

Hon. A. Howard Matz



Hon. A. Howard Matz was appointed by President Bill Clinton as a Federal Judge of the United States District Court for the Central District of California (Los Angeles) and served for 15 years between 1998 and 2013. He presided over numerous noteworthy cases and several of his decisions were ultimately adjudicated by the Supreme Court. Judge Matz served on many judicial committees, including the Ninth Circuit Model Jury Instructions Committee. Judge Matz was the first recipient of the “Vanguard Award” bestowed by the California State Bar for his contributions to intellectual property jurisprudence. Following

his retirement from the bench, the Los Angeles Chapter of the Federal Bar Association sponsored an unusual Tribute Dinner honoring his service as a judge.

Judge Matz also served in the mid-70s as Chief of the Fraud and Special Prosecutions Unit in the United States Attorney’s Office for the Central District of California. He left to be a partner at Hughes Hubbard & Reed and in 1983 started his own law firm, then known as Bird, Marella, Boxer, Wolpert & Matz. In private practice, he represented an unusually diverse range of clients in commercial litigation, in both state and federal court, in a wide variety of complex cases. His clients included Fortune 100 corporations, as well as individuals, lawyers and law firms. He was inducted into the American College of Trial Lawyers in 2016.

His experience acquired in almost five decades of private practice and on the bench makes him exceptionally-qualified to assist parties and their counsel in resolving disputes through arbitration or mediation, in conducting moot courts and in serving as an expert witness or Special Master.

Areas of Expertise:

- SECURITIES
- INSURANCE LAW
- ANTITRUST
- CIVIL RIGHTS
- INTELLECTUAL PROPERTY (COPYRIGHT, TRADEMARK, PATENT LAW AND TRADE SECRETS)
- QUI TAM ACTIONS
- FOREIGN CORRUPT PRACTICES ACT
- RICO
- EMPLOYMENT AND LABOR LAW
- TORT AND PRODUCT LIABILITY
- ENVIRONMENTAL LAW
- CIVIL RIGHTS
- CLASS ACTIONS

Representative Matters:

INSURANCE LAW:

Judicial Rulings re Insurance:

- *Yue v. Conseco Life Insurance Co.*, 282 F.R.D. 469 (2012). Judge Matz was the prior MDL judge. The core issue in those suits, as well as in this follow-on suit: was the insurer entitled to implement a cost of insurance hike that would either raise premiums or reduce payouts?
- *Los Osos Community Services District v. American Alternative Ins. Corp.* 585 F. Supp. 2d 1195 (2008). The main issue was whether a taxpayer's suit seeking restitution for alleged waste of board funds by public officials was a form of damages within the policy.
- *Garamendi v. SDI Vendome, S.A.*, 276 F. Supp. 2d 1030 (2003). In this ruling, arising out of the collapse of Executive Life Insurance Company, the issue was whether certain claims were untimely.
- *Low v. Altus Finance S.A.*, 136 F. Supp. 2d 1113 (2001). Another Executive Life case, involving the statute of limitations as well as certain releases.
- *Chubb Group of Ins. Companies v. H.A. Transp. System, Inc.*, 243 F. Supp. 2d 1064 (2002). The issue: did a property broker have a duty to hire a carrier with adequate insurance to cover the loss of cargo?
- *Khatchatrian v. Continental Cas. Co.*, 198 F. Supp. 2d 1157 (2002). Was an unexpected death due to a stroke an "accident" covered by an accidental death policy?
- *Scherz v. South Carolina Ins. Co.*, 112 F. Supp. 2d 1000 (2000). Held: conflict preemption precluded insurer's state tort action against private flood insurer.
- *Perkins v. Allstate Ins. Co.*, 63 F. Supp. 2d 1164 (1999). Denied summary judgment to an automobile insurance carrier on breach of contract and breach of implied covenant of good faith and fair dealing.

Arbitrations and Mediations re Insurance:

- Party-designated arbitrator in arbitration brought by huge health insurer against two reinsurers.
- Obtained disputed insurance coverage in several cases involving various causes of action where coverage was withheld or limited.
- Represented lawyers and law firms (as an advocate) in arbitrations involving malpractice, where coverage from the liability carrier was central to the dispute.

INTELLECTUAL PROPERTY:

Judicial Rulings re Copyright and Trademark:

- **Source Code Rulings.** In one of the earliest rulings concerning the copyright status of source code, Judge Matz ruled in 2001 that the copyright owner of source code was likely to prevail on a claim that the licensee exceeded the scope of the license. *Play Media Systems, Inc. v. America Online, Inc.*, 171 F.Supp.2d 1094 (C.D. Calif. 2001).
- In 2010, Judge Matz ruled that the assignee-holder of copyright in source code for a computer program lacked standing to bring a claim for infringement because a right to sue had not been granted. Ruling also dealt with right of registrant to sue for a work that existed before the deposited work was created. *Oskar Systems v. Club Speed, Inc.*, 745 F.Supp.2d 1155 (C.D. Calif. 2010).
- **Digital Millennium Copyright Act (“DMCA”).** At an early period in the development of DMCA jurisprudence, Judge Matz authored several opinions that created precedents, some of which were affirmed on appeal. They include:
 - *UMG Recordings v. Veoh Networks*, 620 F. Supp. 2d 1081 (C.D. Cal. 2008) (denying UMG’s motion for partial summary judgment and holding that Veoh’s software functions are “storage” undertaken “at the direction of the user” within the meaning of Section 512(c)(1). This analysis was cited favorably by the Second Circuit in *Viacom Int’l v. You Tube.com*, 676 F. 3d 19 (2d Cir. 2012).
 - *UMG v. VEOH*, 665 F. Supp. 2d 1099 (C.D. Cal. 2009) (Veoh expeditiously removed infringing material when it gained actual or apparent “red flag” knowledge under section 512(c)(1)(A)(i)-(iii); Veoh lacked the right and ability to control the allegedly infringing activity; and Veoh adopted a reasonable policy of terminating repeat infringers.) Affirmed by the Ninth Circuit in a precedential decision: *UMG Recordings, Inc. v. Shelter Capital Partners*, 718 F. 3d 1006 (2013).
- **Other Copyright rulings.** Judge Matz issued several rulings in the marathon saga of *Perfect 10 v. Google*. At issue: the intersection of direct v. contributory v. vicarious infringement relating to the use of search engine links and thumbnails. The first ruling, at 416 F. Supp. 2d 828 (C.D. Calif. 2006), was largely affirmed (and on one issue reversed) in *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F. 3d 1146 (Ninth Circuit 2007).
- *Perfect 10 v. Giganews*, 2013 WL 2109963, addressed the extent to which (if any) “volitional conduct” is an element required to prove direct infringement. Although the case was assigned to other judges after Judge Matz stepped down from the bench, his ruling was later affirmed by the Ninth Circuit. 847 F. 3d 657 (Ninth Cir. 2017).
- *Cusano v. Klein*, 196 F. Supp. 2d 1007 (C.D. Calif. 2001) (Ex-member of rock band KISS not entitled to adjudication of his claim for royalties in absence of transferee of his ownership interest).
- *Garden of Life, Inc. v. Letzer*, 318 F. Supp.2d 946 (C.D. Calif. 2004) (Priority mark holder established likelihood of success on claim to be senior user of contested trademark).

- *Miller v. Glenn Miller Productions*, 318 F. Supp. 2d 923 (C.D. Calif. 2004) (later affirmed and adopted by the Ninth Circuit (454 F.3d 1975)). Set precedent by ruling for first time that “sublicensing rule” from copyright and patent law should be extended to trademark and related publicity rights.
- In *Pom Wonderful LLC v. Welch Foods, Inc.*, 737 F.Supp.2d 1105 (2010), Judge Matz ruled that alleged infringer’s unclean hands defenses were not related to plaintiff’s Lanham Act claims.
- *Hebrew University v. General Motors, LLC*, 878 F.Supp.2d 1021 (C.D. Calif. 2012) (Auto manufacturers’ use of Albert Einstein’s image in advertisement did not likely deceive public).
- *Wetzel’s Pretzels LLC v. Johnson*, 797 F.Supp.2d 1020 (C.D. Calif. 2011) (One year delay in seeking preliminary injunction did not bar relief).
- *Moose Creek, Inc. v. Abercrombie & Fitch Co.*, 331 F.Supp.2d 1214 (C.D. Calif. 2004) (Use of Moose logo to sell clothing would not be preliminarily enjoined, given *Sleekcraft* factors).
- *M2 Software, Inc. v. M2 Communications, LLC*, 281 F.Supp.2d 1166 (C.D. Calif. 2003) (Record company’s “M2.0” mark did not infringe software manufacturer’s “M2” mark).

Judicial Rulings re Patent Law:

- In two decisions involving patents related to contact lenses, the issues included obviousness, invalidity and infringement. *Wesley Jessen Corp. v. Coopervision, Inc.*, 207 F.Supp.2d 1103 (2002) and 233 F.Supp.2d 1233 (2002).
- Several cases involving summary judgment rulings and rulings following *Markman* hearings led to settlements. E.g., *Suntiger, Inc. v. Sunglass Products of California*, 2006 WL 62818 (2006) and *Zagg Intellectual Property Holding Co. v. Zagg, Inc.*, 2011 WL 13133830 (2011).
- *Bosch v. Japan Storage Battery Co.*, 223 F.Supp.2d 1159 (C.D. Calif. 2002) [patent for two-speed cordless power drill not infringed; prosecution estoppel].
- *Alan Lee Distributors v. Van Brown*, 2006 WL 6130341 (2016), granting summary judgment to defendant because patent invalid for obviousness.
- *Williamson v. Citrix Online*, 792 F.3d 1339 (Fed. Cir. 2015), affirming in part and reversing in part claim construction rulings concerning distributed learning control modules and “means plus function.”

Arbitrations and Mediations re Intellectual Property:

- Sole arbitrator in patent infringement action brought against world-famous foreign manufacturer by patentee of numerous game device components. Construed claims after *Markman* hearing and issued a ruling on infringement claims.
- Chair of three member arbitrator panel in infringement action between prominent manufacturers of oil-drilling devices.
- Panelist in three separate disputes brought against ICANN (Internal Corporation for

Assigned Names and Numbers) over rights and use of top-level internet domain names.

- Successfully mediated multiple patent infringement disputes between software developer and prominent mega-retail chains.
- Successfully mediated various copyright infringement and Lanham Act disputes involving high-energy products; protein products; garment designs; jewelry; and premium beverages.

SECURITIES:

Judicial Rulings re Securities:

- *In Re THQ Securities Litigation*, 2002 WL 1832145 (C.D. Calif. 2002), granted plaintiffs' motion to certify a class of purchasers of defendants' stock. The opinion dealt with the use of class actions in securities cases and was not appealed.
- In *Sitrick v. Citigroup Global Markets, Inc.*, 2009 WL 1298148 (C.D. Calif. 2009), Plaintiffs sued the placement agent of a collateralized bond investment alleging numerous violations of the California securities laws. Judge Matz granted defendants' motion for summary judgment, largely because the alleged misstatements were not material and plaintiffs' evidence of reliance was insufficient. The decision was not appealed.
- In *Konvitz v. Midland Walton Capital, Inc.*, 2005 WL 697053 (Ninth Cir. 2005), the Court of Appeals affirmed Judge Matz's ruling reducing the amount of punitive damages that plaintiff had been awarded by the jury. The Ninth Circuit observed that "[t]he trial court...masterfully managed this complicated litigation..."
- *Kilik v. Children's Wonderland, Inc., et al.*, No. CV97-7757-AHM (Oct. 16, 1998), (PACER Doc. 78), granting defendants' motion to dismiss in a putative securities class action brought by purchasers of stock in an IPO. The ruling dealt with numerous recurring issues under the securities laws, including the particularity of the fraud allegations, the adequacy of the scienter allegations, the safe harbor for forward-looking statements under the PSLRA and others. Ruling was not appealed.
- *In Re Edison International Securities Litigation*, Nos. CV00-11516 and CV00-2493-AHM (Mar. 8, 2002) (PACER Doc. 82), granted Edison's motion to dismiss with prejudice a putative class action brought by purchasers of Edison's common stock. The opinion addressed numerous alleged statements and misleading financial reports. Plaintiffs voluntarily dismissed the appeal.

Arbitrations and Mediations re Securities:

- Judge Matz successfully mediated a securities case against a large bank brought by foreign investors suing under Section 10(b)(5) for fraudulent representations in the offering of investments under the EB-5 Visa program.
- Sole arbitrator in a bitter contract dispute involving public offerings for "penny stock," in which 10Qs and 10 Ks were pivotal factors.

LABOR AND EMPLOYMENT DISPUTES:

Judicial Rulings re Labor and Employment¹:

- *Duplesse v. County of Los Angeles*, 714 F.Supp.2d 1045 (C.D. Calif. 2010). Plaintiffs fire fighters employed by the County of Los Angeles and members of an AFL-CIO-represented bargaining unit, alleged that the County violated the FLSA by failing to pay them overtime compensation. Judge Matz granted the County’s motion for summary judgment in a ruling that addressed not just the requirements of the FLSA, but also Department of Labor pronouncements.
- In *Southern California Painters & Allied Trades v. Rodin, et al.*, 558 F.3d 1028 (Ninth Cir. 2009), the Court of Appeals affirmed Judge Matz’s ruling granting summary judgment to a commercial painting contractor accused of violating a Master Labor Agreement by running “double breasted operations” to avoid collective bargaining obligations.
- In *Block v. City of Los Angeles*, 253 F.3d 410 (Ninth Cir. 2001), the Court of Appeals partially affirmed Judge Matz’s grant of summary judgment to municipal employees who worked for the City and its wholly-owned Department of Water and Power. The employees had brought suit under the FLSA to recover unpaid overtime wages.
- In *Victorville Professional Firefighters Association v. City of Victorville*, CV 06-3935 (C.D. Calif. 2/28/2007) (PACER Doc. 25), the firefighters’ union challenged a municipal ordinance that made it unlawful for the union or any of its members to discuss employee relations with any members of the city council, except in a public meeting. Judge Matz granted summary judgment to the plaintiff, ruling that the ordinance violated the plaintiff-members’ constitutional rights. The ruling was not appealed.
- In *In Re Landmark Fence Co.*, 801 F.3d 1099 (9th Cir. 2015), the Court of Appeals dismissed an appeal from a ruling Judge Matz issued in 2013 (2013 WL 866257) upholding an order of the bankruptcy court allowing a class of employees to recover more than \$15 million for various wage and hour violations.

Arbitrations re Labor and Employment:

- Judge Matz served as the lone arbitrator in a dispute brought as a putative class action by plaintiffs who alleged that the cosmetology schools in which they had enrolled had failed to comply with various state and federal laws requiring them to be classified as, and compensated as, employees.

¹ The following summaries do not include the numerous cases that Judge Matz handled involving ERISA coverage issues; wage and hour claims; claims for discriminatory workplace violations and ADA claims; claims by union members against their union for breach of the duties imposed by the NLRA; and claims for wrongful termination.

ENVIRONMENTAL LAW:

Judicial Rulings re Environmental Law:

- In *Chemical Producers and Distributors Ass'n v. Helliker*, 319 F. Supp. 2d 1116 (C.D. Calif. 2004), Judge Matz dismissed plaintiffs' claim that Cal. Food and Agric. Code § 12811.5, imposing requirements for registering generic pesticides, was preempted by FIFRA.
- In *Castaic Lake Water Agency v. Whittaker Corp.*, 272 F. Supp. 2d 1053 (C.D. Calif. 2003), Judge Matz held that owners of wells contaminated by perchlorate established a CERCLA claim, in a ruling that addressed issues of response costs, causation, public nuisance and contributory claims.
- In *Communities for a Better Environment v. Cenco Refining Co.*, 119 F. Supp. 2d 428 (C.D. Calif. 2001), Judge Matz granted a preliminary injunction enjoining the operation of a refinery and construction pending NSR review. In a later ruling he found that under the Clean Air Act there was subject matter jurisdiction for a citizen suit against the refinery. (180 F. Supp. 2d 1062)

TORTS AND PRODUCT LIABILITY:

Judicial Rulings re Torts and Product Liability:

- In re Silicone Gel Breast Implants Products Liability Litigation, 318 F. Supp. 2d 879 (C.D. Calif. 2004), granting summary judgment to manufacturers of breast implants, based on Daubert ruling that plaintiffs' experts failed to establish triable issue of causation.
- *Dorsett v. Sandoz, Inc.*, 699 F. Supp. 2d 1142 (C.D. Calif. 2010), holding that state labeling requirements for generic SSRIs were not preempted by FDA regulations.
- *Motus v. Pfizer, Inc.*, 196 F. Supp. 2d 984 (C.D. Calif. 2001), holding that failure to warn of alleged risk of suicide associated with antidepressant did not cause patient's suicide.
- *Motus v. Pfizer, Inc.*, 127 F. Supp. 2d 1085 (C.D. Calif. 2000), holding that FDA labeling requirements do not preclude manufacturer of anti-depressant drugs from adding a stronger suicide warning.

FOREIGN CORRUPT PRACTICES ACT:

Judge Matz presided over the first-ever criminal jury trial brought under the FCPA against a corporation. Before trial he issued a precedent-setting ruling defining the nature of and scope of the key term "foreign official" under that Act. See *United States v. Aguilar*, 783 F. Supp. 2d 1108 (C.D. Calif. 2011). The ensuing trial initially resulted in a guilty verdict for most of the defendants. Following that verdict, he granted defendants' motion to vacate the conviction because of government misconduct. 831 F. Supp. 2d 1180 (C.D. Calif. 2011).

CIVIL RIGHTS:

Judge Matz tried numerous civil rights cases and otherwise handled hundreds of such cases during his years on the bench. They arose primarily under a plethora of federal and state statutes including “Section 1983”; Unruh Act; IDEA; “Title VII”; ADA; ADEA; Fair Housing Act; FOIA.

CLASS ACTIONS:

Judge Matz has very extensive experience in adjudicating class actions. See *e.g.*, *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387 (C.D. Calif. 2008).

ANTITRUST:

Judicial Rulings re Antitrust:

Judge Matz handled several antitrust actions while serving as a federal judge. See *Verisign v. ICANN*, 2004 WL 2095696 (C.D. Calif. 2004); *Vizio v. Funai*, 2010 WL 7762624 (C.D. Calif. 2010) (Clayton 7 and Sherman 2); *Sosa v. Direct TV*, 437 F.3d 923 (9th Cir. 2006) (Noerr-Pennington); *Live Universe v. My Space*, 304 Fed. Appx. 554 (9th Cir. 2008), affirming dismissal of Sherman Act § 2 complaint (monopolization; exclusionary conduct).

Arbitrations re Antitrust:

- Tribunal member in a dispute (adjudicated in Japan) between manufacturers and distributors of products involving cathode ray components.
- Tribunal member in an antitrust action brought by an auto manufacturer against a parts supplier.

FORMER POSITIONS:

- United States District Judge, Central District of California, 1998-2013
- Founding Partner, Bird Marella Boxer Wolpert & Matz, 1983-1998
- Partner, Hughes Hubbard & Reed LLP, 1979-1983
- Assistant United States Attorney, Central District of California, 1974-1979 (Chief of the Fraud and Special Prosecutions Unit 1977-1979)
- Law Clerk to the Honorable Morris E. Lasker, United States District Judge, Southern District of New York, 1969-1970

ADMITTED TO PRACTICE:

New York (1970) (now inactive)
California (1973)

EDUCATION:

J.D., Harvard Law School (1968)

A.B., Columbia University (Cum Laude, 1965)

SPEAKING AND WRITING ENGAGEMENTS:

Judge Matz has served as a panelist or speaker at numerous conferences, symposia, law school seminars or moot courts and civic organizations, including the following:

- International Conference on the Rights of Intellectual Property in Cyberspace (Stresa, Italy 2001)
- Law and Regulation of Intermediary Businesses (Practicing Law Institute, 2014)
- Presentation of Learned Hand Award at American Jewish Committee (2010)
- California State Bar Intellectual Property Law Section Conference (2009)
- Association of Business Trial Lawyers: What Business Trial Lawyers Can Learn From Criminal Defense Trial Practice (2003)
- Intellectual Property Institute, USC Gould School of Law (2011)
- Conference on “Egalite” et justice: regards Crouse’s France/Etats-Universe (Universite’ Paris X – Nanterre, 2004)
- Association of Business Trial Lawyers: From Taking Sides to Making Decisions: Reflections of Former Business Trial Lawyers (2002)

OTHER ENGAGEMENTS:

- Since leaving the bench Judge Matz has conducted several moot courts for prominent law firms preparing for appellate arguments in federal courts of appeal. He also has conducted moot trials and moot arbitrations for firms preparing for trial-level matters.
- Judge Matz has served as a court-appointed Special Master in one federal case involving precedent-setting rulings in immigration law.
- Judge Matz has provided expert testimony in such matters as the interplay between cases pending simultaneously in federal district court and federal bankruptcy court; how the substantive laws and procedures in the State of California would affect the prosecution of certain civil law claims under Article 8(1) of The Hague Convention; and how California law affects the enforceability of contracts, including arbitration agreements, on the right of parties to have foreign law claims “adjudicated in” an International Chamber of Commerce arbitration.

PUBLISHED WORKS:

- Obtaining Evidence for Federal Economic Crime Prosecutions, 14 American Criminal Law Review 651 (1977)
- Determining the Standard of Proof in Lawsuits Brought Under RICO (National Law Journal, October, 1983)
- Potential Tort Liability in Business Takeovers (Co-Author), The California Lawyer (September, 1986)
- “Struggle With Manhood in Angle of Repose” in American Guy, Masculinity in American Law and Literature, Oxford University Press (2014)

PROFESSIONAL AND COMMUNITY SERVICE:

- Fellow, American College of Trial Lawyers
- President, Bet Tzedek Legal Services (1992-1993)
- Board of Overseers for Hebrew Union College-Jewish Institute of Religion, c. 1996-2008
- Member, Board of Directors, Legal Aid Foundation of Los Angeles (1990-1992)
- Member, Jefferson-Bancroft Literary Society
- Member of American, Los Angeles, and Federal Bar Associations