

Pending California Supreme Court Cases That MPP Is Tracking

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Attorney-Client

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>Contingency Agreement With Public Entity. May a public entity retain private counsel to prosecute a public nuisance abatement action under a contingent fee agreement?</p>	<p>Waiting for argument Fully briefed March 26, 2009</p>	<p><i>County of Santa Clara v. Superior Court</i>, S163681 161 Cal.App.4th 1140</p>
<p>Mediation Privilege. Attorney-Client Privilege. (1) Are the private conversations of an attorney and client for the purpose of mediation entitled to confidentiality under Evidence Code sections 1115 through 1128? (2) Is an attorney a “participant” in a mediation such that communications between the attorney and his or her client for purposes of mediation must remain confidential under Evidence Code section 1119, subdivision (c) and 1122, subdivision (a)(2)?</p>	<p>Waiting for argument Fully briefed April 27, 2010</p>	<p><i>Cassell v. Superior Court</i>, S178914 179 Cal.App.4th 152</p>
<p>Attorney Fees. Preemption. Is an award of fees to a prevailing defendant under the California Disabled Persons</p>	<p>In briefing</p>	<p><i>Jankey v. Lee</i>, S180890</p>

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
Act (Civ. Code, § 54 et seq.) inconsistent with, and therefore preempted by, the federal Americans with Disabilities Act (42 U.S.C. § 12101 et seq.)?	Answer brief due September 6, 2010	181 Cal.App.4th 1173
Duty of Loyalty. Does an attorney breach the duty of loyalty owed a former client when he or she actively takes a position against the former client on the same issue for which the lawyer previously had been retained, even though the lawyer is acting on his or her own behalf and there is no subsequent representation or employment?	In briefing Answer brief due September 10, 2010	<i>Oasis West Realty, LLC v. Goldman,</i> S181781 182 Cal.App.4th 688

Civil Litigation and Commercial Law

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
Collateral Estoppel. Unreviewed Findings Of An	Decided	Murray v. Alaska Airlines, Inc., ___ Cal.4th ___

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
<p>Administrative Agency. Should issue-preclusive effect be given to a federal agency's investigative findings, when the subsequent administrative process provides the complainant the option of a formal adjudicatory hearing to determine the contested issues de novo, as well as subsequent judicial review of that determination, but the complainant elects not to invoke his right to that additional process?</p>		<p>(August 23, 2010)</p>
<p>Arbitration. Wrongful Death Claim of Non-Signatory Heirs. Are the non-signatory adult heirs of a patient bound by a physician-patient arbitration agreement to arbitrate their own wrongful death claims?</p>	<p>Decided</p>	<p>Ruiz v. Podolsky, __ Cal.4th __ (August 23, 2010)</p>
<p>Attorney Fees. Private Attorney General Doctrine. Is plaintiff eligible for an award of attorney fees under the private attorney general doctrine based on a successful challenge to a court reporter's service</p>	<p>Review granted August 18, 2010 Opening brief due September 17, 2010</p>	<p><i>Serrano v. Stefan Merli Plastering Co., Inc.</i>, S183372 184 Cal.App.4th 178</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
charges that established legal precedent?		
Dissolved Corporations. Choice of Law. Does Corporations Code section 2010, which does not limit the time for bringing lawsuits against a dissolved corporation, apply to a dissolved foreign corporation, or does the corporate survival law of the state in which the foreign corporation was incorporated apply?	Review granted August 18, 2010 Opening brief due September 17, 2010	<i>Greb v. Diamond Internat. Corp.</i> , S183365 184 Cal.App.4th 15
Unclaimed Property Law. Escheated Shares of Stock. Is the statutory immunity accorded a corporation that transfers escheated shares of stock to the state (Code Civ. Proc. § 1532, subd. (d)) absolute or conditional?	Waiting for argument Fully briefed December 30, 2008	<i>Azure Limited v. I-Flow Corp.</i> , S164884 163 Cal.App.4th 303
Commercial E-mail Advertising . Does sending unsolicited commercial e-mail advertisements from multiple domain names for the purpose of bypassing spam filters constitute falsified, misrepresented, or forged header information under Business and	Waiting for argument Fully briefed April, 2009	<i>Kleffman v. Vonage Holdings Corp.</i> , S169195 551 F.3d 847

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
Professions Code section 17529.5, subdivision (a)(2)?		
<p>Multiple Injuries From Tobacco. Statute of Limitations. When multiple distinct personal injuries allegedly arise from smoking tobacco, does the earliest injury trigger the statute of limitations for all claims, including those based on a later injury?</p>	<p>Waiting for argument Fully briefed August 10, 2009</p>	<p><i>Poosh v. Phillip Morris USA, Inc.</i>, S172023 561 F.3d 964 (9th Cir. 2009)</p>
<p>Unfair Competition. Representative Standing. Does a plaintiff's allegation that he purchased a product in reliance on the product label's misrepresentation about a characteristic of the product satisfy the requirement for standing under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) that the plaintiff allege a loss of money or property, or is such a plaintiff unable to allege the required loss of money or property because he obtained the benefit of his bargain by receiving the product in exchange for the payment?</p>	<p>Waiting for argument Fully briefed November 23, 2009</p>	<p><i>Kwikset Corp. v. Superior Court</i>, S171845 171 Cal.App.4th 645</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
<p>Computing Time To Bring Action To Trial. Does a stay of discovery constitute a stay of the action within the meaning of Code of Civil Procedure section 583.340, subdivision (c), such that the period during which discovery was stayed should be excluded in determining the time within which the action had to be brought to trial?</p>	<p>Waiting for argument Fully briefed January 22, 2010</p>	<p><i>Bruns v. E-Commerce Exchange, Inc.</i>, S172684 172 Cal.App.4th 488</p>
<p>Class Actions. Tax Refund. Does Government Code section 910 authorize a class claim for refund of a local tax, or must each putative class member file his or her own claim prior to the filing of a class action suit?</p>	<p>Waiting for argument Fully briefed February 10, 2010</p>	<p><i>Ardon v. City of Los Angeles</i>, S174507 174 Cal.App.4th 369 (mod. order)</p>
<p>Attorney Fees. Private Attorney General Statute. May an award of attorney fees under the private attorney general statute (Code Civ. Proc., § 1021.5) be denied because the prevailing party had a significant non-pecuniary personal interest in the outcome of the</p>	<p>Waiting for argument Fully briefed March 15, 2010</p>	<p><i>Conservatorship of Roy W.</i>, S175855 Nonpublished Opinion</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
litigation?		
<p>Standing. City Ban On Plastic Bags and Whether An EIR Is Required. (1) Did an association of plastic bag manufacturers have standing to challenge a local ordinance banning the use of plastic bags? (2) Did the trial court err in ruling the ordinance invalid for the failure to prepare an environmental impact report?</p>	<p>Waiting for argument Fully briefed July 7, 2010</p>	<p><i>Save The Plastic Bag Coalition v. City of Manhattan Beach</i>, S180720 181 Cal.App.4th 521</p>
<p>Collateral Source Rule. Negotiated Rate Differential Between Medical Provider and Insurer. (1) Is the “negotiated rate differential” — the difference between the full billed rate for medical care and the actual amount paid as negotiated between a medical provider and an insurer — a collateral source benefit under the collateral source rule, which allows plaintiff to collect that amount as economic damages, or is the plaintiff limited in economic damages to the</p>	<p>Waiting for argument Fully briefed, August 2, 2010</p>	<p><i>Howell v. Hamilton Meats & Provisions, Inc.</i>, S179115 179 Cal.App.4th 686</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
<p>amount the medical provider accepts as payment? (2) Did the trial court err in this case when it permitted plaintiff to present the full billed amount of medical charges to the jury but then reduced the jury's award of damages by the negotiated rate differential?</p>		
<p>Confidentiality of Medical Information. Preemption. Does the Federal Credit Reporting Act (15 U.S.C. § 1681 et seq.) preempt causes of action for improper disclosure of medical information to credit reporting agencies under California's Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.)?</p>	<p>Waiting for argument Fully briefed August 3, 2010</p>	<p><i>Brown v. Mortensen</i>, S180862 181 Cal.App.4th 789</p>
<p>Class Actions. "Death Knell Doctrine." Did the "death knell doctrine" require plaintiff to immediately appeal the sustaining of a demurer as to class claims when the ruling resolved both individual and class claims, or did the one final judgment rule apply and require a single appeal from the subsequent entry of</p>	<p>Waiting for argument Fully briefed August 9, 2010</p>	<p><i>In re Baycol Cases I and II</i>, S178320 Nonpublished Opinion</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
final judgment on all claims?		
<p>Assignment Of Claim For Punitive Damages. (1) Is the right to recover punitive damages assignable if it arises from an assignable cause of action for property damage, and the property is itself also transferred? (2) If not, may the assignee nonetheless pursue punitive damages if the assignee is merely a continuation of the assignor in a different legal form?</p>	<p>Waiting for argument Fully briefed August 20, 2010</p>	<p><i>Nelson v. Exxon Mobil Corp.</i>, S179122 179 Cal.App.4th 633</p>
<p>Work Product Privilege. Is the statement of a witness that is taken in writing or otherwise recorded verbatim by an attorney or the attorney’s representative entitled to the protection of the California work product privilege?</p>	<p>In briefing Answer brief due September 8, 2010</p>	<p><i>Coito v. Superior Court</i>, S181712 182 Cal.App.4th 758</p>
<p>Costs. Does California Rules of Court, rule 8.278(d)(1)(F), which permits a successful appellant to recover “the cost to obtain a letter of credit as collateral,” allow the recovery of interest paid on sums</p>	<p>In briefing Opening brief due September 10, 2010</p>	<p><i>Rossa v. D.L. Falk Constr., Inc.</i>, S183523 184 Cal.App.4th 438</p>

<i>Issue</i>	<i>Status</i>	<i>Case Name & Court of Appeal Opinion</i>
borrowed to fund a letter of credit used to secure a surety bond?		
<p>Vexatious Litigant Prefiling Order. If a vexatious litigant subject to a prefiling order files a lawsuit while represented by counsel, but counsel substitutes out or is otherwise relieved, may the litigant proceed in propria persona without first obtaining the approval of the presiding judge under Code of Civil Procedure section 391.7?</p>	<p>In briefing Opening brief due September 20, 2010</p>	<p><i>Shalant v. Girardi</i>, S182629 183 Cal.App.4th 545 (mod. order)</p>
<p>Trial Court's Authority To Compel Trial Reference. Does the trial court have discretion to deny a motion under Code of Civil Procedure section 638 to refer a dispute to a referee in accordance with the pre-dispute agreement of the parties?</p>	<p>In briefing Answer brief due September 20, 2010</p>	<p><i>Tarrant Bell Property, LLC v. Superior Court</i>, S179378 179 Cal.App.4th 1283</p>

Construction & Design

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>California OSHA. Household Domestic Service Exception. Does a home owner’s remodeling project, which added a new master bedroom, a new master bath, a new garage in place of a carport, and a new roof, fit within the household domestic service exception to the California Occupational Safety and Health Act (Labor Code section 6300 et seq.)?</p>	<p>Waiting for argument</p> <p>Fully briefed</p> <p>May 25, 2010</p>	<p><i>Cortez v. Abich</i>, S177075</p> <p>177 Cal.App.4th 261</p>

Employment

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>Retired Public Employees. Implied Vested Rights. Whether, as a matter of California law, a California county and its employees can form an implied contract that confers</p>	<p>Review granted</p> <p>August 18, 2010</p>	<p><i>Retired Employees Assn. v. County of Orange</i>, S184059</p>

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
vested rights to health benefits on retired county employees?	Opening brief due September 17, 2010	610 F.3d 1099
Claims Adjusters. Overtime. Do claims adjusters employed by insurance companies fall within the administrative exemption (Cal. Code Regs. tit. 8, § 11040) to the requirement that employees are entitled to overtime compensation?	Waiting for argument Fully briefed June 2008	<i>Harris v. Superior Court</i> , S156555 154 Cal.App.4th 164
Rest and Meal Breaks. This case presents issues concerning the proper interpretation of California’s statutes and regulations governing an employer’s duty to provide meal and rest breaks to hourly workers.	Waiting for argument Fully briefed July 20, 2009	<i>Brinker Restaurant Corp. v. Superior Court</i> , S166350. 165 Cal.App.4th 25
Overtime By Out-Of-State Plaintiffs. (1) Does the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week?	Waiting for argument Fully briefed July 20, 2009	<i>Sullivan v. Oracle Corporation</i> , S170577 Certified Questions From The Ninth Circuit

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>(2) Does Business and Professions Code section 17200 apply to the overtime work described in question one?</p> <p>(3) Does section 17200 apply to overtime work performed outside of California for a California-based employer by out-of-state plaintiffs in the circumstances of this case if the employer failed to comply with the overtime provisions of the federal Fair Labor Standards Act (29 U.S.C. § 207 et seq.)?</p>		
<p>Wage Penalties. (1) When a worker files an action to recover penalties for late payment of final wages under Labor Code section 203, but does not concurrently seek to recover any other unpaid wages, is the statute of limitations the one-year statute for penalties under Code of Civil Procedure section 340, subdivision (a), or the three-year statute for unpaid wages under Labor Code section 202? (2) Can penalties under Labor Code section 203 be recovered as restitution in an Unfair Competition Law action (Bus. & Prof. Code, § 17203)?</p>	<p>Waiting for argument</p> <p>Fully briefed July 20, 2009</p>	<p><i>Pineda v. Bank of America, N.A.</i>, S170758</p> <p>170 Cal.App.4th 388</p>

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>Public Employment. Judicial Review. Fiscal Lay Offs and Collective Bargaining. (1) Is the decision by the Public Employee Relations Board not to issue an unfair labor practices complaint under the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) subject to judicial review? (2) Is a decision to lay off firefighters for fiscal reasons a matter that is subject to collective bargaining under the Act?</p>	<p>Waiting for argument Fully briefed November 30, 2009</p>	<p><i>International Assn. of Firefighters v. Public Employee Relations Board</i>, S172377 172 Cal.App.4th 265</p>
<p>Arbitration. Statutory Wage Claims. Jurisdiction Of Labor Commissioner. (1) Can a mandatory employment arbitration agreement be enforced prior to the conclusion of an administrative proceeding conducted by the Labor Commissioner concerning an employee’s statutory wage claim? (2) Was the Labor Commissioner’s jurisdiction over employee’s statutory wage claim divested by the Federal Arbitration Act under <i>Preston v. Ferrer</i> (2008) __ U.S. __, 128 S.Ct. 978, 169 L.Ed.2d 917?</p>	<p>Waiting for argument Fully briefed January 28, 2010</p>	<p><i>Sonic-Calabasas A, Inc. v. Moreno</i>, S174475 174 Cal.App.4th 546</p>
<p>Prevailing Wage Law. Charter City. Public Works</p>	<p>Waiting for argument</p>	<p><i>State Building & Construction Trades</i></p>

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
Project. Does California’s prevailing wage law (Lab. Code, § 1720 et seq.) apply to a charter city when it contracts to construct public works projects with municipal funds?	Fully briefed December 22, 2009	<i>Council of California v. City of Vista</i> , S173586 173 Cal.App.4th 567
Preemption. Do California food safety laws preempt a local ordinance that requires a grocery store, after a change of ownership, to retain the employees of the former owner for a 90-day transition period? Do federal labor laws do so?	Waiting for argument Fully briefed March 26, 2010	<i>California Grocers Assn. v. City of Los Angeles</i> , S176099 176 Cal.App.4th 51
Public Employment. Arbitration. Can a school district be required to arbitrate disputes over the granting of a charter school petition under the terms of a collective bargaining agreement, or does Education Code section 47611.5, subdivision (e), preclude referring such a dispute to arbitration?	Waiting for argument Fully briefed July 23, 2010	<i>United Teachers Los Angeles v. Los Angeles Unified School District</i> , S177403 177 Cal.App.4th 863
Mixed Motive Defense. Does the “mixed-motive” defense apply to employment discrimination claims under the Fair Employment and Housing Act (Gov. Code, § 12900 et	In briefing Answer brief due	<i>Harris v. City of Santa Monica</i> , S181004 181 Cal.App.4th 1094

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
seq.)?	September 3, 2010	
<p>Hooker Doctrine. When an employee of an independent contractor sustains an on-the-job injury, can the hirer of the contractor be liable on the theory that the hirer’s breach of a non-delegable duty contained in a statute or regulation constituted an “affirmative contribution” to the injury within the meaning of Hooker v. Dept. of Transp. (2002) 27 Cal.4th 198, 212, footnote 3?</p>	<p>In briefing Opening brief due September 15, 2010</p>	<p><i>SeaBright Ins. Co. v. U.S. Airways, Inc.</i>, S182508 183 Cal.App.4th 219</p>
<p>Negligent Hiring. When a plaintiff alleges negligent driving against an employee and negligent hiring against the employer, does the employer’s admission of vicarious liability for the employee’s negligence eliminate the negligent hiring cause of action and preclude evidence of the employee’s poor driving record?</p>	<p>In briefing Reply brief due September 17, 2010</p>	<p><i>Diaz v. Carcamo</i>, S181627 182 Cal.App.4th 339 182 Cal.App.4th 1674a (mod. order)</p>

Insurance

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
<p>Releases. Return of Settlement Money. After settling a first party claim by accepting money from and executing a release of the insurer, may an insured sue the insurer for fraud in inducing the settlement and seek to avoid the release without returning the money the insurer paid?</p>	<p>Opinion due Argued June 1, 2010 Los Angeles Fully briefed July 2008</p>	<p><i>Village Northridge Homeowners Assn v. State Farm Fire & Casualty Co.</i>, S161008 157 Cal.App.4th 1416 158 Cal.App.4th 1241a (modification order)</p>
<p>Duty To Defend. Duty To Indemnify. Does a proceeding before the United States Department of the Interior Board of Contract Appeals constitute a “suit” such as to trigger insurance coverage under a commercial general liability policy?</p>	<p>Set for argument September 7, 2010 San Francisco Fully briefed May 2008</p>	<p><i>Ameron Internat. Corp. v. Insurance Co. of the State of Pennsylvania</i>, S153852. 150 Cal.App.4th 1050 (Modification Order)</p>
<p>Continuous Property Damage. Stacking of Limits. (1) When continuous property damage occurs during the periods of several successive liability policies, is each insurer liable for all damage both during and outside its period up to the amount of the insurer’s policy limits? (2) If so, is the “stacking” of limits—i.e., obtaining the limits of</p>	<p>Waiting for argument Fully briefed August 5, 2009</p>	<p><i>State of California v. Continental Ins. Co.</i>, S170560 170 Cal.App.4th 160 Mod. Order</p>

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
successive policies—permitted?		
<p>Fire Insurance. Effect of Fire Intentionally Caused By Coinsured. May an insurer enforce an exclusion clause in a fire insurance policy that denies coverage to innocent insureds for damages from a fire intentionally caused by a coinsured, or does such a clause impermissibly reduce coverage that is statutorily mandated?</p>	<p>Waiting for argument Fully briefed July 28, 2010</p>	<p><i>Century National Ins. Co. v. Garcia</i>, S179252 Nonpublished opinion</p>
<p>Private Right Of Action Under Unfair Competition Laws. (1) Can an insured bring a cause of action against its insurer under the unfair competition law (Bus. & Prof. Code, § 17200) based on allegations that the insurer misrepresents and falsely advertises that it will promptly and properly pay covered claims when it has no intention of doing so? (2) Does <i>Moradi-Shalal v. Fireman’s Fund Ins. Companies</i> (1988) 46 Cal.3d 287 bar such an action?</p>	<p>Waiting for argument Fully briefed June 30, 2010</p>	<p><i>Zhang v. Superior Court</i>, S178542 178 Cal.App.4th 1081</p>

Products/Environmental

<i>Issue</i>	<i>Status</i>	<i>Case Information</i>
Asbestos. Component Parts Defense. Can the manufacturer of valves and fittings installed on Navy ships, and designed to be used with asbestos packing, gaskets, and insulation, rely on the “component parts” defense or related theories to preclude strict liability for asbestosis injuries years later suffered by seamen on those ships?	Waiting for argument Fully briefed June 30, 2010	<i>O’Neil v. Crane Co.</i> , S177401 177 Cal.App.4th 1019

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