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Introduction

Mr. Kirkman is a partner in the law firm of Wagner Kirkman Blaine Klomprens & Youmans LLP. He supervises the firm's litigation department, along with his partner Carl Blaine. Mr. Kirkman has many years experience in handling complex business litigation involving real estate, breach of contract, legal malpractice, dissolution of entities, shareholder disputes, and the like. Mr. Kirkman has demonstrated an ability to handle extremely complex litigation involving a variety of legal issues.

Contract Dispute

Within the last two years Mr. Kirkman and his partners have successfully prosecuted to a favorable conclusion a partnership dispute involving one of the largest real estate developments in the Sacramento area. Mr. Kirkman was able to successfully resist the adverse party's efforts to remove the case from the arbitration to the superior court arena. As a result of keeping the matter in arbitration, this class III case was brought to a successful conclusion within approximately 90 days after the dispute first arose. The quick resolution saved the firm's client substantial fees, and allowed the client to swiftly obtain satisfactory resolution of its partnership claims.

Arbitration of several other complex business disputes has resulted in Mr. Kirkman acquiring substantial expertise in the area of judicial review of arbitration awards and in the drafting of arbitration agreements. Recently briefs have been prepared by Mr. Kirkman in connection with arbitration matters which have covered the gamut of scope of review of arbitration awards, and he would be able to provide anyone involved in a potential arbitration proceeding or who has obtained or suffered a large arbitration award with an in-depth analysis of the guidelines for vacating or confirming arbitration awards.

Insurance Coverage Issues

Mr. Kirkman has had extensive experience evaluating insurance coverage for business clients involved in major loss situations. For example, Mr. Kirkman successfully prosecuted a claim on behalf of a seller of land who was sued for rescission when the purchaser did soil testing and discovered huge amounts of pollution in the groundwater caused by the seller's predecessor. The seller's insurance policy contained the standard "pollution exclusion" clause which excluded coverage except for "sudden and accidental" releases of pollutants into the environment. The trial court held that the exclusion applied because the seller's predecessor had deliberately released the pollutants into the environment. Mr. Kirkman argued that the phrase "sudden and accidental" was ambiguous in that the word "sudden" has both a temporal and an "expectancy" component, and that since the existence of the pollutants was a "surprise" to the firm's client, who hadn't known of the pollutants when he purchased the property, he was entitled to coverage.

The trial court rejected that contention, but on the eve of argument before the appellate court, the case settled with the carrier paying enough money to allow the seller to settle the suit for rescission by his purchaser. The attorneys who were handling the another huge pollution claim were provided copies of Mr. Kirkman's briefs, and they were apparently able to make good use of them, as they were able to force the carriers to provide their client with a defense, although they ultimately lost at trial because their client had actually done the polluting.

Within the last year Mr. Kirkman successfully obtained insurance coverage for a very large loss when the insured business client was the victim of an elaborate fraud scheme which bilked several local retailers and manufacturers out of millions of dollars in merchandise and credit. The insurer initially denied coverage claiming the proximate cause of the loss was not a covered item. Several weeks of intensive negotiation resulted in the insurer paying millions in coverage benefits after being convinced that there were additional "covered" proximate causes of the loss. Mr. Kirkman has prosecuted a variety of other hotly contested insurance coverage disputes in a complex litigation matters.

Real Estate

Mr. Kirkman recently successfully defended a real estate developer who was the target defendant in a class action suit by a homeowner's association based on developer liability theories. The developer had converted the apartment house into condominiums, and was being sued on standard developer liability theories. The case was settled for a very modest sum after Mr. Kirkman obtained summary adjudication of the class claims against the client. The case involved complex issues of first impression for the court on matters of class action certification. The matter was prosecuted by a firm who specializes in representing homeowner's associations in suing developers.

Legal Malpractice

Mr. Kirkman obtained a large settlement from a lawyer accused of defrauding his client out of the client's share of a large settlement that was obtained when the lawyer prosecuted claims against certain governmental entities. The lawyer defended on the ground that the new matter was a different case, not covered by the initial agreement between lawyer and client. The lawyer also defended on the ground that there was no attorney client relationship as to the new matter. These defenses were successfully used by the lawyer in a dispute which the lawyer had with his former law partner, but on the eve of trial in the malpractice case, the lawyer's carrier paid a large settlement.

Mr. Kirkman recently completed a complex fraud/breach of fiduciary duty/malpractice case wherein the opposing party sought several million dollars for breach of contract damages. The litigation was successfully resolved with the breach of contract claim being dismissed, with millions of dollars worth of real property being returned to the client free of the adverse party's claims, and with the adverse party admitting to fraud and misappropriation of funds.

Mr. Kirkman recently obtained dismissal of a multimillion dollar suit claiming breach of a real estate development agreement involving property located in a foreign country.

Personal Injury

The firm, with Messrs. Kirkman and Blaine supervising, handles personal injury. Pending cases include auto accident and wrongful death claims. Mr. Kirkman has successfully handled personal injury cases against governmental entities, including one of the largest settlements ever obtained against a governmental entity for a swimming pool accident. Liability was established for allowing children to do “can openers” by standing on the side of the pool and jumping in. Although liability was hotly contested, a structure which will likely pay in excess of \$50 million was obtained.

Alternative Dispute Resolution

Mr. Kirkman has substantial experience a variety of cases, including dissolution of partnerships, corporations, or other business entities and tax assessment disputes which involve difficult business or property valuation issues. Mr. Kirkman formerly had a large family law practice which he curtailed when he began focusing on large complex business litigation. However Mr. Kirkman is frequently retained by family law specialists who need assistance with difficult valuation issues or with the trial of the case. Mr. Kirkman’s experience in valuation of business and real property has enabled him to assist the firm’s tax partners in resolving complex tax litigation.

Mr. Kirkman also has had extensive experience in obtain quick resolution of simple disputes. The focus is always on swift resolution whenever possible, so that the client does not get more fees tied up in defending or prosecuting litigation than the case warrants. Mr. Kirkman has extensive experience in serving as a settlement judge (pro temp) and mediator, and has a track record of successfully bringing the parties to a satisfactory settlement in most of the disputes he has heard. Mr. Kirkman is able to use this experience in bringing about swift resolution of many of the cases he has handled for the firm’s clients.

Education

University of California, Davis, Bachelors of Science, 1968
University of California, Davis, J.D., 1972

Admissions

California Bar, 1972
United States District Court, 1974
United States Tax Court, 1998

Affiliations

California State Bar
Sacramento County Bar
Consumer Attorneys of California

Academic Activities

Mediator

Settlement Conference Judge