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Adrian G. Driscoll represents clients in a broad spectrum of areas, including business and commercial litigation, appellate services, personal injury defense, professional liability, attorney fee litigation, trust litigation, actions arising under the Public Safety Officer and Firefighter Procedural Bill of Rights Acts, constitutional and civil rights claims, employment, administrative law hearings, issues involving strategic litigation against public participation (SLAPPs), construction and surety law. He has also handled the defense of foreign corporations doing business in the United States, and admiralty and maritime cases. He is Peer-Review Rated AV® by Martindale-Hubbell.

Mr. Driscoll's appellate work includes published opinions in *Regents of the University of California v. Superior Court* (1996) 41 Cal.App.4th 1040 which applied the primary assumption of risk doctrine to the sport of rock climbing; the attorney-fee and cost dispute in *Vons Companies v. Lyle Parks, Jr., Inc.* (2009) 177 Cal.App.4th 823; the clarification of the statute of limitations under the Public Safety Officers Procedural Bill of Rights Act in *Parra v. City and County of San Francisco* (2006) 144 Cal.App.4th 977; and the charitable trustee succession problem in *McCarthy v. Poulsen* (1985) 173 Cal.App.3d 1212.

Prior to joining Ropers, Mr. Driscoll practiced for eight years with a respected construction, surety and fidelity firm (McCarthy, Flowers & Roberts) where he handled all types of bond claims, including private and public work claims and Miller Act claims. Mr. Driscoll also served as an acting in house bond counsel for Industrial Indemnity Company, and as a staff attorney for the American International Group where he handled the defense of general casualty litigation.

Mr. Driscoll graduated from the University of California (Davis) in 1977, where he obtained his Bachelor of Science degree with highest honors, and was awarded a Departmental Citation in Agricultural Economics and Business Management. In 1980, he received his Juris Doctor, with honors, from the University of San Francisco School of Law where he was selected for membership in the McAuliffe Honor Society. He has returned to the University of San Francisco as an Adjunct Professor of Law, where he teaches Discovery. He has received a Certificate in the Mediation and Conflict Resolution course at the University of California (Berkeley Extension) and completed the Sonoma County Superior Court's Civil Mediation Program.

Mr. Driscoll has been a member of the State Bar of California since 1980, and is admitted to practice before all California federal courts. In addition, he is admitted to the United States Supreme Court, Court of Federal Claims, Tax Court, and Court of Appeal for the Armed Forces. He is a member of the Bar Association of San Francisco and the Litigation Section of the State Bar. Mr. Driscoll is a Lieutenant Colonel in the U.S. Army Reserve's Judge Advocate General's Corps, and has completed the Ethics Counselor, Fiscal Law, Domestic Operations Law, and Rule of Law Courses at the Judge Advocate General's Legal Center, University of Virginia (Charlottesville). His publications include *Preparing and Opposing Petitions for Mandate or Prohibition*, Chapter 8, Appeals and Writs in Criminal Cases 3d (2007, The Regents of University of California) and *Civilian Workplace Protection for Members of the Uniformed Services, Employee Relations Law Journal*, Vol. 31, No. 4 (Aspen Publishers, 2006).

Mr. Driscoll's support to the legal profession and the community includes his service on the Board of Governors of the University of San Francisco Law Society, and as President of the St. Thomas More Society of San Francisco. He has also served as a Probation Monitor for the California State Bar Court, and as a member of the State Bar Committees on the Administration of Justice and

the History of Law in California. Mr. Driscoll is a past President of the San Francisco Marine Claim Agents Association, and a member of the National Eagle Scout Association.

Practice Areas

- Appellate
- Business And Commercial Litigation
- Contract/UCC
- Fidelity & Surety
- Catastrophic/Personal Injury
- Construction
- Employment Litigation and Dispute Resolution
- Unfair Competition
- Professional Liability
- Lawyers

Education

- University of California, Davis, 1977 B.S.
- University of San Francisco School of Law, 1980 J.D.

Court Admissions

- California
- Supreme Court of the United States
- US Court of Appeals for the Armed Forces
- US Court of Appeals for the Ninth Circuit
- US Court of Federal Claims
- US Tax Court
- USDC: Central District of California
- USDC: Eastern District of California
- USDC: Northern District of California
- USDC: Southern District of California

Memberships & Associations

- Bar Association of San Francisco
- Board of Governors, University of San Francisco School of Law
- Irish-American Bar Association
- National Eagle Scout Association
- Saint Thomas More Society of San Francisco
- State Bar of California

Representative Experience

Practice Area: Construction, Coverage, Insurance Services, Lawyers, Professional Liability

Key Issues: Attorney Malpractice; Attorney's Fees and Costs; Construction Litigation; Insurance Coverage;

Mediation

Venue: Alameda County Superior Court

Client Type: Defendant Law Firm

Plaintiff construction company brought a legal malpractice action against its former law firm in connection with the law firm's defense of underlying construction litigation. The plaintiff construction company alleged that the law firm negligently failed to perfect the company's right to insurance coverage in connection with their underlying case, thereby resulting in the incurrence of attorney's fees and litigation costs, which should have been paid by the construction company's insurance carrier. Reimbursement of attorney's fees and litigation costs paid to the law firm were sought by the construction company in the malpractice action. The law firm's malpractice insurance carrier took the position that it was not responsible to cover the attorney's fees portion of the construction company's claim against the law firm pursuant to the terms of its policy, thereby preventing a settlement.

Result:

An analysis of the law firm's malpractice insurance policy, coupled with investigation and analysis of the significant costs of litigation incurred in connection with the underlying construction case (including construction expert fees), revealed that even if the construction company's claim for reimbursement of attorney's fees was not a covered loss, costs of litigation were covered. These costs of litigation were significant enough to result in a settlement of the entire action without loss to the defendant law firm during mediation conducted at the Judicial Arbitration Mediation Service (JAMS).

Practice Area: Appellate, Construction, Litigation Management/Cost Control/Fee Disputes

Key Issues: Appeal; Construction; Real Estate Sales Contract; Attorney's Fees; Litigation Costs; Contract Interpretation; Assignment

Venue: Los Angeles County Superior Court; California Court of Appeal, Second Appellate District

Client Type: Real Estate Owner/Seller

Appeal by owner/seller of commercial real property from Order denying reimbursement of costs of litigation and attorney's fees following entry of judgment against the defendant contractor.

Result:

The trial court's Order denying plaintiff's post-judgment application for recovery of litigation costs was reversed on appeal, and the law of interpretation and assignment of contracts was clarified in a published decision by the California Court of Appeal.

Practice Area: Appellate, Business And Commercial Litigation, Employment

Key Issues: Trustee Liability; Trust Litigation; Pre-Judgment Attachment; Writ; Appeal; Trust Law; Discovery; Privilege Against Self-Incrimination; Corporate Law; Fraud; Conversion

Venue: San Francisco, San Mateo and Shasta Superior Courts; California Court of Appeal, First Appellate District

Client Type: Defendant Employee and Trustee of Inter-Vivos Trust

Coordinated civil actions against the surviving trustor, trustee and beneficiary of an inter-vivos trust. As trustee and as employee of one of the plaintiffs in the coordinated actions, defendant was accused of conversion of funds from a third party trust and from her employer. Allegations of criminal misconduct were also made against defendant, who asserted her constitutional privilege against self-incrimination until the criminal charges were fully resolved. Defendant filed a Petition for Writ of Mandate in the Court of Appeal challenging the trial court's denial of her Motion to Stay the civil actions pending disposition of the criminal charges.

Result:

Defendant's Petition for Writ of Mandate was granted and the coordinated actions were stayed pending resolution of criminal charges against defendant.

Practice Area: Appellate, Catastrophic/Personal Injury, Lawyers, Professional Liability

Key Issues: Settlement; Attorney Professional Liability; Sanctions; Attorney's Fees and Costs

Venue: Contra Costa County Superior Court, Appellate Division

Client Type: Law Firm

Counsel for defendant trucking company was appointed by the company's insurance carrier to defendant plaintiff's personal injury lawsuit. The carrier directed defense counsel to enter into a settlement agreement with the plaintiff on behalf of the defendant trucking company. The insurer became insolvent before funding the settlement, and the defense attorneys were sanctioned by the trial court when the settlement could not be consummated.

Result:

The sanctions order against the law firm representing the defendants was reversed on appeal.

Practice Area: Appellate, Governmental Entity Liability

Key Issues: Appeals; Municipal Law; Public Safety Officers' Procedural Bill of Rights Act (POBRA); Police Officers; Administrative Hearings; Statute of Limitations

Venue: San Francisco Police Commission; San Francisco Superior Court; California Court of Appeal, First Appellate District

Client Type: Police Officer

Appeal from decision by a municipal administrative board denying a Police Officer's motion to dismiss a disciplinary action pursuant to the statute of limitations set forth in the California Public Safety Officers' Procedural Bill of Rights Act (POBRA).

Result:

Published opinion by the California Court of Appeal clarifying the operation of the statute of limitations provided by the Public Safety Officers' Procedural Bill of Rights Act.

Practice Area: Business And Commercial Litigation

Key Issues: False Advertising; §17500

Venue: San Mateo County Superior Court

Client Type: Defendant Auto Auction Company

In this 17200/17500 action involving automobile auctions, a court trial found in favor of our client.

Result:

Neither injunctive relief nor restitution was granted.

Practice Area: Business And Commercial Litigation, Governmental Entity Liability, Insurance Services, Life, Health & Disability

Key Issues: Public Universities; Government Immunity; Hospitals; Health Insurance; Insurance Co-Payments

Venue: San Francisco County Superior Court

Client Type: Defendant Public University Teaching Hospital

Potential class action against the hospitals at the University of California (San Francisco) and major private California health insurance providers for alleged overbilling on medical co-payments charged to hospital patients.

Result:

A demurrer filed on behalf of the defendant University of California hospitals was sustained at the initial pleading stage without leave to amend grounds of governmental immunity, and a judgment was entered in favor of the University.

Practice Area: Appellate, Business And Commercial Litigation, Fidelity & Surety

Key Issues: Appeal; Guaranty; Deed of Trust; Strategic Litigation Against Public Participation (SLAPP); Indemnity

Venue: Santa Clara County Superior Court; California Court of Appeal, Sixth Appellate District

Client Type: Plaintiff Equipment Manufacturer

Appeal by defendants from a trial court Order denying defendant's Special Motion to Strike a SLAPP suit (Strategic Litigation Against Public Participation) based on an allegation that the defendant breached his duty to indemnify plaintiffs pursuant to a provision contained in a Deed of Trust securing a guarantee agreement.

Result:

Trial court's Order denying defendants' Special Motion to Strike was upheld.

Practice Area: Business And Commercial Litigation, Director/Officer Liability (including Non-Profits), Directors & Officers, Professional Liability

Key Issues: Fiduciary Violations

Venue: USDC: Northern District of California

Client Type: Defendant Independent Trustee

In this securities class action case, we defended a former Independent Trustee of a federally-regulated mutual fund against allegations of fiduciary violations.

Result:

We were able to negotiate a dismissal of the case during trial as to our client only, and we thereafter successfully concluded the difficult process of obtaining an order barring cross-complaints for indemnity and contribution against our client by the non-settling defendants that was effective under the federal, California and Delaware laws which governed the issues in the litigation.

Practice Area: Business And Commercial Litigation, Contract/UCC, Directors & Officers, Professional Liability, Unfair Competition

Key Issues: Transfer Dispute

Venue: Santa Clara County Superior Court

Client Type: Defendant Software Manufacturer

We were retained literally on the night before a hearing on a temporary restraining order in a complex technology transfer dispute in which we had no prior involvement. The injunctive relief sought by plaintiff would have severely damaged or even ruined our client's business.

Result:

On extremely short notice, we were able to limit the temporary and preliminary injunctive relief sought by the plaintiff such that it did not significantly interfere with our client's business. Due to a combination of our rapid

ability to analyze and defend the case, and our success in quickly identifying and resolving those issues which could be resolved, the plaintiff abandoned the litigation within six months.

Practice Area: Appellate, Civil Rights, Employment

Key Issues: Appeal; Employment; Sexual Harassment; Wrongful Termination; Wage and Hour

Venue: San Francisco County Superior Court; California Court of Appeal, First Appellate District

Client Type: Defendant Software Technology Company

Appeal by plaintiff former employee against defendant employer for wrongful termination, sexual harassment, wage and hour violations and various job-related torts.

Result:

Successfully obtained summary judgment for the defendant employer, which was later upheld on appeal.

Practice Area: Appellate, Real Estate

Key Issues: Appeal; Agency; Trust litigation; Judgment Notwithstanding the Verdict; Non-Suit

Venue: San Francisco County Superior Court; California Court of Appeal, First Appellate District

Client Type: Defendant Sellers of Real Property; Trustees of Living Trust

Appeal by co-Trustees of living trusts owning partial interests in real property sold to plaintiffs from a Judgment Notwithstanding the Verdict based on a theory of agency by ratification.

Result:

Judgment Notwithstanding the Verdict against the defendant co-Trustees reversed and case remanded for a new trial.

Practice Area: Construction, Governmental Entity Liability, Real Estate

Key Issues: Lis Pendens; Code Enforcement; Nuisance; Housing; State Housing Law: Landlord and Tenant

Venue: San Francisco County Superior Court

Client Type: Defendant Residential Real Property Owner/Lessor

Plaintiff City filed civil action against a major residential rental property owner alleging various building and other code violations and seeking injunctive relief and the recovery of monetary penalties. After the Complaint was filed, the plaintiff City recorded lis pendens (notices of action pending) against certain of the defendant's properties even though all code violations were remedied. There was no question that the properties were habitable and safe to occupy. The lis pendens created clouds on title which were interfering with critical refinancing transactions.

Result:

A motion on behalf of defendant to expunge the lis pendens was granted on the grounds all alleged code violations had been remediated and that there was no other lawful basis to maintain the lis pendens under the California State Housing Law. The lis pendens were ordered withdrawn.

Practice Area: Appellate, Lawyers, Litigation Management/Cost Control/Fee Disputes, Professional Liability

Key Issues: Attorney Malpractice; Attorney's Fees; Attorney-Client Privilege; Fraud; Negligence; Attorney Conflicts of Interest; Professional Liability

Venue: San Francisco County Superior Court; California Court of Appeal, First Appellate District

Client Type: Defendant Law Firm

Lawsuit for legal malpractice demanding return of attorney's fees earned by defendant law firm in an underlying

action on the grounds of failure to disclose a conflict of interest. Discovery propounded on behalf of the defendant law firm disclosed that plaintiffs were receiving legal advice regarding the conflict during the course of the underlying litigation from independent counsel. A Motion to Compel Production of Communication between plaintiffs and their independent attorneys was denied on the grounds of the attorney-client privilege. A Petition for Writ of Mandate was brought before the California Court of Appeal challenging the discovery order denying the motion by defendant law firm to compel production.

Result:

The defendant law firm's Petition for Writ of Mandate was granted and plaintiffs were compelled to produce all communications with their independent counsel concerning conflict of interest in the underlying action. The Court of Appeal's order resulted in a rapid settlement favorable to the defendant law firm.

Practice Area: Business And Commercial Litigation, Construction, Fidelity & Surety, Toxic Tort

Key Issues: Defective Work

Venue: Contra Costa County Superior Court

Client Type: Defendant Construction Surety Company

This was a multi-defendant lawsuit in which we represented a surety which had issued construction payment and performance bonds. The claim involved latent defects, which resulted in corrosion damage to large underground diesel storage tanks constructed to provide emergency energy supplies to a critical banking facility. Faced with a multi-million dollar exposure to our client, we identified key defendants early in the case and worked with them to form a settlement package.

Result:

Very favorable settlement as well as an order barring cross complaints for indemnity and contribution against the surety by the remaining defendants.

Practice Area: Catastrophic/Personal Injury

Key Issues: Personal Injury

Venue: San Francisco County Superior Court

Client Type: Defendant Environmental Services Contractor

Due to our unique experience with admiralty and maritime cases, we were retained to defend a Jones Act claim brought by an employee injured during oil spill cleanup operations in the Long Beach, California harbor area.

Result:

Through the use of targeted discovery, we were able to obtain a very favorable settlement of the claim by establishing that the lawsuit had been improperly brought under the Jones Act.

Practice Area: Appellate, Catastrophic/Personal Injury

Key Issues: Appeal; Assumption of the Risk; Negligence; Rock Climbing; Personal Injury; Wrongful Death

Venue: Alameda County Superior Court; California Court of Appeal, First Appellate District

Client Type: Defendant Public University

Petition for Writ of Mandate to the California Court of Appeal challenging trial court's denial of defendant University's Motion for Summary Judgment in a wrongful death case arising out of the accident death of a student during a Sierra Nevada rock climbing accident.

Result:

In a published opinion, the Court of Appeal reversed the trial court's order denying defendant's Motion for Summary Judgment, and ordered the case dismissed pursuant to the primary assumption of the risk doctrine.

Practice Area: Business And Commercial Litigation, Corporate Governance/Partnership Disputes, Healthcare

Key Issues: Medical Partnerships; Hospitals; Staff Privileges; Emergency Room Physicians

Venue: USDC: Northern District of California

Client Type: Defendant Hospital

Defense of hospital sued by emergency room physician following his expulsion from his medical partnership. Pursuant to a contract between the partnership and the hospital, only physician members of the partnership could practice emergency room medicine at the hospital. Plaintiff physician claimed that he was wrongfully denied staff privileges in violation of the California Business and Professions Code and the hospital staff by-laws.

Result:

Summary Judgment was granted in favor of the hospital, and later upheld on appeal.

Practice Area: Appellate, Business And Commercial Litigation

Key Issues: Appeal; Errors of Law; Administrative Law

Venue: California Department of Consumer Affairs, Bureau of Automotive Repair; San Francisco County Superior Court

Client Type: Plaintiff Small Business Owner

We represented a small business owner who was licensed by the State of California to operate an automotive repair service. The State's Department of Consumer Affairs revoked our client's license following an administrative proceeding before an administrative law judge. We appealed the decision to the Superior Court on the grounds that the administrative law judge did not consider all material evidence, and on the grounds that the ALJ had made errors of law.

Result:

We secured a Writ of Mandate from the Superior Court vacating the State's decision and ordering a new administrative hearing.

Practice Area: Real Estate

Key Issues: Unlawful Detainer Action

Venue: San Francisco County Superior Court

Client Type: Landlord

Landlord purchased a 2-unit property (flats upstairs and downstairs) which had been foreclosed by a Bank. Landlord purchased the property so she and her elderly mother could live in the same premises. Unbeknownst to Landlord, two sets of "tenants" had moved into the two flats and tendered rent to the Bank. Tenants had also successfully defended a prior Unlawful Detainer action brought by the Bank. Tenants failed to pay rent and we served Notices to Pay or Quit. Tenants failed to pay rent and we brought an Unlawful Detainer action against the two sets of Tenants. Tenants both defended against the Unlawful Detainer by asserting numerous habitability defects, and claimed they did not owe rent due to the substandard conditions in the unit. Tenants failed to substantiate any habitability defects in discovery. In deposition, one of the Tenants made several admissions that were devastating to their defense. One of the tenants moved out and attempted to sublet a flat to a new set of tenants.

Result:

With trial fast approaching, the case settled with all the Tenants and sub-tenants agreeing to move out by a date certain, or face an adverse judgment against them.

Publications

- Author, Preparing and Opposing a Petition for Mandate or Prohibition, Chapter 8, *Appeals and Writs in Criminal Cases*, 3rd Edition (CEB 2007) , *CEB - Continuing Education of the Bar*, August 2007
- Author, Civilian Workplace Protection for Members of the Uniformed Services, *Employee Relations Law Journal*, (Aspen Publishers, April 17, 2006)
- Author, Mobilized Reservists And Guard Can Receive Supplemental Payments From Their Employers If There Is No "Ethical Conflict", *HospitalityLawyer.com*, May 5, 2005
- Author, Make Sure You Honor Rights Of Employees In Armed Services, *HospitalityLawyer.com*, *Ropers.com*, *RMKB Newsletter*, April 5, 2005
- Author, Employment: Mobilized Staffers Can Receive Payments If There Is No Ethical Conflict, *San Francisco Daily Journal*, January 14, 2005
- Author, Common Misconceptions About Discrimination Against Military Reservists And Members Of The National Guard, March 22, 2004