

General Docket  
US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 97-16204 Filed: 7/9/97  
Nsuit: 3850 SEC (Fed)  
Janas v. McCracken, et al  
Appeal from: Northern District of California (San Francisco)

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Case type information:

- 1) civil
- 2) private
- 3)

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Lower court information:

District: 0971-3 : CV-96-00393-FMS  
presiding judge: Fern M. Smith, District Judge  
court reporter: Helen Almacen  
Date Filed: 1/29/96  
Date order/judgment: 6/5/97  
Date NOA filed: 7/2/97

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Fee status: paid

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Prior cases:

None

Current cases:

	Lead	Member	Start	End
companion:	97-16204	97-16240	7/11/97	

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97-16204 Janas v. McCracken, et al

EDMUND J. JANAS  
Plaintiff - Appellant

Paul F. Bennett  
415/777-2230  
[COR LD NTC ret]  
GOLD & BENNETT  
595 Market Street  
San Francisco, CA 94105

I. Stephen Rabin, Esq.  
(212) 682-1818  
[COR LD NTC ret]  
RABIN & GARLAND  
275 Maidson Ave.  
New York, NY 10016

v.

EDWARD R. MCCRACKEN  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
650/493-9300

[COR LD NTC ret]  
WILSON SONSINI GOODRICH &  
ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304-1050

MICHAEL RAMSEY  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

ROBERT K. BURGESS  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

THOMAS J. OSWALD  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

TERUYASU SEKIMOTO  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

FOREST BASKETT  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

STEPHEN GOGGIANO  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

WILLIAM M. KELLY  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

LUCILLE SHAPIRO

Bruce G. Vanyo, Esq.

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Defendant - Appellee

(See above)  
[COR LD NTC ret]

SILICON GRAPHICS INC  
Defendant - Appellee

Bruce G. Vanyo, Esq.  
(See above)  
[COR LD NTC ret]

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97-16204 Janas v. McCracken, et al

In re: SILICON GRAPHICS INC.  
SECURITIES LITIGATION

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EDMUND J. JANAS

Plaintiff - Appellant

v.

EDWARD R. MCCRACKEN; MICHAEL RAMSEY; ROBERT K. BURGESS;  
THOMAS J. OSWALD; TERUYASU SEKIMOTO; FOREST BASKETT; STEPHEN  
GOGGIANO; WILLIAM M. KELLY; LUCILLE SHAPIRO; SILICON  
GRAPHICS INC

Defendants - Appellees

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7/9/97 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): NO. setting schedule as follows: appellant's designation of RT is due 7/14/97; appellee's designation of RT is due 7/22/97; appellant shall order transcript by 8/1/97; court reporter shall file transcript in DC by 9/2/97; certificate of record shall be filed by 9/8/97 ; appellant's opening brief is due 10/20/97; appellees' brief is due 11/17/97; appellants' reply brief is due 12/1/97. [97-16204] (ot) [97-16204]

7/9/97 Filed Paul F. Bennett for Appellant Edmund J. Janas Civil Appeals Docketing Statement served on 7/2/97 (to CONFATT) [97-16204] [97-16204] (ot) [97-16204]

7/9/97 Rec'd notice of representation of Paul Bennett and I. Stephen Rabin for aplt and Bruce G. Vanyo for aples. CASEFILE [97-16204] (ot) [97-16204]

8/1/97 Received Appellant notice of designation of reporter's transcript (CASE FILES) [97-16204] (sa) [97-16204]

8/27/97 Filed certificate of record on appeal RT filed in DC 8/6/97 [97-16204] (dg) [97-16204]

9/16/97 Case released from Pre-Briefing Conference program. (mlm) [97-15905 97-15990 97-16134 97-16138 97-16174 97-16181 97-16185 97-16204 97-16206 97-16223 97-16240 97-16375 97-16481 97-16483 97-16508 97-16520 97-16526 97-16543 97-16618 97-16622 97-35710 97-70917 97-70920 97-70935]

10/16/97 14 day oral extension by phone of time to file Appellant Edmund J. Janas in 97-16204 brief. [97-16204] appellants' brief due 11/3/97; appellees' brief due 12/3/97; reply brief is due 14 days . . . (jlc) [97-16204]

11/3/97 Filed original and 15 copies Appellant Edmund J. Janas opening brief (Informal: n) 47 pages and five excerpts of record in one volume; served on 11/3/97 [97-16204] (amended certif of compliance rcvd by fax; hard copy to follow) (ORIGINAL AMENDED CERTIFICATED OF COMPLIANCE RECEIVED 11/10/97) (sa) [97-16204]

12/1/97 14 day oral extension by phone of time to file Appellee in 97-16204's brief. [97-16204] appellees' brief due 12/17/97; reply brief is due 14 days . . . (jlc) [97-16204]

12/17/97 Filed original and 15 copies appellees Edward R. McCracken

et al. 47 page brief, five sets Supp. Exc. in one volume;  
served on 12/17/97 [97-16204] (sa) [97-16204]

12/19/97 Received Appellees Edward R. McCracken et al. appendix of  
unpublished decision w/ aty declar in spt [PROMO w/mtn]  
served on 12/17/97 [97-16204] (\*\* FOR MERITS PANEL \*\*) (sa)  
[97-16204]

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12/24/97 Filed motion and deputy clerk order PROMO (Deputy Clerk:  
CB): Aples' motion to file appendix of unpublished  
dispositions is denied. The denial is w/o prejudice to a  
renewed mtn that demonstrates review of the dispositions is  
approp under Cir. R. 36-1 or that the dispos may may be  
cited as precedent by the issuing ct... ( Motion recvd  
12/17/97) [97-16204] (sa) [97-16204]

1/8/98 Filed motion and deputy clerk order :(Deputy Clerk: cag)  
granting motion & order to extend time to file reply brief  
[3370445-1] appellants' reply brief due 1/28/98; ( Motion  
recvd 12/23/97) [97-16204] (crw) [97-16204]

1/8/98 Filed Edward R. McCracken, Michael Ramsey, Robert K.  
Burgess, Thomas J. Oswald, Teruyasu Sekimoto, Forest  
Baskett, Stephen Goggiano, William M. Kelly, Lucille Shapiro  
and Silicon Graphics Inc's renewed motion for leave to file  
appendix of unpublished decisions, served on 1/8/98  
[3372813] (PROMO) (\*\* FOR MERITS PANEL \*\*) (sm)  
[97-16204]

1/22/98 Filed order PROMO (Deputy Clerk: cag) Apl't's renewed motion  
for leave to file an appendix, the proposed appendix and  
any related filing shall be referred for disposition to the  
panel that considers the merits of the case. [97-16204] (hh)  
[97-16204]

1/29/98 Filed original and 15 copies Edmund J. Janas reply brief,  
( Informal: n ) 20 pages; served on 1/28/98 [97-16204] (sa)  
[97-16204]

3/20/98 Calendar check performed [97-16204, 97-16240] (uk)  
[97-16204 97-16240]

4/6/98 Calendar materials being prepared. [97-16204, 97-16240]  
[97-16204, 97-16240] (uk) [97-16204 97-16240]

4/15/98 CALENDARED: SF 6/11/98 9:00 am Courtroom 1 [97-16204,  
97-16240] (uk) [97-16204 97-16240]

4/15/98 FILED CERTIFIED RECORD ON APPEAL: 8 CLERKS REC, 2 RT's and  
4 Expando's (original). [97-16204, 97-16240] (stev)  
[97-16204 97-16240]

4/29/98 Filed apl'ts' (Edmund J. Janas in 97-16204, and Deanna  
Brody, et al. in 97-16240) motion for separate argument on  
related cases; served on 4/28/98 (PANEL) [3443983]  
[97-16204, 97-16240] [97-16204, 97-16240] (gail)  
[97-16204 97-16240]

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- 5/6/98 Filed Appellees Edward R. McCracken et al. response supporting appellee's motion for separate argument on related cases (PANEL by fax); served on 5/6/98 [97-16204, 97-16240] (sa) [97-16204 97-16240]
- 5/8/98 Filed aples Edward R. McCracken et al. motion to continue oral argument (PANEL by fax) [97-16204, 97-16240] served on 5/8/98 (sa) [97-16204 97-16240]
- 5/13/98 Filed order (Deputy Clerk: gb): Appellees' motion to continue oral argument is denied. (PHONED 9:30) [97-16204, 97-16240] (sa) [97-16204 97-16240]
- 5/13/98 Filed order (Deputy Clerk: gb): Oral argument in this matter shall not exceed 30 min per side. Aplts shall divide their allotted time between themselves. Amicus SEC is hereby granted 10 min for oral argument. [PHONED 9:30] in 97-16240 [97-16204, 97-16240] (sa) [97-16204 97-16240]
- 6/3/98 Filed Appellees McCracken, Ramsey, Burgess, Sekimoto, Baskett, Kelly, Silicon Graphics Inc in 97-16240 and 97-16204 additional citations, served on 6/3/98 (at 4:02pm) [FedX & hand delivered to PANEL] [97-16240, 97-16204] (ah) [97-16204 97-16240]
- 6/9/98 Filed order (Deputy Clerk: gb) denying amicus motion to appear and argue merits of the case [PHONED 2:10] [97-16204, 97-16240] (sa) [97-16204 97-16240]
- 6/11/98 ARGUED AND SUBMITTED TO James R. BROWNING, Joseph T. SNEED, John S. Rhoades [97-16204, 97-16240] (ah) [97-16204 97-16240]
- 6/28/99 Filed aples Edward R. McCracken et al. additional citations (PANEL by o/nite mail), served on 6/28/99 [97-16204, 97-16240] (sa) [97-16204 97-16240]
- 7/2/99 FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. James R. BROWNING, concurring in part and dissenting in part; Joseph T. SNEED, author; John S. Rhoades) FILED AND ENTERED JUDGMENT. (sa) [97-16204 97-16240]
- 7/16/99 [3729037] Filed original and 50 copies Appellants' petition for rehearing with suggestion for rehearing en banc, 15 p.pages, served on 7/16/99 (PANEL AND ALL ACTIVE JUDGES) [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 7/28/99 Received letter dated 7/21/99 from Louisiana State Employees Retirement System ("LASERS") in support of pet for rhrg (RESENT LETTER WITH ATTACHMENTS-crw) (PANEL) [97-16240, 97-16204] (gail) [97-16204 97-16240]

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- 7/29/99 Filed order (James R. BROWNING, Joseph T. SNEED, John S. Rhoades): Defts-aples are directed to file a response to Pltfs-aplts' pet for rhrng and for rhrng en banc filed with this ct on 7/16/99. The response shall not exceed 15 pages in length, and shall be filed in 40 copies on or before 21 days from the date of this order. [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 8/4/99 Filed order ( Joseph T. SNEED, ): The opinion filed on 7/2/99 has been AMENDED. In light of the changes to Section I.B.1.a., "Required state of mind", the Crt will permit plaintiffs-aplts to file a suppl pet for rhrng & suggestion for rhrng en banc. The suppl pet for rhrng & suggestion for rhrng en banc shall not exceed 15 pgs in length & shall be filed in 40 copies on or bef 14 days from the date of this order. In the event that plfts-aplts file a suppl pet, the crt directs dfdts-aples to fila a sippl response to the suppl pet. The suppl response to the suppl pet shall not exceed 15 pgs in length & shall be filed in 40 copies on or bef 28 days from the date of this order. An amended dissent to the amended opinion is forthcoming. (Faxed to csl & PANEL: 12:30) [97-16204, 97-16240] (mhf) [97-16204 97-16240]
- 8/4/99 Filed amended opinion (Judges James R. BROWNING, dissenting; Joseph T. SNEED, John S. Rhoades, (Orig. opinion id: [3705951-1] in 97-16204, [3705951-1] in 97-16240) [97-16204, 97-16240] (JRB's dissent filed 8/25 - see text entry for 8/25/99) (gva) [97-16204 97-16240]
- 8/5/99 Received Atty Bruce G. Vanyo for Aples' Silicon Graphics Inc, et al. letter dated 08/05/99 re: clarification of its order of Jul 29, 1999 and fi the aple has to file a resp by 8/19/99 (fax/AUTHOR) [97-16204] (ot) [97-16204]

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- 8/9/99 Filed order (James R. BROWNING, Joseph T. SNEED, John S. Rhoades): Deft-aples' ltr, dated 8/5/99, is construed as a req for clarification of this ct's Order filed 8/4/99. So construed, the req is granted. On 7/2/99, we issued our original opinion. On 7/16/99, pltfs-aplts filed a 15-page pet for rhrng and for rhrng en banc ("original petition"). On 7/29/99, we issued an Order directing defts-aples to file a response to the original petition w/i 21 days from the date of the order (i.e., by 8/19/99). On 8/4/99, we issued our amended opinion. On 8/4/99, we also issued an order permitting pltfs-aplts to file a supp'l pet for rhrng and for rhrng en banc ("supp'l petition") w/i 14 days from the date of the Order (i.e., by 8/18/99). We also directed defts-aples to file a supp'l response to the supp'l pet on or before 28 days from the date of the Order (i.e., by 9/1/99). We now vacate our Order of 7/29/99, and direct deft-aples to file an original and 40 copies of a single response on or before 9/1/99. In the event pltfs-aplts file a supp'l petition pursuant to our order of 8/4/99, the response of defts-aples shall not exceed 30 pages. If pltfs-aplts decline to file a supp'l petition, the response

of defts-aples shall not exceed 15 pages. (FAXED TO COUNSEL AT 3:15 P.M.) [97-16204, 97-16240] (gail) [97-16204 97-16240]

- 8/18/99 [3736464] Filed original and 50 copies Appellants' supp'l petition for rehearing with suggestion for rehearing en banc (in accordance with 8/9/99 order) 15 p.pages, served on 8/18/99 (PANEL AND ALL ACTIVE JUDGES) [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 8/19/99 Filed Amicus SEC's mtn for lv to file memo as amicus curiae in support of supp'l pet for rhrng en banc; served on 8/18/99 (PANEL) [3738960] [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 8/19/99 Received original and 50 copies Amicus SEC's brf of 6 pages in support of supp'l pet for rhrng and rhrng en banc; served on 8/19/99 (TO PANEL w/mtn) [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 8/25/99 Rcvd Amended Concurring and Dissenting Opinion - BROWNING, concurring in part and dissenting in part. [97-16204] (crw) [97-16204]
- 9/2/99 Filed Amicus Securities Industry Assn's motion for lv to file memo as Amicus Curiae in opp to supp'l pet for rhrng and rhrng en banc; served on 9/2/99 (PANEL) [3746682] [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 9/2/99 Received orig + 50 copies Amicus Securities Industry Assn.'s Amicus Curiae brf in opp to supp'l pet for rhrng and rhrng en banc; served on 9/2/99 (to PANEL w/mtn) [97-16240, 97-16204] (gail) [97-16204 97-16240]

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- 9/7/99 Received letter dated 9/2/99 from Robert H. Stropp, Jr. representing Natl Council of Senior Citizens re: support for supp'l memorandum filed by SEC CASEFILE [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 9/8/99 Rcvd orig & 50 copies of Amicus AEA's memo in opp to pet and suppl pet for rhrng and rhrng en banc; served on 9/8/99 (PANEL) [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 9/8/99 Received Aplt's additional citations in further support of pet for rhrng, served on 9/7/99 (PANEL & all active judges) (only 3 copies were recd, csl to send 47 addl copies to be sent to active judges only - copies already sent to PANEL) [97-16240, 97-16204] (Recd addl copies - sent to all active judges) (gail) [97-16204 97-16240]
- 9/15/99 Received Council of Institutional Investors letter dated 9/13/99 re: 7/29/99 ltr prev rcvdd; support of SEC memorandum. PANEL [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 9/20/99 Received letter dated 9/17/99 from aty Leonard B. Simon for aplt's re: response to aples' ltr dated 9/13/99 re Bryant v. Avado Brands, Inc. PANEL AND ALL ACTIVE JUDGES [97-16240,

97-16204] (gail) [97-16204 97-16240]

- 9/27/99 Received Aplt's (Deanna Brody, et al.) additional citations, served on 9/24/99 (PANEL and ALL ACTIVE JUDGES on 10/04/99) (gail) [97-16204 97-16240]
- 10/5/99 Received via fax Anchorage Police & Fire Retirement System letter dated 7/23/99 re: in support of the PFR/en banc submitted by the SEC. PANEL [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 10/5/99 Received via fax Council for Institutional Investors letter dated 7/29/99 re: in support of PFR/en banc filed by the SEC. PANEL [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 10/7/99 Received Anchorage Police & Fire Retirement System letter dated 9/23/99 re: further support of the SEC's supplemental petition. PANEL [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 10/13/99 Received Aplt's additional cite in support of pet for rhrg en banc; served on 10/13/99 PANEL [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 10/15/99 Received Aples Edward R. McCracken, et al.'s additional citation, served on 10/15/99 PANEL [97-16240, 97-16204] (gail) [97-16204 97-16240]

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- 10/21/99 Rec'd notice of change of address from William S. Lerach for Appellants dated 10/19/99 (new address: MILBERG WEISS BERSHAD HYNES & LERACH LLP, 100 Pine St., Ste. 2600, San Francisco, CA 94111 Tel: (415) 288-4545 Fax: (415) 288-4534) CASEFILE [97-16240, 97-16204] (gail) [97-16204 97-16240]
- 10/27/99 Filed order (for publication) ( James R. BROWNING, Joseph T. SNEED, John S. Rhoades): ...The petn for rehearing is denied and the sugg for rehearing en banc is rejected. Judge Reinhart dissents. All other pending mtns are denied. [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 11/5/99 MANDATE ISSUED [97-16204, 97-16240] (crw) [97-16204 97-16240]
- 10/10/00 RECORD RETURNED. (See control card for details.) (jk) [97-16204 97-16240 97-17140 97-35840 97-50140 97-50240 97-55040 97-71240]

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