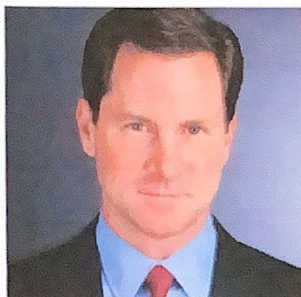


Professionals Daniel J. Toal



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Practices

Litigation
Financial Institutions
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International Arbitration
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Mergers & Acquisitions Litigation

Education

J.D., Georgetown University Law Center, 1995
cum laude

A.B., Dartmouth College, 1990

Clerkships

Hon. Susan H. Black, U.S. Court of Appeals,
11th Circuit

Hon. Helen W. Gillmor, U.S. District Court,
District of Hawaii

Bar Admissions

New York

A partner in the Litigation Department, Dan Toal has extensive experience representing major corporate clients in complex and high-profile litigation. Dan's practice is concentrated in complex commercial disputes, securities litigation, environmental litigation, and employment law. He also has handled numerous significant international arbitrations, regulatory matters, and internal investigations for a broad range of clients.

EXPERIENCE

An experienced trial lawyer, Dan has litigated cases in federal and state courts throughout the country. He also has represented clients in numerous international and domestic arbitrations.

Among his recent significant matters, Dan:

Represented **Major League Baseball** in a nationwide antitrust class action challenging its broadcast structure and out-of-market packages. After a three-day evidentiary hearing, the court granted our motion to exclude the damages opinions of plaintiffs' economic expert and dismissed plaintiffs' \$1 billion damage claim. The plaintiffs' claims for injunctive relief were then successfully resolved.

Represented **ExxonMobil** as trial counsel in a precedent-setting natural resource damage litigation in which the State of New Jersey sought damages of \$8.9 billion, making it one of the largest environmental damage cases ever tried. After an eight-month bench trial, the case settled for \$225 million.

Represented **Activision** in an employment and contractual dispute with the designers of the *Call of Duty* video-game title, and 40 former employees of their design studio. The departed employees sought more than \$1 billion in damages. The case was successfully resolved on the eve of trial.

Represented **Citigroup**:

in its arbitral victory defeating a multi-billion-dollar fraudulent inducement, breach of contract, and breach of fiduciary duty claim brought by the Abu Dhabi Investment Authority related to its \$7.5 billion investment in Citigroup;

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*NOT ADMITTED TO THE NEW YORK BAR

November 4, 2008

Received-Seattle

BY ELECTRONIC MAIL AND U.S. MAIL

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Garden City Group

Morgan Stanley & Co. Inc., No. 2005001449202

Dear Mr. Skolnik:

We represent Morgan Stanley & Co. Inc. ("Morgan Stanley") in the above-referenced matter. We write to object to the additional search request submitted by claimant E. Mandell de Windt (arbitration no. 04-02307 and Garden City Group control no. 2967056740).

Mr. de Windt now proposes that Morgan Stanley perform an additional search for e-mails created from January 1, 2001 to September 11, 2001 sent to, from, or copying Zoe Cruz, Kenneth S. Carberry, or Josh Zucker that contain the words "kemper," "lumber," "lumbermen," or "carberry."

Mr. de Windt's request for an additional search is governed by Section F.4 of the Plan of Distribution ("POD"). Section F.4 provides that, following receipt of e-mails generated by custom or standardized searches,

a claimant may make one additional request for additional e-mail searches based upon the results of the initial search upon satisfying the Fund Administrator that under the circumstances the proposed additional search terms and criteria are reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration.

POD, § F.4 (at 7). The POD thus requires Mr. de Windt to establish that his proposed additional search is both (i) based upon the results of the initial search, and (ii) reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration. Moreover, the form sent to Mr. de Windt by The Garden City Group clearly set forth these conditions for obtaining an additional search. (*See* Standard Payment Election / Additional E-Mail Search / Request for Independent Determination Form, Section B.)

Mr. de Windt, however, has failed to satisfy either of these requirements.

With respect to the former requirement, Mr. de Windt does not establish how the proposed additional search is based on the results of his initial search. Morgan Stanley provided the claimant with four responsive documents following its initial, standard search for e-mails relating to Mr. de Windt's arbitration. (These e-mails are annexed.) Mr. de Windt, however, has provided *no* explanation for how his proposed search terms are "based upon the results of the initial search." Indeed, his request does not contain *any* discussion of, or reference to, the four documents that were provided to him as a result of the initial search.

Furthermore, Morgan Stanley has reviewed those four documents, and is unable to identify any relationship between those e-mails and the requested additional searches. In fact, none of the four documents are to or from the three individuals identified in the search request, and none of the four documents concern securities issued by Kemper Lumbermens Mutual Casualty Company.

Second, Mr. de Windt has failed to meet his burden under Section F.4 of the POD of "satisfying the Fund Administrator that under the circumstances the proposed additional search terms and criteria are reasonably designed to obtain e-mails that could have been relevant to the underlying arbitration." The one-page submission accompanying Mr. de Windt's request contains only his proposed terms. Nowhere does Mr. de Windt explain how the proposed terms are related to the issues in his arbitration, let alone provide any support for such a claim.

In fact, the search terms now sought by Mr. de Windt are a subset of those terms that he previously proposed in requesting a custom search. The Fund Administrator, however, rejected that request on the basis that, in addition to being overbroad, the request "contain[ed] no explanation as to why the proposed additional search terms or criteria are reasonably designed to obtain e-mails relevant to any claims

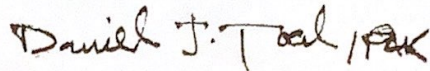
in the claimant's arbitration proceeding." (See Fund Administrator's May 29, 2008 Ruling.) Nonetheless, in *again* proposing some of these very same search terms, Mr. de Windt continued to disregard the requirements of the POD by failing to substantiate the basis for his requested search terms.

For all these reasons, we respectfully submit that Mr. de Windt's proposed additional search should be rejected in its entirety for failing to satisfy the criteria set forth in the POD.

As you know, under POD § F.6.a, Mr. de Windt has ten days from receipt of this letter to respond in writing to our objection, after which time the parties will await your decision.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink that reads "Daniel J. Toal" followed by a stylized monogram or initials.

Daniel J. Toal

cc: Betsy Alaniz, The Garden City Group