

Litigation, Settlement & the Public Interest:

Fluid Recovery & Cy Pres Relief

Participant Biographies:

Donald I. Baker

Baker and Miller, PLLC

Donald I. Baker, a former head the Antitrust Division of the U.S. Department of Justice, established with Todd Miller in 1995 an independent Washington firm specializing in antitrust, competition policy and international law issues. His firm's efforts focus on joint ventures, mergers, licensing, network disputes and international transactions. The firm works closely, on a team basis, with corporate law departments and law firms in handling litigation, arbitrations, transactions and government civil and criminal investigations.

Mr. Baker was educated at (i) the Woodrow Wilson School, Princeton University, (ii) Corpus Christi College, University of Cambridge; and (iii) Harvard Law School.

Mr. Baker is the only modern member of the career Antitrust Division staff to be appointed Assistant Attorney General in Charge of the Antitrust Division. He was a Trial Attorney and Section Chief (1966-1971), and Deputy Assistant Attorney General for Regulated Industries, Appeals and Foreign Commerce (1972-1975), before becoming Assistant Attorney General (1976-1977).

He was Professor of Law at Cornell Law School (1975-1978), where he taught course on antitrust law, utility regulation, financial services regulation, and international business transactions. In recent years, he has given lectures at various universities—including Oxford, Cambridge and London universities in the UK.

At Baker & Miller, and previously as a Washington partner of two major law firms (1978-1994), Mr. Baker's efforts have included all aspects of antitrust counseling; representing complainants as well as targets (or merger parties) in various government investigations; corporate internal

investigations; major arbitrations; and several private antitrust cases for plaintiffs and defendants. He has briefed and argued cases in the U.S. Supreme Court and several U.S. Courts of Appeal.

He is currently serving as a Non-Governmental Advisor to the International Competition Network, working primarily on merger processes and monopoly enforcement issues. He has also represented the governments of Australia, Switzerland and the United Kingdom in briefing international jurisdictional issues before the US Supreme Court and Courts of Appeals. Previously he served as special advisor to the Anti-Monopoly Committee of Ukraine and the Government of Mongolia on establishing new rules and enforcement mechanisms.

Mr. Baker is a member of the Panel of Distinguished Neutrals (arbitrators, mediators, etc.), appointed by the CPR Legal Program to Develop Alternatives to Litigation and the Panel of Arbitrators of the American Arbitration Association. He has served as arbitrator, mediator or counsel in various ADR processes. In 1988, he received the CPR Award for Significant Practical Achievement in Alternative Dispute Resolution as a result of some innovative procedures that he and his co-counsel created for use in the Financial Interchange arbitration (dealing with an antitrust challenge to interchange fees on a major banking network).

William Bernstein

Lieff, Cabraser, Heimann & Bernstein, LLP

William Bernstein was born in York, Pennsylvania on July 5, 1950. He was admitted to the California State Bar in 1975, and in 1985, admitted to the New York State Bar.

Mr. Bernstein attended the University of San Francisco (J.D., 1975). He was a member of the *San Francisco Law Review*, 1974-75. Prior to that he, attended the University of Pennsylvania (B.A., general honors, 1972). He served as Judge Pro Tem for the Municipal Court of Marin in 1984, and was a Discovery Referee for the Marin Superior Court for the period 1984-1989. Mr. Bernstein has also served as an Arbitrator for the Superior Court of Marin during 1984-1990, and as a Mediator for the San Francisco Bar Association Early Settlement Program from 1994-1995. He currently is an Adjunct Professor of Law at the University of San Francisco, teaching “The Laws of Settlements” since 2006.

Mr. Bernstein’s Awards & Honors include “Top 100 Trial Lawyers in California,” American Trial Lawyers Association, 2008; *Who’s Who Legal*, 2007; Northern California Super Lawyers, *Law & Politics*, 2004 – 2010; Princeton Premier Registry, Business Leaders and Professionals, 2008-09; *Unsung Hero Award*, Appleseed, 2006; “Lawdragon Finalist,” *Lawdragon*, 2009-10. Mr. Bernstein’s Publications and Presentations include “The Rise and Fall of Enron’s One-To-Many Trading Platform” (American Bar Association Antitrust Law Section, Annual Spring Meeting, 2005); Co-author with Donald C. Arbitblit, “Effective Use of Class Action Procedures in California Toxic Tort Litigation”, 3 *Hastings West-Northwest Journal of Environmental Law and Policy*, No. 3 (Spring 1996). Mr. Bernstein is a member of the State Bar of California; State

Bar of New York; Marin County Bar Association (Admin. of Justice Committee, 1988) and the Bar Association of San Francisco.

Arthur H. Bryant
Public Justice

Arthur Bryant is the Executive Director of Public Justice, America's public interest law firm, which marshals the skills and resources of over 3,000 of the nation's top attorneys to fight for justice through precedent-setting and socially significant litigation. Public Justice is the only public interest law firm in the country that both prosecutes a wide range of individual and class action litigation and has a special project to preserve class actions and prevent their abuse. Public Justice has provided, benefitted from, objected to, and refused *cy pres* awards in appropriate cases.

Arthur has twice been named one of the 100 Most Influential Lawyers in America by *The National Law Journal*. A graduate of Swarthmore College and Harvard Law School, he is listed in *Who's Who in America*, *Who's Who in American Law*, and *Who's Who in the World*. In 1991, he was honored by the American Bar Association as one of twenty young lawyers making a difference in the world. In 1996, he received a Wasserstein Public Interest Fellowship from Harvard Law School for "outstanding contributions and dedication to public interest law" and was named by *The American Lawyer* as one of 45 young lawyers "whose vision and commitment are changing lives." In 2002, he received the George Moscone Memorial Award for Public Service from the Consumer Attorneys Association of Los Angeles and the ABA's Pursuit of Justice Award. In 2005, Arthur received the Justice Michael A. Musmanno Award from the Philadelphia Trial Lawyers Association and the Leonard Weinglass Award for Excellence in Defense of Civil Liberties from the Civil Rights Section of the American Association for Justice. In recognition of Arthur's work, the Oregon Trial Lawyers Association has renamed its public service award the Arthur H. Bryant Public Justice Award. For more information, see www.publicjustice.net.

Josh Davis
University of San Francisco, School of Law

Professor Davis specializes in complex litigation, ethics, and the interplay between the two. As director of the Center for Law and Ethics, he organizes symposia and undertakes research exploring these topics. Davis is active in law reform, serving from 2001 to 2004 as the reporter for the committee that drafted California Supreme Court Rules 964 to 967 on multijurisdictional practice and testifying before United States Congress in 2009 regarding the pleading standard in federal court. Davis also writes extensively about antitrust and free speech law. He also currently serves as Associate Dean for Faculty Scholarship.

Kathryn Sáenz Duke

Public Health Trust

Ms. Duke came to the Public Health Trust almost one year ago, following work as an independent consultant on prescription drug access and cost issues for safety net providers. Previously, she served eight years as director of the Public Health Institute's Medicine for People in Need (Medpin) program, whose initial funding came from cy pres settlement of a class action suit involving drug pricing in California.

Prior to Medpin, she served as a research faculty member of the University of California at San Francisco Institute for Health Policy Studies, Manager of Scientific Affairs and Public Health at the California Medical Association, Senior Staff to the California Senate Select Committee on AIDS and the Select Committee on Nuclear Emergencies, and Senior Health Policy Staff Consultant at the California Senate Office of Research. She worked briefly at Public Advocates, and later at Heller Ehrman White & McAuliffe, both in San Francisco. Her pro bono legal work has included involvement with the AIDS Legal Referral Panel in Sacramento and the San Francisco Lawyers' Committee on Urban Affairs Political Asylum Project. This past summer she spent a month teaching English at an orphanage in Mexico.

Ms. Duke graduated with highest honors from University of Texas at Austin, and subsequently attended Universidad Nacional Autónoma de México. She earned three graduate degrees from the University of California at Berkeley: Linguistic Anthropology, Public Health, and Law.

Albert Foer

American Antitrust Institute

Albert A. ("Bert") Foer is founder and president of the American Antitrust Institute, a non-profit education, research and advocacy organization in Washington, DC. His career has included private law practice in Washington, DC; the Federal Senior Executive Service (as Assistant Director and Acting Deputy Director of the Federal Trade Commission's Bureau of Competition); CEO of a mid-sized chain of retail jewelry stores for twelve years; trade association and non-profit leadership; and teaching antitrust to undergraduate and graduate business school students. Foer has published numerous articles, book chapters, and reviews relating to competition policy. His article on cy pres appeared in 24 Antitrust 86 (2010). He is a graduate of the University of Chicago Law School, with an A.B. (magna cum laude) from Brandeis University, and an M.A. in political science from Washington University.

Hon. Robert B. Freedman

Superior Court of California, County of Alameda

Hon. Robert B. Freedman is a judge of the Superior Court of California, County of Alameda. He currently serves in one of the Court's two complex civil litigation departments. Prior to his initial appointment to the bench in 1996, Judge Freedman was engaged in the private practice of law in Oakland, California. He served as President of the Alameda County Bar Association in 1988. He is a past member of the Civil and Small Claims Advisory Committee to the California Judicial Council and is a recent appointee to the Court Technology Advisory Committee to the Judicial Council. On the Court, Judge Freedman served as Assistant Presiding Judge (2004 - 2005) and as Supervising Judge/Civil Direct Calendaring. He holds a B.A. degree from UCLA and a J.D. from the University of California, Berkeley School of Law (Boalt Hall). Judge Freedman was honored as the Alameda County Trial Judge of the Year for 2008 by the Alameda-Contra Costa Trial Lawyers Association

Geoffrey Hazard

University of California, Hastings

Professor Geoffrey Hazard is the Thomas E. Miller Distinguished Professor of Law at the University of California, Hastings College of the Law

Professor Hazard has taught at law schools since 1958, beginning at Boalt Hall (University of California, Berkeley), then the University of Chicago, Yale University, and the University of Pennsylvania. He is Trustee Professor of Law, University of Pennsylvania, and Sterling Professor of Law Emeritus at Yale. He was Director (executive director) of the American Law Institute from 1984 to 1999 and previously had been Reporter for the ALI Restatement Second of Judgments. He was Reporter for the American Bar Association Model Rules of Professional Conduct (promulgated in 1983) and draftsman-consultant for the ABA Model Code of Judicial Conduct (promulgated in 1972). He has been a member of the California State Bar since 1960 and is also a member of the Pennsylvania bar.

Professor Hazard's fields have been civil procedure, federal jurisdiction and professional ethics. He is co-author of a treatise and a casebook in civil procedure and also in professional ethics. He is author or co-author of 16 books and many articles. He is frequently an expert witness or consultant in professional ethics, including legal malpractice.

Professor Hazard is a graduate of Swarthmore College and Columbia Law School and has received several honorary degrees. He has a large family, including 24 grandchildren, and plays golf. His favorite leisure subject is history.

Judy Johnson

California Consumer Protection Foundation

In May 2000, Judy Johnson became the first woman and lawyer of color to serve as the Executive Director to the State Bar of California. With over 220,000 members, it is the nation's

largest mandatory state bar association. As State Bar CEO, Ms. Johnson directs a state-wide staff of approximately 550 employees, manages the facilities of the State Bar at its headquarters in San Francisco, its southern California office in Los Angeles and its Governmental Affairs office in Sacramento, and is responsible for administering an annual budget of approximately \$140 million. The State Bar's primary purpose is to serve as the administrative arm of the Supreme Court of California in the regulation of the legal profession, including admissions and discipline, providing services and programs to educate the public about the legal system and improving the administration of justice for all Californians.

Previously, Johnson had served two terms as the State Bar of California's Chief Trial Counsel, the office which is responsible for the prosecution of California attorneys accused of ethical misconduct.

Judy's prior employment as a legal aid attorney and prosecutor in the San Francisco District Attorney's Office, highlight a legal career complemented by extensive involvement in professional and community organizations, including service as a member of the State Bar's Board of Governors, Commission on Judicial Nominees Evaluation and Committee of Bar Examiners.

Judy has been President of the Board of Directors of the California Consumer Protection Foundation since its establishment in 1991 by the Superior Court of California, County of San Francisco, to administer and distribute cy pres funds remaining from the precedent establishing Levi Strauss consumer class action lawsuit. The Foundation is a strategic grantmaker and defender of consumer education and advocacy, which has to date effectively and efficiently distributed more than \$30 million to primarily underserved communities. The Foundation's mission is to protect and benefit consumer interests by directing funds to nonprofit organizations working on diverse consumer issues, such as health care, auto sales, consumer fraud, privacy, finance, insurance, energy and telecommunications. The Foundation adheres to a rigid set of core principles in the administration of cy pres funds, guaranteeing transparency, an open and competitive process, and one of the most, if not the most, stringent conflict of interest policies of all grantmaking foundations.

Judy received her undergraduate degree from Stanford University in 1971 and in 1976, graduated from the University of California, Davis, School of Law.

Hon. Richard Kramer
San Francisco Superior Court

The Hon. Richard A. Kramer was appointed to the California Superior Court for the County of San Francisco on December 3, 1996. He has served as both a civil and a felony criminal trial judge and, since 2002, has presided over the Complex Litigation Department. Judge Kramer has also been an Associate Judge and Presiding Judge of the Appellate Division of the Superior Court, and served as a Justice pro tem of the California Court of Appeal.

Judge Kramer graduated from the University of Southern California in 1969 (B.A., magna cum laude) and again in 1972 (J.D., Order of the Coif). He then practiced law in San Francisco for 24 years at Steefel, Levitt & Weiss, where he specialized in commercial litigation.

Judge Kramer has been active in professional education for many years. He has taught the Rutter Group Civil Procedure Before Trial course since its inception in 1979 and has been a contributing author to the course handbook. He has taught numerous other courses for the Rutter Group, the California Judges' Association, the California Continuing Education of the Bar, and other educational providers in many areas including civil procedure before trial, civil trial practice, class actions, criminal trial practice, consumer finance litigation, current developments in the law, drug and medical device litigation, evidence, electronic evidence, employment law, insurance bad faith, and unfair business practices. He is a frequent lecturer for both judicial and attorney continuing education programs throughout the country.

Judge Kramer is a member of the Federal-State Judicial Council and served on the Appellate Advisory Committee of the California Judicial Council from 1998-2007.

Elizabeth D. Laporte

U.S. District Court, Northern District of California

Magistrate Judge Elizabeth Laporte was appointed in 1998. She has presided over numerous civil cases through trial or other disposition, including patent, trademark, copyright, employment, civil rights and environmental cases. She also has conducted over 1000 settlement conferences, handled criminal matters, and resolved discovery disputes.

A 1982 graduate of Yale Law School and a Marshall Scholar, she clerked for the Honorable Marilyn Hall Patel in the Northern District of California. She was a partner at the boutique litigation firm of Turner & Brorby, and an Administrative Law Judge for the California Department of Insurance. In 1996, she began serving as Chief of Special Litigation for the San Francisco City Attorney's Office, and was named a Lawyer of the Year by *California Lawyer*. She has authored articles on patent litigation and settlement in the *Northern California ABTL [Association of Business Trial Lawyers] Report*, and has written on e-discovery. Judge Laporte serves on the Board of Governors for the Northern California Chapter of the Association of Business Trial Lawyers and the Executive Committee of the Litigation Section of the Bar Association of San Francisco. She is also a judicial observer for the Sedona Conference Working Group on Electronic Document Retention and Production.

Judge Laporte has recently been appointed the Alternative Dispute Resolution Magistrate Judge for the Northern District of California, is a past chair of the Magistrate Judge Executive Board of the Ninth Circuit, and was a member of the Jury Trial Improvement Committee of the Ninth Circuit Court of Appeals from 2002 to 2009. She regularly speaks at legal conferences and

judicial education programs on patent litigation, jury trials, e-discovery, employment law, settlement, and other topics.

Jesse Markham

University of San Francisco, School of Law

Professor Markham is a leading antitrust practitioner who has guided the antitrust departments of Holme Roberts & Owen, Morrison & Foerster, and Orrick, Herrington & Sutcliffe. He has also served as an antitrust prosecutor in California and Massachusetts. He is a contributing author to *Antitrust Dispute Resolution* (2007) and *California Antitrust Law* (First, Second, and Third Editions, plus forthcoming), and the author of numerous articles in scholarly and bar publications. Prior to joining the University of San Francisco School of Law faculty full time, he served as an adjunct professor since 1992 and lectured at both the Haas Business School and Boalt Hall School of Law at UC Berkeley. Markham also practiced corporate law in Paris, France, with the firm now known as Clifford Chance

Hon. William C. Pate (Ret.)

JAMS

Hon. William C. Pate effectively handles a wide variety of civil matters, including complex cases. Judge Pate joined JAMS following 20 years of distinguished service with the San Diego County Superior Court. During that time he regularly served as a Coordinating Judge for Judicial Council Coordinated Proceedings (JCCP), where cases filed in more than one California county are consolidated to a single court. Prior to his judicial appointment, Judge Pate worked for 14 years as a civil litigator in private practice.

Judge Pate conducted numerous mediations including class actions, commercial, personal injury, medical malpractice, and products liability. He has served as an arbitrator for commercial and other disputes including class actions. He conducted numerous mediations arising out of the automobile industry including employment, discrimination, “lemon” law, consumer fraud, and products liability. He is recognized as being very knowledgeable about automotive related matters. He conducted numerous settlement conferences covering all aspects of civil litigation, including personal injury, partnership dissolutions, sales of corporations, consumer fraud, professional liability, and injunctions. He was selected by the Presiding Justice of the Fourth District Court of Appeal to develop and institute a civil settlement program for Division One. He chaired ADR Committee, Torts and Insurance Practices Section, American Bar Association

Judge Pate was one of the original nine judges assigned to the Independent Calendar Program in San Diego. For 14 years, he handled an average of 500 cases at a time, in addition to JCCP cases. He has presided over 393 civil trials in San Diego, Alameda, Santa Clara, and Imperial Counties. These trials involved claims of professional malpractice; wrongful termination; wrongful death; products liability; breach of construction, real estate, and other contracts; the “lemon law”; racial, ethnic, and sexual orientation discrimination; fraud; and defamation.

Jessica Pers

Orrick, Herrington, Heimann & Bernstein, LLP

Ms. Pers, a partner in Orrick's San Francisco office, is a member of the Litigation Group. Ms. Pers focuses on civil litigation, emphasizing antitrust, franchise litigation, trademark and copyright disputes and class actions.

Ms. Pers has handled both jury and non-jury trials and injunction proceedings in federal and state courts and has extensive experience in extraordinary writ practice and appeals before California and federal courts.

Additionally, Ms. Pers has advised clients in the computer industry and various manufacturing and service fields on trademark, copyright and antitrust issues, including issues relating to domain name use on the Internet. She has handled cases for major franchisers in the automotive service and home health care industries as well as state and federal antitrust actions against Microsoft, Levi Strauss & Co. and many television and movie studios. Recently, Ms. Pers has had primary responsibility for large consumer class actions settlements arising from antitrust litigation against Microsoft.

Ms. Pers was involved in the case of State of California v. Levi Strauss, which established the use of "fluid recovery" and cy pres remedies in 1980. More recently, she represented Microsoft in coordinated class actions in San Francisco Superior Court. In settling those cases in 2003, the parties agreed, with Court approval, to establish a cy pres program for unclaimed funds to provide vouchers for use by public schools in purchasing computer hardware and software.

Brad Seligman

Impact Fund

For over 30 years, Brad Seligman has been a civil rights attorney specializing in class action and individual employment and civil rights litigation. He is the founder of public foundation, the Impact Fund, which provides financial and technical assistance and representation for complex public interest litigation. After serving as the organization's Executive Director for 17 years, Seligman became Senior Counsel in July 2010. Since 1992, the Impact Fund has granted over \$5 million to support such litigation. From 1988-1991, he was the managing partner of the Oakland firm of Saperstein, Seligman, Mayeda and Larkin. From September 1991 until June 1994, he was of-counsel to the firm's successor, Saperstein, Mayeda and Goldstein. He was a senior Law Clerk to Judge Lawrence K. Karlton of the Eastern District of California and an extern to Justice Matthew O. Tobriner of the California Supreme Court.

He has successfully litigated over 50 civil rights class actions and countless individual employment cases including wrongful termination actions. He is lead counsel in the nationwide class action gender discrimination case against Wal-Mart Stores, *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137 (N.D.Cal.2004), aff'd in part and remanded 603F 3d 571 (9th cir 2010) (*en banc*), which is the largest civil rights class action ever certified. He is also lead counsel in a nationwide glass ceiling gender discrimination case against Costco, *Ellis v. Costco*, 240 F.R.D. 627 (N.D.Cal.2007).

He successfully tried and subsequently settled the third-largest sex discrimination class action recovery in history (\$107.25 million), *Stender v. Lucky Stores*, 803 F.Supp.259 (N.D.Cal.1992) and also settled the first major challenge to the use of psychological testing by a private employer, *Soroka v. Dayton Hudson Corp, dba Target Stores*. He was co-lead counsel in the then-largest Americans with Disabilities Act access settlement, *Arnold v. United Artists Theatre Circuit*, 158 F.R.D. 439 (N.D.Cal.1994). He settled the largest disability employment class action ever, *Glover v. Potter*, (EEOC 2007) recovering \$61 million for a class of 7500. He represented one of the principal objectors to the *Georgine* class action settlement before the 3d Circuit and before the United States Supreme Court, where the standards for assessing settlement classes were handed down, *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). Before the California Supreme Court, he has argued, among other cases, *Munson v. Del Taco*, 46 Cal. 4th 661 (2009), which held that proof of intentional discrimination is not required for ADA violations under the unruh Civil Rights act, *Frye v. Tenderloin Housing Clinic*, 38 Cal.4th 23 (2006), which upheld the right of nonprofit legal advocacy groups to practice law; *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319 (2004), which established class certification standards in overtime class actions; and *City of Moorpark v. Superior Court*, 18 Cal.4th 1143 (1998), a case which established that disability discrimination claims under the Fair Employment and Housing Act are not preempted by the Workers' Compensation Act.

He has served on the Board of Directors of Equal Rights Advocates and California Rural Legal Assistance, Inc. and also as the chair of the Disability Rights Education and Defense Fund Development Partnership. He was the co-founder of the San Francisco Bay Area Plaintiffs' Employment Lawyers Association. He has spoken and written widely on topics of class actions, employment and public interest law, and attorneys' fee litigation.

He has taught employment discrimination law at the University of California Hastings College of the Law and Golden Gate University Law School, and taught a seminar on class action litigation at UC Hastings. He was a 1978 graduate of UC Hastings College of the Law and a Teaching Fellow at Stanford Law School. He was a Regent's Lecturer at UCLA School of Law in March 2006.