

VERDICTS & SETTLEMENTS

www.dailyjournal.com

FRIDAY, DECEMBER 21, 2012



Saul Sugarman / Daily Journal

Alexander L. "Lex" Brainerd**Affiliation:** JAMS**Location:** San Francisco**Area of specialty:** intellectual property, technology, professional malpractice, business/commercial

Golfing will have to wait

Lex Brainerd thought life as a neutral would mean more time for hobbies; instead, he's got a busy calendar of cases.

Saul Sugarman / Daily Journal Staff Writer

SAN FRANCISCO— About two years ago, Alexander L. "Lex" Brainerd thought leaving Sonnenschein Nath & Rosenthal LLP — now SNR Denton — would mean he could read more, play more golf and spend more time rowing recreationally.

Instead, he found himself with a full calendar mediating and arbitrating for JAMS.

"I had this vision coming to JAMS that I would work two days a week and spend the rest of the time goofing off," he said. "I'm actually busy."

In the summer last year, Brainerd helped broker a settlement in the largest patent dispute in the Eastern District of Virginia, said Ronald S. Epstein, an attorney who handled the dispute.

Epstein represented NTP Inc., a patent holding company that sought licensing deals from some of the world's biggest mobile carriers for NTP's wireless email technology. Six years before, NTP inked a \$612 million settlement on the technology from Canada-based Research In Motion Ltd. and was pursuing agreements with 13 major players, including AT&T Inc., Google Inc., Yahoo Inc. and Sprint Nextel Corp.

"Given that there were so many people involved and that the issue was so complex, we needed someone smart who could understand the issues and who could deliver credibility," said Epstein, CEO of Redwood City-based Epicenter

IP Group LLC. "That was Lex."

Brainerd mediated the dispute for three days among 15 conference rooms in JAMS' San Francisco offices, "the largest multi-party dispute that JAMS has seen outside of toxic tort," Epstein said.

In the end, all 13 companies signed a settlement. Attorneys who have used Brainerd's services said they are drawn to his background in technology and intellectual property litigation.

"He understands the issues," said Michael F. Heafey, a Menlo Park-based partner in the intellectual property group for Orrick, Herrington & Sutcliffe LLP. Heafey hired Brainerd to mediate an infringement case involving 11 patents in the Northern District of California.

"He did a very good job moving the parties toward a business resolution," Heafey said.

Prior to JAMS, Brainerd had a long career as a partner for Sonnenschein, Quinn Emanuel Urquhart & Sullivan LLP, and now-defunct Bronson, Bronson & McKinnon LLP and Heller Ehrman LLP.

"He's kind of an old hand," said Brandon D. Baum, of Menlo Park-based Baum Legal. "I think everyone knows him in intellectual property and everyone likes him."

Baum hired Brainerd to mediate a "highly sensitive, contentious, potentially explosive" intellectual property case, Baum said.

"We selected Lex as someone who would provide a sanity check on our positions," he said. "It's nice to work with someone who has been in the trenches as a trial lawyer and who can tell you you're right or wrong."

He said that Brainerd ultimately decided

Baum, who represented the plaintiff, made a strong case against the defense.

"You need someone to tell the other guy they were wrong or they weren't as right as they thought they were," Baum said.

Born in Reading, Penn., Brainerd grew up in Menlo Park and attended an independent college preparatory high school, Menlo School, where his father was a business administrator. He received a bachelor's degree from Amherst College in 1963 and law degree from UC Berkeley School of Law in 1968.

Brainerd said his mediation style differs from case to case. Each client has different needs and the evidence is different in each dispute, he said. But the common thread for his style is a high level of persistence, which is noted both by Brainerd and by attorneys who have hired him.

"I don't like to let go of a case until I've got it settled," Brainerd said.

San Francisco attorney Henry C. Bunsow agreed.

"He's willing to put in the time," said Bunsow, a partner at Bunsow De Mory Smith & Allison LLP who has utilized Brainerd's services in three cases.

Bunsow said two of the disputes settled at the time of mediation and the third shortly afterward. He noted that part of Brainerd's success is due to him not being a retired judge, who sometimes feel their "mere presence in the room somehow validates their views," Bunsow said.

"Lex's background as a lawyer brings a perspective for him that maybe he needs to try a little bit harder because he doesn't have the title 'judge' when he walks in the room," Bunsow said. "He doesn't have what I would call normal office hours."

In one instance, Brainerd mediated a case for Bunsow until 9:30 p.m. on two days, with a settlement reached on the second day, Bunsow said.

"Clearly, it would not have resolved if everyone had been allowed to leave," he said, "and reconvene days or weeks later."

Here are some lawyers who've used Brainerd's services:

Ronald S. Epstein, Epicenter IP Group LLC, Redwood City; Michael F. Heafey, Orrick, Herrington & Sutcliffe LLP, Menlo Park; Henry C. Bunsow, Bunsow De Mory Smith & Allison LLP, San Francisco; Brandon D. Baum, Baum Legal, Menlo Park; Daralyn J. Durie, Durie Tangri LLP, San Francisco.