

# James C. Nielsen

Before co-founding Nielsen Katibah LLP in 2019, Jim Nielsen chaired the firm of Nielsen, Haley & Abbott LLP starting in 2001, and previously chaired the West Coast Insurance Coverage Practice Group at Wright, Robinson, Osthimer & Tatum for almost a decade. Jim has successfully litigated cases involving business insurance in California and a number of other states, as well as briefing and arguing scores of civil appeals in a diverse range of commercial, tort, and insurance matters. His practice emphasizes trial-court litigation of insurance and commercial disputes, as well as appellate representation in a broader range of civil disputes. Mr. Nielsen is certified as a specialist in appellate law by the State Bar of California.

Mr. Nielsen is admitted to practice in California and Nevada, and also has successfully argued cases venued in Alaska, Arizona, Florida, Illinois, New Mexico, Ohio, Texas, and Wyoming.



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## Certifications & Designations:

- Certified Specialist, Appellate Law, State Bar of California Board of Legal Specialization (1996).
- Member, California Academy of Appellate Lawyers. (Membership is limited to attorneys with substantial experience in the appellate courts, and members are elected only after rigorous scrutiny of their appellate skills. See, [www.calappellate.org](http://www.calappellate.org)).
- "Super Lawyer," Appellate Law, 2004 - current ([www.superlawyers.com](http://www.superlawyers.com))
- "Best Lawyers," Appellate Law, U.S. News & World Report, 2005-current ([www.bestlawyers.com](http://www.bestlawyers.com)).
- Martindale-Hubbell Peer Review Rating: AV® Preeminent™.
- Appointed and trained as Appellate Mediator by the California Court of Appeal, First Appellate District, Appellate Mediation Pilot Project (2000).

## Publications:

- Contributing author, California Civil Appellate Practice (3d ed. Cal. CEB 2023 update).
- Contributing author, California Civil Writ Practice (4th ed. Cal. CEB 2008).
- Author and speaker, "Frequently Asked Questions in California Insurance Litigation," Philadelphia (May 2018).
- Author and speaker, "An Introduction to First-Party Insurance for Computer-Related and Intellectual-Property Losses," Mealey's Insurance Coverage for Cyber-Torts & Intellectual Property Conference (January 2001).
- Author and speaker, "Your Agent Told You What? The Effect of Agent Representations on Coverage Disputes," Defense Research Institute, Insurance Coverage and Practice Symposium (June 1997).
- Author, "Advice of Counsel in Insurance Bad Faith Litigation: A Substantive Framework for Pleading, Discovery and Proof," Tort & Insurance Law Journal, Vol. 25, No. 3, Spring 1990 (copyright, American Bar Association).
- Co-author, "'Sudden, Accidental' Exclusion -- Who Has the Real Burden?" Los Angeles Daily Journal, August 16, 1994.

- Author, "California Courts of Appeal Restrict Enforcement of Stipulated Judgments in Third-Party Bad Faith Suits," Underwriters Report, September 17, 1992.
- Co-author, "'Advertising Injury' Coverage: Pending Court Decision to Have Major Impact," Insurance Journal, February 1992.

#### Education:

- J.D., University of Virginia, 1983
- B.A., University of California, Davis, 1980

#### Bar Admissions:

- State Bar of Nevada, 2000; State Bar of California, 1983; Pro hac vice in several states.
- Admitted to practice before all U.S. District Courts in California and Nevada; U.S. Court of Appeals, Sixth Circuit, Cincinnati (1998); Seventh Circuit, Chicago (2006); Ninth Circuit, San Francisco (1986); Tenth Circuit, Denver (1998); Eleventh Circuit, Atlanta (2000).

#### Published Decisions:

- *Penn-Star Ins. Co v. Zenith Ins. Co.*, 730 F.Supp.3d 1053 (E.D. Cal. 2024) (awarding judgment to general-liability insurer for over \$1 million in uncovered defense and settlement contributions, with interest, from adverse insurer on the risk, and rejecting adverse insurer's efforts to take further discovery on general-liability insurer's expansive auto exclusion on grounds of ambiguity).
- *Wesco Ins. Co. v. BD and J, PC*, 664 F.Supp.3d 1055 (C.D. Cal. 2023) (declining to stay insurer's rescission lawsuit because disputed insurance application question sought insured's objective knowledge of facts capable of resulting in a professional-liability claim and thus presented no risk of inconsistent factual determinations with findings made in underlying malpractice litigation).
- *LaBarbera v. Security Nat'l Ins. Co.*, 86 Cal.App.5th 1329 (2022) (establishing as a matter of first impression that an insured's "indemnitee" is not a third-party beneficiary of and thus lacks standing to enforce provision in ISO general-liability form's Supplementary Payments clause promising a conditional defense of indemnitee).
- *Mesa Underwriters Specialty Ins. Co. v. Allergan, Inc.*, 604 F.Supp.3d 935 (C.D. Cal. 2022) (holding one insured jointly-and-severally liable for reimbursement of entire uncovered settlement payment made on behalf of all insureds).
- *Thompson v. Crestbrook Ins. Co.*, 81 Cal.App.5th 115 (2022) (federal decision finding no coverage barred relitigation of issue against other insurers for insureds' damage to easement property).
- *L.A. Terminals, Inc. v. United National Ins. Co.*, 340 F.R.D. 390 (C.D. Cal. 2022) (Defeating motion to compel on grounds that FRCP Rule 26(e) imposes no duty to supplement responses to unartfully drafted requests for production of documents).
- *Penn-Star Ins. Co. v. Zenith Ins. Co.*, 436 F.Supp.3d 1367 (E.D. Cal. 2020), *reversed*, \_\_ Fed.Appx. \_\_ (9th Cir. 2022) (on appeal, holding that insurer's exclusion for injury caused by "any auto" used by "any person" precluded coverage for suit against insured based on auto accident caused by non-insured auto and driver).
- *Philadelphia Indem. Ins. Co. v. SMG Holdings, Inc.*, 44 Cal.App.5th 834 (2019) (liability policy's arbitration clause enforceable against putative additional insured seeking defense).
- *Mesa Underwriters Spec. Ins. Co. v. Blackboard Spec. Ins. Co.*, 400 F.Supp.3d 928 (N.D. Cal. 2019) (defendant insurer owed duty to defend habitability action under both Coverage A and Coverage B despite allegations that insured intentionally violated tenants' rights).
- *Associated Industries Ins. Co. v. Mt. Hawley Ins. Co.*, 309 F.Supp.3d 812 (N.D. Cal. 2018) (granting summary judgment establishing primary duty to defend and distinguishing American Dynasty "zone of danger" exception to the scope of additional insured coverage under Syfy Enterprises).
- *Camp Richardson Resort Inc. v. Philadelphia Indem. Ins. Co.*, 150 F.Supp.3d 1186 (E.D. Cal. 2015) (dismissing action for coverage under Coverages A and B and Liquor Liability Coverage based on refusal to defend underlying federal action alleging that insured resort interfered with neighboring property interests and alleging injuries from drunken patrons).

- *Philadelphia Indem. Ins. Co. v. Lakeside Heights Homeowners Ass'n*, 110 F.Supp.3d 965 (N.D. Cal. 2015) (for purposes of a subsidence exclusion an HOA's failure to perform its legal duties to maintain land qualifies as its "operations").
- *Renewable Resources Coalition Inc. v. Pebble Mines Corp.*, 218 Cal.App.4th 384 (2013) (nonprofit's claims for tortious interference based on mining companies' purchase of nonprofit's confidential documents from a third-party fundraising consultant held not subject to special motion to strike under anti-SLAPP statute).
- *Dacey v. Taraday*, 196 Cal.App.4th 962 (2011) (one-year statute of limitation under Code Civ. Proc. § 366.2 does not apply to claim by surviving partner's claim for breach of contract where the estate administrator not the deceased partner breached the contract; under Prob. Code § 11423 (b) interest at 10% is properly awarded on \$4.6 million in damages from the time that the breach of the dissolution agreement occurred).
- *United National Ins. Co. v. Spectrum Worldwide Inc.*, 555 F.3d 772 (9th Cir. 2009) (first-publication exclusion applied to negate coverage for suit for trade-dress infringement where infringing elements first published before policy inception and insurer was entitled to recoup settlement payment back from insureds).
- *McCrary Constr. Co. v. Metal Deck Specialists Inc.*, 133 Cal.App.4th 1528 (2005) (subcontractor entitled to reversal of contractual-indemnity judgment for general contractor following a wrongful-death action because Morton Thiokol decision should be read narrowly).
- *Prince v. United National Ins. Co.*, 142 Cal.App.4th 233 (2006) (standard auto exclusion eliminates coverage for lawsuit against insured foster parent based on death of foster children by hyperthermia after having been left unattended in a parked SUV on a hot day).
- *Roe v. McDonald's Corp.*, 129 Cal.App.4th 1107 (2005) (security company entitled to summary judgment on claim of failure to prevent assault after report of a dangerous situation where there had been no definite threat or other criminal activity; declaration of putative security expert properly rejected).
- *Mitchell v. United National Ins. Co.*, 127 Cal.App.4th 457 (2005) (established that provisions of statutory standard form fire policy requiring proof of intent to deceive in order to void a policy do not supersede general statutory provisions permitting rescission based on material but merely inadvertent misrepresentations in an insurance application).
- *Hameid v. National Fire Ins. of Hartford*, 31 Cal.4th 16 (2003) (amicus curiae: For purposes of "advertising injury" coverage "advertising" means "widespread promotional activities directed to the public at large.>").
- *Hartford Cas. Ins. Co. v. Travelers Indem. Co.*, 110 Cal.App.4th 710 (2003) (where landlord was an additional insured under tenant's policy and additional-insured coverage was not limited to liability directly caused by the tenant landlord's policy was excess).
- *United National Ins. Co. v. SST Fitness Inc.*, 309 F.3d 914 (6th Cir. 2002) (under Ohio law where insurer has *adequately reserved its rights it may recover from the insured the costs of defending a non-covered suit*).
- *Bullock v. Maryland Cas. Co.*, 85 Cal.App.4th 1435 (2001) (established that claims for civil penalties and regulatory compliance costs do not qualify as "damages" for which insured is "legally obligated to pay").
- *Cigna Lloyds Ins. Co. v. Bradleys' Electric Inc.*, 33 S.W.3d 102 (Tex.App.-Corpus Christi 2000) (under Texas law advertising-injury coverage does not apply to claims for direct or inducing patent infringement).
- *Smith v. Ingersoll-Rand Co.*, 14 P.3d 990 (Alaska 2000) (under Alaska law established that principles of comparative negligence apply to claims of strict products liability).
- *Ringler Associates Inc. v. Maryland Cas. Co.*, 80 Cal.App.4th 1165 (2000) (first-publication exclusion applies to republications of the same general defamatory material even though same words not used).
- *Bradleys' Electric Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675 (Tex. 1999) (Under Texas law established that intermediate appellate court required to decide coverage point before venue point) vacating on other grounds, 993 S.W.2d 673 (Tex.App.-Corpus Christi 1998) (established that venue erroneously transferred to insured's county of residence where insurer sought declaratory judgment in county where underlying action was pending).
- *United National Ins. Co. v. SST Fitness Inc.*, 182 F.3d 447 (6th Cir. 1999) (under Ohio law no duty to defend suit for patent infringement and unfair competition (Lanham Act) under advertising-injury coverage).
- *Buttram v. Owens-Corning Fiberglas Corp.*, 16 Cal.4th 520 (1997) (established that Proposition 51 [the Deep-Pocket Initiative] applies to latent injuries that manifest after 1986 effective date).

- *In re Daisy Systems Corp.*, 97 F.3d 1171 (9th Cir. 1996) (established right to sue investment banker for professional negligence and breach of fiduciary duty in high-technology corporate acquisition for losses in excess of \$100 million).
- *Stanford Ranch, Inc. v. Maryland Cas. Co.*, 89 F.3d 618 (9th Cir. 1996) (no duty to defend or indemnify three multimillion-dollar real-estate actions arising from wetland violations of the Clean Water Act [33 U.S.C. 1344]).
- *Andrews v. United Airlines Inc.*, 24 F.3d 39 (9th Cir. 1994) (airline's duty with respect to overhead-bin accidents).
- *Intex Plastics Sales Co. v. United National Ins. Co.*, 23 F.3d 254 (9th Cir. 1994) (no duty to defend claims for direct and inducing patent infringement under advertising-injury coverage).
- *Fireman's Fund Ins. Co. v. Maryland Cas. Co.*, 65 Cal.App.4th 1279 (1998) (contribution among insurers differs from subrogation; time on risk as allocation method for defense costs).
- *Marathon Pipeline Co. v. Maryland Cas. Co.*, 5 F.Supp.2d 1252 (D.Wyo. 1998) aff'd in part rev'd in part 243 F.3d 1232 (10th Cir. 2001) (under Wyoming law policyholder's assignment of rights against insurer unenforceable absent reservation of rights).
- *Assurance Co. of America v. Haven.*, 32 Cal.App.4th 78 (1995) (established insurer's cause of action against independent defense counsel for failure to confer and consult with insurer under Cal. Civil Code §2860).
- *Morton v. Owens-Corning Fiberglas Corp.*, 33 Cal.App.4th 1529 (1995) (scope of consumer-expectation doctrine; over \$3 million stricken from \$3.5 million judgment).
- *Dogloo, Inc. v. Northern Ins. Co. of New York*, 907 F.Supp. 1383 (C.D.Cal. 1995) (coverage under advertising injury coverage for Lanham Act trade dress claims).
- *Aetna Cas. & Sur. Co. v. Superior Court (Watercloud)*, 19 Cal.App.4th 320 (1993) (amicus curiae: no duty to defend or indemnify direct and inducing patent infringement claims and judgment under "advertising injury" coverage).
- *Neary v. Regents of University of California*, 3 Cal.4th 273 (1992) (amicus curiae: right to stipulated vacatur of judgments on appeal).
- *Essex Ins. Co. v. Yi*, 795 F.Supp. 319 (N.D.Cal. 1992) (first California case applying assault-and-battery exclusion).
- *Plant Insulation Co. v. Fibreboard Corp.*, 224 Cal.App.3d 781 (1990) (doctrine of exclusive concurrent jurisdiction).