



## **CURRICULA VITAE**

**FOR**

**BRUCE S. KRAMER**

### **Education:**

Washington & Lee University, 1966, Bachelor of Arts, cum laude.

The George Washington University, National Law Center, 1969, Juris Doctor, with honors.

Admitted to practice: Supreme Court of the United States, 1973; United States Courts of Appeals for the Eighth, Sixth, Fifth, Second and Eleventh Circuits; admitted to various United States District Courts; licensed to practice by the State of Tennessee.

Member of the American Bar Association, (Litigation Section, Pre-Trial Discovery Committee), Association of Trial Lawyers of American, Tennessee Bar Association, Tennessee Trial Lawyers Association, past Board member, Memphis and Shelby County Bar Association, American Inns of Court, Leo Bearman Sr. Chapter.

### **Employment:**

President, Borod & Kramer, P.C. - 1994 - Present

Managing Partner, Borod & Kramer, 1988 - 1993.

Founding Partner, Borod & Huggins, 1983 - 1988; Chair - Litigation Section.

Partner, Rosenfield, Borod & Kremer, 1972 - 1983.  
Associate, Rosenfield, Borod, Fones & Bogatin, 1970 - 1972.  
Law Clerk to Robert M. McRae, United States District Court Judge, Western District of Tennessee, 1969 - 1970.

### **Organizations/Memberships:**

American Bar Association  
Memphis and Shelby County Bar Association  
Panelist and faculty member, Bench Bar Conferences, 200, 2001, 2002  
Member (Master) Leo Bearman Sr. American Inn of Court  
National Crime Victim Bar Association  
Recipient 2002 Frank Carrington Champion of Civil Justice Award  
Association of Trial Lawyers of America  
Chair Wal-Mart Litigation Task Force  
American Civil Liberties Union, former member of the National Board of Directors and its Executive Committee. (Member of Communications Media Committee; Special Board Committee to develop policy on televising courtroom proceedings.)  
National Conference of Christians and Jews.  
National Association for the Advancement of Colored People - Life Member.  
Member, Temple Israel, Teacher, Civil Liberties and Jewish Law/Values.

Frequent speaker before civic, church, and professional service associations on topics related to constitutional issues including First Amendment rights, Libel/Slander, separation of church and state, censorship, privacy, access to the media, including appearances on "60 Minutes ", Court T.V.

Rhodes College Institute on the Profession of Law  
2000 "Enforcement of Ethics in Government"  
Panelist with Kenneth Starr  
2002 "Civil Liberties in an Age of Terrorism"  
Panelist with Alan Dershowitz, Felix Frankfurter Professor of Law  
Harvard University  
2003 "Separation of Church and State Reconsidered"  
Panelist with Philip Hamburger, John P. Wilson Professor of Law  
University of Chicago

Guest lecturer Washington & Lee University and W&L Law School, 1993, on Civil Liberties and the Supreme Court

Moderator / Panelist for the Association of Trial Lawyers of America (ATLA) National College of Advocacy Tele-seminar: "Wal-Mart and Beyond: Discovering How to Fight Discovery Abuse – and Win." (February 21, 2001)

Speaker at various ATLA Conventions/seminars on premises liability, discovery abuse and spoliation. Published articles for *Trial* magazine on same topics.

Speaker at CLE programs by TTLA, MSCB association (Bench-Bar Seminars) on various trial topics including depositions and discovery, premises liability, GTLA.

**Significant Commercial/Corporate/Securities/Premises Liability Litigation:**

**In Re: G. Weeks Securities, Inc., 89-B.R.-697, 18 BCD 167 (1988); 33-B.R.-312 (1983); 6-B.R.-277, 2 CBC2d 1240 (1980).** This was a bankruptcy reorganization of a government securities broker/dealer. It was the first successful reorganization of a government securities broker/dealer and involved complex and protracted litigation involving the Bankruptcy Act and the Bankruptcy Code. It also had significant regulatory issues and related litigation to enforce forward contracts for the purchase and sale of GNMA's. See also, S.E.C. v. G. Weeks Securities, et al, 483 F.Supp. 1239 (1980), 678 F.2d 649 (1982).

**Pepsico v. Coca-Cola**, (USDC WD Tenn.), a federal action to enjoin copyright and trademark infringement which secured on behalf of Pepsico a preliminary injunction enjoining the local Coca-Cola Bottling Company from utilizing the name "Pepso" for a cherry cola, pepper-like drink. Dr. Pepper intervened in the litigation and the case was settled after the preliminary injunction was entered on behalf of our client.

**Panhandler v. SCM Corporation/Proctor-Silex**, (USDC WD Tenn.), successful defense of Proctor-Silex against an application for injunction which would have enjoined Proctor-Silex from marketing an electrical appliance for which they had spent \$25,000,000.00 in research and development. A massive marketing effort was in place and ready to go for the Christmas market when the Plaintiff obtained an ex parte TRO. Within two weeks, we had the TRO dissolved and the case accelerated and dismissed on its merits after a hearing for preliminary injunction.

**Southern College of Optometry v. Tennessee Academy of Ophthalmology, Inc., et al, 1986 W.L. 8162 (Tenn.App. 1986).** This was an action brought by the Southern College of Optometry against the Tennessee Academy of Ophthalmology, Inc., alleging business interference and libel. After extensive discovery (five years, scores of depositions, and thousands of documents) and reversal of the trial court's granting of summary judgment on behalf of the Defendants, the case went to trial before a jury. After 100 days of testimony, the jury retired and, within three and one-half hours, rendered a \$2,000,000.00+ verdict on behalf of our client, the Southern College of Optometry. Subsequently, the trial court entered a permanent injunction on behalf of SCO against the Tennessee Academy of Ophthalmology, Inc., and an individual physician enjoining future interference with the activities of the College.

**Aldrich Investment Corporation v. Old Court Savings & Loan/Maryland Deposit Insurance Corp.**, (USDC WD Tenn.) When a Maryland savings and loan

association and its wholly owned subsidiary were placed in a highly publicized conservatorship by the State of Maryland, the real estate developer, who was a joint venture partner with the savings and loan, realized that projects totaling more than \$150,000,000.00 were in extreme jeopardy of losing certain tax advantages unless the loan commitments were funded. When negotiations with the conservator did not produce results as quickly as necessary, we filed and secured on behalf of the developer a mandatory injunction in federal court requiring the savings and loan to fund its loan commitments. After obtaining the injunction, a comprehensive settlement package on behalf of the developer was negotiated to settle the case. In Re: Perkins, (71 B.R. 294, 1987), the financial partner suspected mismanagement and/or misappropriation and self-dealing by his co-partner concerning the development and construction of thirty shopping centers in several states and the development and operation of two FM radio stations. Along with the partner's accountant, we conducted an extensive due diligence inquiry to marshal the evidence of mismanagement and initiated litigation against the co-partner. A dissolution agreement was negotiated resulting in the division of more than \$15,000,000.00 in assets and liabilities. The partner subsequently filed for bankruptcy reorganization and asserted various claims against our client.

**Alexander v. Development Equities Corporation**, (USDC WD Tenn.) This federal civil action arose after limited partners discovered mismanagement and misappropriation of funds by a corporate general partner and its officers and attorney, who had syndicated more than fifty federally subsidized housing projects valued in excess of \$100,000,000.00 across the country. After an independent investigation, an action was filed alleging violations of both state and federal securities laws. Simultaneously, we filed an action to remove the corporate general partner and substitute a new general partner. After obtaining control of the properties, various restructuring and re-syndication was undertaken. The federal action was amended and alleged common law fraud and a RICO claim. Of the individually named Defendants, two were subsequently indicted and sentenced for devising a scheme to defraud our client. Three of the Defendants filed bankruptcy and we secured leave to proceed against these Defendants in a district court action. The case is still continuing against the attorney and is scheduled for trial in June, 1989. Settlements were obtained from the other Defendants.

**In Re: Great American Pyramid, et al.** (US Bankruptcy Court, WD Tenn.) Successfully represented the developer and development company of the Great American Pyramid, a multi-use, 65 million dollar, government funded facility in Memphis, Shelby County, Tennessee, from the efforts of the City and County to terminate long-term management contracts. After a multi-week hearing, the Court agreed with our position that the City and County had not abided by the terms and conditions of the contracts and had not effectively terminated the developer's rights under the contracts.

**City of West Palm Beach, FL v. Ernst & Young**, (Circuit Court, FL) Represent the

City of West Palm Beach in its securities fraud actions against bond broker/dealers and in the related professional (accountancy) malpractice/breach of fiduciary duty claims against the auditing firm of Ernst & Whinney (now Ernst & Young) resulting from multimillion dollar losses from unauthorized security investment trading by the City Treasurer.

**Security Federal Savings & Loan v. Wendelta**, (US Bankruptcy Court WD Tenn.) Successfully represented debtor in action by creditor seeking to terminate loan agreements and for money judgment under confirmed Plan of Reorganization.

**Fogelman v. Heiskell Donelson, et al.**, (Circuit Court, Tenn.) Obtained settlement in legal malpractice claim against state's largest law firm for causing foreclosure of property held by client.

**Doughtie, Trustee v. John B. Tigrett**, (US Bankruptcy Court WD Tenn.) In re: Pyramid Management Authority, Special Counsel for the Trustee to enforce terms and condition of Escrow Agreement.

**Peregrine Myanmar, Ltd., et al. v. Segal**, (USDC, S.D.NY) Representation of Joint Venture Partner in simultaneous actions filed in New York and Hong Kong relating to management rights in a Myanmar Joint Venture which held exclusive off-shore fishing rights.

**Owens v. University Club** (Circuit Court, Tenn.) Successfully represented employees of a private membership club which withheld a portion of the tips from employees in violation of Tennessee's Tip statute and terminated a manager who was the a Whistle blower and refused to participate in the illegal practice. The jury returned a verdict in excess of \$750,000 including \$500,000 in punitive damages.

**McClung v. Delta Square and Wal-Mart** (936 S.W.2d 891Tenn. 1996) Represented the husband of a woman who was abducted on September 6, 1990, at gun point from a Wal-Mart store parking lot in a strip shopping center in Memphis, and subsequently raped and murdered. The Tennessee Supreme Court, in November 1996 reversed both the trial and appellate courts overturning Tennessee's twenty-five year old no-duty rule and established by unanimous decision a new duty and standard of care for premises owners in inadequate security cases in Tennessee. In September 1998, a federal jury returned a seven figure verdict against the shopping center owner / management company. Summary judgment was granted to Wal-Mart three weeks before the jury trial but the summary judgment was reversed and the case against Wal-Mart was remanded for trial by the 6<sup>th</sup> Circuit. (**McClung v. Wal-Mart United States Court of Appeals, Sixth Circuit, 2001 FED App. 0390P**). Wal-Mart settled under a confidential

settlement on the eve of trial.

**Sisler v. Arbors of Harbor** (Circuit Court, Tenn.) Represent the mother of a 23 year old nursing student, Kimberley Wilburn, who was abducted by two young men from the parking lot of her apartment at the Arbors of Harbor Town in Memphis on July 7, 1993, as she exited her car. After her kidnapers picked up three other young men, Kimberley was taken to an isolated area and subsequently beaten, raped, run over by her own vehicle and murdered. All of the perpetrators are serving life in prison without parole.

The wrongful death civil action was settled at the courthouse prior to the empaneling on a jury in May 2001.

**Kyle v. Goldsmiths (Federated Department Stores)** Represent the father of Angela Kyle, a 27 year old social worker, who went to Goldsmith's Department Store (in an up-scale shopping mall) on December 26, 1996, to have a diamond and sapphire bracelet, a Christmas gift, resized. She parked approximately 100 feet from the store entrance in Goldsmith's garage. Angela was approached by two teenage gang members and was shot in the face and killed. She remained in her car for two days before being discovered by other shoppers at the mall. Goldsmith's security guard, who was scheduled to work forty hours a week, had been given the day off and no replacement guard was employed. Her car was not noticed in the lot at the end of the business day or during the next day after remaining over night in the store's parking garage. This case was settled under a confidential settlement prior to trial.

**Campbell, et al, v. Potash Corporation of Saskatchewan, Inc. and PCS Nitrogen v. Campbell, et al.** (USDC WDTN and USCA 6<sup>th</sup> Circuit) Representing PCS in an action involving golden parachute / severance agreements and corporate governance issues arising after the 1.4 billion dollar acquisition of Arcadian Corp. by PCS.

**ERGON/Amoco v. Phillips Petroleum, USDC WD of Tenn.** Representing Phillips Petroleum in environmental litigation involving a site in Memphis, TN.

**Wansley v. Refined Metal Corporation.** (USDC WDTN) Represented Refined Metals Corporation in defeating a toxic tort claim which established that Tennessee would not adopt a continuing tort theory for statute of limitations in toxic tort actions.

**Armstrong v. Makowsky & Ringle (Circuit Court Tenn.)** Represent the mother and minor daughter who was seriously injured after being caught in the cross-fire of a gang shooting at their apartment complex. Despite repeated notices, knowledge and complaints of gang activity, the

owners/managers failed to evict the gang members under applicable statutes, dismissed their on-site “courtesy officers” (off-duty law enforcement personnel) and had no guard or patrol service. After the shooting, the defendants attempted to evict the plaintiff. The case was settled after extensive discovery.

**Lee v. Sentinel Realty (Circuit Court, Tenn)** Represent a woman who was shot with a 12 gauge shotgun through the window of her car when she parked in front of her daughter’s apartment and refused to hand over her purse. The apartment complex had an access gate and shared a roving vehicle patrol with an adjoining apartment complex , even though the patrol company advised that the roving patrol was not adequate and recommended that the complex hire a fulltime, dedicated walking patrol officer. The case was settled after discovery and the defendants have requested court-supervised mediation.

**Doe v. Urban Properties et. al. (Circuit Court, Tenn)** \_ Represent the parents of two minor children who were accosted in a “family restroom” of the largest regional mall in the state. The perpetrator evaded the CCTV system, which was improperly designed, installed and monitored. Case settled after mediation.

**Rogers v. St. Joseph Hospital and Wackenhut (Circuit Court, Tenn).** Represent the family of an 82 year old stroke patient, who was raped in her hospital room by a perpetrator who represented himself as a family relative. Neither the hospital or guard company had any policy or procedure to control visitors’ access to patient’s rooms. The case settled at trial in March 2001.

**Bjotvedt v. Wal-Mart Stores, Inc.** (USDC, AZ) Acted as co-counsel with local AZ counsel for a young woman who was abducted from a Wal-Mart store in Chandler, AZ, raped and shot twice in the head and left for dead in the desert. Wal-Mart is alleged to have inadequate security and violated its own policies by not replacing a parking lot patrol associate for the 10 p.m. to 7 a.m shift thus leaving the premises without any security. The case settled under a confidentiality agreement after the defendant requested mediation prior to a motion to compel discovery and for sanctions for discovery abuse.

**Conopco, Inc d/b/a Slim Fast Foods v. Allen & Hoshall et al.** (USDC WD Tn, 2001) This is a construction/ architect/engineer breach of contract and negligence case brought on behalf of our client Slim Fast arising out of a construction contract for a plant in Covington, Tennessee. The case is presently set for mediation.

**Quilling, Receiver for the Securities and Exchange Commission and Granite Holdings vs. Johnson, et al.** (USDC W.D. Tenn. 2001) This is a consolidated action for legal mal-practice on behalf of investors and the SEC Receiver against an attorney who acted as Trustee for Hammersmith Trust, a purported high-yield investment program, which was in fact a \$60,000,000 Ponzi scheme. The case was settled under Court supervised mediation and the settlement is pending Court approval.

**Spencer v. Wal-Mart Stores, Inc.** (USDC, N Oklahoma. 2001) We are co-counsel with local Oklahoma counsel in this personal injury case resulting from a “hit and run” on Wal-Mart’s parking lot .

**Giesel vs. McDonalds et al** (Circuit Court, Broward County, Florida) We have been associated as co-counsel in this premises liability, inadequate security case by Florida counsel on behalf of the plaintiffs who were assaulted and shot in the parking lot of a McDonald’s restaurant in Fort Lauderdale, Florida. The case is in the initial phase of discovery.

#### **Selected Representative Corporate Clients:**

Holiday Inns - Security arbitration and general corporate matters.

Promus, Inc. - General corporate litigation.

City of West Palm Beach, FL - Security litigation, banking litigation, and accountant malpractice litigation.

Wells Fargo Real Estate - Real estate litigation for real Estate Division of Bank.

AGS-Hunter Management - Corporate and real estate litigation.

Potash Corporation of Saskatchewan, Inc. - Corporate governance and ERISA litigation.

Manufacturers Consolidation Service, Inc. - General corporate, shareholder litigation and corporate governance.

Phillips Petroleum, Inc. - environmental litigation.

Lilly Company - General corporate and corporate litigation.

Tennessee Managed Care Network - Health care related litigation and corporate litigation.

Diversified Health Services, LP - Corporate litigation and health care related litigation.

Corning Clinical Laboratories - Class action litigation and health care related litigation.

Bradson Mercantile, Inc. - Corporate litigation.

Llama Securities - Securities arbitration and employment matters.

Refined Metals Corporation - Environmental litigation.

Wicker Barbecue Products, Inc. - Product liability litigation.  
Reeder Development Co. in its action against Continental Bank - Bank Litigation.  
Aldrich Development Co. in its action against Old Court Savings & Loan - Bank liability litigation.  
Estate of E. B McCool, probate litigation in Broward County, Florida Probate Court  
- trust administration and validity of testamentary disposition and living trust  
International Carwash Association, Inc. (ICA) – General Counsel