

Mark V. Boennighausen

Of Counsel

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- **Industries**

- Banking & Financial Services
- Technology

- **Services**

- Business & Commercial Litigation
- Intellectual Property Litigation
- Litigation
- Trademark & Copyright
- Trust & Estate Litigation

Overview

Mark Boennighausen is a member of Hopkins & Carley's Litigation Department. Mark has broad experience in almost every area of civil litigation with specific expertise in trusts and estate litigation and trade secret law. His commercial litigation experience also includes real estate and commercial disputes involving technology companies. He also regularly provides counseling to clients on commercial contracts and pre-litigation business negotiations. In the 1990s, Mark worked for American Lawyer Media and became the founding executive of an Internet company backed by Softbank.

Mark was a member of the successful Bank of America trial team in *KC Multimedia v. Bank of America* (2009) 171 Cal.App.4th 939, which established the trade secret pre-emption doctrine. He also successfully represented Morgan Stanley & Co, Inc. in *Affonso v. Metropolitan Life Ins. Co et. al* 2012 WL 1496192, (N.D. Cal 2012 (NO. C 10-5054 PJH)), where he obtained dismissal with prejudice of an ERISA claim. In a recent real estate matter, Mark secured dismissal at the pleading stage of federal RICO claims against an LLC and member investors, which was affirmed by the Ninth Circuit, *Malley v. San Jose Midtown Development LLC*, 2022 WL 62915 (N.D. Cal. 2022). He has also represented small technology companies ensnared in class action litigation

involving privacy claims.

Experience

- Represented matriarch in trust and estate litigation against her sons over the distribution and management of assets bequeathed by her husband that grew into a multi-billion dollar family business controlled by two of her five children.
- Represented wife in collateral trust litigation that arose out of divorce proceeding where the validity of a QPRT trust was at issue.
- Represent high net worth individual seeking to recover money loaned based on fraudulent representations by two individuals. After a court trial, the client secured a \$1.2 million judgment, including more than \$800,000 in attorney fees and costs.
- Represented public company in International Chamber of Commerce ("ICC") arbitration and parallel California federal action over non-payment of money by European distributor. After substantive preliminary rulings in the ICC and federal action in favor of client, the matter resolved at mediation.
- Represented investor in bankruptcy adversarial proceeding purchased from trustee against debtor insiders who had filed bankruptcy instead of litigating state action brought by his client on the merits. Matter resolved at settlement conference thereby ending four years of litigation between the principals wherein his client successfully recovered more than \$8 million.
- Represented company in five-day arbitration where minority owner of joint venture sought money, claiming venture had hidden profits which were not reported. Arbitration award denied all of the claims against client and awarded client attorney fees.
- Represented investment advisory firm and its members in arbitration where departing member sought seven-figure pay-out for his voluntary departure from the firm. After five-day arbitration, the arbitrator rejected all of the departing member's claims and found for the firm and its members on an unclean hands defense based on the departing member's conduct.
- Represented public company in recovering money mistakenly wired to wrong account. Litigation required seeking and receiving ex parte restraining order in federal court against recipient who had engaged counsel and sought to negotiate a resolution whereby he would keep the money.
- Represented East Coast-based company in litigation against California-based employee who took confidential company information upon being informed of termination. After filing complaint, secured preliminary injunction against employee prohibiting the use or disclosure of the trade secret information.
- Assisted in defending a publicly traded company in a trade secret dispute, which settled after the plaintiff lost two motions for a preliminary injunction seeking to prohibit client from selling a wide range of its products.
- Represented a real estate investor in an interpleader action where other LLC members sought to prohibit distribution of more than \$8 million to client. After aggressive motion practice, the trial court entered judgment in favor of client for the full amount of the interpleaded funds.
- Lead trial lawyer in a bitter partnership dispute over the ownership of a specialty media company. After a two-year battle, which included a contempt trial and finding of contempt against the plaintiff, the week-long trial in San Francisco concluded with the court ruling in favor of client's cross-complaint and against all of the plaintiff's affirmative claims.

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- Represented defendant in elder abuse and breach of trust claim in which successor-trustee sought to void a real property gift made by previous trustee. Case successfully settled on terms where client kept real property gift and related party to client received benefits from trust unclaimed prior to the initiation of litigation by successor trustee.
- Represented client in successful appellate writ proceeding where ruling reversing trial court resulted in interpleader defendants and cross-complainants having to post multi-million dollar bond to stop release of interpleaded funds. As a result, trial court distributed more than \$6 million to client as well as \$400,000 in costs and appellate delay damages.
- Represented private software company against publically traded company in federal court action seeking more than a \$1 million based on claims that software did not work. Action resolved at mediation.
- Represented insurance beneficiaries in federal court interpleader action, which resulted in entire proceeds of the multi-million dollar life insurance policy being distributed to clients after court ruled primary beneficiary was ineligible to receive the money because of his conduct.

Insights

Publications

- *The Price of Harassment* (1994) (book with collection of articles written covering the seminal Weeks v. Baker McKenzie sexual harassment trial)

Professional Activities

- Los Altos Education Foundation, Treasurer
- AYSO Soccer Referee
- Huttlinger Alliance of Education (advocacy group for local public schools)

Bar Admissions

- State Bar of California (1989)
- State Bar of Colorado (1994)

Court Admissions

- U.S. District Court for the Northern District of California
- U.S. District Court for the Central District of California
- U.S. District Court for the Western District of Washington

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- U.S. District Court for the State of Massachusetts
- Ninth Circuit U.S. Court of Appeals

Education

- J.D., University of California, Berkeley
- B.A. (*with honors*), Government and Computer Applications, University of Notre Dame