

## *Private Sector Representation*

### ***FOCUS: Try cases that need to be tried***

*PB is not afraid of the courtroom and treats every case as having the potential to be tried, so that each case is prepared as if settlement or dispositive motion will not resolve the case.*

<b><i>Trial:</i></b> <i>2 week Jury Trial</i>	Defended general contractor in multi-party negligence and breach of contract case involving a five-star luxury resort where plaintiff alleged damages in excess of \$50M from alleged design and installation construction defects including for pre-fabricated modular units. After pre-trial motions were successfully argued and a jury selected, the matter settled, ending the estimated three month jury trial.
<b><i>Trial:</i></b> <i>4 week Jury Trial</i>	Defended developer/owner in a case involving significant water intrusion allegedly as a result of a conversion of 20-year old apartment complex in Washington. Four weeks into trial and after successful cross-examination of plaintiff's experts and witnesses, a settlement of less than the mediator's proposed settlement was achieved, ending the estimated eight week jury trial.
<b><i>Trial:</i></b> <i>5 week Jury Trial</i>	In a contract action representing a national developer against contractors to recover indemnity on breach of contract, breach of warranty and indemnification claims. Jury verdict in favor of client.
<b><i>Trial:</i></b> <i>3 month Jury Trial</i>	Represented defendant attorney in legal malpractice action; obtained a defense verdict following a \$1M demand.
<b><i>Trial:</i></b> <i>2 week Bench Trial</i>	Represented carrier in equitable subrogation/contribution action resulting in favorable \$1.2M verdict (plus \$500K interest) after carrier defendant rejected pre-trial demand of \$300K.
<b><i>Trial:</i></b> <i>2 ½ month Jury Trial</i>	Defended the remaining contractor in product/sulfate construction claim alleging \$12M in damages; jury verdict of \$650K.

**FOCUS: Use novel and early resolution strategies**

We strive to review our cases both early in the process, and throughout litigation to identify issues that could lend to an early or novel resolution strategy.

<p><b>Multi-District Litigation:</b> <i>Motion to Dismiss granted in favor of client</i></p>	<p>Complete defense of military defense contractor against federal privacy rights claims asserted in multi-state litigation. All federal claims against client dismissed in the published decision <i>In re Jetblue Airways Corp. Privacy Litigation</i>, 379 F.Supp.2d 299 (E.D.N.Y. 2005).</p>
<p><b>Class Action:</b> <i>Demurrer granted in favor of client</i></p>	<p>Complete defense of military defense contractor against California state based privacy rights claims asserted in a class action. All claims dismissed on demurrer and the decision was upheld by the California Court of Appeal.</p>
<p><b>Targeted Risk Transfer Strategy in Multi-Party Litigation</b></p>	<p>Defended general contractor of a new multi-structure mixed use development where plaintiff alleged damages in excess of \$47M; successful targeted risk transfer strategy resulted in favorable settlement at a fraction of plaintiffs' damages.</p>
<p><b>Hawaii Right to Repair Act</b></p>	<p>Defending developers of 120 luxury villas for one building undergoing extensive micro-pile and Uretex<sup>®</sup> retrofit where plaintiff alleged damages in excess of \$35M; successfully dismissed federal and state court actions to binding arbitration. Thereafter, the Firm engaged in strategic discovery including expert depositions where significant damaging testimony was elicited from plaintiffs' key experts both on geotechnical issues and the reduction in valuation claims (stigma damages) which resulted in the Firm successfully settling the matter at the start of arbitration for less than 2% of the claim which did not cover plaintiffs' fees and expenses.</p>
<p><b>Construction Defect</b></p>	<p>Defended owner/developer of a 389-unit, two tower complex in Denver, CO where plaintiff sought damages in excess of \$17M. Comprehensive discovery and preliminary negotiations with claimant's counsel resulted in an opening settlement demand of half of the amounts claimed. Aggressive efforts to minimize the clients' exposure significantly reduced the client's contribution to the settlement. Because the responsible design-build subcontractor was obstructing global settlement negotiations, a creative "side" deal between the claimant, the Firm's clients and the general contractor was negotiated. The settlement also involved the sale by the client of a portion of the commercial property at the project to the HOA which was then used to fund the settlement. The responsible design-build subcontractor then funded the majority of the settlement with the HOA only one day after our clients' "side" deal was negotiated.</p>
<p><b>Targeted Risk Transfer Strategy in Multi-Party Litigation</b></p>	<p>Defended general contractor in complex, multi-party litigation involving luxury apartments in Los Angeles where \$150M in damages was alleged. The Firm successfully filed a motion to allow for destructive testing and took the lead with the experts in securing the necessary repair cost estimates for proper case evaluation. The Firm's effort to educate the mediator with extensive liability analyses, witness testimony, and documentary evidence for each of the parties enabled the mediators to aggressively maximize recovery, thereby significantly reducing the client's contribution to the settlement.</p>

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<p><b>Bifurcation:</b> <i>to utilize alternate strategies in multiple, complex, politicized redevelopment</i></p>	<p>Defended general contractor against 250 highly politicized and publicized claims by redevelopment housing authority; successful implementation of bifurcation strategy to resolve claims and secure contribution/risk transfer.</p>
<p><b>Pre-Trial Motions:</b> <i>Evidentiary Motion</i></p>	<p>Represented development company and international general contractor entities in complex, multi-party litigation involving \$10M+ in damages. After successfully resolving the majority of the case with the HOA, we pursued the design professional for breach of contract and negligence claims. Due to success on our motion to preclude the defendant's only expert witness as a result of defendant's flagrant discovery abuses, and the defendant's inability thus to defend, the case settled favorably in our clients favor on the first day of trial.</p>
<p><b>Class Action:</b> <i>Motion for Summary Judgment granted in favor of client</i></p>	<p>Defended residential developer in \$43M class action claim for alleged defective slopes. Judgment entered for client denying class certification and granting motion for summary judgment.</p>
<p><b>Pre-Trial Motions:</b> <i>Motions in Limine resulting in client's dismissal</i></p>	<p>Client/developer (subsidiary of Fortune 100 company) dismissed from the case after oral argument on favorable rulings on over fifty motions <i>in limine</i>.</p>
<p><b>Pre-Trial Motions:</b> <i>Motion to Dismiss and Anti-SLAPP</i></p>	<p>Successful defense of wrongful death and nuisance claims against Interactive Computer Service Provider through complex pre-trial motion practice (including motions to dismiss, anti-SLAAP motion, and motion for protective order) based upon immunity provisions of Communications Decency Act.</p>
<p><b>Enforcement of Community Declarations; Defense of Related Misrepresentation Claims</b></p>	<p>Represented builder in dispute over creation of second sub-association in covenant-controlled community following the purchase of land from a defunct builder. Suit commenced when master association and original sub-association refused to recognize client's new sub-association and demanded that client's lots be annexed into the original sub-association. Homeowners that purchased lots under the newly formed sub-association then made claims for misrepresentation and non-disclosure. Our unique strategy and diligent efforts brought together the client, the associations and the homeowners of both the original development and newly built homes through the merger of the subassociations, drafting of Amended Declaration with two tiers of maintenance services and resolution of all associated misrepresentation claims.</p>

***FOCUS: Enforce ADR procedures for expedited, cost-efficient results***

*We review all cases to determine if alternative dispute resolution mechanisms can or should be utilized.*

<b><i>Enforced ADR</i></b>	Defense judgment in favor of national developer in arbitration of construction defect action involving project-wide structural and geotechnical allegations.
<b><i>Enforced ADR</i></b>	Binding arbitration of construction defect and Fair Employment and Housing Administration action involving claims ranging from architectural, HVAC and other construction conditions to the assertion of FEHA claims involving alleged bodily injuries and mental distress. Opinion and award issued substantially in favor of developer client on all construction issues and complete defense of homeowners' FEHA claim.
<b><i>Enforced ADR</i></b>	Favorable settlement following first week of binding arbitration of defect involving modular living and commercial units.
<b><i>Enforced ADR</i></b>	Defense judgment in favor of national developer after binding arbitration of warranty dispute.
<b><i>Enforced ADR</i></b>	Arbitration of contract dispute involving advertising claims; Arbitrator accepted all arguments advanced on behalf of client resulting in an award of 20% of the amount sought by claimant.
<b><i>Enforced ADR</i></b>	Successfully moved to enforce a judicial reference provision over the objection of plaintiffs in construction defect suit. Judicial referee found plaintiffs failed to provide credible evidence of geotechnical and structural defects and awarded 12% of the total damages sought.
<b><i>Enforced ADR</i></b>	Successful arbitration of breach of residential real estate purchase contract claim. Awarded 100% of contractual damages, 100% of costs and 75% of contractual attorney's fees.