Cooley

Christopher B. Durbin

Of Counsel



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Seattle

Securities Litigation + Enforcement
White Collar Defense and Investigations
Commercial Litigation
Class Action Litigation
Pro Bono

Chris is an experienced litigator and trial lawyer. His practice focuses on securities class actions, derivative actions, SEC and securities-related regulatory, internal investigations, and a range of complex commercial litigation in federal and state courts, as well as prelitigation counseling, including risk assessment, insurance matters, alternative dispute resolution and appeals.

Chris has extensive trial experience in civil and criminal matters, including two federal criminal trials involving allegations of stock option backdating, one of which, *United States v. Roberts*, resulted in the first acquittal of a stock options backdating defendant; a two-month civil trial in Maricopa County, Arizona, involving breach-of-fiduciary duty claims relating to a real estate transaction; and a two-part trial in *In re Pacific Gas & Electric*, in which the bankruptcy court approved of PG&E's reorganization plan in what was at the time the largest utility bankruptcy proceeding in US history.

Chris left the firm in 2005 to serve as a judicial clerk to then-Chief Judge John C. Coughenour of the US District Court for the Western District of Washington. He returned to Cooley in 2007 after completing a clerkship with the late Judge Robert R. Beezer of the US Court of Appeals for the Ninth Circuit.

Securities Litigation

- Leading national retailer of nutritional products in defense of consolidated shareholder class actions alleging securities fraud in connection with parallel investigation by state attorney general. Our motion to dismiss was granted in full and affirmed on appeal.
- Former executive of information services company in defense of derivative claims asserting breaches of fiduciary duty in connection with company's acquisitions and stock repurchases. After achieving dismissal in California state court on jurisdictional grounds, our motion to dismiss re-filed action in Delaware Chancery Court was granted with prejudice.
- Leading data visualization company and current/former executives in defense of consolidated shareholder class actions alleging securities fraud in connection with competition-related disclosures to investors, as well as related derivative actions. Following discovery, the case was mediated and settled on favorable terms.
- Current/former directors of privately held sports media company in defense of investor claims asserting securities fraud and common law business torts. After the plaintiff voluntarily amended its

complaint in response to our motion to dismiss, the case was mediated prior to discovery and settled on favorable terms.

- Municipal employee retirement fund in connection with fraud claims against former manager of limited partnership investment vehicle, asserting claims (with other LP member entities) in Delaware Chancery Court for breach of LP agreement, breach of fiduciary duty, and rescission of *ultra vires* agreement transferring LP assets to publicly traded business development company. Following lengthy multi-party negotiations, the matter settled on favorable terms, including LP members' majority voting control of business development company and installation of new board and management.
- Leading customer relations management company in Washington state court action seeking appraisal of company stock in response to dissenters-rights dispute arising from all-cash acquisition by publicly traded Delaware corporation. Following discovery, the case settled on favorable terms.
- Target company in defense of shareholder class actions filed in California and Washington state courts in connection with the company's agreement to be acquired. After the California case settled with only additional disclosures, the Washington cases were dismissed voluntarily and without the payment of any attorney's fees.
- Multinational chemical company in an expedited action filed by the target company for specific performance of a multi-billion dollar merger agreement in Delaware Chancery Court. The action settled on the first day of trial on terms that allowed our client to consummate the acquisition on economically favorable terms.
- Life sciences company in defense of tender offer litigation filed in Delaware Chancery Court and the Northern District of California in the wake of its agreement to be acquired. The cases settled with only additional disclosures.
- Semiconductor manufacturer in defense of an expedited breach of contract lawsuit in Delaware Chancery Court alleging bad faith termination of an acquisition agreement. The case was voluntarily dismissed during trial without payment of damages and without being forced to conclude the merger.
- Two large shareholders in M&A litigation filed in Washington state court, among other jurisdictions, relating to the merger of two pharmaceuticals companies. The case settled with no payments to plaintiff by our clients.

Internal/Regulatory Investigations

- Life sciences company in response to Securities and Exchange Commission inquiries regarding post-IPO addition to Nasdaq Biotechnology Index and US Department of Justice inquiry regarding clinical trial sites.
- Recruiting company in response to allegations by former VP of investor relations that company's investor disclosures contained false/misleading statements regarding forward looking financial projections.
- Life sciences company in response to Securities and Exchange Commission and US Department of Justice inquiries regarding insider trading prior to the company's announcement of clinical trial results.
- Large financial services company in an internal investigation in response to an SEC inquiry regarding insider trading prior to the acquisition of a company for which our client served as a financial advisor.
- Life sciences company in an internal investigation in response to FINRA and SEC inquiries regarding insider trading prior to the company's announcement of Phase IV clinical trial results.
- Life sciences company in an internal investigation in response to a FINRA inquiry regarding insider trading prior to our client's announcement of its acquisition.

White Collar Defense

- *United States v. Roberts / SEC v. Roberts* – Successfully defended Kent Roberts, the former general counsel of software company McAfee, in a trial involving alleged stock option backdating violations. Roberts was found not guilty on two felony counts of mail fraud following a two-week criminal trial. The court declared a mistrial on the lone remaining count after the jury deadlocked during deliberations. The government subsequently dismissed the final charge. Roberts was at the time the first executive in

the US to be acquitted in any criminal prosecution related to stock-option backdating charges. The SEC had also filed a civil enforcement action, but following the victory in the criminal case and the completion of discovery in the civil case, the SEC voluntarily dismissed its case with prejudice.
- *United States v. Thurston* – Defended client on appeal in a white collar criminal case. Before the US Supreme Court, we obtained a summary grant of certiorari, vacatur of the opinion by the US Court of Appeals for the First Circuit, and remand for reconsideration of the sentence. On remand, the First Circuit held on Sixth Amendment grounds that our client should be resentenced; the district court subsequently imposed a favorable sentence of six months' time served, in contrast to the five year sentence sought by the prosecutors.

Pro Bono

- *Asylum Matters* – Represented numerous pro bono clients with affirmative asylum applications and interviews, including removal hearings and appeals to the Board of Immigration Appeals.
- *Immigration Appellate Matters* – Conducted numerous oral arguments in petitions to the Ninth Circuit seeking review of asylum and similar immigration-related rulings.

Chris serves on the firm's pro bono committee, is a member of the Seattle area pro bono coordinators group, and also serves as the designee of the ACLU of Washington Foundation as co-chair of the Rules Committee of the Washington State Bar Association's Access to Justice Board.

Chris also serves as regional co-chair of the ABA's Judicial Intern Opportunity Program, which provides opportunities to law students who are members of racial and ethnic groups that are traditionally underrepresented in the profession, including students with disabilities, students who are economically disadvantaged, women, and students who identify as LGBTQ.

Selected Publications and Presentations

- Co-author, *Shareholder Litigation in Washington State*, Ch. 2 "Duties of Officers and Directors" (Washington State Bar Association, forthcoming 2022).
- Presenter, Society of Corporate Secretaries & Governance Professionals' National Conference 2013
- Co-author, "Cy Pres Distributions in Class-Action Settlements," InsideCounsel Magazine, December 27, 2012
- Co-author, "Are Plaintiffs Required to Submit Admissible Evidence in Support of Class Certification?" InsideCounsel Magazine, December 13, 2012
- Co-author, "Considerations for Due-Process Challenges to Classwide Statutory Damages Awards," InsideCounsel Magazine, November 29, 2012
- Presenter, Society of Corporate Secretaries & Governance Professionals' SEC Hot Topics Seminar, Seattle, 2011 – 2012

Education

University of Washington School of Law JD, with honors, Order of the Coif, 2001

Gonzaga University BA, English Literature, magna cum laude, 1997

Admissions & Credentials

California

District of Columbia

Washington

Court Admissions

US District Court for the Central District of California

US District Court for the Eastern District of California

US District Court for the Northern District of California

US District Court for the Southern District of California

US District Court for the District of Columbia

US District Court for the Western District of Washington

US District Court for the Eastern District of Washington

US Court of Appeals for the First Circuit

US Court of Appeals for the Second Circuit

US Court of Appeals for the Fifth Circuit

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Federal Circuit

Rankings & Accolades

Washington Super Lawyers: Securities Litigation (2018-2022)

Memberships & Affiliations

American Bar Association - Litigation Section

King County Bar Association

Federal Bar Association, W.D. Wash. Chapter