Hon. Eduardo C. Robreno

The Honorable Eduardo Robreno served as a judge on the US District Court for the Eastern District of Pennsylvania from 1992 to 2023. He is currently a partner at McCarter & English, LLP where he provides alternative dispute resolution services through arbitration, mediation, special masterships, corporate investigations, and other court appointed neutral services.

During his tenure on the bench, Judge Robreno presided over more than 100 civil and criminal jury trials, authoring more than 3,000 opinions. He oversaw significant multidistrict litigation, including I*n re Asbestos Products Liability*, MDL-875, one of the largest multidistrict litigations in the federal courts, disposing of approximately 180,000 cases and 10 million claims, and *In re Google Cookie Placement Consumer Privacy Litigation*, MDL-2358 in the District of Delaware. In addition to his assignment as a District Judge in the Eastern District of Pennsylvania, Judge Robreno sat by designation with the Court of Appeals for the Third Circuit, Eleventh Circuit, Ninth Circuit, and the District Courts in New Jersey, Delaware, and the Western District of Pennsylvania. While on the bench, he was appointed by Supreme Court Chief Justice Renquist to serve on the Judicial Conference Advisory Committee on Bankruptcy Rules and by Chief Justice Roberts to the Judicial Conference Committee on Bankruptcy Administration.

Prior to his judicial service, Judge Robreno was a partner at a Philadelphia law firm. He also served as a trial attorney with the Department of Justice's Antitrust Division and as a Special Assistant United States Attorney.

Judge Robreno is the first Cuban-American to sit on any federal court and the first Latino on the federal bench in Pennsylvania. He is currently a member of the faculty at the University of Miami Law School where he serves as Distinguished Jurist in Residence (ret). Judge Robreno has also taught as an adjunct at Rutgers Law School, the University of Georgia, and Villanova Law School. He is an elected member of the American Law Institute, a founding member of the Hispanic Bar Association of Pennsylvania, and a member of the Cuban American Bar Association.

Areas of Expertise:

- BUSINESS LITIGATION
- MASS TORT LITIGATION
- ASBESTOS

Legal Publications

- The Federal Asbestos Product Liability Multidistrict Litigation (MDL-875): Black Hole or New Paradigm?, Widener Law Journal, 9.25.2013
- Learning To Do Justice: An Essay On the Development Of The Lower Federal Courts in the Early Years Of The Republic, Rutgers Law Journal, 1.1.1998

Seminars and lectures

- The Life and Time of Justice William Strong, The Justice William Strong American Inn of Court, 10.19.2023
- Centralization of Premature Mass-Tort MDLs, Rabiej Litigation Law Center, 9.29.2023

Education

Judge Robreno received his B.A. from Westfield State University, M.A. from University of Massachusetts Amherst and his J.D. from Rutgers Law School. He is a member of American Law Institute, Cuban American Bar Association and Hispanic Bar Association of Pennsylvania.

Representative Matters

MDL/MASS TORT

Cases collected in Hon. Eduardo C. Robreno, *The Federal Asbestos Product Liability Multidistrict Litigation (MDL-875): Black Hole or New Paradigm?*, 23 Widener L.J. 97 (2013).

ANTITRUST

- *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 362 F. Supp. 2d 574 (E.D. Pa. 2005) (Court held that it would apply cy pres teachings in determining how excess funds should be distributed, and excess funds would be distributed in manner proposed by settling defendants, rather than that proposed by plaintiffs).
- *LifeWatch Services, Inc. v. Highmark, Inc.*, 248 F. Supp. 3d 641 (E.D. Pa. 2017) (Court held that provider could not establish that refusal to pay for telemetry services harmed competition since all telemetry providers were treated the same under insurer's policies).
- *ID Security Sys. Canada, Inc. v. Checkpoint Sys., Inc.*, 268 F. Supp. 2d 448 (E.D. Pa. 2003) (Manufacturer of radio frequency tags brought action against competitor alleging antitrust and state law claims. Following a jury trial, the Court entered judgment in favor of manufacturer, and entered an order granting in part and denying in part competitor's post-trial motions, and reduced the judgment accordingly. Competitor moved to amend the reduced judgment to reflect settlement sum that manufacturer received from a non-party, in conformity with stipulation previously submitted by the parties. The Court held that: (1) reduced judgment restarted time for competitor to file motion to amend judgment, which competitor had timely filed, and (2) competitor was entitled to unconditional credit against substantially reduced judgment).

BANKRUPTCY

- *In re Mushroom Transp. Co., Inc.*, 282 B.R. 805 (E.D. Pa. 2002) (Chapter 7 trustee brought adversary proceeding against bankruptcy attorney and escrow agents which held proceeds from sale of debtors' assets for their alleged breach of fiduciary duty, wrongful conversion, and negligence, breach of contract and fiduciary breaches under ERISA. The Bankruptcy Court granted defendants' motion for summary judgment, and appeal was taken. The District Court held that: (1) bankruptcy court orders requiring that proceeds from sale of debtors' assets be held in account, pending decision upon marshalling and other questions, did not create express trust, but mere escrow arrangement; (2) debtor did not exercise reasonable diligence in monitoring attorney, and could not rely on discovery rule or equitable tolling to extend time for commencing cause of action; and (3) bank and other entity, in their capacity as escrow agents holding proceeds from sale of debtors' assets in escrow for benefit of estate creditors, were not ERISA "fiduciaries.").
- *In re Armstrong World Indus., Inc.*, 348 B.R. 136 (E.D. Pa. 2006) (In order to satisfy statutory requirement for valid asbestos personal injury channeling injunction in Chapter 11 case of bankrupt manufacturer of products that contained asbestos, i.e., that order confirming plan must be issued or affirmed by district court, reference was withdrawn to the District Court with respect to confirmation of debtor-manufacturer's proposed plan. The District Court held that: (1) plan could classify asbestos personal injury claims, that were to be dealt with by channeling injunction and paid from trust fund established specifically for that purpose, in separate class from other unsecured claims; (2) plan was proposed in good faith; (3) proposed plan satisfied statutory "feasibility" requirement; (4) asbestos personal injury trust established under plan, to which 65.57% of new common stock of reorganized debtor would be transferred and which manufacturer was required to fund with future payments, including dividends, satisfied requirements for trust, and trust and channeling injunction would be approved as being consistent with Code requirements and in best interest of estate; (5) claims trading injunction, to prevent trading of beneficial interests in asbestos personal injury trust, would be entered in exercise of court's authority to enter "necessary or appropriate" orders; and (6) discharge, exculpation and indemnity provisions included in plan would be approved).

CLASS ACTION

- *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241 (E.D. Pa. 2011) (Following preliminary approval of settlement of class action suit under the Fair Credit Reporting Act, the District Court held that (1) predominance and superiority requirements for class certification were satisfied; (2) with the exception of the award to representative plaintiff, proposed settlement of consumer class action was fair, reasonable, and adequate; and (3) award of attorney fees in the amount of $65,000 was reasonable).
- *In re Vanguard Chester Funds Litig.*, 625 F. Supp. 3d 362 (E.D. Pa. 2022) (Shareholders brought separate putative class actions against managers and trustees of retirement funds, alleging that managers and trustees breached their fiduciary duties to shareholders by altering shareholders' eligibility to purchase shares of lower-fee, institutional funds, thereby resulting in foreseeable taxable event that harmed smaller, individual shareholders in retail class of funds. After actions were consolidated, two groups of shareholders brought motions to have their counsel appointed as interim lead counsel. The District Court held that counsel for shareholders, who were first to file complaint, was best able to represent interests of

putative class, and thus would be appointed as interim class counsel).

- *Sourovelis v. City of Philadelphia*, 515 F. Supp. 3d 321 (E.D. Pa. 2021) (In lawsuit challenging the validity, on due process grounds, of forfeiture process employed by city, on ground, inter alia, that it required property owners to contest forfeiture before the very officials who were seeking to have their property forfeited, named plaintiffs moved for certification of settlement class on their restitutionary claims and for approval of proposed class settlement. The District Court, held that: (1) preliminary requirements for certification of settlement class were met; (2) proposed restitutionary settlement class could be certified on a "predominance" theory; and (3) court would approve, as fair, reasonable and adequate, a proposed settlement of the class' restitutionary claims, but only after a significant reduction in the large, proposed cy pres award).

DISCRIMINATION

- *Schmidt v. Montgomery Kone, Inc.*, 69 F. Supp. 2d 706 (E.D. Pa. 1999) (Former employees brought an ADEA action against former employers and one employee also brought intentional infliction of emotional distress claim under Pennsylvania law. Employers moved for summary judgment. The District Court held that: (1) genuine issues of material fact precluded summary judgment on employees' age discrimination and retaliation claims under ADEA, and (2) genuine issues of material fact precluded summary judgment on intentional infliction of emotional distress claim under Pennsylvania law).
- *Whitmore v. Nat'l R.R. Passenger Corp*., 510 F. Supp. 3d (E.D. Pa. 2020) (African American Amtrak employee brought discrimination action, alleging that Amtrak violated § 1981, Title VII, and Pennsylvania Human Relations Act by discriminating against him on basis of race, subjecting him to a hostile work environment, and retaliating against him. Employer moved for summary judgment. The District Court held that: (1) genuine issue of material fact precluded summary judgment for Amtrak on discrimination claim; (2) employee failed to establish hostile work environment claim; and (3) employee failed to establish retaliation claim).
- *Velez v. QVC, Inc*., 227 F. Supp. 2d 384 (E.D. Pa. 2002) (Former television hosts brought putative class action in E.D.N.Y. against television network, alleging race and sex discrimination in violation of federal and state law, violations of Equal Pay Act (EPA), and fraud. Action was transferred. On network's motion for summary judgment, the District Court held that: (1) Title VII claims by hosts, who did not file discrimination charges with the EEOC within 300 days of discriminatory act, were untimely; (2) neither continuing violation theory or equitable tolling applied to such claims; (3) female host's EPA claim was untimely; (4) discriminatory actions by supervisors and co-workers towards hosts did not constitute "direct evidence" of race or sex discrimination; (5) fact questions as to whether alleged discriminatory conduct towards Hispanic host, African–American female host and another female host was pervasive and regular, precluded summary judgment on racial and sexual hostile work environment claims under Title VII; (6) fact question as to whether network influenced affiliate company not to hire host because she filed employment discrimination action against it, precluded summary judgment on Title VII retaliation claim; (7) fact questions precluded summary judgment on female hosts' (EPA) claims; and (8) network did not commit fraud when it scheduled contract renewal meeting with host and then at meeting presented new contract to host that decreased her salary by $ 5,000.00 per year).

- *Hanna v. Lincoln Fin. Grp.*, 498 F. Supp. 3d 669 (E.D. Pa. 2020) (Former employee brought action against his former employer under Age Discrimination in Employment Act, Americans with Disabilities Act, New Jersey Law Against Discrimination, Family and Medical Leave Act (FMLA), and for breach of contract, alleging employer's reason for terminating him was pretextual and that he was fired due to discrimination based on age and/or disability. Employer moved for summary judgment. The District Court held that: (1) employee established that he was replaced by a similarly situated younger employee who was treated more favorably than him; (2) fact issues precluded summary judgment on issue of whether employer's proffered reason for terminating employee was pretextual; (3) employee could not establish that his employer had pattern or practice of terminating older recruiters; (4) fact issues precluded summary judgment on employee's disability discrimination claim; (5) temporal proximity of employee's request for FMLA leave to his termination was sufficient to raise an inference of causation; (6) fact issues precluded summary judgment on employee's FMLA retaliation claim; and (7) fact issues precluded summary judgment on employee's breach of contract action).
- *Deans v. Kennedy House, Inc.*, 998 F. Supp. 2d 393 (E.D. Pa. 2014) (Male black employee, member of service employees union, brought action against his former employer, supervisors, union, and union representatives, alleging gender and race discrimination under Title VII and § 1981, hostile work environment, retaliation, violation of ERISA, and various state claims. Parties filed cross-motions for summary judgment. The District Court held that: (1) employer's verbal warning and written warning to employee were not adverse employment actions; (2) docking of employee's pay based on his tardiness was not adverse employment action; (3) employee was not similarly situated to purported comparators; (4) employee failed to exhaust his administrative remedies with respect to race and gender discrimination claims against union under Title VII; (5) there was no evidence that union took allegedly adverse actions against black union member for discriminatory reasons; (6) alleged discrimination by employee's supervisors was not severe or pervasive enough to support hostile work environment claim; (7) employee failed to establish causal relationship between his filings with Equal Employment Opportunity Commission (EEOC) and his termination; and (8) there was no evidence that union breached its duty of fair representation during employee's grievance proceeding).

EDUCATION

- *Gaskin v. Pennsylvania*, 389 F. Supp. 2d 628 (E.D. Pa. 2005) (Parents and foster parents of disabled students enrolled in school districts in Pennsylvania and state and regional disability advocacy groups brought class action against the Commonwealth of Pennsylvania, the Pennsylvania Department of Education, and state officials. Plaintiffs alleged that defendants violated the Individuals with Disabilities in Education Act, the Rehabilitation Act, and the Americans with Disabilities Act. Parties filed joint motion for final approval of proposed settlement agreement. The District Court held that proposed settlement agreement was fair, reasonable, and adequate).
- *Suniaga v. Downingtown Area Sch. Dist.*, 504 F. Supp. 3d 430 (E.D. Pa. 2020) (Former tenured public school teacher and his wife brought action against school district, school district officials, two principals, and parents of certain students alleging constructive discharge after facing disciplinary action over comments he allegedly made to sixth-grade students in health

class, asserting § 1983 claims for violation of due process, claim for conspiracy to deprive him of his constitutional rights, and state law tort claims, and seeking declaratory judgment. Defendants moved to dismiss for failure to state a claim. The District Court held that: (1) teacher failed to state due process claim based on property interest in continued public employment; (2) teacher stated due process claim against principal for deprivation of liberty interest in reputation; (3) principal was entitled to qualified immunity from due process claim; (4) school district was not liable under Monell for principal's due process violation; (5) teacher stated conspiracy claim; (6) teacher stated defamation claim against principal; and (7) teacher stated defamation claim against parent).

- *Franklin Univ. v. CGFNS Int'l, Inc.*, (Private university moved for preliminary injunction and declaratory relief, seeking to stop Commission on Graduates of Foreign Nursing Schools (CGFNS) from implementing an English-language proficiency (ELP) requirement for certain foreign nurses seeking to work in the United States, and to compel CGFNS to issue certified statements to graduates of nursing program who met statutory criteria. The District Court held that (1) CGFNS does not have authority to define terms in statute governing certificates for foreign healthcare workers; (2) "nursing program" means foreign nurses from either an entry-level or graduate-level program are able to receive a certified statement from CGFNS; and (3) CGFNS did not have authority to implement policy change requiring certain foreign nurses to meet ELP prior to receiving certificate).

EMPLOYMENT

- *Sendall v. Boeing Helicopters, a Div. of the Boeing Co.*, 827 F. Supp. 325 (E.D. Pa. 1993) (Employee brought age discrimination action against his former employer, and employer filed counterclaim for breach of nondisclosure agreement. On motions for summary judgment, the District Court held that: (1) "continuing violation" theory did not apply to extend time for filing employee's claim; (2) limitations period was not equitably tolled by employer's handling of employee's internal grievances; and (3) fact issues precluded summary judgment on employer's counterclaim).
- *Cuttic v. Crozer-Chester Med. Ctr.*, 760 F. Supp. 2d 513 (E.D. Pa. 2011) (Physician assistant brought putative class action against medical center, alleging violations of the FLSA. Cross motions for summary judgment were filed. The District Court held that physician assistant was not exempt from overtime requirements).

INSURANCE

- *U.S. Fidelity & Guar. Co. v. Smith*, 171 F. Supp. 2d 484 (E.D. Pa. 2001) (Vehicle liability insurer and insured bus company brought declaratory judgment action, seeking determination of availability of uninsured motorist (UM) benefits, to cover bus passengers, Pennsylvania residents, who were injured when bus, licensed and garaged in New Jersey, was struck by unidentified vehicle, in Pennsylvania. Insurer moved for summary judgment. The District Court held that: (1) under Pennsylvania law, passengers were not entitled to UM benefits, but (2) New Jersey endorsement of policy provided UM coverage to passengers).
- *Harris v. Lumberman's Mut. Cas. Co.*, 409 F. Supp. 2d 618 (E.D. Pa. 2006) (Insured sued automobile insurer alleging, inter alia, statutory bad faith in insurer's denial of her claims for medical costs and lost wages. On insurer's motion to dismiss, the District Court held that: (1) insured was precluded from pursuing a statutory bad faith claim with respect to the denial of first-party medical benefits, but (2) insured could pursue a statutory bad faith claim with

respect to denial of wage lost benefits).

- *State Auto Ins. Companies v. Summy*, 83 F. Supp. 2d 530 (E.D. Pa. 2000) (Liability insurer sought declaratory judgment that it had no duty to defend insured landlords against lawsuit seeking recovery for injuries sustained by minor child of tenant after ingesting lead-based paint. Insurer moved for summary judgment based on business owner's policy's pollution exclusion. The District Court held that: (1) paint was "pollutant," and (2) paint's separation from walls prior to ingestion satisfied exclusion's requirement of movement).

REAL ESTATE

- *First Investors Nevada Realty, LLC v. EIS, Inc.*, 536 F. Supp. 3d 9 (E.D. Pa. 2021) (Pennsylvania landlord brought action against tenant, its purported Delaware successor entities, and Delaware company which had acquired tenant for breach of contract and violation of Pennsylvania's Uniform Voidable Transactions Act. Defendants filed motion to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim. The District Court held that lack of complete diversity precluded diversity jurisdiction over successor entities.
- *Seneca Ins. Co., Inc. v. Lexington and Concord Search and Abstract, LLC*, 484 F. Supp. 2d 374 (E.D. Pa 2007) (Liability insurer sought declaratory judgment that it was entitled to rescind title agent's errors and omissions policy based on misrepresentations in policy application. Title insurer moved for intervention as of right or, in alternative, for permissive intervention. The District Court held that: (1) title insurer did not have sufficient interest in litigation by reason of policy's possible coverage of title agent's liability in title insurer's separate action against title agent; (2) title agent's pre-loss assignment of its rights under policy to title insurer was invalid under Pennsylvania law; (3) assignment therefore did not give title insurer sufficient interest to intervene as of right; and (4) common factual issues did not exist as required for permissive intervention).
- *Breedlove v. CSX Transp. Corp.*, 643 F. Supp. 2d 721 (E.D. Pa. 2009) (Insurance salesman who sold insurance to railroad employees brought action against railroad company, sounding in premise liability, after he was diagnosed with mesothelioma. Railroad company moved for summary judgment. The District Court held that: (1) genuine issue of material fact existed as to whether insurance salesman was invitee or licensee, and (2) genuine issue of material fact existed as to whether insurance salesman was exposed to asbestos when he visited railroad company's mechanical shops).

RETALIATION

- *Hayes v. Saltz, Mongeluzzi & Bendesky, P.C.*, 652 F. Supp. 3d 537 (E.D. Pa. 2023) (Former employee brought action against former employer, asserting claims for unpaid overtime wages under Fair Labor Standards Act (FLSA) and Pennsylvania's Minimum Wage Act, and for retaliation under FLSA for filing instant lawsuit. Employer moved to dismiss retaliation claim. The District Court held that employee failed to allege materially adverse employment action).
- *Schmidt v. Montgomery Kone, Inc.*, 69 F. Supp. 2d 706 (E.D. Pa. 1999) (Former employees brought Age Discrimination in Employment Act (ADEA) action against former employers and one employee also brought intentional infliction of emotional distress claim under Pennsylvania law. Employers moved for summary judgment. The District Court held that: (1)

genuine issues of material fact precluded summary judgment on employees' age discrimination and retaliation claims under ADEA, and (2) genuine issues of material fact precluded summary judgment on intentional infliction of emotional distress claim under Pennsylvania law).

- *Whitmore v. National Railroad Passenger Corp.*, 510 F. Supp. 3d 295 (E.D. Pa.) (African American Amtrak employee brought discrimination action, alleging that Amtrak violated § 1981, Title VII, and Pennsylvania Human Relations Act by discriminating against him on basis of race, subjecting him to a hostile work environment, and retaliating against him. Employer moved for summary judgment. The District Court held that: (1) genuine issue of material fact precluded summary judgment for Amtrak on discrimination claim; (2) employee failed to establish hostile work environment claim; and (3) employee failed to establish retaliation claim).

WAGE AND HOUR

- *Solkoff v. Pennsylvania State University*, 435 F. Supp. 3d 646 (E.D. Pa. 2020) (Worker filed action against public university to collect unpaid wages under the Fair Labor Standards Act (FLSA). After the parties settled, they filed motion to approve settlement. The District Court held that: (1) sufficient evidence established bona fide dispute between worker and public university, supporting parties' motion to approve settlement; (2) total settlement amount of $97,500 was fair and reasonable, supporting parties' motion to approve settlement; (3) requested attorney fee of $35,288.93 was reasonable, supporting parties' motion to approve settlement; (4) confidentiality clause in settlement agreement would frustrate basic purpose of FLSA and thus District Court would disapprove clause; (5) general release frustrated the purpose of the FLSA and thus District Court would disapprove release; and (6) District Court would not approve settlement agreement).
- *Kraus v. PA Fit II, LLC*, 155 F. Supp. 3d 516 (E.D. Pa. 2016) (Personal trainer filed state court suit against her employer alleging retaliation and hostile work environment in violation of Title VII and Pennsylvania Human Relations Act (PaHRA), and unpaid overtime wages pursuant to Fair Labor Standards Act (FLSA) and Pennsylvania Wage Payment and Collection Law. Following removal, trainer moved for approval of proposed settlement agreement. The District Court held that: (1) proposed FLSA settlement resolved a bona fide dispute; but (2) general release and waiver in settlement ran contrary to FLSA, precluding approval; and (3) attorney fees proposed in settlement lacked documentation).
- *Howard v. Philadelphia Housing Authority*, 197 F. Supp. 3d 773 (E.D. Pa. 2016) (Employee brought retaliation action against city housing authority pursuant to the Fair Labor Standards Act (FLSA), alleging that she was terminated from employment after she complained about wage and overtime violations. Employee moved for approval of proposed settlement agreement. The District Court held that: (1) proposed FLSA settlement resolved a bona fide dispute; (2) compensation terms in proposed FLSA settlement were fair and reasonable; (3) release provisions of proposed FLSA settlement were overly broad and frustrated the fairness of the benefit otherwise provided, precluding court's approval; but (4) attorney fee provision in proposed FLSA settlement was fair and reasonable).
- *Cuttic v. Crozer-Chester Medical Center*, 868 F. Supp. 2d 464 (E.D. Pa. 2012) (Employee who brought FLSA action and the employer filed joint motion for in camera review and approval of proposed settlement. The District Court held that it would not review proposed

settlement in camera).

FEDERAL PROCEDURE

- *King v. E.I. DuPont De Nemours and Co.*, 741 F. Supp. 2d 699 (E.D. Pa. 2010) (Victims of asbestos exposure filed state court personal injury action against asbestos manufacturers. Manufacturers removed, and action was transferred as part of multidistrict litigation. After individual cases were severed, manufacturer moved to dismiss them. The District Court held that: (1) under Erie doctrine, direct conflict did not exist between Texas statute and federal rule, and (2) twin aims of Erie doctrine were best served by federal court's application of Texas law, which required filing of medical report for claims involving asbestos-related injuries).
- *Tyco Fire Products LP v. Victaulic Co*., 777 F. Supp. 2d 893 (E.D. Pa. 2011) (Holder of patents related to fire sprinkler systems filed infringement suit against manufacturer of sprinklers, and manufacturer raised affirmative defense and corresponding counterclaim alleging that patents were invalid and/or unenforceable. Patent holder moved to strike defense and to dismiss counterclaim. The District Court held that: (1) plausibility standard does not apply to affirmative defenses; (2) affirmative defense satisfied fair notice standard; and (3) counterclaim did not satisfy plausibility standard).

11TH CIRCUIT

- *Seamon v. Remington Arms Co., LLC*, 813 F.3d 983 (11th Cir. 2016) (Wife brought products liability action against firearms manufacturer following death of husband in hunting accident. The United States District Court for the Middle District of Alabama, No. 2:12–cv–00895–WKW–TFM, 51 F. Supp. 3d 1198, granted manufacturer's motion to exclude causation opinion of wife's liability expert and for summary judgment. Wife appealed. The Court of Appeals held that: (1) District Court abused its discretion in concluding that expert's opinion that design defect in rifle's fire control system caused husband's death was unreliable due to expert's failure to account for possible alternative causes of shooting, and (2) District Court abused its discretion in concluding that expert's causation opinion was unreliable because it was based on speculation, rather than facts in record).
- *Simmons v. Bradshaw*, 879 F.3d 1157 (11th Cir. 2018) (Plaintiff filed § 1983 action in state court against sheriff and deputy alleging that deputy used excessive force against him in violation of Fourth Amendment by shooting him four times at close range after stopping him for riding his bicycle on wrong side of road. After removal, the United States District Court for the Southern District of Florida, No. 9:14-cv-80425-BSS, entered summary judgment in sheriff's favor, 2014 WL 11456548, and, following jury verdict in plaintiff's favor, denied deputy's motion for new trial, 2016 WL 4718409. Parties filed cross-appeals. The Court of Appeals, held that: (1) jury instruction improperly delegated resolution of issue of qualified immunity to jury, and (2) sheriff was not subject to Monell liability).
- *McGinnis v. American Home Mortgage Servicing, Inc.*, 817 F.3d 1241 (11th Cir. 2016) (Mortgagor of seven residential rental properties brought action against mortgage loan servicer, alleging that servicer attempted to collect excessive payments for escrows, wrongfully foreclosed on one of the properties, and threatened to wrongfully foreclose on

other properties based on family rider provision of mortgages. The United States District Court for the Middle District of Georgia, No. 5:11–cv–00284–CAR, 2013 WL 3338922, granted in part and denied in part servicer's motion for summary judgment and motion in limine, and after jury awarded mortgagor $6,000 in compensatory damages for conversion, wrongful foreclosure, and interference with property rights, $500,000 in damages for intentional infliction of emotional distress, and $3 million in punitive damages, the District Court, C. Ashley Royal, J., 2014 WL 2949216, granted in part and denied in part servicer's renewed motion for JMOL and servicer's motion for new trial, reducing award of punitive damages to $250,000 based on Georgia's statutory cap when specific intent to cause harm is not proven. Mortgagor appealed and servicer cross-appealed. The Court of Appeals held that: (1) predicate acts for mortgagor's claim under Georgia's RICO were a single extended transaction that did not provide a basis for RICO liability; (2) servicer's escrow analysis did not comply with requirements under Real Estate Settlement Procedures Act for notice of monthly escrow increase; (3) servicer breached contractual duties regarding amount and payment schedule for escrow payments; (4) servicer's conduct was extreme and outrageous; and (5) servicer waived its contention in renewed motion for JMOL that evidence was insufficient to establish servicer's specific intent, as would allow punitive damages in excess of Georgia's $250,000 statutory cap).

- *Felts v. Wells Fargo Bank, N.A.*, 893 F.3d 1305 (11th Cir. 2018) (Consumer brought action against mortgage servicer, alleging that it failed to conduct a reasonable investigation into the accuracy of its credit reporting of her mortgage loan in response to disputes she lodged with the three major consumer credit reporting agencies, in violation of the Fair Credit Reporting Act. On the parties' cross-motions for summary judgment, the United States District Court for the Middle District of Florida, No. 8:14-cv-02528-JDW-AEP, granted summary judgment in favor of mortgage servicer. Consumer appealed. The Court of Appeals held that: (1) because consumer's nominal, reduced payments under mortgage servicer's unemployment forbearance plan, though timely under the plan, were not the payments she was contractually bound to make under her promissory note, consumer failed to demonstrate that mortgage servicer's reporting of her account as "past due" and "delinquent" was inaccurate, and (2) alternatively, consumer failed to demonstrate that mortgage servicer's reporting of her account was materially misleading).
- *Shockley v. Commissioner of Internal Revenue*, 872 F.3d 1235 (11th Cir. 2017) (Shareholders in closely held corporation petitioned for review of IRS determination that they were liable as transferees for corporation's tax liability, additions to tax, and accuracy-related penalty. The Tax Court, 2011 WL 1641884, entered decision for shareholders on limitations grounds. IRS appealed. The Court of Appeals, 686 F.3d 1228, reversed and remanded. The Tax Court, Nos. 28207-08, 28208-08, 28210-08, 2015 WL 3827570, upheld Commissioner's transferee liability assessment, and denied reconsideration. Shareholders appealed. The Court of Appeals held that: (1) true substance of shareholders' sale of their stock in closely held corporation was sale of corporation's assets, and thus stock sale was disregarded and corporation was deemed to have made transfer within scope of Wisconsin Uniform Fraudulent Transfer Act (WIUFTA) by selling all its assets; (2) substance-over-form principles applied to WIUFTA to determine true nature of transaction under transferred assets provision of Internal Revenue Code; and (3) closely held corporation did not receive anything of reasonably equivalent value in exchange for proceeds from sale of its assets given that

distributions essentially liquidating corporation rendered its stock worthless).

9TH CIRCUIT

- *Woodward v. City of Tucson*, 870 F.3d 1154 (9th Cir. 2017) (Mother of police shooting victim, as representative of victim's estate, brought § 1983 action against police officers alleging that they violated the Fourth Amendment by unlawfully entering apartment victim had been occupying and using excessive force against him. The United States District Court for the District of Arizona, No. 4:15-cv-00077-RM, denied officers' motion for summary judgment on qualified immunity grounds. Officers appealed. The Court of Appeals held that: (1) victim lacked standing to assert Fourth Amendment violation for police officers' warrantless entry and seizure of vacant apartment he had been occupying, and (2) officers were entitled to qualified immunity with regard to excessive force claim).
- *Callahan v. Brookdale Senior Living Communities, Inc*., 42 F.4th 1013 (9th Cir. 2022) (Employee brought putative class action in state court under California's Private Attorneys General Act (PAGA) against employer for alleged labor law violations. After mediation, employee and employer agreed to settlement. Applicant, who was a plaintiff in an overlapping PAGA case against employer, filed motion to intervene. The United States District Court for the Central District of California, 2020 WL 4904653, denied the motion to intervene, and in a separate opinion, approved the PAGA settlement. Applicant appealed both orders, and the issues were consolidated for appeal. The Court of Appeals held that: (1) applicant's argument that she would not have agreed to settlement were insufficient to show inadequacy of representation; (2) fact that applicant's case was formally litigated and current case was not was not sufficient to satisfy inadequacy of representation requirement for intervention as of right; (3) permissive intervention was not warranted; and (4) applicant did not have right to appeal the settlement).
- *Guzman v. Polaris Industries Inc.*, 49 F.4th 1308 (9th Cir. 2022) (Consumer brought action against manufacturer of off-road vehicles with rollover protective structures, alleging that vehicles' labels were false and misleading in violation of California Consumers Legal Remedies Act (CLRA), California's False Advertising Law (FAL), and California Unfair Competition Law (UCL). After dismissal of consumer's claims under the CLRA and FAL, the United States District Court for the Central District of California, 2021 WL 2021454, granted manufacturer's motion for summary judgment on UCL claim. Consumer appealed. The Court of Appeals held that consumer had adequate remedy at law through CLRA claim for damages, precluding equitable relief under UCL).
- *Acosta v. City National Corp*., 922 F.3d 880 (9th Cir. 2019) (The DOL brought action under the Employee Retirement Income Security Act (ERISA) for breach of fiduciary duties and self-dealing by employer along with various of its subsidiaries and employees in administering employer's employee profit-sharing plan. The United States District Court for the Central District of California, granted the DOL's motion for partial summary judgment as to liability as to self-dealing and breach of fiduciary duties, 176 F.Supp.3d 945, then granted the DOL's motion for summary judgment as to damages, 231 F.Supp.3d 593. Employer appealed. The Court of Appeals held that: (1) ERISA's exemption for "reasonable compensation" for services provided by a fiduciary such as recordkeeping services did not apply to employer's prohibited self-dealing; (2) employer failed to establish its entitlement to claimed offsets; but (3) prejudgment interest was required to by awarded on employer's net compensation

after unopposed offsets were deducted).