

BUSINESS LITIGATION

Bergman & Dacey, Inc.'s business is helping you preserve yours by being the right litigator for your business. Our firm is sensitive to the impact that business litigation can have on both the prosperity and reputation of your business. Our firm works closely with you to develop an individualized litigation strategy that is responsive to your short-term and long-term goals. We carefully take stock of all the factors that can influence your decision whether to pursue alternative dispute resolution methods and then carefully explore all options for resolution in order to avoid a drain on your business' financial and personnel resources and meticulously ensure that every litigation angle is covered.

Bergman & Dacey, Inc.'s business litigation practice is designed to fit your business' needs, including preventative risk analysis and insurance coverage:

- Our firm recognizes that the best defense is a good offense. We understand that your business needs guidance beyond litigation and will help you identify, refine, and resolve internal practices and business policies that could lead, or already have led, to costly litigation. As a registered provider of continuing legal education, **Bergman & Dacey, Inc.** has developed, and is poised to present, lectures at your facilities on important legal issues that affect the way you do business.

- **Bergman & Dacey, Inc.'s** business litigators work together with our insurance coverage counsel to explore and determine early on in the litigation process whether there is a policy that provides coverage for the issues being litigated. When we identify potential coverage, we help your business aggressively pursue its rights under the policy to obtain the protection, security, and reimbursement to which you are entitled.

- **Bergman & Dacey, Inc.** has cultivated an intimate knowledge of various administrative agencies and their particularized rules and procedures. Our attorneys are skilled at navigating through the administrative process and posturing your case in a way that anticipates and readies the matter for a transition to the court system at a later date.

- By keeping you actively informed and involved at all stages of litigation, and by utilizing a team approach within our firm, **Bergman & Dacey, Inc.** is often effective at avoiding trial altogether through favorable settlements or prevailing on dispositive motions, such as summary judgment proceedings.

- **Bergman & Dacey, Inc.** has 25 years of experience in successfully representing clients in civil appeals and writ proceedings. Before engaging in any appellate proceeding, we carefully weigh the likelihood of success as well as the pros and cons of pursuing appellate relief. We are mindful of the fact that the outcome of the appeal, especially if the decision is published, can have implications for our clients who engage in intra- or inter-state commercial activities.

BERGMAN & DACEY, INC.'S REPRESENTATIVE MATTERS

- **Bergman & Dacey, Inc.**'s client was sued by four plaintiffs alleging that he conspired with several other defendants to destroy a software development company by causing it to unnecessarily expend financial resources to weaken its economic condition, by interfering with its economic relationships, by improperly inducing employees to move to a new company, and by misappropriating software technology for his financial gain. Through causes of action including conspiracy, fraud, misappropriation of trade secret, negligent misrepresentation, breach of fiduciary duty, negligence, conversion, and interference with contractual and economic relationships, the plaintiffs claimed damages in excess of one billion dollars, as well as punitive damages against our client and the other defendants. Through strong discovery and motion work, **Bergman & Dacey, Inc.** placed the client in a position to force the plaintiffs into a favorable settlement posture. At the same time, **Bergman & Dacey, Inc.** asserted claims against insurance carriers to have them provide defense costs and indemnity to our client. Through the strategies that we developed and implemented, we obtained settlement of the matter with only insurance carrier dollars, such that our client did not have to contribute any of his own monies to settle the matter. We were also able to negotiate an agreement in which the insurance carriers would not seek reimbursement from our client for the monies they expended on our client's defense or in settlement of his lawsuit.

- **Bergman & Dacey, Inc.** represented a corporation and two of its officers shortly after a trial where it appeared that the court improperly found that the officers were individually liable for alleged Labor Code violations. After evaluating the underlying file materials and the trial transcripts and filings, **Bergman & Dacey, Inc.** filed an extensive motion to have the court vacate its decree and order. We argued that individual officers of the corporation could not be considered an employer under the Labor Code statutes or the California Code of Regulations. We also documented that the law only allows, in very limited circumstances, individual liability of the corporation's officers for the corporation's contract. As such, we established that all claims against the individual officers for these violations had to be dismissed. The court agreed with the positions advanced by **Bergman & Dacey, Inc.** and dismissed all the Labor Code violations, dismissed all the individual officers from the claims of breach of contract and Labor Code violations, and struck the award for treble damages. **Bergman & Dacey, Inc.** sought recovery of its clients' attorneys' fees and costs for prevailing on the Labor Code claims.

- **Bergman & Dacey, Inc.** represented a production company in a high-seven figure claim against a major television studio for unpaid executive producer fees and related compensation in connection with one of the most critically acclaimed and commercially successful television series in history. The dispute involved a wide range of industry issues including screen credit, accounting, contingent compensation, net profit participation, guild rights, and talent/production contract obligations. After bringing the demand, but prior to the commencement of formal court proceedings, **Bergman & Dacey, Inc.** negotiated an extremely favorable settlement for our client, avoiding a contentious, public lawsuit.

- **Bergman & Dacey, Inc.** represented a federal savings bank in a contractual dispute concerning the ownership of escrow funds held back during a \$30 million sale of bank loans and repressed properties. The Court sustained the demurrer prepared by **Bergman & Dacey, Inc.** without leave to amend. Following the order sustaining the demurrer and other procedural events, the parties agreed to a

settlement on terms favorable to our client.

- **Bergman & Dacey, Inc.** represented a client who was sued after defaulting on a \$7 million contract for the installation of a computer system. The plaintiff sought in excess of \$200 million in compensatory damages. Our client cross-complained against the plaintiff for its failure to fulfill its contract obligations, for concealing material facts, and for making materially false representations. After a five-week jury trial, our client prevailed. The jury rendered a verdict that the plaintiff take nothing from our client, while instead the plaintiff was ordered to pay our client in excess of \$1 million and over \$500,000 in litigation expenses and interest.

- In two cases of first impression in California regarding allegations of unfair competition and unfair business practices, several clients asked **Bergman & Dacey, Inc.** to intercede and pursue coverage and defense issues. The clients' carrier had, after a lengthy delay, provided a defense with a full reservation of rights and instituted a declaratory relief action against our clients. **Bergman & Dacey, Inc.** filed a cross-complaint and aggressively pursued discovery; shortly thereafter, the declaratory relief action settled. The clients' carrier agreed to defend the underlying litigation (with no limits), waived its right to seek reimbursement of defense costs and fees, and paid the clients' attorneys' fees incurred with **Bergman & Dacey, Inc.**

- **Bergman & Dacey, Inc.** represented a well-known production company in a multi-million dollar dispute involving contested claims to creative, managerial, and financial rights arising out of the creation and production of several successful television series over the past two decades. Due to often fragile, unique, and ongoing relationships that this, like most entertainment industry endeavors, entail, **Bergman & Dacey, Inc.** has taken great care to balance the protection of our client's legal rights with the parties' desires to potentially collaborate on future dealings. As such, we successfully convinced the parties to forego formal court proceedings in favor of confidential alternative dispute proceedings.

- In a designated complex class action challenging an employer's use of temporary labor, **Bergman & Dacey, Inc.** represented the employer. In this case of first impression, temporary employees, agency temporary workers and consultants sought the rights and benefits normally associated with public employment, including membership in the California Public Employee Retirement System. The litigation raised "cutting-edge" legal questions regarding the obligations of public employers to provide rights and benefits associated with public employment to non-civil service workers. **Bergman & Dacey, Inc.** successfully convinced the courts to proceed with the litigation in several phases, so the legal issues of first impression were resolved prior to incurring the costs of factually litigating the many issues associated with this class action. We successfully mobilized *Amicus* support for our client's position from over 2,500 public entities throughout California.

- **Bergman & Dacey, Inc.** represented a global financial services firm in employment disputes with some of their former financial advisors, regarding protection of valuable proprietary information and trade secrets. **Bergman & Dacey, Inc.** requested immediate judicial intervention seeking temporary restraining orders and preliminary injunctions to protect our client from significant irreparable financial injury.

- **Bergman & Dacey, Inc.** represented a client in a declaratory relief and bad faith lawsuit arising out of the ongoing remediation of the Stringfellow Superfund site. This was document-intensive (in excess of 4 million pages) litigation that involved some of the most complex insurance coverage issues. The total amount of our client's claim was estimated at hundreds of millions of dollars. **Bergman & Dacey, Inc.** proved during the first phase of a multi-phase trial that the insurance policies did not contain a pollution exclusion. During this first trial phase, **Bergman & Dacey, Inc.** utilized a state-of-the-art computer system, which combined videotaped deposition testimony and easy-to-follow graphics to assist the Court in ruling that the parties never intended to endorse a pollution exclusion to the policies. During the second phase of the trial, the Court ruled there was no aggregate limit to the defendants' policies and no limit to the number of occurrences. In a published opinion, the Court of Appeal held our client did not own the groundwater for purposes of applying the insurance policies' owned property exclusion.

- **Bergman & Dacey, Inc.** represented a defendant chemical company in a complex, coordinated litigation of the claims of over six hundred plaintiffs who sued for personal injury and wrongful death as a result of alleged overexposure to chemical products while working at the Lockheed plant in Burbank, California (where commercial aircraft, such as the L1011, and secret military aircraft, such as the Stealth Fighter, were built) and conducted trials involving two groups of plaintiffs. The defense we provided our client was unique from that of the other defendants in that **Bergman & Dacey, Inc.** was able to hire a full-time university professor of toxicology who was independent from the chemical industry. He performed basic and cost-effective testing of the client's product, which allowed the professor to testify at trial on the basis of hard data and first-hand experience as opposed to theory and speculation. Our client was a "target" defendant. **Bergman & Dacey, Inc.** obtained the best result amongst all the defendants at the end of the second trial (low-dollar judgment for only one out of fifteen plaintiffs based on minimal liability against our client). On the strength of these results, **Bergman & Dacey, Inc.**, along with the client, negotiated a structured settlement (payable over several years) of all but six of the plaintiffs' claims for approximately 11% of the settling plaintiffs' collective pretrial settlement demands.

- **Bergman & Dacey, Inc.** represented a chemical manufacturer in a products liability litigation involving allegations of personal injury caused by alleged overexposure to chemicals in the workplace. The claims included negligence, breach of warranty, strict liability, willful and malicious misconduct, and fraudulent concealment. Our client is one of eighty-four defendants who were sued for their alleged failure to provide adequate warnings for chemical products supplied to a manufacturing facility. Given the number of parties, chemicals, and the issues of causation and damage, this litigation involved a close analysis of potentially hundreds of thousands of documents and numerous factual nuances.

- **Bergman & Dacey, Inc.** was brought into ongoing federal litigation to represent one of several general partners who invested in the construction of a 100-unit condominium complex and who were sued for construction defects in state court by the condominium homeowners' association. When **Bergman & Dacey, Inc.** became involved, the general partners' insurance carriers were offering limited settlement dollars to resolve the state court action and had filed a declaratory relief action against the general partners in federal court. **Bergman & Dacey, Inc.** threatened a bad faith action against the insurance carriers and successfully convinced the insurance carriers to voluntarily dismiss their federal

declaratory relief action. Within six months, we successfully convinced the insurance carriers to contribute an additional \$2,750,000.00 towards a global resolution of the underlying litigation and all claims among the insurance carriers and their insureds.

- **Bergman & Dacey, Inc.** represented an insurance company that had been sued for breach of contract, bad faith, and punitive damages following the insured's refusal to defend and indemnify the insured in a suit for patent infringement. At trial, **Bergman & Dacey, Inc.** proved that (1) there was no potential for coverage since patent claims do not fit within the definition of "advertising"; (2) plaintiff's activities were willful so that Insurance Code §533 barred coverage for such conduct; (3) plaintiff's acts predated the policy period so that the known loss rule (Insurance Code §§22 and 250) precluded coverage; (4) the notice prejudice rule eliminated any potential for coverage; and (5) the insurer did not act in bad faith when it investigated and declined plaintiff's tender of defense. The court ruled in our client's favor following a three-week trial.

- **Bergman & Dacey, Inc.** successfully defended a prominent film buyer in a dispute against several film buyers and exhibitors by the production company for one of the highest-grossing independent films in motion picture history. Upon receipt of the claim, **Bergman & Dacey, Inc.** immediately commenced an aggressive defense and counter attack, and forced the plaintiff to abandon its entire claim against our client, thereby protecting our client from a costly, public, and protracted lawsuit.