

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> |
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| <p>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?</p> | <p>Waiting for opinion</p> <p>Argued April 6, 2011</p> <p>Los Angeles</p> <p>Fully briefed</p> <p>October 29, 2010</p> | <p><i>Oasis West Realty, LLC v. Goldman</i>, S181781</p> <p>182 Cal.App.4th 688</p> |
| <p>Attorney Fees. Preemption. Is an award of fees to a prevailing defendant under the California Disabled Persons 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.)?</p> | <p>Waiting for argument</p> <p>Fully briefed</p> <p>November 15, 2010</p> | <p><i>Jankey v. Lee</i>, S180890</p> <p>181 Cal.App.4th 1173</p> |

Civil Litigation and Commercial Law

| <i>Issue</i> | <i>Status</i> | <i>Case Name & Court of Appeal Opinion</i> |
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| <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>Set for argument May 4, 2011 San Francisco Fully briefed August 3, 2010</p> | <p><i>Brown v. Mortensen</i>, S180862 181 Cal.App.4th 789</p> |
| <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>Set for argument May 4, 2011 San Francisco 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>Multiple Injuries From Tobacco. Statute of</p> | <p>Waiting for opinion</p> | <p><i>Poosh v. Phillip Morris USA, Inc.</i>, S172023</p> |

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| <p>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>Argued March 8, 2011 San Francisco</p> | <p>561 F.3d 964 (9th Cir. 2009)</p> |
| <p>Childhood Sexual Abuse. Statute of Limitations. Did the Court of Appeal err in concluding that plaintiffs were entitled to rely on the delayed discovery provisions of the statute of limitations (Code Civ. Proc., section 340.1) for claims of childhood sexual abuse against specified non-perpetrators who knew of the abuse and had the ability to prevent it but failed to do so?</p> | <p>Waiting for argument Fully briefed October 20, 2009</p> | <p><i>Quarry v. Doe 1</i>, S171382 170 Cal.App.4th 1574 170 Cal.App.4th 1574</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> |

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| <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 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>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> |
| <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)</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> |

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| If not, may the assignee nonetheless pursue punitive damages if the assignee is merely a continuation of the assignor in a different legal form? | | |
| 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? | Waiting for argument Fully briefed October 25, 2010 | <i>Shalant v. Girardi</i> , S182629 183 Cal.App.4th 545 (mod. order) |
| 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? | Waiting for argument Fully briefed November 10, 2010 | <i>Coito v. Superior Court</i> , S181712 182 Cal.App.4th 758 |
| HOAs and Arbitration. Unconscionability. (1) Is a homeowners association bound by an arbitration | Waiting for argument Fully briefed January | <i>Pinnacle Museum Tower Assn. v. Pinnacle</i> |

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| <p>provision contained in the covenants, conditions and restrictions for a common interest development that were executed and recorded prior to the time the association came into existence?</p> <p>(2) Did the Court of Appeal err by applying the state law doctrine of unconscionability only to the arbitration provision, and not to other provisions in the covenants, conditions and restrictions, in light of federal law prohibiting the application of state law to treat arbitration provisions differently from other provisions of the same agreement? (See <i>Allied-Bruce Terminix Cos. v. Dobson</i> (1995) 513 U.S. 265.)</p> | 25, 2011 | <p><i>Market Development (US), LLC</i>, S186149</p> <p>187 Cal.App.4th 24</p> |
| <p>Attorney Fees. Private Attorney General Doctrine.</p> <p>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>Waiting for argument</p> <p>Fully briefed</p> <p>January 26, 2011</p> | <p><i>Serrano v. Stefan Merli Plastering Co., Inc.</i>, S183372</p> <p>184 Cal.App.4th 178</p> |

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| charges that established legal precedent? | | |
| <p>Section 17200: Continuing Violation Doctrine, Continuous Accrual Doctrine, Delayed Discovery</p> <p>(1) May the continuing violation doctrine, under which a defendant may be held liable for actions that take place outside the limitations period if those actions are sufficiently linked to unlawful conduct within the limitations period, be asserted in an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.)? (2) May the continuous accrual doctrine, under which each violation of a periodic obligation or duty is deemed to give rise to a separate cause of action that accrues at the time of the individual wrong, be asserted in such an action? (3) May the delayed discovery rule, under which a cause of action does not accrue until a reasonable person in the plaintiff's position has actual or constructive knowledge of facts giving rise to a claim, be asserted</p> | <p>Waiting for argument</p> <p>Fully briefed February 22, 2011</p> | <p><i>Aryeh v. Canon Business Solutions, Inc.</i>, S184929</p> <p>185 Cal.App.4th 1159</p> |

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| in such an action? | | |
| <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 borrowed to fund a letter of credit used to secure a surety bond?</p> | <p>Waiting for argument Fully briefed March 3, 2011</p> | <p><i>Rossa v. D.L. Falk Constr., Inc.</i>, S183523 184 Cal.App.4th 438</p> |
| <p>Preemption. Credit Cards and Banking.(1) Is Civil Code section 1748.9, which requires credit card issuers to make certain disclosures on checks issued to cardholders for cash advances from the cardholders' credit card accounts, preempted by the National Bank Act (12 U.S.C. ? 21 et seq.)? (2) Is 12 Code of Federal Regulations section 7.4008, which was promulgated under the National Bank Act by the Office of the Comptroller of the Currency and which provides that state laws that impair a nationally chartered bank's non real-estate banking powers are not applicable to</p> | <p>Waiting for argument briefing Fully briefed April 5, 2011</p> | <p><i>Parks v. MBNA America Bank, N.A.</i>, S183703 184 Cal.App.4th 652</p> |

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| nationally chartered banks, a valid regulation? | | |
| <p>Social Host Immunity. (1) Is a person who hosts a party at a residence, and who furnishes alcoholic beverages and charges an admission fee to uninvited guests, a “social host” within the meaning of Civil Code section 1714, subdivision (c), and hence immune from civil liability for furnishing alcoholic beverages?</p> <p>(2) Under the circumstances here, does such a person fall within an exception stated by Business and Professions Code section 25602.1 to the ordinary immunity from civil liability for furnishing alcoholic beverages provided by Business and Professions Code section 25602, subdivision (b)?</p> | <p>In briefing</p> <p>Answer brief due May 8, 2011</p> | <p><i>Ennabe v. Manosa</i>, S189577</p> <p>190 Cal.App.4th 707</p> <p>(mod. order)</p> |

Construction & Design

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Employment

| <i>Issue</i> | <i>Status</i> | <i>Case Information</i> |
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| <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>Waiting for opinion Argued April 6, 2011 Los Angeles</p> | <p><i>Diaz v. Carcamo</i>, S181627 182 Cal.App.4th 339 182 Cal.App.4th 1674a (mod. order)</p> |
| <p>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</p> | <p>Waiting for opinion Argued April 6, 2011 Los Angeles</p> | <p><i>Sullivan v. Oracle Corporation</i>, S170577 Certified Questions From The Ninth Circuit</p> |

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| <p>overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week?</p> <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>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?</p> | <p>Waiting for argument</p> <p>Fully briefed June 2008</p> | <p><i>Harris v. Superior Court</i>, S156555</p> <p>154 Cal.App.4th 164</p> |
| <p>Rest and Meal Breaks. This case presents issues concerning the proper interpretation of California's statutes</p> | <p>Waiting for argument</p> <p>Fully briefed July 20,</p> | <p><i>Brinker Restaurant Corp. v. Superior Court</i>, S166350.</p> |

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| and regulations governing an employer's duty to provide meal and rest breaks to hourly workers. | 2009 | 165 Cal.App.4th 25 |
| Prevailing Wage Law. Charter City. Public Works Project. Does California's prevailing wage law (Lab. Code, § 1720 et seq.) apply to charter cities? | Waiting for argument Fully briefed December 22, 2009 | <i>State Building & Construction Trades Council of California v. City of Vista</i> , S173586 173 Cal.App.4th 567 |
| 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 |
| 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 vested rights to health benefits on retired county employees? | Waiting for argument Fully briefed November 29, 2010 | <i>Retired Employees Assn. v. County of Orange</i> , S184059 610 F.3d 1099 |

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| <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 <i>Hooker v. Dept. of Transp.</i> (2002) 27 Cal.4th 198, 212, footnote 3?</p> | <p>Waiting for argument Fully briefed January 10, 2010</p> | <p><i>SeaBright Ins. Co. v. U.S. Airways, Inc.</i>, S182508 183 Cal.App.4th 219</p> |
| <p>Mixed Motive Defense. Does the “mixed-motive” defense apply to employment discrimination claims under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.)?</p> | <p>Waiting for argument Fully briefed January 11, 2011</p> | <p><i>Harris v. City of Santa Monica</i>, S181004 181 Cal.App.4th 1094</p> |
| <p>Free Speech and Labor Disputes. (1) Did the Court of Appeal err in concluding that the parking area and walkway in front of the entrance to plaintiff’s retail store, which is part of a larger shopping center, do not constitute a public forum under <i>Robins v. Pruneyard Shopping Center</i> (1979) 23 Cal.3d 899 and its progeny? (2) Do the Moscone Act</p> | <p>Waiting for argument Fully briefed March 22, 2011</p> | <p><i>Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8</i>, S185544 186 Cal.App.4th 1078</p> |

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| (Code Civ. Proc. § 527.3) and Labor Code section 1138.1, which limit the availability of injunctive relief in labor disputes, violate the First and Fourteenth Amendments of the United States Constitution because they afford preferential treatment to speech concerning labor disputes over speech about other issues? | | |
| Negligent Hiring, Retention or Supervision. May a school district be held liable for the negligent hiring, retention or supervision of a school guidance counselor who molests a student, when district employees who hired the counselor knew that the counselor had a history of child molestation? | In briefing Answer brief due April 24, 2011 | <i>C.A. v. William S. Hart Union High School Dist</i> , S188982 189 Cal.App.4th 1166 |
| Attorney's Fees. Labor Code §§ 218.5 and 1194. (1) Does Labor Code section 1194 apply to a cause of action alleging meal and rest period violations (Lab. Code, § 226.7) or may attorney's fees be awarded under Labor Code section 218.5? (2) Is the analysis affected by whether the | In briefing Reply brief due May 10, 2011 | <i>Kirby v. Immoos Fire Protection, Inc.</i> , S185827 186 Cal.App.4th 1361 |

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| claims for meal and rest periods are brought alone or are accompanied by claims for minimum wage and overtime? | | |

Insurance

| <i>Issue</i> | <i>Status</i> | <i>Case Information</i> |
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| <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 successive policies—permitted?</p> | <p>Waiting for argument</p> <p>Fully briefed August 5, 2009</p> | <p><i>State of California v. Continental Ins. Co.</i>, S170560</p> <p>170 Cal.App.4th 160</p> <p>Mod. Order</p> |
| <p>Private Right Of Action Under Unfair Competition Laws. (1) Can an insured bring a cause of action against its</p> | <p>Waiting for argument</p> | <p><i>Zhang v. Superior Court</i>, S178542</p> |

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| 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? | Fully briefed June 30, 2010 | 178 Cal.App.4th 1081 |

Products/Environmental

| <i>Issue</i> | <i>Status</i> | <i>Case Information</i> |
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| 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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| <p>CEQA. Exhaustion of Administrative Remedies. Does Public Resources Code section 21177 require a petitioner to exhaust administrative remedies before filing an action challenging a public agency’s decision that a proposed project is categorically exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)?</p> | <p>Waiting for argument</p> <p>Fully briefed April 11, 2011</p> | <p><i>Tomlinson v. County of Alameda</i>, S188161</p> <p>188 Cal.App.4th 1406</p> |

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