



David Priebe

Partner

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David Priebe's principal areas of practice include defense of companies, officers and directors in securities class action lawsuits and investigations, and related shareholder derivative lawsuits, government investigations and corporate control litigation; counseling in investor communications and insider stock trading policies and plans.

David has defended numerous companies and their current or former officers and directors in securities cases and related shareholder derivative and M&A litigation for over twenty years. In these representations, David has actively participated, often in leadership roles, in all forms of motion practice, factual analysis, discovery, mediation and trial preparation.

David actively and intently keeps informed of and contributes to innovations in securities fraud jurisprudence and owns an Internet site, 10b-5.com, containing articles on securities law developments and other topics. David was also co-lead trial counsel in a successful lending / securities fraud arbitration and a pro bono civil rights trial.

- Litigation, Arbitration and Investigations
- Corporate and Securities Litigation
- Mergers and Acquisitions
- Public Company and Corporate Governance
- Corporate

David also has defended companies in intellectual property, antitrust, and commercial cases, representing (among others) the Williams Companies, Borland, Network Associates, American Mensa Ltd. and Packard Bell.

Clients include current or former officers and directors of Countrywide Financial Corporation, KLA-Tencor, Riverstone Networks, Tripath Technologies and Sipex Corporation; and the corporation and management of Finisar, Applied Signal Technology, Foundry Networks, The Boeing Company, AXT, SONUS Pharmaceuticals, Genentech, Openwave Systems, Vantive, Monterey Pasta Company, Sybase, Extreme Networks, Immersion, Informatica, iPrint Technologies, InsWeb, NetRatings, Agile Software, ValiCert, Preview Systems, Virage, Calico Commerce, Indus International, Silicon Graphics, Informix, Seagate Technologies, Vanstar, Read-Rite, 3DO, Merisel, YES! Entertainment, Cirrus Logic, Silicon Valley Bank, Digital Microwave, Thomas Weisel Partners, Montgomery Securities, PaineWebber, MIPS Technologies, Frame Technologies, NovaSensor and Businessland.

HIGHLIGHTS

- Won dismissal of derivative lawsuit asserting securities fraud and corporate law claims based on alleged stock option backdating by

presenting successful challenge to common statistical method used by plaintiffs in such cases throughout country. *In re Finisar Corp. Derivative Litig.*, 542 F. Supp. 2d 980 (N.D. Cal. 2008); *In re Finisar Corp. Derivative Litig.*, No. C-06-07660 RMW, 2009 WL 3072882 (N.D. Cal. Sept. 22, 2009), now on appeal

- Won dismissal of securities class action against food company by obtaining the first judicial decision applying a Rule 10b5-1(c) stock trading program to negate an inference of scienter in a private securities case. *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d 1102 (N.D. Cal. 2003). This followed several years of research and public speaking on the Rule, including the submission of public comments on it before it was adopted. Although the court allowed leave to amend, plaintiffs voluntarily dismissed the lawsuit
- Won dismissal of parallel shareholder derivative lawsuit involving food company identified above. *Imperial County Employees' Retirement Sys. v. Hewitt*, No. M63679 (Super. Ct. Monterey Cty. 2003). Plaintiff dismissed the appeal
- Representing former CFO of Countrywide Financial Corporation in numerous class action, institutional, and regulatory lawsuits involving common stock purchasers and mortgage-backed securities investors. Representations include SEC action that resulted in a settlement without fraud claims or an officer and director bar, *Securities and Exch. Comm'n v. Mozilo*, No. CV 09-03944 (C.D. Cal.); two State court cases dismissed on our motion for lack of personal jurisdiction. *New Mexico State Investment Council v. Countrywide Fin. Corp.*, No. D-0101-CV-2008-02289 (Santa Fe Cty. N.M., 1st Jud. Dist. Apr. 14, 2009); *United Western Bank v. Countrywide Financial Corp.*, No. 2010CV3325 (Dist. Ct. Colo., City and Cty. of Denver 2d Jud. Dist. Nov. 9, 2010); and federal case granting summary judgment on joint motion upon statute of repose for Exchange Act claims. *Footbridge Ltd. Trust v. Countrywide Fin. Corp.*, 10 Civ. 367 (PKC) (S.D.N.Y. Mar. 16, 2011)
- Served as principal factual and legal researcher in detailed analyses leading to decision denying an officer and director bar against the former CEO of a semiconductor manufacturing company alleged to have engaged in stock option backdating. *Securities and Exch. Comm'n v. Schroeder*, No. C 07-03798 JW, 2010 WL 4789441 (N.D. Cal. Nov. 17, 2010). In the related private litigation, our client recovered over \$13 million from the company despite attempts to blame him for allegedly improper practices
- Won motion to dismiss securities class action against substrate manufacturer alleged to have misrepresented quality of products to customers. *Morgan v. AXT, Inc.*, Nos. C 04-4362 etc., 2005 WL 2347125 (N.D. Cal. Sept. 23, 2005). The case was settled on favorable terms following the dismissal (no contribution from company)
- Defeated attempt to enjoin implementation of challenged term to merger agreement, resulting in a successful tender offer and the consummation of the challenged merger. *Jarackas v. Applied Signal Technology, Inc.*, No. 1:11 CV 191643 (Super. Ct. Santa Clara Cty. Jan. 20, 2011)
- Representing entire Board of Directors of audio chip company in breach of fiduciary lawsuit filed by bankruptcy trustee alleging a failure to sell the company. *Hermerding v. Tripathi*, Adversary Proceeding No. 09 5004 (N.D. Cal. Bank.)
- Won motion to dismiss securities fraud claims under Securities Litigation Uniform Standards Act in lawsuit filed when corporation temporality suspended exercise of stock options until restated financial statements were issued. *McIntosh v. McAfee Inc.*, No. C-06-0794 JW (N.D. Cal. Sept. 28, 2007)
- Won as lead counsel and co-lead arbitration a \$46.5 million arbitration award on behalf of a defrauded borrower unknowingly involved in what the case investigation revealed to be a widespread, international Ponzi scheme. *General Holding, Inc. v. Derivium Capital* (Charleston, S.C., American Arbitration Ass'n June 13, 2005)
- Represented former CEO of semiconductor chip company in securities class action lawsuit and parallel government investigations. The securities class action settled with no contribution from our client, *In re Sipex Corp. Sec. Litig.*, Master File No. 05-CV-00392 (WHA); and an SEC action settled with no fraud claim and no officer and director bar against our client; despite attempts to blame him for allegedly improper practices
- Drafted briefs and declaration that resulted in granting of motion to dismiss, and change in plaintiff's fundamental approach, in derivative case alleging that officers and director steered company to investment banker in exchange for access to IPO shares. *Lefort v. Black*, No. 02 2464 VRW (N.D. Cal. 2002). After the filing of our second motion to dismiss, plaintiff made a demand on the Board, as we had contended was required. The subsequent investigation exonerated our clients and resulted in a dismissal
- Served as co-lead trial counsel on behalf of plaintiff in pro bono civil rights case, *Simpson v. McNack*, No. CV 06-04837 EMC (N.D. Cal. 2010). The jury found for our client as against one defendant, and the case settled on favorable terms during the post-verdict judgment phase
- Won motion to dismiss securities class action lawsuit against intelligence contractor alleged to have misrepresented customer backlog. *In re Applied Signal Tech., Inc. Sec. Litig.*, No. C 05-1027 SBA, 2006 WL 1050174 (N.D. Cal. Feb. 9, 2006). Although the decision was reversed three years later by the Ninth Circuit, the strength of the district court's acceptance of our contentions positioned case well and resulted in a settlement on favorable terms (no contribution from company)
- Won dismissal of parallel shareholder derivative lawsuit involving intelligence contractor identified above. *Shoemaker v. Devine*, No.

1:08 CV 119810 (Jan. 20, 2009) (Super. Ct. Santa Clara Cty.)

- Played a leading role in issuers' joint defense group in defense of the over 300 "IPO laddering" securities cases in the Southern District of New York. *In re Initial Public Offering Sec. Litig.*, No. 21 MC 92 (SAS)
- Drafted briefs and declarations that resulted in granting of summary judgment on behalf of a leading software company alleged to have issued false forecasts. *In re Sybase, Inc. Sec. Litig.*, 48 F. Supp. 2d 958 (N.D. Cal. 1999)
- Selected and served as principal legislative history researcher in support of advanced interpretation arguments in seminal Reform Act case, *In re Silicon Graphics Securities Litigation* (N.D. Cal. 1997). In this capacity, was first to call attention to statute and legislative history requiring disclosure of all facts underlying allegations
- Drafted briefs that resulted in rare pre-Reform Act dismissal of securities class action case alleging that pioneering video game company misrepresented the performance and quality of its product. *In re 3DO Sec. Litig.*, No. CV 94-1820 CAL (N.D. Cal. July 19, 1995). The case settled on favorable terms after the dismissal (no contribution from company)
- Drafted briefs and declarations that resulted in granting of motions to dismiss on behalf of computer distributor alleged to have issued false forecasts. *In re Merisel Sec. Litig.*, Master File No. CV-94-3959-R (C.D. Cal. Apr. 3, 1995). Although the decision was reversed two years later by the Ninth Circuit, the strength of the district court's acceptance of our contentions positioned case well and resulted in a settlement on favorable terms (no contribution from company)
- Drafted brief resulting in grant of motion to dismiss shareholder derivative lawsuit against disk drive company. *Howard Gunty Profit Sharing v. Quantum Corp.*, No. C 96 20711 SW (N.D. Cal. May 28, 1997)
- Assisted in drafting of brief result in grant of motion to dismiss class action complaint challenging terms of acquisition of high technology company. *Barth v. NovaSensor*, No. C-91-0830-DLJ, 1991 WL 330922 (N.D. Cal. Dec. 6, 1991)
- Served as chief legal researcher on damages issues, and confirmed validity of key procedural step resulting in interlocutory win on the merits, in copyright case that reached the United States Supreme Court. *Lotus v. Borland*

CREDENTIALS

Admissions

- California

Prior Experience

- Judicial Extern, the Honorable Milton Schwartz, US District Court, Eastern District of California (1988)

Education

- J.D., University of California, Berkeley, School of Law 1990
Order of the Coif
- M.Phil., Political Science, Yale University 1983
- B.A., Political Science and Mathematics, State University of New York at Albany 1981
Phi Beta Kappa

Memberships

- Member (Partner), Wilson Sonsini Goodrich & Rosati, 1999-2001
- Associate, Wilson Sonsini Goodrich & Rosati, 1990-1999
- Judicial Extern, Honorable Milton Schwartz, United States District Court, Eastern District of California, 1988

INSIGHTS

David has written numerous articles and comments on the securities laws, insider trading, derivative lawsuits and document retention policies. Many of his articles are republished on his Internet site, www.10b-5.com.

Since joining DLA Piper in 2001, David has spoken at numerous professional seminars and presentations on these topics and, in particular, on Rule 10b5-1(c) stock trading plans.

Publications

California court approves enforcement of federal forum selection provision for Securities Act claims: Practical implications of *Wong v. Restoration Robotics*

12 May 2022

Even if Delaware (or another state) allows its domestic corporations to adopt federal forum provisions, it will be up to courts in other states to enforce those provisions.

In *Goldman Sachs* decision, Supreme Court expands methods for challenging class certification in securities fraud cases

23 June 2021

The decision is a significant holding for securities fraud defendants.

Key Reg S-K disclosure rules amended: Fundamental issues to consider in your next SEC filing

9 September 2020

The overarching theme of the amendments is the SEC's focus on issuer responsibility.

Second Circuit clarifies law of insider trading in reversing convictions of remote tippees

11 DEC 2014

The decision is likely to have implications for the type of insider trading prosecutions that are brought in the future and how the litigants will prosecute and defend those cases

David has written numerous articles and comments on the securities laws, insider trading, derivative lawsuits, and document retention policies, including the following:

- Co-author with Rajiv Dharnidharka, "Securities and Exchange Board of India Adopts Broad Prohibitions On Insider Trading And Disclosure," (March 2015)
- Co-author with Rajiv Dharnidharka, "Sophisticated New Securities and Exchange Board of India Insider Trading And Disclosure Regulations Present Interesting Comparisons To US Securities Laws," (March 2015)
- Co-author with Shirli Weiss, "Reason Enough: The Potential Implications Of Omnicare, Inc. v. Laborers' District Counsel Construction Industry Pension Fund," (January 2015)
- Co-author with Edward Johnsen and Patrick Hunnius, "Second Circuit Clarifies Law of Insider Trading In Reversing Convictions Of Remote Tippees," (December 2014)
- Co-author with Shirli Weiss, "Securities Litigation and the Departing High Level Officer," (June 2014)
- Co-author with Rachel Cowen and Jamie Konn, "Sarbanes-Oxley Act Covers Public Companies' Contractors and Subsidiaries," (March 2014)
- Author, "Consent Decrees With The United States Securities And Exchange Commission," (June 2012)

NEWS

DLA Piper advises AEye Inc from Series A through SPAC Closing with CF Finance Acquisition Corp. III

18 August 2021

DLA Piper represented AEye, Inc. from its Series A investment through the recent closing and public listing on the NASDAQ via a business combination with CF Finance Acquisition Corp. III.
