HON. TERENCE BRUINIERS (Ret.)

JAMS
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Website: Hon. Terence Bruiniers (Ret.), JAMS Mediator and Arbitrator

Hon. Terence Bruiniers (Ret.) served as a justice on the First District, Division Five, California Court of Appeal and a judge on the Contra Costa County Superior Court. While on the Court of Appeals he authored well-over 600 opinions in nearly all areas of the law. During his tenure as a judge in Contra Costa, he served as Presiding Judge and as the designated Complex Litigation and CEQA judge. In the Complex Litigation Department, he implemented one of the first programs in the state for electronic filing of court documents, and on the Court of Appeal led design and implementation of the now state-wide appellate e-filing system.

Before his appointment to the bench, Justice Bruiniers practiced law for eighteen years at the San Francisco firm of Farrand, Cooper & Bruiniers, handling business and commercial litigation, as well as maintaining a transactional practice representing national and international clients in technology related matters. As a Deputy District Attorney in Alameda County for seven years, he prosecuted over one hundred jury trials to verdict, including capital cases.

As a trial judge, Justice Bruiniers earned a reputation for meticulous preparation and thorough familiarity with all matters coming before him. He now serves as a mediator, arbitrator, special master, and handles neutral analysis matters including mock exercises and appellate review.

ADR Qualifications

- Ten years as a Justice on the First District Court of Appeal, Division Five
- Ten years as a Contra Costa Superior Court Judge, serving as Presiding Judge and as the designated Complex Litigation Department
- Eighteen years as a member of the Information Technology Advisory Committee to the Judicial Council, serving as Vice-Chair and Chair

Representative Matters

Business/Commercial

- *Morrical v. Rogers* (2013) 220 Cal.App.4th 438: Action to determine the validity of an election of corporate directors may be based on an alleged breach of fiduciary duty or conflict of interest; majority shareholders were indispensable parties.
- *Asahi Kasei Pharma Corp. v. Actelion Ltd.* (2013) 222 Cal.App.4th 945:Foreign manufacturer of hypertension drug sued a foreign competitor, its executives, and its domestic subsidiary, after the domestic company notified plaintiff that it would discontinue development of plaintiff's hypertension drug under pre-existing licensing agreement. Among other claims, plaintiff alleged intentional interference with contract, interference with prospective economic advantage, breach of a confidentiality agreement, and breach of confidence. :
- *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1: Anti-trust matter involving alleged conspiracy to breach license agreement in preparation for merger did not violate Cartwright Act; merger was not a trust under Cartwright Act.

Personal Injury/Torts

- *Leonard v. John Crane, Inc.* (2012) 206 Cal.App.4th 1274:Wife could pursue loss of consortium claim against defendant even though husband's asbestos exposure predated marriage.
- *Johnson v. ArvinMeritor, Inc.* (2017) 9 Cal.App.5th 234: Products liability action against automotive parts manufacturers for injuries alleged to have been caused by secondary exposure to asbestos or asbestos-containing materials: No support for inference of specific exposure to asbestos-containing material; supplier of brake assemblies was not strictly liable Involved question of whether strict liability under a design defect theory applied.

Employment

- *City of South San Francisco v. Workers' Comp. Appeals Bd.* (2018) 20 Cal.App.5th 881: Workers' compensation matter involving allocation of liability for public safety worker carcinogen exposure between successive employers.
- *Holman v. Altana Pharma US, Inc.* (2010) 186 Cal.App.4th 262:. Trial court had discretion to award to employer, as prevailing party in employment discrimination action under FEHA, expert witness fees as costs under the offer of judgment statute, even if the employee's case was not frivolous, but trial court was required to scale the amount of the expert fee award after considering the relative resources of the parties.

Land Use/Environmental

- *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933:Use permits and zoning variances for a mixed-use development project properly granted under Density Bonus Law and variances were required to make development project economically feasible.
- *Center for Biological Diversity v. Department of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931:Cumulative impact assessment for nonindustrial timber management plan provided adequate information under CEQA and Endangered Species Act to ensure meaningful evaluation of potentially significant impacts of proposed logging.
- *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357: Environmental impact report (EIR) was sufficient, and safety concerns were not proper considerations under CEQA.
- *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129: Project's visual impact on a surrounding officially-designated historical district is an appropriate aesthetic impact review under CEQA; substantial evidence supported fair argument that project would have an adverse aesthetic impact on city historic overlay district.
- *Sonoma County Water Coalition v. Sonoma County Water Agency* (2010) 189 Cal.App.4th 33:Petition for writ of mandate challenging legal adequacy of county water agency's urban water management plan. Held: No alternative plan was required for anticipated continuation of diversions into river containing endangered species at current levels; no alternative plan was required to supplement or replace water supplies impacted by city's planned discharge of treated wastewater; and county water agency was not required to consult with additional agencies about urban water management plan.
- *Golden Gate Land Holdings LLC v. East Bay Regional Park Dist.* (2013) 215 Cal.App.4th 353:Eminent Domain matter in which hcondemnee petitioned for writ of mandate and filed complaint for injunctive relief challenging park district's resolution of necessity to condemn property and notice of exemption from California Environmental Quality Act (CEQA).Trial court was not required to vacate resolution of necessity as remedy for failure to prepare EIR for park.

Consumer/Class Action

- *Facebook, Inc. v. Superior Court* (2015) 240 Cal.App.4th 203 (review granted and opinion superseded by *Facebook, Inc. v Superior Court* (2018, 4 Cal.5th 1245):
  Writ of mandate to quash subpoena duces tecum served by criminal defendants on internet social network operators. Stored Communications Act (SCA) does not violate Confrontation Clause in prohibiting pretrial disclosure of victim's social network account contents; SCA did not violate Compulsory Process Clause or due process in prohibiting pretrial disclosure of victim's social network account contents. (CA Supreme Court confirmed as to non-public postings)
- *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545: Award of attorney's fees pursuant to “clear sailing agreement” complied with applicable law and was not unfair to class members; difference between maximum amount of attorney's fees which defendant bank agreed to pay

amount of fees and costs actually awarded did not constitute a surplus belonging to class members.

- *Cellphone Termination Fee Cases* (2011) 193 Cal.App.4th 298 :Consumer class action against cellular telephone carriers challenging early service contract termination fees (ETFs). Regulation of cellular telephone ETFs as liquidated damages provisions was not preempted rate regulation; carrier did not engage in a reasonable endeavor to estimate fair compensation in setting ETFs; evidence supported finding that ETF amounts were not set based on actual or estimated loss; and carrier failed to establish that its ETFs were alternative performance provisions. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380:.,Members of the class in a class action challenging ETFs, filed objections to settlement requiring carrier provide a common fund of $21million from which legal fees and costs would be paid and from which certain class members would be reimbursed. .Notice of settlement was not misleading or incomplete; incentive payments to named class representatives properly approved by trial court.
- *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201:Putative class action against cellular telephone service providers for alleged violations of Unfair Competition Law (UCL) and Consumers Legal Remedies Act (CLRA) in allegedly making false and deceptive representations in the promotion, marketing, and sale of airtime bucket plans. Subscribers failed to allege 1) community of interest on issue of causation as to fraud and CLRA claims; 2) community of interest on issue of reliance as to UCL restitution claims; 3) measurable amount of class wide restitution under UCL;4) but subscribers stated claim for class wide injunctive relief under UCL.

Real Property/Construction

- *Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP* (2012) 211 Cal.App.4th 1301(review granted and opinion superseded by *Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP* (2014) 59 Cal.4th 568: As an issue of first impression, design professionals owe duty of care to third parties in construction of residential housing.(CA Supreme Court confirms)
- *T-Mobile West LLC v. City and County of San Francisco* (2016) 3 Cal.App.5th 334:Land Use/Telecommunications. Wireless telephone service providers brought action against city for declaratory and injunctive relief challenging city's wireless facility site permit ordinance. City's wireless facility site permit ordinance is not subject to implied preemption on its face by the Public Utilities Code provision authorizing telephone lines; city's wireless facility site permit ordinance is not subject to direct conflict preemption on its face by the Public Utilities Code.
- *Coyne v. De Leo* (2018) 26 Cal.App.5th 801: Landlord/Tenant matter in which evidence that landlord's transfer of property was sham was relevant and admissible in unlawful detainer action against elderly tenant under Ellis Act.

Honors, Memberships, and Professional Activities

- Mediation Certification, National Judicial College, 2018
- Language Access Implementation Task Force, 2015-2018
  - Chair, Technology Solution Sub-Committee
- Information Technology Advisory Committee to the Judicial Council,1999-2017
  - Chair, 2012-2016
  - Vice-Chair, 2005 -2011
- Vice-Chair, Trial Court Presiding Judges Advisory Committee, 2007-2008
- Vice-chair, Judicial Science Education Committee, 2005-2007
- Trial Judge of the Year, Alameda-Contra Costa Trial Lawyers Association, 2005

Background and Education

- Justice, First District Court of Appeal, Division Five, 2009-2018
  - Justice Pro Tem, Aug 2006-Dec 2006, Feb 2009 -June 2009
- Judge, Contra Costa County Superior Court, 1998-2009
  - Supervising Judge, Criminal, 2008-2009
  - Presiding Judge, 2007-2008
  - Assistant Presiding Judge, 2005-2006
  - Complex Litigation Department, 2005-2007

    - Direct Calendar Civil Department, 2002-2004
    - Supervising Judge, Family Law, 2000-2001
    - Designated CEQA judge, 2003-2009
- Partner, Farrand, Cooper & Bruiniers, 1981- 1998
- Deputy District Attorney, Alameda County, 1973-1980
- J.D., University of California, Berkeley School of Law (formerly Boalt Hall), 1973
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- B.A., University of California, Berkeley, 1969
- Berkeley Police Officer, 1967-1973
- United States Marine Corp Reserve, 1965-1971