

## SHOUT OUT

# Skadden Take a Bow

By Jenna Greene

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It was quite a week for litigators at Skadden, Arps, Slate, Meagher & Flom, who racked up six wins over seven days.

Especially sweet: prevailing on behalf of a class of more than 3,000 active and retired California justices, judges and their beneficiaries who say they were illegally denied millions of dollars in unpaid salary increases.

From fiscal year 2007-2008 to fiscal year 2013-2014, California state judges got no increase in pay, even though other state employees received raises.

In 2013-2014, the state tried to make up the difference and gave the judges a pay bump intended to equal the ones they'd missed.

But on Dec. 16, Los Angeles County Superior Court Judge Elihu Berle ruled that that wasn't good enough. The increase "did not take into account the time delay in receiving the increase or the cumulative compounding effect of the multiple increases the state employees received over several years," he found.

He ruled that the class members are still owed benefits—unspecified for now, but "capable of being made certain by calculation." In addition, he said that class members are entitled to 10 percent interest per annum on the unpaid salaries and judicial retiree fees, as well as recovery of legal costs.

The Skadden team representing the lead plaintiff—retired Justice Robert Mallano—included partner Raoul Kennedy, counsel James Schaefer and associates William Casey and Pramode Chiruvolu.

### Coffee Break

Another notable win for Skadden was on behalf of JAB Holding Co. and subsidiary Caribou Coffee in Minnesota state court.

Reuters columnist Alison Frankel has a fascinating look at the case and the "burgeoning litigation investment strategy known as appraisal arbitrage."

In January of 2013, JAB acquired Caribou for \$16 per share, a 29 percent premium on Caribou's share price. The respondents—a husband, his wife and his investment company—owned more than 850,000 shares, and complained that the fair value should have been \$22 a share. They said they were shortchanged \$6 million.

Instead, Judge Ronald Abrams on Dec. 15 set the fair value at 10 percent below what JAB paid—which meant that the respondents got nothing, and in fact were worse off than if they'd never challenged the valuation. Skadden partner Paul Lockwood led the team for the win, the first Minnesota case to set fair value in an appraisal below the deal price.

Also on Dec. 15, Skadden lawyers secured a nonprosecution agreement for Baumann & Cie, a private bank headquartered in Basel, Switzerland.

The firm says it's the eighth such agreement Skadden lawyers have won for banks participating in the Justice Department's Swiss bank program. The program provides a path for Swiss banks to resolve potential tax-related criminal offenses in the United States in connection with undeclared accounts.

According to the DOJ, since Aug. 1, 2008, Baumann maintained a total of 167 U.S.-related accounts, with an aggregate peak value of \$514.1 million. The bank struck a deal to pay a penalty of \$7.7 million, less than 1.5 percent of the assets under management that were subject to possible penalties.

Partners Keith Krakaur, Gary DiBianco and Pamela Endreny headed up the representation.

### No Class

Another win came on Dec. 10, when a team led by partners Jay Kasner and Scott Musoff won dismissal of a class action complaint against Vivint Solar Inc. and The Blackstone Group.

The would-be class, represented by Levi & Korsinsky and Pomerantz, claimed that Vivint's IPO registration statement misled investors. The company leases solar energy systems to homeowners; Blackstone owns a majority interest in the company.

U.S. District Judge Katherine Forrest of the Southern District of New York dismissed the case with prejudice, ruling that the registration statement "did not contain an untrue statement of a material fact or otherwise required disclosure."

She also found that even if the plaintiffs had stated a claim for which relief could be granted, Blackstone was not a statutory defendant. On top of that, the lead plaintiff didn't actually buy his shares in the IPO, which meant that he lacked standing, Forrest found.

As for the other wins, Skadden lawyers Noelle Reed and George Zimmerman on Dec. 9 defeated a motion to compel production of documents on behalf of SocGen Private Banking.

And Peter Greene, Boris Bershteyn, Patrick Fitzgerald and Peter Julian on Dec. 15 helped JPMorgan Chase secure preliminary sign-off on a \$2 billion settlement between nine banks involved in the alleged manipulation in the foreign exchange market.

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