

ROBINS  KAPLAN LLP

QUARTERLY

Tackling Tough Business Litigation Matters

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ACHIEVING THE LARGEST JURY VERDICT IN MINNESOTA HISTORY

Q&A WITH MICHAEL COLLYARD



In November 2022, following a four-week trial, a Minnesota jury awarded approximately \$564 million in damages to Robins Kaplan client Douglas A. Kelley in his capacity as trustee for the BMO Litigation Trust. It is the largest jury award in Minnesota history.

The case arose out of one of the biggest Ponzi schemes in U.S. history involving convicted fraudster Tom Petters. He was sentenced to 50 years in prison for using accounts held at M&I Bank, which was acquired in 2011 by BMO Harris Bank. The jury found that BMO aided and abetted breaches of fiduciary duty by Petters and his cohorts in using an M&I checking account to launder nearly \$74 billion in Ponzi scheme proceeds between 2002 and 2008.

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Achieving the Largest Jury Verdict in Minnesota History

Understand what goes into explaining a complex Ponzi scheme to a jury.

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2023 Partners

Learn more about this talented group of attorneys who have provided world-class service to our clients.

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The latest and greatest at Robins Kaplan.

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REWRITING THE ODDS

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The jury awarded \$484 million in compensatory damages and \$80 million in punitive damages. The trustee is also pursuing prejudgment interest, which would bring the bank's total liability to nearly \$1 billion.

We sat down with Michael Collyard, lead trial counsel, to understand what goes into explaining a complex Ponzi scheme to a jury – and ultimately, securing such a massive result.

CAN YOU PROVIDE A HIGH-LEVEL SUMMARY OF THIS CASE?

This case was about how the bank helped a criminal use a small business checking account to carry out one of the biggest money laundering frauds in American history – then turned around and intentionally destroyed key evidence to try to cover up everything it had done.

WHAT WAS YOUR STRATEGY FOR PROVING YOUR CASE TO THE JURY?

We created a few easy, memorable themes that I used throughout the entire trial to show the jury that the bank knew the billions of dollars going in and out of the Petters Company Inc. small business checking account made no sense for the Petters Company Inc. business model. The bank knew from its line of sight into the account that the activity wasn't right – and therefore illegal. The bank also knew from 3½ years of investigating the money laundering alarms that sounded off inside the bank that the activity was suspicious. Yet the bank chose to close every one of those alarms even though nobody could explain why or how that activity wasn't suspicious.

We had to teach the jury that the bank had a responsibility to detect and prevent suspicious activity on its accounts. As part of that, the bank knew how the Petters Company Inc. business model worked. Petters would borrow money from investors to buy TVs from wholesalers, then resell them to big box retailers and use the money to pay back investors.

However, the bank knew the account activity didn't match the business model because it could see three things every single day:

\$564M

The jury awarded \$484 million in compensatory damages and \$80 million in punitive damages. The trustee is also pursuing prejudgment interest, which would bring the bank's total liability to nearly \$1 billion.

ONE: The bank knew retailers were supposed to wire money into the account to pay for the TVs, but no retailer had ever wired a cent into the account.

TWO: The bank knew nearly all money being wired into the account was from two wholesalers that should have never wired money into the account. Additionally, the bank knew the money was flowing the wrong way. The money should have been going to the wholesalers to pay for the TVs, rather than coming from them.

THREE: The bank could see that tens of millions of dollars were going out of the account and directly to Petters and his coconspirators. The bank knew there was no legitimate business purpose for that.

We called these the three fingerprints of the bank's knowledge and came back to them at every turn to prove the bank's insight and assistance.

WAS THERE ANYTHING ELSE THAT HELPED PROVE YOUR CASE?

We proved the bank intentionally destroyed millions of pages of critical evidence. The bank's key witness admitted to the destruction during cross-examination and even admitted that if the jury wanted to see what that evidence looked like, they would have to access the backup tapes that the bank intentionally destroyed.

HOW DID YOU BREAK DOWN AND EXPLAIN COMPLEX CONCEPTS TO THE JURY?

In my opening statement and closing argument, I used a nontraditional PowerPoint that was synched with everything I said so the jury could see and hear at the same time. I showed hand-drawn pictures, photos, video clips, animations, and everyday graphics like road signs and money symbols to teach the jury everything they needed to know.

The goal was to have a few graphics that the jury could look at and understand the story without thinking about it. We spent months coming up with different ways to get the jury's comprehension rate up as quickly as possible to limit any need to think as they listened. That way, they could just keep retaining information.



2023 PARTNERS

Marc Betinsky, Derrick Carman, Elizabeth Fors, Peter Foundas, Geoffrey Kozen, Emily Niles, Manleen Singh, and Emily Tremblay have been promoted to partner, effective January 1, 2023.



MARC BETINSKY (Minneapolis) represents individuals in Section 1983 civil-rights litigation against governmental actors. His cases typically allege violation of the Fourth or Eighth Amendment to the Constitution, including allegations of excessive force or deliberate indifference to an inmate's serious medical needs. He has extensive exposure to federal-court practice, having spent more than 15 years as a law clerk for federal trial judges, including 11 with Judge Richard H. Kyle in the District of Minnesota. There, he served as the Judge's chief advisor on a wide variety of civil and criminal litigation, including numerous cases alleging police misconduct and other civil-rights violations.



DERRICK CARMAN (New York) helps clients assert their intellectual property rights and defend against allegations of intellectual property infringement. He focuses on patent, trademark, and trade secret litigation, representing clients in Federal Courts, the United States Patent and Trademark Office, and the International Trade Commission. His primary goal is to help IP owners turn their IP into revenue generating assets.



ELIZABETH FORS (Minneapolis) focuses her practice on personal injury and medical malpractice. In August 2017, she and her co-counsel obtained the largest wrongful death case in Minnesota history and what is believed to be the third largest verdict in the United States for a wrongful death case for these types of damages. The verdict was listed among the Top 100 Verdicts of 2017 by *The National Law Journal*.

“We are proud to welcome our newest class of partners. This is an immensely talented group of attorneys who have provided world-class service to our clients.”

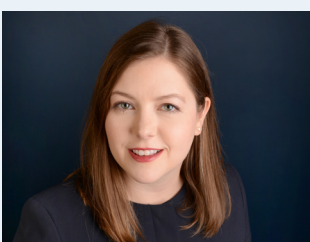
RONALD SCHUTZ, CHAIR OF THE EXECUTIVE BOARD



PETER FOUNDAS (Boston) is a commercial litigator and transactional attorney. He helps business owners and decision makers solve complex disputes and close deals. Utilizing his background in accounting, Peter has successfully litigated complex financial fraud matters, partnership break-ups, trade secret matters, breach of contract cases, fiduciary disputes, professional malpractice, and insurance subrogation claims. Drawing on his business experience, Peter also has counseled clients on corporate governance issues and advised on major M&A and commercial real estate transactions.



GEOFFREY KOZEN (Minneapolis) is an antitrust litigator dedicated to helping ensure his clients are able to pursue their business and personal interests in a competitive marketplace. Geoff has represented both business and class clients in a wide array of high-stakes disputes on both the plaintiff and defense side, often with hundreds-of-millions or even billions of dollars at stake.



EMILY NILES (Minneapolis) is a trial attorney who represents clients in high-stakes intellectual property and business disputes. She has litigated patent infringement, trade secret, business tort, personal injury, and breach of contract claims involving technology licenses, confidential and proprietary information, and non-competition and non-solicitations disputes. Emily is also a registered patent attorney with experience litigating before the Patent Trial and Appeal Board.



MANLEEN SINGH (Boston) advises businesses of all sizes on all facets of corporate transactional law, including mergers and acquisitions, commercial leasing, international transactions, contract drafting and negotiation, corporate formation, and general business counseling. Manleen represents clients in a variety of sectors, including retail, food and beverage, and manufacturing.



EMILY TREMBLAY (Minneapolis) is a patent litigator dedicated to protecting and monetizing her clients' intellectual property and technology, as well as helping them grow and protect their competitive positions in the markets where they operate. Emily represents clients in complex, multi-million-dollar patent litigation across technologies and the country. Her practice focuses on Hatch-Waxman and other pharmaceutical patent litigation and strategic counseling, and patent licensing and strategic enforcement in the computing and semiconductor space.



FRONT AND CENTER

Robins Kaplan LLP Launches New Professional Development Program

Robins Kaplan LLP recently announced the launch of its new professional development program, Robins Kaplan Academy, designed to develop the next generation of world-class trial attorneys.

Building upon the firm's history of providing exceptional training with its First Chair Training Program, Robins Kaplan Academy includes programming and recommendations from the firm's Professional Development, Business Development, Research and Business Intelligence, Diversity, Equity & Inclusion, Pricing and Legal Project Management, and Financial Analytics teams. The holistic program equips attorneys with essential tools to raise their market prominence, leverage networks to develop business, and expand their skills in multiple areas to best serve clients' needs.

"Our firm has a long-standing commitment to attorneys' professional development, and we look forward to building upon the success of our First Chair program with Robins Kaplan Academy," said Ronald Schutz, Chair of the firm's Executive Board.

"We are thrilled to launch this unique program and empower our attorneys to rise to the challenges our clients face both inside and outside of the courtroom."



- **CARRIE LAMBERT**, CHAIR OF THE FIRM'S PROFESSIONAL DEVELOPMENT COMMITTEE





WINNER

ROBINS KAPLAN

MINNESOTA FIRM OF THE YEAR

**BRUNINI GRANTHAM
GROWER & HEWES**

MISSISSIPPI FIRM OF THE YEAR



BENCHMARK LITIGATION **NAMES ROBINS KAPLAN** **2023 MINNESOTA LAW** **FIRM OF THE YEAR**

Robins Kaplan LLP has been named Minnesota Law Firm of the Year by *Benchmark Litigation* in its 2023 U.S. Awards. These awards recognize the country's most distinguished litigators and their firms for their exemplary work from the research period spanning April 2021 to April 2022.

Partner **CHRISTOPHER LARUS**, who was shortlisted for Intellectual Property Litigator of the Year, accepted the award on behalf of the firm.



Seasoned Attorney **Joins Firm's Business** **Litigation Group**

SARAH WALSH has joined the firm's Boston office as a partner in the Business Litigation Group.

Sarah Walsh has over 15 years of experience working on a variety of litigation matters, including significant trial experience in both state and federal court. She has represented companies, executives, and other professionals in a broad range of state and federal regulatory enforcement actions, criminal prosecutions, civil litigation and other investigations involving allegations of healthcare fraud, theft of trade secrets, discrimination, harassment, retaliation, violations of False Claims Act, financial services fraud, and securities violations.

Ranked One of Four Elite U.S. Plaintiff’s Firms for Antitrust in 2023 *GCR 100*

Robins Kaplan LLP has been selected as an Elite U.S. Plaintiffs’ firm for the second year in a row in *Global Competition Review’s* 2023 edition of the *GCR 100*, a comprehensive guide to the world’s top antitrust and competition practices.

One of just four practices nationwide to receive this recognition, the Robins Kaplan Antitrust and Trade Regulation Group is recognized for the significant wins it has achieved for clients over the last 12 months, as well as its continued leadership in major ongoing antitrust class actions. Select highlights from the past year include:

- Serving as court-appointed co-lead counsel for a class of more than 12 million U.S. merchants in *In re Payment Card Interchange Fee and Merchant Discount Litigation*, an ongoing antitrust action wherein the firm obtained a settlement of \$6.26 billion—the largest in the 120-year history of the Sherman Act—which is currently on appeal;
- Serving as court-appointed co-lead counsel for victims of alleged price-fixing in *In re Automotive Parts Antitrust Litigation*, an ongoing antitrust action that stems from the largest criminal antitrust investigation in U.S. history and wherein the firm has secured more than \$1.2 billion in settlements to date;
- As court-appointed co-lead counsel in *In re Disposable Contact Lens Antitrust Litigation*, reaching settlements in excess of \$118 million on behalf of U.S. contact lens purchasers to resolve the expansive antitrust action against the four dominant manufacturers and the largest nationwide distributor of contact lenses;
- As court-appointed interim lead counsel in *BCBSM, Inc. v. Vvera Pharmaceuticals, LLC, et al.*, reaching a settlement worth \$28 million to resolve Blue Cross Blue Shield of Minnesota’s private lawsuit against Martin Shkreli and his former companies for alleged monopolization of the market for Daraprim—a once-affordable, life-saving drug that increased in price by more than 4,000 percent under Shkreli’s leadership; and
- As a member of the plaintiffs’ steering committee in *In re Local TV Advertising Antitrust Litigation*, reaching settlements with defendants CBS, Fox, and Cox Media in the ongoing antitrust action against the largest owners of local television stations in the United States.



“It is an honor to be recognized once again by GCR for our firm’s commitment to restoring competition in our economy,”

STACEY SLAUGHTER
CO-CHAIR,
ANTITRUST
AND TRADE
REGULATION
GROUP

“We are grateful to be selected by our clients and courts to represent businesses and consumers that have been harmed by anticompetitive conduct, and we will continue bringing these important antitrust cases until our economy reflects the values embedded in the Sherman Act.”

KELLIE LERNER
CO-CHAIR,
ANTITRUST
AND TRADE
REGULATION
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QUARTERLY

85 YEARS OF REWRITING THE ODDS

While Robins Kaplan's results speak for themselves, the firm's history is an intricate, idiosyncratic one. It was never an organization that walked in the path well-trod by so many firms that came before it. It is a legacy built by lawyers who conducted themselves as both advocates and entrepreneurs, men and women who set out to do things in a way that had never been done before and altered legal history as they went.

The fight for access for everyone, for a place at the table for all, became part of the firm's DNA and is the foundation of who we are today.



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