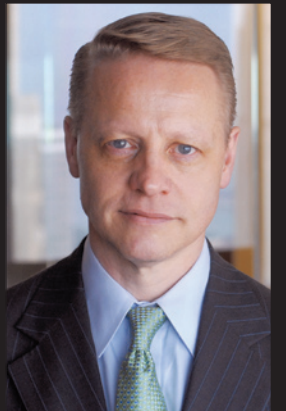


THE NATIONAL  
LAW JOURNAL

# WINNING

SUCCESSFUL LITIGATORS, POWERFUL STRATEGIES





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We asked our readers to nominate trial attorneys with at least one significant win at jury or bench trial within the past 18 months and have a track record of success over many years. We supplemented these submissions with our own research. The criteria for a “significant win” included substantial damages at stake, establishment of an important precedent being altered or unfriendly jurisdictions overcome.

—MICHAEL MOLINE

## How can a phenomenal show make no money?

Case shone a spotlight on dodgy accounting used to hide profits in the entertainment industry.

BY KAREN SLOAN

**W**ho Wants to Be a Millionaire was an immediate cultural phenomenon when it premiered in 1999. On paper, however, the Regis Philbin-hosted quiz show was a turkey. It lost millions a year, according to accounting statements produced by Walt Disney & Co. subsidiaries American Broadcasting Companies Inc., which aired the show, and Buena Vista Television, which produced it.

It fell to Roman Silberfeld and his team from Robins, Kaplan, Miller & Ciresi to prove to a federal jury in Riverside, Calif., that the *Millionaire*-as-financial drain story didn't jibe. Silberfeld, managing partner of Robins Kaplan's Los Angeles office, made the case that Disney and its subsidiaries hid the *Millionaire* profits to avoid paying his client, U.K. production company Celador International Ltd., which created the show.

There was plenty at stake. Celador sought more than \$250 million in damages, and the case would be a bellwether for the profit-sharing agreements commonplace in Hollywood. On top of that, “It's the first entertainment case I've ever tried, but at the end of the day, it's a business contract,” Silberfeld said. “It just happens to have glitzy names attached with it, like Disney and *Who Wants to Be a Millionaire*.”

Robins Kaplan didn't even have an entertainment practice until January 2009, when it brought in nine attorneys from Dreier Stein Kahan Browne Woods George—an affiliate of the ill-fated Dreier LLP.

Buried deep in the caseload the new attorneys brought with them was the suit filed by Celador in 2004 against Disney. With a trial date looming—the case was initially scheduled to go to trial in May 2009 but was continued until June 2010—the firm decided that

Silberfeld should take the lead in court.

Silberfeld's primary strategy was to focus on the terms of the contract and attempt to make the complicated fact pattern as clear as possible to the nine-member jury.

The main issue was the contract that Celador signed in 1999 with ABC and Buena Vista; it stipulated, Silberfeld argued, that Celador would be paid \$25,000 per episode plus 50% of the profits derived by both Disney subsidiaries. Although they paid Celador \$21 million in executive producer fees, it never saw any money from profit-sharing; Buena Vista's and ABC's books showed that *Millionaire* was racking up losses.

“The Disney entities engaged in a series of agreements to shelter the profits from the television show such that ABC or Buena Vista Television would never show a profit, and therefore there would be nothing to pay Celador a share of,” Silberfeld said.

# ROMAN SILBERFELD

| ROBINS, KAPLAN, MILLER & CIRESI



**DISNEY-SLAYER:** "It was never a part of the strategy to try to demonize Disney. It's not as if we were trying a case against an oil company."

The defense, led by Sheppard, Mullin, Richter & Hampton partner Marty Katz, argued that the contract entitled Celador only to a share of Buena Vista's profits, not ABC's. Because Buena Vista never made a profit, the defense argued, Celador got everything it was entitled to. Katz did not respond to calls for comment.

To simplify the case for the jury, Silberfeld and Robins Kaplan partner Bernice Conn zeroed in on what they saw as the 10 most important documents in the case. These included the disputed contract itself, notes taken during meetings that predated the signing of the contract, and e-mails that executives at Disney and its subsidiaries exchanged regarding the value of *Millionaire*.

"Every one of those documents was blown up on storyboards and television screens around the courtroom," Silberfeld said. "Each one was put into a binder that the jurors had in front of them every day of the trial and took with them into deliberations. We went to considerable lengths to explain only

the disputed portions of the contract."

Another key document was a 1999 e-mail written by then-Disney Chief Executive Officer Michael Eisner, who pegged the value of *Millionaire* at \$1 billion or more. (Eisner had been expected to testify, but left the country during the trial and never appeared.)

Most of the plaintiff's witnesses were executives from Disney and its subsidiaries, including current Disney CEO Bob Iger. Silberfeld and Conn took pains to treat the witnesses with respect. "Jurors are human beings, and they're not going to be able to check their biases completely at the door," Silberfeld said. "It was never a part of the strategy to try to demonize Disney. It's not as if we were trying a case against an oil company or tobacco company."

Because the defendants' books showed that *Millionaire* had lost about \$70 million by the time new episodes stopped filming in 2009, the plaintiffs called in industry experts to piece together Celador's share of the profits. They offered four different models for jurors

## TRIAL TIPS

Tell a simple story.

Make sure you don't lose credibility with the judge or the jury, and treat witnesses with respect.

Don't overwhelm the jury with documents. Use no more than 10 or 15 pages of paper.



to choose from, with bottom lines ranging from \$202 million to \$398 million. Silberfeld said during his closing argument that \$279 million was the most accurate estimate of Celador's share.

The jurors agreed, for the most part. After four weeks of testimony and two days' deliberation, they returned a unanimous verdict on July 7, 2010, awarding Celador \$269.4 million—the largest entertainment industry verdict on record at the time. The following September, the court awarded an additional \$50 million in prejudgment interest to Celador and in December denied a bid by Disney to overturn the verdict.

The defendants have filed an appeal with the U.S. Court of Appeals for the 9th Circuit.

"There wasn't one single 'aha' moment at trial, Silberfeld said. "It was a matter of small, yet important, building blocks—all of which came together in the end."

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