



# Thomas C. Sand

## Of Counsel

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Tom Sand represents publicly traded and privately held companies, financial institutions, directors, officers, individual investors, and others in disputed transactions that implicate the state and federal securities laws or involve similar legal challenges to business management practices. While his practice emphasizes securities issues, Tom is also sought after for his knowledge and experience with complex employment and business cases, including class actions.

A Fellow of the American College of Trial Lawyers, Tom is also ranked among leaders in *Chambers USA*, *Benchmark Litigation*, and *The Best Lawyers in America*® and has been named by *Super Lawyers Magazine* as one of the top ten lawyers in Oregon multiple times. Tom is dedicated to advancing the legal profession and participates in causes that provide equal access to the justice system. He is a former president of the Multnomah Bar Association, served on the boards of directors for the St. Andrew Legal Clinic and Children's Cancer Association, among other volunteer and leadership roles. From 1999 through 2008, Tom was the Managing Partner of Miller Nash LLP.

Tom has a strong record of success leading trial teams in a wide variety of securities matters, including class action and shareholder derivative litigation. He understands the complexities of these case and takes special care to guide clients through high stakes and sensitive issues while mitigating risks and adverse outcomes actions.

Tom has represented clients in novel and notable cases before various state and federal courts, including the United States Supreme Court, regulatory agencies such as the SEC, and successfully argued cases in the Ninth Circuit Court of Appeals, the Oregon Supreme Court, and the Oregon Court of Appeals. He is also a trusted mediator and arbitrator who has assisted dozens of parties in resolving disputes in business and securities matters.

### Professional Activities

- Miller Nash LLP, Managing Partner, 1999-2008
- St. Andrew Legal Clinic, Board of Directors, 2013-2016
- Multnomah Bar Association
  - President, 2016-2017
  - Board of Directors, 2015-2018
  - Professionalism Committee, Chair, 1988

### Education

J.D., Lewis & Clark Law School, 1977

B.A., English, University of Oregon, 1974

### Bar Admissions

Washington, 2011  
Oregon, 1977

### Court Admissions

Oregon Supreme Court, 1977

U.S. District Court, District of Oregon, 1977

U.S. Court of Appeals for the Ninth Circuit, 1984

U.S. District Court, Western District of Washington, 2012

U.S. District Court, Eastern District of Washington, 2012

U.S. Supreme Court

- Oregon State Bar
  - Federal Practice and Procedure Committee, Member, 1998-2001
  - Professionalism Committee, Chair, 1990
  - Securities Regulation Section, Executive Board Chair, 1999
- U.S. Bank of Oregon Advisory Board, Member, 2002-2013
- Multnomah Bar Foundation, President, 2010
- American Bar Association
  - Securities Litigation Section, Member
- Securities Industry and Financial Markets Association, Compliance and Legal Division, Member
- Northeast Legal Clinic Volunteer Lawyers Project, Volunteer
- Wasco County voter registration hearings, Special Assistant Attorney General, 1984

### Civic Activities

- Children’s Cancer Association, Board Member, 2016-2020
- Portland Golf Club, Board of Directors, 2014-2017
- U.S. District Court of Oregon Historical Society, Member, 1990-present
- Lewis & Clark Law School, Board of Visitors, Member, 2004-2008
- Alumni Association of Northwestern School of Law of Lewis & Clark College
  - President, 1997
  - Board of Directors, Member, 1992-1997
- Portland Area Council of Camp Fire Inc., Board of Directors, President, 1984-1985

### Representative Experience

#### Securities Litigation

- ***Wurster, et al. v. Deloitte & Touche LLP, et al.*** Represented 70 investors who collectively lost nearly \$100 million in the Aequitas Ponzi scheme. Obtained favorable settlements with third-party professionals in state court litigation and private arbitration, resulting in a gross recovery exceeding our clients’ investment losses.
- **In Re Barrett Business Services Securities Litigation.** Tom represented a publicly traded company in defending a federal court class action securities fraud case, a state court shareholder derivative suit, and government investigations by the Department of Justice and SEC Enforcement Division. The claims arose from various allegations of accounting impropriety and insider trading that were successfully resolved.
- **Umpqua Bank Shareholder Derivative Suit.** We achieved trial court dismissal of shareholder derivative claims that executive compensation was excessive and approved in violation of the “say-on-pay” provisions of Dodd-Frank legislation. We represented the directors and officers of a publicly traded bank holding company, together with national counsel.
- **Schilling Livestock v. Sterling Bank.** Our client won a unanimous defense award from a panel of three arbitrators after two weeks of hearings on investor claims for securities violations arising from tenant-in-common investments.
- **Boyer v. Salomon Smith Barney.** Our client, a broker-dealer of investment securities and commodities, won a jury verdict after a six-day trial. The case was brought by a commodities trader alleging claims for breach of contract, breach of fiduciary duty, statutory violations, and negligence seeking compensatory and punitive damages for losses incurred in connection with trading contracts for future delivery of crude oil and natural gas. The plaintiff appealed, and the Oregon Court of Appeals split five votes to five. The Oregon Supreme Court unanimously affirmed in favor of our clients, the broker-dealer and its agents.

- ***Barinaga, et al. v. Paulson Investment Company, Inc. and UBS PaineWebber, Inc., et al.*** This case was brought by an investor who engaged in “short-selling” stock. After a substantial share value drop, claimant alleged numerous claims, including that his loans of stock were investment contracts and thus constituted sales of securities in violation of state and federal securities laws. Claimant sought \$52 million in damages, plus attorney fees. Four experts testified in support of claimant’s theory, but the three-member arbitration panel dismissed claimant’s claims in their entirety. The arbitrators also awarded our client UBS all its attorney fees incurred in defending the case.
- ***Wallace v. Hinkle Northwest Inc.*** Plaintiff alleged several claims arising from losses she incurred on investments, and after a week-long trial, the jury returned its verdict in favor of our clients, the brokerage firm and the stockbroker, on all claims. The court of appeals affirmed the jury verdict in part but remanded the case on one legal ruling by the trial court. On remand, the case was settled for a nominal amount.
- ***In re Badger Mountain Irrigation District Bondholder Litigation.*** This case began when a bankrupt irrigation district brought a claim against the underwriting firm that handled its municipal bond offering. We succeeded in dismissing all claims brought by the district against the underwriter in state court, and then we defended against the bondholders’ claims in a federal court class action, which was resolved in a settlement.
- ***The Estate of Glancy v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*** The family members and heirs of a deceased executive alleged mishandling of stock option transactions and sued our client to recover nearly \$900,000. The three-member arbitration panel unanimously ruled in favor of Merrill Lynch and dismissed all the claims.
- ***Fulkerson, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.*** Claimants sought damages for allegedly unsuitable investment recommendations, violations of the securities laws, fraud, and negligence, including claims for punitive damages. All claims were unanimously rejected by the arbitration panel. A small award was entered in claimants’ favor for a clerical error that we conceded.
- ***In re Louisiana Pacific Corporation Securities Litigation.*** Shareholders brought a nationwide class-action securities fraud case because of a decline in the company’s stock price after significant losses in product liability litigation. The case was settled before trial, but only after extensive and complex litigation.
- ***Brown and Boston PCS 2000, et al. v. Gary H. Arizala, et al.*** These consolidated actions involving multiple parties alleged securities fraud in connection with creation of a cellular telephone network in Puerto Rico. After several years of litigation, we obtained dismissal of our client, the law firm that created the entity and prepared the securities offering that was alleged to be unlawful.
- ***In re Capital Consultants Litigation.*** We represented several trust funds in claims against an investment adviser and numerous others arising out of mismanaged investments causing losses of hundreds of millions of dollars. After prevailing in significant motions and more than a year of mediation, all claimants recovered approximately \$200 million.
- ***In re Southern Pacific Funding Corporation.*** On the first day of trial, we settled an action involving a lender whose stock had been traded on a national exchange and that was forced to seek bankruptcy reorganization following a dramatic decline in its stock price. It was, at the time, the largest bankruptcy in state history.
- ***Newman v. Comprehensive Care Corp.*** In this case, investors sued multiple defendants after failure of a proposed merger transaction that arose from a proxy solicitation. The complaint alleged violation of federal securities laws, RICO, and state law claims. In representing the investment banker, we obtained summary judgment before trial.

### Employment Litigation

- ***Sibley v. Portland Public School District.*** Our client, Portland Public School District, won a jury verdict after a four-week trial, defeating claims by a former administrator who alleged “whistleblower” retaliation, defamation, “false light,” battery, and intentional infliction of emotional distress when her position was eliminated after she raised concerns about safety in special education programs.

- **Spicer v. Cascade Health Services, Inc.** We won a unanimous jury verdict in favor of our hospital client, the employer, after nearly three weeks of trial in federal court. Plaintiff, a nurse manager, brought claims against the hospital for discrimination, retaliation, and breach of confidentiality, based on her post-traumatic stress disorder. The Ninth Circuit Court of Appeals affirmed.
- **Snider v. Barrett Business Services, Inc.** Our client (the employer) won a unanimous jury verdict in a case brought by plaintiff, a disabled worker, for discrimination and retaliation in her employment. The judgment was affirmed by the Oregon Court of Appeals.
- **DeJong v. WinCo Foods, LLC.** Won a jury verdict after a four-day trial defeating all claims arising from plaintiff's termination of employment. Plaintiff alleged that he had been discriminated and retaliated against for utilizing the workers' compensation system after an injury on the job.
- **Norman G. Lewis v. Washington State University, et al.** Our client, a state university, won a decision from the United States Court of Appeals for the Ninth Circuit which held that a tenured professor failed to establish a constitutionally protected property right to continue as project director of a federal grant. The decision was upheld on appeal to the United States Supreme Court.
- **Howard v. Waremart, Inc.** After a five-day trial, the jury returned a verdict "in favor" of the plaintiff for only \$2. This case involved a wrongful-discharge allegation and "whistleblower" claim brought by a former employee against our client. The court of appeals remanded the case for further proceedings because it disagreed with the trial court's decision to grant a motion for directed verdict on the issue of punitive damages. The case then settled.
- **Drew Ray v. Frito Lay.** In a federal court jury trial, we achieved a defense verdict on behalf of the employer who was accused of race discrimination.
- **Downs v. Waremart, Inc.** The Oregon Supreme Court affirmed summary judgment on behalf of our client, the employer, on all claims except for defamation (an issue of first impression), which was resolved by settlement on remand. The case was brought by a discharged employee who sought damages for a variety of claims arising from her discharge, including defamation.
- **Davidson v. UBS/Paine Webber, et al.** The arbitration panel denied claimant's claims and awarded our client damages on its counterclaim. The claimant, a former employee, asserted numerous claims, including employer retaliation for "whistleblowing" related to alleged violations of SEC regulations. Our client asserted a counterclaim for breach of contract.
- **Byun, et al. v. Winco Foods, Inc.** The trial judge dismissed all claims on our motion for directed verdict at the conclusion of plaintiffs' case. The action was brought by five Korean grocers alleging violation of public accommodation statutes based on ethnic origin.
- **Wage and Hour Class Actions.** In several wage and hour class action cases, Tom has negotiated favorable settlements early in the litigation, often before class certification, most recently in an action challenging a company-wide overtime payment program.

### Business Litigation

- **Major builder's risk insurance recovery for new Oregon data center.** Successful litigation and mediated resolution of a project owner's \$8 million claim against its builder's risk insurance carriers following two explosions and fires during the construction of a 250,000 sq. ft. data center in Washington County, Oregon. The builder's risk insurers' untimely and unreasonable claims adjustment resulted in zero payment to the project owner prior to Miller Nash's involvement. Litigation involved extensive discovery of electronically stored information and depositions, in addition to summary judgment briefing and other motions. With the assistance of a mediator, the vast majority of the owner's losses were recovered.
- **Gary M. Klein, et al. v. West Coast Bancorp, et al.** Tom represented an acquired bank in a shareholder class action alleging breach of fiduciary duty in approving a merger. The case settled while our motion to dismiss was pending.

- ***Sulzer Pumps v. Pacific Indemnity, et al.*** We successfully resolved long-tail insurance coverage for superfund environmental claims after 18 months of litigation in two states that included winning Oregon’s first recorded antisuit injunction prohibiting insurers from continuing with a duplicative action brought by them in another state seeking a declaratory judgment of no coverage.
- ***IBEW Local 98 Pension Fund, et al. v. Cascade Corporation.*** Tom represented a manufacturing company in a shareholder action alleging breach of fiduciary duties by company directors in connection with a merger. The case was settled while our motion to dismiss was pending.
- ***Hemstreet, et al. v. Merrill Lynch Mortgage Capital Inc.*** The district court issued an opinion and order granting our motion for summary judgment on plaintiff’s claims for fraud, breach of contract, negligence, and intentional interference with contract.
- **\$75 Million Recovery—Bodily Injury/Religious Institutions.** Acting as lead counsel for the Archdiocese of Portland in Oregon’s insurance coverage team, we recovered more than \$75 million from their insurers after years of litigation and mediation.
- ***Van De Hey v. U.S. National Bank of Oregon.*** We prevailed in each of two separate state court proceedings, including two rounds in the Oregon Court of Appeals and in the Oregon Supreme Court, as well as in a separate action filed by plaintiffs in federal court. This series of cases was brought by trustees of various employee benefit trusts and alleged violations of the Employee Retirement Income Security Act of 1974.
- ***ITEX Corporation and SLI, Inc. v. Saul Yarmark; Stephen Friedland; Business Exchange International Corp., and BX International.*** We represented plaintiff, a public company, in litigation arising from the disputed acquisition of a 50 percent stake in a privately held competitor. We recovered judgment along with an award of damages to compensate our client for attorney fees and court costs. The case was then settled on appeal.
- ***Clopper v. Merrill Lynch Relocation Management, Inc.*** We prevailed on behalf of defendant in a jury trial, on appeal to the Ninth Circuit Court of Appeals in the primary action, as well as in ancillary proceedings against opposing counsel, also appealed to the Ninth Circuit. This case began as a real estate dispute over competing property appraisals.
- ***Epiq Systems v. Prutsman.*** This case involved competing litigation in two different state courts and a federal court. After a two-day trial, we obtained a preliminary injunction enforcing a covenant not to compete and protecting trade secrets.
- ***All Phase Utility Corp. v. Williams Communications, Inc.*** We represented defendant and prevailed on a motion for summary judgment after plaintiffs sought to recover nearly \$500 million, alleging that defendant had absconded with route and stationing information and then built a fiber-optic route in violation of the Oregon Trade Secrets Act and a nondisclosure agreement.
- **Grifphon Asset Management Litigation.** Tom represented a group of investors in recovering funds lost due to a Ponzi scheme.

### Civil Rights

- **Wasco County Voter Registration Hearings.** When Bhagwan Shree Rajneesh and his followers threatened to take over the government of Wasco County, Tom joined other Miller Nash lawyers in donating their time to take buses to The Dalles, Oregon, to hold voter qualification hearings for registered voters. Our efforts to protect the sanctity of the ballot box received national and international attention.
- **Citizens’ Rights and Obligations Under Public Accommodation Laws.** When citizens of Grant County, Oregon, were concerned that a neo-Nazi group would locate its headquarters in the county, Oregon’s Attorney General asked Tom to lead a Miller Nash team to advise the citizens on their rights and obligations under public accommodation laws.

### Pro Bono

- **State v. Lawrence.** For more than six years, Tom worked on appeals raising constitutional challenges to the conviction of a young mentally ill Native American suffering from the effects of fetal alcohol spectrum disorder. The Washington Supreme Court referred the case back to the trial court for a hearing on the defendant's competence to waive his right to counsel. After a two-day hearing involving lay and expert witness testimony, the court found in favor of the defendant. That led to an appellate court decision to vacate the conviction and remand the case for a new trial on the original charges, which, in turn, resulted in a new sentence reduced by more than 50 years.

### Client Comments

- Results achieved on behalf of one client in one matter does not necessarily indicate that similar results may be obtained for other clients.
- *"Thanks again for the excellent job you did as our mediator. We all appreciate how much effort you put into the case and I am convinced that most mediators would not have gotten the claims settled. You have a very effective style!"* (Plaintiff's Counsel)
- *"Mr. Sand's performance as a mediator . . . was exemplary. He was thoroughly prepared and knowledgeable. It was clear to both sets of defense counsel that we did not need to spend any time educating him on the . . . unique complexities of alternative products. Mr. Sand is clearly an experienced litigator in securities matters, and that experience was an important benefit in our mediation. He demonstrated great patience as well, diligently working for nearly 11 hours in resolving our case."* (Defense Counsel)

### Publications

- "Legal Aid Needs Us Now More Than Ever," Multnomah Bar Association, *Multnomah Lawyer* (May 2017)
- "Fixing a Hole: The New Courthouse is Becoming a Reality" Multnomah Bar Association, *Multnomah Lawyer* (Apr. 2017)
- "2015 Broker-Dealer Litigation Survey," American Bar Association, contributor (Mar. 2016)
- "Constitutional Catch-22," *NWLawyer* (Oct. 2015, vol. 69, no. 7)
- "Democracy Needs You!" Multnomah Bar Association, *Multnomah Lawyer* (Dec. 2010, vol. 56, no. 11)
- "Miller Nash Helps the Archdiocese of Portland in Oregon Emerge From Bankruptcy After Recovering \$52 Million From Insurance Companies," Miller Nash, *News You Can Use* (June 2007)
- "Market Participants Under Fire: Legal and Regulatory Developments Affecting Advisors, Directors, and Professionals," Northwest Securities Institute (Feb. 2005)
- "Venue and Transfer," Oregon State Bar CLE, Federal Civil Litigation in Oregon (1994)
- "Liability of Clearing Brokers," American Bar Association, ABA Securities Litigation Committee—Broker Dealer Subcommittee, Broker Dealer Litigation 1991 Annual Survey (1992)
- "Summary Judgment," Oregon State Bar, *Civil Litigation Manual* (1982, 1990, and 1992 supplements)
- "Costs and Attorney Fees," Oregon State Bar, *Damages* (1980, 1984, and 1990 supplements)
- "The Growing Concept of Professionalism," Oregon State Bar, *Ethics and Professionalism* (1990)
- "Individuals," Oregon State Bar, *Pleading and Practice Manual* (1983 revision)

### Presentations

- "Litigation Risk Assessment," Oregon State Bar, Corporate Counsel Section CLE (June 2013)
- "The Plot Thickens: A State and Federal Legal Update," Miller Nash, Employment Law Seminar (Oct. 2012 and Nov. 2012)
- "Keeping Up With Continual Change: An Update on State and Federal Laws," Miller Nash, Employment Law Seminar (Oct. 2011 and Nov. 2011) Oregon State Bar, 29th Annual Northwest Securities Institute (Feb. 2009)

- “Updates to State and Federal Employment Law,” Miller Nash, Employment Law Seminar (Sept. and Oct. 2008)
- Oregon State Bar, 18th Annual Northwest Securities Institute (Feb. 1998)
- “Arbitration of Claims Against Stockbrokers and Securities Firms,” Securities Law for the Unwary seminar (Nov. 1997)
- “Customer-Stockholder Disputes,” 17th Annual Northwest Securities Institute (Feb. 1997)
- “Current Issues in Securities Arbitration,” 15th Annual Northwest Securities Institute (Feb. 1995)
- “Recent Developments in Securities Litigation and Arbitration,” 13th Annual Northwest Securities Law Institute (Feb. 1993)
- “Liability of Financial Professionals,” Washington Association for Financial Planning, 17th Annual Conference (Feb. 1993)
- “Liability of Financial Professionals—Pitfalls and Prevention,” International Association of Certified Financial Planners (Sept. 1992)
- “ERISA Compliance Seminar,” Qualivest Capital Management (Mar. 1992)
- “ERISA Compliance Seminar,” U.S. Bank (Mar. 1992)
- “Arbitration Update,” 12th Annual Northwest Securities Law Institute (Feb. 1992)
- “Liability of Financial Professionals,” International Association for Financial Planning—Mid Oregon Chapter, Compliance Issues 1992 seminar (Jan. 1992)
- “Securities Arbitration: Defendants’ Perspective,” Oregon State Bar, Securities Law for Non Securities Lawyers conference (May 1991)
- “Professionalism in Trial Practice (The Lawyer’s Perspective),” Federal Bar Association—Oregon Chapter, Federal Practice and Procedure Seminar (Nov. 1990)
- “Learning the Ropes,” Professional Liability Fund and Northwestern School of Law of Lewis & Clark College (June 1990)
- “The Growing Concept of Professionalism,” Portland Legal Secretaries Association (May 1990)
- “Professionalism,” Multnomah Bar Association and Northwestern School of Law of Lewis & Clark College, panelist (Nov. 1988)
- “Forum on Professionalism,” Multnomah Bar Association, moderator (Nov. 1988)
- “Pre-Litigation Preparation,” Law Seminars Inc. (Nov. 1987)
- “Business Malpractice: Accountants, Stockbrokers, Officers and Directors,” Oregon State Bar CLE (June 1987)
- “Pretrial Motions,” Practical Skills Program (Oct. 1986)
- “Pretrial Motions,” Bridging the Gap conference (Oct. 1982)

## Recognition & Honors

- Fellow, American College of Trial Lawyers
- Recognized as a “Leader in Their Field” by *Chambers USA* for Litigation: General Commercial—Oregon
- Selected for inclusion in *The Best Lawyers in America*® (Portland, OR)
  - Corporate Compliance Law, 2024-present
  - Litigation—Banking and Finance, 2024-present
  - Employment Law—Management, 2022-present
  - Litigation—Labor and Employment, 2011-present
  - Litigation—Securities, 2011-present; “Lawyer of the Year,” 2019, 2024
  - Bet-the-Company Litigation, 2010-present
  - Commercial Litigation, 2006-present
- Selected for inclusion as an Oregon Super Lawyer, 2006-present
  - Top 10 Oregon Super Lawyers, 2008, 2013, 2015, 2018-2021
  - Top 50 Oregon Super Lawyers, 2006-present
- Named an “Oregon Litigation Star” by *Benchmark Litigation*, 2012-Present

- 2004 Distinguished Graduate, Lewis & Clark Law School
- Member, American Board of Trial Advocates
- Named to the Washington State Bar Association Supreme Court Pro Bono Public Honor Roll, 2013-2014
- Selected for inclusion on the “Client Service All-Stars” list by The BTI Consulting Group, 2011, 2013
- Named the “2004 Distinguished Graduate” by Lewis & Clark Law School
- Rated AV<sup>®</sup> Preeminent<sup>™</sup> by Martindale-Hubbell<sup>®</sup>

### **Personal Activities**

Tom enjoys golf, playing the guitar, and writing and recording music.