

Daily Journal

OCTOBER 26, 2016

TOP BOUTIQUES IN CALIFORNIA 2016



Alexander Drecun / Special to the Daily Journal

From left, Thomas J. Umberg, Adina W. Stowell, Dean J. Zipser, Carole E. Reagan and Brent S. Colasurdo.

LITIGATION

Umberg Zipser LLP

IRVINE

When California officials sued a vendor in 2013 over the multimillion-dollar failure of the largest government payroll modernization effort in the nation, the state called on Thomas J. Umberg for help. The litigation illustrates some basics about the firm he founded with another prominent Orange County attorney, Dean J. Zipser, and two others.

One basic is the cordial relations Umberg Zipser and law partners Carole E. Reagan and Adina W. Stowell have maintained with the former firms where they worked together for years before opening their own doors in 2014: the Orange County offices of both Morrison & Foerster LLP and Manatt, Phelps & Phillips LLP. That amity showed in their working relationship in steering the suit by the state controller's office against SAP Public Services Inc.

"I was at Manatt when the dispute

with SAP arose," Umberg said. "At Manatt's request, the controller's chief counsel agreed that we would all work together until the conclusion of the case. It is indicative of our relationship after leaving Manatt, and that warm relationship continues until today." As proof, Umberg added in mid-October, "In fact, in the last week, we engaged Manatt to work with us on litigation that is yet to be filed."

After years of litigation, the SAP suit settled June 6 for a \$59 million payment to the controller's office plus an agreement to forego its own \$23 million in claims. *California State Controller v. SAP Inc.*, 34-2013-0014918 (Sacramento Super. Ct. June 6, 2016).

The other basic strength shown by Umberg Zipser's participation in the SAP suit is Umberg's unique qual-

ifications for dealing with matters at the intersection of law and government. As a Democratic state assemblyman, he represented Orange County in the early 1990s and again in the early 2000s, with a stint at MoFo in between. He and Manatt's Phillip R. Kaplan were co-lead counsel on the SAP case, alongside Reagan and Umberg Zipser associate Brent S. Colasurdo.

The controller sued SAP for breach of contract after having hired the software service provider to update California's government payroll and human resources systems but allegedly failed to integrate its own software into the state's existing computer networks and could not cure the defects. "We were on the eve of trial," Umberg said. "There's a history that when government gets shortchanged, it can't always successfully hold a private party accountable. I don't think SAP understood that the controller wasn't going to back down."

Umberg's legislative history was key. "SAP hired lobbyists and there were multiple legislative hearings on

the issue," he said. "My experience was helpful in understanding the process and the motivations involved."

Zipser said he and his colleagues decided to break away in what they thought was a logical next step for the quartet. "Conflicts can be a problem when you're at a big firm," he said. "They are much more manageable at a smaller shop. We now have a nimble, small firm platform. Of course, you're running the business now. Before, we had a lot of infrastructure help. We are a close group. We really fit together like a glove."

Long known in Orange County for his handling of large, complex bet-the-company cases, Zipser has served as president of the county's bar association and the Orange County chapter of the Association of Business Trial Lawyers. On the state level, he currently is co-vice chair of the California State Bar Commission charged with revision of the Rules of Professional Conduct.

On the defense side, Umberg Zipser prevailed in May for client Toshiba America Information Systems Inc. in a class action that arose out of an alleged electrostatic discharge in certain computer models. Although the case filed in 2005 settled quickly, years of litigation followed over one class counsel's demand for a \$25 million fee and more than \$900,000 in costs. A Los Angeles County Superior Court trial judge and a Court of Appeal panel largely denied the fee request and affirmed discovery abuse sanctions against the plaintiffs lawyer. In the end, Zipser said, the amount owing to Toshiba for sanctions and costs exceeded the amount awarded to counsel. Zipser, Reagan and Stowell represented Toshiba from the outset. *Ellis v. Toshiba America Information Systems Inc.*, 218 Cal. App. 4th 853 (2013).

"That was a record for me, in terms of length," Zipser said. "It's not one I'm eager to break."

—John Roemer