



ACC SOUTHERN CALIFORNIA IN HOUSE COUNSEL CONFERENCE

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Anaheim, California

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Introduction

- **Lance Jasper** – Partner, Akin
- **Josh Rubin** – Counsel, Akin
- **Sina Safvati** – Counsel, Akin

M. Lance Jasper



Partner

Akin

Los Angeles

310.552.6442

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Key Experience

- Advises public and private companies, investment advisers, broker-dealers and other financial institutions, as well as individuals in high-stakes government investigations and enforcement proceedings.
- Significant experience in matters before the SEC, DOJ, Federal Reserve, FDIC, FINRA, EPA and other regulators.
- Served for over a decade as an enforcement attorney at the SEC.

Biography

Lance Jasper represents corporations, investment advisers, broker-dealers and other financial institutions, as well as boards and individuals, in a range of internal and government investigations, regulatory examinations and enforcement proceedings and litigation.

Prior to joining Akin, Lance served as senior counsel in the Division of Enforcement of the U.S. Securities and Exchange Commission's (SEC) Los Angeles Regional Office.

Lance served as a law clerk for U.S. Ninth Circuit Court of Appeals Judge Pamela Ann Rymer and U.S. District Court Judge Naomi Reice Buchwald of the Southern District of New York.

Areas of Focus

White Collar Defense & Government Investigations
Securities Enforcement & Litigation
Disputes & Investigations
Global Investment Adviser Regulatory
Investment Funds Litigation
Antibribery/Foreign Corrupt Practices Act (FCPA)
Energy Regulation, Markets & Enforcement

Education

Columbia Law School, *James Kent Scholar*, 2006
Harvard University, M.P.A., 2006
Boston College, *summa cum laude*, 2002

Bar Admissions

California

Josh A. Rubin



Counsel

Akin
Los Angeles
310.728.3282
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Key Experience

- Handles complex commercial litigation in state and federal court, with an emphasis on class action defense.
- Focuses on representing and advising clients in the telecommunications, financial services, sports and entertainment, hospitality, manufacturing and renewable energy sectors.

Biography

Josh represents clients spanning numerous industries in complex commercial matters at all stages of litigation, from initial investigations through trial. He combines strong advocacy skills with a commitment to understanding and servicing the specific needs of each client.

Josh has extensive experience representing individuals and companies in a wide range of business disputes, including breach of contract, business torts, securities fraud, civil RICO (Racketeer Influenced and Corrupt Organizations Act), intellectual property, employment law and unfair competition law. Prior to joining Akin, Josh served as a law clerk to the Honorable Margaret M. Morrow in the United States District Court for the Central District of California.

Areas of Focus

Complex Commercial Litigation
Class Actions
Consumer Class Actions
Labor & Employment
Disputes & Investigations
Consumer Class Actions
Technology
Digital Assets, Cryptocurrency & Blockchain
Consumer Protection
Fintech
Investment Funds Litigation

Education

J.D., New York University School of Law, magna cum laude, 2015
B.A., Macalester College, summa cum laude, 2012

Bar Admissions

California

Sina S. Safvati



Counsel

Akin
Los Angeles
310.229.1064
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Key Experience

- Handles a range of complex litigation matters in federal courts.

Biography

Sina has counseled clients in all stages of the dispute process, including appellate matters.

Sina served as a law clerk for the Honorable J. Clifford Wallace of the U.S. Court of Appeals for the 9th Circuit and for the Honorable Cecilia M. Altonaga of the U.S. District Court for the Southern District of Florida. He also served as a judicial extern for the Honorable Stephen Wilson of the U.S. District Court for the Central District of California.

Areas of Focus

Complex Commercial Litigation
Class Actions
Securities Enforcement & Litigation
Investment Funds Litigation
Supreme Court & Appellate

Education

J.D., University of California, Los Angeles, School of Law, with honors, 2016
B.A., University of California, Los Angeles, summa cum laude, 2012

Bar Admissions

California



INSIDER
TRADING

Attorneys as Traders & Advisors:

Recent Developments of Insider
Trading Law

Insider Trading Basics



What Is Insider Trading?

CLASSICAL THEORY

Involves corporate insiders trading their own company's securities based on material nonpublic information, in breach of the fiduciary duty owed to the employer and its shareholders.

MISAPPROPRIATION THEORY

Pertains to both corporate insiders and outsiders trading based on material nonpublic information obtained in violation of a fiduciary duty owed to the source of information.



What is MNPI?



MNPI

Material Non-Public Information or “MNPI” is information not generally disseminated to the public or made available to investors, which a reasonable investor would likely consider important in making an investment decision to buy, sell, or hold securities.

Insider Trading Violations



Private lawsuits

Civil enforcement

**Criminal
prosecution**

Personal costs

Current Regulatory Environment



SEC has shown a continued focus on insider trading and brought several cases against lawyers and senior executives in 2023.

Insider Trading Case Studies: Attorney as Trader

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SEC v. Levoff



- Gene Levoff was Apple's Director of Law, Corporate Secretary, and Co-Chairman of the Disclosure Committee.
- Levoff breached Apple's "blackout periods" and insider trading policy, which he was tasked to enforce.
- Used material nonpublic information from draft earnings reports to trade Apple stock.
 - Bought shares before strongly quarterly results and sold post-announcement for profit.
 - Sold stock following weaker quarters to prevent losses.

SEC v. Da Costa Neto



- Romero Cabral Da Costa Neto, an attorney at Gibson Dunn, accessed information related to a merger between CTI BioPharma Corp. and Swedish Orphan Biovitrum AB.
- He purchased more than 10,000 shares of CTI the day before the public announcement of the merger, and sold them the next day, making a profit of more than \$42,000.

In the Matter of William E. Gericke



- As conflicts counsel at Cozen O’Conner, William Gericke conducted a confidential conflicts check for a merger involving Liberty Property Trust (LPT).
- He purchased 1,000 LPT shares the next day. After the merger announcement, LPT stock rose by 13.7%, leading to a \$10,002 profit.

SEC v. Markin



- Seth Markin discovered information about the acquisition of Pandion Therapeutics by Merck while organizing files for his then-girlfriend, an associate at Covington & Burling.
- Markin purchased Pandion stock and tipped his close friend Brandon Wong, leading to \$82,000 and \$1.3 million in profits, respectively.


Insider Trading & Professional Rules of Conduct

- **Rule 1.6: Confidentiality of Information**
 - Prohibits attorneys from disclosing information relating to the representation of a client without the client's informed consent.
- **Rule 1.7: Conflict of Interest: Current Clients**
 - Addresses conflicts of interest between a lawyer's personal interests and those of their clients.
- **ABA Rule 1.8: Current Clients: Specific Rules / CA Rule 1.8.2: Use of Current Client's Information**
 - Prohibits using information relating to the representation of a client to the client's disadvantage.
- **Rule 1.9: Duties to Former Clients**
 - Addresses maintaining the confidentiality of information related to former clients.

Insider Trading & Professional Rules of Conduct (cont'd)

- **Rule 1.13: Organization as Client**
 - Pertains to representing an organization, including the duty to report up within the organization in cases of legal violation or breach of duty.
- **ABA Rule 1.2 Scope of Representation & Allocation of Authority Between Client & Lawyer / CA Rule 1.2.1: Advising or Assisting the Violation of Law**
 - Prohibits a lawyer from advising a client to violate the law.
- **Rule 8.3: Reporting Professional Misconduct**
 - Requires a lawyer to report another lawyer's violation of the Rules of Professional Conduct if it raises a substantial question about that lawyer's honesty, trustworthiness, or fitness as a lawyer.
- **Rule 8.4: Misconduct**
 - Prohibits engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Insider Trading Case Studies: Attorney as Adviser

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SEC v. Panuwat



- Matthew Panuwat, former head of business development at Medivation, purchased call options for his employer's competitor Incyte after learning that his employer was about to be acquired by Pfizer at a premium.
- Following the announcement of Medivation's acquisition, Incyte's stock price increased by approximately 8%, leading to Panuwat profiting \$107,066.

Rule 10b5-1 Plans



- Establish in good faith when uninformed of any MNPI.
- Trades must be pre-specified or executed by an uninformed third party.
- Execution must occur during designated Window Periods.

SEC Rule 10b5-1 Actions

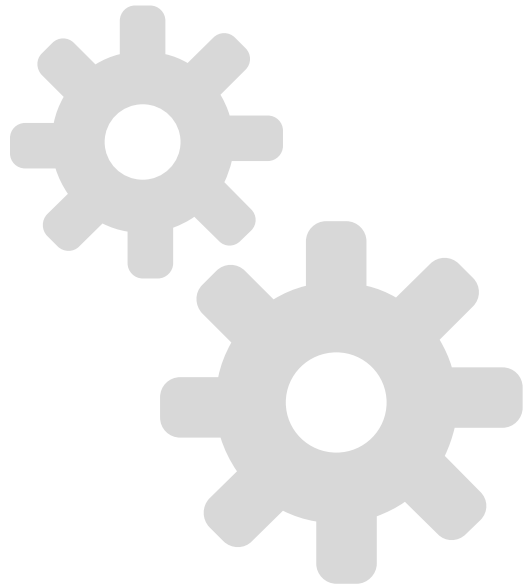
- ***SEC v. Charter Communications*** –Violating internal controls requirements relating to its stock buybacks.
- ***SEC v. Peizer*** – Chairman sold stock based on negative MNPI.
- ***SEC v. Cheetah Mobile*** – CEO and President established 10b5-1 plan after becoming aware of negative MNPI.

Up-the-Ladder Rule



- Attorneys must report evidence of material violations of securities laws, breaches of fiduciary duty, or similar violations by the company or its officers, directors, or employees to the company's chief legal counsel (CLO) or chief executive officer (CEO).
- Allows attorneys to disclose confidential information to the SEC without company consent in specific circumstances, such as to prevent significant injury to the company or its investors, or to address a fraud on the SEC.
- SEC has yet to bring an enforcement action based on the up-the-ladder rule, but in-house counsel continue to seek guidance regarding compliance.

Mitigating Insider Trading



- Develop and enforce robust insider trading policies and procedures to avoid potential legal liabilities.
- Regularly train and offer readily available legal advice to employees on insider trading laws and company policies.
- Use a Restricted List to limit trading of individuals with MNPI.
- Require trade pre-clearance by the CEO or CFO and mandate compliance with the designated Window Period for transactions.
- Establish secure and anonymous channels for reporting suspicious activities.
- Enforce policies to secure unattended laptops or documents that may contain sensitive information.

Closing Thoughts



Always consider the optics before you act.



Encourage employees to not make “materiality” or “breach of duty” calls on their own.

Questions?

