

Litigation:

Year in Review 2013



“...[we] rate the firm as being at the top for trial capacity, issue identification, written product, pragmatism and talent in negotiations.”

— *Chambers USA*, 2013

Table of Contents

Message from the Chairs..... 1

Accolades 2

Litigation Practices 3

 Antitrust, Competition and Trade Regulation 4

 Appellate 6

 Bankruptcy Litigation 8

 Entertainment, Media and Communications 11

 Environmental, Land Use and Natural Resources13

 Financial Institutions Regulatory, Enforcement and Litigation16

 Intellectual Property 22

 Labor and Employment..... 25

 Tax Controversy and Litigation..... 27

 White Collar Investigations and Enforcement..... 29

 London Litigation31

 Hong Kong Litigation 32

 Japanese Practice..... 33

 Bingham Consulting.....35

Pro Bono 37

Message from the Chairs

Dear Clients and Friends,

Bingham McCutchen's Litigation practice has attracted one-third of the Fortune 100 companies over the last two years, proving we are a destination practice. These companies — such as Bank of America, Chevron, CVS, ExxonMobil, GM, Google, HP, Intel, JPMorgan Chase and Oracle — choose Bingham Litigation for our strategic understanding of their business, our trial prowess and our ability to achieve excellent litigation results that further business strategy. Our litigation teams work across industries and technologies — from pharmaceuticals to software to semiconductors, from energy and oil and gas to financial services and funds. We go where business and disputes happen, and we solve them. Quickly if we can. At trial if we must.

Across the globe, Bingham litigators engage in the most complex disputes. Think Deepwater Horizon oil spill, or the largest copyright infringement suit ever, or guiding global financial institutions through the economic meltdown.

We are pleased to present our sixth annual Year in Review, covering litigation activities and achievements in 2013. Inside you will find many examples of how Bingham litigators have worked together to provide clients with solutions to complex legal issues. More than 360 litigators working together across over a dozen practices will provide an excellent base for continued success in 2014.

Underscoring our commitment to the growth of our litigation practice, in 2013, we hired a premiere patent litigation group for Southern California, adding five partners led by Richard de Bodo, who now co-chairs our IP Group, and IP partners in Tokyo and Palo Alto. We also added two former government enforcers from the Department of Justice and the Federal Trade Commission as partners in our Washington, D.C., office, enhancing our antitrust and white collar practices, as well as a competition partner to our London office. We also added a former Department of the Interior lawyer to our environmental group, focused on energy and renewables. Now, more than ever, clients can call upon Bingham to help defend and expand their businesses.

We thank you for all you have done to contribute to that success.

Best,

Global Litigation Co-Chairs,



Geoff Howard
San Francisco



Donn Pickett
San Francisco



Bob Dombroff
New York



Geoff Howard



Donn Pickett



Bob Dombroff

Litigation Accolades



With over 35 litigators listed in *Chambers USA*, sources say, “I would rate the firm as being at the top for trial capacity, issue identification, written product, pragmatism and talent in negotiations.”

- Antitrust – #1 in Massachusetts, #3 California, #4 Nationwide
- Commercial Litigation – #1 in Massachusetts, #4 in California
- Environmental – #1 in California, #3 in District of Columbia, #4 Nationwide
- Intellectual Property – #3 California
- Securities Litigation – #3 New York

— *Chambers USA*, 2013



“Bingham McCutchen’s practice in this field is especially well known for its creditor work, where it has a leading practice acting for bondholders affected by the financial crisis.” The “effective and thorough” ten-lawyer team handles a huge spread of work that takes in investment banking, distressed debt, structured products and cross-border issues.

— *Chambers UK*, Banking Litigation 2013



Bingham was named ‘Securities Litigation Law Firm of the Year’ by *U.S. News* and *Best Lawyers*. Other litigation groups ranked in Tier 1 Nationally included:

- Antitrust Law
- Appellate Practice
- Commercial Litigation
- Employment Law – Management
- Energy Law
- Environmental Law
- Franchise Law
- Insurance Law
- Litigation – Antitrust
- Litigation – Bankruptcy
- Litigation – Environmental
- Litigation – First Amendment
- Litigation – Real Estate
- Litigation – Securities
- Litigation – Tax
- Media and First Amendment Law
- Product Liability Litigation – Defendants

— *Best Lawyers* and *U.S. News and World Report*, 2013



Legal 500 recognized Bingham’s antitrust, environment litigation, financial services litigation and securities shareholder litigation practices.

— *Legal 500*, 2013



56 Bingham litigators were named in “Best Lawyers in America.” Our Antitrust Group received Tier 1 rankings in Boston, San Francisco and National.

— *The Best Lawyers in America*, 2013



Bingham’s U.S. litigation practice was ranked in *Benchmark Litigation’s* 2013 edition, noted as “highly recommended” in Massachusetts and “recommended” in California. In addition, Bingham’s Asian-Pacific litigation practice was ranked in the inaugural *Benchmark Asia-Pacific* 2013 edition as “recommended.”

— *Benchmark Litigation*, 2013



Named a “standout” in Class Action Litigation.

— *BTI Litigation Outlook Report*, 2014



“Bingham McCutchen (London) LLP has ‘in-depth EU antitrust and regulatory expertise and knowledge’. On-going matters include the representation of a major global financial institution undergoing European Commission and U.S. Department of Justice investigations into alleged anti-competitive behaviour in the credit default swaps market. Davina Garrod has ‘an encyclopaedic understanding of competition and merger control laws’.”

— *Legal 500*, 2013

Litigation Practices

- Antitrust, Competition and Trade Regulation
- Appellate
- Bankruptcy Litigation
- Entertainment, Media and Communications
- Environmental, Land Use and Natural Resources
- Financial Institutions Regulatory, Enforcement and Litigation
- Intellectual Property
- Labor and Employment
- Tax Controversy and Litigation
- White Collar Investigations and Enforcement
- London Litigation
- Hong Kong Litigation
- Japanese Practice
- Bingham Consulting



Antitrust, Competition and Trade Regulation

Group Leaders

With 35 partners and 80 professionals, including former enforcers in the United States, Europe and Japan, Bingham has one of the largest and most experienced competition groups in the world. We bring a comprehensive and fully integrated approach and a worldwide reach to all of our clients' complex competition matters, from government investigations to litigation to counseling on mergers, competitor collaborations, IP licensing, standard setting, distribution and other strategic issues.

Chambers USA ranks our Group in Band 1 in Massachusetts, Band 3 in California, and Band 4 nationally, with additional noted practitioners in Washington, New York and London. A client remarked, *"They are a fantastic and diverse firm with wide, deep experience."*

This past year, we were privileged to continue representing the world's leading companies in their most important, highest-profile competition matters.

2013 Representative Matters

Automotive Parts Investigations — Representing a manufacturer of automotive components in connection with multiple criminal investigations by the U.S. Department of Justice ("DOJ") into collusive conduct in the sale of automotive component parts, widely believed to be the largest cartel investigation in history.

Financial Institution — Representing an international financial institution in an investigation by the DOJ Antitrust Division, DOJ Fraud Division and CFTC regarding the setting of LIBOR, a benchmark interest rate, during the financial crisis. Similar investigations have been launched by a number of foreign enforcers, including the European Commission ("EC"), Swiss Competition Authority and others regarding several different LIBOR rates. We are handling the U.S. investigations and coordinating with co-counsel around the globe to represent the client in these investigations.

Genzyme — Serving as lead counsel for all defendants, including Sanofi/Genzyme, one of the world's largest biotech firms, in a complex civil matter involving international distribution rights for medical devices. The claimed damages are substantial and the regulatory regimes in the various countries involved vary greatly.

Global Financial Institution — Representing a leading financial institution and market infrastructure provider in the EC's priority antitrust investigation into the exchange trading and clearing of Credit Default Swaps and concomitant indices.

Intel — Representing Intel in consolidated nationwide class actions challenging Intel's sales and marketing practices for its microprocessors under federal and state antitrust laws. Following a three-day evidentiary hearing, the Special Master issued a 106-page Report and Recommendation to deny class certification and exclude the plaintiffs' expert. In July 2013, we represented Intel in a second three-day evidentiary hearing before the district court, requesting that class certification be denied consistent with the Special Master's Recommendation. The matter is now under submission. We are also representing Intel in a second major antitrust class action alleging a conspiracy among leading Silicon Valley technology companies not to cold-call one another's employees.



Leiv Blad

Washington, D.C.



Frank Hinman

San Francisco

JPMorgan Chase — Representing JPMorgan Chase in a complex restructuring of the leading European frozen food manufacturer, Findus, requiring in-depth advocacy and analysis before the EC. We convinced the EC that control had not been acquired earlier and that the deal would not give rise to material horizontal or vertical competition issues, and we achieved approval in record time.

Kayak — Represented Kayak in multiple merger control investigations (the UK, Germany, Austria, Ukraine, Cyprus) in the context of Priceline’s acquisition, and obtaining multiple unconditional approvals despite intense agency scrutiny and parallel antitrust investigations into retail’s most-favored-customer clauses and related behaviors in the online travel markets.

Lupin Pharmaceuticals — Representing an Indian pharmaceutical company in a series of pay-for-delay cases and related regulatory issues.

Luxury and Consumer Products Companies — Advising a wide variety of leading companies on U.S. and international distribution strategies, including online marketing, cross-border sales, and vertical price and non-price restraints designed to promote brand image and dealer support.

Global Manufacturer — Represented global manufacturer in a proposed acquisition in the medical device sector, including review of merger control rules in the EU, Brazil, China and the U.S. We also provided antitrust advice for implementation of a global marketing and distribution partnerships in certain medical technology markets, including responses to competition agency inquiries.

Qualcomm — Representing Qualcomm in an ongoing proceeding before the JFTC related to alleged violation of Japan’s Antimonopoly Act purportedly based on certain licensing provisions.

SanDisk — Representing SanDisk, a leading manufacturer of flash memory and founding member of defendant SD 3C, LLC, in a putative nationwide consumer class action alleging a price fixing conspiracy, as well as antitrust claims relating to standards development and licensing activities in relation to flash memory cards and devices. We are also representing SanDisk, as a non-party, in the related case filed by Samsung, claiming anticompetitive license agreements. Both cases were dismissed on statute of limitations grounds, and are on appeal.

Technology Company — Secured the closing of a Korea Fair Trade Commission investigation on behalf of a major American technology company. The investigation involved important substantive questions related to the intersection of competition and intellectual property law, and also cutting-edge procedural issues, such as the propriety of Korean regulators’ attempts to access and seize U.S.-based data.

Tempur-Pedic — Shortly after Tempur-Pedic announced its plan to acquire bedding giant Sealy Corporation for \$1.3 billion in September 2012, the FTC opened an investigation of the transaction out of concerns it would lead to undue market concentration in the U.S. bedding industry. The FTC staff threatened to block the deal based on what it characterized as “damning” evidence against the combination. Our antitrust team built and presented a case to the FTC in favor of the merger. On March 7, 2013, the Commission announced its decision to close the investigation and clear the deal without conditions.

Third Generation Partnership Platform — Representing Third Generation Partnership Project (“3GPP”) in a Sherman Act Section 1 case alleging abuses of the standardization process relating to the inclusion of positioning technology in “Long Term Evolution” technical specifications for wireless telecommunications.

Appellate

Group Leader

Bingham's appellate lawyers have substantial experience in analyzing and arguing the most complex legal issues for our clients in multiple industries. We offer a range of specific services beyond regular appeals, including petitions for interlocutory writs, review of administrative proceedings and representation of amici curiae. We provide advice to trial counsel on issues of law, preserving points for appellate review and briefing of important motions in trial courts. We have handled appeals from trial courts in almost every state as well as Washington, D.C., and have appeared in the U.S. Supreme Court, in every circuit in the U.S. Court of Appeals and in the U.S. Court of Claims. Our team includes two former U.S. Supreme Court clerks and a former assistant to the solicitor general of the United States.



David Salmons
Washington, D.C.

Representative Matters

Anadarko Petroleum (*Deepwater Horizon Oil Spill*) — Representing Anadarko in the *In re Oil Spill by the Oil Rig "Deepwater Horizon"* multidistrict litigation, which consists of hundreds of consolidated cases arising from the April 20, 2010, explosion, fire and sinking of the Deepwater Horizon, and the subsequent discharge of millions of gallons of oil into the Gulf of Mexico. Anadarko is named as a defendant in the litigation, and this case is considered to be the largest and most complex mass tort litigation in history.

Our appellate lawyers have been involved at all stages of the litigation, and working cooperatively with the environmental and litigation groups to plan and execute Anadarko's defense strategy. We filed a series of dispositive motions to dismiss, and after multiple rounds of briefing and oral argument, won dismissal of nearly all claims against Anadarko asserted by the state of Alabama, the state of Louisiana and the private plaintiffs, including claims for punitive damages and civil penalties under state environmental laws. We also won dismissal of all cross-claims against Anadarko for indemnity and contribution asserted by the other defendants in the case. We argued that state law is preempted by the Outer Continental Shelf Lands Act and the Clean Water Act, and that only federal law applies to the case. The district court agreed with our argument and dismissed all parties' claims under state law. The district court also dismissed all claims against Anadarko under the general maritime law, agreeing with our argument that Anadarko had no operational control over the Deepwater Horizon.

Our appellate lawyers successfully defended the district court's choice of law and preemption rulings in a hearing on petition for writ of mandamus to the U.S. Court of Appeals for the Fifth Circuit. We also briefed and argued the same issues in an appeal brought by states and local governments in the Fifth Circuit. In February 2014, the court unanimously handed Anadarko a complete victory, upholding the district court's decision dismissing all state-law claims. In December 2013, we argued another appeal before the Fifth Circuit from a summary judgment of Anadarko's liability under the Clean Water Act, which remains pending.

East Ramapo Central School District — Representing East Ramapo Central School District in a series of related cases in New York state and federal courts. In a putative federal civil rights class action suit in the U.S. District Court for the Southern District of New York, nearly 400 private plaintiffs have alleged that the school district is violating the federal Establishment Clause and Equal Protection Clause in several ways, and allege violations of other state and federal laws. We moved to dismiss the plaintiffs' ten-count complaint, and in September 2013, the district court dismissed all but two counts. We have filed a motion to reconsider the district court's ruling, and the court will rule on the reconsideration motion in March 2014 to decide whether any claims in the case

may proceed. In related cases, the New York Commissioner of Education has taken issue with some of the same conduct by the school district that prompted the federal class action. Issues include the lawfulness of private-placements of disabled students in private religious schools under the Individuals with Disabilities Education Act (“IDEA”) and the lawfulness of school district sales and leases of public property to religious schools. On behalf of the school district, we have filed Article 78 Appeals from the Commissioner’s adverse administrative orders prohibiting the school district from agreeing with parents to place their children in mutually acceptable special education schools, and also appealed from another administrative ruling related to the school district’s real estate contracts. In August 2013, we obtained a preliminary injunction prohibiting the commissioner from enforcing an administrative order annulling the school district’s lease of one of its buildings to a local parochial school. Our Article 78 appeals remain in pending in the New York Supreme Court, Albany County.

Finally, we have also filed a breach of contract action against the school district’s liability insurer, the New York School Insurance Reciprocal, in Nassau County Supreme Court. The insurer denied the school district coverage and refused to reimburse the school district for its defense of the federal class action. We filed a motion for summary judgment that the insurer is obligated to provide a defense under the policy, and the Supreme Court granted our motion.

Republic of Iraq — In two oil brokers’ breach-of-contract suits against our client the Republic of Iraq, the U.S. Court of Appeals for the Ninth Circuit denied en banc review and the U.S. Supreme Court denied certiorari, preserving the client’s 2-1 victory. Plaintiff oil brokers sued Iraq for allegedly breaching a contract to deliver oil. The district court refused to dismiss the suit. Over a fierce dissent, the three-judge panel reversed and held that the court lacked jurisdiction under the Foreign Sovereign Immunities Act. Plaintiffs argued that the decision furthered a conflict with other circuits, but the defense team, including Bingham, successfully argued that the decisions could be harmonized and the case was a poor vehicle to resolve any conflict.

Major Automaker — Successfully defended major automaker on question of first impression in the California Court of Appeal. A loaner vehicle, provided by a dealer, crashed and plaintiffs sued the automaker and the dealer for product liability and the dealer based on the dealer’s independent negligence. All product liability claims were settled, but the dealer sued our client, the automaker, for indemnity. The Court of Appeal affirmed summary judgment for our client, holding that the governing statute was not intended to make manufacturers pay for claims of dealer negligence and that our client should not have to pay when any judgment against the dealer will be attributable only to the dealer’s negligence.

Various New England News Organizations — The Maine Supreme Judicial Court unanimously decided that Maine’s Freedom of Access Law required public release of transcripts of 911 calls related to pending criminal cases where the state cannot show any non-speculative prejudice to its ability to investigate the case. We filed an amicus brief in the case on behalf of a number of news organizations, including The Reporters Committee for Freedom of the Press, the New England First Amendment Center, the Maine Association of Broadcasters, the Maine Freedom of Information Coalition, the Maine Press Association and The Associated Press. The amicus brief opposed the attorney general’s argument for a blanket exception to disclosure for any pending criminal action and made several unique points about the purpose of the act and its presumption in favor of openness that the court adopted in its decision. The decision’s strong language in favor of disclosure should be useful for media and other public representatives in future open-records cases in the state.

Bankruptcy Litigation

Bingham's cross-border financial restructuring practice has Band 1 placement in *IFLR 1000*, *Chambers UK*, *Chambers Asia*, *Legal 500 UK* and *Legal 500 Asia Pacific*, among others. Our bankruptcy litigators principally represent banks, insurance companies, other financial institutions and major creditors in matters ranging from complex Chapter 11 proceedings to arguments in the appellate courts concerning the interpretation and application of sections of the Bankruptcy Code. We also represent bankruptcy trustees in complicated cases and counsel clients who find themselves sued by bankruptcy debtors.

Our bankruptcy litigators have substantial experience with both voluntary and involuntary bankruptcy filings as well as motions to convert or dismiss counterproductive Chapter 11 cases. We prosecute contested matters, adversary proceedings, creditors' rights litigation and plan contests in bankruptcy courts throughout the United States. We represent secured creditors in connection with debtor-in-possession financings, 363 sales and valuation disputes. We also advise noteholders, lenders, debt investors, creditors' committees and other financial institutions on restructurings and insolvencies as a single, united team around the globe with professionals "on the ground" in the U.S., Europe, and Asia and strong relationships in Latin America. *(For further details of our international experience, please see pages 32–35)*

Representative Matters

Descriptions begin with the matter name, not the name of the client since our group members represent bondholders, noteholders, committees, etc. (which can range from five to 50 different companies).

In Re Tribune — Defending former shareholders of the Tribune Company ("Tribune") in actions brought by Tribune's creditors' committee/liquidating trust as well as certain other creditors. Plaintiffs assert that payments made to Tribune's former shareholders in connection with the leveraged buyout of Tribune were fraudulent transfers and seek to recover those amounts. Our client group has more than \$500 million of exposure. The litigation is ongoing and currently consolidated in the U.S. District Court for the Southern District of New York, where we have been appointed by the court to the defendants' executive committee.

Land America — Represented the trustee of a litigation trust formed pursuant to LFG's confirmed Chapter 11 plan to pursue claims against, among others, former directors and officers. LandAmerica suffered a high profile collapse after more than \$290 million of customer-deposited funds became frozen and unavailable. The LandAmerica trustee asserted that the directors and certain officers of LandAmerica breached their fiduciary duties by failing to address this crisis adequately, leading to lost enterprise value and other damages. On March 1, 2012, the U.S. Bankruptcy Court for the Eastern District of Virginia denied the defendants' motions to dismiss, holding that a failure to timely and adequately respond to a corporate crisis could expose the directors and officers to liability. Following the decision and several days of mediation, a very favorable settlement was procured for the trust beneficiaries.

Group Leaders



Michael Reilly
New York



James Roome
London



Jeffrey Sabin
New York

ATP — Represented substantial debtor-in-possession lenders in the bankruptcy case of ATP Oil & Gas Corporation filed in the U.S. District Court for the Southern District of Texas. ATP was engaged in the acquisition, development and production of offshore natural gas and oil properties, primarily in the Gulf of Mexico. We negotiated a \$600 million-plus debtor-in-possession financing facility that allowed ATP to refinance the existing first-lien debt and provided ATP with up to \$275 million in additional liquidity during the bankruptcy case. The debtor-in-possession lenders have now acquired most of the assets of ATP in a credit bid under Section 363 of the Bankruptcy Code. The DIP lenders formed a new company, Bennu Oil & Gas, LLC, to acquire and develop the assets purchased from ATP, where we also served as corporate counsel, and included a \$350 million senior secured term loan facility. The sale was approved by the Bankruptcy Court on October 17, 2013 and closed on November 1, 2013.

LightSquared — Serving as counsel to exit lenders and equity holders in connection with the Debtors' proposed plan for the restructuring of a telecom company in Chapter 11.

Southern Montana Electric Generation & Transmission Cooperative Bankruptcy — Representing the secured creditor group of a rural electric cooperative in Chapter 11 proceedings in Montana.

Cahaba Forests — Secured summary judgment in favor of plaintiff Cahaba Forests, LLC ("Cahaba") and third-party defendants Hancock Natural Resource Group, Inc., John Hancock Timber Resource Corporation and Hancock Forest Management ("Hancock Parties") on all counts of Cahaba's declaratory judgment action, as well as on all of the defendants' counterclaims and third-party claims against the Hancock Parties. Cahaba also defeated the cross-motion for partial summary judgment brought by the defendants — 15 individual landowners who own the property as tenants in common. The case centered on the continued validity of Cahaba's long-term sublease of 24,000 acres of timberland in Alabama following the sublessor-lessee's bankruptcy in 2009. The U.S. District Court for the Middle District of Alabama agreed with us that the bankruptcy of the sublessor-lessee, Bowater Alabama, LLC ("Bowater"), and Bowater's deemed rejection of the primary lease and sublease a few months later did not automatically terminate the primary lease or sublease, but constituted a breach thereof. The court also granted Cahaba summary judgment on all of the defendants' counterclaims and third-party claims, including their claims against Cahaba and the Hancock Parties. In essence, the defendants' counterclaims against Cahaba asserted that Cahaba illegally occupied and used the property following the leases' deemed rejection, and that Cahaba fraudulently misrepresented and suppressed its sublease relationship with Bowater and the leases' deemed rejection. The defendant property owners have filed a notice of appeal to the U.S. Court of Appeals for the Eleventh Circuit.

Experian — Secured a ruling from the U.S. Bankruptcy Court for the Eastern District of Virginia ordering credit report provider Experian to drop its lawsuit in federal district court in Illinois against our client the LandAmerica Credit Services Liquidation Trustee. The bankruptcy court also ordered discovery on the issue of whether Experian should be sanctioned for bringing its action in Illinois. The bankruptcy court held that Experian's Illinois lawsuit, which alleged that the LandAmerica Credit Services Liquidation Trustee had a conflict of interest, was in direct contravention of the LandAmerica bankruptcy plan, which resolved trustee conflicts of interest. The bankruptcy court also held that Experian's Illinois filing violated the exclusive jurisdiction provisions of the plan and the "Barton Doctrine," which requires leave of the bankruptcy court before a suit against a bankruptcy court-appointed trustee can be commenced in another forum. The bankruptcy court rejected Experian's arguments that the court could not adjudicate our client's motion to enforce the bankruptcy plan on the alleged grounds that the court lacked subject matter jurisdiction or final judgment authority in light of the Supreme Court decision in *Stern v. Marshall*.

Foxwoods Resort and Casino — After four years of negotiations, the Native American tribe that owns Foxwoods Resort Casino closed a deal that restructures \$2.3 billion in debt and gives the group additional funds as it targets new projects. A series of connected deals reduces the Mashantucket Pequot Tribal Nation's ("MPTN") debt by \$550 million and gives it a new \$20 million term loan, as well as a \$5 million revolving credit line. We also represented bond insurers National Public Finance Guarantee Corp. and Assured Guaranty Municipal Corp. The case posed many novel questions of law concerning tribal sovereignty, the mechanisms to restructure the debts of an Indian tribe, the interplay of the Indian Gaming Regulatory Act and complex financings, and the transformation of ad hoc financing into a cohesive capital structure in the wake of the financial crisis.

Quebecor World (USA) Inc. — The U.S. Court of Appeals for the Second Circuit affirmed the district court's and bankruptcy court's decisions granting summary judgment to our clients, dismissing a \$376 million preference action brought by the Official Creditors' Committee of Chapter 11 Debtors Quebecor World (USA) Inc. ("Quebecor"). In 2000, Quebecor issued \$371 million in private placement notes governed by a Note Purchase Agreement. In October 2007, Quebecor made the strategic decision to exercise an option under the Note Purchase Agreement first for the issuer to prepay the \$315.6 million in notes then outstanding, but subsequently, instead, for the issuer's affiliate to purchase the notes. The noteholders received approximately \$376 million, including principal, interest, and a make-whole amount. The district court and the bankruptcy court each held that the disputed payment was protected from avoidance by the plain text of the Section 546(e) safe harbor as a "settlement payment" and as a transfer in connection with a securities contract. The Second Circuit affirmed, upon finding it undisputed that the transfer was for the purchase of the notes, and therefore was "clearly" a transfer in connection with a securities contract (i.e., the Note Purchase Agreement). This is the first Circuit Court decision to protect a transfer from avoidance based on the "securities contract" clause of the safe harbor. Although the court reiterated the definition of "settlement payment" that it had established in its 2011 Enron decision (also a Bingham victory) — namely, the transfer of cash made to complete a securities transaction — the court did not need to decide whether the disputed transfer was a "settlement payment."

Entertainment, Media and Communications

Group Leader

Bingham's Entertainment, Media and Communications group provides a full range of litigation services, including state and federal trial and appellate work, arbitration and mediation, to celebrities, actors, directors, producers, writers, recording artists, executives, production and distribution companies, major motion picture studios, authors, publishers and communications companies. We advise and advocate on various issues affecting these industries, including enforcement of secured rights; profit participation disputes; tax concerns; patent, copyright and trademark infringement; guild issues; delivery, service and payment disputes; advertising; rights of publicity and privacy; electronic transmission, publication and data storage; and employment and labor matters.



Jon Loeb
Santa Monica

We also have extensive experience in virtually all areas of First Amendment litigation, including defamation; invasion of privacy; subpoenas of reporters, authors and academics; and constitutional and statutory right-of-access cases and copyright claims. We also perform prepublication review for newspapers, magazines, book publishers and websites.

Representative Matters

Agudas Chasidei Chabad — Obtained a victory for client Agudas Chasidei Chabad when U.S. District Chief Judge Royce C. Lamberth imposed civil contempt sanctions against the Russian Federation in the amount of \$50,000 for each day it refuses to return a large, irreplaceable collection of Jewish religious texts, artifacts and other materials to Chabad. This is the latest successful ruling in a landmark nine-year legal battle. After the U.S. Court of Appeals rejected Russia's assertions of sovereign immunity in 2008, Russia declined to further participate in the case. In July 2010, Judge Lamberth entered judgment in favor of Chabad and ordered the Russian Federation to return a large library of religious books seized during the Bolshevik Revolution and an archive of religious manuscripts and other materials that were stolen by the Nazis in Poland and then seized as "trophy documents" by the Soviet Red Army during the waning days of World War II. Russia failed to comply. Judge Lamberth imposed civil contempt sanctions in January 2013 over objections from the DOJ, which argued that the court didn't have the authority to enter sanctions and warned that it could threaten U.S. foreign policy interests.

Avon Rubber plc — Secured the dismissal of a false advertising suit brought by a competitor. Our client manufactures rubber liners and tubing used in the milking of dairy cows. The lawsuit, brought by Conewango Products Corporation, asserted claims for false advertising under the Lanham Act and unfair competition based on violation of California's Sherman Law. Avon moved to dismiss the complaint, which raises novel issues involving an alleged false representation of FDA compliance. Judge Michael W. Fitzgerald of the U.S. District Court for the Central District of California granted Avon's motion to dismiss the action.

Investor's Business Daily — Representing the defendants in one of the first libel cases based on statements posted on Twitter. Mark Grimaldi, an investment advisor and co-publisher with Suze Orman of an investment newsletter, sued *Investor's Business Daily, Inc.* ("IBD") and IBD reporter Trang Ho for defamation and related claims. Grimaldi's claims against Ho were based on "tweets" she posted on Twitter referring to Grimaldi as a liar. His claims against IBD were based on an article written by Ho and published by the paper. On September 3, 2013, the New York Supreme Court dismissed the claims based on Ho's tweets, ruling that the statements were protected opinion. The court ruled that the complaint stated a claim arising out of the separately published IBD article, and that portion of the ruling currently is on appeal.

The Boston Globe — A Massachusetts court issued a 47-page decision in an impressive trial victory, ruling that the names of public employees who settle claims against the Commonwealth must be made public. The case was brought by the *Boston Globe* after the Commonwealth refused to disclose the names of public employees who received more than \$3 million in settlements of claims against their state employers. The state argued that public employees have a privacy right to protect their identities when settling claims against the state, and that the information was exempt from disclosure under state law as personnel records.

The Boston Globe — Represented the *Boston Globe* in an action under the Massachusetts state public records law seeking the names of public employees who have been paid state funds in settlements of claims and in severance packages. The *Boston Globe* sued a number of state agencies under the Public Records Law for refusing to disclose the names of public employees who had entered into settlement agreements with the Commonwealth of more than \$3 million. After holding a trial on the matter, the Massachusetts Superior Court issued a 45-page decision ruling that the employees' names and the settlement amounts were public records, and rejecting the Commonwealth's arguments that the information was statutorily private or protected personnel records. The court issued a further ruling on October 23, 2013 denying the defendants' motion to modify the judgment.

The Boston Globe — Represented the *Boston Globe* in a matter connected to the trial of Boston mobster James Joseph "Whitey" Bulger, Jr. Before trial, Bulger listed several *Boston Globe* reporters as witnesses in the case. The reporters, who had written extensively about Bulger's criminal history, would have been barred from attending or reporting on the trial under the terms of the witness sequestration order. We prevailed in our motion to have the reporters exempted from the court's sequestration order, given the overriding First Amendment interest. In an earlier ruling, the court granted the *Boston Globe*'s motion to modify a confidentiality order that applied to evidence in the case.

The Boston Globe — Successfully argued a motion for summary judgment on behalf of the *Boston Globe* in a case that involved allegations of libel brought by William Monahan, a former chairman of the Massachusetts Civil Commission. Monahan sued the *Boston Globe* over an article that described his real estate dealings with a notorious Boston organized crime member. The court ruled that the article was "substantially true in all material respects" and that "even if some aspect of the article can be considered false and defamatory, Monahan has not presented any evidence of actual malice." The case is on appeal.

The Boston Globe — Represented *Boston Globe* in a libel action brought by a former U.S. Senator's Chief of Staff based on a newspaper article that reported he had "crashed" a presidential campaign event, had stolen campaign documents, was driving a stolen car, and had an extensive criminal background. We successfully moved for summary judgment and obtained the dismissal of the case.

Environmental, Land Use and Natural Resources

Group Leaders

Bingham's Environmental, Land Use and Natural Resources group has the breadth and depth to handle nearly any environmental challenge, including project permitting, high-stakes environmental litigation, compliance, counseling and transactional support. Our environmental and natural resources lawyers are recognized for their knowledge and experience with the development, implementation and real-world enforcement of environmental laws at the federal, state and local level. **Our award-winning practice includes citations for excellence from *Chambers USA*, *U.S. News and World Report* and *Best Lawyers*, and *Legal 500 U.S.***



Jim Dragna
Los Angeles

Representative Matters

Anadarko Petroleum (*In re Deepwater Horizon*) — Serving as coordinating national counsel for Anadarko Petroleum Corporation and Anadarko E&P Company LP (“Anadarko”) with respect to the explosion and resulting release of hydrocarbons relating to the Deepwater Horizon incident in the Gulf of Mexico, one of the largest environmental matters ever to take place in the U.S. Several media outlets have covered developments in the case, including CNN, the *Wall Street Journal*, *Forbes* and *Law 360*. We continue to defend Anadarko in the proceeding, including the defense of the federal governments’ OPA and Clean Water Act claims as well as defending the favorable decisions on appeal.



Ella Foley Gannon
San Francisco

Anadarko Petroleum Corporation — Secured the dismissal of Anadarko Petroleum Corporation from asbestos litigation filed in Los Angeles Superior Court. The plaintiff sued Anadarko and other companies, alleging that he was exposed to asbestos at various facilities during his career as an insulation worker, which caused him to contract terminal lung cancer. The plaintiff alleged that one of the facilities at which he was exposed to asbestos was owned and operated by Kerr-McGee Corporation, a company that Anadarko acquired in 2006. We secured an admission by a third-party company that it, rather than Kerr-McGee Corporation, was the company that owned and operated the facility at issue. Based on this admission, we moved for summary judgment and moved to quash the deposition of Anadarko’s representatives. Unable to respond to the evidence cited in our motions, and with trial eight weeks away, the plaintiff agreed to dismiss Anadarko from the case.

Anadarko Petroleum Corporation (*In re Tronox*) — Representing Anadarko and Kerr-McGee Corporation in two adversary proceedings filed by the United States and various Tronox entities in the U.S. Bankruptcy Court for the Southern District of New York. The claims arose from the spinoff of Tronox from Kerr-McGee in 2005. Anadarko acquired Kerr-McGee in 2006. The plaintiffs allege that the spinoff was part of a plan to separate and shed certain environmental and tort legacy liabilities related to various former businesses, including chemicals, wood treating and nuclear mining. The plaintiffs and the United States seek more than \$16 billion in damages. The case is awaiting final judgment. The litigation has spawned multiple disputes across the U.S. over Tronox’s alleged environmental liabilities, and Tronox’s failure to perform ongoing environmental obligations.

Celanese Corp. — Representing Celanese Ltd. (“Celanese”) and its affiliates in proceedings related to the Remedial Investigation and Feasibility Study of the Lower Passaic River and a related Removal Action. Celanese, which is one of more than 200 parties alleged to be responsible for contamination in the Lower Passaic River, recently agreed to enter into a settlement with the State of New Jersey, resolving claims related to response

costs and certain natural resource damages at the site in exchange for a payment of \$195,000. The eventual clean-up of the river is expected to cost more than \$500 million.

Cogentrix Energy — Represented Cogentrix Energy in its acquisition of five power generation facilities in California, together accounting for 320 megawatts, including the 122-megawatt Midway natural gas-fired plant in Firebaugh, Calif., and the CalPeak portfolio of four natural gas-fired plants totaling 198-megawatts in Escondido, Firebaugh, San Diego and Vacaville, Calif.

Competitive Power Ventures — Represented Competitive Power Ventures (“CPV”), a leading North American electric power generation development and asset management company, as special counsel regarding the interconnection of the Sentinel project located in Riverside County, Calif., as well as assisting in obtaining legislation to address a pending air permitting moratorium imposed by the air district as a result of unrelated litigation between the South Coast Air Quality Management District and the Natural Resources Defense Council. On behalf of CPV, we finalized the Interconnection Agreement, obtained final Public Utilities Commission Approval of the power purchase agreement, and supported financial close of the project allowing the project to begin commercial operation in June 2013.

Imperial County Air Pollution Control District — Represented the Imperial County Air Pollution Control District (the “District”) with respect to the District’s efforts to defend its promulgation of new regulations addressing the control of particulate matter sources. The U.S. Environmental Protection Agency rejected a portion of these rules premised on an interpretation of its Exceptional Events policy, which gives rise to potential legal issues. We argued the case to the U.S. Court of Appeals for the Ninth Circuit and represented the District in the associated mediation ordered by the Ninth Circuit. The mediation was successful in creating a path for resolving the outstanding issues and promulgating rules that meet the expectations of all of the participating agencies.

Imperial Irrigation District — Representing the Imperial Irrigation District (“IID”), a publicly owned electric utility, in complex negotiations involving interconnection of multiple wind and solar renewable energy projects in adjacent electric balancing authority areas. Our work protects IID’s service area and allows for the development of new models to enhance cooperation between adjacent transmission control areas and allows for the development of transmission that minimizes environmental impacts and maximizes operational efficiency.

Kuraray — Represented Kuraray in its \$543 million acquisition of DuPont’s Glass Laminating Solutions/Vinyls plus the value of the inventories. Japan-based Kuraray is a global specialty chemical company that was founded in 1926 and has overseas subsidiaries in 19 countries and regions outside of Japan. DuPont Glass Laminating Solutions/Vinyls has about 600 employees with six manufacturing sites in the U.S., Europe and Asia that serve more than 350 customers worldwide. We provided environmental due diligence on the transaction.

Metropolitan Water District of Southern California — Defended the Metropolitan Water District of Southern California (“MWD”) against a suit by the San Diego County Water Authority (“SDCWA”), one of MWD’s member agencies, over the MWD’s water rates. We also serve as liaison counsel for the other MWD member agencies opposed to the SDCWA’s claims that have joined the suit. The rates are based on a rate structure arrived at in 2001 with input from all cities and water agencies comprising the MWD. The SDCWA’s suit contends that the MWD, the SDCWA’s largest supplier of water, improperly overcharges for the transportation of water and uses that money to subsidize the cost of the water itself. The SDCWA contends that this violates the California Constitution, other state law, and standard water utility practice. A bench trial was held in San Francisco Superior Court in December 2013.

Metropolitan Water District — Successfully defended a group of Southern California water contractors, including long-time client Metropolitan Water District (“Metropolitan”), on appeal before Third District Court of Appeal in *Alameda County Flood Control & Water Conservation District, Zone 7, et al. v. California Department of Water Resources*. This is a significant win for Metropolitan and the other contractors and will spare California residents from water rate increases that could have totaled tens of millions of dollars annually. The case began in 2005 when a group of 14 Northern California water agencies sued the California Department of Water Resources, challenging how it allocated the costs of the State Water Project to Metropolitan and 12 additional Southern California-based water contractors. At issue was the interpretation of a contract dating back to the 1960s. The court agreed with the trial court’s ultimate resolution of the matter, and its decision was even more favorable toward the department’s and the intervenors’ position than the lower court’s decision.

National Biodiesel Board — Prepared comments for the National Biodiesel Board (“NBB”) on the Renewable Fuel Standard (“RFS2”), which began with comments concerning EPA’s initial RFS2 rule in 2010. There have been numerous subsequent rulemakings by EPA, including annual volume obligations, setting volume for 2013 biomass-based diesel, and proposing a new “quality assurance program” that is unprecedented for EPA. NBB has defended and supported the volume mandates for biomass-based diesel and advanced biofuels as required under the Act against ongoing challenges before the agency and before the U.S. Court of Appeals for the D.C. Circuit. Biomass-based diesel — an advanced biofuel — is required to show a 50 percent reduction in lifecycle greenhouse gas emissions compared to baseline petroleum fuel. The issues supported by NBB have been upheld or voluntarily dismissed. Most recently, in January 2013, the D.C. Circuit upheld the 2012 advanced biofuel volume that NBB defended, although the cellulosic biofuel volume was vacated. For compliance year 2013, EPA was required to propose the volume requirement for biomass-based diesel based on a set of factors listed in the Clean Air Act. NBB supported EPA’s final rule, which provided an increase for biomass-based diesel. EPA denied petitions for reconsideration on the decision, and a challenge brought in the D.C. Circuit, in which NBB intervened to support EPA, was voluntarily dismissed. NBB has also intervened in support of EPA on a challenge to the standards for 2013.

Schnitzer Steel Industries — Representing Schnitzer Steel Industries, Inc. and MMGL Corp. in a multi-party Superfund enforcement action and allocation process involving the Portland Harbor Superfund Site in Portland, Oregon. EPA has named our clients and other entities as potentially responsible for sediment contamination over an 11-mile stretch of the Willamette River. While the remedy has not yet been selected, some sources are reporting that the total clean-up costs at the site could exceed \$1 billion. We also represent our clients in responding to demands for reimbursement from the working parties at this site and claims for alleged natural resource damages by trustees including federal and state agencies and several tribes.

SolarReserve LLC — Secured a summary judgment on all claims in a matter involving the Rice Solar Energy Project, a 150-megawatt solar thermal power plant with storage capacity under development in the California desert by client SolarReserve. Approval of the project was challenged under the National Environmental Policy Act, the National Historic Preservation Act, the Federal Land Policy and Management Act, and the Religious Freedom Restoration Act. We are also assisting with complex interconnection work for a facility that must move from the Western Area Power Authority across an intertie to the CAISO transmission system. Negotiation of arrangements to allow these transmission arrangements necessitated several agreements not previously put in place.

Financial Institutions Regulatory, Enforcement and Litigation

Bingham's Financial Institutions Regulatory, Enforcement and Litigation Group includes nearly 130 dedicated lawyers who have significant depth and experience advising on the complex issues facing financial institutions. The group advises about the creation and regulation of financial products, provides guidance through regulatory investigations with every kind of financial services regulator, and handles significant and complex litigation throughout the United States and abroad. By ably representing clients in each of these areas, we provide a more integrated approach to client service and better align with clients' needs.

Chambers USA has noted the group has an “excellent understanding of big picture and complex cases” and is “commended for its securities litigation and regulatory expertise.” The group has 12 *Chambers*-ranked lawyers, is ranked for Securities Litigation in New York and is nationally ranked for both Financial Services Regulation (Broker Dealer Compliance) and Securities Regulation.

Litigation and Arbitrations

(U.S. matters only; for London and Hong Kong financial litigation matters, see pages 32–33)

Access Pharmaceuticals — Obtained the dismissal of all claims asserted against clients Access Pharmaceuticals, Inc., MacroChem Corporation and certain of the companies' officers and directors, in a purported class action and shareholder derivative action filed in the U.S. District Court for the Eastern District of Pennsylvania. Among other claims, the complaint alleged causes of action for breach of fiduciary duty and aiding and abetting breaches of fiduciary duties in connection with the failure of pharmaceutical company, Genaera Corp. Less than a month after oral argument on our motion to dismiss, the court issued its written memorandum dismissing all claims as against all defendants, with prejudice.

Aetna — Won an appeal for Aetna Life Insurance Co. in New York state court in Manhattan. The appellate panel sustained all of Aetna's claims against a non-bankrupt affiliate of Lehman Brothers Holdings Inc. and the individuals who acted on its behalf in a case seeking more than \$100 million in compensatory damages as well as multiple damages and attorneys' fees under the Connecticut Unfair Trade Practices Act. The case is based on allegations that, on the days preceding Lehman Brothers' collapse in September 2008, the defendants stuffed risky subprime securities, taken from Lehman's own inventory, into a reinsurance trust account maintained for Aetna's benefit, even though Connecticut insurance law and the relevant contracts required that the trust account hold only conservative investments. The appellate court ruled that Aetna's case could proceed on all claims asserted against all defendants.

Bank of America — Succeeded in blocking class certification of all claims by a putative class of former Bank of America customers in the U.S. District Court for the Eastern District of Arkansas. The putative class members alleged that Bank of America wrongfully charged certain fees related to account seizure actions by third-party creditors and wrongfully deducted those fees prior to remitting funds required by the seizure. The court denied

Group Leaders



Tim Burke
Boston



Susan DiCicco
New York



Jordan Hershman
Boston

class certification to two proposed nationwide classes, and also denied certification to a proposed Arkansas class of customers alleging additional claims of violation of Arkansas' deceptive trade practices statute. The court ruled that applying the law of more than 30 jurisdictions where Bank of America conducts business would require individualized review of each case on a nationwide basis, which would defeat the purpose of a class action. The court further ruled that the plaintiff failed to sufficiently identify a class of Arkansas plaintiffs who have been subject to the same alleged violations and failed to demonstrate that individual adjudication of the Arkansas claims would be impracticable. We also obtained dismissal of the majority of the named plaintiff's individual claims, leaving the plaintiff with only a \$47.50 breach of contract/conversion claim. The court held that the plaintiff's claim as to the timing or set-off of the bank's deduction of its fees was preempted by the National Bank Act ("NBA"). This is only the second decision in the country to address this issue and the first since the enactment of the Dodd-Frank Act, making this opinion an important reaffirmation of federal preemption in the post-Dodd-Frank world. Likewise, the court ruled that the deceptive trade practices act claim, based on an alleged failure to disclose, was also preempted by the NBA and Office of the Comptroller of the Currency regulations.

Battery Ventures — Obtained the dismissal of all claims asserted against venture capital clients Battery Ventures, Index Ventures and two of their partners in a securities case filed in the U.S. District Court for the Central District of California. The plaintiff is a wholly owned subsidiary of WPP plc, the largest advertising company in the world. In 2009, WPP brought claims for federal securities fraud as well as direct and derivative breach of fiduciary duty claims against high tech startup company, Spot Runner, Inc., and various of its officers, directors and investors, including our clients Battery Ventures, Index Ventures and their partners. In two prior rulings, we previously obtained the dismissal of the federal securities claims asserted against its clients, even as the court sustained WPP's claims asserted against other defendants. In the court's most recent ruling, we obtained the grant of its motion to dismiss all remaining state law claims asserted against its clients, the Battery and Index defendants, despite the fact that the court again sustained plaintiff's claims against other defendants.

Credit Suisse — In this series of actions, some of the world's largest institutional investors sought to hold Credit Suisse responsible for more than \$2 billion in losses they incurred on asset-backed securities ("ABS") issued by subsidiaries of National Century Financial Enterprises ("NCFE"). Credit Suisse was one of the placement agents for NCFE, whose management engaged in a massive fraud. The underlying cases were pending in federal courts in Arizona, New Jersey and Ohio, and arose from the collapse of NCFE and its subsidiaries which issued ABS backed by healthcare receivables. Our team defended Credit Suisse in the NCFE cases since they began in 2003. In March 2012, the MDL court granted in part Credit Suisse's motion for summary judgment with regard to all the noteholder investors' negligent misrepresentation claims, as well as several blue sky law claims. After the summary judgment decision was rendered, pre-trial proceedings were concluded. We successfully moved to transfer venue from Arizona and New Jersey and all the cases were consolidated for trial in the U.S. District Court for the Southern District of New York. The cases settled shortly before trial was scheduled to begin in April 2013.

Credit Suisse — Our firm represents four defendants — Credit Suisse Securities (USA) LLC, Column Guaranteed LLC, Column Financial, Inc., and Walker & Dunlop, LLC — in a commercial case in the Circuit Court of Montgomery County, Maryland involving claims of breach of contract, promissory estoppel, unjust enrichment, and unfair competition. This case concerns \$2 billion in financing provided to acquire the Beverly nursing home chain in 2006 and the subsequent issuance and sale of commercial mortgage-backed securities. On April 30, 2013, the court granted Defendants' summary judgment motion in part and dismissed both of the plaintiff's promissory estoppel claims and one of the plaintiff's two unjust enrichment claims. The case proceeded to trial before a Maryland jury in July 2013, and Bingham obtained the dismissal of three more claims — including both of the plaintiff's claims for unfair competition — on a motion for directed verdict. While the jury initially found for the

plaintiff on the two remaining claims for breach of contract and unjust enrichment, Bingham was able to secure the vacatur of the larger unjust enrichment award, which reduced the amount of the final judgment to \$1.75 million. This judgment amount was vastly lower than the \$91 million that the plaintiff sought during the trial itself.

Credit Suisse — Representing Credit Suisse in a class action brought by the New Jersey Carpenters Health Fund alleging claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 on behalf of purchasers of certain Home Equity Mortgage Pass-Through Certificates that were issued by Credit Suisse in 2006. We are representing all defendants (including the individual directors and officers). The primary issue in this case is whether underwriting guidelines were disregarded in making the relevant mortgage loans. This case has raised numerous procedural issues and expert issues. It is one of the first generation of class actions related to subprime mortgage-backed securities offerings and alleges inaccurate and misleading disclosures in the offering materials.

David Lerner Associates — Won a major victory for David Lerner Associates (“DLA”), a Long Island-based broker dealer, in a securities class action in the U.S. District Court for the Eastern District of New York relating to the issuance and sale of a series of non-publicly traded REITs known as Apple REITs. The Apple REIT transactions comprised roughly half of DLA’s business over the past decade, so this was a true “bet the company” litigation. The class action was originally filed in 2011 and alleged non-fraud claims under the Securities Act of 1933 relating to five Apple REIT deals issued between 2006 and 2010. After extended procedural maneuvering involving a successful motion to transfer one class action filed in New Jersey and the removal of a second New York state class action, we filed a motion to dismiss the consolidated class action complaint, taking the lead on the briefing over the issuer. In a thorough 57-page opinion released on April 3, 2013 that adopted almost every aspect of our argument, the court granted the motion and dismissed the complaint with prejudice and without leave to replead.

Deloitte — Representing Deloitte & Touche LLP in securities class actions, shareholder derivative suits and regulatory investigations relating to payments by Diamond Foods for its walnut growers in its fiscal years 2010 and 2011. Plaintiff in the consolidated securities class action alleged that Diamond improperly deferred these payments and brought claims for securities fraud against Diamond, its officers and Deloitte. On November 30, 2012, we won a motion to dismiss all claims asserted against Deloitte on the ground that plaintiff did not adequately allege that Deloitte acted with scienter under Rule 10b-5 and later convinced plaintiff’s counsel not to attempt to amend to assert claims against Deloitte. The action subsequently settled without payment by Deloitte. After the Diamond defendants settled the state shareholder derivative action, we negotiated separately with plaintiffs’ counsel to obtain their agreement to dismiss all claims against Deloitte with prejudice and without payment by Deloitte. We continue to represent Deloitte in regulatory investigations and in the plaintiff’s appeal of dismissal of the federal shareholder derivative action.

Freddie Mac — Won an appeal for Freddie Mac in the U.S. Court of Appeals for the Second Circuit. Three months after oral argument, the Second Circuit affirmed the dismissal of all securities fraud claims asserted against Freddie Mac in that alleged securities fraud class action, which arose out of the 2008 financial crisis and sought billions of dollars in alleged damages. The court also affirmed the denial of plaintiffs’ motion to amend their complaint to add allegations based on a complaint filed by the U.S. Securities and Exchange Commission (“SEC”) against certain former officers of Freddie Mac, holding that such further amendment would have been futile.

Honeywell — Secured a victory in a shareholder class action filed in Washington State Superior Court by successfully opposing the plaintiffs’ attempt to preliminarily enjoin the proposed merger between Honeywell International Inc. and Intermec, Inc. Multiple shareholder class actions were simultaneously filed in both the Delaware Court of Chancery and Washington State Superior Court upon announcement of the proposed merger. After successfully pressuring the Delaware plaintiffs to cease pursuit of their action, we opposed a motion for

preliminary injunction by the Washington plaintiffs, after engaging in expedited discovery. At the hearing, the Snohomish County Superior Court declined to enjoin the shareholder vote on the proposed merger, which was only four days away. The court denied each of the plaintiffs' arguments, including those arguments based on the "Don't Ask, Don't Waive" standstill provisions and a 24-hour advance notice requirement of a superior proposal to the buyer.

KPMG Hong Kong — Represented KPMG Hong Kong (KPMG HK) in obtaining a dismissal of all claims filed by institutional investors asserting federal securities fraud claims in the District Court for the District of Nevada. The plaintiffs purchased debt securities issued by ShengdaTech, with principal operations in China, which issued equity and debt securities in the U.S. through a "reverse merger." After reports surfaced that ShengdaTech's management materially misrepresented the company's financial condition and results of its operations, ShengdaTech filed for bankruptcy. Institutional investors then filed claims against KPMG HK, which served as the company's outside auditor. Centering their claims on Section 18 of the Exchange Act, the plaintiffs alleged that KPMG HK made materially false and misleading statements concerning ShengdaTech's financial results in issuing its unqualified audit opinions on the company's financial statements and internal controls over financial reporting. On August 5, 2013, the court granted KPMG HK's motion to dismiss.

MassMutual — Representing MassMutual in a series of cases filed across the U.S. by investors in hedge funds managed by one of MassMutual's subsidiaries, Tremont Partners, which lost money due to Bernard Madoff's Ponzi scheme, as well as in a lawsuit commenced by Irving Picard, SIPC trustee of the Madoff estate. The investor class action lawsuits and the Picard lawsuit alleged in excess of \$3 billion in damages. The investor class actions have been settled, with nominal contribution from MassMutual. That settlement is currently on appeal in the U.S. Court of Appeals for the Second Circuit. MassMutual also settled the Picard action, which was approved by the bankruptcy court and upheld by the district court after objection. (MassMutual made no monetary contribution to the Picard settlement.) In 2013, the U.S. District for the Southern District of New York granted MassMutual's motions to dismiss in three additional actions, bringing five motions to dismiss granted by that court. In *Elendow Fund, LLC v. Rye Select Broad Market XL Fund, et al*, the court ruled that plaintiff failed to state a claim for control person liability under the Exchange Act for aiding and abetting fraud and breach of fiduciary duty. The court also dismissed MassMutual from *Cummins Inc. v. New York Life Insurance Company, et al.*, No. 10-cv-09252, holding that plaintiff lacked standing to bring derivative claims and also failed to state claims against MassMutual for fraud, negligent misrepresentation, unjust enrichment and aiding and abetting liability. Similarly in *Yale M. Fishman 1998 Ins. Trust v. General Am. Life Ins. Co., et al.*, 11-cv-01284, the court dismissed derivative claims against MassMutual for lack of standing.

MBIA Insurance — Representing MBIA Insurance Corporation ("MBIA"), the holder of the Class A-1 Notes, in a matter with Natixis Financial Products LLC ("Natixis"), the counterparty to a swap transaction with the CDO issuer. MBIA is an express third-party beneficiary of that transaction. The dispute between MBIA and Natixis involved whether the swap transaction had terminated and, if so, the amount of the termination payment owed by Natixis or the CDO issuer. In March 2012, the court issued an order partially granting and partially denying the summary judgment motions filed by Natixis and MBIA. The court held that Natixis had not properly calculated the termination payment due under the swap transaction and made detailed findings regarding how the calculation must be conducted that were consistent with MBIA's position. The court referred the issue of the proper amount of the termination payment to the Magistrate Judge assigned to the case. In December 2012, the Magistrate Judge found for MBIA and determined that a termination payment of \$10,538,773 was due from Natixis. Thereafter, Natixis appealed the district court's judgment to the U.S. Court of Appeals for the Second Circuit, and MBIA cross-appealed seeking a larger termination payment from Natixis. The matter settled favorably for MBIA.

Merrill Lynch — Represented Merrill Lynch in a dismissal by the U.S. Court of Appeals for the Second Circuit, which upheld the dismissal of claims from multidistrict litigation that alleged Merrill Lynch & Co. Inc. duped a clothing brand licensor into buying \$13 million worth of worthless auction-rate securities. The court found the licensor’s argument on appeal should have been first raised in the lower court. In a summary order, a three-judge panel for the appeals court held that Iconix Brand Inc.’s contention that the district court judge erred by failing to consider its allegations that Merrill misrepresented the collateral for the ARS fails, as that line of reasoning was not put forth at the district court level. The panel also affirmed the dismissal of Iconix’s common law fraud claim, finding that the elements of that claim basically mirror those involved in its collateral argument. Finally, the panel upheld the dismissal of Iconix’s remaining common law negligent misrepresentation claim, finding that the company failed to allege justifiable reliance, as is required under New York law.

Merrill Lynch — Successfully represented Merrill Lynch in a matter brought by one of the largest local government investment pools in the State of Washington. The action sought to recover in excess of \$50 million in losses suffered when two structured investment vehicles declined in value in the wake of the subprime market turmoil in 2007. The investment pool claimed that Merrill Lynch failed to disclose all foreseeable risks associated with these securities. After the district court dismissed several of the plaintiff’s claims, we obtained a favorable settlement for Merrill Lynch.

Morgan Stanley — Represented Morgan Stanley in a breach of contract action that was one of the many cases arising out of the credit crisis. Plaintiff Central Mortgage Company acquired from Morgan Stanley the right to service multiple pools of residential mortgages sold to Freddie Mac, Fannie Mae and various private investors. Plaintiff’s core allegation was that Morgan Stanley breached various representations and warranties in connection with those sales and sought damages and equitable relief. The case involved a large damages claim, and several issues of first impression in the Delaware Chancery Court. After Morgan Stanley’s motion to dismiss was granted, and issues were clarified on appeal, Central Mortgage amended its complaint to add additional breach of representation and warranty claims on several thousand loans. Morgan Stanley moved to dismiss the additional claims on the new loans as time-barred and prevailed. The court’s dismissal of plaintiff’s claims with respect to the new loans on statute of limitations grounds has a significant impact on RMBS litigation arising out of the credit crisis. Ultimately, the case settled and the action was dismissed by stipulation of the parties.

ODN — Prevailed on a motion for summary adjudication on behalf of ODN Holding Corporation, a Los Angeles-based company that owns, develops and manages Internet domains, and the company’s CEO and disinterested directors. The motion sought to dismiss claims of breaches of fiduciary duty and contract brought by ODN’s co-founder, who alleged that the company, its board and majority stockholders should not have allowed a change of control transaction that rendered him a minority shareholder. We moved to bar the co-founder’s claims on res judicata, equitable estoppel and ratification grounds, based on the co-founder’s prior filing and subsequent dismissal with prejudice of a suit in Delaware. Los Angeles Superior Court granted the motion, finding that the co-founder plaintiff’s prior conduct implicated “the essence of res judicata.”

Oppenheimer — Secured dismissal with prejudice of a putative securities class action lawsuit alleging that Oppenheimer & Co. and its affiliates violated Section 12 of the Securities Act of 1933. Institutional investors claimed that an Oppenheimer private equity fund misrepresented its past performance to investors by altering its disclosed valuation methodology so as to report a 38 percent rate of return when, in fact, had the fund conducted its valuation as disclosed, it would have reflected a loss. Plaintiffs sought rescission of more than \$60 million in investments, citing *The Wall Street Journal* reports of investigations by the SEC and Massachusetts AG. On February 28, the court adopted our arguments to dismiss all claims alleged in the complaint and entered judgment.

RBC — Won dismissal of the State of West Virginia’s claims against Royal Bank of Canada (“RBC”) in a multidistrict litigation concerning alleged bid-rigging on municipal derivatives. In a settlement agreement, West Virginia agreed to drop its federal and state antitrust claims against RBC in the state’s suit in the MDL. The suit alleged that several major financial institutions, including RBC, conspired to rig bids on municipal derivative contracts, which are used to invest the proceeds of municipal bond offerings. The dismissal marks the resolution of the last of 21 cases in the MDL in which RBC was a defendant. In 2011, we achieved a significant victory for RBC when it won a motion to dismiss on statute of limitations grounds 19 other cases filed against RBC by various municipalities.

Wells Fargo — Represented Wells Fargo (as successor in interest to Wachovia) in a dispute with Lehman Brothers Special Financing Inc. arising out of two collateralized debt obligation (“CDO”) transactions known as Phoenix 2002-1 and Phoenix 2002-2. The primary issues in the dispute turn on the interpretation of certain CDO documents, and the application of New York common law and federal bankruptcy law. This case is a CDO dispute that involves, among other things, the interpretation of subordination provisions and under what circumstances those provisions are enforceable against an entity in bankruptcy proceedings. The case settled favorably.

Intellectual Property

Recognized in *Chambers USA* for its “knowledge of the high-tech, life sciences and financial services industry,” Bingham’s IP Group helps clients develop, manage and protect their intellectual property assets. We represent clients in the full range of intellectual property and technology matters — we advise clients on protecting their innovations, intellectual and technical assets, and business strategies, including trade secrets; obtaining and enforcing patents, trademarks and copyrights; defending against claims brought by competitors; analyzing patent portfolios; and conducting IP due diligence reviews in connection with potential M&A transactions. We also represent clients in high-profile intellectual property and technology litigation matters. Our intellectual property group combines the skills of lawyers with experience in complex litigation; knowledge of patent, trademark, copyright and trade secret law; and seasoned experience in a broad array of engineering and scientific disciplines.

Many of our lawyers are admitted to practice before the U.S. Patent and Trademark Office and have advanced technical degrees. Just as critically, we offer former industry professionals and in-house counsel who bring a unique understanding of how clients’ intellectual property issues fit into the broader picture of their business.

Representative Matters

IP Litigation

Access Pharmaceuticals — After a bench trial in the U.S. District Court for the Southern District of New York, we secured judgment on all counts for client Access Pharmaceuticals. The plaintiff, iMedicor, Inc., claimed rights under a marketing agreement for up to \$50 million in commissions on sales internationally of Access’ FDA-approved oncology drug.

Aptalis Pharma — Representing Aptalis Pharma and its U.S. and Canadian subsidiaries in a series of Hatch-Waxman patent litigations in the U.S. District Court for the District of New Jersey that are intended to protect Aptalis’ branded and market-leading CANASA pharmaceutical product from generic competition. Aptalis has asserted three different patents directed at the manufacturing of Mylan’s and Sandoz’s active pharmaceutical ingredient, the manufacturing of Mylan’s and Sandoz’s finished products, and the uses of Mylan’s and Sandoz’s products. We are also counseling Aptalis on the development of a comprehensive and interdisciplinary patent and FDA strategy for protecting CANASA’s market.

BlackBerry — Representing BlackBerry Limited and BlackBerry Corporation in a high-stakes, multidistrict patent infringement litigation against Cypress Semiconductor Corporation involving 11 different patents. Cypress asserted six patents relating to USB technology and touch-screen technology against BlackBerry in federal court in the U.S. District Court for the Northern District of California. The lawsuit accuses all of BlackBerry’s smartphones and tablets of infringement. BlackBerry responded by filing counterclaims for patent infringement against Cypress in the U.S. District Court for the Northern District of California based on three of BlackBerry’s USB patents. BlackBerry also sued Cypress in the U.S. District Court for the Northern District of Texas for infringement of two other patents relating to wireless transceiver technology and battery-charging controllers.

FLEXcon Company, Inc. — Represented FLEXcon in defense of a patent infringement matter filed in the U.S. District Court for the Central District of California by Clear Focus Imaging. The case involved three patents

Group Leaders



Richard de Bodo
Santa Monica



Richard Taffet
New York

relating to one-way vision signage. Clear Focus Imaging alleged that FLEXcon's See-Thru-Sign products infringe the subject patents. The case settled via mediation after Markman briefing was completed.

Monadnock Non-Wovens LLC — Representing Monadnock in defense of a patent infringement matter filed in Minnesota by 3M. The case involves a patent relating to thermally-stable polypropylene non-woven acoustic insulation. 3M alleges that Monadnock's acoustic insulation infringes the patent.

Olympus — Obtained final judgment of non-infringement for Olympus in a multidistrict patent case brought by a German patent-holding company against the world's leading digital camera manufacturers. The case is significant to Olympus because the plaintiff, Papst Licensing GmbH & Co. KG ("Papst"), accused all of Olympus' digital camera and recording devices of infringement. Papst asserted two patents and its infringement claims were directed to the interface for communicating picture and audio data between the camera and a computer without the computer needing special software for the communication. Olympus worked closely with its co-defendants — Nikon, Samsung, Hewlett-Packard, Fujifilm and Panasonic — and collectively persuaded U.S. District Judge Rosemary Collyer, of the District of Columbia, to issue six separate summary judgment rulings that, taken together, effectively cleared all of the companies' accused camera and recording devices of patent infringement charges. The case is now proceeding to appeal before the U.S. Court of Appeals for the Federal Circuit.

Oracle — Represented Oracle in obtaining a judgment in Oracle's favor against defendants ServiceKey, LLC and its CEO, Angela Vines, on Oracle's claims for copyright infringement, violation of the Computer Fraud and Abuse and Lanham Acts, fraud, intentional interference with prospective economic relations and unfair competition. The suit filed by Oracle in the U.S. District Court for the Northern District of California against ServiceKey and DLT-FBS alleged that the defendants fraudulently induced contracts with Oracle that provided access to Oracle's password-protected customer support websites. The judgment reflects ServiceKey's and Vines' admission to liability on Oracle's claims. ServiceKey and Vines, among other things admitted that they illegally downloaded, copied and distributed Oracle's copyrighted Solaris operating system, including Solaris software updates and patches, falsely advertised their ability to provide the copyrighted Oracle Solaris patches to customers, and illegally trafficked in passwords to Oracle's customer support website. As part of the judgment against Service Key and Vines, the court issued an injunction that prohibits the defendants from engaging in a wide range of conduct that had led to Oracle's lawsuit. The court's injunction mandates that ServiceKey and Vines may not provide to anyone any Oracle software or support materials, it prohibits them from falsely advertising that they can provide Oracle-branded support, it requires them to inform customers that they may not provide this copyrighted Oracle software and support materials, and it prohibits them from ever again accessing any password-protected Oracle website. Our team also secured a judgment against DLT-FBS.

Oracle — Represented Oracle in a copyright infringement and fraudulent practices lawsuit against former partner CedarCrestone. Oracle accused CedarCrestone of stealing customers and intellectual property, specifically updates for tax and regulatory software originally developed by PeopleSoft, which Oracle acquired in 2005. CedarCrestone has sold maintenance support for the software as an approved Oracle partner since 2005. Oracle claims the lawsuit is part of its "broader war on competition" against third-party providers of consulting, implementation and support for its software, following its successful copyright infringement lawsuit against SAP. The software support in question accounts for approximately \$1 million in yearly sales, and represents less than 1 percent of CedarCrestone's annual revenues. On July 30, 2013, Oracle announced that Oracle America, Oracle International Corporation and CedarCrestone amicably resolved the litigation between them, but the terms of the settlement are confidential.

Oracle — Representing Oracle in a copyright and unfair business practices lawsuit filed against TERiX Computer Company and Maintech Inc. in the U.S. District Court for the Northern District of California. Oracle alleges that the defendants illegally copied and distributed Oracle’s Sun Solaris software updates for Oracle’s Solaris operating system. Magistrate Judge Paul S. Grewal ruled in early 2014 that Oracle stated valid claims for copyright infringement, breach of contract, false advertising, intentional interference, unfair competition claims and Computer Fraud and Abuse Act violations. The case remains pending and discovery is ongoing.

Ruckus Wireless — Sought and received a temporary restraining order for client Ruckus Wireless against two employees and their new employer for trade secret misappropriation, breach of contract, and unfair competition. Our team worked with forensic investigators to develop evidence of misappropriation, including the removal and destruction of an internal hard drive from a Ruckus issued laptop, theft of a Ruckus laptop, and forwarding and copying of confidential materials to personal accounts and personal hard drives. The court granted the application and issued a TRO requiring defendants’ devices and online accounts to be turned over to Ruckus’s forensic experts so the confidential information could be sequestered and removed. The court also issued an order allowing early depositions of defendants. The case settled shortly after entry of the temporary restraining order.

Wayfair LLC — Representing online retailer Wayfair in connection with a variety of patent infringement claims made by Non-Practicing Entities.

Major Defense Contractor — Obtained summary judgment for a major defense contractor in a putative class action in federal court in Massachusetts involving claims for medical monitoring for alleged exposure to beryllium. She elicited critical testimony from plaintiffs’ medical expert that plaintiffs had no evidence of an essential element of their claim. Case is on appeal to the First Circuit.

Transactional

Le Vian — Representing Le Vian in a variety of matters involving the policing and enforcement of its CHOCOLATE DIAMONDS and other trademarks and extensive portfolio of copyrighted designs. Through these efforts we have been able to assist the client in building the CHOCOLATE DIAMONDS brand into a major line of jewelry that is now featured in national advertisements by Jared Jewelry.

Qualcomm — Supporting Qualcomm competition and intellectual property advocacy through amicus briefs, white papers, academic papers and conferences in the U.S., Europe and Asia.

Labor and Employment

Group Leader



Debbie Fischer
Los Angeles

Bingham's Labor and Employment group represent businesses in every aspect of the workplace, handing disputes in all forums as well as providing day-to-day advice and working on the employment aspects on a variety of transactions. We have decades of experience in wage-and-hour class actions, theft of trade secrets, wrongful termination, discrimination, harassment, employee benefits law, union avoidance and collective bargaining issues. We also counsel and train clients to recruit, retain and manage a productive workforce while providing clients with strategic and tactical advice that stresses best practices, litigation prevention and compliance. When claims are made, however, we focus all our skills and experience as advocates on resolving conflicts and, when conflicts cannot be avoided, on aggressively litigating on behalf of our clients.

Representative Matters

Automatic Data Processing — Represented ADP in a class action brought by plaintiff on behalf of employees of Wilson Worldwide LLC ("Wilson") who, through a contract between Wilson and ADP, performed temporary work as recruiters for ADP. The primary allegations are the misclassification of temporary employees as exempt employees and overtime pay. Plaintiffs also allege they were not truly employees of Wilson, but were jointly employed by ADP and denied benefits offered to other ADP employees. The case settled following mediation.

Boston Cab and related companies — Conducted investigation of the allegations raised in the *Boston Globe* "Spotlight" series investigating the Boston taxi industry and treatment of drivers. Also handling a class action lawsuit brought by Boston taxi drivers, challenging the drivers' classification as independent contractors and alleging violations of Massachusetts wage laws.

CleanNet USA — Representing CleanNet USA, a national franchisor of cleaning franchises, in a class action by present and former franchisees alleging violations of the Massachusetts independent contractor statute and wage act, unfair and deceptive business practices, breach of contract and claims in equity. The case is pending; class settlement has been reached in this matter and the settlement is being implemented.

Eaton Vance — Representing Eaton Vance, a mutual fund company, that was sued, together with its disability insurer, in federal court in Boston by a former employee who claimed that her employment was unlawfully terminated and that she was denied disability benefits. After argument, the court granted summary judgment for defendants.

Farmers' Rice Cooperative — Representing Farmers' Rice Cooperative on an ERISA arbitration to recover \$500,000 in withdrawal liability payments from an union-related pension trust. The issue involves the proper interpretation and application of a complicated formula under ERISA for the computation of a withdrawing employer's withdrawal liability.

Medtronic — Represented medical device maker Medtronic Inc. and two individual defendants against claims of discrimination, harassment and retaliation based on disability, wrongful termination and failure to accommodate. The case was initially filed and prosecuted in state court in 2009. The plaintiff dismissed the individual defendants and the case was successfully removed to federal court based on diversity jurisdiction. The federal court granted our motion for summary judgment and dismissed all claims against Medtronic. The court initially issued a tentative order denying our motion on two claims, but after oral argument revised its

tentative ruling to grant the motion on all causes of action. Plaintiff appealed and the U.S. Court of Appeals for the Ninth Circuit affirmed the federal court's order granting summary judgment.

MX Holdings US, Inc. — Defended MX Holdings and two of its wholly-owned subsidiaries in a trial on May 1, 2013 for unfair labor practice litigation before the National Labor Relations Board ("NLRB"). Our clients were "interested parties" subjected to "secondary boycott" coercion by Union in aid of its challenge to the "double-breasted" operation. The administrative law judge ruled in favor of our clients. The matter has been appealed to the full NLRB in Washington, D.C.

Educational Support Organization — Represented an educational support organization and its chief executive officer against claims by former employee for disability and age discrimination.

Film Company — Assisted in an investigation for a film company involving allegations of sexual harassment and sexual assault allegedly occurring on a movie set, and successfully resolved claims.

Fire Safety Company — Represented a fire safety company against claims brought by former employee for disability discrimination and violation of the FMLA.

Insurance Company — Conducted multiple investigations involving allegations of inappropriate conduct and relations by highly-ranked executives as well as broader allegations of institutional bias. Counseled and advised company through actions to take in response to findings.

Medical Group — Successfully defended a medical group against claim by former employee for race discrimination.

Medical Group — Represented a medical group against wage and hour claims brought by current and former employees, including failure to properly classify employees as exempt from overtime, failure to provide meal periods and failure to pay bonus guarantee.

Motorcycle Parts Manufacturer — Represented motorcycle parts manufacturer against claims filed with the NLRB by the Teamsters Union for wrongfully terminating nine employees in retaliation for engaging in union or other protected concerted activities, and to discourage other employees from unionizing. The Teamsters also attempted to convince the NLRB that emergency injunctive relief reinstating the nine employees pending the resolution of the action was necessary to prevent irreparable harm. We worked with our client to present the legitimate, business-related reasons for the terminations and prepared for and appeared with client representatives who gave sworn statements before the NLRB. After taking statements and evidence of our client's actions, the NLRB did not pursue the matter and the regional director of the NLRB "approved" the Teamsters withdrawal of the unfair labor practice claim.

Public Transit Agency — Conducted investigation regarding allegations of hazing in the agency's law enforcement academy which caused the academy to halt its trainings. As a result of our findings, the academy was approved to resume its trainings.

Telecommunications Company — Represented telecommunications company against claims filed by retail store employees. The plaintiffs asserted class action claims under California Labor Code section § 2802 for alleged non-reimbursement of mileage and other expenses incurred in traveling between stores to pick up and deliver telecom products and attending off-site meetings and trainings. The class action claims were voluntarily dismissed following settlement with individual plaintiffs.

Tax Controversy and Litigation

Bingham's tax group is a destination for many sophisticated businesses. **With a nationally recognized federal tax controversy practice and an equally well-regarded state tax controversy practice, what differentiates Bingham is that our tax controversy lawyers' mastery of process and advocacy is matched by our mastery of the technical rules. This combination is rare.** More than half of our substantial tax practice focuses on tax controversy resolution, with particular concentration in IRS practice and procedure, including examination and appeals, transfer pricing dispute resolution, financial institutions and instruments controversy, bankruptcy and restructuring controversy, criminal tax investigation and defense, appellate litigation, and state and local tax controversy and litigation. More than a dozen of our partners have experience at the IRS, the Treasury or the DOJ, including a former chief counsel for the IRS and a former assistant attorney general for the DOJ's Tax Division.

In 2013, Bingham's tax group was honored with the prestigious *Chambers USA* Award for Excellence in Tax, and is one of only five tax controversy practices that *Chambers USA* ranks in Band 1 nationwide. There are four individual partners nationally ranked by *Chambers USA*. Clients surveyed by *Chambers* said the firm's tax team is "always accessible and makes us feel like their only client."

Representative Matters

Docketed Cases

Chemtech Royalty Associates, L.P. v. United States — Representing The Dow Chemical Company ("Dow") in Dow's use of a partnership structure to monetize patent and chemical plant assets and raise minority equity financing from investors. The IRS adjusted Chemtech's partnership items, claiming, among other things, that the partnership lacked economic substance and business purpose and that the investments were more like loans than equity. The government also has asserted the negligence, substantial understatement and gross valuation misstatement penalties with respect to the partnership transaction. We conducted a bench trial in the U.S. District Court for the Middle District of Louisiana in June 2011. The district court issued an adverse decision in February 2013. We have filed our initial appeals briefs in the U.S. Court of Appeals for the Fifth Circuit, and it is anticipated that the appeal will be argued in 2014.

Amazon.com v. Commissioner — Representing Amazon.com in the most significant pending transfer pricing case in the U.S. The case is currently docketed in U.S. Tax Court with trial expected in late 2014. The IRS has proposed a multibillion-dollar income adjustment, and the core issue is cost-sharing, which is one of the most significant transfer pricing issues today.

kgb & Subsidiaries v. Commissioner — Representing kgb, the world's largest directory assistance provider, in a transfer price case currently docketed in the U.S. Tax Court. The IRS has asserted significant adjustments to the prices paid by U.S. entities for directory assistance activities performed by a Philippine subsidiary.

Group Leaders



John Magee
Washington, D.C.



Don Abrams
Boston

White Collar Investigations and Enforcement

Group Leader

Bingham's White Collar Investigations and Enforcement group continues to be an industry leader in the defense of Fortune 500 companies, prominent corporate executives and others in government investigations and criminal and civil enforcement actions arising from today's era of proliferating rules, evolving standards of accountability and transparency, and increased government scrutiny. The group's greatest strength lies in its ability to handle high-profile, complex investigations being conducted simultaneously by multiple federal and state prosecutors, regulatory enforcement agencies and congressional committees. In addition, our lawyers are skilled in managing the media and public relations issues that so often impact public perception in these high-profile cases.



Nathan Hochman
Santa Monica

Best Lawyers has recognized members of the group for their work in white collar crime and government investigations.

Representative Matters

Docketed Cases

U.S. v. Lauryn N. Hill — Representing Grammy award-winning singer, Lauryn Hill, against federal criminal tax charges. In July 2013, the court agreed to impose a three-month sentence of imprisonment and three months of home detention.

Boston Cab Dispatch et al. v. Uber Technologies, Inc. — Representing the owners of Boston Cab Dispatch, Inc. and EJT Management, Inc. following a raid by the IRS and the U.S. Department of Housing and Urban Development. Conducted internal investigation, coordinated joint defense efforts and dealings with multiple federal state and local agencies.

U.S. v. Bryan Shaw — Representing Bryan Shaw, a jeweler from Encino, Calif., who voluntarily reported his insider trading activities to the SEC and DOJ involving a former KPMG senior audit partner. Mr. Shaw subsequently entered a cooperation plea agreement and is awaiting sentencing.

U.S. v. Patricia Hough, et al. — Represented Dr. Patricia Hough in a federal criminal tax jury trial. The amount at issue was over \$40 million, making this the largest UBS foreign bank account case to have gone to trial thus far.

U.S. v. Mary Estelle Curran — Representing individual criminally charged by the DOJ with the largest UBS offshore tax violation filed to date.

United States of America, ex rel. John Raggio v. Jacintoport International LLC — Representing Jacintoport, LLC, a subsidiary of Seaboard Corp., in qui tam litigation in which the government has intervened, where it is alleged that Jacintoport caused false claims for stevedoring services to be made to U.S. Agency for International Development.

U.S. v. Russell Pike — Representing, at sentencing and on appeal, the founder of Xyience Incorporated, a Las Vegas-based manufacturer and distributor of nutritional supplements and energy drinks, who was convicted at trial of tax evasion.

City of Gainesville v. Gainesville Renewable Energy Center et al. — Successfully represented a global energy investor consortium, obtaining a complete dismissal of arbitration demand brought by the city of Gainesville, Fla.

Brockton Power v. City of Brockton — Representing Advanced Power as Plaintiff in a \$68 million section 1983 civil rights damages complaint in the U.S. District Court for the District of Massachusetts. Obtained 44 page decision from U.S. District Court denying all defendants Motions to Dismiss.

DOJ and Complex Multi-Agency Investigations

Sumitomo Mitsui Banking Corporation — Representing, with the Japanese and Antitrust groups, SMBC in connection with class action litigation pending in the U.S. District Court for the Southern District of New York alleging manipulation of Libor interest rates, and related proceedings.

Autoparts Executives — Representing, with the Japanese group, executives of two Japanese manufacturers in connection with criminal investigations by the DOJ into alleged collusive conduct concerning the sale of automotive component parts.

Businessman — Representing Iranian-born American businessman in multinational, multiagency investigations by the U.S. Attorney's Office for the Central District of California, FBI, IRS and Office of Foreign Asset Control into allegations of violating economic and trade sanctions against Iran.

Owner-operators of power generation plants — Representing the owner-operators of power generation plants in connection with federal and state regulatory matters involving EPA and FERC.

Southern California defense contractor — Successfully represented a large Southern California defense contractor against allegations that the company submitted fraudulent certificates on numerous parts; federal government agreed to decline criminal prosecution against company and its employees.

Congressional Investigations

Huawei Technologies Co. Ltd. — Continue to advise Huawei as to matters relating to allegations that Chinese telecommunications companies pose a cyber-espionage threat because of their relationships with the Chinese government.

Other Representative Matters

MBTA — Representing MBTA in connection with multi-billion dollar commuter rail bid protest.

Global Designer — Representing a global designer of retail e-commerce websites in connection with data privacy issues.

Fortune 1000 P&C insurer — Representing a Fortune 1000 P&C insurer in connection with regulatory, enforcement and internal review matters.

Pension Fund — Represented \$3 billion pension fund in connection with stranded real estate investment in New England. Successfully obtained relief of over \$100 million without any court action.

London Litigation

Key Contact

Bingham's London-based finance litigation practice focuses exclusively on financial institutions — primarily investment banks, hedge funds, investment management companies and insurance companies — and represents those institutions in high-value, complex disputes. We are ranked as a leading firm for banking litigation in the UK editions of *Legal 500* and *Chambers*, where clients praise our lawyers for having an “incredible understanding of the commercial reality clients are faced with.”



Mark Dawkins
London

The team forms part of a market-leading Financial Institutions Regulatory, Enforcement and Litigation Group, with capabilities in key financial centers throughout the world, including New York, London, Frankfurt, Tokyo and Hong Kong. The UK finance litigation team covers all our clients' contentious needs: securities, banking and finance litigation; international and domestic arbitrations; litigation strategy; and risk management. We also work alongside our dedicated financial regulatory practice, which is a market leader in regulatory investigations and enforcement. We have particular strengths in: distressed debt, financial restructuring, shareholder activism and insolvency litigation; disputes involving complex creditor arrangements; complex, multiparty and cross-border disputes; and international asset-recovery.

Representative Matters

Icelandic Banks — Continuing to act on behalf of the holders of in excess of US\$33 billion of bonds issued by three insolvent Icelandic banks — Kaupthing, Glitnir and Landsbanki. The bondholder group has 75 leading financial institutions, including some of the world's largest investment banks. We are responsible for all bondholder litigation arising out the collapse of the three banks, which involves running domestic Icelandic litigation, as well as handling international advice in the U.S., the UK, Luxembourg and Norway.

Litigation Strategy — Providing advice on the potential rectification of certain financial instruments used in the financial restructuring of a multinational food business. The role involved the analysis of complex provisions in financing documents and devising a litigation strategy that maximized protection of the clients' interests.

Geodesic — Advising a committee of holders of US \$125 million foreign currency convertible bonds issued by Geodesic Limited, an Indian software technology provider, on their rights and remedies, including proceedings before the English court, and associated summary judgment proceedings, and a winding-up petition filed in India.

Litigation Funding — Advising a portfolio company of a major international hedge fund on its rights under an agreement pursuant to which it had provided funding for litigation which was brought by the Trustees of the bankruptcy estate of a significant telecom company.

Hong Kong Litigation

Key Contact

Bingham lawyers in Hong Kong's litigation practice provide advice to financial institution clients on contentious financial and securities law matters, as well as insolvency and restructuring situations and contentious regulatory disputes. We cover the full spectrum of litigation advisory and international arbitration services and have been involved in providing litigation and enforcement advice on disputes in Hong Kong, the PRC, and throughout the Asia-Pacific region. There are few firms with a strong track record in advising creditors in Asian restructurings. We are familiar with advising on rights under a range of investment treaties. Over the last 12 months, the litigation team in Hong Kong has continued to consolidate, and to broaden and deepen its Pan-Asian experience.



Richard Hornshaw
London

Representative Matters

LDK — Representing a hedge fund suing for amounts owed to it by LDK Solar, the world's largest producer of solar wafers. Our client is seeking summary judgment on the unpaid debt; LDK Solar's defense relies on a standstill agreement it agreed with other noteholders in the context of its ongoing restructuring.

Financing Dispute — Acting for an international hedge fund in connection with a failed financing arrangement with an Australian natural resources company. We successfully obtained an order in Australia for preliminary discovery to enable our client to assess whether to commence proceedings.

SEC Enforcement — Advising a Hong Kong investment bank on its response to an SEC subpoena relating to coverage of a U.S.-listed Chinese media company by the bank's analysts. This matter involved advising on the cross-border regulatory issues, as well as the impact of China state secrecy laws.

International Insolvency and Litigation — Advising an ad hoc noteholder group on the litigation and enforcement options in relation to notes issued by a subsidiary of one of the world's largest renewable energy manufacturing groups based in the PRC. Amongst other things, this has included consideration of insolvency and litigation options in Hong Kong, the Cayman Islands, the U.S., Europe and the PRC.

Indonesian Shareholder Dispute — Advising a significant shareholder on the litigation and regulatory issues relating to an equity investment in a listed Indonesian commodity producer. The matter has involved advising on creditor rights and remedies in the context of suspected fraudulent accounting, unlawful related party and material transactions, and other regulatory and corporate governance failings.

Sumitomo — Acting (together with our Tokyo office) for Sumitomo Metal Mining, one of the world's leading mining groups, in connection with protracted judicial review proceedings before the Solomon Islands High Court, involving several complex public law and procedural issues.

PRC Enforcement — Advising (in conjunction with our Beijing office / local PRC counsel) various international lenders on their remedies in connection with defaulted loans to PRC entities, including advice on enforcement of onshore and offshore security, as well as proceedings for recovery of the debt.

Japanese Practice

With more than 70 bengoshi (lawyers admitted to practice Japanese law and litigate in Japanese courts) who are all experienced in handling complex corporate litigation, **Bingham's litigation practice in Tokyo covers a full range of commercial and financial litigation, antitrust, crisis management, intellectual property, and labor and employment.** Having six former judges, two of whom have experience at the IP Branch/Division of the Tokyo High Court, adds further insight to our bengoshi team and also enables our clients to have a better understanding of the Japanese court procedure, local practices and “psychology” on every aspect of litigation, such as a settlement led by the court. Our clients range from individuals to multinational companies.

For U.S. litigation, members of our Tokyo office (including Len Matsunaga, Tsugu Watanabe, Hisayo Yasuda, Chris Mizumoto and Lisa Valentovich) have assisted clients in U.S. litigation and discovery. The Tokyo office increased its capability to support U.S. discovery, document production and translation in major cross-border litigation matters.

Our lawyers also represent pro bono clients in numerous litigation matters as assigned under Japan's national legal services system.

Representative Matters

Antitrust

Major Automotive Parts Investigations — Representing an automotive parts manufacturer in connection with antitrust investigations by the DOJ the EU Commission and the JFTC. Our Tokyo, U.S. and UK teams work as one in most of these cases.

Japanese Executives — Representing Japanese executives in major civil and criminal U.S. and Japanese antitrust cases.

Qualcomm — Representing Qualcomm in a major JFTC hearing procedure and working in coordination with a U.S. team.

Major Building Material Company — Representing a major building material manufacturer that has been issued a cease and desist order and a surcharge payment order by the JFTC in relation to a price fixing cartel.

Intellectual Property

Japanese Major Mobile Phone Manufacturer — Representing a Japanese major mobile phone manufacturer in an infringement suit brought by a U.S. NPE in the Tokyo District Court on patents relating to mobile communication.

Japanese Major Mobile Phone Manufacturer — Representing a Japanese major mobile phone manufacturer in an infringement suit against a Korean competitor on patents relating to mobile phones.

Health Care Electronic Device Manufacturer — Representing a health care electronic device manufacturer in a design patent infringement suit against a competitor.

Litigation Practice Coordinators



Harumi Kojo
Tokyo



Atsushi Yamada
Tokyo



Mitsue Aizawa
Tokyo



Naoki Hayata
Tokyo

Chemical Engineering and Manufacturing Company — Representing a chemical engineering and manufacturing company in patent infringement suits against a Taiwanese electric company and Japanese companies on LED patents.

Chemical Engineering and Manufacturing Company — Representing chemical engineering and manufacturing company in several patent infringement suits against Sanyo Electric Company on LED patents.

Labor and Employment

Interior Fabrics Distributor — Representing a Japanese subsidiary of a European company which distributes interior fabrics in a lawsuit claiming the invalidity of a job transfer order.

Numerous U.S. Employment Cases — In the U.S. offices, annually dealing with nearly 100 employment cases, involving U.S.-based operations of Japanese corporations, ranging from employment litigation to compliance issues.

Securities and Financial Institutions Litigation

Yoshiaki Tsutsumi — Representing the client against a claim for damages concerning alleged loss in connection with the restructuring of the Seibu Railway group, which, at the time, had been run by the client. Now pending in the Tokyo High Court.

U.S.-Based Plaintiffs (confidential) — Representing large scale litigation cases related to real estate investments in Japan. These cases are being reviewed by the Tokyo District Court and involve asserted damages in excess of US \$100 million. Coordinated efforts from our Tokyo and U.S. offices ensure seamless delivery of services to our U.S.-based clients.

Crisis Management/White Collar/Compliance

LIBOR Case for One of Japan's Largest Banks — Representing one of Japan's largest banks in connection with DOJ, CFTC and SEC investigations of LIBOR rates and related U.S. class action cases. The Tokyo team is working with partners in the New York and Washington, D.C. offices.

Global Medical Equipment Company (confidential) — Working in coordination with U.S. partners in an internal investigation for U.S. client into questionable Japanese subsidiary inventory management, and handling whistleblower claims and other employment issues.

Bingham Consulting

Bingham Consulting focuses on 360-degree solutions to our clients' unique challenges that involve not only market and competitive issues, but also complex questions of law, public policy and communications.

We are on the cusp of a new era in globalization, marked by the convergence of business, law, regulation and instant communications. In this high velocity, high risk involvement, our clients' needs go beyond the services traditionally provided by law firms. Business success requires coordinated strategy that encompasses legal, political, policy, and media issues in the most effective way. To help our clients address these challenges, Bingham Consulting adds to the firm's wide range of specialties an elite array of high-ranking former government officials with broad experience in law, media, business, regulation policy and communications.

Bingham Consulting guides businesses through the challenges posed by multiple levels of government — both intranational and transnational. In their home countries and abroad, we help our clients understand the political background against which government decisions are made. Our strategies enable companies to anticipate and avoid risks before they materialize. We help them to capitalize on opportunities unseen to those without intimate knowledge of the intersecting legal and political landscape.

Our unique resources enable us not only to provide the best strategic advice to our clients, but also to develop business relationships with their top management and boards of directors. These high-level relationships open new opportunities to cross-market the broad range of legal specialties offered by the firm.

Representative Matters

Toyota — Represented Toyota, as part of its litigation team, in defending the company in multiple governmental investigations and civil actions resulting from allegations that Toyota did not properly disclose certain defects in automobiles marketed and sold in the U.S. Bingham Consulting's role included defending Toyota in a 29-state AG multistate investigation of these alleged marketing practices, and that such practices are a violation of each states' Unfair and Deceptive Acts and Practices, and related advertising and marketing statutes. On the company's behalf, we successfully led the negotiations with the states, resulting in a \$29 million settlement with 29 states, a fraction of what the other cases in this multijurisdictional matter cost the company, and significantly less than what the company had expected to pay.

United Auburn Indian Community — Represented United Auburn Indian Community in challenging the actions of the U.S. Secretary of Interior and the Governor of California in federal and state courts in taking certain land in trust for the benefit of another Indian tribe, specifically its use for gaming under the federal Indian Gaming Regulatory Act.

United HealthCare Services Inc. — Representing United HealthCare ("UH") in the development and execution of a strategy to proactively engage key state AGs and their senior staff to strengthen UH's profile and platform in the states. We also represented UH in connection with an affirmative complaint it had regarding anticompetitive practices undertaken by a current business partner. We assisted UH in obtaining FTC and state AG review of the business practice in question, and then used that complaint to protect UH through a better licensing

Group Leaders



Chris Cox
Orange County



Stephen Merrill
Boston

agreement. We are currently advising the company on state issues regarding the roll out of a reduction in the number of physicians within their network consistent with a changing health care environment.

Intel — Providing strategic advice to Intel’s General Counsel Office about ongoing and potential government investigations, particularly by the states. For example, working with the litigation team, we developed and successfully executed a strategic plan to proactively convince another state AG not to join New York in prosecuting an antitrust complaint against Intel. While the New York AG led a multistate investigation of Intel for alleged violations of state antitrust laws, in the end, no other states joined New York in filing the complaint although they were solicited to do so. The containment of the case to New York greatly limited the exposure Intel faced from a damages perspective and reduced the resources the state had to pursue the case. We continue to work with the legal and government affairs offices at Intel to implement a proactive outreach strategy with the state AG.

Celanese — Coordinating a legal, political, public relations and public affairs strategy opposing state listing of a Celanese product under California Prop. 65, including proposed legislation, in conjunction with successful litigation brought by Bingham to prohibit the listing of the Celanese product.

Airbus — Advising on EU Aviation Emissions Trading System and the development of an International Civil Aviation Organization market based mechanism for greenhouse gas emissions, as well as other climate-related issues including sustainable biofuels.

Meracord — Represented Meracord in connection with its settlement of allegation by the Consumer Financial Protection Bureau that the company and its CEO unlawfully marketed the company’s services to consumers in violation of the Telemarketing Sales Rule.

NetChoice — Providing strategic consulting services in connection with the protection of an open U.S. and international market for domestic goods and services sold over the internet, undiminished by cumbersome, multiple rules.

Bionic Hill — Represented the developers of the Bionic Hill technology park in Kyiv, Ukraine. With plans to create a technology ecosystem modeled on Silicon Valley, and with infrastructure support from both Kiev and the national government, the developers seek to attract participation from multinational tech companies in the IT, biotech, energy and pharmaceutical industries. During 2013, Bingham Consulting was retained to develop an overall strategy for attracting businesses to the project, to help develop the education component, and to provide communications and media support.

Purdue Pharma — Representing Purdue in ongoing state AG matters including a lawsuit by the Kentucky AG relating to Purdue’s alleged false marketing of its painkiller Oxycontin and seeking reimbursement for the costs of law enforcement, drug treatment and Medicaid prescriptions allegedly arising from the marketing of the drug. The U.S. Court of Appeals for the Second Circuit recently returned the suit to Kentucky for trial. We also have developed and are working with Purdue to execute its proactive outreach to state AG regarding tamper-resistant packaging for generic oxycodone, and are counseling Purdue in connection with a U.S. Senate request for information and a parallel request from state AG arising out of 2007 multistate settlement in which we represented the company.

Pro Bono

Bingham is proud of our longstanding commitment to pro bono work. In 2013, the firm hired its first **Pro Bono Counsel, Rachel Strong**, to focus exclusively on pro bono matters. **Our litigation lawyers and paralegals devoted more than 45,000 hours to pro bono work in 2013.** Highlighted below are just a few examples of our diverse array of pro bono litigation matters from 2013.

Representative Matters

Advocated to Overturn the Defense of Marriage Act — Filed an amicus brief on behalf of 278 businesses, cities and other employers and employer organizations in *United States v. Windsor*, the U.S. Supreme Court case that struck down the federal Defense of Marriage Act (“DOMA”) as unconstitutional. The brief argued from the point of view of the employer that DOMA’s prohibition of federal recognition of lawful marriages between same-sex spouses created a variety of hardships in the employer’s effort to administer tax, benefits and other human resources matters and in efforts to foster workplace morale. Our amici clients included Goldman Sachs, Morgan Stanley, Deutsche Bank, Bank of New York Mellon, State Street Bank, MassMutual, Eastern Bank, Microsoft, Google, Oracle, Apple Computer, eBay, CBS, Viacom, EMC Corp., NIKE, Twitter, Ogilvy & Mather and Starbucks, and the cities of Boston, Hartford, Los Angeles, New York, San Francisco and Seattle, as well as many others.

Helped a Mother Save her Family — Secured an appellate victory on an issue of first impression after a trial in January 2013. On September 11, 2013, the U.S. Court of Appeals for the First Circuit panel ruled unanimously in favor of our client, affirming the district court’s denial of a petition filed pursuant to the International Child Abduction Remedies Act of the Hague Convention. The petition, brought by the father, sought the return of the parties’ two young daughters to Turkey. Our client had lost custody to the father, whom she accused of abusing her daughters. After exhausting all her appeals, the mother fled Turkey in 2007 with her daughters, and eventually settled in the United States. We represented the mother in a three-day evidentiary hearing in the District Court of New Hampshire which included testimony from the parties, three experts and a Guardian Ad Litem. The district court ultimately found in favor of our client, holding that she proved the elements of the Article 12 defense. (U.S.D.C., District of New Hampshire)

Helped a Small Business Owner Devastated by Hurricane Sandy — Helped a hard-working small business owner devastated by Hurricane Sandy negotiate a settlement agreement with his landlord and avoid eviction. Hurricane Sandy completely destroyed the client’s first floor home and his business. The client spent two months gutting the store, tearing out the water-damaged floors and walls, and replacing every surface area, spending much of his own money to repair the damage. Without flood insurance or any financial assistance from the landlord, he borrowed whatever funds were available to replace more than \$100,000 in lost inventory. With the financial strain from the structural repairs and inventory replacement, our client fell behind on his rent, and his landlord swiftly filed to evict him from the newly repaired premises. We worked closely with the client and with the landlord’s lawyer to negotiate a settlement agreement that enabled the client to remain in the store and repay past-due rent over time.



Bingham was proud to play a role in overturning the Defense of Marriage Act (“DOMA”) in 2013 and helping families celebrate life post-DOMA.

Defended a Lower Court Ruling in Favor of the Woodward School for Girls — Handled an appeal before the Supreme Judicial Court for the Commonwealth of Massachusetts seeking to affirm a 2011 ruling in favor of our client the Woodward School for Girls. In 2011, a judge ruled that the city of Quincy, Massachusetts, the former trustee of trusts benefitting the school, had failed to properly administer the trusts and breached a host of duties to Woodward. The order required the city of Quincy to pay damages of roughly \$3 million to the school and two trust funds endowed by President John Adams and his grandson. The city appealed the decision to the Massachusetts Appeals Court and the Supreme Judicial Court took the matter for direct appellate review as provided for by the Massachusetts Rules of Appellate Procedure. In early December 2013, we argued the appeal before the Supreme Judicial Court.

Obtained Cy Pres Award Funds for National Center for Youth Law — Secured a significant settlement for the National Center for Youth Law (“NCYL”), a child advocacy organization that provides resources and support to abused or neglected children. The dispute related to a cy pres award that NCYL should have received following the settlement of an employment class action. The settlement funds were distributed incorrectly, which depleted the settlement fund and deprived NCYL of the cy pres distribution. We secured a speedy victory for NCYL, helping the organization receive 100 percent of its expected cy pres funds.

Working to Overturn an Arizona Book Ban — Represented several students at Tucson Unified School District No. 1 in a suit against various state officials, challenging the constitutionality of an Arizona state statute that limits school districts’ ability to provide certain race-related curricula. The statute led to the elimination of Mexican-American studies courses as well as the removal of all copies of seven books from Tucson Unified School District’s classrooms. A group of teachers and students in the district challenged the statute’s constitutionality in federal court, and although the teachers were dismissed from the lawsuit, the students continued the challenge. The court ruled that the concerns didn’t meet the high threshold needed to establish a constitutional violation, declaring one provision of the statute to be unconstitutionally overbroad but granting summary judgment to the defendants on all of the other claims. In November 2013, the American Library Association, the National Education Association, the Anti-Defamation League, and other groups of authors, public teachers and literacy organizations filed six amicus briefs supporting our clients’ appeal.

Represented a Nonprofit Organization in an Employment Dispute — Successfully defended a nonprofit organization against claims by an employee who the organization transferred internally to a different job. The union employee claimed that transfer was retaliation because of his prior union activity and violated the terms of the collective bargaining agreement with the union. Through witness testimony, including the testimony of a union leader, our team demonstrated that the transfer was necessary, proper, and not due to any prior union activity and obtained a defense verdict.

Helped Immigrants in Same Sex Marriages Obtain Legal Status — Assisted two immigrants in applying for family-based legal status based on their same sex marriages. Prior to DOMA being overturned, gay or lesbian immigrants who were married to same-sex U.S. citizens were unable to apply for legal status in the U.S. based on their valid marriage. After DOMA was overturned, the U.S. government allowed all immigrants who were legally married, regardless of the sex of their spouse, to apply for legal status. We helped two immigrants who had been applying for legal status based on persecution in their home country instead petition for status based on family.

Secured Legal Status for an Unaccompanied Minor — Helped obtain a positive result for a teenage girl from El Salvador in a longstanding, challenging pro bono matter referred by Kids in Need of Defense (“KIND”). The girl had experienced an extremely challenging childhood, having been abandoned by her father at age 5 and then horrifically attacked as a preteen by local gang members for her refusal to join their gang. At 15, her mother

became ill and was unable to protect her, so the teen fled El Salvador to live with an aunt and sister in New York. Her father's whereabouts are unknown. When she entered the U.S., she was placed in removal proceedings. A Family Court judge designated the girl's adult sister to serve as her legal guardian and granted a motion for special findings, thereby qualifying her for Special Immigrant Juvenile Status in U.S. Immigration Court and allowing her to live with her sister.

Obtained U Visas for Victims of Crime — Successfully helped multiple victims of violent crime to obtain U Nonimmigrant Status Visas ("U Visas"). When granted, U Visas allow undocumented immigrants who have been victimized by crime in the U.S. to obtain legal status. One of the rationales behind the U Visa is to encourage undocumented immigrants to cooperate with law enforcement without the fear of deportation and to punish individuals who prey on a vulnerable population. When a U Visa is granted, the crime victim becomes authorized to work in the U.S. and may apply for a green card after three years of continuous residence in the U.S.

Obtained T Visas for Victims of Trafficking — Helped victims of human trafficking obtain T Nonimmigrant Status Visas ("T Visas") under the Victims of Trafficking and Violence Protection Act. When granted, T Visas allow victims of human trafficking to remain and work in the U.S. in exchange for helping law enforcement to prosecute those responsible for trafficking. A granted T Visa allows an individual to remain and work in the United States and apply for a green card after three years of continuous residence in the U.S.

Helped Victims of Persecution Obtain Asylum in the U.S. — Successfully represented multiple clients seeking asylum in the U.S., including:

- An Iranian woman who converted to Christianity while living in Iran. In Iran, a person who converts from Islam to any other religion is considered an apostate and can be executed. Thus, our client was forced to practice her religion in secrecy for fear of being arrested and possibly killed. Since she arrived in the U.S., the client has been able to practice her religion freely and is active in her church.
- A student activist from Cameroon. The student fled Cameroon for the U.S. to avoid imprisonment for his organization of non-violent protests for the equality and independence of Cameroon's English-speaking population. The Cameroonian government imprisoned him twice for a total of three months, interrogated him, tortured him, and forced him to perform hard labor without food or water. After the student's second arrest, he was ordered to appear in Cameroonian court but, facing certain jail time, fled the country. If he were to return to Cameroon, he could be imprisoned because of his political activities and for not appearing in court.
- An Ethiopian Journalist. A team of lawyers in the firm's Tokyo office helped an Ethiopian journalist and television newscaster obtain asylum in Japan upon initial application. On average, only about two out of every 1,000 asylum applications are granted in Japan upon initial application. According to the international Committee to Protect Journalists, Ethiopia is among the top ten worst countries for jailing journalists.

Defended Against Challenge to the Disadvantaged Business Enterprise Program — Represented the San Diego Chapter of the NAACP and the Coalition for Economic Equity in a case challenging the constitutionality of the Disadvantaged Business Enterprise Program, which was established by the California Department of Transportation to ensure that minority and women-owned businesses are on equal footing to compete for federally funded transportation contracts. Bingham and its co-counsel won summary judgment in 2012 affirming the constitutionality of the program. The U.S. Court of Appeals for the Ninth Circuit affirmed the constitutionality of the program. We represented the San Diego Chapter of the NAACP and the Coalition for Economic Equity, which intervened in the case to ensure the perspectives of the disadvantaged potential contractors were represented.

Secured Victory for Rights of Prisoners — Obtained a significant victory for a prisoner in the U.S. Court of Appeals for the Ninth Circuit. Mr. Lopez alleged that prison officials validated him as a gang member and placed him in the Security Housing Unit (“SHU”) for over 12 years, without affording him due process, as retaliation for exercising his First Amendment right to file grievances and lawsuits. The Ninth Circuit ruled in favor of Mr. Lopez, vindicating the requirement that inmates be told why they are being validated before validation occurs and providing relief on other issues that prevented Mr. Lopez from receiving a fair trial.

Argued Fair Use in a Copyright Case Involving Art — Worked with Stanford’s Fair Use Project to file an amicus brief on behalf of the Warhol Foundation for the Visual Arts in support of fair use in an appeal of *Cariou v. Prince*. In the case, a relatively well-known appropriation artist, Richard Prince, made collages of various appropriated images, including portions of photographs made by Patrick Cariou, and combined them with painting and other media to create 30 new works of art. Cariou sued and Prince argued the use was fair under copyright law. The district court ordered the artwork impounded and subject to destruction. The U.S. Court of Appeals for the Second Circuit reversed the district court’s decision, agreeing with many of the arguments advanced in our amicus brief, including that a use can be fair without criticism or commentary and that an artist’s statement of his intended purpose is not determinative of whether a use is fair.

Defended California’s Ban on the Sale and Production of Foie Gras — Filed an amicus brief on behalf of the Animal Legal Defense Fund in a case challenging California’s ban on the sale and production of foie gras, a popular delicacy that is created by unnaturally enlarging a duck or goose liver up to ten times its normal size by force-feeding the bird over a period of several weeks. Because it is widely perceived to be inhumane, foie gras production is currently banned in many countries. The State of California argued that the law clearly explained the prohibited activity and does not violate the dormant commerce clause. The district court agreed that the plaintiffs were unlikely to prevail on the merits of their claims, and denied the preliminary injunction. The plaintiffs appealed to the U.S. Court of Appeals for the Ninth Circuit and the Animal Legal Defense Fund again submitted an amicus brief in support of the state. The Ninth Circuit affirmed the district court in all respects. The Animal Legal Defense Fund awarded Bingham the 2013 Advancement in Animal Law Pro Bono Achievement Award for our work.

Signature Projects

In 2013, Bingham introduced several new signature pro bono projects. Adding to the **Say Yes to Education** project adopted by the firm in New York in 2005, Bingham initiated partnerships with the following:

SMART Program (San Francisco) — The SMART Program provides highly motivated, financially disadvantaged students with access to educational opportunities by providing them with social and academic services. Starting in the fifth grade, SMART Program students are paired with schools, including charter schools, private schools and other elite schools in the San Francisco area. The partner schools provide free tuition for SMART Program students. Bingham lawyers and staff support the program and its students by hosting a career day, mentoring, tutoring, fundraising, and assisting the students and families with their legal needs.

Bingham/Deloitte - Justice and Diversity Center Partnership (San Francisco) — We launched our first pro bono partnership with Deloitte in 2013 by creating an innovative “clinic in a box” in which Deloitte accountants team up with our lawyers to provide pro bono legal and financial “wellness” assessments of participating nonprofit organizations.

East Palo Alto Phoenix Academy (Silicon Valley) — The East Palo Alto Phoenix Academy (“EPAPA”) is a college preparatory school dedicated to preparing all students for acceptance and success at the four-year college or university of their choice. The school’s mission is to equip students with the academic skills, behaviors, habits

and qualities of character necessary to successfully complete college so that they have the opportunity to earn a family-sustaining income and make a positive impact on their community. Our lawyers and staff volunteer, mentor, fundraise, tutor, provide legal help and much more.

Legal Aid Foundation of Los Angeles (“LAFLA”) (Los Angeles) — Reduced funding hindered LAFLA’s ability to represent foster care parent relatives seeking necessary benefits for children. In 2013, Bingham created a fellowship program at LAFLA, enabling a full-time LAFLA attorney to focus on the foster care Kin-Gap program. The LAFLA Bingham Fellow directly serves clients, refers cases to Bingham pro bono attorneys, and provides training, supervision and mentoring to pro bono attorneys working on Kin-Gap cases.

The Preventing Child Abuse and Neglect Pro Bono Project with the Children’s Law Center (Washington, D.C.) — The Children’s Law Center is a leader in the legal services and child advocacy communities. Bingham lawyers work with families before they become embroiled in the foster care system. Poor children and children with disabilities are at higher risks of abuse and neglect due to the chronic stress associated with poverty and the stress experienced by caregivers associated with caring for a child with disabilities. Through this project, we help to support caregivers to stabilize the lives of these children, ensure that appropriate services are in place, and thus reduce the stressors to the caregiver and mitigate the risk of future abuse and neglect. Bingham attorneys represent grandparents and other relatives who have stepped in to raise children who would otherwise be living with abusive parents.

Pro Bono Fellowships

Bingham supports several pro bono fellowships, as described below.

Equal Justice Works Fellows

Since 1992, Bingham has annually sponsored two to three Equal Justice Works Fellows. Founded by law students in 1986, Equal Justice Works is a nonprofit organization dedicated to creating a just society by mobilizing the next generation of lawyers committed to equal justice. To achieve this goal, Equal Justice Works offers a continuum of opportunities for law students and lawyers. These opportunities provide the training and skills that enable lawyers to provide effective representation to underserved communities and causes. Bingham's 2013 Equal Justice Works Fellows are:

- **Tawny Holmes, National Association of the Deaf (Silver Spring, Md.)** — With both a law degree and a Masters in Education, Tawny Holmes is passionate about teaching parents how to advocate for their deaf child's educational needs. Many teachers and school districts often have limited experience meeting the needs of deaf children. Through in-person trainings and the development of website resources, Tawny is working to educate and empower parents to help their deaf children succeed.
- **Pearl Kan, California Rural Legal Assistance (Salinas, Calif.)** — Pearl Kan is working with local stakeholders and governmental agencies to help the people of Salinas Valley gain access to safe and affordable drinking water. Small, rural and unincorporated communities within the Salinas Valley, some of the poorest communities in the state, are particularly at risk of drinking water contamination. Pearl is working to replicate a successful model of advocacy to access safe drinking water for the people in the Salinas Valley.
- **Michelle Scavongelli, Youth Advocacy Foundation (Roxbury, Mass.)** — Volunteering as a Court Appointed Special Advocate before attending law school, Michelle Scavongelli advocated for the best interests of minor children in the Massachusetts child welfare system. She made sure that children received the in-home counseling, Individualized Educational Plans and after-school activities that they needed. As an Equal Justice Works Fellow, Michelle is creating a project to build a sustainable model of child-empowered legal advocacy in matters of school discipline and special education needs for indigent children involved in the Massachusetts child welfare system.

Public Interest Fellowships

In 2011, Bingham launched a program that enables us to use attorneys' fees recovered in our pro bono litigation engagements to support two three-year public interest fellowships to be hosted by some of the nation's most prominent and respected public interest legal services providers. Since 2011, we sponsored fellowships at **Bay Area Legal Aid** and **New York Lawyers for the Public Interest**. In 2013, we added fellowships at the **Legal Aid Foundation of Los Angeles** and **The Children's Law Center in Washington, D.C.** All of these public service organizations advocate on behalf of Bingham's core values — in areas of community service, children and education — and have long supported our pro bono efforts.



Circular 230 Disclosure: Internal Revenue Service regulations provide that, for the purpose of avoiding certain penalties under the Internal Revenue Code, taxpayers may rely only on opinions of counsel that meet specific requirements set forth in the regulations, including a requirement that such opinions contain extensive factual and legal discussion and analysis. Any tax advice that may be contained herein does not constitute an opinion that meets the requirements of the regulations. Any such tax advice therefore cannot be used, and was not intended or written to be used, for the purpose of avoiding any federal tax penalties that the Internal Revenue Service may attempt to impose.

© 2014 Bingham McCutchen LLP

Bingham McCutchen®
One Federal Street, Boston, MA 02110

ATTORNEY ADVERTISING

To communicate with us regarding protection of your personal information or to subscribe or unsubscribe to some or all of our electronic and mail communications, notify our privacy administrator at privacyUS@bingham.com or privacyUK@bingham.com (privacy policy available at www.bingham.com/privacy.aspx). We can be reached by mail (ATT: Privacy Administrator) in the US at One Federal Street, Boston, MA 02110-1726 or at 41 Lothbury, London EC2R 7HF, UK, or at 866.749.3064 (US) or +08 (08) 234.4626 (international).

Bingham McCutchen LLP, a Massachusetts limited liability partnership, operates in Beijing as Bingham McCutchen LLP Beijing Representative Office.

Bingham McCutchen LLP, a Massachusetts limited liability partnership, is the legal entity which operates in Hong Kong as Bingham McCutchen LLP in association with Roome Puhar. A list of the names of its partners in the Hong Kong office and their qualifications is open for inspection at the address above. Bingham McCutchen LLP is registered with the Hong Kong Law Society as a Foreign Law Firm and does not advise on Hong Kong law. Bingham McCutchen LLP operates in Hong Kong in formal association with Roome Puhar, a Hong Kong partnership which does advise on Hong Kong law.

Bingham McCutchen (London) LLP, a Massachusetts limited liability partnership authorised and regulated by the Solicitors Regulation Authority (registered number: 00328388), is the legal entity which operates in the UK as Bingham. A list of the names of its partners and their qualification is open for inspection at the address above. All partners of Bingham McCutchen (London) LLP are either solicitors or registered foreign lawyers.

The trademarks Bingham®, Bingham McCutchen®, Legal Insight. Business Instinct.™, Legal Insight. Business Instinct. Global Intelligence.™, 斌瀚®, 斌瀚麦卡勤®, 法律视角 商业直觉™, 法律视角 商业直觉 全球情报™ are proprietary trademarks and/or registered trademarks of Bingham McCutchen LLP in the United States and/or in other countries.

This communication is being circulated to Bingham McCutchen LLP's clients and friends. It is not intended to provide legal advice addressed to a particular situation. Prior results do not guarantee a similar outcome.
