

MICHAEL MCNAMARA, Managing Partner, Los Angeles

Michael McNamara is a trial lawyer who has won a long list of favorable verdicts, judgments and settlements for his clients in a wide range of complex litigation matters involving malpractice, securities, fraud, RICO, patent, antitrust, intellectual property, insurance, class action, breach of contract, real estate and employment issues. Mr. McNamara is on the firm's national Policy Committee and serves as the managing partner of the Los Angeles Office, as well as the co-chair of the Professional Responsibility Practice.

Mr. McNamara is a Fellow of the American College of Trial Lawyers (ACTL), widely considered to be the premier professional trial organization in North America. He is also a Fellow of the invitation-only International Academy of Trial Lawyers (IATL), which limits membership to 500 fellows in the United States. Additionally, Mr. McNamara has been recognized in *Chambers USA* every year since 2012 in the area of General Commercial Litigation, with clients describing him as a "big-picture guy who is very sharp and thinks outside of the box." Other clients describe him as "energetic and sophisticated," a "clever, hardworking, and trustworthy trial lawyer" with "a robust reputation for a range of general commercial disputes."

In addition to Mr. McNamara's general commercial litigation practice, Mr. McNamara is also known as a "lawyer's lawyer" who regularly litigates professional liability matters for many of the largest law firms in the United States. Mr. McNamara has been certified by the State Bar of California as a Specialist in Legal Malpractice Law. Mr. McNamara was appointed to ACTL's Legal Ethics and Professionalism Committee for 2017-2018 with the mandate "to advance, improve and promote ethical standards and professionalism in the trial bar in all its aspects in both the United States and Canada."

Mr. McNamara performs several important leadership roles within the Los Angeles legal community. He is a recent president of the board of the Association of Business Trial Lawyers. Mr. McNamara also has served on the State Committee for Southern California of the ACTL and served a one-year term from 2016-2017 on the Executive Committee of the Litigation Section for the Los Angeles County Bar Association.

Representative Complex Litigation Matters:

- Co-tried a case in federal court, winning a jury verdict for fraud in the amount of \$122 million (including \$77 million compensatory, \$16 million pre-judgment interest and \$29 million punitive damages) for a German public company in the business of licensing the foreign distribution rights to major motion pictures. Following this trial, the verdict was listed in the *Daily Journal* as the 3rd largest verdict in California and was listed in *VerdictSearch.com* as the 9th largest verdict in the United States.
- Served as lead trial counsel in an arbitration resulting in a \$40 million award for a client in the real estate industry. The arbitration involved a dispute over the amount owed under an "earn-out" provision in a purchase agreement. This arbitration was brought after the defendant asserted that it only owed \$200,000. Following the arbitral award, the defendant unsuccessfully tried



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LOS ANGELES

Office: 213 239-5149

Email: mmcnamara@jenner.com

PRACTICE GROUPS

Complex Commercial Litigation
Insurance Recovery and Counseling
Litigation
Professional Responsibility

EDUCATION

University of California Hastings College of the Law, JD; *cum laude*; Editor, *Hastings Law Journal*

Stanford University, BA; with distinction

ADMISSIONS

California

District of Columbia

New York

COURT ADMISSIONS

US District Court, Central District of California

US District Court, Eastern District of California

US District Court, Northern District of California

US District Court, Southern District of California

US Court of Appeals, Ninth Circuit

to challenge the award and was ultimately forced to fully pay the \$40 million award.

- Served as co-lead trial counsel in a dispute over the “inventorship” of a patent of wind turbine technology, which was tried in the US District Court for the Eastern District of California.
- Served as lead counsel in the defense of malpractice claims asserted against a large national law firm by the liquidating debtor in a bankruptcy proceeding. The case involved the firm’s prior representation of law firm, first in connection with its dissolution and then with respect to its voluntary bankruptcy filing. The plaintiff sought more than \$80 million in damages based upon claims that the firm caused the “disorderly liquidation” by failing to conduct a UCC lien search and that the firm had also committed malpractice in connection with advice on waivers given with respect to “*Jewel v. Boxer*” claims. The complaint also sought the disgorgement of approximately \$2 million of fees paid to the firm for professional services. The case was recently settled for a small fraction of the damages being sought by the plaintiff.
- Served as lead trial counsel for the former director of a large international investment banking firm in the successful defense of claims brought by a competing investment banking firm in an arbitration before a panel of the New York Stock Exchange. Plaintiff had accused Mr. McNamara’s client of stealing business and clients when he left one bank to join a competing firm. After a one week arbitral hearing, the matter was resolved based on the full reimbursement of the attorney fees for Mr. McNamara’s client.
- Served as lead counsel for a large publicly traded company in defense of securities and derivative claims pending in the Los Angeles Superior Court. The complaint alleged that the defendants defrauded plaintiff by failing to properly disclose facts relating to certain mortgage backed securities on its balance sheet. When the housing bubble burst in 2008, the company’s stock price fell with the value of the assets on the company’s balance sheet. The derivative claims pending in Los Angeles were ultimately dismissed for no consideration, while plaintiff’s direct claims were settled for approximately the same amount the plaintiff would have received if he had not opted out of a related class action settlement
- Defended a retailer in a vertical price fixing case brought as a class action under the California Cartwright Act and Unfair Competition Law (Section 17200). The action was dismissed, without leave to amend, at the demurrer stage. In a published opinion, the Court of Appeal “affirmed in full” in an opinion establishing new law with respect to (i) the interplay between California’s antitrust law and unfair competition law, and (ii) the extent of the “safe harbor” available under Section 17200 where conduct is otherwise protected under the Colgate Doctrine. For reported opinion: *Chavez v. Whirlpool*, 93 Cal. App. 4th 363.
- Served as lead trial counsel for plaintiff winning a \$5.6 million jury verdict in a “palimony” action brought under the principles of *Marvin v. Marvin*. This action was closely watched as one of the few cases brought under *Marvin* to actually go to trial.
- After defending and settling consolidated lawsuits involving a failed real estate project, served as lead trial counsel winning approximately \$3 million in a case involving a partnership dispute over the allocation of fees and costs expended in defense of the underlying consolidated lawsuits against the partnership.
- Served as lead counsel defending largest alleged “feeder” fund to Bernie Madoff. The actions included three individual actions and one putative class action filed in California.
- Served as lead trial counsel in litigation involving a contractual dispute over the exclusive rights to the next generation of renewable energy products in the North American market. This segment of the renewable energy industry is rapidly expanding and was projected by the parties to be growing to over \$300 million in the next several years. The case settled on the courthouse steps on the first day of trial, with Mr. McNamara’s client gaining the immediate and exclusive rights to the products at issue.

- Served as lead trial counsel for a public company in defense of an action for breach of contract, wrongful termination, constructive discharge, and fraud. After moving successfully to dismiss the tort claims and to bifurcate and try the equitable defense issues by the court before a jury trial, the action settled for a nominal amount after a one week bench trial before the Los Angeles County Superior Court.
- Won as lead trial counsel a verdict of \$6.65 million (including \$5 million in punitive damages) from a state court jury in a case involving a dispute arising from the cancellation of a life insurance policy.
- Served as lead trial counsel for a former partner of a large national law firm in defense of a malpractice/partnership dispute in the Los Angeles County Superior Court. On the first day of trial, after granting our motion in limine to strike plaintiff's damages expert and related proof of damages, the Court ordered the dismissal of the complaint. The action was settled on appeal, with the plaintiff paying a significant amount of defendants' costs.
- Served as lead trial counsel for a privately owned real estate developer in an action brought by one of its former members for a "buy out" of his "partnership" interest pursuant to Section 16701 of the California Corporations Code. Following an appraisal, Mr. McNamara won an arbitration enforcing the appraisal against the former partner.
- Represented a national underwriter and administrator of extended service warranties for home appliances and computers in defense of a putative class action brought in federal court under California's Unfair Competition Law. After defeating class certification, the remaining individual action was settled for a nominal amount.
- Served as lead counsel for the former CFO of Asia Global Crossing in defense of several securities class actions. This litigation was transferred by the Federal Multi-District Litigation Panel to the United States District Court for the Southern District of New York, where more than 50 federal securities class actions were pending against Global Crossing and Asia Global Crossing. The litigation was ultimately resolved based upon the court's approval of a settlement of the securities class actions.
- Won as lead counsel a \$4 million judgment in favor of his client, a publicly traded company in the hauling industry. Following the entry of judgment, defendant filed for bankruptcy protection and Mr. McNamara's client purchased the defendant out of bankruptcy. As of today, the defendant's former business is a successful division of Mr. McNamara's client's successor-in-interest.
- Served as lead counsel for a foreign automobile manufacturer in an arbitration with a major studio over product placement issues. The action settled on favorable terms before the final arbitral hearing.
- Served as lead counsel for a large public hotel company in a case in which a local hotel owner sought to enforce an area restriction provision in a management agreement. The plaintiff claimed that a merger with a large competing hotel brand resulted in a violation of the area restriction, as it resulted in several newly affiliated brands of hotels within a block of the plaintiff's hotel. This action was settled on favorable terms just prior to trial.
- Served as lead counsel for the Visiting Nurse Service in defense of a wrongful death action challenging the religious practices of Christian Scientists. After winning the case by motion, the Fourth District Court of Appeal in California affirmed the dismissal in favor of our clients. For reported decision: *Quigley v. First Church of Christ, Scientist, and Christian Science Visiting Nurse Service in Los Angeles County, Inc.*, 65 Cal. App. 4th 1027 (1998).
- Served as lead counsel defending the Chair and CEO of a public company in defense of a securities class action that was pending in federal court in Tucson, Arizona. After winning dismissal of the state law claims, the alleged class window was narrowed, which allowed the action to settle on favorable terms that were ultimately approved by the court.
- Served as lead counsel for a large national law firm in defense of claims by a "client" against a partner for sexual assault and battery in the Los Angeles County Superior Court. This action was won by a motion to dismiss based upon proof of the plaintiff's pre-litigation attempts to extort payments from the lawyer.

- Served as civil counsel for an indicted former partner of a “Big Four” auditing firm in the criminal action in the Southern District of New York based upon the Court’s ancillary jurisdiction over related civil claims. After the Circuit Court reversed the trial court’s assertion of ancillary civil jurisdiction, all related civil claims were successfully resolved in a different forum based upon a confidential settlement.
- Served as lead counsel for a former partner of a large national accounting firm in defense of malpractice and fraud claims in the Los Angeles County Superior Court. This action settled successfully on the eve of trial.
- Served as lead counsel for a former partner of a large accounting firm in defense of claims for fraud and malpractice brought by a former client involving alleged “tax shelters.” All claims were dismissed “with prejudice” by the San Francisco County Superior Court.
- Served as lead counsel for former members of an acquired company in defense of an action brought for fraud in connection with the sale of the business. The assignee/subrogee of the buyer claimed that the buyer was fraudulently induced based upon the alleged failure to fully disclose all material facts during the due diligence period prior to the close of the acquisition. All claims were dismissed when summary judgment was granted resulting in the dismissal of all claims in favor of Mr. McNamara’s client.
- Served as lead counsel for a large public company involved in two lawsuits arising from a dissolved “partnership” to develop a waste-by-rail landfill located in Imperial County, California. Phase I of the litigation against the landowner was favorably settled on the first day of trial. Phase II of the litigation against the transportation provider was settled on favorable terms just prior to trial.
- Served as counsel for the subsidiary of a large public company in defense of claims for environmental contamination arising from a green waste program. After winning summary judgment, the Court of Appeal issued its opinion affirming in full the summary judgment. *PNL v. Waste Management*, 2004 WL 2320349 (Cal.App.4th Dist.) (unpublished opinion).
- Served as counsel for a well-known hotel in defense of a consumer representative action brought under California’s Unfair Competition Law (Section 17200 of Business and Professions Code) concerning parking valet services. After winning summary judgment, the Court of Appeal affirmed the dismissal. *Riley v. Hilton*, (unpublished opinion in B172825 by Division 4, 2nd Appellate District, filed June 1, 2005).
- Served as counsel for a large public company in a shareholder derivative action that was brought following the company’s write-off of approximately \$2.7 billion. After a motion to dismiss was granted by the Los Angeles County Superior Court, Mr. McNamara and a team also defended the company in a separate federal derivative action. Both the state and federal derivative actions were dismissed following a favorable settlement.
- Served as litigation counsel for a trading card company in defense of patent infringement claims. This was one of ten related patent cases. We won summary judgment for the client based upon plaintiff’s lack of standing. Thereafter, a new licensee of the patents at issue brought a new action against the client. After the federal court granted our motion dismissing this second action, the Federal Circuit reversed and remanded the action, which was later settled on favorable terms for the client.
- Served as counsel for a publicly owned insurance company in a shareholder derivative action brought after the carrier faced approximately \$1 billion in earthquake-related claims, when the insurer only had \$200 million of reinsurance for those claims. The action was settled on favorable terms.
- Served as lead counsel for the president and 25% shareholder of privately held company in prosecution of derivative and individual actions against controlling shareholders/board members. This action was settled based upon the sale of our client’s stock in a transaction valued at approximately \$6 million.
- Served as lead counsel for a minority shareholder (30% owner) of a privately held company who was wrongfully ousted by the controlling majority shareholder (70% owner). This dispute was resolved at mediation in a settlement

valued at approximately \$3 million.

- Served as lead counsel for the president of a large privately owned perfume maker in defense of a fraud lawsuit. After prevailing at the trial court level on a motion to dismiss based upon lack of personal jurisdiction, Mr. McNamara also prevailed on appeal before the California Court of Appeal. *Hayman v. Florasynth, Inc. and Jack Friedman*, (unpublished opinion in B094173 in Div. 1, 2nd App. Dist.).
- Served as lead counsel for a public company in defense of a "public policy" wrongful termination suit brought by a former employee of a subsidiary bank. The action settled on favorable terms on appeal, after winning summary judgment for the client. Mr. McNamara and the team were also able to obtain full reimbursement of all lawyers' fees and costs for the client.
- Served as lead trial counsel for a minority shareholder and employee of closely a held corporation in the gazebo business in an arbitration to determine value of his shares and other "wrongful termination" claims. The case was resolved on confidential terms after a two-day panel arbitration.
- Served as lead trial counsel for the creator of the idea for a psychic television program against the producer of a similar show on network television. The claim against the producer for misappropriation of the idea for the show settled on the first day of trial for \$580,000.
- Served as lead trial counsel for a post-production company, which claimed that its tenant had violated a non-compete provision in its lease. Mr. McNamara's client was awarded \$575,000 in damages at a bench trial before a judge pro tem.
- Represented an insurer in defense of an ERISA action. After winning summary judgment, Mr. McNamara argued the case before the US Court of Appeals for the Ninth Circuit where the judgment was affirmed in full. For published opinion: *Moran v. Aetna*, 872 F. 2d 296 (9th Cir.).
- Represented an insurer in a highly complex dispute involving 19 underlying property damage cases, three insurance-related cases, and out-of-state bankruptcy proceedings. The underlying actions involved dozens of parties, multiple forums, and high financial exposure for the insurer with \$25 million of coverages at issue. Ultimately this litigation was resolved with Mr. McNamara's client contributing only \$4 million of the \$62.5 million "global" resolution.
- Represented an insurer in defense of "bad faith" litigation in the Eastern District of Louisiana involving claims brought by a bank arising from a blanket fidelity bond. Mr. McNamara led the team engaged on "remand" to handle the action after a \$20 million bad faith verdict was reversed by the US Court of Appeals for the Fifth Circuit and remanded to the trial court.
- Won a defense verdict as trial counsel from a federal court jury for an individual sued for defamation after reporting that two corporate officers sought illegal bribes.
- Served as trial counsel for the plaintiff in a construction defect case against an architect in a four-month jury trial in Mono County involving the Aspen Creek condominium development. At the time, this was the longest civil jury trial in Mono County's history.
- Served as trial counsel for a software company in copyright action against competitor. After a one week bench trial, the federal district court issued an injunction against the competitor, which then filed for bankruptcy.
- Served as trial counsel for the owner of a large medical building in Palo Alto in an unlawful detainer trial against Stanford University. Stanford's attempt to exercise its right to eminent domain was defeated and damages were awarded in favor of Mr. McNamara's client.

Awards

- *Chambers USA: America's Leading Business Lawyers*
Litigation: General Commercial (California), 2012-2020
- *Legal 500 US*, 2015
- *Martindale-Hubbell*
AV Peer Review Rated
- *Southern California Super Lawyers*
General Litigation, 2005-2016
- *The Best Lawyers in America*
Commercial Litigation, 2021

Service to the Bar

- American Bar Association
Member, Litigation Section
- American Bar Association's Lawyer's Professional Liability Consortium
Member
- American College of Trial Lawyers' Legal Ethics and Professionalism Committee
Member, 2017-2018
- Professional Responsibility and Ethics Committee (PREC), Los Angeles County Bar Association
Member, 2011-2012

Professional Associations and Affiliations

- American College of Trial Lawyers (ACTL)
Fellow
- International Academy of Trial Lawyers (IATL)
Fellow
- Association of Business Trial Lawyers (ABTL)
Member, Board of Directors, 2009-2018
Past President, 2018
- California State Bar Certified Specialist in Legal Malpractice Law (*certified through 2021*)
- Member of Executive Committee of Litigation Section of the Los Angeles County Bar Association, with one-year term running from July 1 2016 - June 30 2017
- Chancery Club, Los Angeles
Member

Publications

- Co-Author, “Pirate’s Booty – Johnny Depp’s Lawyers Walk the Plank: A Cautionary Tale for all Entertainment Lawyers,” *Association of Business Trial Lawyers’ Report*, Winter 2020
- “President’s Report,” *ABTL Report*, Spring 2018
- Co-Author, “Ethical Screens in California: An Emerging Trend,” *ABTL Report Los Angeles*, Winter 2018
- “President’s Report,” *ABTL Report*, Winter 2018
- “President’s Report,” *ABTL Report*, October 2017
- “President’s Report,” *ABTL Report*, Summer 2017
- Co-Author, “Taking Care of (Unfinished) Business,” *Association of Business Trial Lawyers’ Report*, Winter 2017