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Recent Cases

Clients seek our advice and advocacy in complicated commercial disputes.

Our goal is to find successful solutions for our local and global clients.

Here are some of the results we achieved [click on each heading for more information]:

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Shareholder settlement in global financial services marketing enterprise - Our clients, majority shareholders in an international financial services marketing enterprise involving the five corporate entities, were in frequent disagreement with their minority shareholder and business partner. The minority shareholder wished to purchase our client's shares this enterprise, which has operations in Europe, Asia, Australia and North America,. Our clients and their minority partner negotiated an understanding for the sale of their shares by payment over several years out of future revenues of the business. However, the memorandum of understanding did not have enough details or security protection to implement this multi-million dollar settlement. The majority shareholders turned to us for assistance. As a result of our negotiations and drafting, a full set of settlement agreements was successfully negotiated. The settlement agreements resulted in the transfer our clients' shares with security arrangements and dispute resolution provisions to protect our clients' substantial interest in the future performance of this global business. To save legal expenses, we included mechanisms to resolve small financial disputes without legal counsel. Our clients completed the transfer of their shares to their minority partner. They will receive payment out of future revenues, with iron-clad security, over the next several years.

International Software Distributorship Settlement - Our client, a Toronto-based software developer, whose product is used in platforms worldwide, had a distributorship agreement with a reseller outside Canada. Upon mutual termination of distributorship, the reseller agreed to post-termination licensing arrangements for its users of our client's software. At the end of the licensing arrangement, the reseller demanded new terms and the prospect of a complex international arbitration ensued. As a result of our strategy and extensive negotiations, a settlement was negotiated which provided a six-figure payment to our client for additional short-term licensing of its software, a return of its expired user keys and release from all further claims. As a result of our services, our client received the benefits it expected; the security of its software was protected; and an expensive dispute was avoided.

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Success on interim oppression claim nets \$400,000 - Our client, an equal shareholder of several closely-held corporations, claimed oppression under the Ontario Business Corporation Act. The Court preserved our client's reasonable financial expectations pending trial and we resisted the opposing party's motion for leave to appeal. As a result, our client benefits from a payment of more than \$400,000.

Success on interlocutory injunction prevents business losses - Our client's former business partner interpreted their termination agreement in a way which would irreparably harm our client's business. Although the former partner had not yet implemented his interpretation, our client was very concerned. We persuaded the Superior Court of Justice to grant an interlocutory injunction restraining the former partner from competing until the conclusion of the case.

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Oppression claim by minority shareholder successfully resisted - Our clients, the majority shareholders of an apartment hotel, successfully resisted the oppression claims of a minority shareholder. We defended claims for an injunction and then negotiated a favourable buyout of the

minority shareholder's interest in the business. In this case, we were engaged as litigation counsel by the clients' corporate lawyers.

Research Scientist receives compensation - Our client, a post-doctoral research scientist, was hired on under contract for a scientific research project by a laboratory of a major hospital. When scientists at other research facilities published data on a similar topic, the project leader lost interest in our client's research and terminated our client without compensation. As a result of our negotiations, our client received significant financial settlement, highly placed recognition of authorship on all projects in which he participated and a letter of recommendation.

Global Alliance Manager receives large compensation Our client, a mid-50's woman who worked for over five years as Global Alliance Manager with a TSX-listed company, was summarily dismissed. The Vice-President, Human Resources and the Vice-President, Marketing assured her that her termination was no reflection of her work but the result of a corporate decision to restructure the department. They thanked our client for her excellent service and promised her a glowing letter of reference. Three days after her departure, the company announced the hiring of a younger man, whose job description almost identical to our client's. Their promise of the reference letter was also forgotten. In the ensuing lawsuit, the employer denied all allegations of discrimination and it appeared that lengthy litigation would ensue. After several months of intensive procedures, the lawyers agree to hold a mediation. The employer's settlement offer was insultingly low and after a full day of mediation, no settlement was achieved. In the weeks following the mediation, we persevered in our negotiation strategy and eventually worked out the six-figure settlement our client richly deserved. She also received an excellent recommendation letter which recognized the value of her contributions to the company.

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Settlement with Investment Dealer makes clients' losses good

Our clients entrusted their substantial investment portfolio to an advisor employed by a Canadian investment dealer. The investment advisor failed to follow our clients' investment instructions and they suffered significant losses in a number of stocks. As a result of the advisor's failure to communicate with our clients, a substantial part of our clients' holdings were wrongly sold at a very disadvantageous price. The investment advisor promised to return the holdings to our clients' account but he did not so. Other stocks were also sold contrary to instructions resulting in large losses. Several months later, our clients learned that the investment advisor had been fired because of improper dealings with another customer's accounts but our clients had not been informed. Our clients' negotiations with senior officials of the investment dealer did not produce an acceptable resolution. Our clients' commercial lawyer referred them to us. In the complex litigation which ensued, the investment dealer refused to completely disclose all of its records and vigorously defended our clients' claims. Several lengthy court attendances were necessary to get to the bottom of all financial issues. We had to hire a forensic accounting expert to calculate our clients' losses. We also discovered that our clients' signatures were forged on numerous documents in the investment dealer's files. Weeks of oral discovery and motions ensued. Several mediations and negotiating sessions took place. It appeared almost certain that case would go to a lengthy trial, an event our clients hoped to avoid. Eventually, as a result of our determined strategic efforts,

a very substantial settlement was negotiated, which compensated all of our clients' losses and a trial was avoided.

International Judgment Enforcement - Our client, the subsidiary of an internationally-known auction house, loaned a substantial amount to fund a Toronto businessman's purchase of exotic art pieces. The businessman defaulted on the loan. Court proceedings took place in a federal court in the United States. Our client recovered a large judgment which had little value in the US because the businessman resided in Canada. Our client turned to us to enforce the judgment. Achieving our client's objective required development of an effective strategy to prevent the defendant from disposing of his substantial Canadian assets before we could turn the US judgment into an Ontario judgment. We quietly researched the defendant's business affairs and registered certificates of pending litigation against property he had transferred to business associates without valuable consideration. In the ensuing legal proceedings, the defendant claimed that he had no assets. The business associates claimed that they were the owners of the properties. However, we did not relent. As a result of our strategy and ensuing negotiations, a settlement was reached which paid nearly all of our client's substantial judgment.

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Wrongful dismissal settlement for senior hi-tech sales executive - Our client, a senior sales executive of a multi-national hi-tech corporation, was terminated after 9 years' employment, due to the company's decision to restructure its sales force. On our advice, our client rejected the company's offer to pay his salary for only four more months. As a result of our intervention, the company provided a favourable letter of reference and outplacement counselling. After a lawsuit was commenced for wrongful dismissal, we initiated mediation which produced a settlement. As a result, our client recovered as much as he had earned in his last 18 months of employment and the company also paid the mediation cost and most of his legal fees.

Commercial lease and real estate damages against "nightmare" tenant - Our client, a Toronto businessman, purchased a suburban office building from a bank after the owner defaulted on the mortgage. On the eve of the closing, a large tenant prevented the closing by claiming it had a right of first refusal to purchase the building. As a result of our efforts, which involved proceedings up to the Ontario Court of Appeal, our client eventually closed the transaction and now owns a property, which has increased greatly in value. But our client still needed our help: the "nightmare" tenant refused to move from its offices at the end of its lease. In the ensuing complicated litigation, our client eventually forced the tenant to move but left our client with a substantial claim for damages. The tenant claimed to be a shell corporation and said that no judgment could be enforced against it. As a result of our advocacy and negotiations, the former tenant eventually agreed to pay a six figure settlement.

No personal liability under guarantee for company's debt - As a result of our advocacy, the Ontario Court of Appeal unanimously overturned a judgment against our client. Our client, one of the shareholders in a British Columbia distribution company, was sued personally for the debts of his company, which had gone out of business. The claimant was the company's main product supplier, which claimed that under a written credit arrangement, our client had agreed to be personally responsible for the company's debts of nearly \$100,000. Before our firm was retained, the trial judge agreed with the supplier and awarded a judgment against our client. Our client then turned to our firm

to appeal the trial judge's decision. As a result of our success in the Court of Appeal, our client has a \$100,000 weight lifted from his shoulders and also recovered part of his legal expenses.

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Settlement in shareholder dispute involving auto dealerships and real estate - Our client, an equal shareholder of an enterprise which owned auto dealerships and commercial real estate, was oppressed by the actions of his business partner after 10 years of working together. Among other matters, the other partner embarked on a clandestine plan to move one of the dealerships to a larger property and purchased the property on his own. Our client believed that his partner sought to squeeze our client out of the business so he could run it with other members of his family. Before our involvement, our client sold his interest in the business to his partner. For various disputed reasons, the share sale did not close but after the anticipated closing date, our client's business partner operated the business as if he were the owner. Our client's partner even discontinued payments and financial disclosure to our client and to others who had trust interests in the business. As a result of our advocacy in the course of hotly-contested litigation, our client and the other trust beneficiaries eventually recovered interim payments of more than \$400,000 and were provided with full disclosure of the financial affairs of the businesses. We also managed litigation involving millions of dollars, dozens of court appearances, expert witnesses and many days of examinations for discovery and eventually, we brought the case to an all-party mediation. The mediation pitted various opposing interests, each of whom were determined not to give an inch. As experienced counsel, we worked through difficult situations but we did not lose sight of the objective of getting the most favourable resolution possible for our client. As a result, we negotiated a hard-won multi-million dollar mediated settlement for our client and a trial was avoided.

Success at trial in inter-provincial food distribution dispute - Our client, a Canadian prairie grain farmer with a large acreage, was sued by an Ontario customer for failing to supply a large order of lentils of a certain quality. Our client was unable to supply the anticipated quality of lentils because weather conditions deteriorated the crop. Our client sent what he had but the customer rejected it. At the same time, our client claimed against the Ontario customer for the balance under an earlier contract for other legumes. The Ontario customer claimed a loss of profit on the lentils and was holding the balance due on the other order as a set off. The Ontario customer was determined about the rightness of this position and vowed to see the case through to the bitter end. As a result of our advocacy at the trial recently held in Toronto, our client received a judgment for all of his account receivable; the Ontario customer's claim was completely dismissed; the Court discredited the evidence of the customer and the Court also awarded our client his legal costs. Dissatisfied with the trial outcome, the Ontario customer appealed to the Ontario Court of Appeal. As result of our advocacy and negotiations, a settlement was negotiated for our client before the hearing of the appeal. Our client benefited fully from the trial victory.

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American exotic auto buff recovers prized car - Our client, an American collector of rare automobiles, purchased an exotic car, which had once been owned by an international celebrity. The vendor delivered the vehicle to a mechanic who purported to make improvements which were not requested and then charge repair and storage fees. When our client

refused to pay these erroneous charges, the vehicle was seized. As a result of our negotiations, our client recovered the exotic vehicle and his collection is been greatly enhanced.

Personal liability judgment reversed on appeal - Our client, a partner in a western Canada auto alarm distribution company, was sued by its main supplier for non-payment. The supplier sued both the company and our client personally, relying on a personal liability clause in the standard form written agreement. The auto alarm company was going out of business and couldn't pay its debt. Concerned about the legal cost, our client went to the trial without a lawyer. The trial judge turned a deaf ear to his pleas that no personal obligation was intended. With the words, "You signed it. You have to pay for it." the judge found him personally liable for \$100,000, including legal costs. Facing financial ruin, the businessman turned to us to appeal the judgment. Our written analysis of the law and our oral advocacy persuaded the Ontario Court of Appeal to overturn the judgment against our client. He avoided payment of \$100,000 even recovered some of his legal fees.

International Shareholder Dispute results in settlement - Our client was the plaintiff in a claim for US \$100 million arising from an international shareholders' dispute. Our client claimed that the defendants, who were minority shareholders, had overvalued their interest in the corporation and misled securities regulators in another jurisdiction. The case was reported in an internet financial reporting service with a global reach. The case eventually settled.

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Cross-border shareholder arbitration produces win-win resolution - Our client, the major shareholder of a Canadian technology start up, negotiated the successful resolution and joint venture with its minority shareholder, an offshore financier. As a result, a lawsuit in the Superior Court of Justice of Ontario involving a multi-million dollar claim and an international commercial arbitration case were resolved. Following the settlement, our client and its minority shareholder are working co-operatively in international business interests.

International Commercial Arbitration dispute - Our client, a Canadian software manufacturer, was involved in a shareholders' dispute with its minority shareholders located abroad. We were respondents' counsel in an international commercial arbitration proceedings before LCIA International in London, England, which ended for lack of jurisdiction. We then successfully argued jurisdictional issues in the Superior Court of Justice. We were also counsel in a international commercial arbitration before the International Court of Arbitration of the ICC. The case has settled and the parties have continued their business relationship.

American HMO recovers some fruits of massive health services fraud - Our client, an American Health Management Organization, was defrauded for several millions of dollars. Some of these funds were traced to an upscale property in Toronto. Through our advocacy, we recovered the property. The property was sold and the traced funds were returned to our client.

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U.S. Court action dismissed for lack of jurisdiction - Our client, a Canadian business consultant, was sued in a United States court for \$37 million by a major Canadian non-profit organization arising from a failed

venture. We retained and instructed American counsel to dispute the US court's jurisdiction over our client. We managed documentary production involving thousands of documents and client relations. We also represented our client on two US depositions held in Canada. The US court was persuaded to refuse jurisdiction against our client and the refusal was upheld by the State Court of Appeals, terminating the proceedings against our client.

Daughter recovers share of father's estate wrongfully taken by younger brother - Our client challenged the will of her late father, which left virtually all of the assets to another sibling. The challenge, based on the father's lack of testamentary capacity, undue influence, suspicious circumstances and mismanagement of finances, was strenuously resisted and intensely litigated. As a result of a settlement achieved on the eve of the hearing, our client and another sibling recovered a substantial share of a \$1.5 million estate.

Daughter recovers mother's estate and will interpretation dispute successfully resolved - Our client, the residuary beneficiary of her mother's substantial estate, retained us to remove offensive conditions applicable to her receipt of the residue. Through the use of annuity insurance, effective advocacy, we successfully negotiated the payment of the residue to our client. We also negotiated the settlement of a \$1.8 million dispute over a bequest to a charity.

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Buyout of partner in entertainment enterprise successfully negotiated - Our client, a principal in an entertainment enterprise operating in Canada and the United States, negotiated a successful buyout of his shares and an interest in entertainment venture following the issue of an initial public offering. We achieved this result by working cooperatively with corporate and securities counsel whom we brought into the case.

12-Year shareholder dispute ends in trial success - Our clients were three of seven partners who built and developed two suburban apartment buildings. Mistrust developed among the two camps of partners. Before our engagement, bitter litigation ensued in which the other camp had transferred the property to themselves without properly notifying our clients and then sold the property to a third party with whom they were in partnership. During the litigation, the opposing parties refused to give an inch because of their allegations of impropriety against our clients. As a result of our advocacy, the court rejected all impropriety allegations. Our clients recovered more than \$1.1 million from the defendants.

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Success at trial and appeal for partner of accounting practice - Our client, a public accountant, sold his practice to a much larger accounting firm. The firm failed to make many of the payments called for under the agreement between them and treated our client badly. Eventually they made matters so unbearable that our client had to leave and re-opened his own practice. We succeeded in persuading the trial judge to award substantial damages and a large portion of our client's legal costs but we considered the outcome insufficient. On further proceedings, the Ontario Court of Appeal awarded our client additional damages for breach of fiduciary duty.

General partner of realty LLP has fraud claim dismissed - Our client, general partner of a real estate partnership, which built a luxury condominium project, was sued by some of its partners for mismanagement and fraudulent dealings. In co-operation with counsel for the developer of the project, we persuaded that court that the allegations were unfounded. The Court dismissed the claim and awarded substantial costs in favour of our client.