



## James M. Burgess

Partner

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### PRACTICE AREAS

- Antitrust and Trade Regulation
- Litigation
- Entertainment, Media and Technology
- Intellectual Property

### INDUSTRIES

- Entertainment, Media and Technology
- Insurance

### OVERVIEW

James M. Burgess is a partner in the firm's Century City office and is the Team Leader of the Business Trial Group's Consumer Class Action Team.

### Areas of Practice

Mr. Burgess represents businesses in commercial litigation. He has handled many class actions and cases under the Unfair Competition Law (Business and Professions Code Section 17200), including through trial and appeal, and he speaks and writes frequently on those issues. His cases typically involve allegations of breach of contract and commercial torts such as fraud and interference with contract. Mr. Burgess also helps businesses collect outstanding debts and prosecute allegations of fraud. He has handled a variety of cases, including consumer class actions, insurance bad faith, breach of warranty, product defect, leasing and real estate disputes, disputes concerning asset purchase agreements, antitrust, lender liability, sales tax reimbursement disputes, idea submission, and trademark infringement. His published cases include Advanced Building Maintenance v. State Compensation Insurance Fund (1996) 49 Cal. App. 4th 1388, Scheffield Medical Group, Inc. v. Workers' Compensation Appeals Board (1999) 70 Cal. App. 4th 868, Conversive, Inc. v. Conversagent, Inc. (C.D. Cal. 2006) 433 F.Supp.2d 1079, 79 U.S.P.Q.2d 1284 and Mitan v. Feeney (C.D. Cal. 2007) 497 F.Supp.2d 1113, 68 Fed.R.Serv.3d 809.

### EDUCATION

- J.D., University of Southern California Law Center, 1990, *Order of the Coif*
- B.A., Claremont McKenna College, 1984

### ADMISSIONS

- California, including all federal District Courts and the Ninth Circuit Court of Appeals

### EXPERIENCE

#### Representative Clients

- State Compensation Insurance Fund, Nordstrom, Inc., Fox Entertainment Group, Omnicare, CNA, Northrop Grumman, Conversive, Inc. and Enersys

#### Representative Matters

- A&J Liquor Co., et al. v. State Fund: Mr. Burgess was trial counsel for State Fund in this certified class action, which involved allegations of premium overcharging as a result of allegedly excessive reserves set by claims adjusters. After a seven month bench trial involving over 50 witnesses and 1,200 exhibits, the court entered a judgment in favor of State Fund and against the plaintiffs and a class of over 160,000 policyholders. Mr. Burgess argued several key motions before trial, and examined and cross-examined numerous witnesses at trial, including the plaintiffs' only expert on claims adjusting and reserving. The judgment was affirmed in full by the Court of Appeal
- Westrup v. Nordstrom: Mr. Burgess was lead trial counsel for Nordstrom in a 17200 class action that was tried in Los Angeles Superior Court as a representative action. The plaintiff contended Nordstrom collected excess sales tax reimbursements when merchandise certificates distributed pursuant to a rewards program were redeemed. The Court held that Nordstrom did not engage in any unlawful, unfair or fraudulent business conduct and that it collected the proper amount of sales tax. The Plaintiff abandoned her appeal
- Ronald L. Wolfe & Assoc. v. State Fund: Mr. Burgess was lead trial counsel for State Fund in an insurance bad faith case arising out of the cancellation of an insurance policy. The trial lasted 8 days and resulted in a unanimous defense verdict in favor of State Fund in the Santa Barbara Superior Court. The plaintiff sought compensatory and punitive damages as well as attorney's fees. The Plaintiff did not appeal the result
- Ohline Corporation, American Recycling and Wall Units v. State Fund: Mr. Burgess represented State Fund in this class action brought by approximately 25,000 policyholders who alleged that State Fund misreported non-compensable claims to the WCIRB, which resulted in higher premiums. The case was initially certified as a class action, and the court initially granted summary adjudication against State Fund on liability issues. The Plaintiffs sought \$40 million in damages. After the Court of Appeal's ruling in Simi Corp. v. Garamendi (2003) 109 Cal.App.4th 1496, the Court decertified the class, and vacated its prior summary adjudication ruling. The Plaintiff amended the complaint to add a new plaintiff and two subclasses. The trial court later dismissed the entire case. The court of appeal affirmed the dismissal as to one plaintiff and subclass, but reversed as to the other plaintiff and subclass. On remand, the remaining plaintiff's motion for class certification was denied. The court found that State Fund's official policy and general practice was to properly report non-compensable claims and that the class was not ascertainable and that individual issues of fact predominated because, among other things, each of more than 40,000 claim files would need to be reviewed to determine whether a reporting error was made. The court of appeal affirmed the trial court's ruling. The case was later dismissed in its entirety, with prejudice, for no payment of money. The plaintiffs' counsel had filed at least 8 similar lawsuits against other insurers and had never lost class certification. Other carriers paid many millions to settle similar claims
- Acro Constructors v. State Fund: Mr. Burgess represented State Fund in this class action brought by policyholders who alleged that State Fund improperly paid money to Safety Group Administrators, which allegedly resulted in less money being available for dividends to policyholders. The case was dismissed upon State Fund's demurrer. The Court held that State Fund did not have any duty to declare dividends, that it did not owe its policyholders any duty to preserve money to declare as dividends and that policyholders did not have any right to second-guess State Fund's decisions as to how to spend money. The Plaintiff did not appeal.

- State Fund v. Cover-All, Inc., et al.: Mr. Burgess represented State Fund in this lawsuit to collect \$6.3 million in premium that was unpaid because the defendant misreported its payroll. Premiums are based, in part, on an employer's payroll. The defendant agreed to pay 100% of the premium owed, and posted real property security for the entire amount. The corporate defendant also was convicted of insurance fraud.
- Conversive, Inc. v. Conversagent, Inc.: Mr. Burgess was lead trial counsel for plaintiff Conversive in a trademark infringement action. The District Court granted the Plaintiff's motion for partial summary judgment, finding validity, priority and infringement, and issued a preliminary injunction precluding the Defendant from using its top line brand, company name and website domain name. The Defendant settled by agreeing to a permanent injunction, and paying \$400,000 in Plaintiff's attorney's fees
- Atlas Mill Supply v. State Fund: Mr. Burgess was trial counsel for State Fund in this insurance bad faith case arising out of allegations of claims mishandling and over-reserving. The jury trial, which lasted one month, resulted in a unanimous defense verdict in favor of State Fund in the Los Angeles County Superior Court. At trial, Mr. Burgess examined or cross-examined all five of the percipient witnesses, and one of the five experts. The Plaintiff abandoned its appeal
- Go Motorboards v. EnerSys: Mr. Burgess was lead trial counsel for EnerSys in a product liability case arising out of the sale of batteries to an electric scooter manufacturer. The Court dismissed all fraud claims with prejudice. After the deposition of the plaintiff's expert, the Plaintiff dismissed its entire case with prejudice and agreed to entry of judgment for the full amount of EnerSys' counterclaim

## MEMBERSHIPS

- Co-Chair of the Consumer Class Action Subcommittee of the ABA Litigation Section's Class Action and Derivative Suits Committee

## ARTICLES

- Courts Cling to Tradition on CAFA Removal Burden, May 15, 2006
- Class-Action Puts New Limits on Plaintiffs, Venue, March 4, 2005
- Toss Suits Affected By Proposition 64, November 17, 2004
- Unfair-Competition Law Reform May Encourage Class Actions, August 25, 2004
- adbriefs, Winter 2004
- "Agencies Can't Sue Under Unfair Competition Law," Daily Journal (June 8, 1998). This article discusses the fact that government agencies are not within the definition of a "person" that can sue or be sued under the Unfair Competition Law, Business & Professions Code Section 17200. Several decisions were issued after this article was published which followed the conclusion of the article
- "Broad Unfair Competition Standing To Be Reviewed," Daily Journal (1999). This article discusses the dilemma facing the Supreme Court in Kraus and Cortez and the need to alter the broad standing rules under the Unfair Competition Law. This issue was later addressed by Proposition 64
- "Unfair Competition Law Reform May Encourage Class Actions," Daily Journal (August 25, 2004). This article discusses the fact that the changes resulting from Proposition 64 might encourage some plaintiffs to file class actions

## SPEECHES

- Has given numerous MCLE presentations and speeches concerning strategies for defending against Unfair Competition Law claims, as well as the impact of the federal Class Action Fairness Act.

- Participated in two televised debates in favor of Proposition 64, which was passed by the voters in November 2004 and significantly reformed the Unfair Competition Law