

Litigation

Year in Review 2010



Without a winning strategy, litigation is a lot like playing chicken.

bingham.com

“A great team comprised of excellent, hardworking lawyers.”

— *Chambers USA (2010)*

BINGHAM

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Message from the Chairs

Dear Clients and Friends,

We are pleased to present our third annual Year in Review, covering litigation activities and achievements in 2010.

2010 was an exceptional year for the Litigation Group. Among other things, we:

- won the largest copyright infringement victory in history when Oracle was awarded a \$1.3 billion judgment from SAP;
- eliminated \$900 million of potential exposure in a mortgage back securities case for Credit Suisse;
- began working for clients Anadarko and MOEX in the Deepwater Horizon Gulf Spill matter in a coordinating counsel role;
- secured victory for Elektrim S.A.'s bondholders when the English Court of Appeal rejected Elektrim's appeal against €185 million in damages; and
- obtained the first-ever federal PSD permit to limit emissions of greenhouse gases.

More than 450 litigators working together across over a dozen practices will provide an excellent base for continued success in 2011.

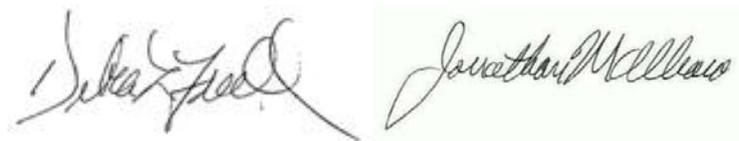
We thank you for all you have done to contribute to our success.

Litigation Practice Leaders,



Bob Dombroff and **Donn Pickett**

Practice Area Leaders



Debbie Fischer and **Jon Albano**

Deputy Practice Area Leaders



Bob Dombroff



Donn Pickett



Debra Fischer



Jon Albano

Litigation Accolades



Bingham was ranked in Tier 1 nationally for General Commercial Litigation on its inaugural list.

— *U.S. News & World Report* (2010)



With 30 litigators listed, the group has a “strong practice with an excellent reputation” and is a “great team comprising excellent, hardworking lawyers.”

- No. 1 — Environmental (California); No. 4 — Environmental (National)
- No. 1 — Antitrust (Massachusetts); No. 3 — Antitrust (California)
- No. 2 — Commercial Litigation (Massachusetts)

— *Chambers USA* (2010)



‘I would absolutely recommend them to anyone in need of high-caliber counsel for complex litigation,’ states one client.

— *Legal 500* (2010)



55 Bingham litigators were named to the *Best Lawyers in America*.

— *The Best Lawyers in America* (2011)



Bingham has seven active litigation lawyers who are Fellows of the American College of Trial Lawyers.

— *American College of Trial Lawyers*



Ranked on the Boston-based BTI Consulting Group’s “Client Service A-Team,” which identifies the top 30 law firms for client service through a national survey of corporate counsels.

— *BTI Consulting* (2011)



Ten Bingham litigation lawyers were featured in *Who's Who Legal: California*.

— *Who's Who Legal: California* (2010)

Practice Groups

- Antitrust and Trade Regulation
- Appellate
- Bankruptcy Litigation
- Entertainment, Media and Communications
- Environmental, Land Use and Natural Resources
- Intellectual Property Litigation
- Labor and Employment
- London Litigation
- Real Estate, Project Finance and Construction Litigation
- Securities
- Tax Controversy and Litigation
- Tokyo Litigation
- White Collar Investigations and Enforcement
- Pro Bono



Antitrust and Trade Regulation

Group Leaders

Bingham has been widely recognized for our work in antitrust and trade regulation law for more than 100 years, representing clients in major matters involving all aspects of antitrust law in federal and state courts throughout the U.S. and before the U.S. Department of Justice, U.S. Federal Trade Commission and international competition authorities. With more than 70 lawyers with significant antitrust and trade regulation experience, we focus on antitrust class actions, intellectual property and standards setting, international cartel and price-fixing litigation, and claims of improper dominant firm practices. In addition to our deep litigation strength, our team also represents clients involved in mergers, acquisitions and joint ventures before both federal and state antitrust regulators.

Our Antitrust and Trade Regulation Group was ranked Band No. 1 in Massachusetts and Band No. 3 in California by *Chambers USA*. A client said “*The group is sophisticated and responsive – it’s ideal to work with in antitrust class action matters.*” In early 2010, we expanded our practice to London to fully service our global clients.



Leiv Blad

Washington, D.C.



Holly House

San Francisco

Representative Matters

Bank of New York Mellon and Pershing — Representing Bank of New York Mellon and Pershing in San Francisco Superior Court in unfair competition cases, challenging prime brokerage short sale practices.

California Tomato Processor — Representing a leading tomato processor in connection with the U.S. Department of Justice Antitrust Division investigation and multidistrict direct and indirect purchaser class action complaints concerning alleged price fixing of processed tomato products.

General Motors — For six months, we represented General Motors LLC in 31 expedited American Arbitration Association (AAA) proceedings brought by car dealers seeking reinstatement to GM’s post-bankruptcy dealer network. Nationwide, outside counsel for GM handled more than 1,000 arbitrations initiated in late January 2010, all of which had to be completed by July 2010. The final score for the New England matters handled by Bingham in its 180 day assignment was six cases tried and won, 24 cases favorably settled and only one loss (where the selected arbitrator recused himself and was replaced by AAA). The cases were venued in the state of Massachusetts and New York.

Genzyme — Representing Genzyme in distribution litigation in the U.S. District Court for the District of New Jersey related to the acquisition of Biomatrix, at which time Genzyme also acquired two distribution agreements that Biomatrix had entered into with I-Med Pharma.

Guy Carpenter Insurance — Defending a reinsurance broker against the Connecticut Attorney General’s lawsuit alleging the reinsurance broker engaged in a more than 50-year antitrust conspiracy involving the sale of reinsurance through reinsurance facilities and other marketing practices. Motions to strike have been argued and are pending a decision.

Intel — Serving as lead counsel for Intel Corporation in more than 75 federal class actions, consolidated in the U.S. District Court for the District of Delaware, challenging Intel’s sales and marketing practices for its

microprocessors under federal and state antitrust laws. In a key ruling last July following a three-day evidentiary hearing, the district court recommended that the district court should deny the plaintiffs' motion for class certification and grant Intel's motion to exclude the plaintiffs' expert witness. We are also representing Intel in related state court class actions in California and served or are serving as co-counsel in related cases brought by AMD, the U.S. Federal Trade Commission and the New York Attorney General.

Major Global Financial Institution — Advising in connection with European Union antitrust investigations relating to ICE and Markit, and on the EU's proposed initiatives into credit default swaps and related market infrastructure.

Morgan Stanley — Representing Morgan Stanley in connection with an antitrust investigation into alleged manipulation of the installed capacity auction markets for electricity in New York City, and in connection with class action lawsuits in state and federal courts pertaining to the same alleged manipulation issues.

Nissan North America — Represented Nissan North America in the Canadian export antitrust cases, which involved approximately 70 cases in federal and state courts. In June, the court affirmed the dismissal of Nissan Motor Co. on the grounds of lack of personal jurisdiction.

QUALCOMM — Representing QUALCOMM in a proceeding before the Japan Federal Trade Commission related to competition law issues.

Rand-Whitney Containerboard — Successfully represented Rand-Whitney in an arbitration concerning multimillion-dollar fee overcharges by the town of Montville, Conn. Rand-Whitney constructed a mill in Montville pursuant to an agreement in 1993. Two years later, the Montville Pollution Control Authority failed to provide water of the quality required by a supply agreement that was included in the 1993 agreement. This led to a lawsuit in federal court beginning in 1996. After several failed settlement efforts, extensive litigation ensued, ultimately resulting in an \$11 million judgment in 2008 against Montville for multiple breaches of contract. Montville retaliated against Rand-Whitney by taking other adverse actions such as using the town's tax powers to overcharge Rand-Whitney in personal and real property taxes. State court litigation followed, resulting in a \$2 million dollar judgment for Rand-Whitney for the tax overcharges. In the service charge arbitration dispute, and after an extensive hearing before a three-arbitrator panel, Rand-Whitney proved the town and its lawyers ginned up a supposedly "independent" rate study to justify a million-dollar-per-year rate increase. The arbitrators invalidated that effort, saving Rand-Whitney many millions of dollars. The town's effort to overturn the arbitration award failed in federal court. Instead, the award was confirmed.

Royal Bank of Canada — Representing the Royal Bank of Canada in an antitrust action commenced by the state of West Virginia against numerous financial institutions alleging improper bidding practices in connection with the market for guaranteed investment contracts and other derivatives related to the reinvestment of the proceeds of municipal bond issuances.

RRI Energy — Received a favorable ruling from the Tennessee Supreme Court in a case we argued November 2010 on behalf of RRI Energy. The Tennessee court broadly ruled that application of state antitrust law to wholesale natural gas transactions was subject to field preemption under the Natural Gas Act as amended.

SanDisk — Representing SanDisk in connection with consolidated nationwide direct and indirect purchaser class action complaints in the U.S. District Court for the Northern District of California. Last spring, the district

court denied the indirect purchaser class certification motion after finding a lack of common proof of impact on either direct or indirect purchasers. The direct purchaser case was dismissed after the court denied the plaintiffs' motion for leave to amend, adopting that the named plaintiff lacked standing.

Sharp Corporation and Sharp Electronics — Representing Sharp Corp. and Sharp Electronics Corp. in direct and indirect purchaser class action cases and in connection with opt-out litigations alleging price-fixing conspiracies related to alleged price fixing of LCD-TFT panels that are used in TVs, computer monitors, laptops, cell phones and other products. A federal judge granted the defendants' motions to dismiss separate antitrust complaints in which Motorola, AT&T and Nokia alleged a conspiracy to fix the market for LCD panels.

Taconic, Angelo Gordon, Anchorage, Providence and Eton Park — Advising private equity companies on the European Union antitrust implications of their acquisition of WIND Hellas, a major Greek telecommunications operator.

Tempur-Pedic — Successfully defended Tempur-Pedic's unilateral retail pricing policy against attacks by private civil litigants and in civil enforcement action by New York Attorney General. Defeated appeal in the U.S. Court of Appeals for the Eleventh Circuit after obtaining dismissal of claims asserted under Section 1 of the Sherman Act in putative national antitrust class action. Persuaded New York state trial court to dismiss and otherwise deny petition by New York Attorney General seeking to enjoin Tempur-Pedic from maintaining its unilateral retail pricing policy in precedent-setting action based on New York Attorney General's novel interpretation of 35 year old statute repealing the New York Fair Trade Law. Petition for *en banc* review pending.

Appellate

Group Leader

Bingham's appellate lawyers represented clients on appeals from a number of multimillion- and multibillion-dollar judgments and we have had a leading role in developing the law in many areas. Our appellate lawyers also offer a range of specific services beyond regular appeals, including petitions for interlocutory writs, review of administrative proceedings and representation of amici curiae. We provide advice to trial counsel on issues of law, preserving points for appellate review and briefing of important motions in trial courts.



David Salmons
Washington, D.C.

We have handled appeals from trial courts in 35 states as well as Washington, D.C., and have appeared in the U.S. Supreme Court, every circuit in the U.S. Court of Appeals and the U.S. Court of Claims. Our team includes David Salmons, a former assistant to the solicitor general of the United States, who has argued 14 cases before the U.S. Supreme Court.

Representative Matters

Attorney's Process and Investigation Services Inc. — Represented Attorney's Process and Investigation Services, Inc., in an appeal involving questions of tribal and federal court jurisdiction. The case was remanded, which was a partial victory for the Attorney's Process and Investigation Services.

Chabad — The U.S. District Court for the District of Columbia entered a default judgment against the Russian Federation, the Russian Ministry of Culture, the Russian State Library and the Russian State Military Archive in an action filed by a religious organization, Agudas Chasidei Chabad of United States, to recover a sacred collection of Jewish books and manuscripts that were seized during the Bolshevik Revolution and World War II. In an order filed July 2010, Judge Royce Lamberth told the Russian government to surrender to the U.S. Embassy in Moscow, or to the duly appointed representatives of Agudas Chabad, the complete collection of religious books, manuscripts, documents and things that comprise the collection, and further ordered the defendants to assist and authorize the transfer of the collection and to provide whatever security and authorization is needed to insure prompt and safe transportation of the collection to a destination of the plaintiff's choosing. Agudas Chabad filed this action on Nov. 2004, under the Foreign Sovereign Immunities Act. After more than five years of hotly contested litigation, including an appeal in the U.S. Court of Appeals for the District of Columbia that affirmed the U.S. federal court's jurisdiction over the defendants, the defendants withdrew from the litigation.

Lawrence Union Free School District — Represented Lawrence Union Free School District in an appeal to the U.S. Court of Appeals for the Second Circuit. Bingham had previously successfully represented the school district in connection with a lawsuit brought by a group of local parents against Lawrence Union Free School District and the board of education and its members, claiming the possible closure and sale of a school violated the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment because members of the board of education, most of whom are Orthodox Jews, would use the proceeds from the school's sale or lease to benefit the Orthodox community. The plaintiffs claimed the lower tax base resulting from the public school's closure would help other Orthodox Jews pay for tuition at private yeshiva schools. The appeal resulted in the Second Circuit upholding the lower court's decision in favor of the school district to refuse to grant a preliminary injunction and dismissal of the suit.

T.A. — Represented the family of an Oregon boy whose parents sought to receive reimbursement from local public schools for monthly private school tuition. The boy, known as T.A., was diagnosed with attention deficit hyperactivity disorder, but the school district refused to recognize his disability or offer him any special education services. **Bingham won a major victory for T.A. when the U.S. Supreme Court ruled 6-3 that parents may seek to recover reimbursement for private special education services whenever a school district fails to make a free appropriate public education available to the child.**

Taiga International — Represented Taiga International in an appeal in the U.S. Court of Appeals for the Fourth Circuit in a case involving trade secrets and contract dispute. Taiga, a Belgian company, specializes in food and tobacco flavoring. Tobacco Technology Inc., a U.S.-based tobacco flavoring company, sued Taiga for allegedly violating a distribution agreement and stealing trade secrets after Taiga began making and selling its own tobacco flavors. Tobacco Technology sought disgorgements of Taiga’s profits from the past five years as well as all of Taiga’s proprietary tobacco formulas. The Fourth Circuit ruled to uphold the U.S. District Court for the District of Maryland’s summary judgment in Taiga’s favor.

Bankruptcy Litigation

“Recognized as the world’s leading firm in the field of restructuring” by *Who’s Who Legal*, more than 100 lawyers in Bingham’s Financial Restructuring Group provide strategic advice concerning troubled investments and loans worldwide. The group’s bankruptcy litigators principally represent banks, insurance companies, other financial institutions and major creditors in financial matters ranging from complex Chapter 11 proceedings to arguments in the appellate courts concerning the interpretation and application of sections of the Bankruptcy Code. We also represent bankruptcy trustees in complicated cases and counsel clients who find themselves sued by bankruptcy debtors.

We have substantial experience with both voluntary and involuntary bankruptcy filings as well as motions to convert or dismiss counterproductive Chapter 11 cases. We have prosecuted contested matters, adversary proceedings, creditors’ rights litigation and plan contests in bankruptcy courts throughout the United States. We represent secured creditors in connection with debtor- in-possession financing, 363 sales and valuation disputes. We also have significant experience representing official committees of unsecured creditors in large Chapter 11 cases, including representing committees in the BearingPoint and Land America filings. We handle fraudulent conveyance and unperfected transfers, and unauthorized post-petition transfers, lift-stay motions, contested confirmations, preferences, valuation hearings, classification and cram-down disputes. We have also handled cases involving the enforcement of intellectual property rights and motions for assumption or rejection of executory contracts or unexpired leases.

Representative Matters

Anadarko Petroleum — Representing Anadarko and Kerr-McGee Corporation in two consolidated adversary proceedings filed by the United States, Tronox Incorporated, Tronox Worldwide LLC and Tronox LLC in bankruptcy court in the U.S. District Court for the Southern District of New York. The proceedings arose out of the separation of Tronox Incorporated from Kerr-McGee. Anadarko acquired Kerr-McGee in August 2006. The plaintiffs allege Kerr-McGee undercapitalized and then fraudulently conveyed Tronox as part of a long-term conspiracy to rid itself of its chemical assets and legacy liabilities related to various former businesses, including wood treating, nuclear material mining and petroleum refinement. According to the complaints, Kerr-McGee’s actions were the cause of Tronox’s ultimate failure as a manufacturer of titanium dioxide. The plaintiffs and the U.S. seek hundreds of millions of dollars in damages. These litigations have spawned multiple disputes across the U.S. over Tronox’s environmental liabilities, as plaintiffs who were pursuing claims against Tronox now have turned their attention to Kerr-McGee and Anadarko for redress. In addition to the bankruptcy-related proceedings, the parties are dealing with Tronox’s failure to perform ongoing environmental reclamation obligations.

Bank of America — Representing Bank of America in an appeal of a bankruptcy decision in the U.S. District Court for the Southern District of New York concerning the return of \$500 million to Lehman Brothers Holdings. Lehman deposited the funds weeks before seeking Chapter 11 protection and called the bank’s seizure of the funds an impermissible setoff that violated the automatic stay in Lehman’s bankruptcy case.

Group Leaders



Michael Reilly
New York



James Roome
London



Jeffrey Sabin
New York

LandAmerica — LandAmerica, once the third-largest title insurer in the United States, collapsed precipitously in November 2008. With the collapse came allegations that LandAmerica’s “like-kind” property exchange business (whereby an investment property can be exchanged for a new property under Section 1031 of the Tax Code without causing a taxable event so long as the funds transfer is handled by a “qualified intermediary”) had been operated as a Ponzi scheme after \$290 million of customer-deposited funds invested in auction-rate securities became frozen in February 2008. Bingham represented the official committee of unsecured creditors for the LandAmerica parent holding company, LandAmerica Financial Group, Inc. (LFG). In addition to the traditional creditors’ committee roles of policing the debtors’ handling of the case, conducting diligence on material claims and post-petition asset sales, and investigating gating plan confirmation issues, Bingham intervened in multiple adversary proceedings brought against LFG and its 1031 exchange subsidiary, LandAmerica 1031 Exchange Services, Inc. (LES), by disgruntled 1031 exchange customers. Bingham then successfully implemented a protocol that staged the litigation of five “test” cases, leaving more than 100 other adversary proceedings brought by 1031 customers stayed. The staging process allowed for early court rulings that held commingled customer deposits at LES to be property of the LES bankruptcy estate. Absent this protocol and result, tens of millions of dollars would have been spent on litigation, and plan confirmation would have been impossible. At the same time, Bingham also conducted an accelerated investigation of more than \$65 million in cash transfers from LFG to LES in the months leading up to the bankruptcy filing, as well as the transfers to LES (during that period) of \$70 million of cash and marketable securities held by LFG’s regulated title insurance subsidiaries in exchange for illiquid auction-rate securities held by LES. Using the results of this investigation, Bingham successfully mediated a dispute with the LES creditors’ committee over the \$65 million inter-company claim owed by LES to LFG, in the process building a settlement structure that served as the basis for the plan of liquidation. This, in turn, allowed plan confirmation to occur in just over a year, again saving LFG’s estate tens of millions of dollars in administrative expenses alone. Post-confirmation, Bingham, on behalf of the trustee of LFG’s liquidation trust, successfully accelerated a \$50 million note payable from Fidelity National Financial (the company that purchased the title insurance subsidiaries at the outset of LFG’s bankruptcy case) to LFG, significantly increasing the funds available for immediate distribution to LFG’s creditors.

Spansion — Spansion is one of the world’s largest manufacturers of memory chips for mobile phones and other devices. In the spring 2009, Spansion filed for bankruptcy protection in Delaware, while at the same time its Japanese subsidiary, Spansion Japan Limited (SJL), filed corporate reorganization proceedings in Japan. SJL operated wafer fabrication facilities and was the manufacturing arm of the company. SJL’s bankruptcy proceeding in Japan was groundbreaking as it is the first-known time a secured lender committee was formulated in a Japanese corporate reorganization proceeding. A cross-boarder team of Bingham lawyers from both our Tokyo and the U.S. offices represented the secured lender committee, which was agented by GE Japan. A key component of the victory was administrative claim litigation commenced in the United States bankruptcy proceedings. After extensive discovery, the U.S. team was able to leverage the litigation into a settlement with both the Japanese and U.S. debtors that resulted in an agreement to mediate disputes concerning SJL’s plan of reorganization in Tokyo. This “first-of-its-kind” mediation in Japan was successfully handled by Bingham’s Tokyo office. It is often expected that secured lenders in Japanese bankruptcy proceedings will recover less than one quarter of their debt, but led by Bingham and GE, the secured lenders in the Spansion case achieved a full recovery (including post-petition fees and interest) of more than \$400 million in secured debt.

Entertainment, Media and Communications

Group Leaders

Our entertainment, media and communications practice provides a full range of litigation services, including state and federal trial and appellate work, arbitration and mediation, to celebrities, actors, directors, producers, writers, recording artists, executives, production and distribution companies, and major motion picture studios. We advise and advocate on various issues affecting the industry, including enforcement of secured rights; profit participation disputes; tax concerns; patent, copyright and trademark infringement; guild issues; delivery, service and payment disputes; advertising; rights of publicity and privacy; and employment and labor matters.

We also have extensive experience in virtually all areas of First Amendment litigation, including defamation; invasion of privacy; subpoenas of reporters, authors and academics; and constitutional and statutory right-of-access cases and copyright claims. We also perform pre-publication review for newspapers, magazines, book publishers and websites.

Representative Matters

Associated Press, Boston Globe and Turner Broadcasting — Successfully represented the Boston Globe in unsealing the jury list in a controversial manslaughter prosecution of a mother whose child was accidentally shot by an illegal gun kept in the home. We also successfully represented the Associated Press and the Boston Globe in unsealing court records in a case charging Thomas Mortimer with murdering his wife, young children and mother-in-law. The records had been sealed to protect the defendant's fair trial rights. Finally, we successfully represented truTV (formerly known as Court TV) in opposing a motion to prohibit broadcasting of a complainant's name and photograph in a case charging a coed with stabbing her ex-boyfriend.

Boston Bar Association — Filed amicus brief in the U.S. Court of Appeals for the First Circuit and successfully arguing that First Amendment right to petition protected bar associations from liability for filing lawsuit accusing company of engaging in the unauthorized practice of law.

The Enterprise — Won a jury trial in Massachusetts Superior Court on behalf of the Enterprise, a newspaper owned by Gatehouse Media, and two of its editors. A former school committee member sued the paper for defamation and related torts stemming from a series of articles about a school employee who was indicted for (and later convicted of) larceny of school funds. After a seven-day trial, the jury found for the defendants on all counts, finding that seven of the eight statements at issue were true and that the eighth statement was not published with actual malice.

ESPN/Erin Andrews — Successfully represented ESPN sports reporter Erin Andrews, who was the victim of criminal videotaping and Internet distribution. We worked closely with the FBI and private investigators to track down the stalker and remove the materials from the Internet. The alleged stalker was arrested and charged in a case of first impression with criminal stalking and causing emotional harm and injury through electronic means. The stalker pled guilty to the charges in December 2009 and was sentenced in March 2010.



Jon Albano



Ky Kirby

Washington, D.C.



Jon Loeb

Santa Monica

Frank Konigsberg — Representing Frank Konigsberg and his production company (9 1/2 Weeks) in connection with various actions and arbitrations to recover his multimillion-dollar investment in the motion picture “Retrograde.” Our work involved two lawsuits in Los Angeles Superior Court, several arbitrations, defending our judgment on appeal, and enforcement and collection of our judgment in Lugano, Switzerland.

Gatehouse Media — Obtained a ruling from the Massachusetts Supreme Judicial Court extending the fair report privilege to newspaper accounts of government actions based on confidential sources.

Harvard University — Successfully represented Harvard University and a faculty member in blocking an attempt by Second Amendment advocates to require the professor to testify about confidential academic communications in an action challenging a Chicago gun control ordinance.

J.K. Rowling — Representing J.K. Rowling, author of the Harry Potter book series, regarding intellectual property matters related to certain other works involving the world of Harry Potter.

Massachusetts Gay and Lesbian Political Caucus — Represented a political advocacy group in filing an amicus brief cited by the U.S. Supreme Court in holding that public records law did not violate First Amendment associational rights by requiring public access to signatures on referendum petitions.

Möet Hennessey Louis Vuitton — Representing Guerlain and Acqua di Parma brands owned by Möet Hennessey Louis Vuitton in matters arising out of the Chapter 7 reorganization of Spa Chakra.

St. Martin’s Press — Recently obtained a victory on behalf of St. Martin’s Press (SMP) against Cambridge author David McClintick, who had been paid a \$650,000 advance to write a biography of Frank Sinatra. SMP sued to recover the advance, alleging McClintick had failed to produce the Sinatra manuscript on time. McClintick counterclaimed that SMP had breached its duty of good faith by failing to work with him to develop the manuscript. We successfully briefed and argued a motion for judgment on the pleadings, which resulted in a judgment in SMP’s favor for the full amount of the advance and dismissal of McClintick’s counterclaims.

Vonage — Representing Vonage in a consumer class action lawsuit for which court approval of a settlement is presently being sought. The law suit alleges Vonage misrepresented the scope of its promotional one month free and money back guarantee; improperly collected disconnection, cancellation and/or termination fees; and continued to charge subscription fees despite requests for cancellation.

Environmental, Land Use and Natural Resources

Group Leaders

Top-ranked as a leading environmental practice by *Chambers USA* and *Best Lawyers*, Bingham's Environmental, Land Use and Natural Resources Group provides environmental compliance, counseling, litigation and rulemaking advocacy services to a variety of clients.

Named by *Chambers USA* as “one of the leading environmental law firms in the U.S.,” we help our clients secure environmental and land use permits for all manner of projects, including renewable energy projects, infrastructure expansions and upgrades, and urban infill and redevelopment projects. We are also a go-to resource for high-stakes environmental litigation. We handle litigation stemming from enforcement investigations, multimedia enforcement actions, bankruptcy cases with environmental law aspects, contract-related issues and mass tort litigation.



Rick Rothman
Los Angeles



Mike Wigmore
Washington, D.C.

Representative Matters

Anadarko Petroleum Corporation — Represented Anadarko in the successful appeal of a lower court's decision clearing the way for the Atlantic Rim project, an extensive natural gas drilling project in Wyoming. The Court of Appeals for the D.C. Circuit struck down claims from green groups that the United States government erred in opening vast tracts of sensitive habitat to exploration by our client and other gas companies, and concluded the Bureau of Land Management carried out adequate environmental studies and, otherwise, fulfilled its responsibilities when approving the project.

Anadarko Petroleum Corporation, Anadarko Exploration and Production and MOEX Offshore 2007 — Serving as coordinating national counsel for Anadarko Petroleum Corporation, Anadarko E&P Company LP, and MOEX Offshore 2007 with respect to the explosion and resulting release of hydrocarbons relating to the Deepwater Horizon incident in the Gulf of Mexico. BP is the majority owner and operator of the Macondo well involved in the Deepwater Horizon incident; our clients are non-operating minority investors in the project. Bingham lawyers are examining the environmental and natural resources and liability issues related to the explosion and oil spill. We are also defending our clients in multi-district litigation where more than 400 lawsuits have been filed with respect to the incident.

California Department of Water Resources (CDWR) — Reached a successful settlement for several litigation matters against Sempra Generation arising out of the long-term contract Sempra entered into with the CPUC and CDWR during the 2000-01 California Energy Crisis. One element of the settlement requires Sempra to pay CDWR \$130 million, money that will ultimately flow to California electricity ratepayers in the form of lower electricity prices. This settlement is a companion piece to another settlement involving short-term energy sales by Sempra to ratepayers during the energy crisis for another \$270 million.

City and County of Honolulu — Represented the City and County of Honolulu in resolving a series of federal lawsuits brought by the United States, the state of Hawaii and several environmental organizations relating to the upgrade of the city's wastewater treatment and collection system. The consent decree, or settlement, calls for the city to make improvements to its wastewater collection system that largely mirror plans that were already being implemented, and allows for secondary treatment system upgrades at Oahu's two largest treatment

plants by 2024 and 2035-38, the latter being the longest schedule for any municipality nationwide. The consent decree awaits approval by the U.S. District Court for the District of Hawaii.

NextLight Power — Negotiated a first-of-its-kind interconnection agreement that will allow the development of a 500 MW solar power plant to be constructed by NextLight Power (recently acquired by First Solar) near Yuma, Ariz. The plant, which will be the largest photo voltaic solar project in the United States once fully constructed, sits astride two different transmission control areas. The agreement is unique because it has been executed by both control areas, thereby facilitating the sale of power generated at the plant into either the California or Arizona control area. Had the agreement not been successfully negotiated, the project would have been delayed and had to forgo federal stimulus funding.

Russell City Energy Center — Secured the first federal air permit that includes limits on emissions of greenhouse gasses for a 620 MW natural gas-fired power plant in Hayward, Calif. The permit was developed in coordination with national environmental groups and served as a model for an EPA advisory committee in preparing guidance for the agency on greenhouse gas permitting. Several citizen groups sued to halt construction of the project. In November 2010, the Environmental Protection Agency's Environmental Appeals Board issued a 136-page opinion denying the five remaining petitions for review of the PSD permit, allowing construction to move forward.

Renewable Fuels Association — Representing RFA in a challenge to the California Air Resources Board's Low Carbon Fuel Standard (LCFS). The lawsuit, filed in federal court in Fresno, Calif., alleges that the LCFS is unconstitutional. Specifically, the complaint alleges that the LCFS (i) discriminates against interstate commerce and Midwest corn ethanol producers; (ii) attempts to regulate extraterritorially activity of Midwest corn ethanol producers; (iii) imposes undue burdens on interstate commerce that are highly disproportionate to the benefits it delivers; and (d) conflicts with, and is therefore preempted by, the federal Energy Independence and Security Act of 2007. RFA and other plaintiffs have filed motions for summary judgment and a preliminary injunction.

Schnitzer Steel Industries — Representing Schnitzer in a multiparty superfund enforcement action involving the Portland Harbor Superfund Site in Portland, Ore. Schnitzer has been named among the potentially responsible parties for the remediation of river sediments in a ten-mile stretch of the Willamette River. EPA has alleged that Schnitzer has contributed to the contamination through its operations along the river, including a metals recycling facility that was previously occupied by World War II U.S. Maritime Commission shipyard. The dispute involves hundreds of entities that operated on the river where EPA has alleged that future cleanup costs could exceed \$1 billion. The matter also involves claims for natural resources damages by trustees including federal and state agencies and several Native American Tribes.

Tessera Solar North America — Helped secure environmental and regulatory permits for Tessera Solar North America's 709 MW solar energy facility in Imperial County, Calif. (the first solar energy project ever developed on public lands) and a 663.5 MW solar energy facility in San Bernardino County, Calif. Our team obtained approvals and permits from the California Energy Commission, Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and the Regional Water Quality Control Board. Our completion of the permitting process allowed for both projects to potentially qualify for stimulus funding under the American Reinvestment and Recovery Act. We are now defending these projects' approvals in litigation.

Intellectual Property

Group Leaders

Bingham's Intellectual Group was recognized by Law360 as one of the top five IP Groups of the Year in 2010. In addition, *Chambers USA* praised our IP team for the “depth of its knowledge, its pragmatic perspective on cases and its responsiveness and good client skills: ‘*The group represents great value for money,*’ concluded one source.”

Our IP Group includes more than 60 lawyers who represent clients in the full range of intellectual property and technology matters – we advise clients on protecting their innovations, intellectual and technical assets and business strategies, including trade secrets; obtaining and enforcing patents, trademarks and copyrights; defending against claims brought by competitors; analyzing patent portfolios and conducting IP due diligence reviews in connection with potential M&A transactions; and representing clients in high-profile intellectual property and technology litigation matters.

Many of our lawyers are admitted to practice before the U.S. Patent and Trademark Office and have advanced technical degrees, and are former industry professionals and in-house counsel.



Bill Abrams
Silicon Valley



Scott Bluni
Boston

Representative Matters

Alere Medical — Represented Alere Medical against claims of infringement of eight patents covering home health monitoring technology. Reexamination requests were filed on the patents, and the case was stayed after the initial request was granted and notice of cancellation was issued by the U.S. Patent and Trademark Office. The case was ultimately settled. In another case, we represented Alere against claims of infringement of 11 patents covering medical monitoring technology. The case was settled.

Boston Scientific Corp. — Represented Boston Scientific in an intellectual property diligence project relating to a \$75 million deal to acquire Intelect Medical, which specialized in deep brain neurostimulation technologies.

CVS — Representing CVS in numerous patent infringement actions brought in the U.S. District Court for the Eastern District of Texas by nonpracticing entities involving various technology and business method patents.

Daimler Trucks N.A. — Representing Daimler Trucks N.A. and Detroit Diesel in defense of patent infringement claims filed by Kruse Technologies in the U.S. District Court for the Central District of California. The case involves three patents that relate to internal combustion engines with a limited temperature cycle.

FLEXcon — Obtained a motion to dismiss for FLEXcon Company Inc., in a suit by Magnamagic Limited Partnership alleging unfair and deceptive trade practices. The case was venued in Massachusetts Superior Court.

Hewlett-Packard — Represented HP against MMCA's claims alleging trade secret misappropriation, interference with contract, breach of contract and conspiracy related to HP's hiring of investigation services for its anti-counterfeiting efforts. We succeeded in getting claims against HP employees dismissed and other claims narrowed. The case settled.

Navilyst Medical Inc. — Representing Navilyst in defense of a patent infringement lawsuit filed in the U.S. District Court for the District of Utah by Guide Flow LLC involving peripherally inserted central catheters.

Oracle — Helped Oracle secure a \$1.3 billion verdict in a copyright infringement suit against SAP AG, the world’s largest maker of business-application software. The award is reported to be the largest copyright infringement verdict ever. The jury awarded the damages after an 11-day trial and one day of deliberations in Oakland, Calif. Oracle, the second-largest maker of business software, sued SAP in 2007, claiming its U.S.-based software maintenance unit made hundreds of thousands of illegal downloads and several thousand copies of Oracle’s software to avoid paying licensing fees and steal customers. The suit alleged SAP illegally accessed Oracle’s password-protected customer website, violating the Copyright Act and Computer Fraud and Abuse Act. SAP did not contest that it was liable for the infringement by its TomorrowNow unit, which it acquired in 2005 and closed in 2008, but did argue the cost estimates.

Oracle — Representing Oracle in prosecuting copyright infringement and computer fraud claims against Rimini Street, a third-party support provider. Oracle sued Rimini Street and its CEO in January 2010 alleging “massive theft of Oracle’s software and related support materials through an illegal business model.”

Sharp Corporation — Representing Sharp in case filed in the U.S. District Court for the District of New Jersey alleging trademark infringement under federal and state laws by Dell Computer regarding Dell’s use of the designation “UltraSharp.” Dell uses the designation in connection with computer monitors and notebooks sold in the same channels of trade to the same customers to whom Sharp sells its products.

Smith & Nephew — Represented Smith & Nephew in negotiating and drafting partnership agreement with Nanotope Inc. in a deal valued in excess of \$25 million for the development of cartilage regeneration products.

Sunbeam Products — Represented Sunbeam Products, Inc. (d/b/a Jarden Consumer Solutions) as plaintiff in a patent infringement case filed against Homeland Housewares, LLC et al. in the U.S. District Court for the Eastern District of Virginia involving blender patents.

Taiga International N.V. — Represented Taiga International N.V., a Belgian tobacco flavoring company, in defense of trade secret claims filed by Tobacco Technology Inc. in the U.S. District Court for the District of Maryland. The district court granted summary judgment to Taiga on all counts, and the decision was affirmed by the U.S. Court of Appeals for the Fourth Circuit.

Tatung Company — Representing Tatung before the U.S. District Court for the Southern District of New York, the U.S. Court of International Trade and at U.S. Customs to ensure continuous supply of televisions into the U.S. after the U.S. International Trade Commission issued a Limited Exclusion Order (LEO) to Funai against Vizio and others barring imports of certain televisions. We succeeded in ensuring a supply of televisions by a Tatung subsidiary into the U.S. after the LEO went into effect, and reached a favorable settlement and dismissal of the Southern District of New York action brought against Funai to resolve a dispute involving the patents Funai used to obtain the LEO.

Union Bank — Represented Union Bank in defense of a patent infringement lawsuit filed by Network Signatures Inc. in the U.S. District Court for the Central District of California involving a patent for network authentication. We also represented UnionBanCal Corporation in defense of a patent infringement lawsuit

filed by LML Patent Corp. in the U.S. District Court for the Eastern District of Texas involving a patent for a checkwriting point-of-sale system.

Watson — Represented Watson in defense of Hatch-Waxman patent infringement actions in which the plaintiff, Reckitt Benckiser, alleged that Watson’s generic forms of three Mucinex products infringe two patents. Prior to trial, we succeeded in getting all claims involving one of the patents dismissed. In January 2011, the case went to a bench trial in the U.S. District Court for the Southern District of Florida to resolve the issues of infringement and invalidity with respect to the remaining patent. In February 2011, the court ruled in Watson’s favor, finding non-infringement by Watson’s generic product.

Labor and Employment

Group Leaders

We represent businesses in every aspect of the workplace, handing disputes in all forums as well as providing day-to-day advice and working on the employment aspects of a variety of transactions. With experience in wage-and-hour class actions, theft of trade secrets, discrimination, harassments, employee benefits law, union avoidance and collective bargaining issues, we also counsel and train clients to recruit, retain and manage a productive workforce.

Our lawyers have been described by *Chambers USA* as “always effective” and “hugely talented lawyers,” who are “excellent in the courtroom.” When necessary, we assist clients in developing a workforce reduction plan and counsel them through the day of reductions and beyond. With more than 30 lawyers, our group is big enough to handle the defense of complex class actions, yet flexible enough to move efficiently and quickly. We take pride in serving the needs of both multinational corporations and small businesses.



Wendy Lazerson
Silicon Valley



Lou Rodrigues
Boston

Representative Matters

Actelion Pharmaceuticals US, Inc. — Won summary judgment in the Michigan State Court, putting an end to this case in which a current employee alleged race and disability discrimination and retaliation. The Court of Appeals affirmed the dismissal on appeal.

ADP, Inc. — Defeated conditional class certification in a wage and hour case brought on behalf of a class of former contract employees in this matter pending in the U.S. District Court for the Southern District of California.

BECO Holdings — Assisted with employment due diligence issues in U.S. fire protection equipment wholesaler BECO Holding Company, Inc., a portfolio company of Behrman Capital, which was acquired by funds affiliated with Freeman Spogli & Co. and management.

Bed Bath & Beyond — Defended race discrimination claims brought by four current managers and employees alleging that a store manager had made racist statements and gestures, treated them unfairly in reviews and promotions and retaliated against them for complaining. We obtained very favorable resolutions in all four matters.

Bimbo Bakeries — Acted as lead counsel for Bimbo Bakeries USA, Inc. in a purported class action filed in U.S. District Court for the Northern District of California by Route Sales Representatives alleging federal and state wage and hour claims, including claims for failure to pay overtime, failure to provide meal and rest periods, “off the clock” work and other claims. The action was filed as both a proposed collective action alleging claims under the federal Fair Labor Standards Act (“FLSA”) and a purported class action alleging claims under California state law. We were able to obtain partial summary judgment on the state and federal overtime and minimum wage claims and to achieve a stay of notice to members of the conditional class. After obtaining summary judgment on these critical issues and paring the case down, an anti-certification motion was filed preemptively. The case resolved favorably and promptly after the oral argument of the anti-certification motion.

Citrix — Assisted with employment due diligence issues in Citrix’s acquisition of Paglo Labs Inc., a leading IT management SAAS company.

Euro Pacific Capital — Secured arbitration award for client and its owner in matter brought against client’s former COO for breach of a settlement agreement that precluded the COO from maintaining company property, slandering the company or initiating released claims. The former COO breached the prior settlement when he, among other things, encouraged another employee to sue the company and provided confidential company documents to that employee to aid him in his claims. The award against the former COO represented the total damages that the client had been required to pay on the other employee’s claim, as well as a portion of the legal fees the client incurred in defending against the other employee’s claim.

Expedia, Inc. and Trip Advisor, Inc. — In a race and disability discrimination case, Bingham’s team resolved the case favorably for the client after taking a single deposition (the plaintiff’s).

Fannie Mae — Achieved a defense award after defeating class certification in a wage and hour class action arbitrated for Fannie Mae. The team first compelled the case from the U.S. District Court for the Southern District of California to arbitration and then defeated the class certification as to the federal claims before finally winning partial summary judgment on the issue of misclassification. After an arbitration hearing based on testimony and other evidence, the judge awarded nothing to the plaintiff.

Global Operator of Power Plants — Representing a national operator of power plants in claim by former assistant general counsel for gender discrimination and retaliation in connection with the termination of her employment.

Hedge Fund — Representing a hedge fund in an action by a former securities analyst claiming entitlement to a \$14 million incentive bonus.

Major Healthcare Company — Represented the company in a case involving a former employee who alleged that she was sexually harassed and assaulted by a manager, and in another case, a former employee who alleged that she was wrongfully terminated based on her age and disability. We obtained favorable resolutions in both of these matters.

Oracle — Assisted with employment due diligence issues with Oracle’s acquisition of certain assets of Market2Lead, Inc., a California-based software company, for an undisclosed purchase price.

Textron — Obtained a major California Court of Appeal victory for Textron, Inc., when former employees claimed Textron had promised them annual retention bonuses if they remained employed with the company. The plaintiffs had been laid off, but claimed they were still entitled to bonuses under the bonus program’s terms. This dispute spawned several individual and class action claims, culminating in five different administrative and court trials. After all five judges found that Textron was obliged to pay the bonus to laid-off employees, which the company paid to almost all former employees before class certification, our team was able to obtain reversal of the class action judgment, with the Court of Appeal holding unanimously that Textron never owed the bonuses.

London Litigation

Group Leader

Our London-based financial institutions litigation practice represents global financial institutions — including investment banks, hedge funds, investment management companies, insurance institutions and international corporations — in high-value, complex, cross-border disputes. We are consistently recognized as leaders in our field, and most recently Natasha Harrison was ranked as one of *The Lawyer's Hot 100* Lawyers of 2010 for Banking Litigation. *The Legal 500* notes our “outstanding team,” while *Chambers UK* commends the team for client service, finding us “very efficient and great on the communication side.” Clients work hand-in-hand with a small, focused team of senior litigation lawyers who have extensive experience before the High Court, the Court of Appeal and the House of Lords, as well as before a wide range of national and international arbitral tribunals.



Natasha Harrison
London

In the financial markets sector, we have far-reaching experience acting on contentious scenarios, including both bank-on-bank and investor-on-bank litigation. We regularly handle disputes arising from structured products, derivatives and trades; PB agreements; and misselling of financial products. We also have a strong track record advising and litigating on behalf of stakeholders at all levels of the capital structure. We have particular experience acting on behalf of noteholders and bondholders following default, having litigated the leading cases on bondholder disputes in the English courts and orchestrated resulting enforcement proceedings across Europe. Working with our market-leading financial restructuring practice, we provide strategic advice on restructurings and distressed situations, including inter-creditor rights and remedies, asset recoveries, potential claims and litigation funding. We have represented the noteholders of Damovo, Elektrim, Enron, Eurotunnel, Greycoat, Kremikovtzi, Level One, Marconi, Sea Containers, Schefenacker, Schieder Möbel, Torex Retail, TXU and T&N.

We work closely with our non-contentious and transactional financial services lawyers, providing us with constant exposure to the business of financial institutions. This enables us to provide our clients with high-level strategic input tailored to the specific needs of their business and to highlight legal risks at the outset. We also work regularly with our market-leading U.K. financial regulatory practice — which includes two former heads of enforcement at the FSA — in defending enforcement actions brought by regulators in the U.K. and elsewhere. Other areas of experience include pensions litigation, arbitration, professional negligence, insurance/reinsurance litigation and tax litigation.

Representative Matters

Elektrim Bondholders — Bingham recently secured a major appellate victory for Elektrim bondholders. The English Court of Appeal overturned Elektrim’s appeal against €185 million in damages and interest awarded to the bondholders of Elektrim S.A. by the English High Court in July 2009. The award compensates bondholders for Elektrim’s failure to pay a “Contingent Payment” negotiated as part of Elektrim’s financial restructuring in 2002. Elektrim unsuccessfully challenged the validity of the Contingent Payment, as well as the amount. Bingham represented the ad hoc committee of bondholders of Elektrim S.A. and appeared for the representative bondholder in the litigation.

Icelandic Banks (Kaupthing Bank HK, Glitnir Bank HF and Landsbanki) — Acting on behalf of bondholders who collectively hold in excess of \$22 billion of bonds issued by three insolvent Icelandic banks. A key part of our

role is advising the bondholders on their challenge to the priority status retroactively granted to deposits pursuant to the emergency legislation introduced by the Icelandic government in October 2008. This challenge, which is based, amongst other things, on Article 1, Protocol 1 of the European Convention of Human Rights, as well as the Icelandic constitution, is due to be heard by the Icelandic Courts in 2011. In addition, we are assisting the bondholders on the analysis of numerous other claims brought against the estates of the three banks, as well as advising them on the management of the Icelandic claims adjudication process. We are also advising bondholders on other litigation strategies to maximize their recoveries (including claims against third parties).

Plexus Fund Limited — Acting for Plexus Fund Limited, a minority lender under a loan facility in favor of Concourse Power Limited, an Indonesian entity. Concourse failed to repay the loan on maturity, despite a number of demands by the agent and lenders. Proceedings were issued in the High Court in England in May 2010 against Concourse and several guarantor entities. Summary judgment was granted in August 2010. The matter settled favorably to the client in November 2010.

Plexus Fund Limited — Acting for Plexus Fund Limited in relation to proceedings it commenced in the Luxembourg courts against ECM Real Estate Investments AG under a €75,599,812.50 bond issue. Plexus was seeking, *inter alia*, an order to compel ECM to effect an early redemption of certain of its bonds held by Plexus, on the basis that there has been a change of control of ECM triggering an early redemption option under the terms and conditions of the bonds. The significance of these proceedings is that the legal questions and issues raised in Plexus' claim have not previously been tested before the Luxembourg courts. At first instance, Plexus prevailed and succeeded in showing there had been a change of control. The case is now under appeal.

Sea Containers — Acting on behalf of the liquidators of Sea Containers Limited and Sea Containers Services Limited, the multi-national container leasing group, in relation to two high value and complex pensions disputes. The Chancellor of the High Court approved a compromise of the first case in 2010 (in what has been described as a new form of compromise). The trial of the second case is due to take place in early January 2011.

Strategic Value Master Fund — Acting for Strategic Value Master Fund Limited (“SVP”), a minority lender under a senior facility agreement. In July 2010, SVP issued Part 8 proceedings in the English High Court seeking declarations as to the correct interpretation of certain provisions of the SFA. On SVP's application, the proceedings are subject to expedition. The proceedings relate to certain events of default under the SFA and subsequent steps taken by the Company to purportedly cure the breaches by capital injection. Bain Capital, Limited (“Bain”) is the ultimate parent of the Company. The claim issued by SVP seeks declarations from the Court in connection with the actions taken by the Bain lenders. In February 2011, Mr. Justice Lewison granted SVP permission to appeal against his judgment. The appeal is likely to be heard in the first six months of 2011.

Real Estate, Project Finance and Construction Litigation

Group Leader



David Yamin
Boston

Power plants, highways, shopping centers, hospitals, and airports — these and other large-scale infrastructure projects dot our global landscape. **We provide tactical and effective counsel to resolve disputes that arise between owners, general contractors, contractors, subcontractors, investors and partners.**

Project developers and owners, creditors, and contractors benefit from the seamless collaboration between a dedicated project finance and construction litigation group and the world's leading team of project finance lawyers. We counsel clients during the transaction process so that they are in the best possible position to avoid disputes where possible, and win disputes should they arise. Mindful of the need to keep projects moving forward in spite of a dispute, we pursue resolution through early intervention, mediation or, when necessary, arbitration or litigation.

We address project-wide problems, such as technology shortcomings and contractor non-performance, as well as more specific project issues such as *force majeure* issues, bid protests, change order disputes, project delays, insurance claims, bond and lien issues, False Claims Act claims, tort claims (negligence, fraud, etc.) and all manner of breach of contract claims. When disputes become crises and arouse the interest of government regulators — as can happen on large-scale projects — we work with our regulatory and white collar lawyers nationwide who lend critical crisis management counsel.

Representative Matters

Deltak Plan Administrator — Achieved a highly favorable settlement of a contested matter before the U.S. Bankruptcy Court for the District of Delaware for the Deltak Plan Administrator in the Global Power Equipment Group bankruptcy proceedings. The dispute concerned a Dutch partnership's claim for damages allegedly arising from a debtor entity's rejection of a pre-petition contract to build and install heat recovery steam generators at a cogeneration facility in the Netherlands. The turning point in negotiations was Bingham's successful motion to compel discovery, granted by the court after a two-day evidentiary hearing in Delaware. The issue presented by Bingham's motion was whether the Dutch claimant could refuse to fully participate in discovery in the contested matter on the basis that relevant materials were located abroad and allegedly precluded from discovery in the U.S. by certain French blocking laws.

Kleen Energy — Representing Kleen Energy Systems, owners of 620-megawatt, natural gas-fired plant in Middletown, Conn., following a fatal explosion in February 2010 that injured dozens and damaged property up to 10 miles away. Criminal and civil investigations into the incident, which began the day after the blast, are being conducted by multiple entities at the federal, state and local levels. Bingham has been engaged to handle multiple issues stemming from this incident, including crisis management and communications, criminal investigations, media inquiries, lender issues, investor relations, insurance coverage issues, construction and energy contracts renegotiation and reconstruction of the Kleen Energy project.

Large Winery — Favorably settled a consumer class action against a large winery that claimed unfair competition and false advertising, based on the allegation that the winery's French wine suppliers sold to the

winery, wine falsely labeled as “Pinot Noir,” which the winery bottled and sold to its customers as Pinot Noir wine.

Louisiana-Pacific — Defending Louisiana-Pacific in a nationwide class action brought on behalf of homeowners, alleging claims regarding the performance of a composite decking product manufactured by our client. The court has preliminarily approved a settlement.

Real Estate Investor — Secured an \$8.8 million arbitration award (the second of two such victories) for a real estate investor. The defendants sought to vacate the award, but it was confirmed. The defendants appealed, which led to oral arguments before the Court of Appeal. In a 50-page published decision, the court affirmed the judgment confirming the arbitration award.

Stanford University — Representing Stanford University in connection with a \$2 billion hospital renovation project.

Securities

Bingham maintains one of the United States' leading securities practices, with a group of dedicated lawyers who advise and defend on the full range of litigation, enforcement and regulatory issues. The group is frequently called upon by broker-dealers, banks, investment banks, investment advisers, insurance companies, public companies, hedge funds and other providers of financial services faced with complex financial litigation, enforcement and regulatory matters. *Chambers USA* noted the group has an “excellent understanding of big picture and complex cases.”

The group has extensive experience litigating and arbitrating securities, contracts, consumer class actions, torts and other claims, including those involving complex financial products such as CDOs, asset-backed securities, mortgage-backed securities, swaps and similar instruments. The group has a record of remarkable success in class actions and derivative suits, corporate governance-related suits, M&A and transactional litigation and securities class actions relating to the sale of investment and insurance products. Our team has developed a particular understanding of complex accounting issues through our representation of the “Big Four” and other major accounting firms.

Our work also includes broad experience defending private investor claims, insider trading matters and investigations and enforcement proceedings initiated by the Securities and Exchange Commission, Financial Industry Regulatory Authority (FINRA), state securities authorities and federal and state prosecutors.

As an added value, our litigators work closely with our enforcement team which includes lawyers who have held senior positions with the Securities and Exchange Commission's Division of Enforcement, Office of General Counsel and Trading & Markets; the Commodity Futures Trading Commission; FINRA; the New York Stock Exchange; the Boston Stock Exchange; numerous state regulatory agencies; and the North American Securities Administrators Association. The group also includes the former director of enforcement at the NYSE and FINRA.

A multidisciplinary approach provides for close cooperation among our compliance and securities enforcement teams and our seasoned trial lawyers. Recent high-profile matters include numerous cases arising out of the credit crisis; sub-prime related matters; and defense of investment products, such as GICs, bank sweeps and auction-rate securities.

Representative Matters

Bank of America — Representing a syndicate of lenders headed by Bank of America, have obtained a \$9 million judgment against a large private equity fund that guaranteed the obligations of one of its portfolio companies, and secured the dismissal of a \$37 million lender liability counterclaim against the bank. After the bank secured a preliminary injunction to equitably attach certain of the guarantor defendant's publicly traded stock from the Massachusetts Superior Court, the defendant tried vigorously to evade that court's further adjudication

Group Leaders



David Balabanian
San Francisco



Dale Barnes
San Francisco



Jordy Hershman
Boston



Jeffrey Smith
New York



Neal Sullivan
Washington, D.C.

of the matter. The defendant improperly removed the case to federal court and commenced a parallel action in New York state court. The New York action was eventually stayed out of deference to the prior pending Massachusetts action, and the federal court remanded the Massachusetts case back to the Superior Court where it began.

Bank of America — Successfully negotiated the settlement and dismissal of a purported nationwide consumer class action alleging breach of contract and demanding multiple damages and attorneys' fees under various state consumer protection laws based on alleged checking account fee overcharges.

Bank of America — Won motion to dismiss consolidated consumer class actions challenging the bank's automatic renewal notices for certificates of deposit. We also defended the bank through the lengthy, convoluted preliminary stages of the case, including proceedings to compel arbitration in both the district court and the U.S. Court of Appeals for the First Circuit.

Battery Ventures — Obtained the dismissal of a complaint filed against private equity clients Battery Ventures, Index Ventures and two of their partners. The plaintiff in the action, WPP Group plc, asserted claims against the Battery and Index funds for federal and state securities fraud arising out of co-investments each entity made in the preferred stock of a high-tech start-up company, Spotranner Inc. The U.S. District Court for the Central District of California granted our motion to dismiss.

Chartis — Represented Chartis (formerly AIG) insurance company in the defense of a claim for insurance coverage brought by the city and county of San Francisco. An agency of San Francisco had been sued by one of its major contractors for a violation of the federal civil rights statute arising out of the agency's termination of various contracts and its "debarment" of the contractor from future work. We moved to dismiss San Francisco's complaint for breach of contract and bad faith and, while that motion was pending, settled the claim for about 12 percent of the approximately \$8 million.

Credit Suisse — Representing Credit Suisse and its affiliates, as well as the Bank of New York Mellon, as trustee in federal court cases brought by institutional investors in Florida and Illinois alleging various tort and breach of contract claims arising out of their purchases of certain mortgage-backed securities in the secondary market. In both cases, Bingham moved to dismiss, arguing the plaintiffs had no standing to sue because they failed to comply with the "no-action" provision of the governing agreement. Specifically, that provision bars an individual holder from commencing a lawsuit unless the trustee endorses the action or the holder has the support of at least 25 percent of the other holders. Bingham also argued the action was improperly brought as a direct action because the harm alleged was an injury to the trust, and therefore, any injury to certificate holders was derivative in nature. In Aug. 2010, the U.S. District Court for the Northern District of Illinois granted Bingham's motion in its entirety, holding the plaintiff had no standing to sue the Credit Suisse defendants for failure to comply with the no-action clause and dismissed the claims against the Bank of New York because the claims were derivative claims improperly brought as a direct action.

Credit Suisse — Represented Credit Suisse in an action alleging public nuisance brought against it and more than 20 other financial services providers by the city of Cleveland. The city claimed the defendants improperly encouraged the issuance of subprime mortgage loans on residential properties in Cleveland, which allegedly resulted in the city incurring costs in connection with foreclosed properties and lower tax revenue. The case was brought by the city in state court, but the defendants removed it to federal court and successfully rebuffed a

motion to remand. The district judge dismissed the complaint with prejudice on numerous grounds, and the city appealed. The U.S. Court of Appeals for the Sixth Circuit recently affirmed this judgment.

Credit Suisse — Representing Credit Suisse in a putative class action alleging claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 on behalf of purchasers of certain Home Equity Mortgage Pass-Through Certificates. This case represents the first generation of class actions related to subprime mortgage-backed securities offerings and alleges inaccurate and misleading disclosures on the part of the placement agents. Our motion to dismiss was granted in part and denied in part in March 2010. The motion to intervene filed by a potential additional class representative was denied in Dec. 2010 which eliminated \$900 million of potential exposure.

D.A. Davidson — Negotiated a settlement on behalf of D.A. Davidson with FINRA to resolve its investigation over alleged violations of Regulation S-P, which requires financial institutions to preserve the privacy of customer information. It is the largest-ever FINRA case involving Regulation S-P. The investigation involved a hacking attack in which the attacker accessed confidential information about 192,000 customers. The breach was discovered through an e-mail that was sent by the hacker on Jan. 16, 2008, blackmailing the firm. Upon receiving the threat, D.A. Davidson reported the incident to law enforcement and assisted the Secret Service in identifying four members of an international group suspected of participating in the hacking attack. Three of those individuals have been extradited from Eastern Europe, arrested and are facing charges in federal court in Montana. FINRA took into consideration the firm's quick response to protect its customers and cooperation with law enforcement authorities, and the fact that, to date, no customer has suffered any instance of identity theft when assessing the fine in this matter — \$375,000. In the terms of the settlement, announced April 2010, the firm neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Deutsche Bank — Defended Deutsche Bank in a lender liability claim based upon allegations of unlawful termination of a \$125 million lending facility and was filed in the New York Supreme Court. The case involved issues of contract interpretation and required an understanding of the use and purpose of conduit liquidity facilities. We moved for summary judgment prior to the commencement of discovery. While the motion was pending, the parties negotiated a workout that repaid the lenders in full and dismissed the action with prejudice.

Deutsche Bank — These securities actions involved one of the largest corporate frauds in American history (the fraud committed at Adelphia Communications by the controlling Rigas family) and the subsequent bankruptcy of Adelphia Communications. Deutsche Bank, as underwriter, margin lender and commercial lender under certain credit facilities, as well as numerous other banks were alleged to have known of and participated in the fraud. After the court issued favorable decisions on certain motions for summary judgment, the major lawsuits were settled.

Fast Growing Technology Company — Achieved a resounding victory for individual client and her privately owned companies in their quest to reclaim nearly \$25 million in fraudulently misappropriated securities when JAMS arbitrator in a privately conducted arbitration ruled in our client's favor. Our client had been the founder and former CEO of the technology company, and sought to rescind multimillion-dollar equity grants made to a former employee over a period of years, which totaled approximately one-third of all outstanding equity in our client's fast-growing company. Complicating rescission of the grants was that each of them was set forth in written documents prepared by legal counsel with standard integration clauses that each did not include "any

representations” beyond those specifically referenced in the subject contracts. Following completion of a seven week arbitration, the arbitrator found in favor of our client and rescinded all the equity grants due to undue influence and fraudulent inducement practiced by the former employee, and also found that the ex-employee’s “systematic and willful fraud” entitled our client and her companies to punitive damages.

First Frontier — Obtained a dismissal of all claims brought against First Frontier, a limited partnership that was a sub-feeder fund in Bernard L. Madoff Securities LLC. Plaintiff investors asserted federal securities fraud, as well as numerous common law claims. The court held, among other things, that the plaintiffs did not adequately plead scienter and that various claims were barred by the limited partnership agreement’s exculpatory clause.

Freddie Mac — Representing Freddie Mac in two putative securities class actions, pending in federal courts in Ohio and New York, and four shareholder derivative lawsuits, pending in federal courts in New York and Virginia. Although the class actions are purportedly brought on behalf of two distinct classes of purchasers of Freddie Mac shares, the shareholder plaintiffs all allege that Freddie Mac and certain former senior officers violated federal securities laws in connection with Freddie Mac’s investments in the subprime industry and its disclosed multibillion-dollar losses. Victories last year included the court’s denials of plaintiffs’ motion to lift the PSLRA discovery stay (N.Y. and Ohio cases) and of plaintiffs’ motion to declare void non-participation clauses in Freddie’s severance agreements.

Hansen Medical — Obtained a dismissal for Hansen Medical in a shareholder derivative action against Hansen’s officers and directors. The plaintiff alleged breach of fiduciary duty and other claims arising out of Hansen’s restatement of its financial results following an internal investigation of a whistle-blower complaint asserting misconduct with respect to revenue recognition. The U.S. District Court for the Northern District of California granted the defendants’ motion to dismiss the plaintiff’s amended complaint in the action, with prejudice, and entered judgment in favor of the defendants. The court held the plaintiff had failed to allege facts demonstrating a majority of the company’s board of directors was sufficiently implicated or lacked sufficient independence to evaluate the claims alleged in the action and that, therefore, the plaintiff had failed to establish, as required, a shareholder demand on the company’s board to investigate the claims would have been futile.

Jefferies — Recently achieved a victory for Jefferies & Co. in an arbitration in Chicago, defending Jefferies against a claimant who was seeking the \$5.8 million he lost when he invested in a Madoff feeder fund. He claimed Jefferies failed to conduct the necessary due diligence on the feeder fund. A week after the hearings, the arbitration panel dismissed all claims against Jefferies. Bingham’s team believes this is the first decision involving a broker-dealer that introduced an investor to a Madoff feeder fund investment.

JPMC — Representing former Washington Mutual affiliates (now subsidiaries of JPMorgan Chase) and employees in consolidated Securities Act actions alleging the Securities and Exchange Commission filings for various WaMu mortgage-backed securities contained misrepresentations about WaMu’s loan underwriting and appraisal practices. The suits concern securities with a total value of about \$30 billion. The U.S. District Court for the Western District of Washington recently granted the defendants’ motion to dismiss all claims as to 29 of the 36 securities offerings, reducing the potential exposure by approximately \$25 billion. The court also dismissed all claims alleging misrepresentations as to appraisals, which had been the focus of the complaint

because of a New York attorney general complaint alleging improper appraisal practices between WaMu and its outside appraisal provider.

JPMC — Representing JPMorgan Securities, f/k/a Bear Stearns, and several affiliates in putative class action filed in the U.S. District Court for the District of New York brought by purchasers of mortgage-backed securities alleging that offering materials contained misrepresentations concerning the underwriting practices of the mortgage originators. The claims relate to more than \$17 billion in securities. In response to our motion to dismiss, plaintiffs withdrew claims relating to approximately \$20 billion in securities. A motion to dismiss plaintiffs' third amended complaint is now pending.

JPMC — Representing JPMorgan Securities, f/k/a Bear Stearns, and several affiliates in an action by Federal Home Loan Bank of Seattle seeking rescission under the Washington blue sky law of its purchases of approximately \$720 million in mortgage-backed securities issued by Bear Stearns affiliates. FHLB Seattle filed 10 substantially identical actions against other major investment banks in state court in Seattle. All 11 actions were removed and, in September 2010, were remanded to state court. A motion to dismiss is pending.

KPMG — Representing KPMG in a class action under the federal securities laws brought by investors who bought securities of Countrywide Financial Corp. between March 2004 and March 2008. KPMG is Countrywide's former auditor. Pursuant to the pending settlement, KPMG will pay \$24 million, and Countrywide will pay \$600 million to resolve the class action litigation.

Kopin — Obtained the dismissal of all claims asserted in a putative class action against Kopin and its directors and senior officers predicated on allegations of stock-option backdating. The plaintiff sought to obtain an order voiding all of the stock options that Kopin granted, i.e., over 11 million stock options, in the nine-year period between 1997 and 2006. In granting Bingham's motion to dismiss, the court adopted our arguments and expressly incorporated into its opinion entire sections of the firm's briefing.

LCA-Vision — Successfully moved to dismiss with prejudice all claims asserted against LCA-Vision, Inc., its CEO, CFO and general counsel, among others, in a federal securities fraud class action. Plaintiffs brought this action in the U.S. District Court for the Southern District of Ohio and based their claims on the facts that the company had restated its financial statements, that it had revised downward its earnings guidance, and that the individual defendants had sold millions of dollars in company stock during the class period. Defeated plaintiffs' motion for reconsideration of order granting motion to dismiss and obtained final judgment in our clients' favor.

MassMutual Life Insurance Company — Representing MassMutual in more than 25 lawsuits in state and federal courts across the country (many of which are putative class actions). Plaintiffs are investors in one or more hedge funds offered by Tremont Group Holdings, which placed funds with Bernard L. Madoff Investment Securities (MassMutual is the ultimate parent of Tremont). All of the lawsuits seek to hold MassMutual liable for the alleged errors Tremont made by placing funds with Madoff.

Merrill Lynch — Serving as national defense counsel for Merrill Lynch, handling customer complaints and major litigation related to auction-rate securities, SIVs, CDOs and related products. We are presently representing the broker-dealer in defending claims by institutional investors around the U.S. in cases involving losses on these investments ranging from \$5 million to \$130 million. These cases are pending in state and federal courts in California, Minnesota, Texas and New York, as well as before FINRA Arbitration

Dispute Resolution. We also responded to nearly 100 customer complaints across the U.S. involving ARS issues.

Merrill Lynch — Represented Merrill Lynch in a FINRA arbitration brought by a former Merrill Lynch financial adviser suing for wrongful termination. The claimant was asking for \$24.3 million in compensatory damages, another \$73 million in punitive damages, expungement of her U-5 CRD record, plus other relief, including indemnification for legal fees incurred by the claimant in litigation involving her clients in 2008. Following a seven-day hearing, the arbitration panel denied all claims for wrongful termination and awarded the claimant \$25,000 for her 2008 legal fees. The panel granted limited expungement of her U-5, while denying expungement as to the underlying reason for the claimant's termination and denied all other requests for relief. The arbitration panel also assessed half the forum fees, more than \$10,000, against the claimant.

MBIA — MBIA brought a breach of contract action to enforce certain agreements in which defendant Patriarch Partners VIII had committed to transfer certain subordinated notes in connection with the remediation of several collateralized debt obligation transactions. The case reflects the diverse nature of the disputes arising from the credit crisis. Complicated issues are being presented relating to the process followed by the major rating agencies and the valuation of CDO securities and illiquid assets. Fact and expert discovery is complete, and cross-motions for summary judgment are currently being briefed by the parties.

Morgan Stanley — Represented Morgan Stanley in a breach of contract and tort action, which is one of the many cases arising out of the credit crisis. Plaintiff Central Mortgage acquired from Morgan Stanley the right to service multiple pools of residential mortgages Morgan Stanley sold to Freddie Mac and Fannie Mae (the "agencies"). When the credit crisis began, the agencies began making frequent repurchase demands of the plaintiff. The plaintiff, as servicer, sought reimbursement for those repurchase demands from Morgan Stanley. Central Mortgage sued Morgan Stanley for breach of contract and breaches of various representations and warranties in connection with the loans Central Mortgage repurchased from the agencies. The court granted Morgan Stanley's motion to stay discovery while the motion to dismiss was pending. The court heard oral argument on the motion to dismiss in May 2010 and dismissed the complaint in its entirety in August 2010.

Robert Moffat — Represented Robert Moffat, a senior executive at IBM charged as a "tipper" in a criminal insider trading case filed by the U.S. Attorney's Office for the Southern District of New York and a parallel civil case filed by the Securities and Exchange Commission. Moffat was charged with providing inside information about several technology companies, including IBM, to Danielle Chiesi, a friend who worked at a hedge fund called New Castle (also charged with insider trading). Moffat was arrested in October 2009 as part of the Galleon insider trading case, which marked the first time the government had used wiretaps extensively to investigate insider trading. We negotiated resolution of the case on favorable terms for Moffat, who pled guilty in March to an agreed-upon set of charges.

Royal Bank of Scotland — Plaintiffs in this case are borrowers under three commercial loans in Ann Arbor, Mich. An RBS affiliate, Greenwich Capital Financial Products Inc., originated the loans and sold them to a commercial mortgage-backed securities (CMBS) trust. The plaintiffs sued Greenwich Capital, as well as Wells Fargo Bank (as trustee of the CMBS trust), Wachovia Bank (the servicer under the trust) and CWC Capital Asset Management (the special servicer of the trust), alleging entitlement to certain escrowed funds and seeking to reform their loan agreements. The plaintiffs' case centers on a theory of mutual mistake relating to an amendment executed when Pfizer, an anchor tenant, announced it was ceasing operations in Michigan. While the defendant's motion

was pending, a settlement was achieved at no cost to our client, and the RBS entities received full releases from plaintiffs and the trust.

Waters Corp. — The U.S. District Court for the District of Massachusetts dismissed a putative shareholder class action against Waters Corporation and two of its officers. The action, filed by Inter-Local Pension Fund GCC/IBT, alleged violations of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 20(a) of the Exchange Act. The complaint asserted that Waters Corp. “disseminated or approved...materially false and misleading statements” and “failed to disclose material facts” about the company’s “slowdown in sales in the Japanese market” and its “effective tax rate for the fourth quarter,” which allegedly caused the price of Waters common stock to be “artificially inflated” at the time of Inter-Local’s purchase. The U.S. Court of Appeals for the First Circuit affirmed the dismissal in January 2011.

Yucaipa — Representing plaintiff Yucaipa American Alliance Fund and its principal, Ron Burkle, in their challenge to the validity of the shareholder rights plan adopted by the board of directors of Barnes & Noble, Inc. on grounds that the rights plan (1) is unreasonable in light of a pre-existing insider voting group holding 32-38 percent of the company’s outstanding shares; (2) unreasonably impinges on Yucaipa’s ability to conduct a proxy contest for the election of directors; and (3) has been used in a discriminatory manner. The matter is now on appeal.

Tax Controversy and Litigation

The Bingham tax group is a destination for many sophisticated businesses. With a nationally recognized federal tax controversy practice, ranked Band No. 1 by *Chambers USA*, and an equally well-regarded state tax controversy practice, what differentiates Bingham is that our tax controversy lawyers' mastery of process and advocacy is matched by our mastery of the technical rules. This combination is rare. More than half of Bingham's substantial tax practice focuses on tax controversy resolution, with particular concentration in IRS practice and procedure: examination and appeals, transfer pricing dispute resolution, financial institutions and instruments controversy, bankruptcy and restructuring controversy, criminal tax investigation and defense, appellate litigation, and state and local tax controversy and litigation. More than a dozen of our partners have experience at the Internal Revenue Service (IRS), U.S. Department of the Treasury or the U.S. Department of Justice, including a former chief counsel at the IRS and a former director of the Advance Pricing Agreement Program at the IRS.

Representative Matters

Federal Tax Litigation and Appeals (Pending Docketed Matters)

U.S. Court of Federal Claims, U.S. District Court for the Southern District of New York, U.S. District Court for the District of Massachusetts — Recently, the IRS has aggressively challenged foreign tax credits (FTC's) claimed by major multinational companies in connection with cross-border financing transactions. The group represents three separate multinational companies who are challenging the IRS's disallowance of FTC's three separate courts, the U.S. Court of Federal Claims, the U.S. District Court for the Southern District of New York and the U.S. District Court for the District of Massachusetts. The amount in controversy in each case is significant.

U.S. District Court for the Middle District of Louisiana — Representing a Fortune 100 company in a matter involving the use of a partnership structure to monetize patent and plant assets and raise minority equity financing from investors. Fact and expert discovery has closed in this case, and trial has been scheduled for June 2011. The amount in controversy is significant.

U.S. Court of Appeals for the D.C. Circuit — In June 2010, Bingham successfully represented the Dow Chemical Company in a D.C. Circuit appeal. The court upheld Dow's right to assert attorney work product protection over documents prepared by in-house and outside counsel, even though the company had provided the documents to its independent auditor. The court also rejected the government's categorical arguments that a document authored by an accounting firm cannot be work product because it was prepared during the course of a financial audit. The court remanded the case to the district court to assess independently *in camera* whether the document authored by the accounting firm was entirely work product or whether a partial or redacted version of the document could have been disclosed.

Group Leaders



Will Nelson
Washington, D.C.



John Magee
Washington, D.C.



David Curtin
Washington, D.C.



Raj Madan
Washington, D.C.

U.S. Court of Appeals for the Second Circuit — Representing the subsidiary of the Fortune 25 company in a case involving the use of a partnership to raise minority equity financing from foreign investors against a fleet of aircraft. The government sought to deny the tax benefits of the transaction and asserted significant penalties. The matter was tried in 2004 with the U.S. Federal District Court for Connecticut rendering a decision in the company’s favor on the merits. On appeal, the Second Circuit reversed the district court, but remanded the case to the district court to determine the merits of an alternative substantive defense. In a 2009 decision on remand, the district court again held for the company, this time on the merits of the of the alternative defense. In addition, the district court determined that in no event should penalties apply because the principal purpose of transaction at issue was not tax avoidance. The government has appealed the case again to the Second Circuit, and we will argue the matter in the spring of 2011.

U.S. Court of Appeals for the First Circuit — Representing a client in an appeal of an adverse penalty determination by the U.S. District Court for the District of Massachusetts.

State Tax Litigation

Financial Institution — Representing a financial institution at the Massachusetts Appellate Tax Board in appeals disputing the assessment of more than \$100 million of taxes. The primary issues in dispute in each case are the state’s disregard of asset transfers among affiliates and the state’s taxation of the same income to more than one entity.

Newspaper, Public Utility and Insurance Companies — Representing a newspaper company, a public utility and an insurance company in appeals disputing the assessment of more than \$100 million of taxes where the primary issue in dispute is the allowance of interest deductions and the characterization of instruments as debt or equity.

Medical Products Provider and Biotechnology Company — Representing a provider of medical products and services and a biotechnology company at the Massachusetts Appellate Tax Board in suits disputing assessments totaling more than \$100 million in taxes. The primary issue in dispute in each case is whether the state can ignore the separate existence of sales, marketing and manufacturing affiliates.

Various Taxpayers — Representing several taxpayers (including retailers, manufacturers, a restaurant company, a medical services and equipment company, a grocery store company and a pharmaceutical services company) at the Massachusetts Appellate Tax Board and before the Massachusetts Department of Revenue in appeals disputing the assessment of corporate taxes relating principally to the tax consequences (including the intercompany transfer pricing) of various intercompany arrangements, including the payments of royalties, interest and service fees and the intercompany sale of goods.

Group Leaders



John Brown
Boston



Donald Abrams
Boston



Matt Schnall
Boston

Tokyo Litigation

With 70 lawyers (nearly 65 bengoshi), our Tokyo litigation practice bolsters the firm's global representation of major corporations in some of the largest cases in Japan, the U.S. and other foreign jurisdictions. **Our Tokyo practice covers a full range of complex corporate litigation, including commercial and financial litigation, intellectual property, antitrust, and labor and employment.** We offer clients unparalleled capabilities in dealing with complex cross-border and international litigation and arbitration as well as discovery.

Representative Matters

Computer Software Company — Represented a computer software company in litigation seeking payment of accounts receivables. Successfully settled the case for over US\$20 million.

Global Solar Photovoltaic Manufacturer — Represented a global solar photovoltaic manufacturer in a case appealed by a Tokyo-based semiconductor manufacturer against a decision made by the Japanese Patent Office, which concluded that our client's patent is not invalid. The IP High Court approved the Japanese Patent Office's decision.

Japanese Chemical Engineering Company — Representing a Japanese chemical engineering company in a preliminary injunction proceeding against an electric company of Taiwan on an LED patent.

Leading Fiber Optics Manufacturer — Representing a leading fiber optics manufacturer in Japan in an infringement suit brought by a major electric company in relation to a laser patent. The case was appealed and is pending at IP High Court.

Leading International Banking and Financial Services Company — Successfully settled a reinstatement claim.

Major Japanese Trading Company — Successfully settled a reinstatement claim.

Major Japanese Trading Firm — Represented a major Japanese trading firm as plaintiff in a litigation claiming payment for sale of shares of a company in which the settlement was 1.55 billion yen (nearly US\$20 million), an extraordinary victory in a Japanese case.

Major Medical Supply Corporation — Represented a major medical supply corporation in a declaratory judgment action and received a favorable judgment in the first instance in 2009. At the IP High Court, we successfully settled all potential claims based on a Japanese patent as well as a corresponding U.S. patent.

Multinational Technology Manufacturer — Represented a multinational technology manufacturer in a suit in which an electronics corporation asserted seven patents relating to mobile phone handsets. After four patents were invalidated, we successfully settled the case.

Litigation Practice Coordinators



Harumi Kojo
Tokyo



Atsushi Yamada
Tokyo

White Collar Investigations and Enforcement

Bingham's White Collar Investigations and Enforcement group continues to be an industry leader in the defense of Fortune 500 companies, prominent corporate executives and others in government investigations and criminal and civil enforcement actions arising from today's era of proliferating rules, evolving standards of accountability and transparency and increased government scrutiny. The group's greatest strength lies in its ability to handle high-profile, complex investigations being conducted simultaneously by multiple federal and state prosecutors, regulatory enforcement agencies and congressional committees. In addition, our lawyers are skilled in managing the media and public relations issues that so often impact public perception in these high-profile cases.

Representative Matters

Eli Rich — In this arbitration, our client, Eli Rich, was sued for \$2.7 million based on alleged fraud and misrepresentation in connection with the sale of his immigration law practice to John Perry. Rich countersued for \$855,000, the amount left on the promissory note for the sale of the practice. The arbitrator, retired California Justice Richard Neal, awarded Rich \$999,999 and Perry nothing.

Employee of Air Cargo Company — Representing an executive of a European air cargo company, in connection with a criminal antitrust investigation by the U.S. Department of Justice and several other countries into alleged price fixing and collusion in the air cargo industry.

Employees of Fannie Mae — Representing a number of senior executives of Fannie Mae in U.S. Department of Justice and Securities and Exchange Commission investigations into the financial downfall of the company.

Evergreen Solar — Representing a high-profile, Massachusetts-based solar energy company in connection with a state investigation into the company's decision to move its manufacturing facility to China after allegedly accepting \$58 million in state grant and subsidies. The state is attempting to "clawback" the grant and subsidies.

Executive of Toyota North America — Representing a senior executive of Toyota North America in criminal and civil investigations by the U.S. Attorney's Office for the Southern District of New York, the Los Angeles Regional Office of the Securities and Exchange Commission, the Inspector General of the U.S. Department of Transportation and the U.S. Congress into statements made to the National Highway Traffic Safety Administration and investors relating to unintended acceleration in Toyota vehicles.

FCPA Investigations — Representing executives, many of them non-U.S. residents, of several public companies being investigated by the U.S. Department of Justice and Securities and Exchange Commission for alleged improper payments made to foreign officials in Asia, South America and Eastern Europe in violation of the Foreign Corrupt Practices Act. In addition, we are representing several companies in internal investigations of alleged FCPA violations.

Group Leaders



Michael Levy
Washington, D.C.



Ray Marshall
San Francisco



Mark Robinson
Boston

Financial Crisis Inquiry Commission — Representing two of the country’s largest financial institutions and current and former executives from a major Wall Street investment bank and another major financial institution in investigations by the Financial Crisis Inquiry Commission to determine “the causes, domestic and global, of the current financial and economic crisis in the United States.”

Futures Commission Merchant — Represented a Futures Commission Merchant, in connection with an investigation and settlement with the U.S. Commodity Futures Trading Commission and other investigations by the Australian Securities and Investments Commission of alleged money laundering, fraud and collusion by introducing brokers.

IFCO Systems Senior Executive — Representing senior executive at IFCO Systems charged with conspiracy in a case consistently cited by the U.S. Department of Justice and Department of Homeland Security as one of their most high-profile criminal immigration prosecutions. Trial is scheduled to begin May 2011 in Houston, Texas.

Kleen Energy — Representing Kleen Energy Systems and Energy Investor Funds in connection with a 620-megawatt, natural gas-fired plant in Middletown, Conn., that suffered a massive explosion in February 2010 that also injured dozens and damaged property up to 10 miles away. Bingham has been engaged to handle multiple issues stemming from this incident, including federal and state criminal investigations, Chemical Safety Board forensic inquiries, Congressional hearings, investor and lender relations, insurance coverage disputes, personal injury and wrongful death claims management, crisis management and communications.

Large International Law Firm — Representing a large international law firm as co-counsel, in a suit filed by a former partner claiming that the law firm undercompensated him after he brought in a sizable contingency award and (he claims) another large fee. The law firm was successful in limiting the amount of damages in a 2008 jury trial. Thereafter, the District of Columbia Court of Appeals confirmed the jury’s findings of liability and remanded the case for a new trial on damages. The retrial on damages took place in February 2011 in D.C. Superior Court. The jury awarded the plaintiff far less than he sought and also denied him prejudgment interest after the law firm argued, *inter alia*, that he had engaged in bad faith conduct. Post-trial motions and appeals are expected.

Major Massachusetts Fabric Importer — Representing a well-established importer of fabric in U.S. Customs and Department of Justice criminal investigations into potential customs duty fraud and tax evasion associated with fabric imports from China.

Major Technology Company — Representing a major technology company in an investigation by the U.S. Attorney’s Office for the Southern District of New York involving an “expert network” firm that allegedly arranged for insiders at publicly traded companies to provide material, nonpublic information to the firm’s hedge fund clients for the purpose of trading.

Prominent International Businessman — Representing a prominent businessman in a lawsuit instigated by a dissident in a foreign country regarding alleged expropriation of assets.

South Shore Hospital — Representing the hospital in connection with a significant data breach involving loss of medical and financial records of approximately 800,000 patients, employees, doctors and staff. The group has defended the hospital against potential federal and state regulatory enforcement actions, as well as individual loss claims.

Telecommunications Carrier — Representing a telecommunications carrier that operates an undersea fiber optic cable network, in the successful recovery of \$1.75 million seized by the organized crime unit of a large, metropolitan police department. The money was allegedly related to violations of the state’s gambling and money laundering statutes.

Wall Street Bank — Representing a Wall Street Bank in connection with a Federal Energy Regulatory Commission investigation into allegations of market manipulation concerning Lake Erie Loop Flow and power trading on the New York ISO, Midwest ISO and PJM Interconnection, LLC markets. The commission determined, in a recent published report, that there was no deception or fraudulent concealment, and thus no market manipulation on the part of our client.

Pro Bono

As a signatory to the Pro Bono Institute's Law Firm Pro Bono Challenge, **our litigators devoted more than 38,000 hours to pro bono work in 2010.** The following are several large, issue-based pro bono matters we have worked on, which are no more important than the thousands of matters we have done on behalf of individuals.

Representative Pro Bono Matters

Hague Convention Victory — For more than two years, a team of Bingham lawyers worked on a pro bono matter that took them from Boston, to Europe and to the U.S. State Department in Washington, D.C., all for the well-being of two young children. The legal team represented Linda, a mother who fled Turkey with her two young girls amid allegations that her ex-husband (the girls' father) abused at least one of the children. Bingham assisted Linda in her quest before the U.S. Department of State to obtain U.S. passports for the girls so they could return to the United States. After an administrative hearing, the State Department, in a March 2010 ruling, granted the girls temporary, one-way, limited-validity passports, and Linda and the girls safely traveled home to the U.S. They have since started a new life here, with consistent access to therapy, medical care, work, schooling and other critical services. Their story, and Bingham's participation in the case, was featured on "Dateline" in November 2010.

California Alliance of Child and Family Services — A federal judge prohibited California from reducing by 10 percent payments to foster care group homes for thousands of neglected and mistreated children, questioning the wisdom of cutting services that might keep troubled youngsters out of jail. About 70,000 youths up to age 18 are in foster homes in California, and 7,400 of them are in group homes. Counties place children in foster care when their parents abuse or neglect them or are unable to care for them. Because of corresponding cuts in federal and county payments, which contribute 80 percent of the funding, the plaintiff said, many homes would have had to reduce staff, therapy and other services or shut their doors.

Bailey House — Secured an arbitration victory for Bailey House, a longtime pro bono client of the firm. Bingham assisted Bailey House in terminating an agreement after 20 months of service because of subpar performance. A law suit was then filed against Bailey House, claiming the agreement had a five-year term, and that by terminating early, it was liable for liquidated damages. The lawsuit also claimed that Bailey House had not lived up to its end of the bargain by, among other things, failing to pay invoices. Attorneys' fees were requested. The arbitrator denied all claims against Bailey House. For more than 25 years, Bailey House has provided housing and support services to homeless men, women and children living with HIV/AIDS in New York.

Deborah Peagler — After 27 years in prison for her alleged role in the murder of her abusive husband, and after seven years of advocating for her release under the battered woman statute, Debbie Peagler was released from prison in August 2009, but sadly passed away of terminal lung cancer in June 2010. She and her lawyers, alums Nadia Costa and Joshua Safran, are featured in *Crime After Crime*, a documentary film which premiered at the Sundance Film Festival in January 2011 to rave reviews.



Members of the Bingham Hague Convention legal team with their client, Linda, and her two daughters.

Pictured from left: Elizabeth Sartori, Lisa Kirby, Alison Eggers, Linda, David Penn, Alisha Telci, Emily Renshaw and Beth Boland

CalTrans — Representing the Coalition for Economic Equity and the NAACP as intervenors in the lawsuit by the Association of General Contractors against the California Department of Transportation challenging CalTrans' alleged race-conscious disadvantaged business enterprise rule.

Education Case — Bingham represents 64 California school children who are plaintiffs in a landmark lawsuit against the State of California's education funding scheme that allegedly violates the state's constitutional duty to keep up and support schools. The plaintiffs assert that California's unpredictable patchwork funding system has no relationship to the actual resources needed to provide the educational program mandated by the state, as evidenced by persistent shortages in teachers, materials, support staff and instructional time, as well as by years' worth of declining proficiency rates. These continuing shortages and resulting achievement shortfalls deprive students of the education that the state has deemed necessary to prepare them for success in today's economy and society. The lawsuit asks the court to order the state to create a stable funding system that accounts for the resources required to provide the state-mandated education program and for the varying needs of different student populations.

Election Protection — Since 2004, Bingham lawyers and staff have volunteered for Election Protection during the U.S. midterm elections. Election Protection helps American voters, including traditionally disenfranchised groups, gain access to the polls and overcome obstacles to voting. The program offers assistance at the national, state and local levels and provides live voter protection services in all 50 states. In 2010, Bingham's San Francisco office hosted a two-day call center that was staffed by 150 volunteers. The firm also trained another 150 volunteers who worked at other call centers.

Frankie Williams — In July 2010, after nearly 30 years in prison and 11 unsuccessful parole board hearings, Bingham client, Frankie Williams, was released from Central California Women's Facility in Chowchilla, Calif. The Board of Parole Hearings decided in February 2010 that Frankie was eligible for parole after almost 29 years in prison for the 1979 shooting death of Eli Thornton. Frankie, who is now 74, had been up for parole 12 times since she was sentenced to 17 years-to-life for the crime. Frankie has maintained that she shot Thornton in self-defense. Bingham has represented Frankie pro bono since 2005.

GLAD — Worked with the Gay & Lesbian Advocates & Defenders (GLAD) to achieve an important pro bono victory in the ongoing fight for transgender equality. In June 2010, a federal district court judge denied the government's motion to dismiss their challenge to a federal Bureau of Prisons policy prohibiting medical care for transgender inmates who enter prison without a diagnosis and treatment plan for gender identity disorder. This suit was filed on behalf of a female inmate who was denied medically necessary transition-related care and otherwise prohibited from expressing a female gender identity.

Circular 230 Disclosure: Internal Revenue Service regulations provide that, for the purpose of avoiding certain penalties under the Internal Revenue Code, taxpayers may rely only on opinions of counsel that meet specific requirements set forth in the regulations, including a requirement that such opinions contain extensive factual and legal discussion and analysis. Any tax advice that may be contained herein does not constitute an opinion that meets the requirements of the regulations. Any such tax advice therefore cannot be used, and was not intended or written to be used, for the purpose of avoiding any federal tax penalties that the Internal Revenue Service may attempt to impose.

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