

**DAVID C. PHILLIPS**

Here is a sample list of clients which Mr. Phillips has represented and cases in which he has participated:

**Entertainment Industry Clients**

Bill Graham Presents/Bill Graham

Winterland Productions

Signatures Network/Dell Furano

MCA

Carlos Santana

Grace Slick

Carole King

John Lee Hooker

JOURNEY/Herbie Herbert/Steve Perry/Jonathan Cain, Ross Vallory/Steve Smith

DEAD KENNEDYS/East Bay Ray, Klaus Floride, D.H. Pellegrino

Jim Guercio

Paul Ahern

**Maritime Clients:**

American International Group/American International Marine Adjusters

San Francisco Bar Pilots

American Navigation Co.

**International Clients**

Moscow Narodny Bank/Victor Gereshenko

Bangkok Bank of Commerce

## **Commercial Clients**

Staples, The Office Superstore

## **Significant Cases**

*Carolyn Adams Garcia vs. The Estate of Jerome Garcia*, Marin County Action No. 8384

Mr. Phillips represented Carolyn Adams Garcia, former spouse of Jerry Garcia of Grateful Dead fame, in enforcing her marital settlement agreement with Jerry against the Estate of Jerry Garcia in the Family Court in Marin County. Before his death Jerry had agreed to pay Carolyn \$5,000,000 in settlement of her marital property rights. His estate challenged the agreement. The Marin Court rejected the challenge and ordered the settlement enforced.

*Dead Kennedys vs. Jello Biafra*, San Francisco Superior Court Action No. 998892

Mr. Phillips represented three of the four members of the punk rock band Dead Kennedys against their former band member and partner Eric Boucher, a/k/a Jello Biafra, in a dispute over partnership rights (whether the partnership was governed by majority vote, as contended by the three clients, or required unanimity as contended by Biafra) and management of the partnership by Biafra. The clients prevailed on the partnership governance rules and recovered general and punitive damages against Biafra for mismanagement of partnership assets, breach of fiduciary duty and fraud.

*Bangkok Bank of Commerce/Rakesh Saxena*

Mr. Phillips was retained by the Bangkok Bank of Commerce of Thailand in 1996 to pursue recovery from one Rakesh Saxena, who had participated in diverting millions of dollars from the B.B.C. and fled to Vancouver, British Columbia, Canada with the loot. The theft caused a near-collapse of the banking system of Southeast Asia. Working with Canadian counsel, a proceeding to extradite Saxena to Thailand was undertaken as well as civil actions to recover funds.

*Johnson vs. Staples, The Office Superstore Contra Costa Superior Court Action No. 99-00054*

Mr. Phillips represented Staples in the first case to be decided under the Federal Y2K Act to limit litigation over computer glitches in year 2000. He succeeded in defeating the plaintiff's attempt to impose an injunction against Staples and other retailers that would have required the retailers to make a wide range of disclosures and take significant actions. The action was then settled for a nominal sum.

*Smart Online v. Staples, Inc., Orange County Superior Court Case No. 03CC04110*

Mr. Phillips represented Staples when Smart Online, a Durham, North Carolina-based creator and manufacturer of the Smart Business Plan 8.0 software product sued Staples in the Orange County Superior Court for allegedly refusing to continue restocking Smart's product in all of Staples stores nationally and to advertise that product every time Windows Office 2000 was advertised. After a promotional period of the Smart Online product ended, Staples stopped advertising Smart Business Plan 8.0 with the Windows program. Smart Online sued Staples for breach of implied contract, claiming that Staples failed to make it a regular stock-keeping unit

and failed to advertise it after a promotional period had ended. Smart Online asked the jury to award \$1 million in damages for alleged lost profits. The jury found for Staples.

*Carlos Santana vs. Miller Brewing Company*, U.S. District Court, Northern District of California.

Miller Brewing Company employed a “sound alike” of Santana’s distinctive rendering of Black Magic Woman in a Miller Lite beer commercial. Miller did not request Santana’s permission, nor did they obtain Santana’s consent to employ the “sound alike” of the sound and style of his guitar playing in the commercial. Mr. Phillips filed this then first-ever complaint based on the Lanham Act in a claim for damages for the commercial use of a “sound alike” of an artist. The action was very quickly settled by Miller beer.

*Liew v. Moscow Narodny Bank*, U.S. District Court for the Northern District of California

Mr. Phillips defended the Moscow Narodny Bank in an action brought in the federal court in San Francisco alleging that the bank had conspired to harm the rights of a Singaporean in connection with the purchase of several independent banks in the State of California. The Moscow Narodny Bank was chartered in Great Britain and owned by the Russian government. Plaintiff alleged that the bank was conspiring to enter the U.S. banking system by stealth and interfered with plaintiff’s contractual rights. Mr. Phillips succeeded in obtaining dismissal of the bank on summary judgment. He represented in the litigation Victor Geraschenko, who went on to become chairman of Russia’s Central Bank.

*Paul Ahern v. Tom Scholz*, U.S. District Court, District of Massachusetts, Case No. 91-10586-H

Paul Ahern is the original personal manager for the group BOSTON and went on to manage the career of its lead member, Tom Scholz. Ahern was responsible for bringing BOSTON onto the national airways and touring success. After Ahern settled his continuing monetary music entitlements in BOSTON with Scholz, Scholz failed to perform the agreement. After a three week trial in the federal court in Boston, a jury awarded \$547,000 to Ahern and the court ordered Scholz to pay Ahern's attorney fees. The trial court subsequently added the Massachusetts equivalent of punitive damages to the award.

*Boles v. Travelers and INA Insurance Companies*; San Francisco Superior Court Action No.

763319. Phillips brought a bad faith insurance action against Travelers and INA based on their refusal to honor a jointly issued marine insurance contract with Walter Boles, a commercial fisherman. Boles' vessel went aground in the Point Reyes National Seashore in Marin County, California. The carriers had selected a marine surveyor to assess the potential of saving the vessel shortly after the vessel went aground. The surveyor opined that the vessel was not capable of being saved, even though the evidence was that it could have been. After the vessel was lost, the carrier asserted that technical violations of the policy justified not paying Boles policy proceeds of \$120,000 for the loss. The vessel was the Boles' family sole source of income. After a two week jury trial, a San Francisco jury awarded Boles \$2.8 million including \$2 million in punitive damages, the then largest San Francisco Superior Court bad faith insurance award.