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Kevin P. Cody, who joined the firm in 1983 and became a partner in 1988, has represented hundreds of business and individual clients, including product manufacturers, real estate developers, contractors, architects and engineers, and commercial and residential property owners. His cases range from multi-million dollar consumer class action and product liability lawsuits, to complex construction, real estate and business litigation, to catastrophic injury actions. He has litigated matters throughout the state of California, including the representation of clients in 23 of California's 58 counties, and has tried, in both state and federal district court, 17 matters to verdict and/or judgment. Mr. Cody also advises clients about contractual and corporate obligations, and assists clients in drafting contracts and corporate documents.

Mr. Cody has been a panelist at the Ropers, Majeski annual seminar presented nationally, addressing topics that include current litigation, appellate and Supreme Court decisions and legislation having to do with consumer class actions, product liability and construction. A member of the Executive Committee of the Real Property Section of the Santa Clara Bar Association, Mr. Cody was a panelist at the Bar Association 2011 Real Estate Symposium, providing a summary of recent California real estate law. He has also co-chaired an Association of Defense Counsel presentation on the selection and use of experts in construction litigation. Mr. Cody has authored articles on construction topics, including the California Right to Repair Legislation (SB 800).

A native of San Jose, CA, where he was born on June 24, 1953, Mr. Cody earned his bachelor's degree in biology in 1975 and his law degree in 1980, both from Santa Clara University. As a law student, Mr. Cody received the distinction of being elected to the Santa Clara Law Review and being appointed Technical Editor.

Mr. Cody is a member of the State Bar of California and has been admitted to practice in federal court for the Northern District of California. He is a member of the Santa Clara County Bar Association and has served as a Judge Pro Tem in the Superior Court of the County of Santa Clara on numerous occasions. He holds the highest personal rating from Martindale-Hubbell, an AV® rating.

## Practice Areas

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- Business And Commercial Litigation

- Class Action/Complex Litigation
- Product Liability
- Construction
- Real Estate
- Catastrophic/Personal Injury

## Education

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- Santa Clara University, 1975 Bachelor
- Santa Clara University School of Law, 1980 J.D.

## Court Admissions

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- California
- USDC: Northern District of California

## Memberships & Associations

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- Santa Clara County Bar Association
- State Bar of California

## Representative Experience

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**Practice Area:** Class Action/Complex Litigation, Product Liability

**Key Issues:** Should class be certified? Was product defective? Did putative class sustain damage?

**Venue:** Alameda County Superior Court

**Client Type:** Manufacturer of Fiber Cement Roofing Shakes

Plaintiffs sued, individually and on behalf of class, claiming that fiber cement roofing shakes manufactured by the client were defective in that they deteriorated prematurely and as a result leaked and caused damage to the homes in which they were installed.

**Result:**

Successful in defeating plaintiffs' motion for certification, after which case settled for small sum.

**Practice Area:** Class Action/Complex Litigation, Product Liability

**Key Issues:** Should class be certified? Was product defective? Did putative class sustain damage?

**Venue:** San Diego County Superior Court

**Client Type:** Manufacturer of Vinyl Windows

Plaintiffs sued, individually and on behalf of class, claiming that windows manufactured by the client (more than one million) were defective in that they could not be installed without producing leaks and as a result caused damage to the homes in which they were installed.

**Result:**

After years of litigation, obtained judgment on the pleadings in favor of the client on plaintiffs' fourth amended

complaint. Plaintiffs appealed and the appeal was granted. After the matter was returned to the trial court, the case settled for a small sum as to the client. However, when one plaintiff continued the class action against a co-defendant, the co-defendant cross-complained against the client for contractual and equitable indemnity as to the class claims. Plaintiff moved for certification of the class, but after considering the separate oppositions prepared on behalf of the client and on behalf of the co-defendant, agreed to dismiss the class allegations and settle her individual claim.

**Practice Area:** Class Action/Complex Litigation, Product Liability

**Key Issues:** Should class be certified? Was product defective? Did putative class sustain damage?

**Venue:** San Joaquin County Superior Court and USDC: Eastern District of California

**Client Type:** Manufacturer of Aluminum Windows.

Plaintiffs sued, individually and on behalf of a class, in both courts, claiming that the entire product line of windows (more than one million) manufactured by client was defective in that the windows were prone to leaking, that there was a breach of express and implied warranties, and that the windows caused or would cause damage to all homes in which the windows were installed.

**Result:**

Though both courts certified the classes in each case, the cases settled favorably for the client as evidenced by comparison to other class action settlements involving similar aluminum window products.

**Practice Area:** Class Action/Complex Litigation, Product Liability

**Key Issues:** Should matter be certified as a class action? Was product defective? Was implied warranty breached? Did putative class sustain damages?

**Venue:** Santa Clara County Superior Court

**Client Type:** Defendant Furnace Manufacturer

Plaintiffs sued, individually and on behalf of class, claiming that furnaces manufactured by the client (hundreds of thousands) were defective in that they were prone to causing accidental fires

**Result:**

Court certified the case and on eve of trial case settled.

**Practice Area:** Business And Commercial Litigation, Real Estate

**Key Issues:** Ability of client to foreclose on mechanic's lien on property bank had already foreclosed on.

**Venue:** Santa Clara County Superior Court

**Client Type:** Land Improvement Contractor

Client, a land improvement contractor, contracted to perform site improvement work on residential property. Defendant bank financed the project and eventually foreclosed on the property when the developer defaulted. Client sought recovery from defendant, arguing his mechanic's lien was senior to the bank's deed of trust. The bank argued that there were defects in the client's lien claim and therefore the bank's deed of trust had seniority.

**Result:**

The parties quickly agreed to mediation and the matter settled successfully for the client with the client being paid \$60,000.

**Practice Area:** Business And Commercial Litigation, Real Estate

**Key Issues:** Did client breach written agreements? Was clients' performance excused?

**Venue:** Santa Clara County Superior Court

**Client Type:** Developer of Commercial Condominiums

Client, a developer of commercial condominiums, was sued by plaintiffs, real estate brokers, who claimed that the client failed to pay commissions earned in the sale of 50 commercial condominium units.

**Result:**

After extensive litigation and multiple settlement conferences, the case settled successfully for the client as the client paid less in commissions than the amounts stated in the written agreements with the brokers.

**Practice Area:** Business And Commercial Litigation, Real Estate

**Key Issues:** Did defendant employee breach contract? Did defendant title insurance company breach its fiduciary duties to the client? Did client breach separate agreement with defendant employee in failing to pay defendant employee?

**Venue:** Santa Clara County Superior Court

**Client Type:** Developer of Commercial Condominiums.

Client, a developer of commercial condominiums, sued defendant employee who had been working for the client, asserting that employee had failed to pay for a condominium unit transferred to him. Defendant employee claimed the unit transfer was part of his compensation. Client sued defendant title insurance company, asserting that the title insurance company's errors in the handling of the escrow for the unit resulted in the unit being transferred to defendant employee without payment being made for the unit. In a separate cross-claim, defendant employee claimed that the client failed to pay him more than \$100,000 in compensation owed on the sale of units in a separate commercial condominium project.

**Result:**

After extensive litigation and on the eve of trial, case settled successfully for the client as the client received \$200,000, plus other considerations valued at \$25,000

**Practice Area:** Business And Commercial Litigation, Real Estate

**Key Issues:** What was the scope of an easement? Did the clients violate plaintiffs' easement rights?

**Venue:** Santa Clara County Superior Court

**Client Type:** Individual Homeowners

The clients and plaintiffs were next door neighbors. Plaintiffs had an easement for ingress and egress running over a portion of the clients' property. Clients undertook some remodel work on their property and plaintiffs claimed that the work violated plaintiffs' easement rights.

**Result:**

After extensive litigation, the matter went to trial and the Court interpreted the easement favorably for the clients.

**Practice Area:** Construction, Real Estate

**Key Issues:** Did the client trespass on plaintiffs' property? What damages, if any, did plaintiffs sustain?

**Venue:** Santa Clara County Superior Court

**Client Type:** Electrical Contractor

The client, an electrical subcontractor, placed temporary power poles across plaintiffs' property to provide electrical power to a residential construction project being built by defendant developer. Plaintiffs maintained the placement of the poles constituted a trespass on their property. The client argued that the placement of the poles was in fact authorized by a PG&E easement.

**Result:**

After extensive litigation and settlement negotiations where plaintiffs were offered in excess of \$50,000, the matter was tried to a jury. Just before closing arguments plaintiffs' dismissed the client in exchange for a waiver of costs.

**Practice Area:** Business And Commercial Litigation, Construction

**Key Issues:** Which party breached \$150,000 written contract for landscaping work? Did either party suffer damages?

**Venue:** Alameda County Superior Court, California

**Client Type:** Landscape Architectural and Construction Firm

Client, a landscape architectural/construction firm, sued defendant and defendant cross-complained against client, with both parties claiming the other breached the landscape construction contract. The client claimed defendant failed to pay according to the terms of the contract. Defendant claimed that he was current on all progress payments and that the client's work was deficient.

**Result:**

After defendant rejected the client's offer that both parties walk away from the matter in exchange for mutual dismissals and insisted that the client pay defendant \$70,000, the matter was tried to the Court and the Court found in favor of the client and awarded the client \$30,000 in damages and all costs of litigation.

**Practice Area:** Construction

**Key Issues:** Was the client's work on a residential construction project deficient? Did plaintiff townhome association sustain any damages as a result of the client's work?

**Venue:** Santa Clara County Superior Court

**Client Type:** Drywall Subcontractor

Plaintiff, a townhome association, sued the developer/builder and most of the subcontractors, including the client, who built a 200 unit townhome complex. The client was the drywall subcontractor for the project and plaintiff alleged that the client improperly installed the drywall thereby violating building codes and creating potential fire hazards in each of the 200 units. While the client acknowledged that some of its work required repair, it disputed plaintiff's contention the work created a fire hazard and the scope of repair set out by

plaintiff's experts.

**Result:**

Plaintiff settled with the developer and all other subcontractors and took the matter to trial solely against the client, even though the client had offered \$130,000 to settle. While the jury returned a verdict in favor of plaintiff, the verdict was less than \$100,000, substantially below what had been offered by the client prior to trial.

**Practice Area:** Catastrophic/Personal Injury

**Key Issues:** Was the client negligent in the maintenance of an apartment building he owned?

**Venue:** Santa Clara County Superior Court

**Client Type:** Apartment Owner

Plaintiff, a very sympathetic minor, sued the client claiming that the third degree burns she suffered on both hands and both feet were the result of the client's negligence in the maintenance of his property. Specifically, plaintiff alleged that the client, rather than buy more water heaters or a water heater with greater capacity, turned the setting on the single water heater that served the apartment complex up to a dangerously high temperature which resulted in her third degree burns when exposed to the water in a bathtub. The client denied plaintiff's allegations and maintained that plaintiff's injuries were solely the result of plaintiff's mother's neglect in caring for plaintiff.

**Result:**

The client offered \$100,000 to settle. However, due to plaintiff's \$1,000,000 demand the matter was tried, in December just before Christmas, to a jury. The jury returned a verdict in favor of the client.

**Practice Area:** Catastrophic/Personal Injury

**Key Issues:** Was the client negligent in the operation of its extensive conveyor belt system? Did the client breach a non-delegable duty owed to plaintiff?

**Venue:** Santa Clara County Superior Court

**Client Type:** National Delivery Provider

Plaintiff, a maintenance worker, sued the client contending the client was negligent in the operation of its conveyor belt system used to sort packages. As a result, while plaintiff was cleaning a belt he expected would not be in operation, the belt was activated and plaintiff's foot was crushed in one of the large rollers that moved the belt. The client maintained it was not negligent as the system was equipped with warning devices and plaintiff's injury was solely the result of plaintiff's employer failing to properly train the plaintiff.

**Result:**

After multiple attempts to settle the matter, it was tried to a jury and the jury returned a verdict in favor of the client.

**Practice Area:** Catastrophic/Personal Injury, Product Liability

**Key Issues:** Was the client's taping tool defective? Was the tool the cause of plaintiff's injuries?

**Client Type:** Manufacturer of Drywall Taping Tools

Plaintiff, a drywall worker, suffered a career-disabling back injury when he slipped and fell while working on a job site. Plaintiff alleged that the client's taping tool was defective in that its poor design allowed excessive amounts of drywall mud to leak from the tool, which mud caused plaintiff to slip and fall and injury his back requiring multiple surgeries. The client argued that the tool was not defective and that plaintiff's poor technique in applying the drywall mud allowed excessive mud to drip onto the floor.

**Result:**

After settlement negotiations were unsuccessful, the matter was tried to a jury and the jury returned a verdict in favor of the client.

**Practice Area:** Catastrophic/Personal Injury, Construction

**Key Issues:** Were the clients negligent in their supervision of a construction project? Was the clients' negligence the cause of plaintiff's injuries? Was plaintiff's injury the result of a "Peculiar Risk"? What were the extent of plaintiff's damages?

**Venue:** Orange County Superior Court

**Client Type:** Engineering Firm and Contractor.

Plaintiff sustained life-threatening internal injuries when a water truck went careening down a hill, out of control, and struck plaintiff's vehicle broadside. Plaintiff alleged that the clients, a project engineering firm and construction firm, were negligent in instructing the water truck driver to fill up with water at the top of a hill rather than at a location not requiring the heavily-loaded truck to descend a steep hill. Plaintiff also alleged that the reason the hill-top location was selected is that the clients were illegally drawing water without a permit. The clients argued that the accident was the result of the water truck driver's failure to properly operate the truck and/or the failure of the driver's employers to train him in the operation of the truck.

**Result:**

After settling with the truck driver and his employer and after multiple settlement conferences, where the total offer to plaintiff was \$2,000,000, the matter was tried to a jury and the jury returned a verdict in favor of plaintiff and awarded plaintiff in excess of \$3,000,000.

**Practice Area:** Business And Commercial Litigation

**Key Issues:** Was there an oral contract between the parties for the development of residential real estate? Was the contract breached by the client in failing to transfer the property to the plaintiffs?

**Venue:** Santa Clara County Superior Court

**Client Type:** Individual/ Contractor

Plaintiffs sued client claiming that client failed to perform a contract to acquire and develop residential property, and thereafter build twelve homes on the property. Specifically, plaintiffs alleged that the client failed to transfer the property to plaintiffs after plaintiffs paid a \$200,000 down payment and after the initial site improvement work had been completed by the client. As a result plaintiffs lost millions of dollars of profit they would have received on the sale of the homes.

**Result:**

After plaintiffs' rejected client's \$500,000 settlement offer, the matter was tried to a jury and jury found in favor of the client concluding that material terms had never been agreed to and therefore there was no contract.

**Practice Area:** Business And Commercial Litigation, Construction

**Key Issues:** Did the client breach a contract with homeowners to build the homeowners' home? Were change order costs excessive and/or unapproved? Was the project unnecessarily delayed? Was the construction deficient?

**Venue:** Binding Arbitration

**Client Type:** Developer/ Builder

Client, a developer/builder, filed for binding arbitration after homeowners failed to pay client \$300,000 still owing on the construction of the homeowner's \$1,600,00 home. Homeowners had boasted they would get the home for \$300,000 less than it cost the client to build, asserting that the the project was unnecessarily delayed, change orders were excessive and/or unapproved and the construction was deficient. The client disputed the homeowners' claims.

**Result:**

After numerous attempts to get the homeowners to mediate, all without success, the matter went to binding arbitration and a panel of three arbitrators found in favor of the client, with the client's recovery being in excess of \$500,000 as the client was awarded not only the \$300,000 still owing on the home, but also all attorney's fees and litigation costs.

## Publications

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- Author, Right to Repair, *Daily Journal*, June 30, 2003
- Author, Mold: The New Hot Spore , *Claims Magazine*, April 27, 2003
- Author, Arbitration Panel Finds In Favor Of DHP Silver Creek Investors And Pacific Diversified Company In Complex Construction Case, May 1, 2002

## Speaking Engagements

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- Insurance & Casualty Litigation 2011 - 2012: The Year in Review, May 23, 2012
- Insurance & Casualty Litigation 2011 - 2012: The Year in Review, May 22, 2012