

LITIGATION SUMMARY
1988-2012
Relating to Customer Transactions
With Monex Deposit Company and Monex Credit Company

- A. Cases Filed*: 100 (61 civil, 18 CFTC reparation, 21 arbitration)
- B. Cases Resolved: 92 (56 civil, 18 CFTC reparation, 18 arbitration)
- 49 Settled: 1988 (2 for \$925) (1 civil, 1 reparation)
1989 (1 for \$2,200) (1 reparation)
1990 (4 for \$80,500) (1 civil, 3 reparation)
1991 (3 for \$18,000) (3 reparation)
1992 (2 for \$48,258) (2 reparation)
1993 (4 for \$51,500) (2 civil, 1 reparation, 1 arbitration)
1994 (4 for \$45,752) (2 civil, 1 reparation, 1 arbitration)
1995 (6 for \$90,593) (5 civil, 1 reparation)
1996 (1 for \$41,000) (1 civil)
1997 (None)
1998 (None)
1999 (1 for \$100,000) (1 civil)
2000 (3 for \$51,000) (3 civil)
2001 (3 for \$81,000) (3 civil)
2002 (3 for \$849,500) (3 civil)
2003 (None)
2004 (1 for \$50,000) (1 civil)
2005 (1 for \$15,000) (1 civil)
2006 (None)
2007 (2 for \$140,392.50) (1 civil, 1 arbitration)
2008 (1 for \$77,000)(1 arbitration)
2009 (1 for \$90,300.04) (1 civil)
2010 (3 for \$1,993,000) (2 civil, 1 arbitration)
2011 (2 for \$28,000) (1 civil, 1 arbitration)
2012 (1 for \$100,000) (1 arbitration)
- Total: 49 for \$3,953,920.54
- 6 Dismissed on jurisdictional grounds (4 reparations, 2 civil)
11 Dismissed voluntarily by plaintiff [no settlement] (7 civil, 4 arbitration)
4 Dismissed for plaintiff's counsel's failure to appear at MSC or ADR Rev. (4 civil)
5 Dismissed for plaintiff's failure to prosecute (3 civil, 2 arbitration)
16 Won (10 civil, 1 reparation, 5 arbitration)
1 Lost (1 civil for \$276, Small Claims Court – April 2000)
- C. Cases Pending (3/30/12): 8 (5 civil, 3 arbitration)*

1. Monex Deposit Company adv. Mary Ann Duke, JAMS, Orange County, CA, Case No. 1200041165, filed August 2008.

Duke purchased and sold silver bullion in a Monex account from September 2007 to May 2008, losing approximately \$287,000. She subsequently threatened to file a lawsuit in Maryland state court, alleging that her account representative, Justin Dennis, caused her to make purchases and sales in March 2008 when she was incompetent to do so. In response, Monex filed a Demand for Arbitration with JAMS in Orange County, CA pursuant to its

written account agreements with Duke. The case has been in suspense since December 2009 when Duke's counsel asked JAMS to take it off calendar because Duke had filed for bankruptcy. No further communications have been received from Plaintiff since then. Monex denies Duke's claims and will defend them vigorously if she pursues them.

2. Elizabeth M. Moffitt and Nicholas E. Dibs v. Monex Deposit Company, Monex Credit Company and Kyle Felic, Orange County Superior Court Case No. 30-2010-00434314, filed December 17, 2010.

Plaintiffs lost approximately \$40,000 buying and selling gold and silver bullion in financed transactions between December 2004 and October 2006. Plaintiffs allege, inter alia, fraudulent misrepresentation, deceit, constructive fraud, negligence and breach of fiduciary duty. Plaintiffs seek compensatory damages of \$50,000, punitive damages, interest and costs.

Defendants deny Plaintiffs' claims and will defend them vigorously. Discovery in progress. Trial set for June 18, 2012.

3. Monex Deposit Company and Monex Credit Company adv. Rio Vista Holdings, Inc. and Thomas English, JAMS, Orange County, CA, No.1200042168, filed May 15, 2009.

In January 2008 Thomas English, a Massachusetts resident, opened accounts with Monex Deposit Company and Monex Credit Company in the name of Rio Vista Holdings, Inc., his personal Nevada corporation. Rio Vista purchased and sold gold, silver, platinum and palladium bullion on credit over the next 10 months, closing its accounts with a net loss of \$236,607.

In April 2009, Rio Vista advised Monex that it intended to file suit in Massachusetts state court alleging breach of contract, breach of fiduciary duty, fraud and deceit, negligent misrepresentation, negligence and civil conspiracy if Monex did not reimburse all of its losses. In response, Monex filed a

Demand for Arbitration with JAMS in Orange County, CA pursuant to its written account agreements with Rio Vista, seeking a determination that it had no liability. Rio Vista counterclaimed alleging the aforementioned causes of action and seeking compensatory and punitive damages and other relief.

Monex denies Claimants' claims and will defend them vigorously. Discovery completed. A two-day hearing is scheduled for June 19-20, 2012.

4. James Sutherland v. Monex Deposit Company, Orange County, CA, Superior Court, Case No. 30-2011-00449784-CU-FR-CJC, filed February 14, 2011.

Plaintiff Sutherland lost \$391,440 on financed purchases of platinum bullion between February 2008 and February 2010. Plaintiff's now claims that these losses were caused by Monex's fraud, negligence, deceit, breach of fiduciary duty, negligent misrepresentations, and breach of contract. Plaintiff seeks compensatory, consequential, punitive and exemplary damages, prejudgment interest, attorneys fees and costs.

Monex denies Plaintiff's claims and will defend them vigorously. Discovery in progress. Trial is set for April 23, 2012.

5. Rudolph Schaffter, Eric Wetzell, Julie Braam, Judy C. Scott and Kenneth Land v. Monex Deposit Company and Monex Credit Company, Orange County, CA, Superior Court, Case No. 30-2010-00371655-CU-FR-CJC, filed May 12, 2010; Rudolph Schaffter, Eric Wetzell, Julie Braam, Judy C. Scott and Kenneth Land v. Monex Deposit Company and Monex Credit Company, JAMS, Orange County, CA, Case No. 1200045367, filed October 4, 2011.

Plaintiffs Braam and Wetzell are husband and wife and Plaintiffs Land and Scott are brother and sister. Plaintiffs are otherwise unrelated and appear to have been aggregated by their attorneys in the hope that it will make their case more persuasive. Schaffter actively traded silver, gold and palladium bullion between between October 2006 and May 2008, losing \$275,738. His account representative was R.J. DeVogler. Braam and Wetzell purchased 28 silver bars on credit from Monex in August and September 2008, losing \$90,566 when silver prices declined shortly thereafter. Their account representative was Terry Parsons. Land lost \$195,096 purchasing and shorting silver bullion between May 2007 and November 2008. Scott opened an account on Land's recommendation and lost \$50,793 purchasing and shorting silver between July 2007 and December 2008. Their account representative was Sean Fallon..

Plaintiffs allege that their losses were caused by Monex's fraudulent misrepresentations, breach of fiduciary duty, deceit, constructive fraud, negligent misrepresentation, negligence, elder abuse and unfair business practices.

Defendants' Motion to Compel Arbitration was granted in September 2011. The Court Of Appeals denied Plaintiffs' request for a writ to challenge that decision in March 2012.

Monex denies Plaintiff's claims and will defend them vigorously. Discovery in progress. Monex will move to separate Plaintiffs' claims into 3 separate actions once an arbitrator is selected.

6. Daniel J. Nibler v. Monex Deposit Company and Monex Credit Company, Orange County, CA, Superior Court, Case No. 30-2011-00500383-CU-FR-CJC, filed August 15, 2011.

Plaintiff lost approximately \$194,800 on purchases of silver bullion between June and October 2008 following a substantial decline in silver prices. Plaintiff blames his losses on Monex and his account representative, alleging fraud, negligence, deceit, breach of fiduciary duty, negligent misrepresentations, and breach of contract. Plaintiff seeks compensatory, consequential, punitive and exemplary damages, prejudgment interest, attorneys fees and costs.

Defendants deny Plaintiff's claims and will defend them vigorously. Defendants moved to compel Plaintiff to arbitrate his claims before JAMS. The court denied this motion and Defendants appealed. Awaiting decision of the Court of Appeals on this issue. No discovery has yet taken place.

7. J.D. Black v. Monex Deposit Company and Monex Credit Company, JAMS, Orange County, CA, Case No. 1200045250, filed September 2, 2011.

Black, a wealthy North Carolina businessman and personal friend of his Monex account representative, engaged in large long financed silver, gold and palladium bullion transactions and large short silver transactions with Monex between September 2006 - March 2008 and September 2009 – November 2010, losing approximately \$963,900. He now claims that his losses were due to Monex's breach of fiduciary duty, constructive fraud, negligent misrepresentations and negligence. Plaintiff seeks compensatory damages according to proof, punitive and exemplary damages, prejudgment interest, attorneys fees and costs.

Monex denies Claimants' claims and will defend them vigorously. Discovery in progress. No hearing date has been set.

8. Marissa Sharpe v. Monex Deposit Company, Monex Credit Company and Art Levine, Orange County Superior Court Case No. 30-2011-00522681-CU-FR-CJC, filed November 15, 2011.

Plaintiff lost \$64,704 between August 2007 and October 2010 trading silver, gold, platinum and palladium bullion. Plaintiff alleges that defendants defrauded her, misrepresented various terms and risks of her transactions and failed to disclose others in violation of Section 29536 of the California Commodity Code, breached their fiduciary duties to her, deceived her, made negligent misrepresentations, were negligent and violated Section 17200 of California's B&P Code. Claims primarily based on alleged representations of risk, failure to adequately disclose risks, unauthorized trading and churning. Plaintiff seeks compensatory damages, lost profits, punitive damages, interest, costs and attorneys fees.

This case has not yet been served on Defendants. If and when the case is served Defendants will deny Plaintiff's claims and defend them vigorously.

*This list does not include the following pending matter which is customer related, but which was not brought by or on behalf of a customer:

George Dale, Commissioner of Insurance for the State of Mississippi, as Receiver of Franklin Protective Life Insurance Company, Family Guaranty Life Insurance Company and First National life Insurance Company of America; Paula Flowers, Commissioner of Commerce and Insurance for the State of Tennessee, as Receiver of Franklin American Life Insurance Company; Scott Lakin, Director of the Department of Insurance for the State of Missouri, as Receiver of International Services Life Insurance Company; Carroll Fisher, Insurance Commissioner for the State of Oklahoma, as Receiver for Farmers and Ranchers Life Insurance Company; and Mike Pickens, Insurance Commissioner for the State of Arkansas, as Receiver Old Southwest Life Insurance Company v. Emilio Colagiovanni; Edward David Collins; Thomas Corbally; Endurance Investments LTD.; The Holy See a/k/a/ Vatican City State; Monitor Ecclesiasticus Foundation; Caldwell & Caldwell; James Caldwell, Jr.; James Caldwell III; and Monex Deposit Company (United States District

Court, Southern District of Mississippi, Jackson Division, Case No. 3:01CV663BN, filed August 31, 2001; Monex added as a defendant April 4, 2003.)

This case arises out of the fraudulent activities of financier Martin Frankel, who allegedly bilked the insurance companies represented by Plaintiffs out of over \$200,000,000. In April 1999, Monex sold gold coins to Frankel's company, Devonshire Technologies, Ltd. Plaintiffs allege that Monex either knew or should have known that Frankel was engaged in fraud and that the gold sale assisted Frankel's fraudulent endeavors. On this basis Plaintiffs allege that Monex conspired with Frankel to launder the funds he fraudulently obtained from the insurance companies and participated in mail and wire fraud by Frankel in violation of 18 U.S.C. Sections 1341, 1343, 1962(c) and 1962(d). Plaintiffs seek joint and several liability against all defendants and request compensatory damages according to proof, treble damages and attorneys fees for the federal violations, punitive damages for the conspiracy and aiding and abetting claims, plus prejudgment interest and costs.

Monex's Answer was filed May 21, 2003 denying Plaintiffs' claims. Monex knew nothing of Frankel's fraudulent activities when it sold the gold coins to his company and believes that its dealings with Frankel were beyond reproach. In that regard, Monex assisted the FBI in the recovery of all the coins.

It appears that Plaintiffs' counsel view Monex as a deep pocket and hope it will be willing to pay Plaintiffs at least a low 6-figure settlement to avoid continuing litigation costs. The case against Monex has been quiescent since early 2007 while Plaintiffs pursued their claims against the other defendants. Recently Monex was informed that Plaintiffs had reached settlements with all but two of the other defendants and now will actively pursue their claims against Monex. MDC views its inclusion in the case as nothing more than attempted extortion and will defend Plaintiffs' claims vigorously. Discovery in progress. No trial date set.

LITIGATION SUMMARY
1988-2005
Relating to Customer Transactions
With Monex Deposit Company and Monex Credit Company

A. Cases Filed: 65*

B. Cases Resolved: 61

39 Settled: 1988 (2 for \$925) (1 civil, 1 reparation)
1989 (1 for \$2,200) (1 reparation)
1990 (4 for \$80,500) (1 civil, 3 reparation)
1991 (3 for \$18,000) (3 reparation)
1992 (2 for \$48,258) (2 reparation)
1993 (4 for \$51,500) (2 civil, 1 reparation, 1 arbitration)
1994 (4 for \$45,752) (2 civil, 1 reparation, 1 arbitration)
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1996 (1 for \$41,000) (1 civil)
1997 (None)
1998 (None)
1999 (1 for \$100,000) (1 civil)
2000 (3 for \$51,000) (3 civil)
2001 (3 for \$81,000) (3 civil)
2002 (3 for \$849,500) (3 civil)
2003 (None)
2004 (1 for \$50,000) (1 civil)
2005 (1 for \$15,000) (1 civil)

Total: 39 for \$1,525,228

7 Dismissed on jurisdictional grounds (4 reparations, 3 civil)
3 Dismissed voluntarily by plaintiff [no settlement] (3 civil)
3 Dismissed for plaintiff's counsel's failure to appear at MSC (3 civil)
2 Dismissed for plaintiff's failure to prosecute (2 civil)
6 Won (5 civil, 1 reparation)
1 Lost (1 civil for \$276, Small Claims Court – April 2000)

C. Cases Pending (7/12/05): 4*

1. Anne Marie Bielicki, Georgina Bielicki and John Davino, individually and on behalf of all others similarly situated, v. Monex Deposit Company, Monex Credit Company, Comco Management Corporation, Metco Management Corporation, Louis E. Carabini and Michael A. Carabini (Orange County, CA, Superior Court, Case No. 00CC15244, filed December 20, 2000). The named Plaintiffs had losses of approximately \$82,100 from their dealings with MDC and MCC. Their purported class action alleges violations of California's unfair business practices statutes (B&P Section 17200 et seq.), California's Legal Remedies Act (Civil Code Section 1750 et seq.), fraud, breach of fiduciary duty, civil conspiracy and negligent supervision.

Plaintiffs seek appointment of a receiver, restitution of monies paid to defendants, disgorgement of profits, an injunction against continuing unlawful, unfair or fraudulent business practices, prejudgment interest, punitive damages, attorney fees and costs.

Defendants demurred to Plaintiff's claims and moved that the case be dismissed for failure to state a cause of action. Plaintiffs filed their First Amended Complaint on June 25, 2001. Defendants' Demurrer to that complaint was rejected. Defendants' Answer was filed on October 16, 2001 denying Plaintiffs' claims. Plaintiffs' Motion For Class Certification was filed June 4, 2003. Defendants' Response was filed February 6, 2004. On April 1, 2004 the court denied Plaintiffs' Motion For Class Certification. Plaintiffs appealed that ruling. The Court of Appeals affirmed the lower court's decision on March 30, 2005 and awarded Defendants costs. Given the court's decision not to grant class certification, it is anticipated that the case will be dismissed by plaintiffs in exchange for a waiver of defendants' costs award. Should the three individual plaintiffs continue to pursue their claims, defendants will oppose them vigorously.

2. Kevin Walker, individually and on behalf of all others similarly situated, v. Monex Deposit Company, Monex Credit Company, Comco Management Corporation, Metco Management Corporation, Newport Service Corporation, Louis E. Carabini, Michael A. Carabini and William A. Nelles (Orange County, CA, Superior Court, Case No. 04CC00082, filed February 25, 2004). This case is substantially similar to the Bielicki case. The named Plaintiff had losses of approximately \$250,000 from his dealings with MDC and MCC. The purported class action alleges violations of California's unfair business practices statutes (B&P Section 17200 et seq.), California's Legal Remedies Act (Civil Code Section 1750 et seq.), fraud by concealment, breach of fiduciary duty, civil conspiracy and negligent supervision and breach of contract.

As in Bielicki, Plaintiff seek appointment of a receiver, restitution of monies paid to defendants, disgorgement of profits, an injunction against continuing unlawful, unfair or fraudulent business practices, prejudgment interest, punitive damages, attorney fees and costs.

Defendants have answered Plaintiff's First Amended Complaint denying all claims. Discovery is underway. Defendants will oppose Plaintiff's claims vigorously.

3. Rebecca Garza, Rosa Garza and Flora Giuliani v. Monex Deposit Company, Monex Credit Company, Comco Management Corporation, Metco Management Corporation, Monaco Financial, LLC, Monex International Deposit Company, Louis E. Carabini, Michael A. Carabini and Justin Dennis (JAMS, Orange County, CA, Arbitration Case No. 1200034899, filed April 6, 2004). Complainants lost approximately \$211,500 in their precious metals transactions with MDC and MCC between November 2002 and July 2003. The Monex parties filed for arbitration following receipt of Complainants' draft Superior Court complaint alleging breach of fiduciary duty, fraud in the sale of securities under California blue sky laws, sale of unregistered securities under California blue sky laws, violation of Section 12(1) of the California Securities Act, actual and constructive fraud and deceit, fraud on a senior citizen, violation of the California Investment Advisor Act, tort of another claim, negligence, mutual mistake, representative action for unfair competition and unfair business practices, and violation of California's Consumer Legal Remedies Act.

Defendants have denied Plaintiffs' claims and will oppose them vigorously. Discov-

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ery is underway. The arbitration hearing is scheduled for September 20-22, 2005.

4. Christopher Franklin and Veronica Franklin v. Monex Deposit Company, Monex Credit Company and Greg Morton (Orange County, CA, Superior Court, Case No. 05CC 04906, filed April 6, 2005). Plaintiffs allege negligence and breach of fiduciary duty by defendants in that MDC's Account Representative, Greg Morton, failed to contact Plaintiffs during a significant market decline as he allegedly promised to do. Plaintiffs also allege unfair competition by Monex in connection with the companies' method of obtaining leverage accounts and falsely implying in their advertisements that investment in precious metals does not involve significant risk. Plaintiffs seek compensatory damages in excess of \$150,000, punitives, costs and attorneys fees.

Defendants have moved the court to transfer the case to JAMS pursuant to Defendants' arbitration agreements with MDC/MCC. Defendants intend to oppose Plaintiffs' claims vigorously.

*This list does not include the following pending matter which is customer related, but which was not brought by or on behalf of a customer:

George Dale, Commissioner of Insurance for the State of Mississippi, as Receiver of Franklin Protective Life Insurance Company, Family Guaranty Life Insurance Company and First National life Insurance Company of America; Paula Flowers, Commissioner of Commerce and Insurance for the State of Tennessee, as Receiver of Franklin American Life Insurance Company; Scott Lakin, Director of the Department of Insurance for the State of Missouri, as Receiver of International Services Life Insurance Company; Carroll Fisher, Insurance Commissioner for the State of Oklahoma, as Receiver for Farmers and Ranchers Life Insurance Company; and Mike Pickens, Insurance Commissioner for the State of Arkansas, as Receiver Old Southwest Life Insurance Company v. Emilio Colagiovanni; Edward David Collins; Thomas Corbally; Endurance Investments LTD.; The Holy See a/k/a/ Vatican City State; Moni-

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tor Ecclesiasticus Foundation; Caldwell & Caldwell; James Caldwell, Jr.; James Caldwell III; and Monex Deposit Company (United States District Court, Southern District of Mississippi, Jackson Division, Case No. 3:01CV663BN, filed August 31, 2001; Monex added as a defendant April 4, 2003.)

This case arises out of the fraudulent activities of financier Martin Frankel, who allegedly bilked the insurance companies represented by Plaintiffs out of over \$200,000,000. In April 1999, MDC sold gold coins to Frankel's company, Devonshire Technologies, Ltd. Plaintiffs allege that MDC either knew or should have known that Frankel was engaged in fraud and that the gold sale assisted Frankel's fraudulent endeavors. On this basis Plaintiffs allege that MDC conspired with Frankel to launder the funds he fraudulently obtained from the insurance companies and participated in mail and wire fraud by Frankel in violation of 18 U.S.C. Sections 1341, 1343, 1962(c) and 1962(d). Plaintiffs seek joint and several liability against all defendants and request compensatory damages according to proof, treble damages and attorneys fees for the federal violations, punitive damages for the conspiracy and aiding and abetting claims, plus prejudgment interest and costs.

MDC's Answer was filed May 21, 2003 denying Plaintiffs' claims. MDC knew nothing of Frankel's fraudulent activities when it sold the gold coins to his company and believes that its dealings with Frankel were beyond reproach. It appears that Plaintiffs' counsel view MDC as a deep pocket and hope it will be willing to pay Plaintiffs at least a low 6-figure settlement to avoid continuing litigation costs. Obviously, Plaintiffs' counsel are in no hurry in this regard since virtually all of their activities have been directed toward the other defendants (primarily the Vatican) since MDC was added to the case. No major activity is required of MDC until Plaintiffs turn their attention in its direction. MDC views its inclusion in the case as nothing more than attempted extortion and intends to defend Plaintiffs' claims vigorously.

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