

Commercial Litigation

Parr Brown's trial lawyers are nationally recognized and bring an elite reputation to the firm's litigation practice. They represent companies and individuals in complex disputes and have achieved unparalleled results. When appropriate, Parr Brown employs alternative dispute resolution strategies consistent with the clients' objectives, but it is equally qualified and staffed to pursue complex litigation strategies under the most adversarial of conditions. Many Parr Brown attorneys are admitted to practice in Utah and other states, as well as federal courts in various jurisdictions, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court. Parr Brown has significant experience in prosecuting and defending cases in state and federal courts as well as through alternative dispute resolution.

Representative Matters

Bilingual Parr Brown attorneys successfully defended a Japanese multinational client involved in a patent infringement lawsuit in Denver where the plaintiff sought in excess of \$75 million and an injunction that would have effectively shut down the client's business in the U.S.

Represented the Salt Lake Tribune, Deseret News, and the Utah Society of Professional Journalists in successfully seeking access to several sealed search warrant records in the case of two high-profile capital murder defendants accused of killing a deputy sheriff, *State v. Ruben Chavez-Reyes and Roberto Miramontes Roman* (Utah County, Utah).

Defended a national products supplier in a product liability case where plaintiff contended that exposure to asbestos was a substantial factor in the cause of his father's death from pleural mesothelioma. After 1/2 weeks of a projected 6-7 week jury trial, case dismissed by plaintiff without prejudice. (*Lars Roner v. Asbestos Corporation Limited, et al.*)

Represented Reminderband, Scott Huskinson, and Clay Broadbent in litigation brought by former employee of Reminderband, Craig Ricks. Ricks claimed that prior to his termination from Reminderband he had been promised a share of Reminderband's equity and that a subsequent sale of a significant portion of Reminderband's assets to ZAGG, Incorporated deprived him of his rights to that equity. Ricks claimed damages in excess of \$4,000,000. Reminderband and its founders and sole equity holders, Scott Huskinson and Clay Broadbent, denied those allegations.

Represented Firefly who was sued for patent infringement in federal court in Billings, Montana and served with an emergency motion for a preliminary injunction. Within two weeks of being retained, we participated in a full evidentiary hearing before the Montana Federal Court and procured not only a denial of the sought injunction, but language from the court seriously questioning the strength of plaintiff's case both on non-infringement and serious questions of the validity of plaintiff's IP on which it sued. This involved millions in claimed damage and threatened injunction that could lead to business demise. The case is ongoing with an appeal pending to the Federal Circuit filed by plaintiff.

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Represented plaintiff in *Zero Down et al. v. Haderlie et al.*, which included fraud and other claims against former employees and competitors of transportation consulting company. Achieved a significant ruling defaulting a number of defendants for discovery abuses, as well as favorable settlements or judgments against all remaining defendants.

Parr Brown represented defendants in an \$80 million litigation involving, among others, claims for patent, trade secret, unfair competition, and fiduciary duty relating to an internet business. Parr Brown successfully and quickly opposed a request for a preliminary injunction and obtained the dismissal of nearly every claim filed by plaintiffs, concurrent with asserting a number of claims against the plaintiffs in appropriate jurisdictions. As the proceedings involved very time-sensitive matters, the full cooperation and assistance of Meritas firms around the country was crucial to the litigation strategy and ultimate result, which was the dismissal of all claims against the client and a substantial payment to the defendant client.

Parr Brown attorneys successfully defended a multinational US corporation in an oil and gas lease dispute in the United States District Court for the District of Utah, in which the plaintiff sought approximately \$4.5 million in damages. Following a bench trial, the Court awarded only nominal damages to plaintiff in the amount of \$1.00.

Represented Soltis, Inc., a Utah investment advisory firm in a five day JAMS arbitration hearing before Hon. Haley J. Fromholz (Ret.) where the claimant asserted breach of the advisory agreement, breach of fiduciary duty, and securities claims. *Rosenbruch Family Limited Partnership v. Soltis Investment Advisors, Inc.*, JAMS Case No. 1310019117. Total damages asked for by claimant exceeded \$1.5 million. After the arbitration hearing, the arbitrator rendered his award on June 18, 2012, ruling in favor of our client on all issues, denying all claims on the merits, and awarding attorneys' fees to our client.

Represented EnergySolutions, Inc. (f/k/a Envirocare of Utah) in a Federal False Claims Act case captioned *United States ex rel. Roger Lemmon, Patrick Cole, and Kyle Gunderson v. Envirocare of Utah*, Civil No. 2-02-CV-904. Relators alleged that the company improperly disposed of radioactive waste that resulted in submission of false invoices to the government. Counsel for Relators asserted that the claims would result in damages exceeding \$1.5 billion. As of September 30, 2012, the total stockholders' equity for the company was \$312 million. Prevailed on a motion for partial summary judgment that led to a settlement described in the Company's 10Q for the period ending 9/30/12 as "not expected to have a material adverse effect on our financial position, results of operations, or cash flows."

Represented Deseret Digital Media in a large defamation action brought in federal court by a former contractor against a municipal group called UTOPIA, which was formed to create a fiber-optic network for various local towns. The claims arose from an article that was penned under a secret pseudonym by Mayor Winder of West Valley City. The plaintiff sued Parr Brown's client and a number of other defendants, claiming damages in the millions of dollars. Parr Brown took the lead on briefing the defamation-related issues in a motion for judgment on the pleadings. Chief Judge Ted Stewart granted the motion and dismissed the case.

Represented a holder of a secured note in multi-million dollar claim against a publicly traded company in *Hawes v. Madison Avenue Media*. Parr Brown's client prevailed on a contested summary judgment motion and received an award in excess of \$3 million. Case now on appeal before the 11th Circuit U.S. Court of Appeals.

VCS v. La Salle Development Represented Utah Community Bank in a mechanic's lien case. The lien claimant, general contractor VCS, Inc., claimed a lien on an Ogden-area subdivision even though it failed to record a lis pendens until more than a year after it was required by statute to do so. VCS had raised a number of legal and equitable arguments in support of the court's excusing its failure to comply with the mechanic's lien statute. The Utah Supreme Court issued a unanimous decision affirming the district court's grant of summary judgment in favor of Parr Brown's client.

Represented hundreds of plaintiffs in San Diego County who lost their homes and/or businesses in the 2007 San Diego Wildfires. In this case, Parr Brown pursued extensive damage claims against San Diego Gas & Electric and other defendants under theories of inverse condemnation, negligence, trespass, nuisance, and negligence per se. Over \$134 million has been recovered on behalf of our clients.

Represented Jacob Family Chalk Creek and counterclaim plaintiffs in a dispute over various roads on 20,000 acres in the Uinta Mountains. Plaintiff sought to eliminate access to Defendants' 10,000 acre ranch claiming that the access road over Plaintiff's adjacent 10,000 acre ranch was private. At trial and on appeal, Defendants were able to establish that the access road was public. This case requires extensive historical research and interviews of elderly Summit County residents to establish at least a ten year period of public use of a road in the Uinta Mountains. On behalf of our clients, at we established that the road was public in the late 1800's and early 1900's, allowing access for our clients to use their cabins, lakes, and other property. We received a favorable ruling at trial, which was very recently upheld on appeal.

Represented Smith, Bitner and Nelson , victims of a train wreck involving transport of solid rocket boosters en route to Cape Canaveral. Bridge collapsed on short line railroad as train crossed resulting in substantial human injury to 3 client passengers who were escorting the rocket motors. Confidential settlement.

Acted on behalf of a class of similarly situated individuals comprising some 25,000 or more residents of Utah regarding IHC's billing practices resulting in excess charges to individual patients. This was the first case of its kind against IHC and perhaps in the nation. Prevailed at the interlocutory appellate level against IHC and successfully certified a class.

Represented DataMark Inc and Ecollege.com in a breach of employment agreement claim. Damages claimed exceeded \$380 million. Resulted in all claims being resolved in favor of defendants—no award in any amount for plaintiff.

Retained in *American Nutrition, Inc. v. Wilbur Ellis Company* (and numerous related cases) to represent **American Nutrition, Inc.**, a major manufacturer of pet food, in a wide array of litigation related to melamine contamination of rice protein concentrate and lamb meal. The legal matters included an FDA recall, defending claims from direct

purchasers (distributors or retailers of pet food), coordinating defense of consumer claims, and litigation commenced against Wilbur-Ellis Company in the Second Judicial District Court for Weber County, Utah. The vast majority of claims (including many millions of dollars of exposure) have been resolved in a fashion that was extremely favorable to ANI and that covered nearly all of the expenses and business losses ANI suffered as a result of the contamination. The resolution followed approximately one year of litigation and after defeating multiple summary judgment motions filed by the supplier of product claiming application of a “passive retailer doctrine” theory that was rejected by the Court.

Represented Kinross in a settlement of a hotly contested damages claim based on a tender offer transaction.

Defended Hercules, Inc. in a lawsuit that included a claim for specific performance or damages related to conveyance of a multi-million dollar parcel of real property.

Acted as lead counsel for Sprint in several complex telecommunication lawsuits.

Lead counsel for UNEV (Holly Refining) in connection with eminent domain, permitting, and regulatory actions relating to the construction of a 400 mile long refined products, common carrier pipeline which will deliver gasoline and other refined products from the Salt Lake City area to the Salt Lake City airport, southern Utah, and Las Vegas, Nevada.

Represented SkyWest Airlines in a contract dispute lawsuit that had tens of millions of dollars at issue. (*Atlantic Southeast Airlines and SkyWest Airlines v. Delta Air Lines*)

Lead counsel for Top Stop gasoline stores (Wind River Petroleum) in litigation filed by approximately 100 plaintiffs who claim to have suffered approximately \$20 million in property damage and personal injuries as the result of a leak from an underground, gasoline storage tank. (*Lila Lee Christensen, et al. v. Wind River Petroleum*)

Acted as lead counsel for Utah’s largest general contractor in lawsuits and arbitrations pending and /or tried during 2008 in Utah, Idaho, Nevada, New Mexico, and Montana. *The Jicarilla Apache Nation v. Layton Construction, American Arbitration Association, Case No. 76 110 Y 00036 07 JISI; Layton Construction Co. vs. Palmdale Medical Properties, American Arbitration Association; Pacifcorp v. C Entry Constructors & Engineers, Inc., In the Fifth District Court, Beaver County, Utah, Civil No. 080500074, Interior Construction Specialists v. Waterford School, In the Third Judicial District Court, Salt Lake County, Utah, Civil No. 050918011.*

Defended our client in a \$500,000 contract dispute. We were awarded summary judgment dismissing all claims and awarding our client attorneys’ fees. (Case later settled on confidential terms pending appeal.)

Defended Nevada Chemicals in a derivative litigation related to a tender offer. Our client was a publicly traded company that entered into an acquisition / merger agreement that included a tender offer by the acquirer. Plaintiff purported to be an adequate representative of the company in asserting breaches of fiduciary duty, inadequate disclosures, etc. He sought a restraining order and injunction against closing of the transaction, which were denied. The \$80 million transaction successfully closed.

Successfully represented plaintiffs in an action to abate violations of Salt Lake County’s county zoning and roadway ordinances. Our clients had refused to sell their property to the defendant developers to be used as part of a shopping center development. Over our clients’ objections, the developers constructed a shopping center on the adjacent

property in violation of the requirements of the County's zoning and roadway ordinances.. The court granted the relief that we sought ordering the defendants to remove their shopping center buildings and to bring the roadways into compliance. After we successfully defended the injunction on appeal, the developers agreed to a settlement rather than remove their shopping center buildings. In addition, we recovered over \$800,000 in legal fees from Salt Lake County under the private attorney general doctrine.

Employed aggressive, fully-informed tactics to obtain a settlement exceeding all lost profits within sixty days of filing for a medical device originator.

Represented Neways International in multiple lawsuits filed in the United States and Japan involving more than \$10 million in claimed damages. Parr Brown was successful in obtaining injunctions against several former Neways distributors and dismissal of all claims against Neways.

Settled a condemnation lawsuit filed by the Utah Department of Transportation relating to the acquisition of land located in unincorporated Salt Lake County for the construction of the new Mountain View Corridor. The settlement amount was \$9,280,000 which included the sale of additional land damaged by the loss of access. The original offer from UDOT was \$2,698,000.

Settled a condemnation lawsuit filed by the Utah Department of Transportation relating to the acquisition of land located adjacent to the St. George Airport. Represented a client whose access to the airport was cut off as a result of UDOT's construction of the new Southern Parkway. In addition to compensation, the settlement included a land exchange and an agreement by UDOT to construct a new bridge to restore lost access.

Settled a condemnation lawsuit filed by the Utah Department of Transportation relating to the acquisition of property needed for a detention basin adjacent to I-15 in Utah County. The settlement amount was over \$2,900,000. The original offer from UDOT was \$530,000. The settlement also included the sale of additional land damaged by the construction of the public improvement.

Settled a condemnation lawsuit filed by the Utah Department of Transportation relating to the acquisition of land located in West Jordan, Utah for the construction of the new Mountain View Corridor. The settlement amount was for \$5,512,500. In addition, the settlement included the negotiation of an access agreement with UDOT that secured future develop access rights for the remaining property as well as the purchase of surplus land from UDOT.

Successfully defended Japanese high tech client in a patent infringement lawsuit, settling for the equivalent of a licensing agreement fee on a product client no longer sold and no restrictions on the continued sales of client's key product. (\$61 million).

Defended a medical device manufacturer accused of infringement. Won a summary judgment/claims \$30 million.

Represented Gastec Co., Ltd., a Japanese company in the industrial safety business, in a suit against a defendant for trademark infringement and unfair competition. Obtained a settlement whereby defendant paid client damages of more than 10 times the attorneys' fees accumulated during the suit and agreed to stop selling infringing products.

Reversed a trial court decision on appeal with the Federal Circuit, injunction thrown out, obtained new construction of

the patent.

Obtained a settlement where defendant agreed to stop selling product and pay our client eight times the gross revenues on the sales of the accused product.

Obtained a stipulated injunction within thirty days of filing a software infringement action.

Successfully represented a software manufacturer in a \$23.5 software piracy case.

Successfully defended Bausch & Lomb in a licensing dispute related to Lasik eye surgery.

Successfully represented Gastec Co., Ltd of Japan. Obtained settlement whereby defendant agreed to re-design its product that infringed client's trade dress.

Represented the Salt Lake Tribune, Deseret News, and the Utah Society of Professional Journalists in successfully seeking access to several sealed search warrant records in the case of two high-profile capital murder defendants accused of killing a deputy sheriff, *State v. Ruben Chavez-Reyes and Roberto Miramontes Roman* (Utah County, Utah)

Successfully defended the Logan Herald Journal in a defamation and invasion of privacy suit arising out of the mistaken publication of a mug shot. Parr Brown won dismissal of all claims. (*Leishman v. Cache Valley Publishing*)

Represented the Utah Media Coalition in leading the fight against H.B. 477, a bill that would have crippled the Utah open records statute, the Government Records Access and Management Act ("GRAMA"). After initially passing the bill, the Utah Legislature did an about-face and repealed the law in a special session.

Represented the Salt Lake Tribune, Deseret News and the Utah Society of Professional Journalists in obtaining public disclosure of court records in a high-profile capital murder case, *State v. Allgier*. The Utah Supreme Court unanimously affirmed the ruling.

Successfully defended clients in an \$80 million litigation involving, among others, claims for patent, trade secret, unfair competition, and fiduciary duty relating to an internet business.

Successfully defended a U.S. automobile manufacturer in rollover and seat belt litigation.

Defended a national products supplier in the first asbestos personal injury or death case tried in Utah. Case is currently under appeal. (*Vickie Warren v. Georgia-Pacific, LLP, Hamilton Materials, Inc., and Union Carbide Corporation*).

American Nutrition, Inc. v. The Peterson Company. Represented American Nutrition, Inc. (ANI) in litigation resulting from the largest consumer recall in the history of the FDA.

Successfully defended a privately-held international pharmaceutical company in a wrongful death claim involving an

oral medication.

Successfully defended a building products manufacturer in an \$80 million property damage suit to recover the cost of removing asbestos from public buildings throughout the State of Utah.

Successfully represented an international pharmaceutical company in defense of a multi-million dollar product liability claim relating to baby formula.

Successfully represented an international mining company in product liability litigation arising out of uranium mining operations.

Successfully defended dozens of product manufacturers in asbestos personal injury litigation over 25 years.

Represented SkyWest, Inc. in negotiation of an aircraft purchase agreement for 100 MRJ90 regional jet aircraft, with a list value of more than \$4 billion, and 100 additional aircraft at SkyWest's option.

Represented a German academic institute against charges in California of patent infringement regarding clean room technology. Within six months the case was dismissed.

Prevailing counsel in *State v. Mathis*, resulting in payment of \$5.1 million to client in mineral estate ownership dispute with the State of Utah.

Settled 25 years of litigation with State of Utah and others over ownership to 1,125 annual acre-feet of historic water rights in rural Utah.

Represented Great Salt Lake Minerals Corporation in an administrative challenge brought by environmental groups to multiple permits under the Clean Water Act involving multi-million dollar operations on the Great Salt Lake.

Took to trial and won a complex water rights case in which a borrower had given a trust deed to secure a loan from a lender. The trust deed indicated that it encumbered all water rights associated with certain real property; and then the same water was conveyed to our client. Parr Brown presented fact and expert testimony to establish that its client was a bona fide purchaser without notice of the prior pledge of the water, and that purchasers of water stock in Utah do not review real property records to determine ownership of water stock.

Successful six-year litigation of gold mine ownership dispute in Utah.

Successful litigation to secure historic access rights for isolated ranch property in Summit County, Utah.
