

Corporate Practice Profile

## Corporate and Transactional Practice

We are a full-service corporate and transactional practice and regularly represent clients across a broad spectrum of business matters in which we have extensive experience, some of which are listed here.

### **General Counsel**

- Board meetings
- Business entity selection and formation for corporations, LLCs, LPs, PCs, and LLPs
- Capitalization and re-capitalization
- Commercial claims analysis
- Conflicts of interest and interested director safe harbors
- Covenant compliance
- Customer contracts
- Dispute resolution
- Dissolution
- Equity compensation
- Fiduciary duties
- Governance
- Insolvency process alternatives analysis
- Insurance
- Leases
- Nondisclosure agreements (NDAs)
- Options
- Outsourced manufacturing agreements
- Professional service contracts
- Proxies
- Regulatory compliance, including securities Hart-Scott, ITAR, and EAR
- Resolutions and written consents
- Restructuring
- Sales and marketing
- Securities transfers
- Shareholders' agreements
- Stock plans
- Supply agreements
- Voting and control

### **M&A and Finance**

- Acquisitions
- Angel financings
- Asset purchases and sales
- Assignments for the benefit of creditors (ABCs)
- Bridge financings
- Cash deals
- Change of control transactions
- Closings
- Confidential Information Memoranda (CIMs)
- Debt financings, both secured and unsecured by real and/or personal property
- Definitive agreements
- Derivatives
- Due diligence investigations and responses
- Equity financings
- Escrows
- Islamic financings and Shari'ah-driven transactions
- Letters of Understanding (LOIs)
- Memoranda of Understanding (MOUs)
- Mergers
- Private Placement Memoranda (PPMs)
- Restructurings
- Securities offerings
- Special counsel engagements
- Stock deals
- Structured finance
- Syndications and fund formations
- Tax sensitive and tax driven transactions
- Term sheets
- Transcripts
- Venture capital transactions

*Attorney Profile*

## DAVID M. SEREPCA



Mr. Serepca heads the corporate and transactional practice of MCMAHON SEREPCA LLP. He advises and represents operating and investment companies and their stakeholders in corporate, partnership, securities and transactional business matters. He also brings extensive expertise as a general counsel across a broad spectrum of industries including electronics manufacturing, real estate, semiconductor, retail, telecommunications, biotechnology, medical device, biopharmaceutical, software and professional services.

### M&A

Representing clients in transactions on the sell-side and the buy-side, as well as numerous other stakeholders (e.g., founders, managers, board members, stockholders, other owners and employees), he structures and advises on transactions using asset purchases, equity sales and statutory mergers. His deals involve cash and securities, as well as all forms of business entities. These tax-sensitive transactions range from sales of non-operating assets to acquisitions of going concerns involving large public companies. He also represents M&A transaction intermediaries and fiduciaries in solvent and insolvent situations (e.g., acquisition subsidiaries, assignees for the benefit of creditors, etc.).

### Finance

Representing clients in corporate and commercial finance transactions, both on the company and investor side, Mr. Serepca works with virtually all legal aspects of operating company finance and financing transactions. He routinely advises in equity financings, including founders' rounds, angel investments, venture capital financings and public offerings, as well as in debt financings, including bridge and bank financings, both secured and unsecured. He also represents clients in complex structured financings involving real estate, equipment, special purpose entities and trusts, such as leveraged leases, revenue bonds and Islamic Shari'ah compliant transactions. Mr. Serepca also structures and represents clients in real estate investment and development fund formation, and represents portfolio companies.

### Commercial Transactions

Mr. Serepca extensively represents clients in commercial transactions, including structuring and executing customer contracts, supply agreements and licenses, as well as in ongoing global reseller arrangements and other distribution relationships. He represents clients in commercial leasing matters, including with commercial real estate (e.g., office, manufacturing and retail), and has extensive experience in specialized equipment leasing transactions (e.g., manufacturing and transportation equipment, such as ships and aircraft).

### General Counsel

His practice includes attending board meetings as general counsel, and advising operating companies on handling all aspects of general legal compliance and administration, including coordination with and/or management of other counsel. Mr. Serepca provides general corporate, partnership and securities representation and advice under corporate laws (e.g., California and Delaware), as well as under federal and state "blue sky" securities laws applicable to issuers, resellers, broker/dealers, and their agents. Mr. Serepca routinely:

- *advises clients in business entity selection during company formations and for use in transactions;*
- *advises senior management and represents clients in dispute resolution negotiation and settlement transactions;*
- *represents entities doing business in California in corporate compliance, including non-California entities of multinationals; and*
- *advises stakeholders with regard to process choices in insolvency situations.*

## Professional Activities

Mr. Serepca is a member and past officer of the Corporations Committee of the Business Law Section of the State Bar of California, serving on numerous subcommittees. The Corporations Committee acts for the benefit of all corporate and securities law practitioners throughout the State of California in connection with legislation, education, and best practices on both the national and local level.

He is a Primary Contributor to the Handbook for Incorporating a Business in California (2005), a Report by the Corporations Committee, and an Update Author (2006) and Author (2007-2009) for Choosing the State of Organization in Selecting and Forming Business Entities, a CEB publication. As a Co-Panelist, Mr. Serepca presented Recent Developments in California Corporate Law at the 2005 California State Bar Annual Meeting in San Diego, and Incorporating a Business in California at the 2006 Winter Section Education Institute in Santa Monica.

Other distinctions include serving as special advisor to the California Cyberspace Law Committee (2006-2007), a member of the Corporate Counsel Executive Committee of the Santa Clara County Bar Association (Chair 2007), and a member of the CEB Business and Intellectual Property Law Advisory Committee (2007-2008). Mr. Serepca is a member of the Cornell Alumni Association of Northern California.

## Background and Education

Over the past 15 years, Mr. Serepca has served as general counsel of numerous companies, and has practiced at large, international law firms, representing clients in transactions of all sizes. He practiced corporate and securities law at Wilson Sonsini Goodrich & Rosati, one of the leading U.S. corporate and securities law firms for private and public companies. He practiced with the corporate group in commercial and structured finance transactions at Lillick & Charles, one of California's oldest law firms. And he practiced banking, bankruptcy and commercial law at Buchalter, Nemer, Fields & Younger, one of California's leading real estate and commercial law firms. Mr. Serepca has also served as general counsel and a corporate officer of Sanrise Group, Inc., the largest data storage software and services provider at Exodus Communications Internet Data Centers worldwide and a Crosspoint Venture Partners portfolio company.

Mr. Serepca earned his Juris Doctor degree from the University of San Francisco School of Law in 1992. During law school, he clerked for the lead trial counsel for the State of Alaska in the North Slope Oil Royalty Litigation, for the lead trial counsel (liability) for the Chubb Insurance Companies, and for the general counsel of the Western Regional Headquarters of the Federal Deposit Insurance Corporation. He earned his Bachelor of Science degree from Cornell University in 1989, with a major in consumer economics and housing policy analysis and minor in nutritional biochemistry.

## Personal Interests and Activities

Mountain biking, alpine skiing, underwater photography and scuba diving (PADI Dive Master rated and TDI Advanced Trimix certified to 100m).

# Litigation Practice

The primary focus of MSLLP's litigation practice is to offer our clients cost-effective experienced representation for litigation matters ranging from a few hundred thousand dollars to five million dollars. We also offer strategic counseling to clients on all matters relating to how to best prepare for litigation and/or achieve successful pre-litigation settlements. We strive to be aggressive ethical advocates for our clients.

## Intellectual Property Litigation & Counseling

- **Trade Secrets** – The “crown jewels” of every business are its trade secrets – from nascent start-ups to large public companies. MSLLP has successfully represented such clients as both plaintiffs and defendants in numerous cases. In addition, MSLLP has identified certain “high risk” companies vulnerable to trade secret theft and worked with such companies to establish tailored enforceable policies to prevent trade secret theft or, in the event of theft, a roadmap to obtain immediate injunctive relief.
- **Copyright Infringement** – MSLLP works with its clients to obtain copyright protection for their most valued intellectual property, and our lawyers have the experience necessary to rapidly enforce such intellectual property rights against infringement. In this area, MSLLP's clients are primarily individuals and small businesses who trust MSLLP to help protect them against unscrupulous competition.
- **Trademark** – The lawyers at MSLLP work with clients to register trademarks with the U.S. Patent & Trademark Office, and to counsel clients submitting trademarks for registration. MSLLP further represents clients in Lanham Act, misleading advertising and similar Unfair Competition matters.

## Employment Litigation & Counseling

- **Retaliation and Whistleblower Litigation** – In many cases, employees make unsubstantiated claims of discrimination and/or wrongdoing against their employers. Despite prevailing on such underlying claims, employers sometimes make critical mistakes in handling the reaction to and investigation of such claims. Indeed, the highest damages awards given out by juries against employers often relate to cases where the employer prevailed on the discrimination allegation but the employee prevailed on claims of retaliation. MSLLP has extensive experience counseling companies how to avoid such pitfalls, and defending them in court when litigation commences.
- **Employment Discrimination Litigation**, including Race, Gender, Harassment, Age, and Disability - MSLLP primarily defends employers against claims of employment discrimination. We have successfully obtained summary judgment for clients faced with the onerous cost of defending meritless claims. In addition, MSLLP represents individuals where evidence of discrimination is manifest and individual rights have been violated.
- **Employer/Employee Privacy Matters** – MSLLP lawyers are highly experienced in counseling clients regarding the intricacies of employee privacy rights in the workplace. The rights of employers to protect their intellectual property and their workforce can sometimes clash with employees' rights - thereby subjecting employers to potential liability. MSLLP works closely with its clients to ensure compliance with privacy laws such as the Electronic Communications Privacy Act (ECPA) and Stored Communication Act (Act), and equivalent California state laws, while at the same time maximizing the employer's rights to protect its intellectual property.
- **Wage & Hour** – This area of the law is widely misunderstood by employers and potentially devastating to small and mid-sized companies. MSLLP counsels its clients on how to properly classify workers to avoid steep penalties and lawsuits. MSLLP has also defended small and mid-sized companies against wage and hour class actions filed by current and former employees.
- **Workplace Violence** - We have obtained a multitude of Temporary Restraining Orders relating to workplace violence and employee stalking matters for small, private, and public companies.

## Business Litigation

- **Fiduciary Duty** – MSLLP has extensive experience representing clients, as both plaintiffs and defendants, in matters involving allegations of breach of fiduciary duties. From failed partnerships to unscrupulous LLC members and venture capitalists, MSLLP has successfully defended and prosecuted multiple fiduciary duty cases.
- **Contract** – MSLLP has successfully litigated numerous software-licensing matters in the Software as a Service (SaaS) industry. In addition, a staple of MSLLP's practice relates to litigating contract disputes on behalf of clients.

## Miscellaneous

- **Third Party Witness eDiscovery and Litigation Support Services** – Partnering with Precision Discovery, MSLLP provides comprehensive litigation and eDiscovery support services. Perhaps the largest case in the history of the world is the AMD v. Intel matter currently pending in the District of Delaware. MSLLP has represented a third party witness in that matter, providing comprehensive eDiscovery and document review services for more than 2.0 million pages of documents (200 gigabytes) at a fraction of the cost.
- **Third Party Witness Representation** – MSLLP represents multiple companies that receive subpoenas for documents and witness testimony, where such companies are not parties to the underlying litigation. MSLLP defends such third party witness depositions in a cost-effective manner.
- **Individual Defendant Representation** – In some cases, potential conflicts arise where Company Executives are sued in their individual capacity along with the corporation. MSLLP provides aggressive representation for such individuals.
- **Sarbanes-Oxley Investigations** – MSLLP has provided small public companies with investigative services relating to allegations of inventory manipulation and quarterly profit and loss manipulation in violation of the Securities laws. MSLLP partners with experienced forensic accountants with whom MSLLP has a strategic relationship to gather the facts and examine the books in order to provide the client (the Board's Audit Committee) with a comprehensive Report of Investigation.

*Attorney Profile*

## Peter C. McMahon



Mr. McMahon is a founder of MCMAHON SEREPCA LLP, a distinguished litigation boutique law firm dedicated to providing its clients with exceptional service, creative solutions, passion and excellence in representation. In addition to representing clients in complex business litigation, he also provides counseling to a broad range of high-tech companies.

Prior to founding the firm, Mr. McMahon was with the preeminent law firm of Orrick, Herrington & Sutcliffe LLP ("Orrick"). His tenure with Orrick spanned seven years, where as a member of the Employment Law Department he gained expertise in:

- *Intellectual Property Litigation.*
- *Employment discrimination litigation;*
- *Electronic Communications Privacy Act (ECPA), email monitoring and other privacy issues related to employment;*
- *Class action wage and hour litigation;*
- *Retaliation and Whistleblower litigation;*

Mr. McMahon has extensive experience counseling employers in cutting-edge legal issues presented by the introduction of the Internet into the workplace, and the impact of technological advances on workplace privacy and its potential for liability to employers. Because of Mr. McMahon's interest in high-tech legal issues, he has also gained significant experience in Intellectual Property litigation, representing several clients in trade secret, software licensing and patent matters.

His litigation excellence was recognized in June 2001, when he was tapped by Orrick to defend the firm in a disability discrimination case filed against Orrick in San Francisco. Mr. McMahon co-chaired the two-week jury trial, wherein the trial team obtained a jury verdict in favor of Orrick. In 1998, he appeared as lead trial counsel in a two-week workplace violence jury trial, where he also prevailed for his client. Mr. McMahon has also successfully represented numerous clients in administrative proceedings before the California Department of Fair Employment and Housing ("DFEH").

From 1990 through 1996, he was an Assistant General Counsel with the Department of Defense (Defense Investigative Service) in Washington, D.C., where he was responsible for litigation, advice and counseling. During his tenure, Mr. McMahon successfully obtained numerous defense verdicts in lawsuits tried before the Merit Systems Protection Board (MSPB) and Equal Employment Opportunity Commission (EEOC), which included claims of sexual harassment, discrimination, and wrongful termination. In July 1996, he received a Distinguished Service award, recognizing his significant contributions to the Office of General Counsel.

In addition to his extensive litigation experience, Mr. McMahon has authored and published several papers, including:

- *Wrongful Termination: Whistleblowing & Retaliation* (Nov. 2002) (NELI Employment Law Conference 2002).
- *Fall-Out After Enron: An In-Depth Analysis of Sarbanes-Oxley and Whistleblower Law* (Oct. 2002) (21st Annual Seminar for Employers).
- *Retaliation Under the EEO Laws* (Oct. 2002) (21st Annual Seminar for Employers).
- *Race, Religious and National Origin Discrimination* (Oct. 2001).
- *Enforcement Issues in Securities Law & The Internet: Doing Business in a Rapidly Changing Marketplace*, at 265 (PLI Corp. L. & Prac. Course Handbook No. B-1127 June-July 1999).
- *Chapter 3: Wage and Hour*. (1998) (California Employment Law Deskbook).
- *Sexual Harassment Investigations for Employers* (1998) (Annual Seminar for Employers).
- *Expert Polygraph Evidence and Questioned Document Experts* (co-author, Aug 1998) (American Bar Association – Section of Labor and Employment Law).
- *An Employer's Right to "Private" Information* (Oct. 1997) (Personnel Law Institute).
- *Recent Developments Re: The Family Medical Leave Act* (co-author) (May 1997) (NELI Employment Law Conference).

Prior to enrolling in law school (from 1987 through 1989), Mr. McMahon worked with the Police Foundation, a law enforcement research think-tank. Along with other researchers and scholars, he contributed cutting-edge solutions to the most pressing and difficult problems facing the legal community.

Mr. McMahon earned his B.A in Law Enforcement from the University of Maryland in 1986, and his Juris Doctor from Catholic University in 1992. In 1995, while he was with the Department of Defense, he was a Master's Degree candidate at Georgetown University, in the National Securities Studies Program (School of Foreign Service). Mr. McMahon abandoned the pursuit of his Master's Degree when he moved to the West Coast in 1996 to join Orrick.