THE RISLEY NEWSLETTER

SOMETIMES THE LITTLE GUY WINS

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Little Guy Wins

"It's rare, but sometimes the 'little guy' with little money wins against the 'big guys' with a lot of money." Sailor Mohler was just such a "little guy." While living in Virginia, he was sued by two lawyers, one millionaire, and two corporations, in California, three thousand miles from his home in Virginia.

The story began a long time ago. For more than twenty years, Mohler worked on various medical diagnostic inventions to make life better for his fellow man. He developed a non-invasive, cardiac diagnostic device employing passive sound detection and interpretive protocols, based on the principles of sonar. The device worked. It detects coronary arterial blockages, and other cardiac maladies. Patent applications were filed and are pending. A test model was built, then successfully beta-tested at Johns Hopkins University.

There was enormous interest in the invention because the potential market was so vast. The market included every cardiologist's and cardiac surgeon's office, every hospital, and possibly every physician's office in the world. Indeed, many in the medical profession, and investors, were extremely interested.

Mr. Mohler is a modest man living in Maryland. He has a hearing impediment stemming from an injury he received while serving in the United States Navy. In recent years, he has devoted his entire life to the development of this new technology. He took on partners to help finance and market the device using the technology, and the test model.

It was then that his troubles began. He went to an attorney and member of a large, Washington, D.C. law firm. Fake purported to be a business development lawyer, with "know-how" in the development of fledgling businesses and with access to venture capital.

Fake formed a partnership and two corporations for Mr. Mohler, his other partners, and investors. He took a percentage interest in these entities which he had set up.

At the time that Fake took the percentage interest in these companies, he recorded his "billable hours" charged to the entities which were recorded in the law firm's billing system. This was a serious conflict of interest in violation of legal ethics in Washington, D.C., and in nearly all other states of the Union. As a result, Fake was eventually fired and terminated by the large D.C. law firm.

During the time of his representation, Fake failed to follow up with prospective investors which Mohler directed to him. He even treated some of them with disdain. At this point, after having given away most of the legal interest in this new technology, Mohler began to resist. However, Fake and his cohorts could not tolerate this resistance, so they sued Mohler in California, three thousand miles from his home. The complaint contained fifteen counts, including nearly every imaginable business claim from embezzlement and defamation, to breach of contract, breach of fiduciary duty, and conspiracy.

It was at this point that Mohler contacted Robert Risley in Pasadena to help with his defense. The first line of defense was to attack the complaint with a "motion to quash" the summons and complaint for lack of jurisdiction. This effort failed, as the California Judge ruled that there was sufficient contact to give California jurisdiction. Things looked very bad indeed following this negative ruling.

However, Mohler was able to raise a little money and was able to mount a further defense, defeating an effort by Fake and his partners to obtain an injunction and then legally attacking several of the "causes of action" in the complaint. At this point, Risley was joined by attorneys Ken Martin and Jennifer Adams, Washington, D.C. lawyers. After lengthy depositions in California, one by one the plaintiffs who had sued Mohler

dismissed their claims, and finally, on September 17, the court dismissed the last remaining plaintiff in the case, Barent Fake. Fake had also given up, and failed to appear at a Mandatory Settlement Conference, and failed to prosecute his case.

The case has now been dismissed. All claims against Mohler have been defeated and he is essentially free of the enormous burden of litigation in California. As Mohler stated in a recent letter, "I cannot thank you enough, Bob, for the magnificent job you did for me."

Indeed, it is rare, but sometimes the "little guy" with no money wins against the "big guy" with lots of money.

Risley, in turn, has extended thanks to Washington, D.C. lawyers, Ken Martin and Jennifer Adams for their excellent work and lead on the case.

Taxpayer Beats IRS:

Fair Market Value of Lottery Prize Allowed

On September 5, 1987, Mr. Shackleford won $10.16 million in the California lottery. He received an immediate payment of $508,000 and the right to receive 19 additional annual payments of $508,000 each. To fund the future payments, the California Lottery purchased zero-coupon U.S. Treasury bonds for $4.3 million. Shackleford had no right to receive either principal or interest in the bonds nor did he have the right or option at any time to collect his prize or any remaining payments in a lump sum, even on a discounted basis.

Shackleford died in 1990. At that time 17 of the 20 annual payments remained to be made ($8.6 million). Under his will his lottery interest passed to his brother. Shackleford's estate reported the value of his interest in the prize payments on his date of death as a little over $4 million on his federal estate tax return. Later the estate filed an amended estate tax return, claiming that the value of Shackleford's interest in the future lottery prize payments was reported improperly, and sought a refund. IRS rejected the refund claim, and the estate brought an action for refund in a U.S. District Court.

IRS argued that Shackleford's interest in the lottery payments should be valued under the tables set forth in Reg. Sec. 20.2031-7. The estate claimed that the annuity should be valued in accordance with the fair market value rule, which defines fair market value as "the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."

The Court agreed with the estate that the value derived from the tables was unreasonable enough to warrant departure from their use because they failed to consider marketability restrictions in valuing the lottery prize. For purposes of assigning a fair market value to

the prize, the Court had to assume the existence of a valid hypothetical sale of that prize in 1990, even thought the sale did not, in face, occur. The value of Shackleford's interest in the remaining lottery prize payments on his date of death was about $4 million according to the federal estate tax return. The realistic value of the prize at the time of his death was about $2 million, said the Court.

Risley Client Victorious Over Bank:

Washington Mutual Ordered to Pay "Merger Severance" to "Jane Doe"

It's difficult to beat a bank, especially a big one. This is because they have significant influence in the legislature resulting in laws which create favorable presumptions and legislation reversing unfavorable Supreme Court opinions. So it is news when an employee beats a large bank such as Washington Mutual.

Jane Doe,† a CPA, had spent much of her career in the banking industry, and was working for Great Western Savings and Loan when it merged with Home Savings and Loan. Home, in turn, merged with Washington Mutual Savings and Loan in 1997. These and other recent mergers have made Washington Mutual the second largest bank in California.

The merger documents provided for employee severance packages for loss of jobs principally depending on their longevity and salary. Soon after the announced merger with Great Western, Washington Mutual fixed April 1, 1998, as the target date for closing down Jane's department at Great Western (Home Savings). Washington Mutual manager Craig Kennedy met with the entire department and told those present, including Jane, that early departures would be permitted "on a case by case basis," providing an

individual's workload could be accomplished by the remaining employees without causing an undue burden.

In late December 1997, Jane received a job offer from Sanwa Bank and asked her immediate supervisor if she could accept it. The answer was, "yes," and together, Jane and her supervisor charted her work requirements which could be accomplished by others without undue burden. It was immediately sent to Craig Kennedy in Seattle at the Washington Mutual headquarters, and whose approval was required. Kennedy waited until January 14, 1998, the last day before Jane's expected departure, to tell her, "no." Kennedy said that if he allowed Jane to go, it might encourage others to leave, and he was especially concerned about retaining Jane's immediate supervisor. The Judge ruled that these reasons were not part of the deal, and accordingly, Washington Mutual breached its contract with Jane by denying her severance package on a case by case basis. The Judge awarded her the entire package plus two years' legal interest at 10%.

When Jane heard the news from Robert Risley, she was in tears with joy over the judge's award. Robert Risley noted that this was a straight Breach of Contract case and not based on employment law principles.

†Name has been changed to protect our client's privacy.

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Check our new Web Site - **"www.risleylaw.com"**

We have added several new features, including a "virtual office tour." The tour consists of pictures of the reception area, conference room, balcony, library, and Renee's and my offices. There is also a voice overlay. But depending on the web browser you use, it may not be automatic. No action need be taken if your use Microsoft Explorer. If you use Netscape, you will need to "click for Audio" to activate the voice signal.

Robert L. Risley, A Professional Law Corp.
790 E. Colorado Blvd., Ninth Floor
Pasadena, California 91101-2113
Telephone: (626) 397-2745
E-Mail: bob@risleylaw.com
Web Site: www.risleylaw.com