

Daily Journal

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TOP 100 LAWYERS IN CALIFORNIA 2018

APPELLATE LITIGATION

Daniel M. Kolkey

GIBSON, DUNN & CRUTCHER LLP | SAN FRANCISCO

SPECIALTY: APPELLATE LAW, CONSTITUTIONAL LAW

Kolkey, a former state appellate justice and counsel to several governors, argued and prevailed before former Court of Appeal colleagues in a major California Environmental Quality Act case over whether a big railway project near the Ports of Los Angeles and Long Beach.

In January a 1st District Court of Appeal panel reversed a trial court judgment stalling the planned Southern California International Gateway Project and let it go forward, subject to rectification of two technical problems in the environmental impact review. Kolkey's client is BNSF Railway Co., which plans to construct the new \$500 million intermodal rail terminal. *City of Long Beach v. BNSF Railway Co.*, A148993 (Cal. App. 1st Dist., filed Aug. 11, 2016).

"Opponents of the project wanted the EIR to include material on the existing facility as well as the new," Kolkey said. "But we showed that was unnecessary because, if anything, the new facility would reduce environmental impacts at the old facility."

In March, the Orange County Superior Court Complex Case Division vacated a \$173.6 million penalty imposed by the California Insurance Commissioner against Kolkey's client, PacifiCare Life and Health Insurance Co., over alleg-

edly mishandled claims and underpayments to doctors. *PacifiCare Life and Health Insurance Co. v. Jones*, 30-2015-00733375 (Orange Super Ct., filed July 9, 2014).

"A big and justified victory," Kolkey said. "We showed that each of 19 separate penalties rested on two or three regulations, each of which we successfully challenged."

In another appellate matter, Kolkey argued an appeal in a \$34.5 million malpractice judgment against Holland & Knight LLP and won reversal. Gibson Dunn and Kolkey were brought on as counsel after the case was briefed. The plaintiff, a wealthy investor, accused Holland & Knight of facilitating a Ponzi scheme that cost him millions in cash and loan obligations. A state appellate panel reversed the verdict, ordered judgment in Holland & Knight's favor as to one plaintiff and a new trial on all issues as to the other plaintiffs. *Sabadia v. Holland & Knight LLP*, B242773 (Cal. App. 2nd Dist., filed July 20, 2012).

"The key argument was over causation," Kolkey said. "The plaintiffs were unable to show that any claimed malpractice was responsible for the losses."

Kolkey was chair of the California Supreme Court's International Commercial Arbitration Working Group, which



drafted legislation permitting foreign and out-of-state attorneys to appear in international commercial arbitrations in the state. "We got it signed in July and it takes effect January 1," Kolkey said. "We tried to anticipate concerns and potential opposition. We want to make California an attractive place for international arbitrations."

— John Roemer