

Nicki Locker

PARTNER

Litigation

Palo Alto

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FOCUS AREAS

Board and Internal
Investigations
Commercial Litigation
Corporate Governance
Corporate Governance
Litigation
FCPA and Anti-Corruption
Government Investigations
Israel
Litigation
Securities Litigation

HIGHLIGHTS

- An Accomplished Securities Litigator**
Nicki has represented companies and their officers and directors in more than 100 securities class actions, derivative lawsuits and SEC and internal investigations.
- A Highly Recognized Practitioner**
Nicki was recognized as one of the top securities litigators in the U.S. in the 2007-2023 editions of *Chambers USA* and in 2016 she was recognized as a "BTI Client Service All-Star."

EXPERIENCE

Nicki Locker is a partner in the Palo Alto office of Wilson Sonsini Goodrich & Rosati. In addition to representing companies and their officers and directors in shareholder class actions and derivative suits throughout the United States, Nicki also has substantial experience in corporate internal investigations and SEC investigations and enforcement proceedings.

For the past 14 years, Nicki has been recognized as one of the leading securities litigation practitioners in *Chambers USA: America's Leading Lawyers for Business*. The guide describes Nicki as "an excellent litigator who handles most sophisticated securities litigation" and "knows everything there is to know about defending securities litigation and is committed to making your defense as strong as it can be."

Nicki joined the firm in 1985. Among other leadership roles, she is the former head of the securities litigation practice group, has served as a member of the firm's Policy Committee and Board Nominating Committee, and as chair of the Partner Nominating Committee.

After graduating from Stanford Law School in 1984, Nicki clerked for the Honorable Anthony Kennedy of the U.S. Court of Appeals for the Ninth Circuit.

CREDENTIALS

Education

- J.D., Stanford Law School, 1984
Editor, Stanford Law Review; *Recipient*, Frank Baker Belcher Evidence Award
- B.A., Interdisciplinary Studies, Yale University, 1980
With Distinction and Honors, Summa Cum Laude, Phi Beta Kappa

Honors

- Recognized as one of the top securities litigators in the U.S. in the 2007-2023 editions of *Chambers USA*

- Honored as a "BTI Client Service All-Star" for 2016
- Selected for inclusion in *Northern California Super Lawyers* in 2005-2020
- Featured in the 2006-2020 editions of *Best Lawyers in America*
- Named one of the nation's "Top 10 Commercial Litigation Lawyers" by *U.S. Lawyer Rankings* in 2007-2011 and 2014-2015

Admissions

- Bar of the District of Columbia
- State Bar of California
- Supreme Court of California
- U.S. District Court for the District of Arizona
- U.S. District Court for the Central District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit

MATTERS

Current and Recent Matters

- Represent Dropbox in securities class actions in state and federal courts arising out of its IPO. The federal court granted defendants' motion to dismiss. The state court granted defendants' motion to dismiss based on Dropbox's federal forum provision. The California Court of Appeals affirmed the dismissal. The California Supreme Court denied plaintiff's petition for review.
- Represented MacroGenics in a securities class action filed following announcement of clinical trial results. The court granted defendants' first motion to dismiss with prejudice. The Fourth Circuit Court of Appeals affirmed the dismissal.
- Represented Invuity in a securities class action arising out of missed quarterly guidance. The court granted defendants' motion to dismiss with prejudice.
- Represent Viatrix in a securities class action alleging false and misleading statements in a registration statement filed in connection with the business combination between Mylan and a subsidiary of Pfizer.
- Represented Nutanix in a securities class action arising out of announcement of quarterly guidance. The court granted defendants' motion to dismiss with prejudice with respect to most of the challenged statements. The action was settled.
- Represent Mesa Air in securities class actions in federal court arising out of its IPO. The federal court granted defendants' motion to dismiss with respect to most of the challenged statements. The action was settled.
- Represented AIO Networks in a securities class action arising out of a financial restatement. The court granted the motion to dismiss with leave to amend; plaintiffs appealed that decision and subsequently withdrew the appeal.
- Represent Mylan Pharmaceuticals in a securities class action arising out of an announcement of receipt of Form 483s and implementation of remediation program at a manufacturing plant.
- Represented Intrexon in a securities class action filed following publication of short seller report. The case was dismissed with leave to amend, which plaintiffs chose not to do.
- Represent Precigen in a securities class action arising out of announcement of SEC Cease and Desist Order relating to the company's disclosures concerning its methane bioconversion platform. The court granted defendants' motion to dismiss as to most of the challenged statements. The action was settled.
- Represents the Chairman of Intelsat S.A. in a securities class action arising out of allegations of insider trading. The court granted defendants' motion to dismiss with prejudice.

Derivative Actions

- Represented Nutanix and its officers and directors in a shareholder derivative suit related to the announcement of disappointing guidance. The action was dismissed with prejudice.
- Represented Zovio, (formerly Bridgepoint Education) and its officers and directors in a shareholder derivative suit related to an adverse regulatory development. The court dismissed the action with prejudice.
- Represented Zovio, (formerly Bridgepoint Education) and its officers and directors in a [shareholder derivative lawsuit](#) related to a self-tender offer. The action was dismissed with prejudice and the dismissal was affirmed by the U.S. Court of Appeals for the Ninth Circuit.

- Represented A10 Networks and its officers and directors in a shareholder derivative action arising from restatement of financials. Action was voluntarily dismissed following full briefing of motion to dismiss.

SEC and Internal Investigations

- Public networking communication company in SEC investigation regarding potential improper revenue recognition based on alleged contingent sales
- CFO of a public company regarding alleged insider trading in which the SEC declined to pursue charges after CFO received Wells Notice
- Public life sciences company in SEC investigation regarding potential improper revenue recognition based on alleged round-tripping of cash through related parties
- Public biotechnology company in SEC investigation regarding disclosure of clinical trial results.
- Public technology company in SEC investigation regarding stock sales by insiders.
- Audit Committee of a public company in internal investigation regarding potential violations of related party transaction disclosure rules
- Audit Committee of Ixia in internal investigation regarding accounting for multi-element transactions and post-contract support transactions
- Special Committee of Board of Directors of a public technology company in internal investigation regarding stock sales by several officers and directors
- Audit Committee of a public company in internal investigation regarding off-label promotion of FDA-approved medication

CLIENTS

Clients in Other Representations Include

(* = multiple cases during different periods)

Technology Companies:

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| ▪ A10 Networks, Inc.* | ▪ Liquid Audio, Inc. |
| ▪ Actel Corporation | ▪ Marketo, Inc. |
| ▪ Agilent Technologies | ▪ McAfee.com Corporation |
| ▪ Allot Communications | ▪ Merisel, Inc. |
| ▪ Alvarion | ▪ Mindspeed Technologies, Inc. |
| ▪ Asante Technologies | ▪ Mobility Electronics, Inc. |
| ▪ Avanex Corporation | ▪ New Focus, Inc.* |
| ▪ BackWeb Technologies Ltd. | ▪ Novell |
| ▪ Brocade Communication Systems, Inc.* | ▪ Nutanix |
| ▪ Capstone Turbine Corporation | ▪ OpenTV Corp. |
| ▪ Catalyst Semiconductor | ▪ Palm, Inc. |
| ▪ chinadotcom Corporation | ▪ Peerless Systems Corporation |
| ▪ Cobalt (Sun Microsystems, Inc.) | ▪ Portal Software, Inc. |
| ▪ Commerce One, Inc. | ▪ QuickLogic Corporation |
| ▪ Convergent Technologies | ▪ Quovadx, Inc. |
| ▪ CoSine Communications, Inc. | ▪ RocketFuel |
| ▪ Digital Impact, Inc. | ▪ Salesforce.com |
| ▪ DigitalThink, Inc. | ▪ SeeBeyond |
| ▪ Dropbox | ▪ Sirenza Microdevices, Inc. |
| ▪ E.piphany, Inc. | ▪ Software Publishing |
| ▪ F5 Networks, Inc. | ▪ Sybase* |
| ▪ Gadzoox Networks, Inc. | ▪ Symyx Technologies, Inc. |
| ▪ Genesis Microchip | ▪ TIBCO Software Inc. |
| ▪ i2 Technologies, Inc.* | ▪ Triton Network Systems, Inc. |
| ▪ InterTrust Technologies Corp. | ▪ Tut Systems, Inc. |
| ▪ Intraware, Inc. | ▪ VA Software Corporation |
| ▪ Juniper Networks* | ▪ Veritas Software Corporation |
| ▪ Liberate Technologies, Inc. | ▪ Webvan Group Inc. |
| ▪ Lipman Electronic Engineering | |

Life Sciences Companies:

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| ▪ Antigenics | ▪ Guidant Corporation* |
| ▪ Coherent, Inc. | ▪ Intrexon |

- Invuity, Inc.
- Juno Therapeutics, Inc.
- MacroGenics, Inc.
- Mylan
- Pacific Biosciences
- Precigen
- Viatris Inc.

Other Companies:

- Bridgepoint Education, Inc.
- Critical Path, Inc.
- GSI Group, Inc.
- HealthpointCapital, LLC
- Landry's Seafood Restaurants
- Mesa Air Group, Inc.
- NortonLifeLock
- root9B Technologies, Inc.
- Strayer Education
- U.S. Auto Parts
- Universal Access

INSIGHTS

Select Publications

- Co-author, "[2020 Life Sciences Securities Litigation Roundup](#)," Wilson Sonsini Client Advisory, March 2021
- Co-author, "[2019 Life Sciences Securities Litigation Roundup](#)," Wilson Sonsini Client Advisory, April 2020
- Co-author with L. Smilan, "[Carving Out Some IPO Protections](#)," *Corporate Board Member*, January 2020
- Co-author, "[2018 Life Sciences Securities Litigation Roundup](#)," Wilson Sonsini Client Advisory, March 2019
- Co-author, "It's Long Past Time to Say So Long to State Court Securities Litigation," Harvard Law School Forum on Corporate Governance and Financial Regulation, February 2019
- Co-author with P. Nielsen, "[Ambiguity Deters Claims Pursuit: Practicalities May Make Section 304 More Trouble than Its Worth](#)," *San Francisco Daily Journal*, August 2005

Select Speaking Engagements

- "Preventative Medicine for Biotech Boards: Lessons Learned from Life Sciences Securities Litigation," ACC San Francisco Bay Area Chapter, Life Sciences 2021 – The Road Ahead, May 14, 2021
- Moderator, "Big Data, A.I., and the Evolving Role of Technology in Conducting Internal Investigations and Prosecuting and Defending Securities Fraud Cases," Securities Enforcement Forum West, May 2020
- "Directors & Officers Liability: Current Landscape and Proactive Strategies to Mitigate the Pressure on Increased Premiums and Retentions," MDMA Webinar, April 22, 2020
- Panelist, "The Current State of the D&O Market for IPOs," PLUS D&O Symposium, New York, New York, February 2020
- Panelist, "Avoiding Ethical Pitfalls During Internal Investigations," The Compliance Institute, ACC-New York City Chapter, Fordham Law School, New York, New York, September 2019
- Moderator, "Managing a True Corporate Crisis/Major Internal Investigation," Securities Enforcement Forum West, Palo Alto, CA, May 2017
- "A Guide to Venture-Backed Board Membership: Best Practices of Private Board Members," Rock Center for Corporate Governance, Stanford University, Palo Alto, CA, April 2017
- Moderator, "M&A Litigation and Claims Trends: Better, Worse or Just Different?" PLUS Conference, Chicago, IL, November 2016
- Faculty, "FCPA, SEC/DOJ Joint Actions, and Other Criminal Enforcement Trends," Securities Enforcement Forum West, San Francisco, CA, May 2016