



## RONALD (RON) J. NESSIM

### PRINCIPAL

T 310.201.2100

F 310.201.2110

E rnessim@birdmarella.com

### EDUCATION

University of Michigan Law School, J.D., *cum laude*, 1980

Stanford University, A.B., *with distinction*, 1977

## OVERVIEW

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Ron Nessim has been lead trial counsel in numerous civil and criminal trials and arbitrations. He has argued numerous appeals in both federal and state courts, including in the United States Supreme Court, and has been at the center of numerous precedent-setting, high-profile entertainment, commercial and white-collar criminal law cases. His clients value his attention to detail, ability to think strategically, tenacity and his trial skills. Prior to joining Bird Marella, he served as an Assistant United States Attorney in the Major Frauds Section of the United States Attorneys' Office in Los Angeles.

Mr. Nessim was selected by his peers as the 2015 Criminal Defense: White Collar "Lawyer of the Year" for the Los Angeles area by The Best Lawyers in America. He has also been recognized by *Chambers & Partners*, *Variety* and Southern California Super Lawyers for his entertainment litigation, white collar, and commercial litigation expertise.

In the entertainment arena, Mr. Nessim often represents talent in disputes with the major television studios. His current and past representations include SAG-AFTRA in connection with employment restraints in actor contracts, Eric Kripke (*Supernatural*), Carsey-Werner, (*Roseanne* series), several of the participants in The Walking Dead series, Don Bellisario (first opportunity rights in *NCIS: LA*), Dick Wolf (*Law & Order* franchise), Shonda Rhimes (*Grey's Anatomy*), J.J. Abrams (*Lost*), David Kohan and Max Mutchnick (*Will & Grace*), Barry Levinson and Tom Fontana (*Homicide: Life on the Streets*) and Danielle Steel (*Danielle Steel Movies of the Week*).

In Mr. Nessim's general commercial litigation practice, he represents clients in breach of contract, partnership, real estate, employment and business tort cases.

In the criminal and health care fraud arena, Mr. Nessim represents individuals and entities in pre-indictment and post-indictment criminal proceedings. Mr. Nessim has successfully tried numerous criminal cases and has often successfully persuaded prosecutors not to charge clients they had originally characterized as "targets" of their investigation.

Mr. Nessim often represents clients who are facing parallel criminal and civil proceedings related to the same events.

Mr. Nessim is active in the community and has served, and continues to serve, on the board of several non-profits.

## EXPERIENCE

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### Representative Cases (Client names only listed where representation is not confidential):

Currently representing Erik Kripke, creator of television series, *Supernatural*, in a profit participation arbitration against Warner Bros.

Currently representing SAG-AFTRA in connection with issues arising from option and exclusivity provisions in actors' contracts, including co-authoring an [amicus brief](#) in a pending case.

Represented a former head of real estate of a large multi-family firm in an arbitration against the firm due to its wrongful termination of our client in violation of public policy.

Served as litigation counsel to Carsey-Werner, the production company for the *Roseanne* series in connection with Roseanne's tweets and ABC's cancellation of the series.

Represented a department chair at UCLA in a wide ranging internal investigation involving allegations of violations of the Political Reform Act. The matter involved first impression issues involving the commercialization of academic inventions and whether University resources could be used for tasks that were both academic and commercial in nature. The investigation terminated in a favorable confidential settlement.

Represented Don Bellisario, the creator of the *JAG* and *NCIS* television series, in a state court lawsuit against CBS alleging that CBS violated his first opportunity rights to write and executive produce *NCIS: LA*. The parties agreed to a confidential settlement one week before the start of the scheduled jury trial.

Represented Ross Klein, former head of the luxury hotel division of Starwood Hotels and then Hilton Hotels, in a federal pre-indictment criminal investigation in the Southern District of New York involving the alleged theft of trade secrets and computer fraud where the United States Attorney's Office in the Southern District of New York ultimately declined to bring charges. Also represented Klein in a parallel federal civil case in the Southern District of New York that ended with a confidential settlement.

Represented Tom Mackey, former COO of Tenet Health Care, in parallel criminal SEC, civil False Claims Act, class action and derivative proceedings involving Tenet's gross pricing practices and receipt of outlier payments all of which successfully resolved for Mackey.

Represented David Kohan and Max Mutchnick, the creators of the *Will & Grace* television series, and their agent in a three-month state court jury trial of their profit participation claims. After the jury agreed on \$49.5 million in compensatory damages and made punitive damages findings against defendant NBC Studios, the parties agreed to a confidential settlement of the case.

Represented defendant Chake Kojayan in a watershed prosecutorial misconduct case. Finding that the prosecutor lied to the jury and misled both the trial and appellate courts, the Ninth Circuit reversed Kojayan's conviction. The Ninth Circuit specifically praised Mr. Nessim's conduct and criticized the United States Attorney's Office for its conduct. *United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993). On remand, the district court dismissed the indictment with prejudice as a sanction for the government's misconduct.

Represented Lee Robbins, a state prisoner, in connection with his federal habeas corpus petition before the United States Supreme Court. The district court granted the petition and the Ninth Circuit affirmed. The U.S. Supreme Court granted certiorari and over vigorous dissents (Justices Stevens, Souter, Ginsburg and Breyer), the Court reversed on a 5-4 vote. *Smith v. Robbins*, 528 U.S. 259 (2000).

Represented Hector Contreras and HLC Electronics, his wholly owned corporation, in parallel federal civil and criminal litigation in a case involving alleged trademark infringement and various frauds involving reconditioned circuit breakers that were found in a number of sensitive U.S. military and nuclear facilities. Both Contreras and his corporation were acquitted of all 56 counts charged in the indictment after a six-week federal court jury trial. Also successfully settled the parallel civil case brought by large circuit breaker manufacturers in a manner that funded the criminal case.

Represented Benjamin Johnson, an internationally known art dealer, through a federal pre- criminal investigation where, after lengthy proceedings, the Court ordered the U.S. government to return the pre-Colombian art it had seized from Johnson and declined to bring criminal charges against Johnson. The Government of Peru then brought a parallel civil suit against Johnson in federal court claiming that his pre-Colombian art collection was the property of Peru under its patrimony laws. After a court trial, the court returned a verdict in Johnson's favor. *Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989).

Represented Precision Dynamics Corporation and several of its officers and directors in a state court trial involving a shareholder's challenge of the election of the corporation's directors and various alleged breaches of fiduciary duty. Following the end of the Plaintiffs' case in chief, judgment was entered for all of our defendant clients.

Represented Henry Mayo Memorial Hospital in an arbitration against a radiology group revolving around the hospital's termination of its contracts with the radiology group on fraud and abuse grounds. The arbitrator ruled in favor of the hospital on all claims.

Represented Stone Boardwear, Inc., aka Volcom, Inc., a defendant in a state civil antitrust case. After developing facts of a large tax fraud committed by the plaintiff company, successfully referred the matter to the United States Attorney's Office where the principal of the plaintiff company was criminally prosecuted. The civil case ended with a confidential settlement.

Represented Milberg LLP in a sanctions hearing in federal court in San Diego where the defendant corporation alleged that Milberg knowingly received and used stolen documents in the underlying federal securities class action. The court found that no misconduct had occurred.

Represented Thrifty Oil in a putative class action which went before the state appellate court twice, *Linder v. Thrifty Oil*, 58 Cal. App. 4th 664 (1997) and 91 Cal. App. 4th 1070 (2001)) and the California Supreme Court once (23 Cal. 4th 429 (2000)). The case ultimately resolved in a favorable settlement.

Represented Gregory Jenkins where following his acquittal of six of eight felony counts in a federal criminal court trial, the granting of a new trial motion as to the remaining two counts and, the filing of a prosecutorial misconduct motion, the government dismissed the remaining two counts.

## Published Cases

*Linder v. Thrifty Oil Co.*, 91 Cal. App. 4th 1070 (2001). Represented Thrifty Oil in this putative class action which went before the state appellate court twice (above and 58 Cal. App. 4th 664 (1997)) and the California Supreme Court once (23 Cal. 4th 429 (2000)).

*Smith v. Robbins*, 528 U.S. 259 (2000). Represented Robbins, a state prisoner, in connection with his federal habeas corpus petition, which raised several issues of federal constitutional law. The district court granted the petition and the Ninth Circuit affirmed. 152 F.3d 1062 (9th Cir. 1998). The U.S. Supreme Court granted certiorari and Mr. Nessim argued the case in October 1999. Over vigorous dissents (Justices Stevens, Souter, Ginsburg and Breyer), the Court reversed on a 5-4 vote.

*United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993). Represented Kojayan in this watershed prosecutorial misconduct case. Finding that the prosecutor lied to the jury and misled both the trial and appellate courts, the Ninth Circuit reversed Kojayan's conviction. The Ninth Circuit specifically praised Mr. Nessim's conduct and criticized the United States Attorney's Office for its conduct. On remand, the district court dismissed the indictment with prejudice as a sanction for the government's misconduct.

*Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989). Represented Johnson, an internationally known art dealer, through a federal pre-indictment criminal investigation involving pre-Colombian art where, after lengthy proceedings, the Court ordered the U.S. government to return the pre-Colombian art it had seized from Johnson and, based on our presentations, the government declined to bring criminal charges against Johnson. The Government of Peru then brought a parallel civil suit against Johnson claiming that his pre-Colombian art collection was its own under its patrimony laws. After a trial, the court returned a verdict in Johnson's favor on all counts. The Ninth Circuit affirmed in an unpublished opinion.

## HONORS & AWARDS

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Best Lawyers in America, White Collar Criminal Defense and Commercial Litigation, 2006-present

Ranked, Litigation: Media & Entertainment, *Chambers and Partners USA*, 2016-present

Top 100 Power Lawyers, *The Hollywood Reporter*, 2019

Elite Boutique Trailblazers, *National Law Journal*, 2018

Best Lawyers in America, Los Angeles Criminal Defense White Collar Lawyer of the Year, 2015

Local Litigation Star, *Benchmark Litigation*, 2015-present

Southern California Super Lawyers, *Los Angeles Magazine*, 2004-present

Legal Impact Report, *Variety*, 2014

## AFFILIATIONS

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Board of Directors, Constitutional Rights Foundation, 2020-present

Member, Standing Committee on Discipline, United States District Court, Central District of California, 2012-2016

Board of Directors, Public Counsel, 2002-2010

Co-Chair, National ABA White Collar Crime Committee, 2004-2007

Chair, West Coast Regional Subcommittee, ABA White Collar Crime Committee, 2002-2004

Co-Chair, Health Care & Abuse Subcommittee, ABA White Collar Crime Committee, 1998-2004

## PUBLICATIONS

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Co-Author, "The Application Of Sales Comparison Affiliate Transaction Provisions To New, In-House Streaming Transactions Involving Historical Television Programs, And Their Impact On Profit Participants" 2021 in 28 UCLA ENT. L. REV. \*\* (2021)

Author, "Profit Participation Claims," *Entertainment Law & Litigation*, Chapter 7, LexisNexis, 2017-2018

Co-Author, "Mandatory Arbitration Provisions in Talent-Studio Contracts and Proposed Areas for Improvement," 22 *UCLA Ent. L. Rev.* 233 (2015)

Author, "Five Things to Consider Before Bringing a Profits or Other Claim Against a Major Studio," Green Hasson & Janks LLP Publications, November 2014

Co-Author, "Recent Trials: Kilpatrick, Newman, and Nosal," American Bar Association's National Institute on White Collar Crime, March 2014

Author, "Taking the Fifth," *California Lawyer*, November 2013

Co-Author, "Major Fraud Cases of 2012: Blagojevich, Edwards, and Gupta," American Bar Association's National Institute on White Collar Crime, March 2013

Co-Author, "Medicare Cost Certification: The Government Asks Too Much," ABA National Institute on The False Claims Act and Qui Tam Enforcement, November 2001

Co-Author, "Open Questions Under the Anti-Kickback Statute," ABA National Institute on White Collar Crime, March 2000

Co-Author, "Litigation Issues in Fraud and Abuse," 19 *Whittier Law Review* 51, 1997

Author, "Criminal (and Civil) Trademark Infringement; What Statute of Limitations Applies?" *Journal of the Patent and Trademark Society*, December 1994

Author, "The Glass Slipper," *The Los Angeles Lawyer*, November 1994

Author, "Internal Investigations," ABA National Institute on Health Care Fraud, February 1994

Author, "Joint Defense Privilege and Conflicts of Interest," *The Los Angeles Lawyer*, May 1992

Author, "Conflicts and Confidences, The Defense Viewpoint," *ABA Criminal Justice*, Spring 1992

Author, "Parallel Civil and Criminal Litigation," *The Los Angeles Lawyer*, December 1990

## EVENTS

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Speaker, "Motion Picture and Television Profit Participants," American Bar Association Forum on Entertainment and Sports Industries, October 2019

Faculty, ABA National Institute on White Collar Crime, 1999-2001, 2003, 2005-2015

Multiple MCLE presentations on Mandatory Arbitration Provisions involving talent and studios and proposed areas for improvement, 2015-2016

Multiple MCLE presentations on "Lessons Learned in *Bellisario v. CBS*" to transactional entertainment firms and others, 2013-2014

Faculty, ABA National Institute on Health Care Fraud, 1993-2003, 2005, 2007

## FORMER POSITIONS

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Assistant United States Attorney, Central District of California, Criminal Division, Major Frauds Unit, Founding Chair-Bankruptcy Fraud Task Force, Commendations from FBI Director William Webster and other federal agencies, February 1984-December 1987

Associate, Gibson, Dunn & Crutcher, October 1980-February 1984

## ADMISSIONS

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California Bar, 1980

U.S. District Courts of California: Central, Northern, Southern, and Eastern Districts of California

Ninth Circuit Court of Appeals

United States Supreme Court