

THE LAW OFFICES OF
BERGMAN & DACEY, INC.

COMPLEX LITIGATION

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Complex litigation has long been considered one of the most difficult types of litigation to defend. The challenges presented in litigating these cases require extraordinary management, skill, attention, and perseverance. Certain cases, such as class actions, environmental and toxic torts, and mass torts are automatically designated “provisionally complex.”

Bergman & Dacey, Inc. attorneys are readily familiar with the specialized laws and rules that apply to complex and class action litigation, and are equipped to handle the demands of early and extensive judicial involvement. We take a proactive approach in developing the case management order with the judge and suggest provisions that are calculated to assist in positioning our clients’ defense.

We have extensive experience with an array of experts in all types of complex litigation. We effectively coordinate the experts to work together as part of the trial team and combine their efforts to best serve our clients. We assist our experts in preparing their budgets and identify their scope of work.

COMPLEX LITIGATION REPRESENTATIVE MATTERS

1. **Bergman & Dacey, Inc.** has obtained dismissal of a multi-claim federal court discrimination complaint, without leave to amend, under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In a case filed by seven plaintiffs alleging civil rights violations under 42 U.S.C. §§ 1981, 1985 and 2000(e), our firm successfully argued that a prior state superior court dismissal of similar claims from the same plaintiffs acted as a bar to re-litigation of the claims in federal court. Because the federal court claims could have been raised and litigated in the state court proceedings, these claims were encompassed by *res judicata* [a matter decided by a judge in another forum] notwithstanding the fact the plaintiffs deleted these claims from their state court action.

2. **Bergman & Dacey, Inc.** represented a high-profile public entity as a defendant in a class action lawsuit brought in federal court by female employees of a police department. The class of plaintiffs, represented by prominent individual attorneys and organizations such as the ACLU and the NAACP, alleged sexual harassment, discrimination, and retaliation, and it sought broad-based injunctive relief and damages. After successfully resolving the entirety of the plaintiffs’ injunctive relief claims after forcing plaintiffs into a position of not pursuing class relief, we obtained dismissal of some of the individual plaintiffs’ claims, based on their failure to exhaust administrative remedies. We thereafter obtained a Supreme Court ruling limiting the circumstances under which plaintiffs may recover attorneys’ fees, which positioned the client to settle the remaining claims.

3. **Bergman & Dacey, Inc.** represented a large public entity in a class action filed by temporary workers claiming rights under CalPERS and the entity’s administrative code. Although confronting potential claims of thousands of class members, **Bergman & Dacey, Inc.** was able to demonstrate to the court via early motion work that it had no authority to grant the

relief sought against the public entity under its administrative code. Thereafter, we assisted the entity in navigating a CalPERS audit and argued to the court that the lawsuit should not proceed as a class action. Having obtained dismissal of the class claims, **Bergman & Dacey, Inc.** was able to convince the remaining plaintiffs to dismiss any further claims without the public entity having to pay any monies to them, either on their individual CalPERS claims or on their seven figure claim for attorneys' fees and costs.

4. **Bergman & Dacey, Inc.** currently represents a different large public entity in a class action case involving claims made by individuals who provided services to the employer in the capacity of independent contractors. The independent contractors claim they were mis-classified and that they are entitled to be designated as employees of the entity. The independent contractors seek to receive all employee benefits that are provided to permanent and full-time employees.

5. **Bergman & Dacey, Inc.** represented a governmental entity 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 trial presentation 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.

6. The Lockheed Litigation is 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). **Bergman & Dacey, Inc.** represented one of the defendant chemical companies 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, and **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, was able to negotiate 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.

7. **Bergman & Dacey, Inc.** represented one of the chemical manufacturers in its efforts to obtain insurance coverage for claims that were the subject of the Lockheed Litigation settlement. Plaintiffs alleged continuous exposure to products over many decades. **Bergman & Dacey, Inc.** was successful in securing payments, collectively in excess of \$3,000,000 from certain companies who provided insurance to our client during the alleged injurious period of exposure.

8. **Bergman & Dacey, Inc.** represents a chemical manufacturer in products liability litigation involving allegations of personal injury caused by alleged overexposure to chemicals in the workplace. The claims include 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 involves a close analysis of potentially hundreds of thousands of documents and numerous factual nuances. Multiple depositions of both lay and expert witnesses will, in all likelihood, be necessary in order to establish which party, if any, is culpable.

9. **Bergman & Dacey, Inc.** successfully settled a complex document-intensive, environmental litigation case. The case involved a waste water treatment system that was placed in a printed circuit board manufacturing plant, which the plaintiffs alleged contaminated the soil and groundwater on plaintiffs' property. Plaintiffs also alleged stigma damages and damages to adjacent properties. Our client supplied a product that was used in the waste water treatment system for the essential removal of copper. Plaintiffs sought over \$200,000,000.00 in damages from multiple parties. Plaintiffs' settlement offer to our client began at \$7,520,000.00. After the first week of trial, and our effective, precise, detailed cross-examination of plaintiffs' key witnesses, the plaintiffs accepted our client's counter-offer to settle the case for \$50,000.00.

10. A corporation sued our client, a large governmental entity, after being defaulted on a \$7,000,000.00 contract for the installation of a computer aided dispatch system for the governmental entity. The corporation sought in excess of \$200,000,000.00 in compensatory damages. The governmental entity cross-complained against the plaintiff for its failure to fulfill its contractual obligations, concealing material facts, and making materially false representations. After a five-week jury trial in San Diego, the jury rendered a verdict that the plaintiff take nothing against our client on the Complaint. Instead, the plaintiff was ordered to pay our client in excess of \$1,000,000.00 on the governmental entities contract claims, and over \$500,000.00 in costs and interest.

11. **Bergman & Dacey, Inc.** helped resolve a twenty-year dispute involving multiple parties concerning the use of \$100,000,000.00 for the construction of housing and business developments in geographic areas affected by the construction of an interstate freeway.

12. **Bergman & Dacey, Inc.** was brought into ongoing federal litigation by 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 homeowner's 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.

13. **Bergman and Dacey, Inc.** successfully assisted our client, a public entity, to favorably resolve over 100 cases pending against in through, negotiation, mediation, arbitration, and trial. Although these cases posed a potential exposure in excess of \$80 million, **Bergman and Dacey, Inc.** was able to obtain resolutions resulting in a net gain of \$3 million to our client, who paid a total of \$1.7 million, but collected \$4.7 million from these same contractors and their performance bond sureties.

14. **Bergman & Dacey, Inc.** obtained summary judgment in favor of a government entity client in a class action lawsuit involving over 200 female attorneys. In this action, plaintiffs claimed that under the Federal Equal Pay Act, California Equal Pay Act, and the California Fair Employment and Housing Act, they suffered gender discrimination. Specifically, plaintiffs argued that as employees of a non-profit company performing the same duties as public employee attorneys, they were entitled under statute and common law principles to the same salary and benefits afforded to male civil service attorneys employed by the government entity. We prevailed on a dispositive motion by proving that there were no unlawful pay differentials between the female attorneys at the non-profit organization and the male attorneys at the government entity by establishing: (1) that plaintiffs had selected an inappropriate male comparator (i.e., government male attorney vs. non-profit male attorney employee); and (2) that the pay differentials were based on legitimate factors other than sex (i.e., merit based civil service system and cost savings). Finally, we were able to establish that there was no evidence as a matter of law of disparate treatment that would support a FEHA claim.

15. Through a carefully devised strategy to resolve class action claims prior to the commencement of extensive and costly litigation, **Bergman & Dacey, Inc.** negotiated the settlement of a major class action claim, involving approximately 5,000 claims. The settlement occurred as a result of mediation. Prior to the mediation, **Bergman & Dacey, Inc.** engaged in extensive pre-mediation negotiations with plaintiffs' counsel in an effort to clarify the issues and to facilitate an efficient mediation process. After two days of mediation, the parties reached an early settlement at a sum that represented less than 3% of the potential exposure that was estimated to be in the range of hundreds of millions of dollars. As such, the strategy not only cut off fees and costs associated with years of potential litigation, it did so on very favorable terms to the client.

16. **Bergman & Dacey, Inc.** represented a school district client in a complex soil subsidence matter involving multiple parties, including a developer, soils engineers, and

contractors. **Bergman & Dacey, Inc.** utilized its extensive experience to analyze the relevant insurance coverage issues and factual and legal claims, and retained industry leading experts to evaluate geotechnical issues, repair costs and options, and the parties' respective liability. We provided our client with a comprehensive and cost-effective analysis of the entire matter, including a realistic assessment of damage claims, potential exposure and repair options, which led to a global settlement of the entire action.