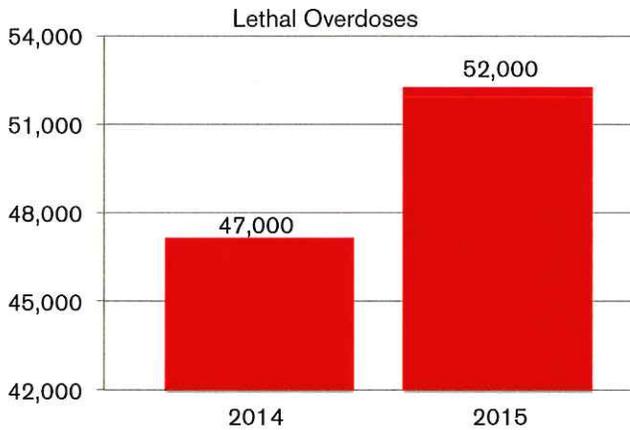
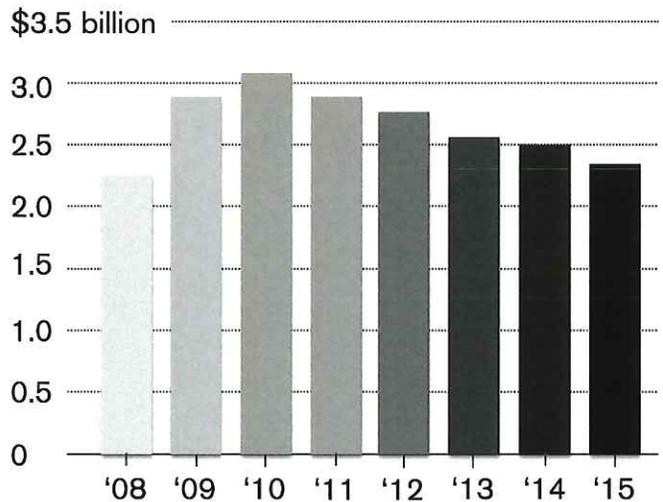


HOLDING BIG PHARMA ACCOUNTABLE FOR THE OPIOID EPIDEMIC IT HELPED CREATE

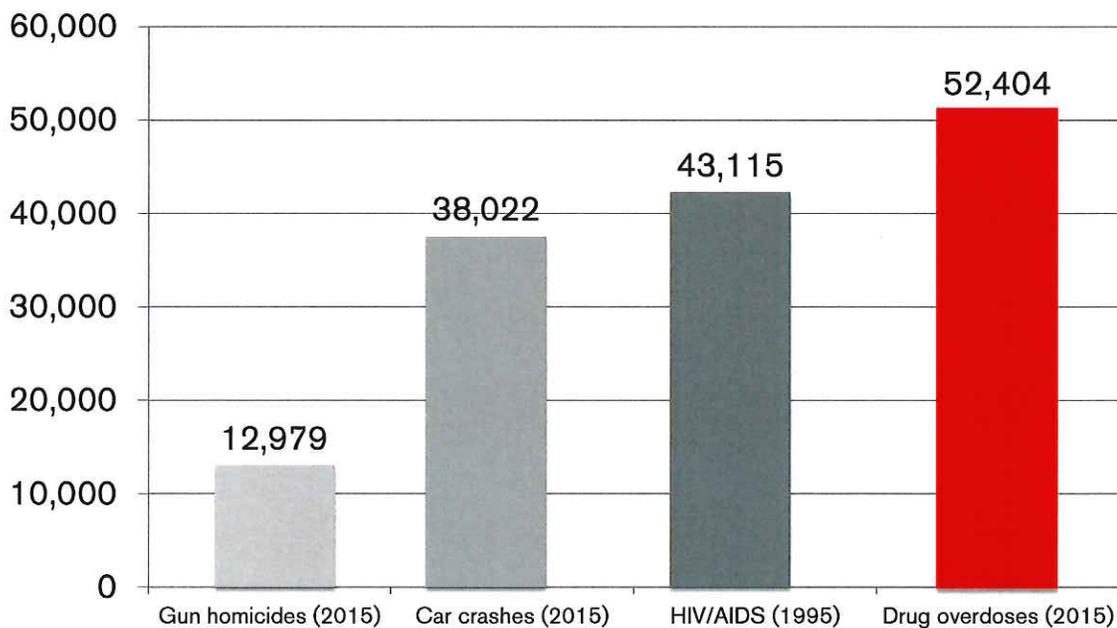
HEALTH CARE PROVIDERS WROTE 259 MILLION PRESCRIPTIONS FOR PAINKILLERS IN 2012.



OXYCONTIN SALES: 2008-2015



TOTAL DEATHS IN AMERICA BY CAUSE AND YEAR



Sources: Centers for Disease Control and Prevention, and QuintilesIMS National Sales Perspective

CONFIDENTIAL / WORK-PRODUCT PRIVILEGE

MEMORANDUM

TO: Mayor Glickstein

FROM: Mark Dearman and Aelish Baig, Robbins Geller Rudman & Dowd LLP

DATE: April 27, 2017

SUBJECT: *Proposed Opioids Litigation by the City of Delray Beach, Florida*

We have investigated potential claims on behalf of the City of Delray Beach, Florida (“Delray Beach”) against certain pharmaceutical manufacturers who have violated Florida State law by deceptively marketing prescription painkillers as being non-addictive, and against certain pharmaceutical wholesalers for failing to report suspicious sales as required by federal law. We would be pleased to meet with you regarding proposed litigation, which we believe presents an excellent opportunity for Delray Beach to hold the manufacturers and wholesalers accountable and to recover losses resulting from the manufacturers’ and wholesalers’ unlawful acts which fueled the opioid epidemic Delray Beach now faces.

A. The Scheme

A potential complaint brought by Delray Beach would allege that numerous pharmaceutical manufacturers, through a sophisticated, highly deceptive and unfair marketing campaign that began in the late 1990s and continues, intentionally reversed the popular medical understanding that opioids are only appropriate and effective for short-term post-surgical, trauma-related pain and end-of-life care, to promote the liberal prescribing of opioids for common ailments including chronic long-term pain. Prescription painkillers are now more widely used than tobacco, and more than one in three American adults – 35% – were given painkiller prescriptions by medical providers in 2015. More than 85 % of these prescriptions are for chronic long-term pain. As a result, opioid sales have increased exponentially since the early 2000s – generating approximately \$8 billion in revenue for drug companies in 2010 alone – as have addiction rates and deaths resulting from their use.

Opioid manufacturers have long known that extended opioid use creates a substantial likelihood of abuse and diversion. They have also known that long-term opioid use renders the drugs less effective, requiring increased dosages and frequency – concomitantly increasing the risk of addiction and death. For example, in 2007, executives at Purdue Pharma L.P., the maker of OxyContin, pled guilty to misleading the public about the drug’s addictive nature and agreed to pay \$600 million in fines. By way of further example, as recently as last year, employees at Insys

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April 27, 2017
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Therapeutics, Inc., a manufacturer of the powerful painkiller Fentanyl, pled guilty to charges involving kickback schemes for Fentanyl sales.

In addition, we have investigated claims against pharmaceutical wholesalers for failing to report suspicious sales as required by federal law – a critical failure that enabled and magnified the opioid crisis afflicting the state.

The results of the misconduct across the country, and for Florida in particular, have been devastating. The Florida overdose epidemic is estimated to have claimed more than 3,200 lives in 2015 and more than 900 lives in South Florida alone in 2016. Officials estimate first responders in Palm Beach County answered nearly 5,000 overdose calls in 2016. The statewide drug overdose death rate increased by 22.7% from 2014 to 2015, one of the highest statewide increases in the country. These costs are not borne only by individual consumers, but in fact, opioid over-prescription and abuse has caused municipalities and states billions of dollars per year to manage, treat and contain. By filing this action, Delray Beach would help lead the charge to hold accountable the corporations whose wealth derives substantially from a crisis they helped create.

A. Proposed Claims

We have analyzed potential causes of action on behalf of Delray Beach against opioid manufacturers and wholesalers, and believe the following to be the most viable:

Florida Consumer Protection Law. Manufacturers' violations arise from their deceitful and misleading representations and their omissions of facts rendering their marketing misleading. The wholesalers' violations arise primarily from omissions – specifically, their failure to report suspicious orders of opioids, as required by the federal Controlled Substances Act.

Public Nuisance. Manufacturers created a public nuisance by interfering with the public health, safety, peace and comfort by disseminating false and misleading information concerning opioids' safety and efficacy and downplaying or omitting the risk of addiction. Wholesalers created a public nuisance by failing to report suspicious orders of opioids. Florida suffered damages distinct from those suffered by its citizens generally by incurring costs associated with the opioid crisis including payments for fraudulent prescriptions as well as increased substance abuse treatment and diversion plan expenditures including the allocation of state resources for public safety and health.

Negligence. Manufacturers breached the duty they owed to Florida and its citizens to promote opioids truthfully and to disclose the true risks of addiction associated with opioid use. Wholesalers breached the duty they owed to Florida by unreasonably failing to comply with the Controlled Substances Act.

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Unjust Enrichment. Florida conferred on manufacturers and wholesalers benefits, including payments for opioids manufactured and sold by each, which they accepted. The retention of those benefits by manufacturers and wholesalers is inequitable due to the violations summarized in the claims above.

B. Potential Damages

These claims give rise to actual and punitive damages, civil penalties and disgorgement, as well as injunctive relief. Potential damages are substantial. The following settlements reached in related actions brought by federal, state and local officials provide some guidance as to the range of recoveries that have been obtained:

- In 2007, Purdue pled guilty and paid \$600 million to resolve charges brought by the U.S. Attorney for the Western District of Virginia arising from falsely marketing OxyContin. In addition, three Purdue executives paid fines totaling \$34.5 million to resolve allegations arising out of the same case.
- In 2008, McKesson Corporation agreed to pay \$13.25 million to resolve charges brought by the U.S. Attorneys for the Middle District of Washington, District of Colorado, Southern District of Texas, District of Utah and Eastern District of California that it violated the federal Controlled Substances Act by failing to report suspicious orders of controlled substances to the U.S. Drug Enforcement Agency (“DEA”).
- In 2008, Cephalon, Inc. agreed to pay \$425 million in civil and criminal penalties to resolve False Claims Act charges filed by relators and investigated by the U.S. Attorney for the Eastern District of Pennsylvania, and numerous federal agencies, in connection with the off-label marketing of Actiq and two other drugs.
- In 2016, Cardinal Health, Inc. agreed to pay \$44 million to resolve allegations brought by the U.S. Attorney for the District of Maryland and others that it violated the federal Controlled Substances Act in Maryland, Florida and New York by failing to report suspicious orders of controlled substances to the DEA.
- In 2016, AmerisourceBergen Corporation agreed to pay \$16 million to resolve allegations brought by the State of West Virginia that it violated the state Controlled Substances Act, consumer credit and protection laws and antitrust laws, and created a public nuisance.

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- In 2017, McKesson agreed to pay \$150 million in fines to the U.S. for violating the memorandum of understanding it entered with the U.S. Department of Justice in 2008 by failing to identify or report suspicious orders.
- In 2017, Insys agreed to pay \$2.9 million and make a related charitable donation of \$500,000 to resolve allegations brought by the State of New Hampshire that it violated the state Consumer Protection Act.

C. Status of Related Cases

Related cases brought by states, counties or cities include the following:

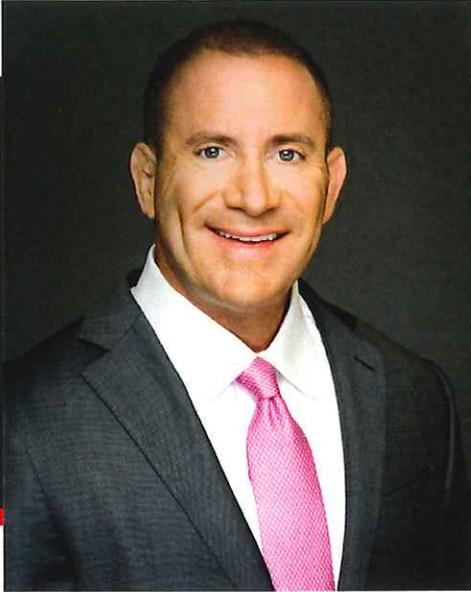
- Kentucky sued Purdue in state court in 2007 for misleading the public about the addictiveness of OxyContin. That case settled in December 2015 for \$24 million.
- Chicago sued several manufacturing defendants in federal court in 2014 for deceptive marketing in violation of a city ordinance and related claims. Chicago seeks civil penalties, restitution and disgorgement of ill-gotten gains. Chicago filed its second amended complaint in August 2015 which was largely upheld on September 29, 2016. The court found that plaintiff adequately pled its deceptive practices claims against all defendants. Chicago filed a third amended complaint in November 2016. Briefing on the further amended complaint was completed in February 2017.
- Santa Clara County and Orange County (California) sued Purdue and other pharmaceutical companies in 2014 in state court for violations of the California Unfair Competition Law and public nuisance. In October 2016, plaintiffs filed an amended complaint.
- New Hampshire announced an investigation in September 2015 of pharmaceutical companies' marketing of prescription opioids. Separately, New Hampshire filed an enforcement action in January 2017 against Insys for violating the New Hampshire Consumer Protection Act while promoting the opioid Subsys. Insys agreed to an Assurance of Discontinuance, paid \$2.9 million for its violations of the Consumer Protection Act, and donated \$500,000 to be used in remediating problems arising from the opioid crisis.
- Mississippi sued manufacturers in December 2015 in state court for violations of the Mississippi Medicaid Fraud Control Act and Consumer Protection Act, as well as

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fraud, negligent misrepresentation, unjust enrichment and public nuisance. Defendants moved to dismiss, transfer or stay the complaint in March 2016. On February 13, 2017, the court denied defendants' motion to transfer and to dismiss in its entirety.

- West Virginia sued wholesalers in state court in 2016, alleging violations of state consumer protection laws and the state Controlled Substances Act. Several wholesalers have settled, including McKesson for \$13 million, Cardinal Health for \$20 million and AmerisourceBergen for \$16 million.
- Illinois sued Insys in August 2016 in state court for violations of the Illinois Consumer Fraud Act for engaging in a series of unfair and deceptive acts in the marketing of Subsys.
- Broome County (New York) sued opioid manufacturers in state court in February 2017 for deceptive practices and acts, false advertising, public nuisance, violations of the state social services law, common law fraud and unjust enrichment. Each claim stems from false marketing of opioids.
- Cabell County (West Virginia) sued wholesalers in federal court in March 2017 for negligence arising from their failure to investigate or report suspicious orders of opioids.
- The Cherokee Nation sued McKesson and other distributors in the District Court of the Cherokee Nation on April 20, 2017 for, among other things, violation of the Cherokee Nation Unfair and Deceptive Practices Act and Civil Conspiracy.
- St. Clair County, Illinois, on behalf of itself and the State of Illinois, also filed suit in April 2017 for consumer fraud and related claims against Purdue and Abbott Labs.

The litigation of these claims is still in its very early stages. We look forward to meeting with you to discuss the possibility of collaborating on this very important issue.



Paul J. Geller

Founding Partner

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Practice Areas

Consumer Fraud and Multi-District Litigation
Securities Fraud
Shareholder Derivative and Corporate
Governance Litigation

Education

Emory University School of Law, J.D., 1993,
with Highest Distinction

- Editor, *Emory Law Journal*
- Order of the Coif Legal Honor Society
- Awarded multiple American Jurisprudence Book Awards for earning the highest grade in the school in a dozen courses

University of Florida, B.S., 1990, Psychology

- Member, University Honors Program

Admissions

Florida

United States Supreme Court

United States Courts of Appeals:
Fifth and Eleventh Circuits

United States District Courts: Northern,
Middle and Southern Districts of Florida;
District of Colorado; Eastern District of
Michigan

Paul Geller, Managing Partner of the Boca Raton, Florida office, is a Founding Partner of the Firm, a member of its Executive and Management Committees and head of the Firm's Consumer Practice Group. Geller's 23 years of litigation experience is broad, and he has handled cases in each of the Firm's practice areas. Notably, before devoting his practice to the representation of consumers and investors, he defended companies in high-stakes class action litigation, providing him an invaluable perspective. Geller has tried bench and jury trials on both the plaintiffs' and defendants' sides, and has argued before numerous state, federal and appellate courts throughout the country.

Geller was selected to serve in a leadership position on behalf of consumers in the massive Volkswagen "Clean Diesel" Emissions case. This notable appointment came after a record-setting application process in which over 150 attorneys sought the court's designation as a member of the Plaintiffs' Steering Committee. The San Francisco legal newspaper *The Recorder* labeled the group that was ultimately appointed, including Geller, a "class action dream team." Along with the committee and government agencies, Geller reached a \$14.7 billion settlement (which includes \$2.7 billion for environmental remediation), plus a \$1.6 billion settlement with dealers, for a total of over \$17 billion for affected consumers.

Other noteworthy recent successes include a \$265 million recovery against Massey Energy in *In re Massey Energy Co. Sec. Litig.*, in which Massey was found accountable for a tragic explosion at the Upper Big Branch mine in Raleigh County, West Virginia. Geller also secured a \$146.25 million recovery against Duke Energy in *Nieman v. Duke Energy Corp.*, the largest recovery in North Carolina for a case involving securities fraud, and one of the five largest recoveries in the Fourth Circuit.

Additionally, Geller was the lead counsel in *Kehoe v. Fidelity Fed. Bank & Trust*, one of the country's first cases alleging a class-wide privacy violation, settling the case for a \$50 million recovery in addition to enhanced privacy protections. More recently, he was one of the lead counsel in the Sony Gaming Networks Data Breach litigation, which resulted in significant monetary recovery and other benefits to class members. Geller was also instrumental in resolving a case against Dannon for falsely advertising the health benefits of yogurt products.

Geller has been rated AV by Martindale-Hubbell (the highest rating available), twice named one of the nation's top "40 Under 40" by *The National Law Journal*, and has been named one of "Florida's Top Lawyers" by *Law & Politics* and *South Florida Business Journal*. He has also been named one of the nation's "Top 500 Lawyers" by *Lawdragon*, one of Florida's "Legal Elite" by *Florida Trend* magazine and one of "Florida's Most Effective Lawyers" by American Law Media's *Daily Business Review*.



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Practice Areas

Consumer Fraud
Mass Torts (Products Liability & Personal Injury)
Antitrust
Whistleblower
Securities Fraud
Corporate Takeover Litigation

Education

Nova Southeastern University, J.D., 1993
University of Florida, B.A., 1990

Admissions

Florida
United States Courts of Appeals for the Eighth, Ninth and Eleventh Circuits
United States District Courts for the Northern, Middle and Southern Districts of Florida
United States District Court for the Southern District of Texas

Mark Dearman is a partner in the Firm's Boca Raton office, where his practice focuses on consumer fraud, securities fraud, mass torts, antitrust, whistleblower and corporate takeover litigation.

Dearman's recent representative cases include *In re NHL Players' Concussion Injury Litig.*, MDL No. 14-2551 (SRN), 2015 U.S. Dist. LEXIS 38755 (D. Minn. Mar. 25, 2015); *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 903 F. Supp. 2d 942 (S.D. Cal. 2012); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2016 U.S. Dist. LEXIS 1357 (N.D. Cal. Jan. 5, 2016); *In re Ford Fusion & C-Max Fuel Econ. Litig.*, No. 13-MD-2450 (KMK), 2015 U.S. Dist. LEXIS 155383 (S.D.N.Y. Nov. 12, 2015); *Looper v. FCA US LLC*, No. 5:14-cv-00700-VAP-DTB (C.D. Cal.); *In re Aluminum Warehousing Antitrust Litig.*, 95 F. Supp. 3d 419 (S.D.N.Y. 2015); *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687 (JLL) (JAD) (D.N.J.); *In re Winn-Dixie Stores, Inc. S'holder Litig.*, No. 16-2011-CA-010616 (Fla. 4th Jud. Cir. Ct., Duval Cty.); *Gemelas v. Dannon Co. Inc.*, No. 1:08-cv-00236 (N.D. Ohio); and *In re AuthenTec, Inc. S'holder Litig.*, No. 05-2012-CA-57589 (Fla. 18th Jud. Cir. Ct., Brevard Cty.).

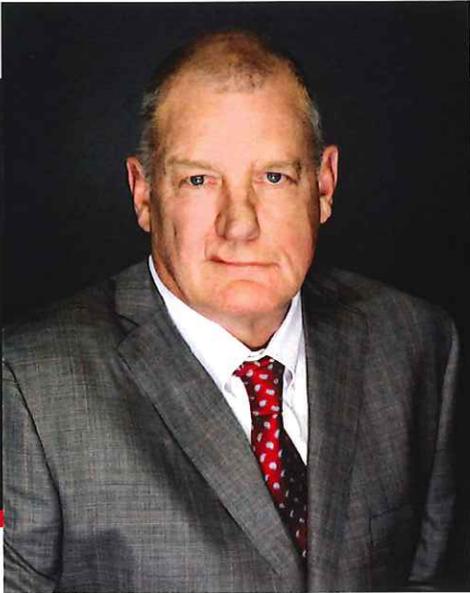
Dearman is AV rated by Martindale-Hubbell and has been recognized as a Florida Super Lawyer in *Super Lawyers Magazine*. He has also been recognized by his peers as being in the top 1.5% of Florida Civil Trial Lawyers as published in *Florida Trend's* Florida Legal Elite.

Prior to joining the Firm, Dearman spent several years defending Fortune 500 companies in all aspects of litigation, with an emphasis in complex commercial litigation, consumer claims and mass torts (products liability and personal injury). He went on to found the firm of Dearman & Gerson, where he continued to defend many publicly traded corporations for over 12 years. Within the last 17 years of practice, Dearman has obtained extensive jury trial experience on the plaintiffs' side, protecting the rights of investors throughout the United States.

Dearman earned his Bachelor of Arts degree from the University of Florida and his Juris Doctor degree from Nova Southeastern University. Upon graduation from law school, he worked in the Miami office of Ruden, McClosky, Smith, Schuster & Russell.

Honors & Awards

- AV rating by Martindale-Hubbell
- Super Lawyer, 2014-2017
- Recognized by his peers as being in the top 1.5% of Florida Civil Trial Lawyers as published in *Florida Trend's* Florida Legal Elite, 2006, 2004



Patrick J. Coughlin

Of Counsel

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Practice Areas

Securities Fraud
Antitrust

Education

Golden Gate University School of Law, J.D., 1983
Santa Clara University, B.S., 1977

Admissions

California
New York
District of Columbia
United States Supreme Court
United States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Eleventh and District of Columbia Circuits
United States District Courts for the Northern, Eastern, Central and Southern Districts of California
United States District Courts for the Southern and Eastern Districts of New York
United States District Court for the District of Columbia
United States District Court for the Northern District of Illinois

Patrick Coughlin is Of Counsel to the Firm and is based in the San Diego office. He has been lead counsel for several major securities matters, including one of the earliest and largest class action securities cases to go to trial, *In re Apple Computer Sec. Litig.*, No. C-84-20148 (N.D. Cal.).

Additional prominent securities class actions prosecuted by Coughlin include the *Enron* litigation, in which \$7.2 billion was recovered; the *Qwest* litigation, in which a \$445 million recovery was obtained; and the *HealthSouth* litigation, in which a \$671 million recovery was obtained.

In addition to the numerous securities cases, Coughlin has handled a number of large antitrust cases, including the *Visa/Master Card Interchange Fee* case, the *Currency Conversion* cases in which \$360 million was recovered for consumers, and the *Private Equity* litigation (*Dahl v. Bain Capital Partners, LLC*) in which \$590.5 million was recovered for investors.

Formerly, Coughlin was an Assistant United States Attorney in the District of Columbia and the Southern District of California, handling complex white-collar fraud matters. During this time, he helped try one of the largest criminal RICO cases ever prosecuted by the United States, *United States v. Brown*, No. 86-3056-SWR (D.D.C.), as well as an infamous oil fraud scheme resulting in a complex murder-for-hire trial, *United States v. Boeckman*, No. 87-cr-00676 (S.D. Cal.).

Coughlin's additional trials involving securities violations include cases against Wells Fargo and California Amplifier. Both cases settled in trial. Cases that settled on the eve of trial include cases against Alcatel and America West. Antitrust trials include a large case against the tobacco industry and a recent case against Apple. Coughlin has tried more than 50 cases. Coughlin helped end the Joe Camel ad campaign, a cartoon ad campaign that targeted children and secured a \$12.5 billion recovery for the cities and counties of California in the landmark 1998 state settlement with the tobacco companies.

Patrick J. Coughlin

Of Counsel

Honors & Awards

- Senior Statesman, *Chambers USA*, 2014-2017
- Top Lawyer in San Diego, *San Diego Magazine*, 2013-2017
- Best Lawyer in America, *Best Lawyers®*, 2006-2017
- Super Lawyer, 2004-2017
- Antitrust Trailblazer, *The National Law Journal*, 2015
- Top 100 Lawyers, *Daily Journal*, 2008
- Leading Lawyer in America, *Lawdragon*, 2009, 2008, 2006



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Practice Areas

Securities Fraud
Shareholder Derivative and Corporate
Governance Litigation
Corporate Governance

Education

Washington College of Law at American
University, J.D., 1998, *cum laude*

▪ Senior editor of the *Administrative Law Review*

Brown University, B.A., 1992, International
Relations

Admissions

California
United States Supreme Court
United States Court of Appeals for the
Ninth Circuit
United States District Courts for the Northern
and Central Districts of California

Aelish Marie Baig is a partner in the Firm's San Francisco office. She specializes in federal securities and consumer class actions. Baig has litigated a number of cases through jury trial, resulting in multi-million dollar awards and settlements for her clients, and has prosecuted securities fraud, consumer and derivative actions obtaining millions of dollars in recoveries against corporations such as Wells Fargo, Verizon, Celera, Pall and Prudential.

Baig prosecuted an action against Wells Fargo's directors and officers accusing the giant of engaging in robo-signing foreclosure papers so as to mass-process home foreclosures, a practice that contributed significantly to the 2008-2009 financial crisis. The resulting settlement was worth more than \$67 million in cash, corporate preventative measures and new lending initiatives for residents of cities devastated by Wells Fargo's alleged unlawful foreclosure practices. Baig was part of the litigation and trial team in *White v. Cellco Partnership d/b/a Verizon Wireless*, which resulted in a \$25 million settlement and Verizon's agreement to an injunction restricting its ability to impose early termination fees in future subscriber agreements. She was also part of the team that prosecuted dozens of stock option backdating actions, securing tens of millions of dollars in cash recoveries as well as the implementation of comprehensive corporate governance enhancements for numerous companies victimized by their directors' and officers' fraudulent stock option backdating practices. Additionally, Baig prosecuted an action against Prudential Insurance for its alleged failure to pay life insurance benefits to beneficiaries of policyholders it knew or had reason to know had died, resulting in a settlement in excess of \$30 million.

Baig joined the Firm in 2004 after having previously practiced with Lawless & Lawless in the area of employment discrimination, where she litigated and tried numerous cases to successful outcomes. She is a member of the California Bar and admitted to practice before the United States Supreme Court, the Ninth Circuit Court of Appeals, and the United States District Courts for the Northern and Central Districts of California. She earned her Bachelor of Arts degree from Brown University and her Juris Doctor degree from American University, where she was senior editor of the *Administrative Law Review*.

Individual & Firm Honors & Awards

- Super Lawyer, 2012-2013