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LA appellate lawyer Rex Heinke reflects on a milestone

By Nicolas Sonnenburg
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LOS ANGELES — Nearly 40 years after first appearing before a court of appeal, Rex S. Heinke received news that he was victorious in a case that was a personal milestone.

Heinke successfully urged the 1st District Court of Appeal to affirm a multimillion-dollar award for the Fireman's Fund Insurance Co. and its employees against a financial seminar company that lost employees' money through risky investments during the 2008 financial crisis.

The panel affirmed a verdict in Fireman's Fund's favor.

"It was very satisfying to have the Court of Appeal uphold the over \$15 million judgment for our client," he said of the mid-March ruling.

The case was Heinke's 150th appellate oral argument.

Weeks later, on Wednesday, the 9th U.S. Circuit Court of Appeals affirmed, in an unpublished order, summary judgment secured on behalf of his client, VCA Animal Hospitals Inc., in a lawsuit alleging that the national veterinary service provider had printed misleading invoices allowing them to charge unnecessary fees.

The argument in that case, in which he went toe-to-toe against former U.S. District Judge Stephen G. Larson, gave the mild-mannered Heinke an opportunity to wax poetic on the work of an appellate lawyer.

"I wouldn't have a living if all statutes, all contracts were clear. There wouldn't be anything for me to do as a lawyer," he mused, acknowledging that his client could have been clearer in its invoices.

Recently, Heinke sat down with the Daily Journal to reflect on his career.

As the co-head of Akin Gump Strauss Hauer & Feld LLP's Supreme Court and appellate practice group, Heinke is a regular in California's appellate courtrooms. Since starting as an associate at Gibson, Dunn & Crutcher LLP in 1976, Heinke has represented the gamut of media and corporate clients in disputes ranging from em-



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ployment disputes to copyright claims.

Among his most memorable battles was one against the government of Turkmenistan.

Heinke, along with a team of other Akin Gump lawyers, represented an Argentinian oil conglomerate, Bidas S.A.P.I.C., in an attempt to enforce an international arbitration agreement against the Turkmenistan government.

Turkmenistan's leaders requested to renegotiate a contract — a proposition which Bidas had accepted once before, but was not keen on doing again — and when he refused, the country kicked the oil and gas holding company out, without payment for its work, Heinke said.

In two trips to the 5th U.S. Circuit Court of Appeals, Akin Gump saw that an international arbitration awarded to Bidas against Turkmenistan's subsidiary, which totaled nearly a billion dollars with interest, was enforced.

"I thought it was a fascinating case because of the facts," Heinke recalled, discussing the colorful leader who ruled the country, Saparmurat Niyazov.

"He had a statue in the capital of himself, something like 14 feet high, covered all in gold on a rotating platform so it always faced the sun. He renamed the days of the week for his daughters. It was quite a place."

Heinke, a graduate of Columbia Law School who spent his childhood moving across the Western United States due to his dad's demanding construction industry work, was attracted to Los Angeles where he said firms seemed a tad more casual than in San Francisco.

A class he took in law school on journalism and the First Amendment piqued his interest in media law and Gibson Dunn's representation of the Los Angeles Times during that period was a natural fit.

"I thought there were very interesting legal questions and problems," Heinke said.

In fact, his first appellate argument was representing the Times-Mirror Company in a pro se lawsuit brought by a repeat litigant who sued the publishing company after the Los Angeles Times printed her address incorrectly in an ad she purchased.

The self-represented plaintiff argued that the Times had defamed her in its litigation tactics, to which Heinke responded that his client was protected by the litigation privilege. On rebuttal, the plaintiff told the panel that Heinke's assertion — that one was free to argue as he liked in court — wasn't true. She knew because of personal experience.

"Just last week, I was in LA Supe-

rior Court and I said something the judge didn't like and I spent a night in jail," she told the court.

"The court of appeals justices just about fell out of their chairs," Heinke said, laughing. "That was my introduction to appellate law. Needless to say, we won."

Representing media clients, who often saw litigation as a matter of principle rather than just motivated by financial needs, Heinke fell into appellate work.

In 1992, by then a partner at Gibson Dunn, he represented USA Today publisher News America Publishing Inc. in a trademark lawsuit brought by the teen pop band New Kids on the Block. USA Today had published a poll asking readers to call in and vote for their favorite New Kid, charging 50 cents a pop.

"We said, 'Well, there's no trademark infringement,'" Heinke said. "'Nobody thinks we're them. And there's no right of publicity because we have to be free to talk about people like them, even if we end up making money off of it.'"

The case made its way to the 9th Circuit, which ultimately ruled in favor of Heinke's client, enunciating a new affirmative defense to trademark claims: nominative use.

Heinke spent two years with the appellate boutique firm Greines, Martin, Stein & Richland LLP. But trial work he had brought from Gibson Dunn in 1999 didn't mesh well with Greines Martin's appellate-only focus.

In 2001, former 9th Circuit Judge William A. Norris and Edward P. Lazarus, who started Akin Gump's appellate practice a year earlier, asked Heinke to help lead the practice. Since then, the practice has grown. When Heinke started, it consisted of five other lawyers. Now, there are 12 who regularly do appellate work, he said.

"Rex is a terrific appellate lawyer," said Akin Gump partner Pratik A. Shah, who leads the firm's East Coast appellate practice from Washington, D.C. "He's one of the most experienced appellate lawyers in California and in the whole country."