



CURRICULUM VITAE

R. WAYNE KLEIN
Klein & Associates, PLLC
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Professional Experience

Principal, Klein & Associates, PLLC, October 2009 to present.

Principal, Lewis B. Freeman & Partners, Inc., April 2008 to September 2009.

Director, Utah Division of Securities, October 2005 to February 2008.

Chief, Commercial Enforcement Division, Utah Attorney General's Office, 2001-2005.

Special Assistant to the U.S. Attorney General, Philadelphia, PA, 2004-2005 (on a criminal antitrust investigation conducted jointly with the U.S. Department of Justice).

Assistant Attorney General, Utah Attorney General's Office, 1996-2001 (securities and antitrust cases).

Securities Bureau Chief, Idaho Department of Finance, 1986-1995.

Adjunct Professor, Management Department, Boise State University, 1989-1995.

Deputy Attorney General, Idaho Attorney General's Office, 1983-1986.

Attorney, Corporate Trust Department, First Security Bank, Salt Lake City, 1982-1983.

Education

Law Degree (J.D.), The National Law Center, George Washington University, Washington, D.C., 1982.

B.A. Degree, Political Science, The University of Utah, Salt Lake City, 1979.

Certificate, International Relations, The University of Utah, Salt Lake City, 1979.

Professional Activities, Designations and Memberships

Certified Fraud Examiner (CFE), Member: Association of Certified Fraud Examiners (2010).

Certified Specialist in Asset Recovery (CSAR), Member of International Association for Asset Recovery (IAAR) task force that developed CSAR Certification Examination (2010).

Chair, Litigation Section, Utah State Bar, 2009-2010 (Executive Committee from 2001 to 2011).

Founding Board Member and Secretary/Treasurer, National Association of Federal Equity Receivers (NAFER) (2009 to 2012).

Securities Expert Roundtable – Member (2009 to present).

Arbitrator: FINRA arbitrator qualified: 2006.
National Futures Association, 1990-1995, 2011.

Chair, Business Law Section, Idaho State Bar, 1988-1989.

North American Securities Administrators Association (NASAA)

Vice Chair, Broker-Dealer Section, 2007-2008.

Member, Board of Directors, 1992-1995.

Chair, Enforcement Section, 1991-1992.

Chair, Regulatory Liaison Section, 1989-1990.

Chair, Internationalization Committee, 1987-1991.

Delegate, Int'l Org. of Securities Commissions (IOSCO), 1987, 1989-1992.

Bar Memberships: Utah, 1982; Idaho, 1984. Admitted to the U.S. Supreme Court, the Tenth, Ninth, and Fourth Circuit Courts of Appeal, and federal district courts of Utah and Idaho.

Congressional Testimony

Marketing Practices: *Contact Lens Sales: Is Market Regulation the Prescription?* U.S. House Subcommittee on Commerce, Trade, and Consumer Protection, Sept. 15, 2006.

Interstate Enforcement: *Enforcement of State Laws Relating to Interstate Transportation of Intoxicating Liquor.* U.S. Senate Committee on the Judiciary, Mar. 9, 1999.

Commodities: *Application of the Commodity Exchange Act's Anti-Fraud and Anti-Manipulation Protections.* U.S. House Subcommittee on Environment, Credit, and Rural Development, June 30, 1993.

Law Review Publications

The Prudential Solution – National Securities Regulatory Settlements (co-author), 51 *The Business Lawyer* 223, 256-82 (1995).

The Idaho Securities Act: An Analysis of Idaho Securities Opinions, 29 *Idaho Law Review* 95 (1992-93).

CDs as Securities: State Law Considerations, 1986 Boston University, *Annual Review of Banking Law*.

Administrative Law Judge Experience

Nevada: Appointed as administrative law judge by Nevada Secretary of State for complex securities disciplinary case (*Secretary of State v. Tretiak*). Las Vegas, NV (1996-1997). Appeals court ruling can be found at 22 P.3d 1134 (Nev. 2001).

Utah: As director of securities, served as presiding officer and administrative law judge for scores of hearings in administrative proceedings.

Receivership Experience

SEC v. National Note of Utah, L.C. and Wayne L. Palmer, 2:12CV591 (D. Utah, Jun. 25, 2012) (appointed receiver for \$100 million promissory note fraud scheme).

SEC v. Art Intellect, dba Mason Hill, Patrick Merrill Brody, Laura A. Roser, 2:11cv00358 (D. Utah, Apr. 18, 2011) (appointed receiver for Art Intellect in \$2.5 million real estate fraud scheme).

CFTC v. US Ventures, Winsome Investment Trust, Robert J. Andres, and Robert L. Holloway, 2:11CV00099 (D. Utah, Jan 25, 2011) (appointed receiver for US Ventures and Winsome in \$50 million commodity fraud scheme).

US Capital, Inc. v. Legacy Media Corp, Civ. No. 090500982 (Fifth Dist. Utah, Sept. 25, 2009) (appointed receiver for five radio stations that defaulted on loan obligations).

Barnes v. FFCF Investors, Civ. No. 080922273 (Third Dist. Utah, Mar. 18, 2009) (appointed receiver for three companies in \$13 million Ponzi scheme).

SEC v. Trigon Group, Inc. and Daren Palmer; CFTC v. Trigon Group, Inc. and Daren Palmer, CV-09-75 and CV-09-76 (D. Idaho, Feb. 26, 2009) (appointed receiver for Trigon Group, Inc. in \$60 million Ponzi scheme).

In Re Hess Kennedy, Coral Springs, FL (assisted receiver in structuring claims process for victims of credit repair fraud – 2008).

Bankruptcy Trustee Experience

In re: Gables Management, LLC, Case No. 10-42241 (D. Idaho, Aug. 23, 2011) (appointed Chapter 11 trustee over company operating three retirement centers in Eastern Idaho).

EXPERT WITNESS EXPERIENCE

Testifying Expert

Witman v. Jonathan Feldman, et al., Case No. 120905237, Third District Court of Utah (expert opinion report for plaintiffs on securities law applicability to accountant paid compensation for recommending oil and gas investments to clients; 12/10/15 trial testimony) (\$1.8 million jury verdict for plaintiffs).

SEC v. Wayne Palmer, Case No. 2:12CV591, U.S. District Court of Utah (Nov. 1, 2015 trial witness for SEC testifying on existence of Ponzi scheme, how fraud scheme operated) (court found defendant violated the federal securities laws and imposed an injunction, civil penalties, and disgorgement).

Rome v. Marc Mandel, et al., Case No. 2014CV34131, Denver District Court (expert opinion for Colorado Attorney General on investment advisory laws applicable to operator of investment website, auto-trading programs) (summary judgment granted to Colorado Securities Commissioner in 2015, after expert opinion issued).

Smith v. The Elva Group, et al., Case No. 1:13cv028, U.S. District Court of Utah (expert opinion for plaintiffs on securities law compliance in sales of investment note to retirement account relating to real estate investments).

United States v. Robert Holloway, Case No. 1:11CR984, U.S. District Court of Utah (8/5/14 trial testimony in criminal case regarding financial transactions by operator of Ponzi scheme) (defendant convicted and sentenced to 15 years incarceration).

White v. Trans Terra Financial West, et al., Case No. 120401270, Fourth District Court of Utah (expert opinion for defendants on civil liability of person listed in state corporate filings as a director).

Wood v. Fitzgerald, et al., Case. No. 120400644, Fourth District Court of Utah (expert opinion for plaintiffs on securities law compliance by seller of real estate investments) (case settled in 2014 with full restitution, after expert opinion was issued).

Bamert v. Pulte Home Corporation, Case No. 6:08CV02120, U.S. District Court, Middle District of Florida (expert opinion on whether condo-hotel program constituted a security, securities law compliance by homebuilder) (case settled after expert opinion was issued 2013).

Klein v. Beck, Case No. CV10-88-EJL, U.S. District Court, District of Idaho (trial testimony July 31 to Aug. 2, 2012 regarding Trigon Group Ponzi scheme) (deposition taken May 10, 2011) (expert report issued). Jury awarded \$55,000.00 to plaintiff; jury award affirmed on appeal to Ninth Circuit.

State of Nevada – Confidential Grand Jury Hearing, (Nov. 1, 2011 testimony for Nevada Attorney General's Office in grand jury proceedings regarding whether particular

types of financial instruments are securities and whether the sales of securities were carried out in compliance with the law.)

Morofsky v. Westlake, et al., FINRA Arbitration Case No. 10-04113, San Francisco, CA (Oct. 25, 2011 expert report on sales of non-public securities, availability of exemptions, and disclosure deficiencies in sales of tenant-in-common real estate private placements; case settled).

Hedlund v. Waveland Capital Partners, et al., FINRA Arbitration Case No. 10-04494, San Diego, CA (Sept. 14, 2011 testimony on integration, due diligence, and suitability involving sales of private placement securities).

Koprowski v. H. Beck, et al., FINRA Arbitration Case No. 09-03946, St. Louis, MO (Aug. 17, 2011 testimony on suitability and adequacy of supervision involving sales of promissory notes; case went to award after hearing).

Kesler v. Atkins, et al., Case No. 09-08-C-02642 (Cass County District Court, North Dakota) (May 2011 expert report on supervisory duties over selling-away activities of agent; January 2012 trial testimony).

Nanas, et al., v. Green, et al., Case No. CISCV166597 (Santa Cruz Superior Court, California) (Nov. 2010 preliminary expert report on sales of private placement securities).

Capital Funding and Consulting, LLC. v. David Bernhardt, Esq., (Private Mediation, Richmond, Virginia) (Sept. 14, 2010 expert report for mediation session on application of securities laws to promissory notes issued by real estate lending company).

U.S. Bank, N.A. v. Lake Hazelwood Property Partners, Case No. CV 08-10268 (Third District Court, Idaho) (Sept. 1, 2010 expert report on application of securities laws to promissory notes issued by real estate developer; case settled at trial).

Javier Alatorre Tapia v. Salomon Smith Barney, Case No. 20084220 (Ariz. Superior Court in Pima County) (Dec. 22, 2009 expert report on duties owed to brokerage client; case settled before trial).

Ward v. Associated Securities, FINRA Arbitration Case No. 07-02944, Los Angeles, CA (Feb. 10, 2009 testimony on regulatory expectations involving sales of hedge fund interests; case settled before hearing).

State v. Jenson, No. 051905391 (3rd Dist. Utah) (Dec. 13, 2006 testimony for State of Utah at criminal preliminary hearing regarding fraud alleged in sale of securities; defendant bound over for trial).

State v. Tenney, Civ. No. 94901 (4th Dist. Idaho) (Aug 29, 1991 testimony for State of Idaho in civil enforcement action alleging securities fraud; injunction granted against defendant).

Postal Inspection Service. Witness before federal grand jury in Spokane investigating boiler room selling securities, circa 1990.

Mutual Fund Case. Witness testifying in private civil action in Idaho state court in an action claiming unsuitable sales by small mutual fund, circa 1988.

Consulting Expert

Importer/Distributor, Utah. Forensic analysis of financial records to identify causes of suspected misappropriation of \$350,000, recommend implementation of additional internal controls (2015).

First American Credit Union, Ogden, Utah, (Financial institution loan forbearance agreements) (2015 forensic accounting of multiple borrowers to ensure compliance with terms of lender forbearance agreement relating to real estate development project).

In re Know Weigh, LLC, Case No. 1:13-BK-12439 (Central District of California) (2013 consulting assistance to creditor regarding proposing competing reorganization in Chapter 11 case, including pursuing avoidance actions for fraudulent transfers).

Pulley v. First American Professional Real Estate Services, Case No. 2:12CV172 (2012-2103 consulting assistance to plaintiff on securities law issues related to securities sold to plaintiff; case settled in 2013).

Coleman v. Westmoore Management, LLC, Case No. 37-2010-95750 (California Superior Court in San Diego) (2011 consulting assistance to plaintiffs on promissory notes issued as part of Ponzi scheme; case settled the week before trial.).

Confidential SEC Investigation (2011 preparation of forensic accounting summary showing uses of funds held by defendants under SEC investigation).

Dr. P. S. v. Confidential Broker-Dealer, FINRA Arbitration Case No. 08-009XX, Miami, FL (2009 assistance to claimant alleging improper sales of auction rate securities; case settled before hearing).

Parallel Partners v. Emerald Star Casino, (Florida state court action) (2009 assistance to plaintiffs alleging securities fraud in connection with capital-raising efforts for casino; case settled before trial).

Confidential Private Arbitration, Las Vegas, NV (2009 assistance to plaintiffs alleging violations of securities laws in sales of condominium hotel units).

Alunni et al. v. Development Resources Group, Case No. 6:08-cv-1349 (M.D. Fla.) (2009 assistance to plaintiffs alleging violations of securities laws in sales of condominium hotel units; 2011 opinion by 11th Circuit ruled that the products were securities, reversing the trial court).

Hertzberg v. Millbrae Natural Gas Development & Exploration Fund, C.A. No. 3224-VCS (Del. Ch.) (2008 assistance to plaintiffs alleging fraud in management of gas limited partnership; case settled before trial).

Source Direct Holdings v. Integritas, Civ. No. 050921794 (Third Dist. Utah) (2008 assistance to plaintiffs alleging securities fraud in stock offering).

Smith v. Belsen Getty, Private Securities Arbitration, Salt Lake City (2008 assistance to claimants alleging fraud by investment adviser in management of funds).

State of Nevada, Secretary of State, Securities Division. Consulting expert on several administrative, civil, and criminal cases, 1996-2000.

Tracey Pride Stoneman, Esq. Consulting expert on arbitration claim, circa 2000.

Legal Education Presentations on Securities and Receivership Topics

Detecting Ponzi Schemes: Protecting Customers and Avoiding Bank Losses, Zions Bank AML Training, Salt Lake City, UT May 14, 2015.

Ethical Constraints on the Use of Confidentiality Agreements, Public Investors Arbitration Bar Association, La Quinta, CA, Oct. 24, 2014.

Ethical Constraints on the Use of Confidentiality Agreements, Litigation Section, Utah State Bar, Salt Lake City, UT, July 1, 2014; Securities Section, Utah State Bar, May 13, 2015.

Understanding Frauds from a Historical and Psychological Perspective, Utah White Collar Crime Seminar, Salt Lake City, UT, Oct. 8, 2013.

Understanding Frauds from a Historical and Psychological Perspective, Utah Chapter, Certified Fraud Examiners, Salt Lake City, UT, Sept. 3, 2013.

How Receivers Help Enforcers, North American Securities Administrators Association, New Orleans, LA, Jan. 22, 2012.

Personal and Professional Ethics, Public Investors Arbitration Bar Association, Rancho Mirage, CA, Oct. 28, 2011.

How Federal Equity Receiverships Operate, Turnaround Management Association, Santa Barbara, CA, July 14, 2011.

Some Turnaround Problems are Best Solved by Receivers, Turnaround Management Association, Santa Barbara, CA, July 14, 2011.

Behaving Ethically and Avoiding Conflicts of Interest, IAAR Live Chat (Online), Feb. 2, 2011.

Ethics and Professionalism, Utah Chapter of Association of Corporate Counsel, Salt Lake City, UT, Nov. 10, 2010.

Ethical Issues Arising from the use of Pretexting, PIABA, Jacksonville, FL (Oct. 15, 2010).

Securities Laws: A Powerful Tool in Financial Investigations, International Association of Financial Crimes Investigators, Las Vegas, NV (Sept. 9, 2010).

Making Third Parties Pay When Fraudsters Hide the Money, IAAR Online “Live Chat” (Aug. 26, 2010).

“Extraordinary Popular Delusions and the Madness of Crowds”, Utah Bar Annual Securities Conference (Aug. 20, 2010).

Using Receivers in Enforcement Actions, NASAA Winter Enforcement Conference (Jan. 11, 2010).

1) Using Bank Records to Find Hidden Assets; 2) Gatekeepers and Intermediaries; 3) Failed Banks: Ten Sources of Asset Recoveries, International Association for Asset Recovery, Las Vegas, NV (Nov. 9-10, 2009).

Ponzi Scheme Receivers: Why Everyone is Unhappy, Utah Bar Annual Securities Conference, Jackson, WY (Aug. 15, 2009).

Working with State Attorneys General in Complex Commercial Litigation, Miami/Dade County Bar Association (May 15, 2009).

Ethics for Securities Enforcers, NASAA Winter Enforcement Conference (Jan. 10, 2009).

Receivers: The Consummate Problem Solvers, Utah State Bar CLE (December 9, 2008).

Five Distortions in the Securities Markets, Board of Wasatch Mutual Funds (Oct. 17, 2008); Presentation at Annual Conference of the Utah Bar Securities Section (Aug. 22, 2008).

The Credit Crisis: Trouble Coming to the Courts, Miami Inn of Court (Apr. 24, 2008).

Why Securities Enforcers Have no Fan Clubs, NASAA Winter Enforcement Conference (Jan. 5, 2008).

Developments in the Financial Services Industry, Utah Valley Estate Planning Council (Dec. 5, 2007).

Opening and Closing Statements in Enforcement Cases, NASAA Attorney Training Seminar (Dec. 1, 2007).

Trial Organization Strategies, NASAA Attorney Training Seminar (Nov. 30, 2007).

Partnering with Regulators, Cache County Estate Planning Council (Oct. 9, 2007), Presentation to Cache Valley Chapter of CPAs (Sept. 20, 2007); Southern Utah Estate Planning Council (May 3, 2007); Utah Chapter of Certified Fraud Examiners (Oct. 3, 2006); Utah Society of Financial Services (Sept. 12, 2006).

Top Ten Predictions: The Future of State Securities Regulation, NASAA Broker-Dealer Training Seminar (June 16, 2007).

Short Selling Abuses, NASAA Broker-Dealer Training Seminar (June 15, 2007); Public Investors Arbitration Bar Association (PIABA) Seminar (Oct. 25, 2006); NASAA Corporation Finance Training Seminar (July 28, 2006).

Why Investment Scams Target Seniors, Utah Adult Protective Services Training Seminar (June 6, 2007); Utah Gerontological Society Spring Conference (Mar. 13, 2007).

What Practices Most Worry State Regulators in the DPP Industry, Investment Program Association Annual Meeting (Apr. 21, 2007).

Forensic Accounting and Fraud, University of Utah Accounting Department (Jan. 25, 2007).

Ten Habits of Highly Effective Securities Enforcement Agencies, NASAA Winter Enforcement Meeting (Jan. 6, 2007).

Drafting Securities Enforcement Pleadings, NASAA Attorney Training Seminar (Dec. 7, 2009; Dec. 2, 2006; Dec. 4, 2005; Dec. 3, 2004; Dec. 13, 2003; Aug. 17, 2002; Dec. 2, 2000; Nov. 5, 1999).

Motions Practice for Securities Enforcement Agencies, NASAA Attorney Training Seminar (Dec. 8, 2009; Dec. 1, 2006; Dec. 4, 2005).

Unauthorized Practice of Law in Arbitration, PIABA (Oct. 27, 2006).

Investment Fraud Trends, PIABA (Oct. 25, 2006)

Investment Fraud in Utah, Utah Chapter of Association of Certified Fraud Examiners (Oct. 25, 2006).

Developments at the Utah Division of Securities, Annual Meeting of Utah Bar Securities Section (Aug. 25, 2006).

Compliance Expectations in the Tenant-in-Common Industry, Tenant In Common Association Conference (Aug. 15, 2006).

Who is Trying to Steal Your Clients' Money, Utah State Bar CLE (May 19, 2006).

Ethics Scenarios for Securities Litigators, PIABA (Sept. 30, 2005).

Variable Annuity Update, PIABA (Sept. 28, 2005).

Scams, Schemes, and Swindles, PIABA (Sept. 28, 2005; Oct. 20, 2004; Oct. 22, 2003; Oct. 2, 2002; Oct. 17, 2001).

Demonstrating Professionalism in Securities Litigation; A Step Above Ethics, Practising Law Institute Seminar (Aug. 17, 2005); PIABA (Oct. 22, 2004).

Trial Advocacy Training for Securities Enforcement Lawyers, Instructor at NITA Training (Mar. 20-22, 2005).

Negotiation Skills for Securities Enforcers, NASAA Attorney Training (Dec. 4, 2004; Dec. 12, 2003; Aug. 17, 2002).

Abuses in Sales of Variable Annuities, PIABA (Oct. 20, 2005).

Overview of the Securities Industry and Securities Regulation, Joint Training Seminar of NASAA and NAIC (May 6, 2004).

Ethics for Securities Regulators, NASAA Winter Enforcement Conference (Jan. 11, 2004).

Ethics Standards in Arbitration, PIABA (Oct. 22, 2003).

Review of New Federal Legislation Governing Securities Litigation, PIABA (Oct. 22, 2003).

Statutes of Limitations in Securities Litigation, PIABA (Oct. 2, 2002).

Trends in State Securities Enforcement Proceedings, PIABA (Oct. 20, 2001).

Attorney Fee Recovery in Securities Cases, PIABA (Oct. 17, 2001).

Who's Liable: Extended Liability Under Blue Sky Law, PIABA (Oct. 11, 2000).

New Products: Are They Securities?, PIABA (Oct. 11, 2000).

Expert Witnesses and Evidence in Mining Fraud Cases, Nevada securities fraud prosecutors (Oct. 6, 2000).

Enforcement: Where to From Here?, NASAA Winter Enforcement Conference (Jan. 4, 1998).

Protocols for Multi-Jurisdictional Task Forces, NASAA Winter Enforcement Conference (Jan. 6, 1997).

Recognizing an Investment Contract, NASAA Winter Enforcement Conference (Jan. 5, 1997).

Resolving Securities Customer Complaints, NASAA Broker-Dealer Training Program (June 21, 1996); NASAA Winter Enforcement Meeting (Jan. 6, 1996).

Current and Future Trends in Securities Regulation, Idaho Business Law Symposium (Apr. 21, 1995).

State and Provincial Developments in Securities Law, Northwest Securities Institute (Feb. 25, 1995).

Sales Abuses in Limited Partnerships, Investment Program Association Spring Conference (Mar. 17, 1994).

Settlements 101: How to Maximize the Effects of Task Forces, NASAA Winter Enforcement Meeting (Jan. 1994).

Raising the Enforcement Profile of Securities Agencies, NASAA Winter Enforcement Meeting (Jan. 1994).

Fraud and Abuse in Insurance and Securities, Idaho Bar CLE (Dec. 3, 1993).

Interaction of State and Federal Securities Laws, PIABA (Oct. 24, 1993).

Private Financing Options, Energy and Waste Conference (June 13, 1992).

Idaho Blue Sky Laws, Northwest Securities Institute (Feb. 28, 1992).

Securities and Investment Fraud Enforcement Actions, Corporate and Securities Law Section Meeting, Idaho State Bar (May 9, 1991).

State Participation in International Securities Developments, Wisconsin Fifth Annual SEC Update Nov. 28, 1990).

State Banking Regulation Contrasted with State Securities Regulation, Financial Institutions Training Program for SEC Attorneys (June 19, 1990).

Securities Enforcement in the U.S., International Association of Young Lawyers Conference (1989).

Idaho Blue Sky Laws, Idaho State Bar CLE (Sept. 1988).

Legal and Regulatory Climate in Idaho, Conference on Financial Planning (Oct. 3, 1986).

Enforcement of the Idaho Securities Act, Idaho State Bar CLE (Jan. 1985).

Manuals, News Articles, Bar Journal Articles, and Working Papers

Lawyers are needed to Clean up Wall Street's Mess and Rebuild the Economy, Utah Bar Journal, Jan/Feb 2009 at 25.

Investors: Take Steps to Minimize Fraud, Maximize Trust, *Daily Business Review (Miami)*, January 27, 2009 (also available at www.kleinutah.com).

Receivership Manual for the Utah Judiciary (co-authored with Lewis B. Freeman and Annette W. Jarvis), December 9, 2008 (distributed at December 2008 Utah Bar CLE event).

Profiteers, the New Privateers, *Securities Law 360*, December 30, 2008.

Internal Investigations: Why Two Are Better Than One, December 19, 2008.

What is an Investor to Do? How to Respond to the Market Meltdown (co-authored with Harley Tropin), *The Enterprise*, Oct. 27, 2008 at p. 9 (also available at www.kleinutah.com).

Auction-Rate Securities: Investors Bear Brunt of Crisis, July 7, 2008, available at www.kleinutah.com.

Don't Be a Victim of Real-Estate Fraud, *Miami Herald*, May 12, 2008 at G7 (also available at www.kleinutah.com).

Condo-Hotels: What Next for Owners?, Apr. 28, 2008, available at www.kleinutah.com.

A Professionalism Quiz: How Does Your Conduct Measure Up? Utah Bar Journal, Nov/Dec 2006 at 24.

Current as of May 15, 2015.