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Cut, print: Coppola out \$20M

Latest reversal continues streak for Calif. appellate firm.

BY MARGARET CRONIN FISK

WHEN A California appellate court recently reversed the remaining \$20 million of an \$80 million jury verdict awarded to film director Francis Ford Coppola, the ruling provided the latest in a series of stunning wins for Encino, Calif., appellate boutique Horvitz & Levy.

The firm recently won a reversal of a \$221 million punitive judgment verdict awarded in 1998 in a legal malpractice case. And in 2000, Horvitz & Levy attorneys won a reversal of a \$405.4 million personal-injury judgment against five makers of cleaning solvents.

In its latest victory, the firm was representing Warner Bros. Inc., which had been hit with an \$80 million verdict in July 1998. The lawsuit had its origin in discussions between Mr. Coppola and Warner Bros. over Mr. Coppola's suggested remake of the *Pinocchio* story, using live action.

The parties never agreed on compensation, and after 18 months of negotiations, Mr. Coppola notified Warner that he was withdrawing. Subsequently, Warner learned Mr. Coppola was discussing a *Pinocchio* project with Columbia Pictures. In February 1994, Warner executive Steven Spira sent a letter to Columbia saying Warner had a

pre-existing deal with Mr. Coppola. Mr. Coppola and Columbia entered into a contract to produce the movie, but Warner refused to relinquish its rights.

Mr. Coppola then sued Warner Bros., charging that Warner's refusal to relinquish its claims was wrongful interference with his Columbia contract. While a *Pinocchio* film was produced, neither Mr. Coppola nor Warner Bros. was involved, said Warner appellate counsel Frederic Cohen of Horvitz & Levy.

In July 1998, a Los Angeles jury awarded Mr. Coppola \$20 million in compensatory damages and \$60 million in punitives. The punitives were thrown out. *Coppola v. Warner Bros. Inc.*, BC 135198 (Los Angeles Co. Super. Ct.).

In any appeal, Mr. Cohen said, "it's essential to develop a theme that encapsulates what your arguments are. You have to distill the essence of the injustice and make that theme run through all the legal arguments." In *Coppola*, he said, the central defense appellate theme was that "it made no sense for a company like Warner, which had been working on a



Frederic Cohen: Warner Bros. had a privilege to stop a rival film project.

film, to sit quietly while their partner walks off" to a competitor. "Warner's conduct in asserting its interest was protected by litigation privilege and common-interest privilege," he added.

Arguing privilege

Mr. Coppola alleged that Warner did not have a legally enforceable claim of rights in the *Pinocchio* project and the litigation privilege was inapplicable because Warner never filed suit.

Warner countered, Mr. Cohen said, that "because Warner Bros. had a valid reason for asserting its interests," it could claim the privilege protection.

California's 2d District Court of Appeal agreed with Warner, finding that its underlying claim of rights to any Coppola *Pinocchio* project may not have been enforceable but was "legally tenable," and, "[t]herefore, Warner was at liberty to take whatever legal measures were available to protect and enforce that claim." Mr. Coppola is expected to appeal.