

Hon. Donald S. Black



Hon. Donald S. Black was appointed to the Fresno County Superior Court by Governor Pete Wilson in 1998 and served for over 20 years between 1998 and 2019. Judge Black was a founding member of Fresno's direct calendar unlimited civil division, which began in 2003 and served as a judge in that assignment until his retirement.

He managed a wide variety of cases from the pleading stage of the case through trial. At any given time, Judge Black was responsible for 800 to 1200 unlimited civil cases. Among the case types handled were personal injury, contract disputes, real property disputes, employment disputes, securities disputes, and complex class action litigation related to wage and hour law, securities law and construction defect law. Over the years

Judge Black conducted hundreds of law and motion proceedings and settlement conferences and tried hundreds of jury and bench trials.

Starting in 2003 Judge Black was also a member of the Fresno Superior Court Appellate Division and during the last ten years was the Appellate Division Presiding Judge. During that time Judge Black participated in hundreds of appeals and wrote hundreds of appellate decisions.

For a five-month period while on the bench (August through December 2017) Judge Black sat as a Pro Tem Judge on the Fifth District Court of Appeal in Fresno.

Before being appointed to the bench in 1998, Judge Black was a business litigator with McCormick Barstow LLP in Fresno. He was a partner in the firm from 1984 through appointment to the bench in 1998. During those 18 years, Judge Black handled a wide variety of cases related to business disputes in both federal and state courts and was responsible for all phases of the litigation of such disputes from pleading through discovery, trial and appeal.

Areas of Expertise:

- APPELLATE
- ATTORNEY FEE / MALPRACTICE
- CIVIL RIGHTS
- CONTRACTS
- EMPLOYMENT / LABOR
- PRODUCT LIABILITY
- REAL ESTATE
- SECURITIES / FINANCIAL SERVICES

Representative Matters:

CIVIL RIGHTS CASES:

- *JB Development, LLC v. City of Fresno*, Fresno Case No. 11CECG00557:
Claim by real property developer that defendant City violated 42 USC section 1983 in failing to negotiate in good faith for the sale of City owned property.

CLASS ACTION CASES:

- *Vicken Masoyan, etc., et al., v. HL Leasing, Inc.*, Fresno Case No. 09CECG01839:
Investor class action against leasing company and its principal alleging defendant was a fraudulent Ponzi scheme tried to a jury over four weeks to a verdict over \$100 million. Alter ego allegations against principle's wife later found by the court to be proven true resulting in an award against that defendant of over \$100 million. Affirmed on appeal.

CONTRACTS CASES:

- *Primex Farms, LLC v. Roll International Corporation*, Fresno Case No. 10CECG01114:
Claim by pistachio grower against processor for breach of contract, breach of the implied covenant of good faith and fair dealing and interference with contract. Bifurcated jury trial resolved by Judge Black on the basis of a directed verdict in favor of defendant with respect to its statute of limitations defense.
- *Ray J. Skochko, et al. v. JKM Development, Inc., et al.*, Fresno Case No. 10CECG01096:
Claims for breach of contract, fraud, and breach of fiduciary duty related to construction loan made by plaintiff to defendant tried to the court and resulting in judgment in favor of plaintiffs for compensatory and punitive damages.
- *Ronald C. Weingart, et al. v. John Gullian, et al.*, Fresno Case No. 07CECG00958:
Claims for breach of contract, specific performance and bad faith related to an attempted purchase and sale of real property for development tried to the court and resulting in a judgment in favor of plaintiff for compensatory damages.

CORPORATE / PARTNERSHIP CASES:

- *Duke v. Superior Court* (2017) 18 Cal. App. 5th 490:
Appellate opinion authored by Judge Black which determined that a levy of a guarantor's stock by coguarantors who had taken an assignment of a judgment against the corporation supported a cause of action for conversion. Based on the facts alleged in the guarantor's complaint, the co-guarantor assignees obtained contribution far in excess of the guarantor's proportionate share of the debt.
- *Marilyn Trow v. John C. Palmer*, Fresno Case No. 12CECG00669:
Claims for dissolution, declaratory relief and conversion related to failed limited liability companies tried to the court.

EMPLOYMENT AND DISCRIMINATION CASES:

- *Stacy Johnson-Klein v. California State University Fresno, Fresno Case No. 05CECG02645:*
Employment discrimination case filed by terminated Fresno State women's basketball coach tried over three months to a jury verdict of over \$19 million. Later reduced on remittitur to approximately \$6.6 million. Settled on appeal.
- *Daniel Horsford v. California State University Fresno, Fresno Case No. 600186-1:*
Multiple plaintiff reverse discrimination case tried to plaintiffs' jury verdict of approximately \$5 million after eight-week trial. Remittitur issue on motion for new trial. New trial order affirmed on appeal.
- *Bernard D. Yates, et al. v. California Dairies, Inc., Fresno Case No. 03CECG01067:*
Multiple plaintiff racial discrimination case tried over 10 weeks.
- *Ryan N. Liggett v. Ruiz Food Products, Inc., Fresno Case No. 07CECG02754:*
Claim for retaliation in violation of the California Family Rights Act tried to a jury over two weeks resulting in verdict for plaintiff.

INSURANCE CASES:

- *Roberta Lawson v. CalFarm Insurance Company, Fresno Case No. 598161-8:*
Judge Black was called upon to determine whether a policy exclusion applicable to intentional acts of an insured violates California Insurance Code Sections 2070 and 2071 and whether coverage under the policy and, thus, plaintiff's claim was barred by California Civil Code Section 1714.1, which imputes the intentional acts of a minor to the minor's parent, the insured under the policy.
- *Estate of William S. Adams v. AIG Insurance Co., Fresno Case No. 645173-6:*
Judge Black was called upon to determine whether an insurer's obligation to pay damages arising out of the wrongful death of an insured arises only when the liability of the alleged tortfeasor has been legally determined through a judgment or there has been a written agreement by the insurer.
- *Michael L. Wenthur v. Merced Mutual Insurance Company, Fresno Case No. 609880-0:*
In a trial to the bench, Judge Black was required to determine whether an insurer should be permitted to rescind the fire policy issued to its insured because of misrepresentations made on behalf of the insured in the application.
- *Rio Mesa Holdings, LLC v. Fidelity National Title Insurance Company, Fresno Case No. 13CECG00867:*
Breach of contract/bad faith case filed by real property developer against title insurer regarding insurance for access to property bordering the San Joaquin River. Tried over eight weeks to a jury verdict of \$25 million. Later reduced on remittitur to approximately \$4 million.

PERSONAL INJURY AND PRODUCT LIABILITY CASES:

- *Victor Garay and Olga Lopez Garay v. Greyhound Lines, Inc., Fresno Case No. 10CECG03185:*
Personal injury action arising out of catastrophic Greyhound bus crash on Highway 99 tried over six weeks to a defense jury verdict. Motion for new trial granted on the basis of insufficient evidence supporting the verdict. Affirmed on appeal and now scheduled for retrial.
- *Gonzalez v. Union Pacific Railroad, Fresno Case No. 14CECG00134:*
Multiple plaintiff wrongful death action involving claims negligence and unsafe condition of railroad crossing tried over six weeks to a defense verdict. Affirmed on appeal.
- *George Santillan and Howard Santillan v. Defendant John Doe, Fresno Case No. 03CECG04480:*
Clergy sex abuse case tried over four weeks to a defense verdict after which a motion for new trial was granted as to one of the plaintiffs on the basis of the discovery of new evidence. Affirmed on appeal.
- *John G. Fisher v. Sierra Summit, Inc., Fresno Case No. 08CECG00198:*
Claim for personal injuries resulting from skiing accident requiring the court to construe a release signed by plaintiff and apply the doctrine of primary assumption of the risk to plaintiff's claim.
- *Elizabeth Gilmore v. San Francisco Ladder Company, et al., Fresno Case No. 07CECG03086:*
Claims for negligence and products liability related to a ladder tried to a jury over several weeks resulting in a verdict in favor of defendant.

REAL PROPERTY CASES:

- *Neil Grossman, et al. v. Park Fort Washington Homeowners' Association, Fresno Case No. 09CECG02121:*
Claim for enforcement of CC&Rs related to a residential subdivision tried to the court and resolved in favor of plaintiff.
- *Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership, et al., Fresno Case No. 11CECG01157:*
Claim for judicial foreclosure of commercial real property tried to the court and requiring the court to determine the fair value of the foreclosed property, the deficiency amount and the redemption price pursuant to Code of Civil Procedure § 729.070.
- *Belmont Country Club, Inc. v. Curtis Kleidon, et al., Fresno Case No. 08CECG02628:*
Claims for quiet, prescriptive easement, nuisance, declaratory relief and injunction related to access road for golf course.

TOXIC TORTS CASES:

- *City of Clovis v. Shell Oil Company, Fresno Case No. 15CECG03767:*
Environmental tort case involving allegations that defendant, Shell Oil Company, knowingly distributed agricultural products containing the contaminant TCP which leached into groundwater and contaminated the City's wells. Tried over three months to a plaintiff's jury verdict of over \$20 million.

WAGE AND HOUR CASES:

- *Susan Pasquale v. Fresno's Chaffee Zoo Corporation, Fresno Case No. 13CECG02398:*
Claim by former employee of the defendant that she was misclassified as an employee exempt from overtime compensation tried to the court requiring an application of IWC Wage Order 10 (8 C.C.R. § 11040).

WILLS AND PROBATE CASES:

- *In re: John P. McCann and Elizabeth A. McCann Trust, Fresno Case No. 11CEPR00871:*
Complicated trust and estate dispute involving estate valued at over \$10 million. Claims of misappropriation, undue influence, fraud. Disputes involving validity and interpretation of trust and amending instruments. Tried to the court over several weeks. Judgment issued construing trust and in favor of Petitioners for over \$2 million. Appeal filed and dismissed.
- *In re: The Cenci Family Trust of 1992, Fresno Case No. 10CEPR00244:*
Trust and probate dispute involving claims of misappropriation and elder abuse tried to the court over several weeks.

FORMER POSITIONS:

- California Superior Court Judge, Superior Court of Fresno County, 1998-2019
- Partner, McCormick, Barstow, Sheppard, Wayte & Carruth, 1980-1998

ADMITTED TO PRACTICE:

- California 1980-1998; 2019-present

EDUCATION:

- J.D., Santa Clara University School of Law (1980) Editor, Santa Clara Law Review
- A.B., Middlebury College (cum laude 1976)

PROFESSIONAL AND COMMUNITY SERVICE:

- Board of Directors, Association of Business Trial Lawyers (2008-present)
- Board of Directors, Fresno Philharmonic Association (1994-2006; President 1998-2000)
- Member of Fresno County and California State Bar Associations