



## David S. MacCuish

Senior Counsel

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### *Related Services*

Litigation ■ Commercial ■ Appellate ■ Products Liability

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Dave MacCuish has almost 40 years of experience in complex commercial litigation, trying more than 35 matters involving a diversity of subjects and industries. He has tried contract, fraud, antitrust, environmental, real estate, insurance, products liability, trade practices, unfair competition and trade secret disputes in federal and state courts and has successfully handled hundreds of other commercial engagements. He has also arbitrated a number of contract and technical matters in various arbitral forums.

Dave has developed special expertise in the energy industry. He has handled a wide spectrum of commercial matters for oil and gas companies and electric energy producers, including the full range of renewal energy sources.

Dave has also served as lead appellate counsel on appeals involving an equally broad range of matters, resulting in several dozen published opinions.

Dave's achievements have been recognized in *Who's Who Legal: California* and in *Southern California Super Lawyers* for the last nine years.

### *Representative Experience*

- Successfully prosecuted and defended trade secret and unfair competition cases at trial.
- Defense of a product manufacturer in a California False Claims Act action brought on behalf of 160 municipal entities and in related common law fraud action.
- Successful prosecution of a product warranty and performance action in five-month arbitration.
- Obtained summary judgment for a trade association in an antitrust action.
- Defense of antitrust, deceptive trade practices and consumer class actions.
- Successful prosecution and defense at trial of separate environmental actions.
- Prosecution and defense of contract disputes under merger, acquisition, partnership, joint venture and stock buy-out agreements.
- Defense of toxic and mass tort actions.
- Prosecution and trial of claims under liability, property and business interruption insurance policies.

- Representation of a major utility's subsidiary in various contractual disputes over access to electrical transmission lines, waste streams from coal-burning facilities, pollution credits, and the enforcement of contractual indemnities and joint venture agreements.
- Representation of businesses in disputes involving contractual buy-out provisions.
- Prosecution and defense of "take or pay" contract disputes and actions to enforce minimum take requirements and pricing obligations.
- Defense and prosecution of right-of-first refusal actions.
- Representation of companies in disputes arising from power plant development and acquisitions.
- Litigation and administrative compliance engagements involving access to natural gas pipelines and other transportation facilities.
- Obtained nine-figure judgments for a group of major oil companies in several protracted arbitrations regarding the allocation of equity interests under a unit agreement for one of California's largest oil fields.
- Representation of contracting parties in disputes under farm-out, royalty, operating, unit and oil and gas purchase agreements.
- Handling of complex litigation matters arising from the purchase and sale of oil and gas reserves, leases, drilling contracts, and mineral properties and the formation and dissolution of production businesses.

## **Reported appellate decisions**

- *Zurich American Ins. Co. v. Superior Court* (Watts Industries, Inc.), 155 Cal.App.4th 1485 (2007). (attorney-client privilege)
- *Armenta Ex Rel. City of Burbank v. Mueller*, 142 Cal.App.4th 636 (2006). (California False Claims Act)
- *Zurich American Insurance Company v. Watts Industries, Inc.*, 466 F.3d 577 (7th Cir. 2006). (arbitration)
- *Zurich American Insurance Company v. Watts Industries, Inc.*, 415 F.Supp.2d 887 (N.D. Ill. 2006). (arbitration)
- *Zurich American Insurance Company v. Watts Industries, Inc.*, 417 F.3d 682 (7th Cir. 2005). (arbitrability of disputes under deductible agreements)
- *Watts Industries, Inc., et al. v. Zurich Insurance Company*, 121 Cal.App.4th (2004). (insurance coverage in False Claims Act case)
- *Oxy Resources California v. Superior Court* (Calpine Natural Gas LP), 115 Cal.App.4th 874 (2004). (common interest privilege)
- *Zurich American Insurance Company v. Superior Court for the State of California*, 326 F.3d 816 (7th Cir. 2003). (Anti-Injunction Act)
- *Zurich American Insurance Company v. Superior Court*, 205 F.Supp.2d 964 (N.D. Ill. 2002). (injunction against state proceedings)
- *Armenta v. Superior Court* (James Jones Co.) 101 Cal.App.4th 525 (2002). (privileged documents)
- *City of Pomona v. Superior Court* (James Jones Co.), 89 Cal.App.4th 793 (2001). (pleading in False Claims Act case)
- *Rothschild v. Tyco Internat. (US), Inc.*, 83 Cal.App.4th 488 (2000). (summary judgment in unfair competition action)

- *PSC Geothermal Services Co. v. Superior Court* (Imperial County District Attorney), 25 Cal.App.4th 1697 (1994). (protection of privileged material from search warrants in environmental matter)
- *Newhall Land & Farming Co. v. Superior Court* (Mobile Oil Corp.), 19 Cal.App.4th 334 (1993). (common law theories of relief in environmental contamination case)
- *Ford Motor Co. v. Home Ins. Co.*, 116 Cal.App.3d (1981). (insurance coverage)

## ***Professional & Community Engagement***

- Association of Business Trial Lawyers

## ***Education***

- University of Pennsylvania (J.D., 1972)
- Stanford University (A.B., 1969)

## ***Admitted to Practice***

- California