

### **Breach of Contract / Fraud – *Sale of a Business***

Dan Holsenback substituted-in as trial counsel in a case involving claims of fraud and breach of a contract in the sale of a business. After a six day jury trial, the jury returned two 12-0 verdicts in favor of Holsenback APC's clients, the defendant-sellers.

### **Breach of Contract – *Monies Lent but not Repaid***

Dan Holsenback substituted-in as trial counsel in a San Diego County case involving a plaintiff's six-figure claim of breach of contract for monies lent but not repaid and a cross-claim for intentional infliction of emotional distress brought by the defendant's mother as a result of cross-defendant's collection efforts. After securing the agreement of counsel for defendant and cross-complainant to waive jury and conducting a 2-day bench trial, Holsenback APC's client was awarded \$152,000; only \$30,000 was awarded to cross-complainant. Prior to trial the best offer of defendant and cross-complainant was that plaintiff "walk away" from his claim and they would agree to mutual releases.

### **Copyright / Trade Secret / Trademark / Patent**

Dan Holsenback was co-counsel for software manufacturer bleem, inc. in precedent-setting copyright, trade secret, trademark, and patent litigation in the United States District Court, Northern District of California. Bleem's first product let you play Sony PlayStation games on your PC. Bleem's adversary in this litigation was Sony. Bleem served and filed a Rule 11 motion, seeking a sanction of dismissal of the case, together with motions for summary judgment addressing all of Sony's claims. Sony took advantage of the "safe harbor" provision of Rule 11, and stipulated to judgment on Counts Three (circumvention of technological protection measures) and Five (trademark dilution). Bleem won summary judgment on two claims. First, Sony's copyright infringement claim relating to a computer program used in the PlayStation called the "BIOS" (Count One) was dismissed. In reaching this decision the judge found that bleem's source code did not contain any copyrighted Sony material. Second, Sony's reverse palming off claim (Count Four) was dismissed.

### **Partnership Dispute**

Dan Holsenback defended one member of a start-up semiconductor LLC against numerous claims brought by the other member of the start-up LLC in a three week jury trial. The other member of the LLC tried the following claims before jury against Holsenback APC's client: Breach of Contract; Breach of Fiduciary Duty; Fraud; Negligent Misrepresentation; Misappropriation of Trade Secrets; and Unfair Business Practices. Plaintiff's potential damages were greatly reduced by motion during trial. Plaintiff's Misappropriation of Trade Secrets and Unfair Business Practices claims were disposed of by motion during trial. The other claims made their way to the jury. The jury returned special verdict forms: Special Verdict Form – Breach of Contract, Special Verdict Form – Negligent Misrepresentation, and Special Verdict Form – Fraud, finding in favor of Defendant on each of those causes of action. The Special Verdict Form – Breach of Fiduciary Duty returned by the jury determined that Defendant breached certain fiduciary duties owed to Plaintiff. Total damages awarded to Plaintiff were only \$30,000, in a case where Plaintiff's Statutory Offer to Compromise was for \$99,999 plus all property, tangible and intangible of the LLC, and where Plaintiff began the trial seeking approximately \$1,000,000 in damages. In the dissolution action, the Court rejected Plaintiff's claim that he was the owner of the LLC's intellectual property. The Court adopted Holsenback APC's suggestion that the LLC's intellectual property be transferred to Plaintiff and that Plaintiff be ordered to pay to Defendant one-half of the value of the intellectual property, resulting in a positive net judgment for Defendant of \$7,500 for the entirety of the matter.

### **Breach of Contract – *Unpaid Commissions***

Xelan, a financial services company, sued a former sales representative for fraud and breach of contract. Dan Holsenback represented the former sales representative in a four day jury trial. The jury returned a verdict of \$5,000.00 for Xelan, and \$106,000.00 for Dan Holsenback's client, who had cross-claimed for unpaid commissions.

### **Software Copyright Infringement – *Technology Company***

Bluebird Systems developed and marketed a suite of software used to input, store, and manage documents in concert with application software

products that were developed and installed by leading industry vendors such as IBM and PeopleSoft. Mr. Holsenback represented Bluebird in a five day binding arbitration against Budget Rent a Car Corporation. The matter dealt with copyright infringement and indemnity issues. Bluebird obtained all requested relief: a one-quarter million dollar judgment plus attorney fees and costs.

### **Software Licensing Dispute – *Technology Company***

Corrugated Technologies, Inc. is a provider of scheduling, planning, data collection, materials tracking, and document storage software for the corrugated box industry. Mr. Holsenback represented CTI in a high-stakes licensing dispute with Weyerhaeuser, protecting CTI's source code from discovery in this federal court action and obtaining a confidential settlement for CTI.

### **Breach of Fiduciary Duty**

Dan Holsenback defended a multi-million dollar action involving a high profile San Diego corporation and claims for involuntary dissolution and breach of fiduciary duty and cross-claims for misappropriation of trade secrets and breach of contract. Mr. Holsenback succeeded in bifurcating the trial, with certain issues to be tried before the jury presentation. This victory, coupled with victories at the summary judgment and motion in limine stages, resulted in an acceptable, confidential settlement after one week of trial in a case with tremendous exposure.

### **Breach of Contract – *Pension Administrator***

Dan Holsenback defended a pension administrator in a 4-day binding arbitration dealing with unfair competition and breach of contract issues. Plaintiff's pre-arbitration demand was for \$286,736 plus attorney fees. Mr. Holsenback kept the judgment down to \$77,500 and no attorney fees and secured for the defendant an award of certain accounts receivable potentially equal to the amount of the judgment.

### **Breach of Royalty Agreement**

Dan Holsenback represented the respondent, the creator of a high profile exercise device, in a 2-day binding arbitration regarding a claimed breach of a royalty agreement, limiting the judgment to an amount less than claimant's pre-arbitration settlement demand.

### **Breach of Contracts – *Real Estate***

Dan Holsenback represented a real estate agent and his broker in an action for breach of contracts to pay commissions on sixteen properties. The case involved two issues of first impression in California. First, can a real estate broker assign a claim for breach of contract to pay real estate commissions to a real estate salesperson? Second, if a buyer enters into a purchase contract pursuant to a California Association of Realtors' Buyer Broker Compensation Contract ("BBCC"), and the seller subsequently agrees to cancel the transaction, can the buyer still be found to be in default under the BBCC, and thus, liable for commissions under the BBCC? After a 6-day bench trial, Judge Ronald Styn answered both questions, "Yes," awarding Holsenback APC's clients \$180,000 in commissions and prejudgment interest, and subsequently awarding attorney fees and costs. Mr. Holsenback's Motion for Judgment as to the Cross-Complaint of defendant, made during trial, was granted.

### **Commission Dispute – *Real Estate***

Dan Holsenback represented a real estate agent who had been assigned his broker's right to commissions under a C.A.R. Form Residential Listing Agreement (Exclusive Authorization and Right to Sell). The case revolved around the issue of "cancellation," as used in 4A(2) of the Agreement and whether it can be construed as applying to a unilateral cancellation. Mr. Holsenback successfully argued in a binding arbitration that if a Seller could unilaterally cancel the Listing Agreement it would nullify the Listing Period because a Seller could cancel an irrevocable 2 year listing on Day 1 of a Listing Period and be relieved of its commission obligation 180 days later. This would make no sense, particularly in light of 4A(3), which provides that a commission is owed if without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred or made unmarketable by a voluntary act of Seller during the Listing Period or any extension. Holsenback APC's client was awarded his six-figure commission and all attorney fees and costs at arbitration and the arbitration award became a judgment by order of the Superior Court.

### **Breach of Commercial Lease – *Real Property***

Dan Holsenback substituted-in as trial counsel in a San Diego County case involving breach of a commercial lease of real property. After a four day jury trial, he obtained a six-figure judgment for his client, the landlord, and defended cross-claims for fraud, negligent misrepresentation, and breach of contract.

### **Construction Defect / Insurance Bad Faith**

Dan Holsenback was lead plaintiff's counsel in a construction defect case brought by Williamsburg Developments against Crib Retaining Walls, Inc. He secured a judgment of \$7,850,000 after a judge trial consisting of direct examination of two expert witnesses and submission of numerous detailed declarations. CRW was not represented at trial because its carrier pulled its defense days before trial. The Holsenback team took an assignment of bad faith rights from CRW in exchange for a covenant not to execute. Then, they filed an insurance bad faith action against CRW's carrier. The Holsenback team survived three motions for summary judgment and a year of worldwide depositions while developing a strategy that established liability and damages as a matter of law, leading to the largest insurance bad faith settlement in California in 1998. Mr. Holsenback handled all oral argument and nearly all depositions in the bad faith case and personally conducted the settlement negotiations.

### **Premises Liability / Assault**

Dan Holsenback defended two nightclub promoters in a five day jury trial involving issues of premises liability, assault, and respondeat superior. Plaintiff went to a nightclub, got into a physical altercation, and required multiple surgeries. Plaintiff sued the nightclub and the promoters who were providing the entertainment. The jury awarded over \$100,000.00 against the pugilist, but returned a defense verdict for the promoter defendants.

### **Legal Malpractice – *Guardian Ad Litem***

Dan Holsenback second-chaired a several week jury trial involving a \$1,000,000 claim against a guardian ad litem, Mr. Holsenback's client. Plaintiff was represented by San Diego's preeminent plaintiff's legal malpractice attorney. The case settled after its second phase for \$50,000.

### **Personal Injury – *Premises Liability***

Dan Holsenback substituted-in as trial counsel in a Riverside County case brought against Marriott Desert Springs Resort & Spa. The case dealt with post-concussive syndrome. A confidential settlement was reached after opening statements and direct examination of the treating neurologist.

### **Personal Injury – *Various***

Dan Holsenback has represented many individuals who have suffered harm at the hands of others and caused many such cases to settle before trial. One case involved a dangerously defective steel stairwell door in a high rise building that slammed with such force that it severed and broke his client's left index finger, resulting in unrelenting left forefinger pain and constant left upper extremity and cervical spine pain. Another other case involved an automobile vs. pedestrian accident where his client suffered an 8-cm scalp laceration, bleeding on the brain, an acute buttock hematoma, post-concussive syndrome and post-traumatic vertigo, plus anemia secondary to blood loss. It was a privilege representing each of these clients and it is rewarding to know the difference made in their lives by the negotiated settlements.

### **Uninsured Motorist**

Dan Holsenback defended an insurance company in an uninsured motorist arbitration with stipulated damages of \$100,000, securing a complete defense award for his client.

### **Motor Vehicle – *Various***

While an associate at Gray, Cary, Ames & Frye, Mr. Holsenback represented numerous American Automobile Association insureds in cases arising out of motor vehicle accidents. He prevailed in all binding arbitrations conducted on behalf of AAA insureds.