

caregiver and her sons. *Estate of Odian*, C.A. 4th., DAR p. 15500

Workers' Compensation: Statute awarding worker's compensation death benefit to decedent's estate is unconstitutional. *Six Flags Inc. v. NCVAB*, C.A. 2nd., DAR p. 15485

Briefly

RE-ENACTMENT — The Black Repertory Group will re-enact the execution of Crips co-founder and murderer Stanley Tookie Williams to mark the one-year anniversary of the former gang leader's death by lethal injection.

Williams' longtime friend and co-author Barbara Becnel and Shirley Seal, a vice president at The Africa Channel, are co-producing the Dec. 12 event to show what they witnessed as "dramatic and horrific."

"This is what the state of California is doing in the name of its people," Becnel said Tuesday. "We were there. We saw it. Now we want the public to see what we saw."

Becnel, who co-wrote the script with Neal, said the Berkeley event, which is meant to make a political statement, will begin with music and speeches celebrating Williams' peacemaker legacy.

— Associated Press

INDEX

Classified Advertising 9-13
Crossword 13
Legal Notices 14-16

05CR-00398 (C.D. Cal., filed April 27, 2005).

That caught the attention of officials at the highest levels of the Justice Department, where Attorney General John Ashcroft praised the company's response in several speeches. A few months later, an internal memo circulated to federal prosecutors. It advised

companies to withhold legal fees, a rule that the Justice Department may relax, according to attorneys familiar with the matter.

"Where Homestore made its biggest mark was when they announced the cooperation deal," said Jim Asperger, a former federal prosecutor and O'Melveny & Myers partner in Los Angeles. "It was

brief statement that the company's response allowed it to move forward under new management.

Although Arthur Andersen's indictment demonstrated why corporations would want to cooperate, Homestore showed how to do it. And now, after ex-Homestore CEO Stuart Wolff has been convicted and sentenced to a 15-year prison

that quickly led to plea deals with three former workers. Prosecutors argued that, as the high-flying dot-com era waned in 2001, Homestore executives had lined up \$45 million in false online advertising revenues. Although they booked deals with online advertisers, the

See Page 8 — CASE

Millionaire Labeled a Thief for Profitable Dip Into Friend's Trust

By Rebecca Beyer

Daily Journal Staff Writer

LOS ANGELES — Earlier this year, investor Neil Kadisha was ranked 41 among the Los Angeles Business Journal's 50 richest Angelenos. Several years ago, Forbes ranked Kadisha, one of the founders of the high-tech communications firm Qualcomm, one of the wealthiest men in the United States.

But in a decision last month, a retired Los Angeles Superior Court judge sitting on assignment labeled Kadisha "a common thief."

Judge Henry W. Shatford made his ruling in a dispute over Kadisha's handling of the \$6 million trust of a friend's widow, who contended that Kadisha used the trust money in conflicted transactions for his own benefit.

Kadisha, a principal at Beverly Hills-based investment firm Omnicent, could not be reached for comment. Nor could his lawyers. Kadisha is represented by Bernard J. Nussbaum and John E. Walker of Sonnenschein Nath & Rosenthal's Chicago and Los Angeles offices, and Marvin G. Burns, a private practitioner in Los Angeles.

Kadisha is also represented by public relations firm Sitrick and Company. His representatives there drew a starkly contrasting picture of Kadisha's actions. His management of the trust, they contended, actually made the friend's widow more than \$27 million in principal and payouts by September 2000.

In briefs from their closing arguments, Kadisha's attorneys argued that the trust agreements permitted Kadisha to manage,

sell, invest, borrow and lend the trust assets without any conflict of interest.

The conflicted transactions, they wrote, were some of the most profitable.

But those argument did not sway Shatford, who in a colorfully worded opinion wrote that Kadisha's defense "dissipates like fog on a hot summer day" and that Kadisha's attorney for the trust "concocted a trust agreement with escape clauses designed to relieve Kadisha of any warranty he would provide lawful trustee services."

Shatford, who turned 89 on Nov. 14, came back from retirement in 1993 to act as a sitting judge. He presided over the dispute between trustee Neil Kadisha and beneficiary Dafna Uzyel in a nonjury trial that lasted four and a half years.

The two cases against Kadisha,

both filed in 1999, alleged that he "mismanaged, self-dealt, obtained secret profits, and used assets of the trust for his own personal benefit."

"In short, he did the opposite of what the duty of the trust compelled him to do," said Samuel Krane, Uzyel's lead attorney from Krane & Smith in Encino. "His contention is that he took the money, paid it back and made a lot of money. So what, you could make for them a lot of money — the point is you can't benefit."

Shatford kicked off his ruling with a quote from Oscar Wilde. "The truth is never pure and rarely simple."

According to Shatford's decision, Kadisha was able to take advantage of Uzyel because she had "a 10th-grade education, minimal

See Page 8 — JUDGE

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See Pa

In Plaintiff-Friendly District, Intel Deflects Patent Challenge

By Anna Oberthur
Daily Journal Staff Writer

SAN FRANCISCO — Intel Corp. has suc-



Davis Wright Plans to A Washington-Based Cole

By Robert Iafolla
Daily Journal Staff Writer



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Department has stood by the rules.
Recently, Paul McNulty, deputy
attorney general, has been consid-
ering a revision, according to attor-
neys familiar with the matter.

The issue of attorney fees came
up again when KPMG, an ac-
counting firm that allegedly sold
illegal tax shelters, reached a de-
ferred-prosecution agreement with
federal prosecutors. This summer,
in a New York federal courthouse,
U.S. District Judge Lewis Kaplan
ruled that prosecutors put uncon-
stitutional pressure on KPMG to
withhold legal fees from its former
executives.

This month, Kaplan delayed the
case indefinitely, pending an appeal
to the 2nd Circuit, but hinted that he
would dismiss an indictment if pro-
secutors did not reverse course.

The American Bar Association's
House of Delegates passed a resolu-
tion against the Thompson memo-
randum in August. It condemned
policies that erode a defendant's
right to trial and other constitutional
rights, specifically such as when
companies face pressure to withhold
payment of legal fees. At least seven
state bars, though not California,
have convened task forces to weigh
in on Thompson's guidelines.

Tasia Scolinos, director of public
affairs at the Justice Department,
did not return phone calls for this
article. In the past, Mary Beth Bu-
chanan, U.S. attorney for the West-
ern District of Pennsylvania, has
said that companies often volunteer
to cooperate with the Thompson
memorandum standards and that
prosecutors rarely pressure them to
meet said standards.

Handzlik, who represented Gie-
secke in Homestore, sat on the ABA
committee that passed recommen-
dations to the House of Delegates for
its resolution and has been outspo-
ken on the issue.

He declined to comment on the
Homestore prosecution in which
Giesecke, former chief operating of-
ficer and a main witness for the gov-
ernment, was sentenced to one year
in prison, at a hearing this month.

But Handzlik said that the issue
of withheld legal fees has come up
in other cases he has worked on.

"There is a need to restore funda-
mental fairness to the way in which
officers and employees are treated
during investigations," he said.

Judge Shames Millionaire for Profiting Off of Trust in His Care

Continued from page 1

understanding of the English lan-
guage, and a total lack of financial
business experience."

But Kadisha's attorneys argued
that the "evidence belies such
vacant intellect." Dafna Uzyel and
her new husband pretended they
did not understand trust account-
ings — after arguing initially that
they hadn't received any, Kadisha's
attorneys said.

Dafna Uzyel had worked only
briefly as a make-up artist. Her
husband, Rafael Uzyel, had made
millions in the fabric business. He
and Dafna, who immigrated to the
United States after moving from Is-
rael to Turkey, had assets valued at
several million dollars, including a
house in Israel, cash in Switzerland
and a home in Beverly Hills, Krane
said.

In 1986, 40-year-old Rafael
Uzyel died of a heart attack while
driving Dafna, then his 28-year-
old wife, and their young children
back from a vacation. After his
death, Rafael's Switzerland-based
sister was concerned about Dafna-
Uzyel's ability to handle the fam-
ily's money.

She insisted that some of it be
put into a trust for the children.
Family friend Neil Kadisha was
appointed trustee. Kadisha and
his attorney set up a second trust
with Dafna's portion of the money
on their own, according to court
documents.

"Kadisha and the Uzyels were
social friends," Krane said. "You
know how you have an A group of
friends — they were B or C group.
But Dafna had no one to turn to,
and he was providing economic
assistance [until the trust money
became available] and guiding her
through the legal process."

In 1988, Kadisha became the
trustee of two trusts: one for Dafna
Uzyel and one for her children,
Izzet and Joelle. Kadisha was re-
sponsible for distributing money
to Dafna and paying the tuition of

the Uzyel children.

He did that, but not always, ac-
cording to the judge's ruling.

In 1999, when Dafna Uzyel's
second husband, Ron Levi, and
her son Izzet asked for \$300,000,
Kadisha did not immediately pro-
vide it. So the Uzyels hired the
Encino law firm Krane & Smith to
investigate. In October 1999, two
breach-of-trust cases were filed
against Kadisha.

On Nov. 13, Shatford issued
a judgment against Kadisha of
\$95 million in compensatory dam-
ages and \$5 million in punitive
damages for his actions in han-
dling the Uzyel trust.

But the next day, he vacated that
judgment because he had not al-
lowed Kadisha's attorneys the full
15-days to object. Kadisha's side
has until today to respond to a new
proposed judgment.

"[Shatford] said he's not chang-
ing his statement of decision,"
Krane said. "He's just going to
enter a new judgment, and it won't
change unless they find I made
mathematical errors."

The damages were calculated
using Krane's analysis of the value
of investments and stocks that
Kadisha bought and sold through-
out his trusteeship.

But Shatford's statement of deci-
sion states that Dafna Uzyel and
her children deserve some of the
profits from Kadisha's investments.

"Had Qualcomm gone the way
of a multitude of other dot coms,
petitioners would have had no
recourse against Kadisha because
of the failure of his other invest-
ments. Since they were forced to
unwittingly share in the risk of
Kadisha's investment decisions,
they are also entitled to share in
the benefits," Shatford wrote.

Though Shatford acknowledges
the Uzyel trusts saw "a very large
ultimate financial gain," as a result
of Kadisha's investments, the
judge said Kadisha's use of the
money was still embezzlement.

According to an exhibit from
Kadisha's defense, that gain was
an annual return of 22 percent.

"No trustee returning such re-
sults has ever been surcharged,"
wrote Kadisha's attorneys in their
closing briefs.

But Krane said that made no
difference.

"Understand one thing, that
is no different than me stealing
money from the bank, I invest it
and then I return it to the bank
with interest and say, 'no harm, no
foul,'" he said.

Judge Shatford agreed.

"Kadisha's defenses rest be-
yond denials, but upon a grossly
contrived conception a thief can
steal money and keep the benefits
therefrom. And further that if he
elects at some point to return the
money with interest, he is to be
forgiven for his thefts. He is sadly
mistaken," Shatford wrote.

"But malice or fraud is not
waived, ignored, or forgiven by a
fortuitous financial gain," Shatford
continued. "The almighty dollar
does not bear a cross or other re-
ligious symbol."

Though Kadisha's attorney,
Hugo D. de Castro of De Castro,
West, Chodorow, Glickfeld & Nass
in Los Angeles, advised him "as to
his limitations and obligations as
a trustee, he totally ignored [de
Castro's] advice and repeatedly
entered into conflicted transac-
tions," Shatford wrote.

De Castro did not return phone
calls seeking comment.

In total, the Uzyels claimed that
Kadisha took more than \$6 million
from the trusts. One of the claims
against Kadisha was that he used
the trust money to invest in Qual-
comm Incorporated, a company he
helped found and for which he was
a member of the board of direc-
tors beginning in 1988. Kadisha
resigned from that position in May
2002.

In 1988, Kadisha used \$300,000
from Dafna's trust as a loan to
Qualcomm, which was then a

fledgling communications com-
pany. According to Shatford's
statement, Kadisha also took
money from the trust "for his own
use to bolster his shaky finances"
and used trust money to invest in
a company that was directly linked
to a company for which he was a
chief executive officer.

To protect himself, Kadisha
had three amendments to the
trust added over time to relieve him
from civil liability. Dafna signed the
amendments although in his state-
ment of decision, the judge wrote:
"Dafna never had independent legal
representation nor was she advised
to seek independent counsel."

After the petitions for breach of
trust were filed in October 1999,
Kadisha withdrew money from the
trusts to pay his own legal fees in
the matter. He was later ordered to
pay it back. His attorneys argued
that the trust agreements allowed
him to hire attorneys using trust
money.

Judge Shatford wrote "the court
finds that the petitioners have
shown, by clear and convincing
evidence, that they are entitled
to punitive damages for his con-
duct in the management of both
trusts."

Shatford did not find that all of
the Uzyels' claims that Kadisha
benefitted from the trust money
were valid. One, he wrote, "is not
uninteresting but is as leaky as
the New Orleans levee when hit
by Katrina."

In his issued statement, Kad-
isha's public relations representative
wrote, "although the court has
ruled in favor of Mr. Kadisha on
most of the petitioner's claims,
we nonetheless are dismayed that
the trial court has, until now, ruled
in the petitioner's favor on some
remaining issues."

Those claims, he wrote, his side
respectfully believes have been
"incorrectly decided" and will
appeal.