



## JUSTICE NICKOLAS J. DIBIASO (RET.)

Of Counsel

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Business Litigation

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Fresno

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### **JUSTICE NICKOLAS J. DIBIASO (RET.)**

Nick Dibiaso works in our Fresno office where his practice is principally devoted to serving as an arbitrator, mediator, special master, referee and private judge for third parties. He also provides consulting services for firm clients in matters involving ADR, antitrust compliance, appeals, and trial practice. His broad experience, first as a trial attorney, next as a trial court judge, and then as an appellate justice, uniquely qualifies him to serve as a dispute resolution neutral in all capacities in a wide variety of matters.

To relax and rejuvenate, Nick engages with his kids and grandkids, reads history, and travels.

### **EDUCATION**

- J.D. University of California Berkeley School of Law
- B.A., Santa Clara University, *magna cum laude*

### **AREAS OF PRACTICE**

## **AREAS OF PRACTICE**

- Alternative Dispute Resolution
- Antitrust Compliance
- Appeals
- Business Litigation

### **REPRESENTATIVE CASES**

*As an Arbitrator Private Judge, Referee, and Special Master:*

Appointed in more than 500 proceedings as an arbitrator or court officer (Referee/Temporary Judge/Special Master). Acted as a Panel chair, or wing, or solo arbitrator in AAA, ICDR, and other arbitrations involving issues arising under the laws of California and/or Delaware,

Nevada, Texas, Arizona, Illinois, New York, Nebraska, Kansas, Utah, and the United States. Significant experience in conducting video hearings via Zoom and similar platforms.

**CONTRACTS/BREACH OF CONTRACT:** non-competition and non-solicitation covenants, franchises/franchising, licensing agreements, manufacturing agreements, mining and subsurface rights, oil and gas leases, product sales, accounts, accountings, executive employments and compensation, security interests, hospital/physician specialty coverage agreements, UCC sales transactions, settlement agreements, professional medical corporations/associations/groups, technology consulting/services, Medicaid reimbursement services, high frequency/computer stock trading, sales of water rights, partnership agreements, credit card processing services, municipal redevelopment plans, stock sale agreements, and contracts to negotiate.

*Specific cases include:*

- A breach of contract dispute under Illinois law between two Midwestern credit unions in connection with the sale and repurchase of a \$5M sub-prime mobile home loan pool;
- A Nevada dispute arising out of the attempt to enforce under Nevada and Illinois law a noncompetition provision in an employment contract for services in connection with high frequency algorithmic-based electronic trading;
- A complex \$8M breach of contract action involving claims arising out of concurrent surface use and subsurface mining rights in real property (Party appointed Panel member);
- A \$1M+ case raising claims of various securities law violations brought by numerous private placement investors in a real estate investment fund;
- A \$40M breach of contract claim arising out of a multi-year contract to manufacture and supply a well-known household product (Panel member);
- A \$20M dispute between parties to a sales contract with respect to commissions attributable to Medicaid reimbursement claims brought by Medicaid providers (Panel chair);
- A Texas and California dispute between a bank and the provider of mortgage foreclosure services involving the advertisement and performance of such services (Panel chair);
- A dispute about the interpretation of a provision in an owner participation agreement with respect to a municipal redevelopment plan;
- A breach of contract and breach of warranty case involving the sale of an automated dairy milking system, in which a \$20M damage claim was made against numerous defendants (including United Kingdom and Netherlands corporations);
- A dispute among the sellers of a Delaware asset management company about the allocation of the proceeds of the sale;
- A \$5M+ dispute arising out of the alleged violation of a non-competition provision in an operating agreement of an LLC providing radiation oncology services (Panel Chair);
- A \$9M dispute among credit card processors about the alleged breach of a residuals payment provision in an asset purchase contract; and
- A \$2M+ breach of contract and False Claims Act case brought by a public entity and arising out of a license agreement for the design and supply of a fiber optic network for the entity.
- A dispute involving allegations of breach of contract, bad faith, unfair competition, and injunctive remedies brought by a health care provider against a health care insurer based upon claims by the claimant that the insurer wrongfully terminated the claimant from the

defendant's network in retaliation for the claimant's successful challenges to the respondent's denials of coverage.

A million dollar claim by a manufacturer/distributor against a warehouse facility for various

- breaches of contract, including space issues and alleged overcharges, arising out of a contract for the storage of products owned by plaintiff (party appointed Panel Member).

A breach of contract claim by a professional sports team against a customer arising out of the customer's failure to pay for a luxury suite at the team's home stadium (Panel Chair).

A dispute between an LLC depositor and a financial institution involving a claim that the defendant wrongfully disbursed more than four-hundred thousand dollars from the plaintiff's business account to a person no longer affiliated with the plaintiff and thus not entitled to the disbursed funds (stipulated Section 638 Referee).

A claim by a franchisee of a health care business against the franchisor for alleged breach of contract, unfair competition, and various torts based upon allegations that the franchisor

- abandoned the franchise by a variety of means, including rebranding, for the purpose of establishing a franchisor-owned business in competition with the franchisee in the franchisee's "protected territory."

A eight million dollar claim by a terminated distributor of certain consumer products against the manufacturer of the products for alleged violations of the Sherman Act and the

Cartwright Act arising out of an alleged bid-rigging scheme implemented by the respondent (party appointed Panel Member).

**CORPORATIONS/PARTNERSHIPS:** governance issues, director liability, shareholder buyouts, derivative actions, business/stock valuations/appraisals, majority-minority shareholder claims, shareholder agreements, general and limited partnership relationships and agreements; advancement and indemnification issues.

*Specific cases include:*

• A dispute about a buy-out agreement between the shareholders of a \$5M industrial services company;

• An action between a partnership of CPAs and its former partners over withdrawal payouts and non-competition provisions in the partnership agreement;

• A dispute among the members of an LLC about the management of a \$20M agricultural facility;

• A dispute among the members of an \$85M Delaware multi-state real estate development LLC involving rights and obligations under the operating agreement (Panel chair);

• A multi-million-dollar dispute among members of an LLC about membership rights and entitlements to the profits of a wholly owned subsidiary real estate development company;

• A dispute involving claims of breach of contract, fraud, and securities law violations by limited partners and investors in a Delaware real estate investment fund limited partnership;

• A \$40M management dispute among the members of a Delaware private equity fund (Panel Chair);

• A \$5M claim arising out of a dispute among physicians about alleged violations of non-compete provisions in an LLC Operating Agreement (Panel chair);

• A dispute seeking the expulsion of a member of a distillery LLC based upon alleged fraud, mismanagement, and breach of contract and upon the alleged wrongful access and use of

computer data;

- A dispute under a shareholders agreement between shareholders of a Delaware corporation;
- including allegations of exclusion from the business and the diversion of the benefits of a \$50M+ Federal Government manufacturing contract;
- A proceeding to determine the valuation of a medical center and offices for purposes of the enforcement of buy-out provisions in an LLC operating agreement (Panel Chair); and
- A \$6+M action by a group of investors for fraud and breach of fiduciary duty against promoters and LLC member-managers in connection with the purchase of interests in a sustainable agricultural venture (Panel Member).

DISSOLUTIONS OF CORPORATIONS, LLCs, PARTNERSHIPS, LLPs, AND JOINT VENTURES: fair market/going concern/liquidations valuations, goodwill, breach of fiduciary duties, accounts, buy-out agreements, statutory buy-out provisions, and appraiser appointment and review.

*Specific cases include:*

- The dissolution of a \$4M agricultural LLC;
- The dissolution of two \$350M partnerships;
- The appointment and supervision of a liquidating trustee under Delaware law in connection with the dissolution of an \$80M Delaware real estate LLC (Panel chair);
- The dissolution of a \$60M real estate development partnership; and
- A multi-party action involving the formation and operation of an LLC formed to resurrect and operate oil wells located in Southern California, with cross-claims among the parties based on many causes of action, including breach of contract, breach of fiduciary duty, fraud, trespass, and dissolution, and conflicting claims for damages exceeding five million dollars (Temporary Superior Court Judge).

AGRICULTURE: agricultural packing/marketing contracts, agricultural associations and cooperatives, conventional/organic products, marketing orders, grower agreements, custom farming contracts, Federal Crop Insurance Policy (7 U.S.C. §1501 et seq.) claims (involving, among other crops, walnuts, tomatoes, wheat, grapes, strawberries, and apricots).

*Specific cases include:*

- A dispute over a joint agreement for the production, packing, and marketing of citrus (including issues involving the valuation of the equipment of a packing house);
- An accounting dispute about the amount due as sales proceeds and retains relating to a contract for the harvesting, packing, and marketing of citrus;
- A dispute arising out of claims against a produce grower by a distributor for indemnity for damages paid by the distributor to consumers as a result of an E-coli outbreak (Panel Member);
- A dispute arising out of the dissolution of a family farming enterprise, including issues about the valuation of real property and equipment (including a dehydrating facility; and
- A \$7M claim brought by a sustainable nut farming company against its management company for breach of the management contract and the associated marketing agreement (Panel Chair).

**REAL PROPERTY:** commercial, real estate sales and development, financing arrangements, shopping centers and leases, subdivisions, partitions/partition ,referee appointments, options, lease/conditional sales, rights of first refusal, valuations/appraisals, deed of trust/mortgage foreclosures and servicing entities, and property management/sub-management agreements.

*Specific cases include:*

- A dispute involving a "most favored nation" provision in a shopping center lease between a national clothing brand and the landlord center;
- An action for the judicial foreclosure of deeds of trust and for deficiency judgments against debtors and guarantors arising out of loans exceeding \$8M extended to finance the acquisition and construction of a residential subdivision project;
- A dispute between a lender and a guarantor raising issues of waiver of the anti-deficiency and one form of action defenses and issues of an alleged "sham" guarantee;
- A dispute involving the setting of the amount to be paid as lease option renewal base rent by a large grocery store to the owner of a Southern California shopping center;
- An action involving the alleged breach of the continuous operations provision in a shopping center lease and the effect of an estoppel certificate issued by the landlord center;
- A dispute involving the interpretation and application of CCR's with respect to CAM and other common area charges and to the management of a multi-use, multi-owned, Southern California business center;
- A dispute raising issues involving the validity of the assignment of an oil and gas lease;
- An action for the rescission of a contract for the sale of a 100-unit apartment complex; and
- An appeal by an individual from a decision by a Tribal Tribunal denying the claimant's tort claim against the Tribe for personal injuries alleged to have been sustained by the claimant when visiting a restaurant located in the Tribe's gaming establishment (party appointed Panel Member).

**EMPLOYMENT:** breach of contracts, wages and hours, discrimination, harassment, wrongful actual/constructive discharge, violations of public policy, failure to interact or accommodate, retaliation, hostile work environment, privacy, FEHA, Title VII, ADA, FMLA, with claimants including an oil well driller, a physician, a fast food restaurant worker, automobile dealership executives, hospital service workers, a hospital executive, and retail department store employees.

*Specific cases include:*

- A Nevada dispute involving alleged defamation and breach of contract arising out of a contract of employment as the president and CEO of a publicly held gaming corporation;
- A special master in a state-wide wage and hour class action;
- A dispute arising out of the employment of a coach of a Division I NCAA athletic team;
- A constructive discharge action by the manager of a call center involving medical conditions and raising public policy, privacy, and HIPAA issues;
- An action for alleged wrongful termination, retaliation, and fraud brought by the general manager of a multi-location auto dealership;
- An action for wrongful termination and retaliation by a radiologist against a medical corporation;

- An action by a hospital employee for FEHA and Disability Act violations;
- An action by an LCSW against a medical facility for FEHA and Disability Act violations; and
- An action by employees of a restaurant ownership group alleging FEHA and public policy violations, with associated alter ego and joint employer issues.

INSURANCE: life insurance, comprehensive general liability insurance, excess insurance, reinsurance, extended coverages, uninsured and underinsured motorists, professional liability insurance, property loss valuation proceedings (as umpire).

*Specific cases include:*

- A multi-million-dollar dispute between a corporate employer and a reinsurer arising out of a workers' compensation reinsurance participation agreement (party appointed Panel member);
- A dispute concerning indemnity obligations with respect to a mutual benefit association's workers compensation self-insurance plan; and
- A dispute among the alleged beneficiaries of a multi-million-dollar life insurance policy.

CONSTRUCTION: contracts and subcontracts (refinery, roadways, buildings, concrete, electrical), extra work, delays, performance bonds, payment bonds, public/private works, loss of bonding capacity, mechanics' liens and bonds.

*Specific cases include:*

- A \$150M breach of contract claim arising out of a contract to construct a refinery for a petroleum product (Panel member);
- A construction dispute arising out of alleged defects in the paving of several miles of public roadways in a mountainous area;
- A dispute involving alleged defects in the construction of the roof for a church;
- A dispute involving environmental remediation and other repairs of a storm damaged building leased to a State Agency;
- A dispute involving the scope of the work with respect to the construction of concrete flatwork for a church site and building
- A claim brought by a transportation and storage company for breach of contract arising out of an agreement for the construction of a multi-site solar energy panel system; and
- A dispute among a prime contractor, its surety, and the owner for the construction of a multi-story office structure, involving cross-claims in excess of six million dollars for breach of contract and abandonment, and including a *Lambert* motion (stipulated Section 638 Referee).

PROFESSIONAL NEGLIGENCE: legal, accounting, 10-Ks, 10-Qs, audits and auditor liability.

*Specific cases include:*

- A \$10M breach of contract and professional negligence claim by a manufacturing company against its auditors;
- A \$2M legal malpractice action centered in Nevada and arising out of a bankruptcy court representation (Panel member); and

- A \$250M accounting claim brought by a federal governmental agency against an international business firm (Party-appointed Panel member).

HEALTH CARE: medical provider insurance reimbursement claims/HMO and other group health care insurance plans, plan coverages, medical necessity, accountings, Knox Keene, IPAs, Anti-Kickback Statute.

*Specific cases include:*

- An action by physicians against other physicians and medical providers (IPAs) for breach of contract arising out of a participation agreement;
- A dispute between a hospital group and an medical insurance plan about the propriety of "line item" and other disallowances by the plan of charges billed to the plan by the hospitals for patient care;
- A \$100M claim by a medical insurance carrier against a medical care provider for fraud, deceptive billing, steering, and violations of the Anti-Kickback Statute in connection with the operation of treatment clinics (Panel Member);
- A \$12M commercial dispute involving medical service contracts centered in Utah (Panel member);
- A \$7M claim by a hospital group for alleged underpayment in connection with discounts on outpatient drugs acquired through the 340B program; and
- A \$10M claim set out in various state and federal causes of action brought by a provider of health benefit plans against a group of physicians and based upon an alleged "pass-through billing" scheme.

*As a Mediator:*

Dual and multi-party cases involving breach of contract claims, construction project disputes, real estate transactions, property ownership matters, insurance contracts and coverages (including reinsurance), medical malpractice claims, legal malpractice claims, accounting malpractice claims, public retirement system controversies, inverse condemnation, condemnation valuation questions, wrongful death and personal injury claims, employment controversies, class actions, partnership and corporate governance and dissolution disputes, shareholder derivative claims, trade secret disputes, hospital governance matters, health care elder abuse, medical payor-payee disputes, public service districts, unfair competition claims, probate and trust controversies, and workers' compensation matters.

*As Of Counsel:*

- Appeals (consultation, brief reviewing/editing, petitions for review, writ proceedings, "moot court" arguments); Antitrust (counseling and compliance); trials/litigation (counseling).

*As a Judge/Justice:*

- Jury and non-jury trials and law and motion in complex and/or coordinated civil actions, including breach of contract, fraud, unfair competition, insurance coverage, corporations, insurance subrogation, partnerships, joint ventures, real estate, libel and slander, inverse condemnation, negligence, personal injury, professional malpractice, product liability, emotional distress, government claims, crop damage, and agricultural associations and cooperatives.

Appellate review of more than 6,000 cases, including appeals and writ proceedings, involving multitudes of issues arising in civil cases, including breach of contract, fraud, breach of fiduciary duties, unfair competition, Cartwright Act, insurance and insurance coverage, real property transactions, premises liability, CEQA, attorney fees, mortgages, foreclosures, personal injury, wrongful death, professional malpractice, class actions, corporations and corporate governance, LLCs, partnerships, joint ventures, construction contracts and subcontracts, mechanics' liens, surety bonds, labor and employment, discrimination, wrongful termination, harassment, government tort claims, agency, sales transactions, condemnation, constitutional issues, workers' compensation, crop damage, riparian water rights, administrative law, and attorney disqualifications.

*As an Attorney:*

Litigation, jury and non-jury trials, arbitrations and appeals in state and federal courts in commercial disputes, including antitrust, unfair competition, breach of contract, construction contracts and subcontracts (buildings, roads, wastewater treatment plants, underground construction and pipelines, grocery chain central processing facility, competitive bidding statutes, public and private works, mechanics' liens, Miller Act), OSHA, commerce clause, insurance and insurance coverage, surety bonds, business torts, class actions, real property transactions, corporations and corporate governance, derivative actions, agricultural associations and cooperatives, and public agencies and public service districts (water/irrigation/wastewater).

*Some specific cases include:*

Counsel for the plaintiff in a Federal Court action in Hawaii involving the legality, under the

Commerce Clause of the United States Constitution, of regulations issued by the State of Hawaii restricting the sale of sterilized milk in Hawaii;

Counsel for the defendant, a national conglomerate, in a Federal Court action involving

alleged Federal antitrust violations in connection with the wholesale distribution in California of an item of wearing apparel;

Counsel for the defendants, a United Kingdom Corporation and its U. S. subsidiary, in a State

Court action concerning alleged breaches of warranty and contract in connection with the lease of sophisticated medical diagnostic equipment to a hospital;

Counsel for the defendant, a national manufacturer and distributor of engine components, in

a Federal Court action involving alleged Sherman Act violations in connection with the distribution in Louisiana and elsewhere of fuel/water separators for diesel engines;

Counsel for the defendant, a national oil company, in a State Court Cartwright Act class action involving retail gasoline dealership contracts;

Counsel for a California local public agency in administrative audit proceedings conducted

by the Federal Environmental Protection Agency under Federal and State Clean Water Grant legislation;

Co-counsel for the defendant in a Federal Court prosecution brought under the criminal provisions of the Internal Revenue Code;

Counsel for the defendant, a publicly-held manufacturing company, in a Federal Court class action under the Civil Rights Act;

Counsel for the plaintiff in a Federal Court lawsuit brought under the Federal and State securities laws involving the sale of cattle feeding contracts;

- Counsel for a farming corporation in connection with a Subpoena issued to it to produce documents and testimony before a grand jury, in an antitrust investigation of one segment of the food industry, pending in a Maryland Federal Court and conducted by the U.S. Attorney General's office;
- Counsel for the defendant, a diversified farming corporation, in a Federal Court action by the Federal Deposit Insurance Corporation in connection with insolvency proceedings for a defunct National Bank;
- Counsel for the defendant, a national conglomerate, in a Federal Court action involving an alleged violation of the Sherman Act in connection with the distribution of bottled wine;
- Counsel for a National Bank, as the defendant, in a Federal Court action under Regulation U of the Federal Reserve Board;
- Counsel for the plaintiff, a local public agency, in a State Court action brought under the California antitrust laws in connection with the design and construction of a sewage treatment plant;
- Counsel for the defendant, a statewide construction company, in a State Court action for damages for delays and undisclosed subsurface conditions in the construction of an underground sewage pipeline system for a southern California municipal services district;
- Counsel for the defendant, a statewide construction company, in a State Court action for damages for delays in the construction of a company brand central processing facility for a Southern California grocery store chain;
- Counsel for the defendant, a statewide construction company, in a State Court action involving alleged defects and delays in the construction of the engineering school building at a California State University; and
- Counsel for a national manufacturer and distributor of industrial equipment in a State Court action involving alleged defects in aerators supplied in the construction of a wastewater treatment plant for a northern California city.

*Illustrative Civil Case Opinions as a Justice, Court of Appeal of California, Fifth Appellate District:*

- *Protect Our Water v. County of Merced*, 130 Cal. App. 4th 488 (CEQA attorney fees)
- *Farris v. Fireman's Fund Ins. Co.*, 119 Cal. App. 4th 671 (attorney disqualification)
- *Jessen v. Hartford Casual Ins. Co.*, 111 Cal. App. 4th 698 (attorney disqualification)
- *Jefferson v. County of Kern*, 98 Cal. App. 4th 606 (limitations/Tort Claims Act)
- *Lauren H. v. Kannappan*, 96 Cal. App. 4th 834 (compromise verdict)
- *Souvannarath v. Hadden*, 95 Cal. App. 4th 1115 (public health)
- *Lewis C. Nelson & Sons v. Clovis Unified School Dist.*, 90 Cal. App. 4th 64 (prejudgment interest/construction)
- *Fresno Unified School Dist. v. Workers' Comp Appeals Board*, 84 Cal. App. 4th 1295 (workers' compensation)
- *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523 (jurisdiction/corporations/alter ego)
- *Maranian v. Workers' Comp. Appeals Board*, 81 Cal. App. 4th 1068 (workers' compensation)
- *Stewart Title Guar. Co. v. Fallgatter, and Prudential Ins. Co. v Fallgatter*, 2006 Cal. App. Unpub. Lexis 2023 (mortgage foreclosures); 2006 Cal. App. Unpub. Lexis 1985 (attorney fees)

- *N.T. Hill v. City of Fresno*, 72 Cal. App. 4th 977 (subdivision map/fees)
- *Jauregi v. Superior Court*, 72 Cal. App. 4th 931 (civil forfeiture)
- *Modern Continental Construction Co., Inc v. Superior Court (Alstom Power, Inc.)*, 2004 Cal. App. Unpub. Lexis 11420 (construction)
- *North Kern Water Storage Dist. v. Kern Delta Water District*, 2003 Cal. App. Unpub. Lexis 1130 (water rights, forfeiture)
- *Hill v. City of Clovis*, 63 Cal. App. 4th 434 (appellate jurisdiction)
- *Solpac, Inc. v. City of Fresno*, 2003 Cal. App. Unpub. Lexis 614 (construction competitive bidding)
- *Nevocal Enterprises, Inc. v. Board of Education*, 2003 Cal. App. Unpub. Lexis 4174 (construction bid dispute)
- *Spitze v. Zolin*, 48 Cal. App 4th 1920 (driving privileges)
- *Voss v. Superior Court*, 46 Cal. App. 4th 900 (ag marketing act/APA)
- *Wurts v. County of Fresno*, 44 Cal. App. 4th 380 (tort claim/medical malpractice)
- *Brantley v. Pisaro*, 42 Cal. App. 4th 1591 (summary judgment)
- *Fresno Fab Tech, Inc. v Lemoore Unified School District*, 2002 Cal. App. Unpub. Lexis 10574 (construction bidding)
- *Fantazia v. County of Stanislaus*, 47 Cal. App. 4th 1444 (tort claim/legal malpractice)
- *O'Neal Irrigation Supply Co., Inc. v. Mauldin-Dorfmeir Construction*, 2002 Cal. App. Unpub. Lexis 8157 (construction payment bond)
- *Miranda v. National Emergency Services, Inc.*, 35 Cal.App. 4th 894 (medical malpractice)
- *Parker-Renfrow v. Albertson's, Inc.*, 2003 Cal. App. Unpub. Lexis 9521 (non-delegable duty; subhauers)
- *Los Angeles County Court Reporters Assn. v Superior Court*, 31 Cal. App. 4th 403 (court reporters)
- *Young v. County of Fresno*, 2002 Cal. App. Unpub. Lexis 2204 (wrongful termination)
- *Cutler-Orosi Unified School Dist. v. Tulare County School etc. Authority*, 31 Cal. App. 4th 617 (insurer duty to defend)
- *Alan D. Barbour v. Sierra Sky Park Property Owners' Association*, 2003 Cal. App. Unpub. Lexis 11728 (malicious prosecution; CC&R's)
- *Soza v. Ziering*, 2002 Cal. App. Unpub. Lexis 6398 (sexual harassment)
- *Rocky D. Ritchie v. Workers' Comp. Appeals Board*, 24 Cal. App. 4th 1174 (workers' compensation)
- *S.C. Anderson, Inc. v. Bank of America*, 24 Cal. App. 4th 529 (construction damages/lost profits/bonding capacity)
- *Estate of Woodworth*, 18 Cal. App. 4th 936 (wills and probate)
- *Curties v. Hill Top Developers, Inc.*, 14 Cal. App. 4th 1651 (comparative negligence/assumption of risk)
- *Smith v. Inland Crop Dusters, Inc.*, 2003 Cal. App. Unpub. Lexis 5976 (evidence – Dissenting Opinion)

- *Deluca v. Yosemite Lakes Owners' Assn*, 2001 Cal. App. Unpub. Lexis 1180 (res iudicata)
- *Azadigian v. Workers' Comp. Appeals Board*, 7 Cal. App. 4th 372 (workers' compensation)
- *Parsons Brinckerhoff Quade & Douglas, Inc. v. Kern County Employees Retirement Assn.*, 5 Cal. App. 4th 1264 (mechanic's lien foreclosure)
- *Miranda v. Shell Oil Co.*, 17 Cal. App. 4th 1651 (toxic tort damages)
- *Chevron U.S.A., Inc. v. Superior Court*, 4 Cal. App. 4th 544 (summary judgment)
- *Hartwig v. Zacky Farms*, 2 Cal. App. 4th 1550 (attorney fee apportionment)
- *County of Madera v. Ranger Ins. Co.*, 230 Cal. App. 3rd 271 (bail bond surety)
- *Jackson v. Pierce*, 224 Cal. App. 3rd 964 (driver's license)
- *Hydratec, Inc. v. Sun Valley, 260 Orchard & Vineyard Co.*, 223 Cal. App. 3rd 924 (prevailing party fees and costs)
- *Shannon v. Superior Court*, 217 Cal. App. 3rd 986 (attorney/client privilege)
- *Twain Harte Associates, Ltd. v. County of Tuolumne*, 217 Cal. App. 3rd 71 (inverse condemnation)
- *St. Paul Ins. Co. v. Industrial Underwriters Ins. Co.*, 214 Cal. App. 3rd 117 (insurance coverage)

## AWARDS AND HONORS

- AV® Preeminent™ Peer Review Rated (the highest rating available), by Martindale-Hubbell
- *Northern California Super Lawyers®*, 2013-2022
- Alternative Dispute Resolution "Champion," *National Law Journal*, 2017
- Distinguished Service Award, American Arbitration Association, 1990
- Army Commendation Medal (ARCOM)

## PROFESSIONAL AND COMMUNITY ACTIVITIES

- Fellow, College of Commercial Arbitrators
- Member Emeritus, California Academy of Appellate Lawyers
- Member, American Arbitration Association/ICDR Judges, Large Complex Case, Commercial Case, International, Employment, Health Care, and Appellate panels
- Member, State Judges' Panel, Federal Arbitration, Inc. ("FedArb")
- Member, National Academy of Distinguished Neutrals
- Justice, Court of Appeal of California, Fifth Appellate District, 1989-2006 (Assistant Presiding Justice, 2001-2006)
- California Judicial Council Advisory Committee on Voir Dire (1985-1986)
- California Judicial Council Appellate Advisory Committee (1995-1996)
- Judge, Fresno County Superior Court, 1985-1989
- Justice Pro Tem, California Supreme Court, 1999
- Partner and Litigation Chair (1970-1985), Thomas, Snell, Jamison Russell, Williamson & Asperger
- Captain, U. S. Army (Active Duty, 1968-1970}, Deputy Staff Judge Advocate, U. S. Army Intelligence Command and Garrison, Fort Holabird, Maryland

- San Joaquin College of Law, Assistant Adjunct Professor of Law, 1979-1985 ("Antitrust and Trade Regulation Law")
- Past Member and President of the Board, Board of Directors, Fresno Philharmonic Association, 1976-1983
- Past Member, Board of Directors, Fresno County Chapter of the American Red Cross, 1983-1985
- Past Member and President of the Board, Board of Trustees, Fresno County Law Library, 1986-1989
- Past Member, Board of Directors and Treasurer, Fresno County Bar Association, 1976-1977
- Past Member, Board of Directors, Downtown Club, 19975-1978
- Participated as an instructor or panel member for a multitude of civil litigation, discovery, arbitration, trial and appellate practice and substantive law (including construction, antitrust, and arbitration) educational programs, involving both federal and state law topics and sponsored by a variety of organizations, including the California Judicial College, the Center for Judicial Education and Research (CJER), the California Bar Association, the California Continuing Education of the Bar (CEB), the San Joaquin College of Law, the Court of Appeal for the Fifth Appellate District, the American Arbitration Association, the Rutter Group, the Construction Specifications Institute, and the Associated General Contractors of California.

## ADMISSIONS

- California

## ADR FEE SCHEDULE

- Mediations – \$750 per hour; with minimums and cancellation charges;
- Arbitrations, Special Master, Referee, etc. – \$750 setup fee; \$750 per hour;
 

Cancellation policy: If the Hearing in an Arbitration or the trial in a reference or other court appointed position/proceeding is set for two or fewer days, a cancellation fee of four (4) hours per scheduled day will be charged if the Hearing or trial is cancelled within 14 calendar days of the scheduled commencement date. If the Hearing or trial or proceeding is set for three or more days, a cancellation fee of four (4) hours per scheduled day will be charged if the Hearing or trial is cancelled within 30 calendar days of the scheduled commencement date. In all instances, an appropriate adjustment will be made if the Hearing, trial, or proceeding is re-set for a later date or if some or all of the cancelled dates are filled with other assignments.

No charges for travel time or travel expenses for proceedings held in the location of an office

- of Fennemore. For any other location, travel time and expenses are not charged, except for necessary, reasonable lodging.

- Locale: Nationwide

## COMMENTS

*As Judge/Justice:*

It is "virtually impossible to find a lawyer who has a bad word to say about [him]" "He's had

- more experience [in complex civil cases] than most of the lawyers who come before him."

(Daily Journal, April 26, 1988)

He "is revered in Central Valley legal circles, praised for his intelligence, savvy and objectivity." "His experience in handling complex business cases, both as a lawyer and a trial court judge, gives him an unusual command over such cases." "He's a deep thinker who has also experienced life in the trenches." (Daily Journal, September 23, 2002)

*As an Arbitrator:*

"Retired Justice Dibiaso brings to every arbitration intelligence, experience, skill, wisdom, and

- knowledge, coupled with common sense and courtesy, unrivaled among his peers."

(Northern California trial lawyer)

"He combines the knowledge and analytical acuity of a law professor with the experience and savvy of a seasoned trial lawyer." (Northern California trial lawyer)

"One of the best arbitrators and mediators I have had the pleasure of working with in my 43 years of practice. Justice Dibiaso's intelligence, skill, and objectivity are unparalleled, and his command of the issues, no matter how complex, is unrivaled." (Nevada trial lawyer)

• "Outrageously smart." (Southern California trial lawyer)

• Bring your A Game. You cannot baloney him. His attention to detail is complete. He misses nothing, legally or factually." (Southern California trial lawyer)