



Philip M. Guess

Partner

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OVERVIEW

Phil Guess focuses his litigation practice on complex business disputes and has particular experience representing clients in the technology, energy, and financial services industries. He has served on the firmwide management committee and as the managing partner of the Seattle office.

Phil is currently listed in *Chambers USA* as one of the top lawyers in Washington for General Commercial Litigation and has represented clients in courts throughout the United States in cases involving contractual breaches, usurpation of trade secrets, tortious interference, and class action allegations, among other issues.

For clients' technology disputes, Phil provides particular experience in contractual disputes regarding the ownership or disposition of intellectual property as well as disputes representing business against consumers. For clients engaged in energy-related industries, Phil offers particular experience with allegations surrounding supply contact breaches, breaches of non-compete and/or trade secret disputes, as well as federal preemption issues.

Phil has represented financial services clients in a number of high stakes cases. For example, he represented and advised numerous clients regarding *Bernard Madoff* and *Bernard L. Madoff Securities, LLC*. Likewise, Phil represented the Trustee in *In Re: Consolidated Meridian Funds*, which involved a \$220 million real estate scheme, the largest fraud of its kind in the Pacific Northwest.

Phil also represented the Bayou Unofficial Creditors' Committee and Bayou Official Creditors' Committee, *In re Bayou Hedge Fund Litigation*, assisting institutional investors in the Bayou family of hedge funds to recover in excess of \$75 million in what was, at the time, the largest Ponzi Scheme in United States history. Phil is also an experienced securities litigator, handling cases alleging securities fraud and dissenters' rights cases in state and federal court. Finally, Phil has represented companies, fund managers and institutional investors in matters involving or disputes with the Securities & Exchange Commission, Securities Investor Protection Corporation, and Washington State Department of Financial Institutions.

ACHIEVEMENTS

- Ranked in *Chambers USA* 2014-2021 for Litigation: General Commercial: Washington
- Selected to Best Lawyers Commercial Litigation (2019-2022)

- Selected to *Washington Super Lawyers* (2007-2021)
- Peer Review Rated AV in *Martindale-Hubbell* (2021)
- Selected to *Washington Rising Stars* (2004-2006)

PROFESSIONAL / CIVIC ACTIVITIES

- Board Member, Seattle Aquarium
- Former Member of Executive Committee, Former Chair of Governance and Nominations Committee, Seattle Aquarium
- Former Adjunct Professor of Law, Seattle University, Securities Law
- Former Board Member, Washington Community Alliance for Self Help

EDUCATION

- J.D., University of Virginia School of Law, 1993 (*Articles Editor Virginia Journal of International Law*)
- B.A., University of California, Berkeley, 1988 (*with high distinction in general scholarship*)
- B.S., University of California, Berkeley, 1988 (*with high honors*)

ADMISSIONS

- Bar of California
- Bar of Oregon
- Bar of Washington
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the District of Oregon
- United States District Court for the Eastern District of Washington
- United States District Court for the Northern District of California
- United States District Court for the Western District of Washington

THOUGHT LEADERSHIP POWERED BY HUB

- 15 December 2020, Litigation Minute: Thinking Ahead to Avoid Headaches Later: Contractual Dispute Resolution Provisions (*Alerts/Updates*)

- 29 July 2020, Investor Landmines in a Work-Out World: What Fiduciaries Need to Know (*Webinar*)
- 21 May 2020, COVID-19: A Virtual Discussion on Litigating Force Majeure (*Webinar*)
- 21 April 2020, COVID-19: Force Majeure Checklist for the GC's Office (*Alerts/Updates*)

NEWS & EVENTS

- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch (*Rankings & Recognitions*)
- 21 May 2021, K&L Gates Litigation and Dispute Resolution Practice, Lawyers Recognized in 2021 Chambers USA Guide (*Rankings & Recognitions*)
- 23 April 2020, K&L Gates, Lawyers Recognized in 2020 Chambers USA Guide (*Rankings & Recognitions*)
- 26 April 2019, Chambers USA 2019 Guide Ranks K&L Gates, Lawyers Among Leaders (*Press Release*)
- 23 June 2016, K&L Gates, Lawyers Recognized as Leaders in Chambers USA 2016 Guide (*Press Release*)
- 20 May 2015, Chambers USA 2015 Guide Recognizes K&L Gates, Lawyers as Industry Leaders (*Press Release*)

MEDIA MENTIONS

- Quote, "The Gathering Storm," *Oregon Business* magazine, September 2020

AREAS OF FOCUS

- Securities and Transactional Litigation
- Complex Commercial Litigation and Disputes
- IP Litigation
- Oil and Gas
- Power

INDUSTRIES

- Energy
- Energy Disputes

REPRESENTATIVE EXPERIENCE

Business Litigation Experience

- Represent Heart Monitor Company in series of non-compete and trade secret litigation associated with sales team.
- Represented Consulting Firm in valuation case involving departing partner.
- Represent generic pharmaceutical company in trade secret dispute with former prospective business partner.
- Represent shareholder in global public relations and media company in case involving valuation and breaches of fiduciary duty.
- Represent seller of workplace safety equipment company in dispute related to application of Generally Accepted Accounting Principles affecting earn out payment.
- Represented a large national bank in dispute in breach of contract/fiduciary duty claim by mortgage holder. Obtained summary dismissal.
- Represent global pesticides company and its subsidiary in Florida District Court in dispute with subsidiary's founder and former executive alleging securities fraud, fraud, breach of fiduciary duty and breach of contract.
- Represent worldwide seller of premium machine products in dispute with former overseas executives for theft and improper use of trade secrets.
- Represented investment fund in dispute over buyout of co-founder and alleged breaches of fiduciary duty. Case settled on favorable terms.
- Represented medical clinic in dispute with former physicians related to violation of non-compete. Case settled on favorable terms.
- Represented worldwide transportation and logistics company alleging trade secrets/breach of non-compete against two former employees. Secured court ordered temporary restraining order, preliminary injunction, and negotiated a permanent injunction. Case No. 3:17-cv-01160-MO (Or. D. November 3, 2017).
- Represented seller of maritime services company in dispute related to application of Generally Accepted Accounting Principles affecting earn out payment. Case settled on favorable terms.
- Represented large financial institution in series of cases involving allegations of wrongful foreclosure and/or violation of various federal lending laws and regulations. Secured numerous dismissals (e.g., Case No. C18-0230JLR, 2018 WL 3126546 (W.D. Wash. June 26, 2018); Case No. 76462-4-1, 2018 WL 3120833 (Wash. Ct. App. June 25, 2018); Case No. C16-9RAJ, 2016 WL 4061813 (W.D. Wash. July 29, 2016)) and settled numerous other cases on favorable terms.
- Represented a Seattle-based technology company in multi-million dollar breach of contract action filed in King County Superior Court. Case settled on favorable terms. Breach of contract
- Represented national cellular telephone company in litigation in Kitsap County Superior Court involving multi-million dollar breach of contract dispute. Obtained multi-million dollar summary judgment award.
- Represented warehouse lending company in fraudulent conveyance action against former retail lender in King County Superior Court. Obtained multi-million dollar summary judgment award.

- Represented medical technology company in three separate cases involving former employee actions with respect to non-competes and trade secrets. One case summarily dismissed, two settled on favorable terms.
- Represented a large national pipeline company in dispute with various agencies of the State of Washington regarding awarding requisite permits for expansion. Obtained injunctive relief in client's favor.
- Represented a Northwest-based maritime company in trade secret/non-compete litigation with two former executive employees in King County Superior Court. Case settled on favorable terms.
- Represented a partnership real estate venture in litigation with dispute with former partner in Montana Federal District Court.
- Represented a British university in breach of contract dispute with former PhD candidate filed in federal court in the Western District of Washington. Obtained summary dismissal of case which was confirmed on appeal.
- Represented consultant related to investment in renewable energy tax-equity investment. Case settled on favorable terms.
- Represented Pennsylvania-based energy company in large breach of contract arbitration related to transportation and delivery of natural gas. 313 F. Supp. 2d 1039 (D.N.D. 2004). Case settled in favorable terms.
- Represented a national cellular telephone company in consumer class action filed in King County Superior Court regarding purported improper allocation of minutes. Case summarily dismissed.
- Represented a Taiwan-based technology company in breach of contract litigation in federal District Court in Indiana and Hong Kong. Case settled on favorable terms.
- Represent cryptocurrency company in connection with breach of contract and fraud claim against former trader.
- Secured summary judgment for publicly traded renewable energy company with respect to founder's termination and claims of equity ownership *Monfort v. ADOMANI, Inc.*, 18-CV-05211-LHK, 2019 WL 6311378 (N.D. Cal. Nov. 25, 2019); see also 2019 WL 131842 (N.D. Cal. Jan. 8, 2019).

Securities and Fraud Litigation Experience

- Represented Educational Services Company in dispute regarding claims associated with escrow claims post-dating transaction.
- Represent City Retirement System with respect to fraudulent acts of broker dealer managing assets.
- Represented medical diagnostic laboratory in derivative case pending in San Jose Superior Court.
- Represented an investment fund in investigations before the Washington Department of Financial Institutions pertaining to management fees.
- Represent defrauded institutional investors in *In Re Bayou Group, LLC* in Southern District of New York bankruptcy court. Ultimately, Institutional investors ultimately recovered monies and judgments in excess of \$75 million. 363 B.R. 674 (S.D.N.Y. 2007).

- Represent large state employees pension fund in dispute with investment fund and former founder pertaining to founders' recent criminal plea related to bribery scandal.
- Represented former Chief Financial Officer of San Diego-based technology company in company investigation and associated derivative action.
- Represented several companies with respect to a series of informal or formal investigations by the Securities & Exchange Commission into potential employee insider trading.
- Represent Northwest- and California-based investment funds with respect to investor losses in the investments in the Bernard L. Madoff Ponzi Scheme, in California state litigation.
- Represent East Coast-based investment fund in Lehman Brothers bankruptcy proceeding pending in the Southern District of New York. Securities Investor Protection Corp. v. Lehman Bros, Inc. 433 B.R. 127 (S.D.N.Y. 2010).
- Represented mineral company in class and derivative actions in Idaho federal court. Case settled on favorable terms.
- Represented outside directors of Northwest technology company in companion derivative cases pending in the Western District of Washington and King County Superior Court. Case settled on favorable terms.
- Represent publicly traded renewable energy company in Riverside Superior Court in '33 Act case asserting material omissions in disclosures related to initial public offering.
- Represented entrepreneur before the U.S. Court of Appeals for the Ninth Circuit, obtaining dismissal of securities fraud claim. 748 F. App'x 732 (9th Cir. 2018).
- Represented a large broker dealer before Washington Department of Financial Institutions regarding a disputed settlement agreement.
- Represented interests of co-founder in technology company derivative litigation pending in King County Superior Court. Case settled on favorable terms.
- Represented Pacific Northwest mining company in defending '34 Act and state fiduciary claims in federal and state courts seeking to enjoin acquisition. Injunctive relief defeated in state case and federal case summarily dismissed. Case No. 2:16-CV-00256-SMJ, 2016 WL 4611573 (E.D. Wash. Sept. 2, 2016).
- Represented individual/fund in defense of \$10 million lawsuit seeking compensation for alleged investment advice. Case summarily dismissed. Case No. 4:15-CV-40082-TSH, 2015 WL 5822629 (D. Mass. Oct. 1 2015).
- Represented Liquidating Trustee for the Meridian real estate funds in resolution of a \$220 million fraudulent scheme, the largest fraud of its kind in the Pacific Northwest. In Re: Consolidated Meridian Funds et al, 487 B.R. 263 (W.D. Wash. 2013).
- Represented Texas-based security and technology company in dissenters' rights litigation in King County. Case settled on favorable terms.

- Representation of numerous institutional investors that were victims of the Madoff fraud scheme in Trustee adversary proceedings for the bankruptcy estate of Bernard L. Madoff Investment Securities.
- Represented Northwest-based timeshare company in shareholder derivative litigation pending in federal court in the Northern District of California.
- Represented an Idaho-based mining company with respect to Securities & Exchange Commission investigation.
- Represented a large Seattle-based technology company with respect to Securities & Exchange Commission insider trading investigation pertaining to acquisition.
- Represented several financial institutions/advisors before the Washington Department of Financial Institutions.
- Represented a large Northwest-based technology company in defamation case in the federal District Court for the District of Columbia. Obtained summary dismissal of case.