

Snell & Wilmer Raises Appellate Firm Profile

By Laura Ernde
Daily Journal Staff Writer

Snell & Wilmer is positioning itself as the go-to appellate firm in Orange County with the addition of partner and appellate specialist M.C. Sungaila.

Sungaila spent 13 years at the Encino appellate firm of Horvitz & Levy, where she focused on toxic-tort defense and pursued pro bono work in furtherance of women's rights.

"She's a terrific person and a terrific lawyer," said Snell & Wilmer partner Richard Derevan. "We think we're fortunate to get her."

Sungaila said a desire for a new challenge and the opportunity to be closer to her parents prompted the move.

Snell & Wilmer is one of the few firms in Orange County that has a dedicated appellate practice, Derevan said. The bulk of Southern California appellate work goes to Los Angeles-based firms, including Horvitz & Levy.

Derevan has been doing appellate work exclusively for nearly 20 years. The firm's clients include Ford Motor Co. and Allergan Inc. The firm also gets referrals, and is handling the defense of a \$350 million jury verdict for venture capital firm Auerbach Acquisition Associates Inc. The company was awarded damages from an entrepreneur who reneged on a promise to let investors in on the ground floor of iPayment, which provides Internet credit



M.C. Sungaila

card processing services.

Sungaila graduated from UCLA Law School in 1991, and worked as an associate at Irell & Manella before joining Horvitz & Levy.

Last year, she won a groundbreaking ruling from the Inter-American Court of Hu-

man Rights, which held Mexican authorities responsible for failing to properly investigate the disappearance of hundreds of women from Ciudad Juarez.

laura_ernde@dailyjournal.com

Haag Discusses Hiring, Policies as U.S. Attorney

By Rebecca Beyer
Daily Journal Staff Writer

SAN FRANCISCO — After President Barack Obama nominated Melinda L. Haag to replace Joseph P. Russoniello as U.S. attorney in the Northern District, the Department of Justice put a hiring freeze in place so Haag could oversee personnel changes when she arrived.

Now that she's in place, the hiring has begun.

In August, the Senate confirmed Haag to become the district's first woman U.S. attorney in more than 90 years. Bringing on new prosecutors is part of a series of changes Haag plans to make as she settles into her new role. Speaking at an event of the Bar Association of San Francisco Tuesday, Haag said she also plans to restructure the office's criminal division, although she declined to specify how.

Haag said that when she first posted openings for assistant U.S. attorney positions, she received 1,000 applications. Since then, she said she has narrowed the pool to 18 applicants. She has 14 spots to fill — a number that can change at any moment due to budgetary concerns — and plans to make offers to candidates this week.

"I'm excited to be able to bring some new folks in," she said.

Two of Haag's early hires are familiar faces in the district. Miranda B. Kane, a former chief of the office's white-collar unit, started her job as criminal chief five days ago, taking over for Brian Stretch, who is now Haag's First Assistant U.S. Attorney. Haag also recruited former Enron Task Force prosecutor John H. Hemann, who is leaving his position as partner at Morgan, Lewis & Bockius to return to the office, although Haag declined to say Tuesday what his role will be.

In the hour-long session, Haag took questions from assistant U.S. attorney Tracie Brown, the office's civil rights coordinator, and from a crowd of mostly private practitioners.



Melinda L. Haag

Many of the questions from the crowd were directed at policies in place under Haag's predecessor, Russoniello. Some of those policies — including a practice of charging a defendant with his or her prior convictions in order to trigger mandatory minimums unless a defendant pleaded guilty and not engaging in settlement conferences in criminal cases — have been heavily criticized by the defense bar.

"It's on my radar screen," Haag said, explaining that she has sat down with all her prosecutors to discuss their views on each policy but is not yet ready to announce what changes, if any, are coming.

As she has before, Haag emphasized that white collar investigations and environmental and civil rights cases will be a major focus under

her watch. That said, she reassured one attorney in the audience who said some people were concerned she might de-emphasize prosecutions of drug and gun cases in favor of white collar crime. Haag said she'd been meeting with local law enforcement to talk about ways to combat street crime together.

"Nothing has changed with respect to our commitment" to fighting violent crime, she said.

Former prosecutor and K&L Gates partner Jeffrey L. Bornstein, who was in attendance at Tuesday's event, said he expected Haag to deliver on her promise of more white collar cases.

"It feels like there's a renewed sense of purpose and vigor," he said of the office.

rebecca_beyer@dailyjournal.com

As Bratz Case Widens, Big-Name Lawyer Returns

By Jason W. Armstrong
Daily Journal Staff Writer

In the latest in a long line of attorney switch-ups for MGA Entertainment Inc. in its war with Mattel Inc. over the Bratz dolls, the toymaker rehired prominent Los Angeles trial lawyer Patricia Glaser to lead counsel for the upcoming second trial of the lengthy intellectual property case.

Glaser, who has twice served as lead counsel for MGA in the six-year-old litigation, will try the case with Annette Hurst, a San Francisco partner with Orrick, Herrington & Sutcliffe who was tapped to head the company's defense in July 2009, according to a court filing Monday night.

Glaser, a name partner with Glaser, Weil, Fink, Jacobs, Howard & Shapiro, said she left the case previously because MGA wanted the case "under one roof," and her firm didn't have enough lawyers or resources to handle the litigation alone.

Isaac Larian, MGA's chief executive officer, said in a statement Tuesday that he brought Glaser back into the case because she "is one of the best trial attorneys in the world."

"I trust her. She has the big case jury trial experience we need," Larian said.

Glaser said Tuesday that she would be lead

counsel, but that she and Hurst would both argue the case. She said the two firms coordinated duties very well so far.

"It takes a little more effort with two firms, but so far it's seamless," she said.

"She's integral to this team," Glaser said of Hurst. "She's an extremely talented lady, and I'm very pleased to be able to work with her."

Hurst could not be reached for comment Tuesday.

The counsel shuffle comes as the scope of the second phase of the Mattel-MGA litigation has widened dramatically.

MGA and Mattel each accuse one another of spying on internal toy development meetings in illicit attempts to gain information about new brands, among other things. And MGA is gearing up to defend itself a second time against Mattel's claims that the company committed copyright infringement by developing the multi-billion-dollar Bratz brand based on the ideas of a Mattel doll designer.

The 9th U.S. Circuit Court of Appeals in July reversed a string of the initial trial judge's rulings, including a decision that Mattel owned the Bratz trademark, after a jury ordered MGA to pay

Mattel \$100 million for conversion, infringement and other claims. Last month, U.S. District Judge David O. Carter, who is now hearing the case, dismissed the jury's findings against MGA.

A re-trial of those claims and additional allegations is scheduled for January.

Glaser initially represented MGA in the case, serving as lead trial counsel, with attorneys from O'Melveny & Myers as co-counsel. But Glaser and O'Melveny left the case in 2007 amid a dispute between MGA and O'Melveny. O'Melveny has since sued MGA for allegedly skipping out on \$10.2 million in fees. MGA, in a countersuit, accuses O'Melveny of malpractice and overbilling.

MGA then hired well-known Los Angeles litigator Thomas Nolan and his firm, Skadden, Arps, Slate, Meagher & Flom, to handle the whole case. But in early 2009, MGA brought in Glaser and Russell Frackman, a partner with Mitchell Silberberg & Knupp in Los Angeles, to handle the next phase of the trial, with Nolan and Skadden continuing to handle pending issues relating to the jury's 2008 verdict.

MGA then replaced Glaser and Frackman with Hurst and the Orrick firm in July 2009.

jason_armstrong@dailyjournal.com

Squire Sanders Scraps Plans for Expanded Hong Kong Office

By Erica E. Phillips
Daily Journal Staff Writer

When Squire Sanders & Dempsey announced its combination with British firm Hammonds in early November, the Los Angeles office was primed to attract a new crop of trans-Pacific work from Hong Kong.

"We really like the nexus with China that the Hammonds combination provides," said Jake Broderick, Los Angeles managing partner.

Broderick noted that the four-partner Squire Sanders office in Hong Kong focused "largely on private equity transactions." Add-

ing the attorneys from Hammonds would expand its capabilities in dispute resolution and "triangulate the [International Dispute Resolution]

part of the merger.

The firms said in a joint statement: "As is common with large law firm combinations, even in circum-

'All is not lost, and far from it.'

JAKE BRODERICK
SQUIRE SANDERS & DEMPSEY

practice between Los Angeles, Tokyo and Seoul."

Those plans were cut short on Tuesday, however, when Hammonds' six-partner office in Hong Kong announced it would not be

stances such as ours where the vast majority of the voting partnership approved the combination, a small handful of partners in Hong Kong have taken the view that they do not want to be part of a fully integrated

global firm with established offices throughout China and have decided to leave."

Broderick echoed the sentiment, adding that Paris, London and Madrid would remain hubs for the firm's IDR practice.

"All is not lost, and far from it," he said, adding that Spain would be an important office to serve Asian and Latin American clients doing business in Latin America.

"Obviously we'd looked forward to that addition, but it was hardly the centerpiece of the combination overall," Broderick said.

erica_phillips@dailyjournal.com

Court Says Couple Can't Sue L.A. County

By Robert Iafolla
Daily Journal Staff Writer

WASHINGTON — The U.S. Supreme Court unanimously ruled Tuesday that a couple cannot sue Los Angeles County for failing to remove their names from a list of child abusers, even though they were acquitted of the abuse charges.

The decision overturned a 9th U.S. Circuit Court of Appeals ruling that the couple could sue the county for violating their due-process rights, even though the state, not the county, is responsible for creating and administering the list. The high court decision also strikes the circuit's judgment in the couple's favor that called for the county to pay \$60,000 in legal fees.

The court found that a municipality such as Los Angeles County isn't liable for declaratory or injunctive relief, known together as prospective relief, unless a plaintiff can prove that the municipality's "policy or practice" caused the constitutional violation in question. *Los Angeles County v. Humphries*, 09-350.

A 1978 Supreme Court ruling had already created a similar standard to insulate municipalities from claims for damages in civil rights cases. *Monell v. New York City Dept. of Social Servs.*,

436 U.S. 658.

Writing for the court, Justice Stephen G. Breyer said that nothing in the text of the criminal code dealing with civil rights claims suggests the policy or practice requirement for monetary relief not apply to prospective relief.

"*Monell's* logic also argues against any such relief-based bifurcation," Stephens continued. "The *Monell* court thought that Congress intended potential [civil rights violation] liability where a municipality's own violations were at issue but not where only the violations of others were at issue."

The court reached the decision on an 8-0 vote. Justice Elena Kagan did not take part in the case because she worked on it while serving as solicitor general.

The case stems from the abuse accusations of Craig and Wendy Humphries' 15-year-old daughter. Their names were added to the list, as required by California law, after an investigation substantiated the daughter's claims.

But they remained on the list, called the Child Abuse Central Index, after a state court cleared them of abuse charges. The Humphries sued the county when they discovered there was no way to strike their names from the list.

robert_iafolla@dailyjournal.com

High Court Divided Over State Prison Population

Continued from page 1

the same question: After all these years of failing, how exactly will California improve prisoners' medical and mental health care?

In addition to changing the culture in prisons, Phillips insisted the state has made significant gains by hiring additional staff and building new facilities. He said the population is now roughly 147,000, down from a high of 170,000. He parried suggestions from several justices that California's extreme fiscal emergency could hinder more hiring and construction.

Phillips also said that the three-judge panel did not give the state enough time to continue improvements, and instead issued an "extraordinary and unprecedented order" that could have dire public safety consequences.

"I guarantee you that there is going to be more crime, and people are going to die on the streets of California," Phillips warned.

Donald Specter, executive director of the nonprofit Prison Law Office in Berkeley, representing the inmates, tried to combat the public safety argument by emphasizing expert testimony saying the population can be decreased in ways that wouldn't put the public in danger.

But Justice Samuel A. Alito Jr. wasn't buying it.

"The experts can testify to whatever they want, but you know what?" Alito said. "If this order goes into effect, we will see. We will see, and the people of California will see."

Chief Justice John G. Roberts Jr. attacked the very legitimacy of

institutional reform through litigation which, transfers authority for setting budget priorities from state legislatures to federal courts. He asked Specter what a state should do when it has to deal with multiple judicial orders to spend billions to remedy constitutional violations.

"Well, my simple answer to your question, your honor, and I don't mean to be flippant, but they have an obligation to follow the federal law, the constitutional law, and other laws," Specter said. "And if they are not, then the federal court has an obligation to impose a remedy."

The three-judge panel that ordered the changes is composed of 9th Circuit Judge Stephen Reinhardt and U.S. district judges Lawrence K. Karlton of Sacramento and Thelton E. Henderson of San Francisco. They consolidated the two classes from two separate prisoner lawsuits. *Coleman v. Schwarzenegger*, 90-0520; *Plata v. Schwarzenegger*, 01-1351.

Specter represents the *Plata* class and King & Spaulding partner Paul D. Clement, who served as solicitor general for three years during the Bush administration, represents the *Coleman* class.

Clement said in an e-mail that the pair asked the justices for a divided argument so that they both could appear before the court. But the denial of that request meant luck would decide who would argue one of the most important cases of the term.

"When they denied that motion," Clement said, "we flipped a coin, and Don won."

robert_iafolla@dailyjournal.com

Dole Attorneys Seek to Speed Case's Move to Appeals Stage

Continued from page 1

testify in his defense.

"Apparently, [Dole] didn't want that," Condie said.

An attorney for Dole, Scott A. Edelman of Gibson, Dunn & Crutcher, said his client's decision to drop the contempt hearing was motivated by a desire to move the case forward not a change of heart.

"It was clear [Condie] was going to use [the contempt hearing] as a basis to delay things," Edelman said. "The sooner the judge can rule on his violations of the protective order the better."

Edelman also said Dole would file a renewed motion today for sanctions against Condie for again divulging confidential witness names to the media.

Both last year and this year, Chaney dismissed several Dole-related lawsuits, finding the plaintiffs'

attorneys — specifically Juan J. Dominguez of Los Angeles — deprived Dole of its due process rights by obtaining phony victims, by fabricating laboratory results and by threatening witnesses helpful to Dole's case. Chaney is still working on the final written version of her July oral ruling that dismissed *Tellez v. Dole Food Co.* — the sole remaining lawsuit against Dole brought by Nicaraguans claiming to have been sterilized on the company's farms. She vacated a \$2.3 million verdict the plaintiffs won at a 2007 trial.

The next hearing in the case is scheduled for January, when Chaney will be asked to issue sanctions against Condie for leaking to the media a State Bar complaint alleging that attorneys working for Dole bribed key witnesses in the case.

cieran_mcevoy@dailyjournal.com