



Philip F. Atkins-Pattenson

Partner

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PRACTICE AREAS

- Litigation
- Land Use and Natural Resources

INDUSTRIES

- Digital Business
- Financial Services
- Healthcare
- Insurance

OVERVIEW

Phil Atkins-Pattenson is a partner in the Business Trial Practice Group and is Co-Office Administrative Partner of the firm's San Francisco office. In 2007, he was recognized by *California Lawyer* magazine as one of its California Attorneys of the Year (CLAY). The *Daily Journal* recognized one of his cases as a Top Ten Defense Verdict in 2009.

Areas of Practice

Mr. Atkins-Pattenson's practice focuses on complex business litigation in which he represents clients in a variety of industries, including manufacturing, insurance, high technology, real estate development, healthcare and telecommunications. He regularly defends consumer class actions, and has extensive experience litigating cases involving business torts, bad faith, unfair competition and false advertising, contract, fraud, partnership disputes, securities, trade secrets, and land use and environmental issues (CEQA, NEPA and ESA). He has conducted numerous trials and arbitrations, handled internal corporate investigations and argued important cases before the California Court of Appeal and U.S. Court of Appeals for the Ninth Circuit.

Mr. Atkins-Pattenson has extensive experience in litigating attorneys' fee awards (both contractual and statutory) and has recovered over \$13 million in awards and settlements.

EDUCATION

- J.D., University of San Francisco, 1980, Articles Editor, *Law Review*
- Masters of Divinity, Harvard University, 1977 (Rockefeller Fellow)
- A.B., Stanford University, 1974

ADMISSIONS

- California
- U.S. District Court for the Northern, Eastern, Central and Southern Districts of California
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Federal Claims
- U.S. Court of Appeals for the Federal Circuit

EXPERIENCE

Representative Litigation Experience

Mr. Atkins-Pattenson represented California's largest workers' compensation carrier in a

7-month trial in San Francisco Superior Court of a \$2 billion class action for unfair competition, bad faith and fraud – one of the largest class actions to be tried in California state court. The Court's 117-page Statement of Decision found for the client on all issues, and the California Court of Appeal affirmed the Judgment in all respects.

More recently, Mr. Atkins-Pattenson assisted this same client in obtaining a jury verdict of over \$300 million in a complex business fraud case.

Mr. Atkins-Pattenson represents several international airlines in consumer class actions in state and federal courts involving various claims including unfair competition, breach of contract and violations of RICO relating to the collection of a tourism fee for air travel to Mexico, pricing practices and operation of a branded credit card incentive program. In one of those cases, the Ninth Circuit affirmed holding that the class plaintiff's claims were preempted by the Airline Deregulation Act.

Mr. Atkins-Pattenson is representing the purchaser of a 100-acre site in Madera, California for the development of an 800,000 square foot retail "power center" in a state court action for fraud and breach of contract arising from the seller's failure to disclose material information regarding the condition of the property prior to the close of escrow. Mr. Atkins-Pattenson previously represented this client in a state court challenge to the land use entitlements for the project under CEQA. The California Court of Appeal, in a published opinion, affirmed the Judgment for our client, holding that including a "supercenter" as one of the retail uses did not automatically trigger a duty to analyze potential urban decay impacts.

Mr. Atkins-Pattenson is representing the owner and master developer of a luxury residential development in a federal court action against a national homebuilder arising from the latter's termination of a contract to purchase finished lots for \$32 million. Mr. Atkins-Pattenson's team obtained a Judgment for \$7.44 million, including \$2.66 million in attorneys' fees. Mr. Atkins-Pattenson previously represented this client in a state court challenge to the land use entitlements for this project under CEQA and a parallel federal court challenge to the natural resources permits for the project under the ESA. The client prevailed in both lawsuits.

Mr. Atkins-Pattenson recently defended a leading manufacturer of wireless LAN chips in a federal court action relating to a contract for the development and licensing of custom software. Aggressive motion practice resulted in a "walk away" settlement on the eve of trial.

Mr. Atkins-Pattenson recently represented the City of Sacramento in its successful defense of the multiple challenges under CEQA to the myriad land use entitlements and approvals for the "Railyards Project" – the transformation of a 244-acre redevelopment site on the edge of downtown Sacramento (the former maintenance and repair yard for the Union Pacific Railroad) into a 24-hour mixed use development consisting of housing, office space, retail stores and cultural sites. The *Daily Journal* recognized the Judgment in this case as one of the top 10 defense verdicts in California in 2009.

Mr. Atkins-Pattenson recently represented a leading global provider of technology and services for mobile content management in several consumer class actions in state and federal courts throughout the United States relating to wireless subscription charges on consumer's cell phone billings. Utilizing a creative settlement strategy and structure, all claims against the client (by cell phone customers, other participants in the channel of commerce and states Attorneys General) were resolved on a nationwide basis.

Mr. Atkins-Pattenson successfully defended a lawsuit against a national pharmacy benefits manager brought by Vietnamese-American owned pharmacies in Orange County, California for race discrimination under California's Unruh Act, fraud and unfair competition. On the eve of trial, where the plaintiffs were seeking \$2.5 million in damages and attorneys' fees, the Court granted our client summary adjudication on all but one of plaintiffs' claims, resulting in a nominal settlement (completely covered by insurance).

Mr. Atkins-Pattenson recently represented the City and County of San Francisco (including the Port of San Francisco) in quiet title litigation relating to the public trust interest in former tidelands.

Mr. Atkins-Pattenson recently represented a property owner in Redwood City in a successful challenge under CEQA to the adoption of the Downtown Precise Plan. In addition to setting aside the Downtown Precise Plan, the Court awarded the client significant attorneys' fees under California's "private attorney general" statute.

Reported Decisions

Natural Resources Defense Council v. Patterson, 791 F.Supp. 1425 (E.D. Cal. 1992); *Natural Resources Defense Council v. Houston*, 146 F.3d 1118 (9th Cir. 1998), *cert. denied* 526 U.S. 1111 (1999) (affirming summary judgment for ESA violation); *Natural Resources Defense Council v. Rodgers*, 333 F. Supp.2d 906 (E.D. Cal. 2004)(granting summary judgment that Bureau of Reclamation's operation of Friant Dam violated California Fish and Game Code Section 5937)

Orff v. United States, 358 F.3d 1137 (9th Cir. 2004), *affirmed* 545 U.S. 596 (2005) (affirming judgment of no subject matter jurisdiction for lack of waiver of sovereign immunity)

In re Convergent Technologies Securities Litigation, 948 F.2d 507 (9th Cir. 1991) (affirming summary judgement in Rule 10b-5 class action)

In re Convergent Technologies Second Half 1984 Securities Litigation, [1991-92] Fed. Sec. L. Rep. (CCH) Paragraph 96,211 (9th Cir. 1991) (affirming summary judgment in Rule 10b-5 class action)

Bily v. Arthur Young (1992) 3 Cal.4th 370 (holding accountants owe no duty to non-client third parties) (represented California Society of CPAs as *amicus*)

Mirkin v. Wasserman (1993) 5 Cal.4th 370 (rejecting "fraud-on-the-market" theory of reliance for common law claims) (represented California Society of CPAs as *amicus*)

Melom v. City of Madera (2010) 2010 DJDAR 4451 (affirming Judgment and holding no "per se" rule under CEQA to do urban decay analysis for "supercenters")

HONORS

- California Attorney of the Year (CLAY), *California Lawyer* magazine, 2007
- Finalist, Lawdragon 500 Leading Lawyers In America, *Lawdragon* magazine, 2007
- Northern California Super Lawyers, Business Litigation, *San Francisco Magazine*, 2004-2011
- Sheppard Mullin *Pro Bono* Attorney of the Year, 2007

- Top Ten Defense Verdicts in 2009, *Daily Journal*, February 3, 2010
- Legal 500, 2010

MEMBERSHIPS

- American Bar Association (Litigation Section)
- State Bar of California (Litigation, Environmental sections)
- San Francisco Bar Association (Litigation Section)
- Federal Bar Association
- Association of Business Trial Lawyers
- Bay Area Council

ARTICLES

- Top Verdicts of 2009 - Clearing the Way for Urban In-Fill, *Daily Journal*, February 3, 2010
- Mr. Atkins-Pattenson has authored articles on business litigation topics for the Practicing Law Institute and served on its program faculty.