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NEWS **RULINGS** **VERDICTS**

Friday, July 12, 2013

Litigation

Bayer agrees to settle Cipro antitrust case

A proposed settlement agreement filed Thursday in San Diego County Superior Court asks a judge to allow Bayer AG to pay \$74 million in cash to end an 11-year antitrust class action stemming from the sale of the drug Ciprofloxacin.

Law Practice

Norton Rose Fulbright experiences departures in wake of merger

Since Houston-based Fulbright & Jaworski LLP and London-based Norton Rose LLP officially joined forces June 3, the firm has shed more than 10 lawyers - including three partners - from its California offices.

Mergers & Acquisitions Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

California Supreme Court

State high court avoids ruling on controversial DNA case, for now

The state Supreme Court directed a court of appeal to reconsider its 2011 decision declaring unconstitutional a California law requiring police to collect a DNA sample from anyone arrested of a felony.

U.S. Court of Appeals for the 9th Circuit

Hollywood producers must pay restitution for bribery scheme, at least for now

Hollywood producers Gerald and Patricia Green are on the hook for \$250,000 in restitution for an overseas bribery scheme, at least for now, a 9th U.S. Circuit Court of Appeals panel held Thursday.

Corporate

Lift of advertising ban to spur investment

The SEC voted Wednesday to lift an 80-year-old advertising ban, a move praised by lawyers as instrumental in removing barriers to capital, promoting job growth and stimulating business.

Solo and Small Firms

Strike & Techel Beverage Law Group LLP

San Francisco-based Strike & Techel Beverage Law Group LLP helps makers, marketers, sellers and shippers in navigating the various rules and regulations set up in each of the 50 states in getting wines, beers and spirits onto shelves.

Alternative Dispute Resolution

Paul Roose

Four years ago, Roose led the mediation between the Bay Area Rapid Transit System, known as BART, and its two biggest unions. A year ago he left state mediation services to create his own firm, Golden Gate Dispute Resolution.

Entertainment & Sports

Judge allows suit over digital 'Hobbit,' 'Lord of the Rings' merchandise

A judge ruled that a dispute between the J.R.R.

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Paul Roose

Paul Roose, who helped mediate the last BART dispute, is a nonlawyer who doesn't mind if participants get a little angry.

By Emily Green

The four-day strike that shut down San Francisco Bay Area's commuter train service and stranded hundreds of thousands of riders has a lot to do with money. But the dynamics are much more complicated than that, said veteran mediator Paul Roose, who is one of the few people with an insider's view on the closed-door negotiations.



Four years ago, Roose led the mediation between the Bay Area Rapid Transit system, known as BART, and its two biggest unions. He headed up a four-person team to deal with the various parties. Negotiations lasted 21 straight days, including some all-nighters, before the parties struck a deal. That contract expired this year, and while BART employees have agreed temporarily to return to work, the sides remain at an impasse.

"The process is complex. The parties are complex. The issues are complex. There is nothing more complex than BART," said Roose, who is not involved with the negotiations this year.

A former postal worker turned union leader and then mediator, Roose served as the longtime head of the California State Mediation and Conciliation Service, where he mediated employee grievance lawsuits and helped resolve some of the biggest labor disputes in the state.

A nonlawyer, Roose was praised by attorneys who worked with him for his grasp of the law and keen understanding of the political pressures that lead to stalemates in labor contract negotiations. Independently, many used the same words to describe Roose: patient, creative and calm. As labor attorney Gregory J. Dannis put it: "He has got this maddening patience. He will just outpatient you."

In May 2012, Roose left state mediation services to create his own firm, Golden Gate Dispute Resolution, where he handles mediation, arbitration and fact-finding.

Despite his reputation for patience, Roose is anything but a passive participant in mediations. While he mostly listens to the parties during the first part of mediations, he said, 90 percent of the time his ideas help provide the framework for the settlements. "I think the parties want me to be coming up with ideas, to be challenging their ideas, to be poking holes in their positions."

Roose has some concrete techniques for breaking through logjams. The first, he says, is to try to get the parties to expand the amount of time the contract covers. If the dispute revolves around a two-year contract, for example, Roose may push the parties to agree to a four-year contract. That would allow employees insistent upon a raise to get it sometime in the future, but not immediately.

"In the context of a longer agreement you can often find a way where both sides' interests can be met," Roose said.

Mediations involving collective bargaining disputes and labor relations are unique in

that the parties often have longstanding relationships, usually extending back dozens of years. It's a marriage without the possibility of divorce, and disputes are often colored by personal animus.

Roose said he is unperturbed by shouting in negotiations - that can sometimes inadvertently reveal the parties true motivations, he said - but he insists the participants follow his process for mediating the dispute.

He begins by having all the parties in a room together where they present their positions. Then he breaks the sides up. And then he breaks them up some more. Unions are often reluctant to let their teams split up, Roose said, but that can be key to getting a deal. He said smaller groups in smaller rooms tend to be more frank and positive and engage in less grandstanding.

"The mediator's role is to try to figure out who can talk with whom, who to try and isolate from the process - someone who might be a lightning rod - and put the people talking together who have an approach to try and settle it."

"He is very creative," said Sandra Woliver, a lawyer at Dannis Woliver Kelley who represents school districts in contract negotiations, "not only around dollars, but around other substantive issues where you think, 'How the heck does he know as much as he knows about the working hours of the school teachers?' Some of those very technical issues that are part of a collective bargaining agreement."

"He really understands what it's like to be an employee," said Nancy Watson, executive director for the Western Council of Engineers, "and to be in the workplace in a bureaucratic structure. That definitely sets him apart." The council represents engineers and related professionals working for public agencies and cities in California.

Watson and others said the fact that Roose isn't a lawyer makes employees more likely to trust him, and it mitigates the naturally adversarial environment that arises in mediations.

Roose said once management-side lawyers realized he was a "straight-shooter," they appreciated his labor background because "they know that I can go into the union caucus and talk with folks in a way that I can get through to them." Over the years, he has helped avert strikes in contract disputes between employers and unions at the Port of Oakland and the University of California, among others.

Yet while Roose's job lies in settling differences, he also believes in the power and even necessity of strikes, which he said are a crucial part of the democratic process. He said he wasn't surprised BART employees went on strike, noting a recent wave of strikes and threats of strikes by unions across the state. And, he said, in recent years it's primarily been employers trying to change the terms of collective bargaining contracts due to the recession, with unions seeking to defend them.

"It's typical when the economy starts to pick up a little bit, that's when you see more union militancy," Roose said. As for BART, he said, "I think that there probably was a lot of pressure from certain elements within the union to strike because they hadn't struck for 16 years and they had to get that out of their system."

He said getting an agreement will require appeasing various parties, including the two unions that represent BART employees; BART's nine-person board of directors, each of whom represents different constituents in the Bay Area; and a new general manager of BART, who has a specific set of goals.

"We could use Paul Roose back at state mediation with everything that is going on right now," said attorney David Wolf, general counsel for AC Transit, the public transportation system for Alameda and Contra Costa counties. "He understands the politics of the issues on both sides of the table. He understands the constituent groups. He knows what it takes to get a deal."

Here are some attorneys who have used Roose's services: Jeffrey Sloan, Renne Sloan Holtzman & Sakai LLP, San Francisco; David Wolf, AC Transit, Oakland; Donna Williamson, Liebert Cassidy Whitmore, San Francisco; Roy Combs, Fagen Friedman & Fulfrost LLP, Oakland; M. Carol Stevens, Burke, Williams & Sorensen LLP, Mountain View; Sandra Woliver, Dannis, Woliver, Kelley, San Francisco; Anne Yen, Weinberg, Roger & Rosenfeld, Alameda; Carol Koenig, Wylie, McBride, Platten & Renner, San Jose; Brad Yamauchi, Minami Tamaki LLP, San Francisco; Felix DeLaTorre, SEIU Local 1000, Sacramento; Gregg Adam, Carroll, Burdick & McDonough LLP, San Francisco; Nancy Watson, Western Council of Engineers, Santa Rosa

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Tolkien estate and Warner Bros. Digital Distribution Inc. over the rights to digital merchandise featuring characters and places from "The Lord of the Rings" and "The Hobbit" will continue.

Criminal **State Senate backs Beard as prison secretary**

The state Senate on Thursday confirmed Jeffrey Beard as the Secretary of the Department of Corrections and Rehabilitation with a 23-6 vote.

Administrative/Regulatory **SF lawyer elected to State Bar Board of Trustees**

Experienced litigator Daniel P. Dean has been elected to a three-year term, the bar announced Thursday.

Litigation **Texting, tweeting, liking... and serving?**

Several years ago, serving a summons and complaint electronically was all but unknown. In many circumstances today, e-service may be the most effective way to reach defendants. By **Chris Chiou, David Russell and Stanley Chen**

Alternative Dispute Resolution **A different vocabulary for mediation**

In a recent mediation, the plaintiff's lawyer had a pained expression on his face as he reviewed a document, and as I walked in he said to his client, "Oy. This is not good." By **Robert S. Mann**

Public Interest **Young public defenders brave absurd caseloads**

HBO's "Gideon's Army" explores the crisis in the criminal justice system that is hampered by an overworked and underpaid staff of defenders. By **Alan H. Friedenthal**

Litigation **Impact of high court's arbitration ruling in California uncertain**

It remains to be seen how California employers will be impacted by the US high court's ruling in *Italian Colors*; the state high court's forthcoming ruling in *Iskanian* should provide some answers. By **Robyn E. Frick**

Perspective **A quiet, mild-mannered, fierce, determined activist**

"The Rebellious Life of Mrs. Rosa Parks" takes the reader out of the clichéd view of Parks as the quiet seamstress, and reveals a complicated political thinker and strategist. By **Elaine Elinson**

Securities **Hedge fund ad ban relaxed, what to expect**

Will lifting the ban on general solicitation mean we'll suddenly be inundated with ads for hedge fund investments? Not likely. By **Kristy Wiehe**

Judicial Profile **Paul Beeman**

Superior Court Judge Solano County (Fairfield)

Litigation **Lead paint trial, starting Monday, poses new threat to corporate defendants**

A trial set to start Monday in Santa Clara County Superior Court might tip the scale in favor of

\\ladj008/DJICText/News/Text/1051975D0712201317.htm
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plaintiffs who have been trying to sue lead paint makers for decades with little success.

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