

# Why Dave Markowitz's favorite room is the courtroom

The long-time Portland litigator on the Oracle trial he wanted but never got

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**Elizabeth Hayes** Staff Reporter *Portland Business Journal*

*Anyone who followed the epic Oregon v. Oracle battle knows how ugly it got.*

*Oracle America sued the state to collect what it was owed for its work on the ill-fated Cover Oregon health insurance website. The state struck back with a fraud and racketeering suit against the software giant. All told, the dispute spawned seven separate legal actions.*



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Markowitz said it's critical that a successful litigator be able to handle pressure:... [more](#)

While Attorney General [Ellen Rosenblum](#) represented the state, she outsourced much of the work to Dave Markowitz and his team at the Portland law firm he co-founded in 1983, [Markowitz Herbold PC](#).

[Barrie Herbold](#) recruited Markowitz when they were both 33. They pooled their savings and embarked on a plan to build Portland's premier boutique civil litigation firm.

Markowitz's courtroom skills have earned him numerous accolades. He's a frequent lecturer on litigation tactics, having handled many high-profile cases before Oracle came along. He represented tennis star [Andre Agassi](#) in a contract dispute with Nike Inc. and pioneering animator [Will Vinton](#) against Nike co-founder [Phil Knight](#).

Markowitz was prepared to take the Oracle fight to trial. Instead, the cases settled for \$100 million. Taxpayers footed \$16 million in attorneys' fees for the Markowitz firm's efforts, along with \$9 million to other lawyers.

We caught up with him right before he left on a sabbatical that would begin with the San Francisco Giants' spring training. His comments have been edited for brevity.

**What has been your most memorable case?** My favorite case was for a woman who did babysitting in her home. Her name was Doty and the city was shutting her down because there were day care center plumbing requirements that were going to be imposed on her. Her home couldn't accommodate that, so even though she was a fabulous day care source at low cost and all kids she took care of were in diapers, she was being shut down. We went to trial twice and won the case for her. Eventually, the Legislature changed the laws to allow her and others like her to continue in business. The fee was babysitting for my young children at the time. The courtroom was packed with young mothers. I loved it. I won't forget it. The other couple of hundred cases (that have gone to trial) all tie for second.

**What makes for an effective litigator?** The old adage about how it takes 10,000 hours to get good at anything is not enough to be a good trial lawyer. While you can be a good trial lawyer with a balanced life, you can't become great without a huge time commitment. You have to be smart — but not too smart. Trial lawyers are typically not the brightest person in their law school class. The people doing tax law and estate law and complex regulatory work are intellectually brighter. Trial lawyers have to be smart enough to get it.

**Was Oracle the most high-pressure case you've ever been involved in?** There's no comparison. If the scale before was 1-10, Oracle was a 13.

**How so?** It was the way Oracle played it. They opened up challenges that don't exist in typical litigation. A half a dozen new lawsuits were started. Opponents don't do that. They challenged the first judge. There were the federal and state cases, multiple counties, multiple judges, even in one courthouse. They took it outside of the courthouse and hired political lobbyists and went to the business community and the Legislature.

Anything that could be done to put pressure on the Attorney General and her team they seemed to do.

**So it didn't unfold at all as you thought it would?** My office is filled with crystal balls, and I claim I can see the future. This one didn't go as I thought it would. Ultimately, I could predict their next move. The first year, there were a number of surprises.

**You had accused Oracle of fraud and racketeering. It was a very aggressive complaint. Could you have proven it?** I can assure you I wouldn't sign a pleading unless I believed it 100 percent. Everything in the complaint I stood behind and still do.

**Does part of you wish you could have gone to trial?** Yes. Some part of me was disappointed. I would have loved to have taken this case to trial. As a trial lawyer, you start getting ready for trial when you put together the complaints. I had two years of imagining myself in trial and working on everything from jury selection to the closing arguments. There was a lot of preparation I wasn't able to put into actual use. It's like building the fastest race car and not taking it to the race. Ultimately, trial lawyers don't work for their personal interests.

**Why turn around and settle for Oracle software? Was that a win?** It was a win in that the client and **the clients' renowned settlement counsel** were pleased with the outcome. I couldn't tell the details. **They hired the best (settlement counsel) to do that.**

**You seem very much at home in the courtroom.** I'm as comfortable in the courtroom as I am in my living room. I feel so comfortable there, so happy to be in court. I have so many great memories. I hope to have so many more good times. That's what I work to do, to get into court and win lawsuits. I would have been happy if the (Oracle) case required me to, and I'm also happy they didn't.

— Elizabeth Hayes, @PDXBizLiz

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#### **DAVID MARKOWITZ**

**Title:** Shareholder, [Markowitz Herbold PC](#)

**Started practicing law:** 1974

**First firm:** Spears Lubersky (now Lane Powell)

**Education:** Cal Poly San Luis Obispo, B.S. in social science; J.D., with great distinction, McGeorge School of Law at University of the Pacific

**Born:** Chicago, July 27, 1949

**Grew up:** All over, but mostly Santa Monica, Calif.

**Fun fact:** His father, Harry Markowitz, was awarded the Nobel Prize in economics

**Hobbies:** Collecting stamps; he owns Uptown Stamp Show in Northwest Portland

**Favorite Portland restaurant:** Buster's

**What he's reading now:** A series of depositions in a group of new cases

**Personal:** Married to Pamela; two sons and two daughters, five grandsons

*Elizabeth covers health care for the Portland Business Journal. [Sign up for her free daily email](#) to keep tabs on the rapidly changing industry.*