson with the belief that a law practice of the highest quality could be established in a creative and stimulating environment. Today, MTO's 175 lawyers are known for trying bet-the-company cases and negotiating deals that shape our corporate landscape. In 2011, MTO took second place—after three consecutive first place finishes—on *The American Lawyer's* 2011 A-List, an annual ranking of the nation's elite law firms.

### Our Work

Clients turn to MTO when the stakes are high. In a survey conducted by *The American Lawyer*, the firm's clients said that they called on MTO in "precedent-setting cases that require a creative mind" and in cases that require an "army of trial lawyers capable of waging war." MTO has built its reputation by providing clients with exceptional judgment, creative thinking, and a deep commitment to solving their problems.

MTO's work is national and international in scope. Our principal areas of practice include bankruptcy, corporate, environmental, labor and employment, litigation, real estate and tax.

MTO is committed to providing exceptional service to its clients in a cost-effective manner. With a one-to-one partner-associate ratio, we staff our matters leanly with partners providing strategic leadership from inception to conclusion. Where appropriate, we use paralegals and other personnel to handle tasks at lower cost.

### Our People

To solve its clients' toughest problems, MTO strives to associate only the most qualified and creative lawyers we can find. Our 175 lawyers are extraordinarily talented, nearly 70 percent served as law clerks to federal judges. Eighteen of our attorneys were law clerks to U.S. Supreme Court Justices. Many of our attorneys have experience in government, including service in the U.S. Department of Justice, U.S. Attorneys' Offices, and the Environmental Protection Agency. Numerous MTO lawyers have advanced degrees in computer engineering, mathematics, physics, chemical engineering, chemistry, molecular biology, medicine, finance, business, economics and statistics, among others.

MTO's culture—and the loyalty and pride that it breeds—has allowed the firm to avoid the revolving door of lawyers that ill serves a law firm's clients. Nearly 45 percent of the lawyers who joined MTO in the past 20 years—and 70 percent of our partners—are still at the firm.

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## **Our Community**

Service to the community is a core aspect of MTO's culture. Our lawyers serve on boards of community organizations, volunteer their time with local non-profits and political campaigns and lead bar activities.

MTO is deeply committed to pro bono service. MTO was one of the charter signatories to the American Bar Association's pro bono challenge and consistently devotes more than three percent of collective attorney time to delivering pro bono legal assistance. MTO was one of five law firms awarded a *National Law Journal* 2009 Pro Bono Award for its work obtaining a \$500 million settlement on behalf of 80,000 Social Security recipients previously denied benefits. The ACLU Foundation of Southern California recently presented MTO with its LGBT Award for representing several gay and lesbian couples in their California Supreme Court petition challenging the constitutionality of Proposition 8, the voter initiative that sought to eliminate the right of same-sex couples to marry; and its Social Justice Award to a team of MTO litigators that secured protections for farm workers exposed to heat-related illness and injury. Our corporate lawyers regularly advise non-profit organizations on intellectual property, employment, financing and other matters. We are proud to be one of a select group of firms to have received the American Bar Association's coveted Pro Bono Publico Award.

## **Our Commitment to Diversity**

At MTO, a diverse workforce improves our ability to serve the needs of our clients and creates a more dynamic workplace for our attorneys. We have a long tradition of supporting diversity, and are proud of our leadership in this area, but know that achieving diversity can only be accomplished through consistent and sustained effort. We are committed to that effort and are determined to make further progress on diversity issues both within our firm and in the legal profession.

MTO's lawyers work in a democratic and egalitarian environment. The firm's major decisions are made by consensus, and all attorneys are encouraged to participate in firm governance. The firm is governed by more than 25 committees, including a policy committee in which 30 percent of its members are women and 17 percent are minorities. Additionally the firm's managing partner, Sandra Seville-Jones, is a woman; her predecessor, Bart Williams, is African American. MTO had one of the first women partners in Los Angeles, and we were one of the first major law firms in the United States to have an gay managing partner.

MTO places great importance on recruiting women and minority attorneys, and believes that our firm can be a platform for success for every lawyer we hire. We are dedicated to addressing the tough issues, in our firm and society, that impair success for women and minority lawyers. We actively encourage employment applications from women and members of minority groups. MTO offers a 1L summer program for exceptional first year law students who are members of racial or ethnic minority groups, are GLBT, are physically challenged or are from disadvantaged socioeconomic backgrounds. In its 2L and 3L program—the firm's main hiring vehicle—54 percent of the incoming 2011 group are minorities or women and 5 percent of 2010's group were minorities or women.

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## PROFILE

### *A-Listed*



Munger Tolles & Olson took second place—after three consecutive first place finishes—on *The American Lawyer's* A-List, an annual ranking of the nation's elite law firms. Our firm continues to be the only law firm outside of New York to have appeared in first place on the A-List.

To determine the A-List, the magazine assigns numeric values to revenue per lawyer, commitment to pro bono, diversity among lawyers and associate training and satisfaction. MTO achieved its highest overall point total since taking the top seat on the list in 2008.

According to *The American Lawyer*, the A-List "isn't just a report card on firm statistics. It's a measure of how well firms balance moneymaking with the priorities of service and collegiality that used to distinguish the legal profession."

## PROFILE

### *An Historic Restructuring*



Munger Tolles & Olson took second place—after three consecutive first place finishes—on *The American Lawyer's A-List*, an annual ranking of the nation's elite law firms. Our firm continues to be the only law firm outside of New York to have appeared in first place on the A-List.

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## **BANKRUPTCY**

**Bankruptcy Litigation**

**Creditors' Rights**

**Distressed Asset Sales**

**Planning and Counseling**

**Restructuring**

Munger, Tolles & Olson's bankruptcy practice combines the resources and credentials of one of the country's top law firms with the kind of individualized problem-solving and adaptability that you might expect of a smaller, more specialized boutique. The depth of our experience in all phases of the bankruptcy process sets our bankruptcy practice apart from those of other full service firms. Because we routinely represent a variety of key constituents—chapter 11 committees, lenders, bondholders, individual creditors (both secured and unsecured), liquidating trustees, purchasers of assets out of bankruptcy, and others—we are able to approach the process from a variety of perspectives, with an understanding of each constituent's needs.

MTO's practice extends beyond that of more specialized "boutique" firms with a core group of dedicated bankruptcy professionals, because we regularly consult our colleagues on corporate, tax, real estate, insurance, and labor laws, which fundamentally intersect with the bankruptcy process. The collective experience of our lawyers spans a broad range of issues and industries—an indispensable asset given increasingly complex and industry-specific chapter 11 proceedings. In addition, our clients, including many prominent law firms, take special comfort knowing that they are backed at every step by the litigation powerhouse for which our firm is nationally known.

In every bankruptcy representation that MTO undertakes, we are guided by one overriding principle, maximizing value to the client. We are always cognizant of the end goal in the bankruptcy process—to increase values or recoveries, or reduce exposure. We recognize that spending time and money on short-term strategies that do not lead to a favorable and achievable endgame is counterproductive. In short, we search for the resolution that makes the most sense given the economic realities of a particular situation.

MTO's clients include *Fortune* 500 companies; leaders in their respective industries; large financial institutions; and some of the most sophisticated and respected financial players in the world. During the last several years, the firm has represented key constituents in major bankruptcies in such industries as apparel, automotive, consumer products and services, e-commerce, hospitality, intellectual property, energy/oil & gas, entertainment, finance, healthcare, real estate, retail, technology and telecommunications, among others.

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## **Bankruptcy Litigation**

Munger, Tolles & Olson offers a wealth of experience and resources in the arena of bankruptcy litigation. We have litigated hundreds of bankruptcy-related lawsuits, both in and out of bankruptcy courts, throughout the country. This includes both complex litigation taking place beneath the bankruptcy umbrella, as well as more specialized bankruptcy matters, such as preference and fraudulent transfer actions. We have extensive experience litigating bankruptcy matters, and, where appropriate, negotiating settlements with estate counterparties. Our attorneys are well versed in defending complex bankruptcy-specific subject matters such as aiding and abetting liability, as well as litigating complex jurisdictional and procedural issues that can arise in bankruptcy cases. Our deep experience in the core bankruptcy functions, for instance how a plan trust operates and creditor expectations under a plan of reorganization, allows us to approach every case with the fundamental tools critical to effectively and efficiently handling bankruptcy-related litigation.

## **Creditor's Rights**

Munger, Tolles & Olson's bankruptcy practice has placed particular emphasis on representing creditor and bondholder committees in the bankruptcy process, including pre-petition, statutory, and ad hoc committees. We have represented the official creditors committees in the bankruptcy cases of Lake Las Vegas, Coho Energy, Inc. and Prime Succession, Inc., in addition to a number of committees in out of court restructurings. MTO also has represented some of the nation's largest individual bondholders and funds, as well as other key creditors, as official and ad hoc committee members in numerous cases throughout the country.

In addition, MTO routinely advises key constituents in the bankruptcy process with respect to the use of cash collateral, assumption and rejection of executory contracts and leases, and plan solicitation and confirmation proceedings. For example, MTO represented a large DSL company in connection with numerous bankruptcies of individual Internet service providers with which it had contracted. In addition, MTO attorneys played a substantial role in shaping the confirmed reorganization plans of debtors California Power Exchange, Sun World International, Inc., and Livent based on the firm's representation of key constituents in those cases.

## **Distressed Asset Sales**

Along with our corporate practice, Munger, Tolles & Olson's bankruptcy group has a tremendous amount of experience counseling clients in the purchase of assets of distressed entities. For example, MTO attorneys recently represented the purchaser of the assets of Queen's Seaport Development, Inc. out of bankruptcy, concurrently buying out a 50-year lease to operate the landmark ship, Queen Mary. We also have advised numerous other significant players in the financial industry in connection with the purchase of distressed assets in bankruptcy including, recently, the assets of Solidus Networks, Inc., a leader in biometric payment and personalized marketing, as well as the assets of Fibertech, a manufacturer of environmentally-friendly building materials.

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## **Planning and Counseling**

Munger, Tolles & Olson's bankruptcy practice is often called upon to advise the firm's clients in structuring transactions or settling cases in light of bankruptcy risks. When a client's counterparty—in litigation or a corporate transaction—is already experiencing financial difficulties or such challenges are looming, there are risks and opportunities for our clients. We ensure that our clients are ideally positioned to weather those risks, or capitalize on the opportunities. Recently, MTO helped one of the nation's largest entertainment companies fundamentally change the way it conducts business with counter-parties given the increasing concerns about the liquidity and ultimate viability of the company's many counter-parties.

In addition, over the last few years, the firm has represented dozens of directors and officers, often in connection with bankruptcy or pre-bankruptcy planning. We have tremendous experience working with officers and directors to make sure they have continued access to insurance proceeds during the pendency of the bankruptcy, and have successfully litigated the issue on a number of occasions in several jurisdictions.

## **Restructurings**

Although the bulk of Munger, Tolles & Olson's bankruptcy practice is on the creditors' side, we have undertaken a number of significant debtor-side representations as well, both in and out of bankruptcy. During California's energy crisis, for example, we provided critical guidance to one of the nation's largest utilities. Whereas our client's competitors chose to file bankruptcy, we developed an alternative strategy for our client that saved the company—and its constituents—tens of millions of dollars in fees and costs. More recently, we have devised out-of-court restructurings for a Los Angeles area physicians network, and a homebuilder, with debts exceeding \$650 million, that controlled more than 30,000 lots through more than 20 entities in three states.

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REPRESENTATIVE BANKRUPTCY CASES

*Adelphia Communications Corp.*  
*Alliance Entertainment*  
*California Power Exchange*  
*Calpine*  
*Clift Hotel, LLC*  
*Circuit City*  
*Coho Energy, Inc.*  
*Consolidated Industries Corp.*  
*Covanta*  
*Daewoo Industries*  
*Enron*  
*FiberTech*  
*Finova*  
*Indymac*  
*Kmart*  
*Lake Las Vegas*  
*Lehman Bros.*  
*Livent*  
*MedPartners Provider Network, Inc.*  
*Metricom*  
*Movie Gallery*  
*Network Access Solutions*  
*New Century*  
*Northpoint Communications*  
*Pacific Century Homes*  
*Pathmark*  
*Pocket Communications*  
*Prime Succession, Inc.*  
*Quasar Engineering, Inc.*  
*Refco*  
*Resort Theaters of America*  
*The Sirena Apparel Group, Inc.*  
*Solidus*  
*Southern Pacific Funding Corp.*  
*Sun World International, Inc.*  
*United Airlines*  
*Wilshire Center Marketplace*

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## **CORPORATE**

### **Boards & Committees**

### **Company Counseling & Corporate Governance**

### **Entertainment Transactions**

### **Finance & Capital Markets**

### **Mergers & Acquisitions**

### **Private Investment Funds**

Munger, Tolles & Olson's corporate attorneys are routinely called upon to structure our clients' most important business transactions and to tackle their most interesting and complex legal challenges. We offer the full range of services and resources that you would expect from a law firm of our prestige and caliber, but we also offer the responsiveness and value that's unique to a corporate boutique. The combination of these advantages has enabled us to attract and retain highly valued clients with highly sophisticated legal demands that defy the cookie-cutter mold.

That's why Berkshire Hathaway asked us to help create the first-ever security with a negative interest rate, and why Oaktree Capital asked us to represent it in connection with its initial foray into the gaming business. It's also why we were asked to structure Warren Buffett's \$36 billion donation to the Bill & Melinda Gates Foundation, the largest charitable gift in history.

Handling one-of-a-kind deals like these while practicing in a boutique environment enables us to provide our clients with particularly thoughtful and informed advice. Every one of our corporate attorneys, from the most junior associate to the most senior partner, practices in a number of different areas, giving us the broad range of experience necessary to act as true counselors. We understand that no transaction happens in isolation, and we know that tackling a client's toughest legal problem requires serious thought about how any solution will impact the client's other business goals.

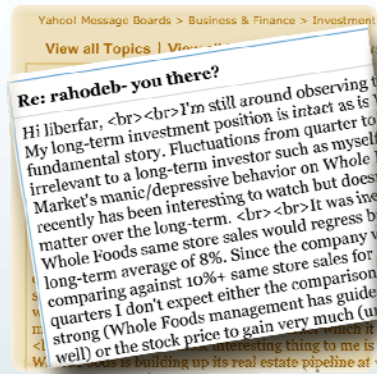
You can learn more about our specific practice areas and our diverse client base on the following pages.

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## PROFILE

### *Who is Rahodeb?*



For more than seven years, someone using the pseudonym “Rahodeb” made more than 1,000 anonymous postings on Internet message boards championing the cause of Whole Foods Market and often criticizing its then-rival, Wild Oats Markets. In July 2007, a front page story in *The Wall Street Journal* identified that someone as the Chairman and CEO of Whole Foods, John Mackey.

At the request of a special committee of independent directors of Whole Foods, MTO put together a multi-disciplinary team of both litigation and corporate attorneys to investigate the facts and analyze the myriad legal issues. We reported our findings to the special committee and worked closely with company counsel to respond to an inquiry from the Securities and Exchange Commission. In April 2008, Whole Foods announced that the SEC had concluded its inquiry without recommending enforcement action against the company or Mr. Mackey.

## BOARDS & COMMITTEES

Munger, Tolles & Olson realizes that counseling corporate directors requires both an in-depth understanding of the law, and a keen appreciation for the practical realities of today's corporate governance environment. As a result, our corporate lawyers are routinely in the board room, advising on everything from bet-the-company transactions to corporate crises.

In particular, MTO has extensive experience representing special committees of boards of directors in connection with business transactions that may involve conflicts of interest, including "going private" and related-party transactions. We also regularly represent special committees and independent directors in connection with internal investigations of suspected or alleged misconduct. In addition, we've developed a niche practice representing independent directors nominated for election in connection with proxy contests for corporate control.

Below is a representative list of MTO's recent boards & committees work.

- ▣ **Whole Foods.** We represented a special committee of the board in its investigation of controversial anonymous postings on the Internet by the company's CEO.
  - ▣ **Yahoo!** We represented the independent directors of Yahoo! in evaluating Microsoft's unsolicited bid to acquire the company.
  - ▣ **Herbalife.** We represented a special committee of the board of Herbalife in connection with a \$3 billion buy-out bid from the company's controlling shareholders.
  - ▣ **SM&A.** We represented the special committee of the board of SM&A in the consideration and approval of an acquisition of the company by a private equity fund.
  - ▣ **Apria Healthcare Group, Inc.** We represented the independent directors in connection with Apria's \$1.6 billion merger agreement with The Blackstone Group.
  - ▣ **Optical Communication Products, Inc.** We represented a special committee of the board in evaluating a buy-out proposal from the majority shareholder and proffered other strategic alternatives.
  - ▣ **AirTran.** We represented a slate of independent directors nominated by AirTran Airways in connection with AirTran's hostile tender offer for Midwest Airlines.
  - ▣ **Oracle.** We represented the independent slate nominated by Oracle as part of its efforts to acquire PeopleSoft.
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## COMPANY COUNSELING & CORPORATE GOVERNANCE

Munger, Tolles & Olson represents a variety of public and private companies in connection with a broad range of securities law, corporate governance and risk management matters. We have particular expertise counseling our public company clients with respect to tough disclosure questions and negotiating their most important commercial contracts.

MTO also advises clients with respect to fiduciary duties, proxy solicitations, Sarbanes-Oxley compliance, director independence, Section 16 compliance, stock exchange listing rules, takeover defenses, California securities law compliance and periodic reporting requirements under the Securities Exchange Act of 1934. In addition, we regularly represent clients with respect to indemnity arrangements, Section 10(b) antifraud rules, Foreign Corrupt Practices Act compliance and employment related issues.

MTO is recognized as a leader on executive compensation issues, representing both individual executives and companies in connection with the negotiation of top-level employment agreements and severance arrangements. We also represent companies in all aspects of their compensation programs, including the design of equity compensation plans and compliance with Section 409A of the Internal Revenue Code.

Below is a representative list of MTO's clients for which we regularly provide advice in one or more company counseling areas.

- ▣ **Berkshire Hathaway**
- ▣ **City National Bank**
- ▣ **Daily Journal Corporation**
- ▣ **Edison International**
- ▣ **KB Home**
- ▣ **Lindsay Corporation**
- ▣ **99 Cents Only Stores**

## PROFILE

### *A Talented Combination*



Munger, Tolles & Olson corporate lawyers represented the William Morris Agency in its merger with The Endeavor Agency. MTO lawyers were involved in developing and negotiating all of the economic and governance terms with Endeavor to create one of the largest full-service talent agencies in Hollywood. The William Morris Agency was founded in 1898 to represent artists in many areas, including theater, film, book publishing, music and television. Endeavor, established in 1995, focused on representations of television and movie producers, literary talent, and makers of online content. The new entity, William Morris Endeavor Entertainment, leverages the strengths of both companies.

## ENTERTAINMENT TRANSACTIONS

Munger, Tolles & Olson's corporate practice is widely recognized for handling some of the thorniest and most unique entertainment industry transactions. The firm represents a diverse group of industry clients, including media moguls, talent agencies, production companies, services and technology providers and the world's largest music company.

MTO's practice focuses on large-scale acquisitions, joint ventures and strategic partnerships, licensing arrangements and day-to-day corporate counseling. We also regularly represent top studio executives in connection with their employment, and severance, agreements.

Our broad range of experience, combined with MTO's expertise in tax, intellectual property and entertainment litigation, has made the firm go-to counselors for Hollywood's deal-making elite.

Below is a representative list of MTO's recent entertainment transactions work.

- ▣ **Treasure Island, LLC.** We represented Phil Ruffin in his \$775 million acquisition of the Treasure Island Hotel & Casino from MGM Mirage.
  - ▣ **Reveille.** We represented NBC Entertainment Co-Chairman Ben Silverman in the sale of his interest in the incredibly successful Reveille production company to Shine, Ltd. and represented Silverman in the formation and funding of Electus, LLC, a digital media venture
  - ▣ **Universal Music Group.** We regularly represent UMG in the negotiation of its key joint ventures and strategic investments. We have also represented UMG in its major label acquisitions, including the purchase of Interscope Records and Univision Music Group, as well as in its acquisition of BMG Music Publishing.
  - ▣ **Wasserman Media Group.** During the firm's 13-year relationship with Wasserman we have acted as counsel in more than 20 acquisition and other strategic transactions, including the formation of a sports franchise, the acquisition of several athletic representation agencies, and the acquisition and financing of other sports-related businesses
  - ▣ **The Tornante Company.** We represented Michael Eisner's The Tornante Company and Madison Dearborn Partners acquisition of The Topps Company, the maker of Topps™ trading cards and Bazooka Joe™ bubble gum, for approximately \$400 million.
  - ▣ **Stacey Snider.** We represented Stacey Snider, a former president of Paramount Pictures, in the formation and structuring of the new DreamWorks Studio with Steven Spielberg.
  - ▣ **United Talent Agency.** We represented United Talent Agency in its founding investment in GHL, LLC, a boutique investment banking firm focused on structured finance advisory work on behalf of media and entertainment companies.
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## FINANCE & CAPITAL MARKETS

Munger, Tolles & Olson's finance and capital markets practice provides clients unsurpassed expertise across a broad array of financing transactions coupled with personalized service not available from the country's largest financial institutions and corporate law departments that routinely sit across the conference table. This allows us to provide access to the most sophisticated financial products while tailoring them to the specific business needs of our clients.

MTO primarily represents issuers and selling shareholders in a variety of equity and debt, primary and secondary, public or private financing transactions. We also represent borrowers and lenders in secured and unsecured bank financings, including acquisition financing transactions and transactions with unusually sophisticated structuring characteristics.

Below is a representative list of MTO's recent finance and capital markets work.

- ▣ **Air Lease Corporation.** We represented Air Lease Corporation in its initial public offering on the New York Stock Exchange, which raised gross proceeds of more than \$900 million. We also represented Air Lease Corporation in its \$2.8 billion initial capital raise, consisting of \$1.3 billion in equity financing and \$1.5 billion in debt financing.
  - ▣ **Berkshire Hathaway.** We represented Berkshire in obtaining an \$8 billion bridge loan as part of its \$44 billion acquisition of Burlington Northern Santa Fe Railway, and in a public offering of \$8 billion of senior notes, in six different issues of fixed and floating rate debt.
  - ▣ **Oaktree Capital Management.** We represented Oaktree in its \$250 million issuance of notes in a 144A transaction. Previously, MTO represented Oaktree in its first-of-its kind Rule 144A IPO, and in private placements of senior notes and establishment and refinancing of bank credit facilities.
  - ▣ **Internet Brands, Inc.** We represented Internet Brands in its IPO on NASDAQ.
  - ▣ **Cannery Casino Resorts.** We represented Cannery Casino Resorts in its entry into its first lien, second lien and furniture, fixtures and equipment syndicated credit facilities, amounting to \$895 million in the aggregate.
  - ▣ **KB Home.** We represented KB Home in refinancing a significant portion of the company's public debt through a \$265 million offering of senior notes.
  - ▣ **Source Interlink.** We represented Source Interlink (an affiliate of The Yucaipa Companies) in its entry into syndicated credit facilities amounting to \$1.3 billion, including acquisition financing for Source Interlink's acquisition of the Enthusiast Media division of Primedia, Inc.
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## PROFILE

### *Full Speed Ahead*



An MTO corporate team represented Berkshire Hathaway in its 2010 Burlington Northern Santa Fe Corp. acquisition for \$100 per share in cash and stock the remaining 77% of outstanding BNSF shares that it didn't already own. The transaction was valued at approximately \$44 billion, including \$10 billion of outstanding BNSF debt, making it the largest acquisition in Berkshire Hathaway history.

Negotiation of the definitive merger agreement began October 27, with it being approved and signed in less than a week. In announcing the deal, Warren E. Buffett, Berkshire Hathaway chairman and chief executive officer, said, "Our country's future prosperity depends on its having an efficient and well-maintained rail systems... it's an all-in wager on the economic future of the United States...I love these bets."

## MERGERS & ACQUISITIONS

Munger, Tolles & Olson represents buyers and sellers in a wide variety of M&A transactions, from public company mergers and “going private” transactions to privately negotiated investments and significant asset acquisitions.

MTO has represented many of our M&A clients in connection with their key transactions for decades. For all clients, we strive to build long-standing, collaborative relationships, which affords in-depth understanding of our clients’ needs, and a unique appreciation for their strategic goals.

Recently, MTO has developed a particular expertise in negotiating private equity transactions to support our clients in becoming preeminent players in the global M&A market. Our expanded private equity practice assists with closing clients’ most creative and cutting-edge deals through every stage of the investment cycle from due diligence to post-closing integration.

Below is a representative list of MTO’s recent mergers & acquisitions work.

- ▣ **Berkshire Hathaway.** We regularly represent Berkshire in its major acquisition activity, including its \$44 billion acquisition of Burlington Northern Santa Fe Railway and its \$9.7 billion Lubrizol Corporation acquisition. We also represented Berkshire in connection with its \$5 billion investment in Goldman Sachs, its \$3 billion investment in General Electric, its \$3 billion investment in Dow Chemical, and its CHF 3 billion investment in Swiss Re, and represented Berkshire’s subsidiary MidAmerican Energy, in its purchase of a 10% interest in Chinese battery and auto maker BYD. We also represented Berkshire in its acquisition of a controlling interest in Marmon Holdings from the Pritzker family for \$4.5 billion, and in its \$4 billion acquisition of Iscar Metalworkings, an Israeli tool manufacturer.
  - ▣ **Universal Music Group.** We represented UMG in connection with its \$2 billion acquisition of BMG Music Publishing, and in its acquisition of Univision Music Group, the leading Latin music company in the United States.
  - ▣ **Oaktree Capital.** We represented Oaktree in the complex structuring of its acquisition of a substantial interest in Cannery Casino Resorts (“CCR”). We then represented CCR in its groundbreaking acquisition of “The Meadows” racetrack and casino in Pennsylvania.
  - ▣ **The Yucaipa Companies.** MTO regularly represents Yucaipa in strategic acquisitions and investments, including a \$2 billion restructuring of Hf. Eimskipafelag Islands, Iceland’s largest shipping and logistics company, as a result of which Yucaipa acquired a controlling interest in VersaCold, a \$115 million equity investment in the Yellowstone Club, a \$75 million investment in the Morgans Hotel Group, and a \$97 million acquisition by one of its portfolio companies of United Food Group.
  - ▣ **Playboy Enterprises, Inc.** We represented the controlling shareholder, Hugh Hefner, in his deal to take Playboy Enterprises, Inc. private.
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## MERGERS & ACQUISITIONS (CONT.)

- ▣ **Wesco Financial Corporation.** We represented the controlling shareholder, Berkshire Hathaway Inc., in its acquisition of the remainder of Wesco Financial Corporation that it didn't already own.
  - ▣ **99 Cents Only Stores.** We are representing 99 Cents Only Stores in a proposal from members of the Schiffer/Gold family, together with Leonard Green & Partners, L.P., to acquire the company in a going private transaction.
  - ▣ **Internet Brands, Inc.** We represented Internet Brands, Inc. in its \$640 million sale to a private equity fund.
  - ▣ **Ameristar Casinos.** We represented the Estate of Craig Neilsen in its sale of majority stock back to Ameristar Casinos for \$460 million.
  - ▣ **Station Casinos.** We represented Frank and Lorenzo Fertitta in connection with their acquisition of Station Casinos out of bankruptcy.
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## PRIVATE INVESTMENT FUNDS

Munger, Tolles & Olson provides a comprehensive range of services to private investment funds and their sponsors. Not only do we represent sponsors in forming and operating private equity funds, hedge funds, venture capital funds and other pooled investment vehicles, we also represent them in structuring their internal affairs and strategic partnerships. Our substantial expertise in this area includes assembling traditional fund vehicles as well as hybrid and non-traditional structures for a wide range of institutional investors, including public pension funds, private pension funds and sovereign wealth funds.

In addition, MTO represents private investment funds in acquiring, financing, restructuring and disposing of portfolio investments. To strategically achieve clients' goals we take an integrated approach to our representation, combining our fund formation and fund governance expertise with M&A, securities, financing and other corporate and tax expertise.

MTO's long-standing clients include some of the country's largest and most successful firms across a broad spectrum of the private equity, hedge fund and venture capital industry. We also represent a number of smaller funds in connection with fund formation and investment activities.

Below is a representative list of MTO's recent private investment funds work.

- ▣ **Oaktree Capital Management.** We represent Oaktree in the structuring of its internal affairs, and we provide a wide range of general corporate advice in connection with its operations. In 2007, we represented Oaktree in connection with the first ever Rule 144A equity offering by a private equity sponsor. We also routinely represent Oaktree investment funds and their portfolio companies in a wide variety of M&A, financing and other corporate transactions.
  - ▣ **The Yucaipa Companies.** We provide general corporate advice to Yucaipa and have represented it in forming several leveraged buyout, special situations and other private equity funds. We also represent Yucaipa in joint ventures and strategic alliances. In addition, we regularly represent Yucaipa investment funds and their portfolio companies in a wide variety of transactions.
  - ▣ **Wasserstein & Co.** We represent Wasserstein investment funds in making, exiting and restructuring portfolio investments.
  - ▣ **Taiyo Pacific Partners.** We provide general corporate advice to Taiyo Pacific Partners and represent it in forming a number of corporate governance funds. We also represent Taiyo Pacific Partners in its joint ventures with public pension funds and other investment managers.
  - ▣ **Red Mountain Capital Partners.** In addition to representing Red Mountain in forming a hybrid hedge fund, we routinely represent it on securities law matters and in minority investments in publicly traded entities.
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## **PROFILE**

### *Negotiating with the EPA*



When the United States Environmental Protection Agency launched an investigation into alleged violations of state and federal air emissions regulations, a major Southern California cement company turned to MTO's environmental team. Despite substantial scrutiny by the EPA in a multi-year investigation, MTO's environmental lawyers succeeded in negotiating a resolution of all claims that paved the way for completion of a new multi-million dollar, state-of-the-art manufacturing facility with minimal disruption in the manufacturing process.

## ENVIRONMENTAL

**Environmental Counseling**  
**Environmental Enforcement Matters**  
**Environmental Litigation**  
**Superfund Compliance**

With a comprehensive environmental law practice, Munger, Tolles & Olson guides clients through complex environmental law issues in whatever context they arise. We advise clients on environmental liability issues that can become central to successfully completing a corporate transaction. We assist companies to develop regulatory compliance programs or environmental audits. MTO lawyers regularly represent companies in state or federal enforcement proceedings. And MTO's environmental litigators have the experience to defend complicated, multi-billion dollar environmental litigation in state or federal court.

### Environmental Counseling

Munger, Tolles & Olson provides day-to-day advice to our clients concerning compliance with environmental regulations. Our expertise spans a wide range of compliance issues, including:

- ▣ **Corporate Transactions.** We advise counsel handling corporate transactions on potential environmental liability issues that can be central to completing many corporate deals.
  - ▣ **Environmental Audits.** We help clients to design and conduct environmental audits at their facilities. We have assisted clients in a wide range of industries, including high technology, oil refining, and food processing.
  - ▣ **Environmental Rulemaking.** We advise clients on strategies related to pending federal, state, and local regulations.
  - ▣ **Real Estate Transactions and Development.** We counsel buyers and sellers of industrial properties regarding potential environmental liabilities. We also help project applicants develop strategies for complying with environmental review requirements under CEQA.
  - ▣ **Regulatory Compliance Strategies.** We have advised a major cement company regarding compliance strategies for ever-changing regulations concerning air emissions from its facilities.
  - ▣ **Utility Divestiture.** We developed a Preliminary Environmental Assessment and CEQA documents regarding the divestiture of oil- and gas-fired generating stations in Southern California. We guided environmental due diligence, including performing extensive Phase I and II assessments.
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## ENVIRONMENTAL ENFORCEMENT MATTERS

As regulatory and permitting programs mature, regulatory agencies have shifted their focus away from promulgating regulations toward enforcement. This change has resulted in an increasing number of judicial and administrative enforcement actions, particularly concerning hazardous waste, seeking criminal or civil penalties for non-compliance and injunctive relief. MTO has defended clients in a number of these cases, including:

- ▣ **CEQA.** We defended a major oil company in a CEQA action brought by a local trade union.
  - ▣ **Clean Air Act.** We have represented clients in judicial and administrative enforcement actions seeking penalties and injunctive relief for alleged violations of air permits and regulatory requirements. We have also represented clients in administrative proceedings before California air districts seeking variances from existing air pollution requirements.
  - ▣ **Clean Water Act.** We defended a major manufacturing company in a federal suit brought by the EPA for penalties and injunctive relief based on allegations of unlawful wastewater discharges. We also represented a major defense contractor during a three-year federal grand jury investigation concerning allegations by federal and local agencies of illegal discharges of wastewater to a municipal sewage treatment plant. And, on behalf of a major oil company, we negotiated parallel criminal and civil settlements with federal and state authorities regarding an oil pipeline spill, while defending separate wrongful death and personal injury actions arising from spill.
  - ▣ **Hazardous Waste Acts.** MTO successfully defended a major corporation in state and federal criminal investigations alleging improper hazardous waste disposal related to the closure of a former manufacturing facility. We represented a major oil company in a statewide hazardous waste enforcement action regarding oil change facilities. MTO attorneys defended a major oil company in UST enforcement actions related to gasoline stations in Southern California.
  - ▣ **RCRA.** We represented a major utility with respect to RCRA closure issues at multiple Southern California facilities.
  - ▣ **Medical Waste Act.** MTO defended a major institution in a state and federal investigation into allegations of improper disposal of medical waste.
  - ▣ **California Proposition 65.** We have defended numerous manufacturers and retailers in citizen suits and public prosecutor actions alleging violations of Proposition 65's warning requirements.
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## ENVIRONMENTAL LITIGATION

Munger, Tolles has represented clients in a wide range of complex environmental litigation matters. Our environmental lawyers combine substantive knowledge of environmental laws with extensive experience litigating cases in state and federal courts. Some representative matters we have handled include:

- ▣ **Aera Energy LLC.** We defended Aera against subsurface trespass claims arising out of the use of percolation ponds to dispose of water produced from oil fields. We also advised Aera on related administrative actions.
  - ▣ **Alyeska Pipeline Co., British Petroleum, Mobil, ARCO, Phillips, Amerada Hess, and Union Oil Company.** We defended Alyeska and the non-Exxon owners of an oil pipeline in all of the civil and potential criminal actions arising out of the Valdez oil spill in March 1989, including a damages action brought by the state and federal governments.
  - ▣ **Boeing North American, Rocketdyne Facility.** We defended Boeing in a toxic tort action and related Proposition 65 litigation alleging that the testing of rocket engines caused injuries and property damage to neighboring properties.
  - ▣ **McColl Site, Los Angeles Area.** We defended a number of major oil companies in Superfund litigation involving the disposal of waste from the production of aviation gasoline in World War II.
  - ▣ **Shell Oil Company.** We defended Shell in multiple property damage and personal injury lawsuits alleging products liability, nuisance, trespass, and statutory violations arising out of use of MTBE in gasoline.
  - ▣ **Stringfellow Site, Los Angeles Area.** We represented Rockwell and Northrop in a multi-million dollar Superfund action filed by the EPA and the State of California and in a companion toxic tort action brought by 3,500 plaintiffs who live near the site.
  - ▣ **Thomas Ranch Site, Los Angeles Area.** MTO defended major oil companies in a case involving alleged liability for the disposal of refinery sludges at the Thomas Ranch Site.
  - ▣ **Unocal.** We defended Unocal in actions brought by various state agencies and private parties seeking damages and injunctive relief arising from the alleged discharge of more than eight million gallons of diluent, a petroleum product used in the production of oil, in the Guadalupe Field.
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## SUPERFUND COMPLIANCE

Munger, Tolles & Olson represents clients at some of the largest Superfund sites in the nation. Our lawyers know how to tackle the difficult scientific and legal issues that arise in Superfund-related cases. We also have extensive experience handling the complex negotiations with federal and state agencies, other potentially responsible parties (PRPs) and interested community groups that are often necessary to achieve a successful resolution for our clients. Some of the sites where MTO represents or has represented major PRPs include:

- ▣ **Beazer East, Inc., Gainesville, Florida.** Represent former owner of wood treatment facility concerning implementation of federal order to remediate the site.
  - ▣ **Beazer East, Inc., Gainesville, Florida.** MTO represented the former owner of a wood treatment facility regarding the implementation of a federal order to remediate the site.
  - ▣ **McColl Site, Los Angeles Area.** We represented a major oil company in negotiations with the EPA concerning a site remedial plan.
  - ▣ **McKin Site, Grey, Maine.** MTO represented a major generator concerning the disposal of industrial waste at a closed, bankrupt disposal site in Grey, Maine.
  - ▣ **Operating Industries, Inc. Site, Montebello, California.** We defended several major oil production companies concerning potential liability at the OII Superfund site, one of the largest Superfund sites in the United States.
  - ▣ **Rialto Perchlorate Site, Riverside, California.** We represented Whittaker Corporation in negotiations with the California Regional Water Quality Control Board and other PRPs regarding potential liability for perchlorate clean-up costs for a drinking water aquifer that serves customers in the Rialto and Riverside areas.
  - ▣ **San Gabriel TCE Site, Los Angeles Area.** We represented Aerojet, one of many industrial firms in the San Gabriel Valley Superfund site, concerning remediation of TCE in one of the major aquifers supplying drinking water to over a million residents in the Los Angeles basin.
  - ▣ **TCL Site, Wilmington, California.** We represented Union Pacific Resources Company in negotiations with the California EPA and related agencies to remediate a 70-year-old oil and gas production field in phases, allowing development to occur on a portion of the site prior to remediation of the entire site.
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## **PROFILE**

### *Fending Off Corporate Raiding Suit*



Edgewood Partners Insurance Center is a dynamic and growing insurance broker. A well-financed competitor recently accused EPIC of corporate raiding, claiming that EPIC had unlawfully conspired to hire the competitor's employees and then lure away clients with trade secrets and other confidential information.

EPIC turned to MTO. MTO defeated the competitor's request for a restraining order, and the parties later reached a mutually agreeable and confidential resolution to the lawsuit. EPIC continues to thrive today.

## **LABOR & EMPLOYMENT**

### **Appellate Matters**

### **Discrimination, Harassment and Wrongful Discharge**

### **Internal Corporate Investigations**

### **Strategic Counseling**

### **Traditional Labor**

### **Wage and Hour Litigation**

While the bulk of our time is spent defending employers against litigation, Munger, Tolles & Olson counsels clients to develop sound policies and procedures that avoid potential liabilities and comply with California's complex and, at times, surprising employment laws and decisions.

MTO represents employers in a wide range of labor and employment matters. Our litigators have significant experience handling individual and class action suits involving allegations of wage and hour violations, discrimination, wrongful termination, harassment, and retaliation. We also regularly handle trade secret and unfair competition suits as well as collective bargaining negotiations and arbitrations. Our employment practice serves a wide range of companies and currently has a particular emphasis on the financial services, entertainment, utilities, telecommunications and retail sectors.

Clients often engage us to handle high-profile or precedent-setting disputes, including those that challenge fundamental aspects of their business model. For example, representing the Board of Directors of Earl Scheib in *Reynolds v. Bement*, MTO obtained a precedent-setting California Supreme Court decision that corporate officers and directors may not be held personally liable for wage claims by corporate employees. For Merrill Lynch, we obtained a judgment dismissing a financial advisor's fraud claims in connection with compensation policy changes at the firm's Swiss Bank affiliate. Representing Warner Home Video, MTO secured the dismissal of fraud claims by an individual alleging he was owed a multi-million bonus for his role in developing the DVD format. For a major airline, we obtained dismissals in a series of cases challenging drug testing policies and results.

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## APPELLATE MATTERS

Munger, Tolles & Olson advises and represents clients in connection with appeals and writ petitions related to employment cases in federal and state courts.

Below is a representative list of MTO's recent Appellate work. Due to the confidential and volatile nature of employment litigation, some client names are not disclosed.

- ▣ For the board of directors of a retail company, we successfully defended on appeal the dismissal of wage and hour claims brought by a putative class.
  - ▣ For a major financial services firm seeking to collect on promissory notes used to secure forgivable recruiting loans, we successfully upheld through appeal an order compelling arbitration of an employee's challenge to the contract's enforceability.
  - ▣ For a major financial services firm, we successfully defended on appeal summary judgment dismissal of breach of contract, fraud and defamation claims brought by a former employee.
  - ▣ We advised the insurer for a restaurant chain on the likelihood of success of a writ petition challenging the certification of a wage and hour class.
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## DISCRIMINATION, HARASSMENT AND WRONGFUL DISCHARGE

Munger, Tolles & Olson represents numerous companies in connection with lawsuits filed by employees alleging wrongful discharge, employment discrimination, harassment and common law torts. The plaintiffs range from chief executive officers to front line employees of major corporations and banks.

Below is a representative list of MTO's recent Wrongful Discharge work.

- ▣ **Merrill Lynch & Co., Inc.** We obtained an Oregon jury verdict dismissing claims that a high-producing, long-tenured financial advisor had been wrongfully discharged and discriminated against due to a disability. In a separate case, we obtained a judgment dismissing a financial advisor's fraud and various other tort claims in connection with financial advisor compensation policy changes at Merrill Lynch Bank Suisse. Also for Merrill Lynch, we obtained dismissal of a high-producing financial advisor's claims for wrongful termination, intentional interference with contract, and various other torts after two weeks of arbitration. Additionally, we have obtained numerous favorable arbitration decisions before the NASD, NYSE and FINRA against wrongful discharge, discrimination, tort, and compensation claims.
- ▣ **Warner Home Video.** We obtained summary judgment dismissing alleged breach of contract and breach of the implied covenant of fair dealing claims brought by the reported "father of the DVD." He alleged that he was owed a \$25 million to \$100 million bonus for his critical role in the development and success of the DVD format.
- ▣ **Delta Air Lines, Inc.** We obtained a defense verdict dismissing an employee's allegations of national origin and disability discrimination and harassment. In a separate case for Delta we obtained a directed verdict against an employee alleging wrongful discharge and age discrimination. Also for Delta we obtained summary judgment dismissing a complex disability discrimination lawsuit involving multiple and subtle issues of reasonable accommodation and the interactive process. We then successfully defended the judgment before the Ninth Circuit.



## INTERNAL CORPORATE INVESTIGATIONS

Employers have increasingly used internal investigations to detect, prevent, and remedy improper corporate conduct. These investigations have become particularly critical for employers in California and other jurisdictions when faced with allegations of sexual harassment and/or the need to establish the factual basis for employment decisions. Munger, Tolles & Olson both conducts and advises employers in carrying out such investigations.

Below is a representative list of MTO's recent Internal Corporate Investigations work. Due to the confidential and volatile nature of employment litigation, some client names are not disclosed.

- ▣ We conducted an independent investigation into allegations of sexual harassment against a high-level officer for a large non-profit corporation.
- ▣ We advised a foundation in investigating allegations of widespread discrimination.
- ▣ We advised a technology company in investigating allegations of sexual harassment by several of its managers.

## STRATEGIC COUNSELING

Munger, Tolles & Olson advises numerous national and California clients about state and federal laws and judicial decisions affecting their employment relationships, obligations and rights. We also draft and structure personnel policies, counsel clients on litigation avoidance, and advise on labor law considerations in the context of acquisitions, mergers, and reductions in force. In addition, we negotiate and draft both employment contracts and severance agreements for our clients.

MTO has also developed a niche counseling practice to advise major corporations on the issues of privacy in the work place, drug testing and workplace security. These issues are especially sensitive for our aerospace, airline, and government contractor clients in light of national security concerns and related statutory and regulatory schemes. We successfully litigated the legality of a drug-screening program established by one of our larger clients, and we have developed drug-screening programs for others.

Below is a representative list of MTO's recent Strategic Counseling and Privacy Counseling work.

- ▣ **Merrill Lynch & Co., Inc.** We advised Merrill Lynch on compensation policies and practices, including devising incentive compensation structures to account for business expenses, error prevention, and timing of payment to comply with restrictive California law and the laws of other states. We also counseled the company with respect to the enforceability of alleged forfeiture provisions in its various deferred compensation plans, and numerous compensation plans for Merrill Lynch's non-brokerage businesses.
  - ▣ **Western Asset Management Company.** We advised Western Asset on numerous California employment issues, including classification of various employees, leaves of absence, employee discipline, and termination and litigation avoidance strategies.
  - ▣ **Oaktree Capital Management, LLC.** We advised Oaktree on various California employment issues, including employment contracts, leaves of absence, and employee discipline and termination.
  - ▣ **Southern California Edison Company.** We conducted a comprehensive analysis of Southern California Edison's work force, hiring, promotions, and terminations to access potential vulnerabilities and to advise the company on minimizing litigation risks.
  - ▣ We advised clients, including a major sales corporation and one of the nation's leading oil and gas companies, on structuring privacy policies and on related privacy issues in the workplace, including the monitoring of employee use of computers, telephones, voice mail and other company equipment;
  - ▣ We obtained dismissals in a series of cases challenging a major airline's drug testing policies and drug test results.
  - ▣ We advised a worldwide ground transportation company on the development of a single drug-screening program to comply with differing federal and state regulations.
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## TRADITIONAL LABOR

We advise management in union organizing attempts, including National Labor Relations Board proceedings. We also represent corporations in adversary proceedings before the National Labor Relations Board and other regulatory agencies. Furthermore, we offer counseling with respect to the increasing attention that must be paid to cultural and diversity issues in the workplace, as was the situation in a recent case where a union was rejected by several thousand employees.

Our role in the collective bargaining process varies from chief negotiator for entire industries and for individual employers in both the private and public sectors to giving strategic and legal advice to employer bargaining teams. We also represent employers in "interest" arbitrations. MTO was a pioneer in developing and establishing the strategy of negotiating "interim bargaining terms" when unions resort to sabotage and other unprotected activities during negotiations. Other strike-related activities have included seeking injunctions, filing, defending and litigating unfair labor practice charges, and negotiating strike-ending agreements.

Our past representation of sports entities includes the employment work for the Los Angeles Olympic Organizing Committee. We also represent employers in arbitrations under collective bargaining agreements. Significant matters include:

- ▣ Successfully representing a major retailer in union contract negotiations and providing advice on other union organizing campaigns;
  - ▣ Successfully representing one of the largest school districts in the country in interest arbitrations that led to a collective bargaining agreement;
  - ▣ Successfully advising and representing an employer in connection with a "white collar" organizing campaign;
  - ▣ Advising a major employer regarding plant relocations and corporate restructuring involving union represented employees; and
  - ▣ Arbitrating a challenged allocation of work between rival union groups at a nuclear fuel remediation site in Ohio.
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## WAGE AND HOUR LITIGATION

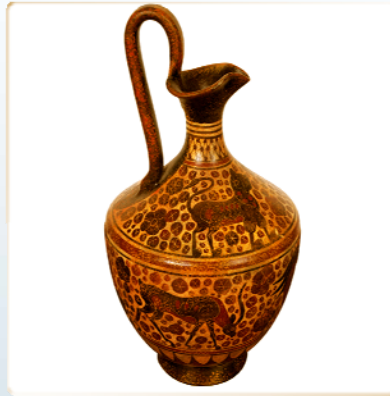
Munger, Tolles & Olson has handled many California and nationwide class actions alleging violation of California and federal wage and hour laws.

Below is a representative list of MTO's recent Wage and Hour Litigation work.

- ▣ **Board of Directors of Earl Scheib and Earl Scheib of California.** We obtained dismissal on demurrer of claims for California Labor Code violations brought on behalf of a putative class and successfully defended the result through two levels of appeal. The resulting precedent-setting California Supreme Court decision holds that corporate officers and directors may not be held personally liable under the California Labor Code for wage claims by corporate employees. The decision is published at *Reynolds v. Bement*, 36 Cal. 4th 1075 (2005).
  - ▣ **Merrill Lynch & Co., Inc.** We represented Merrill Lynch in connection with a series of national and California wage and hour class actions attacking numerous compensation policies prevalent in the securities industry. Similar cases were filed against nearly all of the major securities firms and we were the first to use mediation to obtain a favorable early settlement of the California class action. That settlement set the pattern for settlements for nearly the entire industry and remains the most favorable one among Merrill Lynch's major competitors. Also for Merrill Lynch we obtained summary judgment dismissing a putative nation-wide class and collective action that challenged the exempt classification of first line supervisors.
  - ▣ **Guardsmark.** We defeated class certification in a California class action alleging that the company did not comply with state law on meal and rest periods.
  - ▣ **Verizon Wireless.** We obtained a favorable settlement in a California class action alleging that the company had misclassified employees in a major call center.
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## PROFILE

### *Preserving the Past*



MTO was retained by the J. Paul Getty Trust, one of Los Angeles' most prized cultural institutions, to review the Getty Museum's antiquities collection and acquisition practices. At the time, both the Italian and Greek governments claimed that objects in the Getty's collection had been removed from their homelands in violation of cultural patrimony laws. Following its in-depth review, MTO aided the Getty in negotiating with the Italian and Greek governments to return some of the requested objects, while also reaching wide-ranging agreements with Italy and Greece for continued cultural exchanges with the Getty.

## LITIGATION

**Antitrust & Unfair Competition**  
**Appellate**  
**Copyright and Trademark**  
**Criminal Defense & Crisis Management**  
**Defense & Aerospace**  
**Energy**  
**Insurance**  
**Legal Malpractice**  
**Patent**  
**Securities**  
**Telecommunications**

Clients turn to Munger, Tolles & Olson when the stakes are high. From bet-the-company patent litigation to liberating victims of human trafficking, for more than 40 years our clients have trusted MTO to handle their most significant cases.

Exceptional judgment is the key to MTO's extraordinarily broad trial practice. We know that keeping clients out of the courtroom can often be the best strategy and we seek to avoid litigation through negotiation, mediation, or other alternative means. But when the time comes to take a case to trial, MTO's judgment and experience are invaluable. In fact, *The American Lawyer* magazine has referred to the firm as a "deep bench of trial-seasoned lawyers."

It's why Universal Music group tapped MTO to hold Napster funders secondarily liable for mass copyright infringement and defend it from YouTube's DMCA claims; why a major aerospace manufacturer hired MTO to defend a \$5 billion commercial contract; why a chief utility used MTO to challenge the restructuring of California's electric industry; and why Rambus hired MTO for a behemoth patent battle with the world's largest semiconductor firms. It's also why our peer law firms hire MTO to defend against alleged malpractice; why high-powered executives use the firm to defend against options backdating allegations; and why a major telecommunications provider tapped the firm to defend multidistrict litigation alleging that it assisted the N.S.A. in counter-terrorism intelligence gathering.

Our national trial practice is complemented by extensive experience representing clients before federal and state agencies and in other non-judicial forums. We also regularly conduct investigations into alleged wrongdoing by corporate executives, including everything from purported stock options backdating to anonymous Internet postings.

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## ANTITRUST & UNFAIR COMPETITION

Munger, Tolles & Olson LLP's reputation as antitrust trial lawyers is based on a consistent track record of trial and appellate victories in significant cases. We have experience with private antitrust suits, class actions, multi-jurisdictional proceedings, government investigations and FTC proceedings in a wide range of industries, including the pharmaceutical, semi-conductor, entertainment, energy, computer, apparel, grocery, and education industries. MTO has played a key role in some of the most important antitrust cases of the past decade. We have also provided antitrust advice to many clients in connection with mergers and acquisitions, license agreements, distribution issues, compliance programs, trade association activities and other matters.

MTO has particular expertise and experience in joint ventures and the interaction between antitrust doctrines and intellectual property rights. For example, the firm represents Rambus both in antitrust claims brought against it relating to standard setting protocols and in claims brought by Rambus against a worldwide semiconductor cartel. MTO represents Abbott Laboratories in a series of cases involving one of the first antitrust challenges to pharmaceutical patent settlements. MTO represented Microsoft in a major antitrust challenge to components of its operating system. MTO has also defended numerous entertainment companies in antitrust cases involving their copyrighted content.

Some examples of our clients and significant matters include the following:

- ▣ **Shell Oil Company.** MTO has obtained precedent setting victories in antitrust cases for Shell in the U.S. Supreme Court, the California Supreme Court, and the Ninth Circuit, including *Texaco, Inc. v. Dagher*, 547 U.S. 1 (2006), which clarified the law on joint ventures; and *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 (2001), which dismissed conspiracy claims against the oil industry and set the standard for summary judgment motions in California.
  - ▣ **Rambus Inc.** MTO has been lead counsel to Rambus in a series of cases that have helped define the antitrust analysis of patents arising out of standard setting processes. These include a successful administrative trial at the FTC and a reversal by the D.C. Circuit of the Commission's adverse ruling. MTO subsequently obtained a federal court jury verdict on similar claims brought by numerous semiconductor memory manufacturers. MTO currently represents Rambus as plaintiff in a price-fixing case against several of those same manufacturers.
  - ▣ **Abbott Laboratories.** MTO has represented Abbott Laboratories in numerous major antitrust matters at the intersection of antitrust and patent laws, such as challenges to patent settlements, allegations of sham patent litigation, and *Walker Process* claims. MTO has also represented Abbott in antitrust cases alleging Robinson-Patman violations, resale price maintenance, and pharmaceutical bundling. These cases resulted in numerous favorable summary judgments, jury verdicts and appellate court victories establishing important principles of antitrust law.
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## ANTITRUST & UNFAIR COMPETITION (CONTINUED)

- ▣ **Entertainment Clients.** MTO has represented numerous entertainment industry clients in important antitrust matters. For example, MTO represented Fox Entertainment in securing a victory from the 9th Circuit U.S. Court of Appeals in a recent antitrust case upholding the practice of “tiering” or bundling channels, which subscribers claimed allegedly violated the Sherman Act in *Brantley v. NBC Universal, Inc.*, 2011 WL 2163961 (9th Cir., June 3, 2011). MTO successfully guided Universal Music Group’s acquisitions of BMG Music Publishing and of Univision’s music labels through the DOJ and FTC regulatory processes. MTO represented UMG before the FTC and in the D.C. Circuit in *Polygram Holding, Inc. v. Federal Trade Comm’n*, 416 F.3d 29 (D.C. Cir. 2005), which raised important issues regarding the analysis of joint ventures. MTO represented Universal Pictures against charges of price-fixing among major motion picture studios with respect to compensation of talent, and in a federal antitrust challenge to the major studios’ Internet joint venture, Movielink.
  - ▣ **Brighton Collectibles.** MTO serves as lead national antitrust counsel for Brighton, formerly known as Leegin Creative Leather Products, Inc., in a series of state and federal resale price maintenance cases, currently on remand from the United States Supreme Court. MTO has obtained dismissals at the pleading or summary judgment stage in each matter.
  - ▣ **Grocery Industry.** MTO obtained a defense verdict at jury trial for The Vons Companies in a case alleging that major grocery companies fixed the price of eggs. MTO has also represented multiple grocery companies, including Vons and Safeway, in connection with mergers and acquisitions.
  - ▣ **Board of Yahoo!** MTO was retained by the Board of Yahoo! in 2008 to, among other things, provide antitrust counseling with respect to strategic partnership proposals for its search engine business.
  - ▣ **Microsoft Corporation.** MTO represented Microsoft against claims by RealNetworks that Microsoft monopolized the market for media players by allegedly tying its media player to the Windows operating system.
  - ▣ **Berkshire Hathaway.** MTO obtained an early dismissal of several Berkshire subsidiaries from a federal class action alleging price-fixing among insurance companies.
  - ▣ **Kaplan, Inc.** MTO represented Kaplan in class actions alleging monopolization and market division in the market for bar review courses.
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## APPELLATE

Munger, Tolles & Olson has an active and diverse appellate practice. Our appellate practitioners have represented clients in matters involving virtually every major area of the law, including administrative, antitrust, banking, business torts, constitutional, environmental, insurance, intellectual property, labor and employment, professional liability, real estate, and securities.

MTO has a deep bench of experienced appellate lawyers. Almost half of our lawyers have served as clerks for federal appellate judges. Eighteen are former Supreme Court clerks. Our attorneys have taught courses in appellate advocacy at UC Berkeley School of Law, Stanford Law School, and Loyola Law School. Others are active in the ABA's Appellate Practice Committee, the Ninth Circuit Judicial Conference, and the Los Angeles County Bar Association Appellate Elections Evaluation Committee.

Our appellate practice handles appeals from three principal sources. First, we often are retained solely for an appeal—typically in cases involving a massive monetary judgment below. We work with trial counsel to sift through the record, formulate issues on appeal, and develop successful arguments to attack or defend the judgment in the trial court. Second, we frequently represent clients in appeals from judgments in cases where we were counsel below. In such cases, our appellate lawyers often participate at the trial level to formulate legal arguments and develop the record to position our client for appeal. Third, we regularly submit amicus curiae briefs in pending appeals on behalf of companies, trade associations, and pro bono clients.

Some of our recent appellate engagements include:

- ▣ We represented a client before the California Supreme Court in a precedent-setting case that established that California products liability law recognizes the sophisticated user doctrine.
  - ▣ MTO represented a major oil company before the U.S. Supreme Court in a case establishing that a joint venture's decision to sell separately branded products at the same price does not constitute a per se illegal horizontal price fixing agreement between the joint venture's two companies.
  - ▣ In a major appellate decision in the Ninth Circuit, we won affirmance of the dismissal of securities fraud claims brought against our client. The court's decision clarified circuit law on the standards for pleading loss causation and scienter in securities fraud actions.
  - ▣ MTO won a victory in a landmark case in which the California Supreme Court held that corporate officers and directors may not be held personally liable under the California Labor Code for wage claims by corporate employees.
  - ▣ We won an order in the New York appellate division directing the dismissal of a fraud and breach of contract action against our client in which plaintiffs sought damages in excess of \$100 million in connection with their financing of the purchase of workers' compensation insurance companies.
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## APPELLATE (CONTINUED)

- ▣ We represented a gay rights organization as an intervenor in defense of a state tax regulation that treats domestic partners the same as spouses. Our client's position prevailed in the California Court of Appeal, and we successfully opposed a petition for review to the California Supreme Court.
  - ▣ MTO represented cellular telephone providers in the California Court of Appeal in a successful challenge under the California Constitution to a utility user tax increase.
  - ▣ We filed amicus curiae briefs in four cases decided by the United States Supreme Court in the 2007 Term. In *Baze v. Rees*, we filed a brief on behalf of medical experts in a case challenging the constitutionality of Kentucky's lethal injection protocol. In *United States v. Williams*, we filed a brief on the constitutionality of the federal statute outlawing the solicitation or pandering of child pornography. In *Crawford v. Marion County Election Board*, we filed a brief on behalf of international scholars in a case involving the constitutionality of Indiana's voter identification law. And in *District of Columbia v. Heller*, we filed a brief on behalf of a gun violence protection organization in a case involving the scope of the Second Amendment.
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## COPYRIGHT & TRADEMARK

Munger, Tolles & Olson leads the charge in some of the most innovative and novel disputes preserving copyright and trademark protections. As these cutting-edge areas of intellectual property evolve, MTO increasingly defines law that secures rights for our preeminent motion picture, recording and technology industry clients.

Below is a representative list of MTO's recent Copyright and Trademark work.

- ▣ **Universal Music Group.** We represented UMG in copyright infringement litigation alleging that Bertelsmann and Hummer Winblad Venture Partners were secondarily liable for mass infringement occurring through the Napster file-sharing service. We also defended UMG against alleged violations of the Digital Millennium Copyright Act in connection with sending a takedown notice to YouTube.
  - ▣ **Warner Music Group.** We represented Warner Music in copyright infringement litigation against SeeqPod and iMeem, challenging unauthorized reproduction, distribution and performance of copyrighted sound recordings.
  - ▣ **Motion Picture Association of America.** We represented the association as amicus curiae before the Supreme Court and the Ninth Circuit in the *Perfect 10 v. Visa* litigation, involving questions of contributory infringement and vicarious liability under the copyright laws.
  - ▣ **Aftermath Records.** We represented the label (affiliated with Universal Music Group) and Apple Inc. in litigation claiming copyright infringement based on the distribution of Eminem sound recordings through iTunes.
  - ▣ **Verizon.** We represented Verizon in a cybersquatting and trademark infringement lawsuit alleging that defendants had used an automated process to register hundreds of domain names that were confusingly similar to Verizon's trademarks.
  - ▣ **99 Cents Only.** We represented the stores in multiple trademark infringement lawsuits.
  - ▣ **Green Hills Software.** We successfully defended a five-month arbitration that questioned whether application program interfaces for computer programs are copyrightable subject matter.
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## **CRIMINAL DEFENSE & CRISIS MANAGEMENT**

Munger, Tolles & Olson has a leading white-collar criminal defense and crisis management practice that represents corporations, celebrities, corporate executives, and other noteworthy individuals facing bet-the-company or career-threatening crises. MTO lawyers are experienced developing solutions and implementing strategies that keep clients off investigators' radar and out of the media's spotlight.

At trial, MTO defends corporations, corporate executives, and other individuals that face state or federal criminal charges in white-collar matters. Our attorneys—including 13 former Justice Department lawyers—defend securities law violations, including revenue inflation, stock options back-dating, and other accounting matters; mail, wire, or bank fraud and racketeering claims; false claims to the government; campaign finance violations; environmental law violations; bribery and other alleged offenses.

Before charges are filed, and frequently never made public, MTO represents companies and individuals identified as subjects or targets in federal or state criminal investigations. Such cases have nationwide venues, including Los Angeles, San Francisco, Chicago, New York, Miami, Phoenix, Denver, Boston, Topeka, San Antonio, and Washington, D.C.

MTO's internal investigations practice has global reach. For *Fortune 500* corporations, MTO has conducted investigations under the Foreign Corrupt Practices Act, securities laws, environmental laws, government contract regulations, and various other international, federal and state laws.

Due to client confidentiality concerns, representative matters are not described.

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## DEFENSE & AEROSPACE

From multi-billion dollar jury trials to congressional inquiries and Justice Department investigations, Munger, Tolles & Olson has defended some of the highest-stakes case in the defense and aerospace industry. Our firm has substantial experience representing defense and aerospace clients in a wide range of matters, including False Claims Act cases, alleged whistleblower claims, environmental actions and contract disputes.

Below is a representative list of MTO's recent defense and aerospace work. Due to the confidential nature of defense and aerospace litigation, client names are not disclosed.

- ▣ We represented a national aerospace manufacturer in a 10-week long jury trial defending a \$5 billion commercial contract for satellite manufacturing and launches.
  - ▣ We represented a major aerospace company in congressional investigations into alleged mischarging and test falsifications in defense programs and in Justice Department investigations into alleged improper billing of the U.S. government for fees paid to foreign sales agents.
  - ▣ We defended another defense company in a trial involving alleged whistleblowing related to purported improprieties in the company's missile program. We also represented that company in multiple actions brought under the False Claims Act arising out of the same missile program.
  - ▣ We represented a defense electronics maker in various government investigations and in qui tam actions under the False Claims Act arising from allegations of testing improprieties, mischarging of costs, and violations of the Truth In Negotiations Act
  - ▣ We defended another defense company against a \$500 million suit under the False Claims Act alleging that the company mischarged the government for data processing services. The case involved a constitutional challenge to the qui tam provisions of the federal False Claims Act.
  - ▣ We represented another aerospace company in a False Claims Act suit filed by 17 relators arising from alleged false testing of turbine components.
  - ▣ We represented a government contractor in a False Claims Act case in Ohio arising from an environmental clean-up project.
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## ENERGY

Munger, Tolles & Olson's energy expertise cuts across a wide range of substantive areas. We were heavily involved in the restructuring of the electricity industry in California, and we have represented major oil companies in antitrust, environmental and insurance coverage cases. We represent energy firms in state and federal regulatory proceedings, including before the U.S. Supreme Court, and in complex business disputes between various players in the energy industry.

Below is a representative list of MTO's recent energy industry work. Due to the confidential nature of energy industry litigation, some client names are not disclosed.

- ▣ We represented an electric utility in challenging the restructuring of California's electric industry, and in a series of lawsuits brought by power suppliers during the California energy crisis.
  - ▣ **Exxon Valdez.** We represented a consortium of major oil companies in litigation related to the Exxon Valdez oil spill.
  - ▣ We represent a major oil company in a series of actions relating to the escape of a gasoline additive, MTBE, into the environment surrounding gas stations.
  - ▣ We represented an electric utility in a case against a federal agency involving a contract to deliver power to that utility.
  - ▣ We represented a major electric utility in a dispute with a co-owner over the continued operation of a nuclear power plant.
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## INSURANCE

Munger, Tolles & Olson has helped our clients obtain more than \$2 billion in insurance benefits to date. Our extensive insurance coverage practice includes representing policyholders in insurance coverage litigation, analyzing insurance issues for MTO clients, and advising clients on restructuring their corporate insurance programs. We have handled insurance matters under the following policy types: general liability, officer and director liability, fidelity bond and crime, electronic errors and omissions, employment, environmental impairment, engineering and architecture liability, and business interruption and first party property damage.

In addition, MTO litigates cases and counsel clients regarding insurance for environmental contamination, construction defects, product liability, securities law violations, employee theft, mass tort personal injury claims, and advertising, trademark, copyright, and privacy violations. We also have significant experience in reinsurance disputes, regularly representing reinsurers in complex litigation both in the United States and overseas.

Below is a representative list of MTO's recent insurance industry work. Client names are not disclosed due to confidentiality.

- ▣ We obtained full insurance coverage of more than \$500 million for business interruption claims.
  - ▣ We successfully tried a toxic tort insurance coverage case, resulting in approximately \$1 billion in insurance benefits.
  - ▣ We won a more than \$90 million award, including attorneys fees, in an international arbitration for an international oil company.
  - ▣ For a chemical company we obtained more than \$300 million in coverage for a series of environmental damages claims.
  - ▣ We obtained a successful jury verdict awarding actual damages, punitive damages, and attorneys' fees for an energy company challenging an insurer's bad faith conduct.
  - ▣ We obtained full coverage and attorneys' fees for a \$20 million settlement of a brain injury claim.
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## LEGAL MALPRACTICE

The nation's leading law firms turn to Munger, Tolles & Olson when faced with a potentially damaging lawsuit. Our litigators are experienced in aggressively pursuing our clients' interests with a keen eye toward preserving our clients' reputations. We handle not only traditional legal malpractice cases and fee disputes, but also suits alleging malicious prosecution, contempt, securities fraud, conflict of interest, and RICO violations. We represent clients in individual actions, nationwide class actions, and investigations by regulatory agencies.

Below is a representative list of MTO's recent legal malpractice work. Client names are not disclosed due to confidentiality.

- ▣ We represent an international law firm in a nationwide class action and more than 50 individual cases in federal and state courts throughout the United States.
  - ▣ We obtained a directed verdict in favor of a law firm client after a five-week jury trial involving claims for malicious prosecution arising out of the firm's prosecution of a trademark infringement case.
  - ▣ We represented an international law firm in an arbitration involving a fee dispute with its former client. Our client was awarded more than \$5 million in fees and interest, as well as attorneys' fees.
  - ▣ We won a writ of mandate from the California Court of Appeal directing entry of summary judgment in favor of our law firm client in a malicious prosecution action.
  - ▣ We won a defense verdict on behalf of a law firm client after a three-week trial involving allegations by its former client that the firm had failed to perfect a security interest.
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## PATENT

Munger, Tolles & Olson's patent trial lawyers clarify the complicated to help clients achieve strategic business goals. MTO represents clients across a wide range of technologies, including semiconductors, pharmaceuticals and biotech, and telecommunications. Our lawyers practice in the most active patent litigation venues in the country, from the Northern District of California to the Eastern District of Texas to the District of Delaware. Our representations include some of the highest-profile patent cases in the country.

Below is a representative list of MTO's recent patent litigation work.

- ▣ **Rambus Litigation.** Since 2002, MTO has represented Rambus Inc., an industry leader in high-performance memory solutions, in a series of high-profile patent infringement actions against some of the leading memory chip companies in the world.
  - ▣ After an eight-week jury trial, we obtained a successful verdict for Rambus on monopolization and unfair competition claims brought by three of the largest chip makers in the world (Hynix, Micron and Nanya).
  - ▣ We obtained a final judgment for Rambus totaling almost \$400 million in a patent case against Hynix.
  - ▣ We tried and won a three-month trial before the Federal Trade Commission's Chief Administrative Law Judge on charges of unfair business practices. After further FTC proceedings, the D.C. Circuit unanimously upheld the ruling for Rambus.
  - ▣ **Abbott Laboratories.** We have represented Abbott in a variety of patent cases related to its pharmaceutical products and other technology.
    - ▣ We represent Abbott Laboratories in related lawsuits in the Northern District of Illinois against generic drug manufacturers for infringement of Abbott's patents covering clarithromycin products. We obtained preliminary injunctions prohibiting the generic companies from selling versions of BIAXIN XL, and successfully defended two of the injunctions on appeal before the Federal Circuit.
    - ▣ We defended Abbott in patent litigation against Novartis in the District of Delaware, involving Abbott's cyclosporin pharmaceutical product, Gengraf. We tried the case to a mixed jury verdict (one claim infringed, another not infringed), and then to a successful reversal of the jury's one finding of infringement.
    - ▣ We have been retained by Abbott Laboratories as appellate counsel in a series of Northern District of California cases involving blood glucose patents.
    - ▣ We are defending Abbott Laboratories in a patent case filed by Bristol Myers Squibb in the Southern District of Indiana regarding packaging technology for infant formula.
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## PATENT (CONTINUED)

- ▣ **Verizon Wireless.** We represent Verizon Wireless in two patent infringement actions pending in the Eastern District of Texas.
  - ▣ **Applied Materials.** We successfully represented Applied Materials in a bench trial before the Northern District of California.
  - ▣ **MedImmune.** We were co-counsel to Medimmune following the Supreme Court's landmark decision on subject matter jurisdiction in *MedImmune, Inc. v. Genentech, Inc. et al.* The Markman hearing was held in July 2007, and the matter settled before trial in May 2008.
  - ▣ **Alien Technology.** We represent Alien Technology in this declaratory judgment action brought in the District of North Dakota involving several patents covering different aspects of Radio Frequency Identification technology.
  - ▣ **Creative Labs.** We represented Creative Labs in pursuing its claims of patent infringement in the Northern District of California involving cache memory and 3D audio technology. We tried the case to a jury verdict, after which the parties settled the matter on favorable terms for Creative.
  - ▣ **Southern California Edison.** We represented Southern California Edison in defending claims of patent infringement in the Central District of California relating to a chemical deoxygenation process used in a nuclear power facility. Following two bench trials and Federal Circuit appeals, the parties reached a settlement of the matter.
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## SECURITIES

Munger, Tolles & Olson's recent notable securities engagements have involved lawsuits arising from the demise of Enron Corporation, the merger of America Online and Time Warner, and stock option practices at numerous companies. MTO's securities lawyers defend cases involving mutual fund revenue sharing and market timing, IPO practices, employee stock option exercise issues, analyst/banker conflicts, municipal government fiscal practices, pension funding disclosure and accounting issues, and derivative disputes.

MTO's securities litigation practice includes representing issuers, securities firms, special litigation committees, directors, officers, and other professionals in cases ranging from traditional securities class actions to mergers and acquisitions litigation. Our practice also frequently involves combined civil, regulatory, criminal, and investigative aspects.

Our securities litigation group also has been pre-approved for representing directors, officers, and issuers covered by leading D&O insurers.

Below is a representative list of MTO's recent securities litigation work.

- ▣ **Corinthian Colleges.** We obtained dismissal of allegations that the colleges engaged in fraudulent practices designed to maximize the amount of Title IV funding received by its schools. The Ninth Circuit later affirmed the decision.
  - ▣ **The Coca-Cola Company.** We defended the company and its directors in two federal securities class actions and two state court derivative actions in Atlanta that alleged both an improper delay in taking impairment charges and channel stuffing designed to inflate quarterly earnings. All of the actions were either dismissed or settled.
  - ▣ **UnitedHealth Group.** For the company's Special Litigation Committee, we investigated and negotiated a \$500 million settlement of claims related to alleged backdating of the company's stock options.
  - ▣ **Merrill Lynch.** Before the Third Circuit, we successfully obtained an affirmance upholding a trial court's dismissal of a case brought against the company and several subsidiaries. A putative class of investors claimed that certain Class B mutual fund shares were not a rational investment under certain circumstances.
  - ▣ **Northrop Grumman.** We successfully secured the dismissals of federal securities cases and state court derivative cases against the company and certain of its officers and directors after the Department of Justice sued to block Northrop's merger with Lockheed Martin Corporation on antitrust grounds.
  - ▣ **Michael Ovitz.** We represented the former president of The Walt Disney Co., in shareholder derivative litigation arising from the severance package he received upon separation from the company. The trial, which was one of the longest in Delaware Chancery Court history, ended with a complete defense victory that was later affirmed by the Delaware Supreme Court.
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## TELECOMMUNICATIONS

Munger, Tolles & Olson has an active telecommunications practice representing both wireline and wireless carriers. Our litigators have extensive experience with the complex regulatory, statutory, and constitutional issues that arise in this field of law. We regularly defend telecommunications clients against consumer class actions in state and federal courts across the country. We represent clients in state and federal regulatory proceedings, as well as in challenges to those agencies' action in court. We have also brought numerous lawsuits on behalf of our clients challenging municipal regulation of telecommunications service providers.

Below is a representative list of MTO's recent telecommunications litigation work.

- ▣ We represent a major telecommunications provider in a multi-district litigation action alleging that telephone companies assisted the National Security Agency in alleged counter-terrorism intelligence gathering.
  - ▣ We represent a wireless carrier in class action proceedings challenging the validity of early termination fees. A proposed nationwide settlement is pending.
  - ▣ We have represented telecommunications carriers in many consumer class actions, including cases alleging improper billing, improper disruption of e-mail access, and various other disclosure-based claims.
  - ▣ We have brought several challenges to local zoning ordinances that restrict the siting of wireless facilities, including a precedent-setting case on the right of wireless carriers to challenge local ordinances under the federal Communications Act. More recently, we represented a major wireless communications carrier in a lawsuit challenging a California city's wireless zoning ordinance and the city's delay in acting on applications for permits to construct wireless facilities.
  - ▣ We have represented telecommunications carriers in several cases challenging local regulations, including right-of-way regulations.
  - ▣ We represent a wireless carrier in California Public Utilities Commission proceedings relating to the development of consumer protection rules for the telecommunications industry, including rules requiring disclosures in languages other than English and rules for reporting on customer complaints about "cramming" (unauthorized charges on customer bill).
  - ▣ We regularly handle matters relating to the regulation of cable television service, including representing a client in an FCC rulemaking addressing local regulation of cable franchises. We also brought suit on behalf of a video service provider against a locality over its failure to comply with federal law governing cable franchises.
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## PROFILE

### *A Landmark Development*



When the Los Angeles County Metropolitan Transportation Authority (MTA) sought to revive the iconic intersection of Hollywood and Vine with a \$600 million mixed-use hotel and residential project situated atop one of its subway stations, the MTA turned to our real estate lawyers for counsel to complete the vision and to negotiate the transaction with the project developers.

The MTA regularly relies on the real estate expertise of our lawyers in connection with a variety of transit oriented public-private development projects, many of which are certain to become landmarks in the region.

## **REAL ESTATE**

**Acquisitions and Dispositions**

**Development Transactions**

**Finance**

**Workouts and Restructurings of Troubled Loans**

**Joint Ventures and Investment Funds**

**Public-Private Partnerships**

**Land Use**

**Leasing**

Munger Tolles, & Olson's real estate attorneys are routinely called upon to structure and bring to fruition our clients' most complex and challenging real estate transactions and land use matters. With a small but dynamic practice group, we provide clients with the value and responsiveness generally associated with a real estate boutique, while offering the full range of services that one would expect from a national law firm.

As a result, our real estate attorneys have led transactions involving some of the most important landmarks in Los Angeles. For example, we represented both the County of Los Angeles and developer Walt Disney Concert Hall, Inc. in the development of the Walt Disney Concert Hall, we represented the Roman Catholic Archdiocese in its development of the Cathedral of Our Lady of the Angeles, and we represented U.S. Bank in its lease as lead tenant of the 73-story U.S. Bank Tower, the tallest building west of the Mississippi.

Each of our real estate attorneys works in multiple practice areas, ensuring that each has broad experience, can provide thoughtful and pragmatic advice, and can act as a true problem solver. Our attorneys are leaders in national, state and local bar and industry organizations, teach at national law schools, and have given speeches and written articles and practice guides on issues relating to real estate development, land use, leasing and finance. Moreover, two of our attorneys, O'Malley Miller and Richard Volpert, are members of the prestigious American College of Real Estate Lawyers and have served as chairmen of the Real Property Section of the Los Angeles County Bar Association and as members of the executive committee of the Real Property Law Section of the State Bar of California.

Our clients include a broad range of developers, major corporations, real estate companies, governmental entities, nonprofit organizations, major financial institutions and individual entrepreneurs. We have experience in virtually every type of transaction affecting real property, from the structuring and negotiating of traditional commercial projects (e.g., office buildings, shopping centers, hotels and industrial facilities) and mixed-use and residential projects (e.g., apartments and senior housing and congregate care facilities), to land use entitlement projects associated with public or quasi-public developments and special real estate assets (e.g., power plants, stadiums and entertainment venues). The geographical scope of our practice is focused on Southern California, but we are regularly involved in projects throughout the country.

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## ACQUISITIONS AND DISPOSITIONS

We have represented clients in the purchase and sale of all types of real estate projects, including office buildings, hotels, retail properties, industrial sites and residential developments.

Examples of our representations in this area include:

- ▣ **Maguire Properties.** We represent Maguire Properties in matters relating to the acquisition, disposition, financing and development of various office projects in Southern California.
  - ▣ **Clayton Homes.** We assisted Clayton Homes, a subsidiary of Berkshire Hathaway, in selling its manufactured homes unit in a \$380 million transaction involving the sale of more than 65 manufactured home sites in eight states, and the complex transfer of not only the real property but also the leases of individual home sites and ownership of individual manufactured homes.
  - ▣ **Good Samaritan Hospital.** MTO represented Good Samaritan Hospital in connection with the sale of a development parcel in downtown Los Angeles. The transaction involved the management of contaminated ground water from a pre-existing service station, removal of tenants under the City's newly modified rent control ordinance, and reciprocal easements and access agreements to integrate the Hospital, surrounding parking and the buyer's proposed residential project.
  - ▣ **Hamilton Chase Incorporated.** We represented Hamilton Chase in the acquisition, financing and tax-deferred exchange into more than 20 properties in eight states with a total value of more than \$68 million.
  - ▣ **Acquisition of Queen Mary Leasehold and Development Rights.** MTO advised PBR Fletcher Development Co. in connection with a complex transaction in which (acting through its affiliate, Save the Queen, LLC) it purchased out of a bankruptcy auction the ground lease and development rights for the historic RMS Queen Mary in Long Beach, California.
  - ▣ **Yucaipa Companies.** MTO represents Yucaipa Companies in the acquisition of Americold Corporation, a multi-billion dollar cold storage and logistics company with over \$1 billion in real property cold storage and warehouse facilities.
  - ▣ **Tishman Speyer Properties.** We have represented Tishman Speyer in a variety of matters related to the acquisition, disposition and financing of office projects throughout California.
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## DEVELOPMENT TRANSACTIONS

We have represented local and national development companies, governmental authorities and nonprofit organizations in the development of numerous commercial, residential and public projects. This work includes substantial experience negotiating and preparing contracts with architects, contractors, engineers and other project consultants.

Examples of our representations in this area include:

- ▣ **County of Los Angeles.** MTO has represented the County in connection with a variety of significant matters, including: the development of the Grand Avenue Project, a \$3 billion public/private hotel, multi-family residential, retail and office redevelopment project located in downtown Los Angeles; the development of the Walt Disney Concert Hall in downtown Los Angeles; and more than 40 separate residential, hotel, retail and mixed-use development and redevelopment projects in Marina del Rey.
  - ▣ **Roman Catholic Archdiocese.** We represented the Archdiocese in connection with the development of the Cathedral of Our Lady of the Angels, the 3,000-seat Roman Catholic cathedral in downtown Los Angeles.
  - ▣ **Saint John's Hospital & Health Center.** We represented Saint John's Hospital in connection with the development and ground leasing of a medical office building and parking structure adjacent to the hospital in Santa Monica, as well as a \$300 million renovation of and addition to the hospital campus.
  - ▣ **Los Angeles County Metropolitan Transportation Authority.** MTO has represented the Metropolitan Transportation Authority in connection with a variety of transit oriented development projects, including the \$600 million mixed-use, transit oriented development project at the Hollywood & Vine Metro Red Line Station and other transit related developments at major Metro station sites such as North Hollywood, Wilshire/Western and Westlake/MacArthur Park.
  - ▣ **Rand Corporation.** MTO represented Rand in the negotiation of an Owner Participation Agreement with the City of Santa Monica for the development of Rand's new headquarters office building and the sale of adjacent property to the City for more than \$50 million.
  - ▣ **Developers Diversified Realty Corporation.** We represented Developers Diversified in its development of The Pike at Rainbow Harbor, a 375,000-square foot retail-entertainment project along the waterfront in Long Beach, California. The transaction involved the negotiation of a Disposition and Development Agreement and a 66-year ground lease with the City of Long Beach and included the issuance of Mello Roos bonds to finance certain portions of the project.
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## FINANCE

We have extensive experience representing both borrowers and lenders in various types of financing transactions involving office buildings, shopping centers, hotels, industrial properties, residential and other projects. These transactions have included loan originations (construction, term and mezzanine loans), sale-leaseback, leveraged lease and similar transactions, workouts, deeds in lieu, foreclosures (friendly and contested) and note sales.

A few examples of our attorneys' experience in this area include:

- ▣ **House of Blues, Inc.** We represented House of Blues in the sale and leaseback of two of its amphitheaters.
- ▣ **Reyes Holdings.** We represented this beverage distribution company in the financing and refinancing of storage facilities.
- ▣ **The Yucaipa Companies.** We represented Yucaipa in financing relating to various acquisition and development projects, including mezzanine financing for the development of a 32-story condominium towers project adjacent to the Las Vegas strip.
- ▣ We also represented a bank in the restructuring of loan facilities with an aggregate principal balance in excess of \$230 million and secured by hotels in Arizona, California, Hawaii and Texas.

## WORKOUTS AND RESTRUCTURING OF TROUBLED LOANS AND ASSETS

We have represented borrowers, lenders, landlords and tenants in a broad range of matters involving workout and restructuring of troubled loans and assets, including matters involving litigation and bankruptcy proceedings. In handling these matters, our real estate lawyers work closely with our firm's litigators and insolvency lawyers to develop comprehensive strategies to address the many issues and problems that arise in connection with troubled real estate assets.

Examples of our representations in this area include:

- ▣ **Breckner, LLC.** We have represented Breckner, LLC with respect to workout and foreclosure proceedings, and related land use, real estate and bankruptcy issues, connected with investments in a Coachella Valley project for development of 1,500 acres into more than 2,000 homes, 1.4 million square feet of commercial space, two golf courses, a hotel and various related improvements.
  - ▣ **99¢ Only Stores.** We have represented 99¢ Only, a long-time client, with respect to foreclosure proceedings and related litigation and negotiations arising from a real property investment in which 99¢ Only had a variety of real property rights, including rights as an owner, manager and tenant.
  - ▣ **Tenant Bankruptcy Matters.** We have advised various clients regarding their rights as duties as landlords in connection with the bankruptcy of commercial and retail tenants.
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## JOINT VENTURES AND INVESTMENT FUNDS

We have represented developers and investors (institutions and individuals) in structuring, negotiating and forming numerous joint ventures and real estate investment funds to develop and own commercial and residential real estate projects. We also have assisted clients in structuring complex partnership reorganizations.

Examples of our representations in this area include:

- ▣ **Saybrook Capital.** We represented Saybrook in the formation of a fund (using pension fund investments) to develop and invest in for-sale housing in urban infill areas.
  - ▣ **Academy of Motion Picture Arts and Sciences.** We represented the Academy in connection with partnership and land use issues associated with structuring a joint venture between the Academy and UCLA for developing a world class film preservation and archival system.
  - ▣ **Klein Financial.** We represented Klein Financial in the formation of an entity with a large pension fund to invest in affordable housing projects throughout California.
  - ▣ **TOPA Equities, Ltd.** We regularly represent TOPA in connection with the formation of complex joint ventures to acquire real estate throughout Los Angeles, as well as in connection with tenant disputes, management issues and land use matters.
  - ▣ **The Kutzer Company.** We represent The Kutzer Company and its affiliate, Edgewood Realty Partners, in connection with the formation of multiple real estate funds and the subsequent acquisition of shopping centers and office buildings throughout California.
  - ▣ **Seidler Equity Partners.** We represented Seidler Equity Partners in the formation of complex partnership structures to acquire real estate assets in connection with corporate acquisitions.
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## PUBLIC PRIVATE PARTNERSHIPS

We have represented developers, investors and public entities in the structuring, negotiating and forming of public-private ventures to develop and own commercial and residential real estate projects. Many of the projects have involved Owner Participation Agreements, Disposition and Development Agreements, Ground Leases and similar agreements with governmental entities, including Redevelopment Agencies.

Examples of our representations in this area include:

- ▣ **Grand Avenue Project.** MTO currently represents the County of Los Angeles in connection with the Grand Avenue Project, a \$3 billion hotel, multi-family residential, retail and office development project in downtown Los Angeles,
  - ▣ **Downtown Garage Projects.** MTO represents the developer of the Broadway Spring Center and Los Angeles Garage Projects in downtown Los Angeles with respect to negotiations with the Community Redevelopment Agency and related matters.
  - ▣ **Hollywood & Vine Metro Station Project.** MTO has represented and currently represents the Metropolitan Transportation Authority in connection with a variety of transit oriented public-private development projects, including the \$600 million mixed-use, transit oriented development project at the Hollywood & Vine Metro Red Line Station.
  - ▣ **Marina Del Rey Projects.** MTO has represented the County of Los Angeles in connection with more than 40 separate residential, hotel, retail and mixed-use development and redevelopment projects in Marina del Rey.
  - ▣ **Wilshire/Western Metro Station Project.** MTO has represented the Metropolitan Transportation Authority in connection with transit related developments at major Metro station sites that include the intersection of Wilshire Boulevard and Western Avenue.
  - ▣ **Walt Disney Concert Hall.** MTO attorneys represented multiple parties with respect to the development of the Frank-Gehry-designed Walt Disney Concert Hall in downtown Los Angeles, including developer Walt Disney Concert Hall, Inc., and the County of Los Angeles.
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## LAND USE

We have had extensive experience assisting owners and prospective purchasers of real estate in obtaining necessary land-use entitlements and approvals for the development of new projects and the redevelopment of existing projects. Our involvement has included negotiating Development Agreements, prospective purchaser agreements and similar agreements with governmental authorities, drafting specific plans, assisting clients in complying with (and challenges under) the California Environmental Quality Act (CEQA), and appearing before planning commissions and other governmental and regulatory authorities.

A few examples of our representations in this area include:

- ▣ **Apollo Real Estate Advisors.** We represented Apollo in the negotiation of a Development Agreement with the City of West Hollywood for the development of two hotels, two residential condominium projects and various restaurant and retail uses.
  - ▣ **Claremont University Consortium.** We represent the Consortium in land use and general real estate matters pertaining to the development and use of land by and on behalf of the Claremont Colleges.
  - ▣ **The Malibu Bay Company.** We represented this owner of multiple parcels of land in Malibu, in the negotiation of a Development Agreement with the City of Malibu.
  - ▣ **Mitsui Fudosan America, Inc.** We represent Mitsui in land use and real estate matters pertaining to the development of a mixed-use project in downtown Los Angeles.
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## LEASING

We have represented landlords and tenants in numerous leases involving all types of commercial projects. Additionally, we have extensive experience representing landowners (typically governmental authorities) and developers in long-term ground lease transactions.

A few examples of our representations in this area include:

- ▣ **U.S. Bank.** We represented U.S. Bank in the lease of its headquarters at U.S. Bank Tower (formerly the Library Tower) in downtown Los Angeles.
- ▣ **Saint John's Hospital & Health Center.** We represented Saint John's Hospital in a participating ground lease of an office building in Santa Monica and the conversion of the building to medical office use.
- ▣ **Kornwasser Shopping Center Properties.** We represent Kornwasser in connection with anchor tenant and other retail leasing at various retail properties in California and other western states.
- ▣ We represented a joint venture whose members include **Developers Diversified Realty Corporation, Prudential Real Estate Investors** and **Coventry Real Estate Partners** in the development and retail leasing of CityPlace, a 450,000-square foot mixed use retail and residential project in Long Beach.



## **ATTORNEY BIOGRAPHIES**

## Bradley S. Phillips

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### Experience

BRAD PHILLIPS is a litigation partner in the Los Angeles office of Munger, Tolles & Olson LLP.

Mr. Phillips's practice consists principally of complex civil litigation in the trial and appellate courts. He has been lead counsel in jury trials in both state and federal court. He has an extensive appellate practice, having argued in the United States Supreme Court, been counsel of record on numerous briefs in that Court, and argued on many occasions in the California Supreme Court, the federal Circuit Courts of Appeals, and the California Courts of Appeal.

Mr. Phillips's areas of practice include antitrust, unfair competition, First Amendment, intellectual property, and general commercial litigation. He also does extensive litigation involving other constitutional issues, civil rights, election law and other public law issues.

Mr. Phillips has represented companies in the entertainment, publishing, newspaper, computer, telecommunications, aerospace, financial, energy and education businesses; and he has also represented a public university and public school districts.

A few examples of Mr. Phillips's many significant representations are the following:

- Defending the constitutionality of Arizona's Clean Elections Act in the United States Supreme Court, in *McComish v. Bennett*, No. 10-238, in which he argued for Respondents on March 28, 2011.
- Defending the University of California against constitutional claims that UC's high school course requirements for applicants discriminate against the plaintiff schools and students on the basis of their religion.
- Defending Shell Oil Company in numerous antitrust cases, including *Texaco Inc. v. Dagher*, 547 U.S. 1 (2006); *Rick-Mik Enterprises, Inc. v. Equilon Enterprises LLC*, 532 F.3d 963 (9th Cir. 2008); and *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 (2001).
- Defending a major daily legal newspaper at jury trial against claims of unfair competition.
- Defending a major California law firm against a claim of malicious prosecution. *Hufstедler, Kaus & Ettinger v. Superior Court*, 42 Cal.App.4th 555 (1996).
- Defending a Los Angeles television network affiliate at jury trial against claims of defamation and invasion of privacy.

Mr. Phillips devotes a substantial portion of his time to representing clients on a pro bono basis. He has represented classes of homeless individuals, immigrants, prisoners, and voters, as well as numerous non-profit organizations. A few examples of Mr. Phillips's many pro bono successes are the following:

- Obtaining an injunction against lethal injections in California based on the Administrative Procedure Act. *Morales v. California Dept. of Corrections and Rehabilitations*, 168 Cal.App.4th 729 (2008).
- Prosecuting a federal lawsuit that forced immigration officials to end their practice of forcibly administering anti-psychotic drugs to immigration detainees without a medical examination or a court order.
- Defending, as co-counsel, the constitutionality of the Bipartisan Campaign Reform Act of 2002. *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003).
- Obtaining an order requiring California to replace its pre-scored punch card voting machines (of "hanging chad" fame) before the 2004 Presidential election. *Common Cause v. Jones*, 213 F.Supp.2d 1106 (C.D. Cal. 2001), 235 F.Supp.2d 1076 (C.D. Cal. 2002).
- Obtaining reversals of the convictions of two individuals who had been sentenced to death in California. *In re Wilson*, 3 Cal.4th 945 (1992); *People v. Hale*, 44 Cal.3d 531 (1988).

Mr. Phillips is the Co-Chair of the Lawyers' Committee for Civil Rights Under Law, where he also served for years as a member of the Executive Committee and a Regional

### Contact

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**Phone:** (213) 683-9262  
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### Practice Areas

- Litigation
- Appellate
- Antitrust and Unfair Competition



## MUNGER, TOLLES & OLSON LLP

Vice-Chair. Mr. Phillips is a Fellow of the American Bar Foundation and served as a member of the Board of Directors of the California Bar Foundation. He served as President of the Legal Aid Foundation of Los Angeles in 1992-1993. He was the 1996 recipient of MALDEF's Legal Services Award; and he has received the ACLU of Southern California's Pro Bono Civil Rights Advocates Award, its Voting Rights Award, and its Equal Justice Award. Mr. Phillips is currently a member of the Board of the California Committee South of Human Rights Watch.

Mr. Phillips has done extensive legal and policy work in the areas of ethics in government, campaign finance, and election law. He served from 1993-1996 as the Chair of California Common Cause and for a dozen years as a member of the National Governing Board of Common Cause.

### **Education**

- Yale Law School (J.D., 1978); Member, Board of Editors, Yale Law Journal, 1977-78
- Stanford University (B.A., 1975); Phi Beta Kappa

### **Clerkships**

- Clerk to Judge Wm. Matthew Byrne, Jr., U.S. District Court, Central District of California, 1978-79

## David C. Dinielli

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### Experience

DAVID DINIELLI is a partner in the Los Angeles office of Munger, Tolles & Olson LLP.

Mr. Dinielli received his A.B. from Harvard College in 1990, where he received a degree in the Classics magna cum laude. He was awarded a public service fellowship, and following graduation, worked for the Native leadership of an Alaskan village. Mr. Dinielli received his J.D. from the University of Michigan Law School in 1994, magna cum laude, where he served as the Managing Editor of the Michigan Law Review and was elected to the Order of the Coif.

Mr. Dinielli then served as law clerk to the Honorable Cynthia Holcomb Hall, U.S. Circuit Judge for the Court of Appeals for the Ninth Circuit during the 1994-1995 term. He joined Munger, Tolles & Olson in the Fall of 1995.

Mr. Dinielli's practice has involved a wide variety of matters, including antitrust litigation and counseling, securities litigation, shareholder litigation, class action defense, trademark and licensing litigation and other commercial matters. He has represented a number of the major movie studios and other entertainment clients, an electric utility and an Alaska Native Corporation. In addition, Mr. Dinielli has done pro bono work for the ACLU of Southern California, and other civil rights organizations, including the Servicemembers Legal Defense Network and the Lambda Legal Defense and Education Fund.

### Education

- The University of Michigan Law School (J.D., *magna cum laude*, 1994); Order of the Coif  
Managing Editor, Michigan Law Review 1993-94
- Harvard College (A.B., *magna cum laude*, 1990)

### Clerkships

- Clerk to Judge Cynthia Holcomb Hall, U.S. Court of Appeals for the Ninth Circuit, 1994-1995

## Contact

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**Email:** David.Dinielli@mto.com

### Practice Area

- Litigation

## Michelle T. Friedland

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### Experience

MICHELLE FRIEDLAND is a litigation partner in the San Francisco office of Munger, Tolles & Olson LLP.

Ms. Friedland's practice focuses primarily on complex civil litigation and appellate matters. Her recent representations have included:

- Defending a leading pharmaceutical company against several federal antitrust challenges to drug pricing decisions, including in a successful month-long jury trial.
- Defending a university hospital against Confidentiality of Medical Information Act and other privacy claims related to an alleged breach of computer security.
- Defending a state university system against First Amendment challenges to its admission policies and prevailing at summary judgment on all claims, and then successfully defending that judgment on appeal and in opposing Supreme Court review.
- Representing Berkshire Hathaway in a successful trial in U.S. District Court to obtain a federal tax refund.
- Defending Boeing in a multi-agency government investigation into alleged theft of trade secrets from a competitor.
- Representing Equality California and several same-sex couples in the challenge to Proposition 8 before the California Supreme Court.
- Representing a prisoner claiming civil rights violations in briefing and argument before the United States Court of Appeals for the Ninth Circuit.

Ms. Friedland has also drafted amicus briefs to the United States Supreme Court on behalf of a variety of businesses and organizations.

Ms. Friedland joined the firm in 2004 after a two year lectureship at Stanford Law School during which she taught Federal Jurisdiction and Environmental Law. Prior to teaching at Stanford, Ms. Friedland served as a law clerk to Justice Sandra Day O'Connor of the United States Supreme Court (2001-2002) and Judge David Tatel of the United States Court of Appeals for the D.C. Circuit (2000-2001).

Ms. Friedland received her undergraduate degree in Ecology and Population Biology from Stanford University, where she was elected to Phi Beta Kappa. After graduation, she studied political theory for a year at Oxford University on a Fulbright Scholarship and then returned to California, receiving her law degree from Stanford Law School, where she graduated second in her class and a member of Order of the Coif. While in law school, Ms. Friedland won awards for her Law Review note and for receiving the highest grade-point average in her first-year class.

In 2009, Ms. Friedland received the American Civil Liberties Union of Southern California's LGBT Award for her work on the challenge to Proposition 8. In 2006, Ms. Friedland received the Wiley W. Manuel award for pro bono legal services, presented by the Board of Governors of the State Bar of California.

Ms. Friedland is co-chair of the Bar Association of San Francisco's Amicus Committee and serves on the board of the Silicon Valley Campaign for Legal Services and the executive board of the Bay Area Chapter of the American Constitution Society.

### Education

- Stanford Law School (J.D., 2000); Order of the Coif; Urban A. Sontheimer Award; Award for Best Student Note
- Stanford University (B.S., with Distinction, Ecology & Population Biology, Honors in Ethics in Society, 1994); Phi Beta Kappa

### Clerkships

### Contact

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### Practice Area

- Litigation





## MUNGER, TOLLES & OLSON LLP

- Clerk to Judge David Tatel, U.S. Court of Appeals, District of Columbia, 2000-2001
- Clerk to Justice Sandra Day O'Connor, U.S. Supreme Court, 2001-2002

### **Fellowships**

- Fulbright Scholarship, Oxford University, 1995-1996



## Grant A. Davis-Denny

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### Experience

GRANT DAVIS-DENNY is an associate in the Los Angeles office of Munger, Tolles & Olson LLP.

His complex commercial litigation practice includes legal malpractice defense, patent and antitrust litigation, and appellate law. He also provides compliance advice on state and local laws covering campaign finance, gifts to public officials, and government procurements.

Mr. Davis-Denny maintains an active pro bono practice. He has represented members of Congress, Common Cause, and international election law scholars in filing *amicus curiae* briefs in the United States Supreme Court. Mr. Davis-Denny represented death-row inmates in a successful challenge to California's lethal injection regulations based on the Department of Corrections' failure to comply with the Administrative Procedures Act. He currently represents the Clean Elections Institute in its defense of the Arizona Citizens Clean Elections Act.

Mr. Davis-Denny is a member and former Chair of the Board of Directors of California Common Cause. His publications include:

*Divergent Disclosure: The Value of Uniformity in State Campaign Finance Disclosure Laws*, 4 Election Law Journal 282 (2005) (paper presented at the 2004 Midwest Political Science Association Conference)

*The Constitutionality of Regulating Coordinated Issue Advocacy: A Reply to James Bopp, Jr. and Heidi K. Abegg's The Developing Constitutional Standards for 'Coordinated Expenditures'*, 2 Election Law Journal 267 (2003)

*Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of Buckley v. Valeo*, 50 UCLA Law Review 205 (2002)

Mr. Davis-Denny graduated from UCLA School of Law in 2003 and was elected to the Order of the Coif. He served as co-Editor in Chief of the Women's Law Journal and Comments Editor of the UCLA Law Review. He was also a member of the Program in Public Interest Law and Policy. Prior to attending law school, Mr. Davis-Denny worked for elected officials Kathleen Sebelius and Tom Torlakson.

### Clerkships

- Judge Richard A. Paez, U.S. Court of Appeals, Ninth Circuit, 2003-2004

## Contact

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### Practice Area

- Litigation



**RICHARD C. CHEN**

Los Angeles, California 90025

**EDUCATION**

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**HARVARD LAW SCHOOL**, J.D., June 2009, *magna cum laude*

Activities: *Harvard Law Review*, Articles Editor  
*Harvard Civil Rights–Civil Liberties Law Review*, Staff  
Eliot House, Resident Pre-Law Tutor  
Professors David Barron and Lani Guinier, Research Assistant

Honors: Summer Academic Fellowship

**HARVARD COLLEGE**, A.B., English and American Literature and Language, June 2002, *cum laude*

Activities: *Satire V*, Editor and Founding Member

Honors: John Harvard Scholarship  
Harvard College Scholarship

**WORK EXPERIENCE**

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**MUNGER, TOLLES & OLSON**, Los Angeles, California Summer 2008; November 2010 to Present

*Associate*. Researched and drafted memoranda on complex business litigation issues. Drafted motions to dismiss and appellate briefs on topics such as personal jurisdiction, RICO, and the Takings Clause.

**NINTH CIRCUIT COURT OF APPEALS**, Pasadena, California August 2009 to August 2010

*Law Clerk for Judge Raymond C. Fisher*. Prepared bench memoranda and draft opinions.

**DEPARTMENT OF JUSTICE, Civil Rights Division**, Washington, District of Columbia Summer 2008

*Summer Law Intern*. Drafted motions in limine and research memoranda to support the enforcement of the Fair Housing Act.

**SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE**, Boston, Massachusetts Summer 2007

*Intern*. Drafted motions in limine and research memoranda on topics such as prior bad acts, Miranda rights, and wiretap regulations. Prepared questions for direct and cross examination of expert witnesses.

**GOOGLE INC.**, Irvine, California July 2003 to October 2005; April to August 2006 (contractor)

*Creative Maximizer*. Analyzed and improved the performance of advertising campaigns on Google.  
*Product Specialist*. Worked with engineering team to develop and promote new advertising product features.

**INTERNATIONAL JUSTICE MISSION**, Phnom Penh, Cambodia October 2005 to April 2006

*Legal Intern*. Interviewed trafficking victims in preparation for trial. Drafted memoranda detailing evidence and applicable law for judges and victims' lawyers.

**PUBLICATIONS**

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Recent Case, *Doe v. Exxon Mobil Corp.*, 473 F.3d 345 (D.C. Cir. 2007), 121 HARV. L. REV. 898 (2008).

Leading Case, *Medellín v. Texas*, 128 S. Ct. 1346 (2008), 122 HARV. L. REV. 435 (2008).

Note, *Organizational Irrationality and Corporate Human Rights Violations*, 122 HARV. L. REV. 1931 (2009).

**LANGUAGES AND INTERESTS**

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Conversant in Mandarin.

Creative writing, literature, guitar, Red Sox baseball, and table tennis.