



25TH ANNIVERSARY
MCLE SPECTACULAR!
Friday, November 22, 2019



The CCCBA Appellate Section proudly presents...

#1 “The Supremes Said What???” Recent California Supreme Court Decisions Impacting Civil Litigators

Presiding Justice Peter Siggins, First District Court of Appeal, Div. 3

Gary A. Watt - Hanson Bridgett

Don Willenburg - Gordon & Rees Scully Mansukhani

AGENDA

Attorneys & Settlement Agreements: *Monster Energy v. Schechter* (2019) 7 Cal.5th 781 (cautionary tale regarding attorney approved as to form signatures).

Conflicts of Interest: *Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co.* (2018) 6 Cal.5th 59 (attorneys' simultaneous representation of adverse clients in violation of professional conduct rule invalidated entire engagement agreement).

Arbitration Procedure: *Heimlich v. Shivji* (2019) 7 Cal.5th 350 (application of 998 offers in the arbitration context).

Arbitration Agreements: *Oto v. Kho* (2019) 8 Cal.5th 111 (resolution of pending question whether a litigation-like arbitration scheme suffices as equivalent of statutory rights left unresolved because agreement is oppressive and coercive).

Standing to Appeal: *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260 (general rule that any aggrieved party may appeal does not apply to unnamed class members who failed to intervene in the action).

Issue Preclusion Post-appeal: *Samara v. Matar* (2018) 5 Cal. 5th 322 (issue preclusion does not apply to issues appealed but not actually decided on appeal).

Anti-SLAPP: Amended Complaints: *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637 (the anti-SLAPP motion amended complaint issues).

Anti-SLAPP: Prong 1—Protected Activity? *Rand Resources LLC v. City of Carson* (2019) 6 Cal.5th 610 (anti-SLAPP recurring issue re is protected activity the “basis of the claims”).

Anti-SLAPP: Prong 2—Evidence: *Sweetwater Union H. S. Dist. v. Gilbane Bldg. Co.* (2019) 6 Cal.5th 931 (affidavits and other admissible evidence on Prong 2 of the anti-SLAPP motion procedure). **Economic Loss Rule:** *Southern California Gas Leak Cases* (2019) 7 Cal.5th 391 (no recovery of economic losses for negligence claim without personal injury or property damage – here lost income from closing businesses due to proximity to gas leaks).

Statutory Standing & Online Businesses: *White v. Square, Inc.* (2019) 7 Cal.5th 1019 (while mere awareness of a discriminatory practice, without more, is not sufficient to confer standing under the Unruh Civil Rights Act; intent to use the service without actual use because of discrimination, *is sufficient* to confer standing).

Coming Attraction: Evidence—Case Specific Facts or Not? *People v. Veamatahau* (2018) 24 Cal.App.5th 68, review granted; Supreme Court case no. S249872 (further elaboration on the limitations on expert witnesses relating case specific facts to a jury, established in *People v. Sanchez* (2016) 63 Cal.4th 665; Issue Presented—Did the prosecution's expert witness relate inadmissible case-specific hearsay to the jury by using a drug database to identify the chemical composition of the drug defendant possessed?).

Peter J. Siggins



Presiding Justice

Justice Siggins was appointed presiding justice of Division Three of the Court of Appeal by Governor Brown in July 2018, and first joined the court as an associate justice in 2006. Prior to becoming an appellate justice, he served as the Legal Affairs Secretary to Governor Arnold Schwarzenegger (2003-2005) and the Governor's Interim Chief of Staff (September to November 2005). Before going to work for Governor Schwarzenegger, Justice Siggins was employed in the Attorney General's Office of the California Department of Justice from 1988 until 2003.

Justice Siggins began his career in the Attorney General's Office as a deputy attorney general responsible for the defense of correctional officials and agencies in trials and appeals challenging state correctional policies, practices and conditions of confinement. In 1995 he became a Senior Assistant Attorney General, and in 1999, Justice Siggins was named Chief Deputy Attorney General for Legal Affairs by Attorney General Bill Lockyer. As Chief Deputy Attorney General, he was responsible for the oversight and operation of the California Attorney General's Office. He remained Chief Deputy until he left the Department of Justice to join the Governor's Office in 2003.

Prior to joining the Attorney General's Office, Justice Siggins practiced general civil litigation and maritime law in San Francisco with the firm of Acret & Perrochet (1980-1983), as a sole practitioner (1983-1985), and in the two lawyer firm of German & Siggins (1985-1988).

He is a native San Franciscan, and graduate of St. Ignatius High School (1973). He graduated from Loyola Marymount University (B.A. 1977), and Hastings College of the Law (J.D. 1980). In 2004, Justice Siggins was recognized by California Lawyer Magazine as an Attorney of the Year for achievement in Government/Public Policy, and he was twice named one of the state's 100 most influential lawyers by the Daily Journal (2004/2005). In 2003, Justice Siggins received the Conference of Western Attorneys General Nelson Kempsky Award for outstanding leadership and management of an attorney general's office.

Justice Siggins serves on several advisory committees to the Judicial Council of California in the areas of criminal jury instructions, audit reviews of the state trial courts, and the use and implementation of information technology in the courts. He is also a member of the Executive Board of the California Judges Association. He was retained in office by the voters in 2006 and 2010.

Justice Siggins is a member and current chair of the Board of Trustees of St. Ignatius High School in San Francisco, a current trustee of the Santa Clara University Jesuit School of Theology in Berkeley, and a member of the Commonwealth Club of California. He and his wife Veronique Laband Siggins (1981) reside in San Rafael. They have four adult children and one grandchild.



Gary A. Watt

Partner

Gary serves as Chair of the firm's Appellate Practice. He is a State Bar approved Certified Appellate Specialist, handling writs and appeals in all of the California appellate courts, including the California Supreme Court and the United States Court of Appeals for the Ninth Circuit. His practice also includes dispositive motions such as SLAPP, summary judgment, and post-trial motions. His appellate experience gives him unique insights into complex cases and esoteric disputes. He excels at issue spotting and arrives at thoughtful solutions to business problems. His practice includes risk management such as interpreting contracts, indemnity provisions, and more.

A passionate appellate lawyer and law professor, Gary has been on the faculty at U.C. Hastings College of the Law since 2001 teaching various appellate law courses and coaching intercollegiate moot court competition teams. Consistent with Hanson Bridgett's commitment to pro bono work, Gary currently serves as Director of U.C. Hastings' Ninth Circuit clinical program: the Hastings Appellate Project. As Director, he supervises law students in the pro bono legal representation of appellants. He is also a frequent lecturer at MCLE presentations throughout the Bay Area, and has taught hundreds of lawyers over the years on a vast array of appellate and litigation best practices.

Gary is also Chair of the Contra Costa County Bar Association's appellate practice section. A prolific writer, Gary is a frequent contributor to the Daily Journal, The Recorder, and other legal publications, with over 75 published articles to date.

Published Decisions

Schwan v. Permann (2018) 28 Cal.App.5th 678 (trust interpretation)

Barrientos v. Lynch, 829 F.3d 1064 (9th Cir. 2016) (administrative law)

Medina-Nunez v. Lynch, 788 F.3d 1103 (9th Cir. 2015) (administrative law)

Velasquez v. Centrome, Inc. (2015) 233 Cal.App.4th 1191 (evidence law)

Castrijon-Garcia v. Holder, 704 F.3d 1205 (9th Cir. 2013) (immigration law)

Seabright Insurance Co. v. U.S. Airways (2011) 52 Cal.4th 590 (torts/administrative law)

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Hernandez-Velasquez v. Holder, 611 F.3d 1073 (9th Cir. 2010) (administrative law)

Margaret W. v. Kelly R. (2006) 139 Cal.App.4th 141 (torts)

Perez v. Roe (2006) 146 Cal.App.4th 171 (constitutional law)

Publications

"Costs and Attorney Fees on Appeal," *Appellate Insight Blog* (February 2019)

"Ruling Says Denial of Costs Doesn't Preclude Fee Award," *Daily Journal* (January 2019)

"Anti-SLAPP Motions: Use It or Lose It," author, *Appellate Insight Blog* (September 2018)

"California civil litigators are SLAPP - happy," *Daily Journal* (July 2018)

"People v. Sanchez, Hearsay, and Expert Testimony," co-author, *California Litigation* (June 2018) Republication by permission of California Litigation, the journal of the Litigation Section of the California Lawyers Association

"Say Yes to Pro Bono," *San Francisco Attorney* (June 2018)

"California anti-SLAPP in the 9th Circuit: Can it survive?" *Daily Journal* (May 2018)

"Will California's Anti-SLAPP Statute Survive?" *Appellate Insight Blog* (May 2018)

"Navigating Appeals," *Daily Journal* (April 2018)

"Anti-SLAPP Statutes In Federal Courts," *USLAW Magazine* (March 2018)

"Searching for perfection," *Daily Journal* (December 2017)

"Expert Testimony, Hearsay, and Summary Judgment," *Appellate Insight Blog* (October 2017)

"Hearsay and expert witnesses: relying or relating?," *Daily Journal* (October 2017)

"A paradigm shift on experts and hearsay in civil cases?," *Daily Journal* (September 2017)

"Ruling grapples with 998 offers, arbitration," *Daily Journal* (June 2017)

"Frivolous Appeals," *Daily Journal* (April 2017)

"New Year's resolution: filing appeals on time," *Daily Journal* (January 2017)

"Real estate duty decision could have big impact. Or not," *Daily Journal* (December 2016)

"2016 Opinions Provide 998 Guidance," *Daily Journal* (November 2016)

"Settling, Dismissing and Prevailing," *Daily Journal* (March 2016)

- "State High Court Takes on Anti-SLAPP," *Daily Journal* (February 2016)
- "Contractual Attorney Fees Conundrum," *Daily Journal* (December 2015)
- "Independent contractor doctrine limited in ruling," co-author, *Daily Journal* (July 2015)
- "When's an Action 'On the Contract' for Free Purposes?," *Daily Journal* (April 2014)
- "Fly fishing and the appellate lawyering life," *Daily Journal* (October 2013)
- "What the Dickens is the Law?," *Daily Journal* (September 2013)
- "Your Skills: Oral Argument – Going All Out," *The Recorder* (August 2013)
- "Multiple settlement offers: blurry or bright-line rules?," *Daily Journal* (June 2013)
- "Your Skills: Appellate Brief Writing, Before, During and After," *The Recorder* (June 2013)
- "Judicial notice: effective weapon or misfire?," *Daily Journal* (May 2013)
- "State high court to hear settlement offer fee-shifting arguments," *The Daily Journal* (April 2013)
- "High court set to examine prevailing party attorney fees," *The Daily Journal* (February 2013)
- "Immigrant gets another chance to stay in U.S. despite kidnapping rap, 9th Circuit rules," *Daily Journal* (January 2013)
- "Prevailing party attorney fees: battle or war?," *Daily Journal* (December 2012)
- "Strategy in Section 998 offers to compromise," *Daily Journal* (August 2012)
- "The outer limits: When the facts are not taken as true," *Daily Journal* (February 2012)
- "Supreme Court Rolls Back Nondelegable Duties," *The Recorder* (August 2011)
- "Masquerade: Identifying the Genuine Judgment," *Daily Journal* (July 2011)
- "Summer Blockbusters: Will the State Supreme Court Deliver?," *Daily Journal* (June 2011)
- "Home Improvement: When There's an Accident, Who's at fault?," *Daily Journal* (March 2011)
- "Early 998 Offers: Wicked Weapon or Wise Tactic?," *Daily Journal* (February 2011)

Presentations

- "Advanced Appellate Practice," co-presenter, American Bar Association (January 2019)
- "A Discussion with Justice Ignazio Ruvolo: Appellate Practice, Pitfalls and Pontifications," Contra Costa County Bar Association (April 2018)

"The Record in the Era of Multimedia Trials," 3rd Annual Advanced Appellate Conference (January 2018)

"Hearsay: Heresies & How Tos," co-speaker, Contra Costa County Bar Association ("CCCBA") (November 2017)

"Appellate Mediation: Why It Makes Sense," Pincus 2nd Annual Appellate Conference (January 2017)

"Ethics in Appellate Advocacy," Pincus 2nd Annual Appellate Conference (January 2017)

"Section 998 Offers: Turn A Loss Into A Win - Or Vice-Versa," co-speaker, Association of Defense Counsel of Northern California and Nevada's 57th Annual Meeting (December 2016)

"Ethics in Advocacy: Attorneys Behaving Badly," co-speaker, Contra Costa County Bar Association's 22nd Annual MCLE Spectacular! (November 2016)

"Advanced Civil Appellate Conference," Pincus Professional Education (February 2016)

"Ethics in Advocacy," Association of Defense Counsel (December 2015)

"Perfecting the Record for Appeal," Contra Costa County Bar Association (November 2015)

"Expert Witnesses and Big Data," Appraisal Institute (May 2015)

"A Discussion with Justice James A. Richman," Contra Costa County Bar Association (April 2015)

"Perfecting the Record for Appeal," Association of Defense Counsel (December 2014)

"California: A SLAPP Happy State?" Contra Costa County Bar Association (November 2014)

"The Appellate Process for Non-appellate Practitioners," Bridgeport Continuing Education (July 2014)

"A Discussion with Justice Ignazio J. Ruvolo," Contra Costa County Bar Association Appellate Practice Section (March 2014)

Honors & Awards

Martindale-Hubbell, AV Preeminent Rating

Northern California Super Lawyers: Appellate (2011-present)

Professional Affiliations

Contra Costa County Bar Association, Chair: Appellate Practice Section

Member, California Lawyers Association's Committee on Appellate Courts

Bar Association of San Francisco, Appellate Practice Section

Education

J.D., University of California, Hastings College of the Law (1997)

B.S., *cum laude*, California State University, Hayward (1992)

Admissions and Courts

Supreme Court of the United States

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Sixth Circuit

California Supreme Court

U.S. District Court for the Central District of California

U.S. District Court for the Eastern District of California

U.S. District Court for the Northern District of California

U.S. District Court for the Southern District of California

California

Professional Licenses

Certified Appellate Specialist



DON WILLENBURG

PARTNER
PRACTICES

- Environmental/Toxic Tort
- Appellate
- Insurance
- Green Technology & Climate Change
- Entertainment & Recreation Law

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Attorney Biography

Don Willenburg is chair of the firm's national Appellate Practice Group. Described as an "appellate luminary" by the journal *California Litigation*, he is past chair of the Appellate Practice Section of the Bar Association of San Francisco, and for the last decade-plus has chaired the amicus briefs committee of the Association of Defense Counsel of Northern California and Nevada working to advance causes important to the defense community.

Mr. Willenburg has won appeals and writes in cases involving product liability, employment (discrimination, harassment, wrongful termination), construction defects and disputes, the "going and coming" rule, and other areas. He is editor of the firm's blog *Environmental and Toxic Tort Defense Insight*.

Appellate lawyering is not "just" appeals and writs. Summary judgments and other dispositive motions are part of the specialty, as is serving as "appellate monitor" in a high-stakes trial to help shape arguments and create the best record for possible appeal. And sometimes the best advice you can get from an appellate lawyer is to not pursue a writ or appeal, or a particular argument in connection with either. Even when the trial-level defeat really stings.

Mr. Willenburg has guest lectured at the USC and Pepperdine law schools, and been a moot court justice at a number of law schools in Los Angeles and San Francisco. He is a frequent author and lecturer on appellate procedure, evidence, expert witnesses, SLAPP and section 998 settlement offers. He has volunteered as judge pro tem, and as a Penal Code section 1524 special master accompanying police executing search warrants that cover privileged material.

Experience

Mr. Willenburg's practice has included:

- Successfully defended a school district against claims of Constitutional violations for protecting student safety regarding students wearing American flag-themed clothing at a Cinco de Mayo celebration. *Dariano v. Morgan Hill Unified Sch. Dist.*, 745 F.3d 354 (9th Cir. 2014).
- Successfully defended an award of attorney fees against a frivolous FEHA plaintiff, despite the absence of what precedent called "unwaivable requirement" for such an award. (*Robert v. Stanford University* (2014) 224 Cal.App.4th 67.)
- Briefing two cases that resulted in decisions limiting product liability by rejecting a defendant's liability for harms caused by the products of other parties "foreseeably" used near the defendant's non-defective product. (*Merrill v. Leslie Controls, Inc.* (2009) 179 Cal.App.4th 262; *Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564.)
- Arguing and winning a decision from a California Court of Appeal requiring fair disclosure by plaintiffs in civil cases of documents submitted to asbestos bankruptcy trusts. (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481.)
- Defeating a tobacco company's attempt to force its insurer to pay for smoking lawsuits.
- Conducting an in-court sale of "Spiderman" motion picture rights.
- Structuring the financial reorganization of Seabrook nuclear power plant.
- An amicus brief persuading the California Supreme Court not to impose needless restrictions on nonprofit organizations that provide legal services. (*Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23.)

Publications & Presentations

Publications

- "Legal innovation report: part promising, part unexceptionable," *Daily Journal* (Aug. 23, 2019)
- "The California Consumer Privacy Act of 2018," *Defense Comment* (Summer 2019)
- *People v. Sanchez*, Hearsay, and Expert Testimony, *California Litigation* (Spring 2018)
- "Anti-SLAPP Appeals: Extensions and Civility are Not Bad Faith," *Daily Journal* (Feb. 7, 2018)
- "Product liability decision hits hard, but may not reach far," *Daily Journal* (January 17, 2018)
- "Can't Spell Truth Without Ruth: Book Review, Notorious RBG: The Life and Times of Ruth Bader Ginsburg," *Defense Comment* magazine (Summer 2017)
- Quoted in "California Supreme Court decision on statute of limitations could alter certainty in courts, experts say," *Northern California Record* (March 23, 2017)
- "What Happens in Vegas Might Be Decided by a California Court," *Daily Journal* (February 1, 2017)
- "Hearsay ruling will affect civil cases, too," *Daily Journal* (August 2016)
- "E-filing is Coming to Superior Courts," *Daily Journal* (May 2016)
- "No Duty, No Problem? Strict Product Liability Applies Anyway," American Bar Association, Corporate Counsel News and Developments (February 5, 2014)
- "Sargon: to the promised land of Daubert or still wandering in the desert?" *Defense Comment* magazine Fall 2013
- "Both Sides of the Coin: Now that Medical Damages are Limited, What's Next?", *Daily Journal* (August 23, 2011)
- Ninth Circuit Court of Appeals Increases Vulnerability of Auditors in Suits Alleging Fraudulent Backdating of Stock Options, *Legal Insights* (Spring/Summer 2011)
- What is the Proper Measure of Medical Damages?, *Daily Journal* (May 24, 2011)
- 'Reid' Gets It Right With Appellate Review Holding, *The Recorder* (August 30, 2010)
- "Cap and Trade, or Bait and Switch?", *Daily Journal* (May 7, 2009)
- "Wishful Greening", *Daily Journal* (July 31, 2008)
- "Carpet-Bagging Counsel Fleeing Tort Reform", *Mealey's Litigation Report*, Silica, Vol. 5, Issue #10 (June 2007)
- "Case Before State High Court Might Limit Expert Testimony", *Daily Journal* (April 18, 2006)
- "Book Review, Divided by God: America's Church-State Problem - And What We Should Do About It", *80 Tulane L. Rev.* 713 (December 2005)
- "Making Adjustments: High Court Ends Up Both Limiting and Extending Punitive Damages," *The Recorder* (July 20, 2005)
- "Robinson v. Dana: Economic Loss Rule Does Not Apply to Action for Fraudulent Contract Breach" (January 2005)
- Fixing the Damage-California Courts Are Struggling to Apply Reasonable Limits on Punitive Damage Awards in light of State Farm v. Campbell, *Los Angeles Lawyer* (June 2004)
- "Testing the Limits: Supreme Court Lays Down the Law on Punitive Damages in One Case-But What About the Future?", *The Recorder* (July 2, 2003)
- "Closed Doors Open Perils: How 'Locking Out' Post-Confirmation Settlements Imperils Asbestos Trusts and Beneficiaries", *Mealey's Asbestos Reporter* (December 6, 2002)
- "Latching On:" Asbestos Channeling Injunctions Should Protect All Settling Insurers, Regardless of Whether They Settle Before or After Plan Confirmation", *Mealey's Asbestos Bankruptcy Reporter* (November 2002)

Presentations

- *Expert Witnesses and Hearsay: People v Sanchez*. Association of Defense Counsel of Northern California and Nevada, Toxic Torts Section. (April 27, 2019.)
- *Understanding SLAPPs: Process and Procedure from Initiation through Appeal*. Hotel Nikko in San Francisco. (April 5, 2019.) Co-presenters included Justice James Richman and Justice Terence Bruiniers (ret.) from the California Court of Appeal and three expert SLAPP practitioners.
- *Sanchez, Experts and Hearsay: Tricks and Traps*. Association of Defense Counsel of Northern California and Nevada, Annual Meeting. (December 6, 2018.) Mr. Willenburg's co-presenters were Justice Louis Mauro of the California Court of Appeal and civil practitioner Kristie Sager.
- *SLAPP and 998 Update: What You Don't Know or Don't Do Could Sink You*. Contra Costa County Bar Association MCLE Spectacular. (November 16, 2018.) Mr. Willenburg's co-presenters were Justice Ignazio Ruvolo, California Court of Appeal (ret.) and Professor Gary Watt (Hastings).
- *The Fine Art of Legal Writing and Advocacy*. Association of Defense Counsel of Northern California and Nevada, "Basic Training" series. (October 18, 2018.)
- *Key California Cases 2017-2018*. California Lawyers Association Litigation and Appellate Summit (October 5, 2018.)
- *Ethics in Appellate Advocacy* - with Redding Superior Court judges Tammy Wood and Stephen Baker, and Prof. Gary Watt. Shasta-Trinity Bar Assn., Redding, CA (May 5, 2017)
- *What to Do and Not To Do with Technology* - with California Court of Appeal Justice Jon Streeter and Harry Chamberlain. Advanced Appellate Practice Seminar, San Francisco (January 27, 2017)
- *Ethics in Appellate Advocacy* - with California Court of Appeal Justice Jon Streeter and Gary Watt. Advanced Appellate Practice Seminar, San Francisco (January 27, 2017)
- *How to Turn a Loss Into a Win, and Vice Versa: Section 998 Settlement Offers* - with California Court of Appeal Justice Mark Simons and Prof. Gary Watt, Association of Defense Counsel of Northern California and Nevada Annual Meeting (December 8, 2016)
- *Ethics in Advocacy: Attorneys Behaving Badly* - with California Court of Appeal Justice Peter Siggins and Prof. Gary Watt. Contra Costa County Bar Association, MCLE Spectacular (November 16, 2016)

- Watt, Contra Costa County Bar Association, MCLE Spectacular (November 18, 2016)
- *How to Turn a Loss Into a Win, and Vice Versa: Section 998 Settlement Offers* - with Prof. Gary Watt and Beau Burbridge, Bar Association of San Francisco (November 8, 2016)
 - *(1) What's New in Appellate Practice and Technology and (2) Protecting and Presenting the Record* - Advanced Civil Appellate Conference, Pincus Presentations (February 25, 2016)
 - *Ethics in Advocacy – Appellate and Otherwise* - with Justice Peter Siggins and Prof. Gary Watt. Association of Defense Counsel of Northern California and Nevada Annual Meeting (December 10, 2015)
 - *Perfecting and Imperfecting the Record for Appeal* - with Justice Mark Simons and Prof. Gary Watt, Contra Costa Bar Association MCLE Spectacular (November 20, 2015)
 - *Expert Witnesses and Mega-Data Studies* - Appraisal Institute, Northern California Chapter (May 21, 2015)
 - *California Asbestos Appeals in 2014* - HarrisMartin Presentations, (December 10, 2014)
 - *Perfecting and Imperfecting the Record for Appeal* - with Justice Mark Simons and Prof. Gary Watt. Association of Defense Counsel of Northern California and Nevada Annual Meeting. www.adcncn.org, (December 4, 2014)
 - *California: A SLAPP Happy State?* - with Justice James A. Richman and Prof. Gary Watt. Contra Costa Bar Association MCLE Spectacular, (November 21, 2014)
 - *Perfecting and Imperfecting the Record for Appeal* - Bridgeport Conferences, (July 10, 2014)
 - *Attorney Fees, Please* - Association of Defense Counsel of Northern California and Nevada Annual Meeting. www.adcncn.org, (December 12, 2013)
 - *Sargonauts and the Golden Fleece (re expert witnesses)* - with Justice Mark Simon and Prof. Gary Watt. Contra Costa Bar Association MCLE Extravaganza. www.ccba.org, (November 22, 2013)
 - *Disappearing Dollars: How Section 998 Offers Can Make Or Break Your Case* - Association of Defense Counsel of Northern California and Nevada Annual Meeting. www.adcncn.org, (December 6, 2012)
 - *Attorney Fees, Please* – about section 1717 and contractual attorney fee awards. Panel includes Prof. Gary Watt (Hastings) and Associate Justice Mark Simons. Contra Costa Bar Association MCLE Extravaganza. (November 16, 2012)
 - *Appellate E-Filing*, with Associate Justice Terrence Bruiniers. First District Appellate Symposium. <http://www.sfbar.org/>, (November 9, 2012)
 - *Disappearing Dollars: How Section 998 Offers Can Make Or Break Your Case*. Santa Clara county Bar Association (May 2012)
 - *Disappearing Dollars: How Section 998 Offers Can Make Or Break Your Case*. Contra Costa Bar Association (April 2012)
 - *Disappearing Dollars: Post-Trial Motion Verdict Reductions* at Contra Costa Bar Association MCLE Spectacular (November 2011).
 - *How Reid v. Google Will Affect Your Summary Judgment, Employment Discrimination, and Appellate Practices/* Co-presented with an employment law specialist on this key California Supreme Court case, after having "mooted" one of the advocates before arguments in that Court. (November 2010)
 - *CCP 998 Offers to Compromise: The Pitfalls and How to Avoid Them* Co-presented with a First Appellate District justice and a practitioner who is also an assistant professor at Hastings School of Law. (November 2010).
 - *Everything But the Briefs: Motions and Other Appellate Filings* Mr. Willenburg moderated a panel of research attorneys from the Ninth Circuit and California's First Appellate District on matters of special interest to appellate practitioners. (October 2009)
 - *Putting Your Best Foot Forward: Make Your Appellate Briefs and Arguments More Effective* Mr. Willenburg co-presented this seminar with a professor from Golden Gate University School of Law and a First Appellate District justice. (April 2009)
 - Mr. Willenburg moderated an all-day appellate practice seminar with over a dozen justices of California's First Appellate District, including the presiding justice, to an audience of nearly a hundred attendees. The event is presented triennially by the First District and the Appellate Practice Section of the Bar Association of San Francisco. (November 2008)

Admissions

United States Supreme Court
 California
 United States District Courts, California
 United States Court of Appeals, First, Fifth, and Ninth Circuits

Memberships

Association of Defense Counsel for Northern California and Nevada, Member,
 Board of Directors and Chair, Amicus Briefs Committee
 Member, Information Technology Advisory Committee to Judicial Council of California

Education

- J.D., Stanford University, 1984
- Member, *Stanford Law Review*; *Stanford Journal of International Law*
 - Various editorial positions on *The Stanford Daily*
- B.A., *magna cum laude*, Loyola University of Chicago, 1978
- Member, Jesuit and political science honor societies



Honors

Top Rated Lawyer-AV® Preeminent™, Martindale-Hubbell

Super Lawyers® distinction in the fields of Appellate, Personal Injury Defense: Products and Employment Litigation: Defense (2013-2019)



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The Supremes Said What? Recent California Supreme Court Decisions Impacting Civil Litigators

FRIDAY, NOVEMBER 22, 2019

Presented by:

Justice Peter Siggins

Presiding Justice,
First District Court of Appeal, Div. 3

Gary A. Watt

Hanson Bridgett LLP

Don Willenburg

Gordon Rees Scully Mansukhani, LLP

Attorneys & Settlement Agreements:

ATTORNEYS, WATCH OUT!

Approved As To Form and Content: Should you sign???

Breach of settlement agreement claim *against party's counsel* turns on language of the agreement—case by case situation

Monster Energy Co. v. Schechter (2019) 7 Cal.5th 781

Conflicts of Interest:

DUAL REPRESENTATION MAY NOT SURVIVE DESPITE CONFLICT WAIVERS

Client's consent to waive current and future conflicts under engagement agreement did not constitute effective consent to *concurrent* representation of *adverse* party

Simultaneous representation of adverse clients invalidated entire engagement agreement on public policy grounds; Compensation, disgorgement? Maybe!

Sheppard, Mullin, Richter & Hampton, LLP v. J-M Mfg. Co. (2018) 6 Cal.5th 59

Arbitration Procedure:

998 OFFERS IN ARBITRATION: YES, YOU CAN GET RULINGS

998 offer may be presented before or after an arbitrator's final award on the merits; If after, must be within 15 days after issuance of a final award

But arbitrator refusal to consider the 998 offer was not subject to judicial review!
(It's arbitration, after all.)

Heimlich v. Shivji (2019) 7 Cal.5th 350

Arbitration Agreements:

ARBITRATION AGREEMENT-KILLERS LIVE ON

Court granted review to decide whether an arbitral scheme resembling civil litigation can constitute a sufficiently accessible and affordable process protecting statutory rights

However, Court never reaches the issue because it finds the agreement procedurally unconscionable as highly oppressive—making it unenforceable

Oto v. Kho (2019) 8 Cal.5th 111

Standing To Appeal:

AGGRIEVED? NOT A PARTY? INTERVENE WHILE YOU CAN

Code Civ. Proc. § 902: “Any party aggrieved may appeal”

Unnamed class members may not appeal a class judgment, settlement, or attorney fees award unless they intervene in the action

Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260

Claim/Issue Preclusion Post-Appeal:

**IT'S NOT WHAT YOU BRIEFED; IT'S WHAT THE COURT OF APPEAL
REACHED**

Issue reached by the trial court and challenged on appeal, but not embraced by appellate court's decision, should *not be given* preclusive effect

A challenged ground is no more reliable—no more deserving of finality—merely because it need not be evaluated to resolve the appeal

Samara v. Matar (2018) 5 Cal.5th 322

Recent Anti-SLAPP Decisions:

NO SECOND BITE OF THE SLAPP APPLE!

No attacking original anti-SLAPPable claims by waiting and attacking an amended complaint

Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism (2018) 4 Cal.5th 637

Recent Anti-SLAPP Decisions:

ON PRONG 1: IT'S WHETHER PROTECTED STATEMENTS FORM THE "BASIS OF PLAINTIFF'S CLAIMS!"

Do the statements themselves constitute the wrongs giving rise to the complaint?

Intentional interference claims based on competitor's meeting with city attorney subject to anti-SLAPP statute; statements of mayor and city attorney were not

Rand Resources, LLC v City of Carson (2019) 6 Cal.5th 610

Recent Anti-SLAPP Decisions:

AFFIDAVITS & EQUIVALENTS (ON PRONG 2: IT'S THE EVIDENCE!)

Declarations/plea forms signed under oath under CA law not per se excluded by SLAPP statute because not “affidavits”—the term the statute uses

Grand jury transcripts also in b/c testimony under oath

Sweetwater Union H. S. Dist. v. Gilbane Bldg. Co. (2019) 6 Cal.5th 931

Economic Loss Rule:

**TORT CLAIMS? NO RECOVERY FOR ECONOMIC LOSSES WITHOUT
BODILY INJURY OR PROPERTY DAMAGE**

Purely economic losses due to utility's gas leak? Too bad!

Utility owed no duty to local businesses to prevent purely economic losses

Southern California Gas Leak Cases (2019) 7 Cal.5th 391

Statutory Standing, Civil Rights & Online Businesses:

STATUTORY STANDING: IT'S THE LEGISLATIVE INTENT THAT MATTERS

Does a plaintiff have standing under the Unruh Civil Rights Act when the plaintiff visits a business's website with the intent to use its services, encounters discriminatory terms and conditions, and then leaves the website *without* entering into an agreement with the provider?

Yes. Even though attorney who filed class action had not used the service—because he *intended to use it* but found the service agreement discriminatory—denial of standing would defeat the purpose of the statute

White v. Square, Inc. (2019) 7 Cal.5th 1019

Coming Attractions: Evidence & Expert Testimony

CASE SPECIFIC FACTS OR BACKGROUND FACTS?

People v. Sanchez & hearsay: Experts cannot relate case-specific facts to a jury without overcoming any hearsay problems first

Is information from Internet database “background,” even when used to identify the drugs in a specific case?

People v. Veamatahau (2018) 24 Cal.App.5th 68 (review granted in S249872)

THE END!

(For now....)