

CURRICULUM VITAE
OF
MITCHELL LEE LATHROP

November 2020

Licensed to Practice Law:

Admitted to practice law in the following jurisdictions and courts:

- California
- New York
- District of Columbia
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Fifth, Ninth, Tenth,
District of Columbia and Federal Circuits
- U.S. District Courts for the Northern, Eastern, Central and Southern Districts of
California, the Northern, Southern, Eastern and Western Districts of New York,
the Eastern District of Michigan, the Southern District of Texas and the District of
Columbia
- U.S. Tax Court
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of International Trade
- U.S. Court of Federal Claims
- U.S. Court of Appeals for Veterans Affairs

Admitted *pro hac vice* for the handling of specific cases in Arkansas, Arizona, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Vermont, Washington, Wisconsin and West Virginia.

Certified General Courts Martial trial and defense counsel under Article 27(b) of the Uniform Code of Military Justice, 10 U.S.C. §827(b).

Educational Background:

Preparatory education at The Thacher School, Ojai, California. B.Sc. in Engineering, United States Naval Academy, Annapolis, Maryland. J.D., University of Southern California Law School. Postgraduate education: Securities Law, University of Southern California Law School. Environmental Engineering, Industrial Waste Conference, Purdue University, 1988, 1989. Insurance & Reinsurance Arbitration, ARIAS-US, annual courses, 1997-2012. International Commercial Arbitration, Paris, 2005. Diplomat in International Arbitration Law, College of Law of England and Wales, 2006.

Educational Background (cont'd):

Advanced arbitration training, Chartered Institute of Arbitrators, London, 2007. Certificate in Advanced Mediation, Straus Institute for Dispute Resolution, Pepperdine University School of Law. Advanced mediation training, International Institute for Conflict Prevention and Resolution ("CPR").

Recognitions:

Presiding Referee, California State Bar Court, 1985-1987

Martindale-Hubbell "A" rated in both California and New York

Listed in *The Best Lawyers in America*, 2006-present

Listed in *Super Lawyers*, 2005-present

Lawyer representative to the Ninth Circuit Judicial Conference from the U.S. District Court for the Southern District of California, 2011-2014

Reported Decisions:

Served as counsel in the following cases in which appellate decisions were rendered and which directly or indirectly involved lawyers' professional responsibility:

- (1) *Heyer v. Flaig*, 70 Cal.2d 223, 74 Cal.Rptr. 225, 449 P.2d 161 (1969).
- (2) *Crystal Growers Corp. v. Dobbins*, 616 F.2d 458 (10th Cir. 1980).
- (3) *Draney v. Wilson, Morton, Assaf & McElligott*, 1981 U.S. Dist. LEXIS 15819 (D. Ariz., June 19, 1981), *later decision*, 1984 U.S. Dist. LEXIS 23093 (D. Ariz., October 2, 1984).
- (4) *Trone v. Smith*, 553 F.2d 1207 (9th Cir. 1977); *later decision*, 621 F.2d 994 (9th Cir. 1980).
- (5) *Jones v. Stevenson*, 149 Cal.App. 3d 560; 197 Cal.Rptr. 25 (1983).
- (6) *Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co.*, 35 Cal.App.4th 192, 26 Cal.Rptr.2d 35 (1993), *mod. on denial of rearg.* December 13, 1993; *rev. granted* January 27, 1994; *trans.* October 19, 1995 to Ct. App., 1st Dist., Div. 1, *with directions to vacate its decision and reconsider in light of Montrose Chemical Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645 (1995); *later decision*, 45 Cal.App.4th 1, 52 Cal.Rptr.2d 690 (1996).

Reported Decisions (cont'd):

- (7) *Hoepker v. Kruger*, 2001 U.S. Dist. LEXIS 13043 (S.D.N.Y., August 28, 2001), *later decision*, 200 F.Supp.2d 340 (S.D.N.Y. 2002).
- (8) *Low v. Golden Eagle Insurance Co.*, 104 Cal.App.4th 306, 128 Cal.Rptr.2d 423 (2002).
- (9) *In re Golden Eagle Insurance Company in Liquidation (Low v. Cogan)*, 2002 Cal. App. Unpub. LEXIS 10830 (Cal. App., November 22, 2002) (unpublished).
- (10) *Home Insurance Co. v. Appleton Papers, Inc.*, 2002 U.S. Dist. LEXIS 213 (S.D.N.Y., January 8, 2002).
- (11) *DeMille v. Citizens Business Bank*, 2007 Cal. App. LEXIS 2121 (Cal. App., November 7, 2007) (unpublished).
- (12) *MediVas, LLC v. Marubeni Corp.*, 2011 U.S. Dist. LEXIS 19160 (S.D. Cal., February 28, 2011).
- (13) *Tortona v. Shinseki*, Case No. 12-1005, Ct. App. Vet. Claims, August 7, 2012.

Publications - Articles:

- (1) “Legal Malpractice: Plaintiffs, Limiting Statutes and *Heyer v. Flaig*,” 37 Ins. Counsel J. 258 (1970).
- (2) “Legal Malpractice and Rule 10b-5 Liability: Pitfalls for the Occasional Securities Practitioner,” 5 Loy.L.A.L.Rev. 449 (1972) (with William F. Rinehart).
- (3) “The Exposure of the Patent Attorney to Claims for Legal Malpractice: The New Frontier,” 3 Am.Pat.L.A.J. 220 (1975).
- (4) “A Lawyer's Primer for the Use of Computers in Litigation,” California Continuing Education of the Bar, Annual Trial Practice Institute, December, 1986.
- (5) “Attorney-Client Privilege and Attorney Work Product in the Context of Environmental Insurance Coverage Litigation,” Defense Research Institute, 1989.

Publications - Articles (cont'd):

- (6) "Attorney-Client Privilege and Attorney Work Product Immunity in Insurance Coverage Litigation," Defense Research Institute, 1990.
- (7) "The Changing Face of Expert Evidence," 52 F.D.C.C. Quarterly 409 (2002).
- (8) "Responsive Pleadings and Arbitration," *Alternatives to Litigation*, 2010
- (9) "The State of the Law: Responsive Pleading, and Motions to Compel Arbitration," *Alternatives*, Vol. 30 (February 2012)

Publications - Books:

- (1) *Computer Technology in Civil Litigation*, Bancroft-Whitney, 1990.
- (2) "Computers and the Law Office," 54 *Am Jur Trials*, Bancroft-Whitney, 1990.
- (3) *Environmental Insurance Coverage: State Law and Regulation*, Juris Publishing, Inc., 1991-2004. No longer in print.
- (4) *Insurance Coverage for Environmental Claims*, LexisNexis Matthew Bender, 1992. Updated annually. Last update in August 2016.

Teaching and Lecturing:

Lectured on various aspects of insurance and reinsurance law and lawyers' professional responsibility for the following organizations:

- (1) American Bar Association - American Law Institute
- (2) Continuing Education of the Bar, State Bar of California
- (3) Business & Corporations Law Section, Los Angeles County Bar Association
- (4) Advanced Management Research, Inc., New York
- (5) Continuing Legal Education, State Bar of Minnesota
- (6) Loyola University of Los Angeles, School of Law (guest lecturing appearances)
- (7) University of San Diego School of Law, San Diego (guest lecturing appearances)

Teaching and Lecturing (cont'd):

- (8) Western State University, School of Law (guest lecturing appearances)
- (9) Practicing Law Institute, New York
- (10) Association of Business Trial Lawyers, Los Angeles
- (11) American Board of Professional Liability Attorneys
- (12) Stanford Law School, Palo Alto (guest lecturing appearances)
- (13) California Bankers Association
- (14) Executive Enterprises, Inc., New York
- (15) Northwest Center for Professional Education, Bellevue, Washington
- (16) Purdue University, School of Civil Engineering, 44th Industrial Waste Conference
- (17) Defense Research Institute
- (18) The Rutter Group, Los Angeles
- (19) California Judges' Association
- (20) Chicago Reinsurance Conference
- (21) Member, National Editorial Board, Class Action Reports, 1979-1994
- (22) Fulcrum Information Services, Inc., New York
- (23) New York State Bar Association
- (24) Mealey's Publications, Inc.
- (25) Reinsurance Association of America, Washington, DC
- (26) Zurich Reinsurance Centre, Inc., New York, NY
- (27) Software Productivity Group
- (28) Glasser LegalWorks

- (29) Center for International Legal Services (“CILS”) - International Arbitration
- (30) International Institute for Conflict Prevention and Resolution (“CPR”)

Expert Witness Engagements:

Retained as an expert witness in the following public record matters involving ethics and lawyers’ professional responsibilities. Expert consultation and testimony, in arbitrations or matters subject to confidentiality, is omitted due to the confidential nature of those proceedings. (This is a partial list, based upon recollection with respect to older matters.):

- (1) *In re Worldwide Church of God*, Los Angeles County Bar Association fee arbitration - Testified as to the reasonableness of attorney's fees in a litigation matter
- (2) *Previews, Inc. v. California Union Insurance Co.*, U.S.D.C., Central District of California - Testified as to the reasonableness of a law firm's fees in handling a matter involving insurance coverage litigation
- (3) *Aquachlor v. Devilbiss*, Calif. Superior Court, Fresno County - Retained as an expert on the standard of care for attorneys in handling securities transactions
- (4) *Lavine v. Rich & Ezer*, Calif. Superior Court, Los Angeles County - Retained as an expert on the standard of care for attorneys in handling corporate and securities transactions
- (5) *Palace Management Corp. v. Palace Nightclub Corp.*, Calif. Superior Court, Los Angeles County - Retained as an expert on the standard of care and the standard of conduct for attorneys in California
- (6) *Fireman’s Fund Insurance Co. v. Younesi*, Calif. Superior Court, Los Angeles County - Retained as an expert on the standard of care and the standard of conduct for insurance-appointed defense counsel, the standard of care for claim handling, and billing practices of counsel
- (7) *Garamendi v. Daar & Newman*, Calif. Superior Court, Los Angeles County - Retained by the California Insurance Commissioner as an expert on the standard of care and the standard of conduct for attorneys in California
- (8) *Pollack v. Malat, Lans*, Calif. Superior Court, Los Angeles County - Retained by a law firm in a legal malpractice case to testify on what constitutes an attorney-client relationship and on the standard of care and the standard of conduct for attorneys in California

Expert Witness Engagements (cont'd):

- (9) *McLaughlin v. Burchett*, Calif. Superior Court, Los Angeles County - Retained by the plaintiff in a legal malpractice case to testify on the standard of care for lawyers in California handling real property matters involving environmental contamination
- (10) *Jacobson v. Selvin, Ruben & Weiner*, Calif. Superior Court, Los Angeles County - Testified as an expert on the standard of care and the standard of conduct for attorneys in California in connection with a fee dispute
- (11) *Brea Hospital Properties v. Snell & Wilmer*, Calif. Superior Court, Orange County - Served as an expert witness on insurance policy interpretation, insurance industry custom and practice, and the standard of care required of lawyers in California
- (12) *Zampi, Determan & Erickson LLP v. Baker*, Calif. Superior Court, San Diego County - Served as an expert witness on the standard of care and the standard of conduct required of attorneys
- (13) *Contractors Access Program of California v. Theodora Oringer, P.C.*, Calif. Superior Court, Los Angeles County - Served as an expert witness on the standard of care and the standard of conduct required of attorneys
- (14) *Contractors Access Program of California v. Majestic Capital, Ltd.*, Calif. Superior Court, San Francisco County - Served as an expert witness on the standard of care and the standard of conduct required of attorneys
- (15) *US Construction Law v. Clarke* - Calif. Superior Court, San Diego County - Served as an expert on the standard of care and the standard of conduct expected of attorneys practicing in California
- (16) *State Bar v. Sione*, Calif. State Bar Court - Served as an expert on the standard of care and the standard of conduct expected of attorneys practicing in California
- (17) *THV Investment LLC v. Rogers*, Calif. Superior Court, Fresno County - Served as an expert on the standard of care and the standard of conduct expected of lawyers in California
- (18) *US Construction Law v. Kinder* - Calif. Superior Court, San Diego County - Served as an expert on the standard of care and the standard of conduct expected of attorneys practicing in California

Expert Witness Engagements (cont'd):

- (19) *Certain Underwriters at Lloyd's London v. Phelps Dunbar LLP* - U.S.D.C., Central District of California - Served as an expert on the standard of care of appointed defense counsel handling cases involving costs within limits
- (20) *Rice v. Beard Hobbs & Associates* - Calif. Superior Court, San Diego County - Served as an expert witness on the standard of care required of attorneys in California
- (21) *San Diego Electrical Training Trust v. Teague Insurance Agency, Inc.* - Calif. Superior Court, San Diego County - Served as an expert witness on the standard of care required of attorneys in California as well as the standard of care required of insurance brokers and agents
- (22) *APR Construction, Inc. v. San Diego Housing Commission* (and related cases) - Serving as an expert witness on the standard of care and the standard of conduct required of sureties, general liability insurers, and counsel involved in contract and construction defect cases
- (23) *John C. Depp II v. Bloom Hergott Diemer Osenthal La Violette Feldman Schenkman & Goodman, LLP*, California Superior Court, Los Angeles County - Served as an expert witness on the standard of care and standard of conduct required of attorneys practicing in California
- (24) *Aguilar v. Ahn* - California Superior Court, Alameda County - Serving as an expert on the standard of care expected of lawyers in California, the standard of care for insurers issuing commercial general liability policies in California, the right to a defense provided by an insurer, and the reasonableness of attorney's fees
- (25) *Moore v. Niel Dymott* - California Superior Court, San Diego County - Served as an expert on the standard of care expected of lawyers in California
- (26) *Vasile v. Wolfe* - California Superior Court, Los Angeles County - Serving as an expert on the standard of care expected of lawyers in California

Professional Memberships & Offices Held:

- (1) Association of Professional Responsibility Lawyers
- (2) American Board of Trial Advocates, 1969-Present

Professional Memberships & Offices Held (cont'd):

- (3) Judge Advocates Association, 1968-Present
Chairman, Southern California Chapter, 1978

- (4) State Bar Court of California, 1966-Present
Disciplinary Examiner, 1967-1971
Local Administrative Committee Member, Disciplinary Board, 1971-1976
Disciplinary Board Member, 1976-1978
Hearing Referee, 1978-1980; 1987-1989
Executive Committee, 1978-1988
Review Department Referee, 1980-1982
Assistant Presiding Referee and Chairman, Review Department, 1982-1985
Presiding Referee, 1985-1987

- (5) San Diego County Bar Association, 1977-Present
Vice-President, 1985-1986
Director of the Association, 1982-1986
Ethics Committee, 1978-1982; Chairman, 1981 and 1982
Federal Court Committee, 1978-1981; Chairman, 1980
ADR Committee, Executive Committee, 2019-Present

- (6) American Bar Association, 1966-Present

Military Service:

On active service from 1959 to 1964. Active reserve, 1964 to 1998. Vietnam service. Armed Forces Expeditionary Medal, Vietnam Service Medal, National Defense Service Medal. Presently, Captain, Judge Advocate General's Corps, U.S. Naval Reserve (Retired).

Professional Employment:

2012-Present: Independent arbitrator, mediator and expert. Practice consists of domestic and international arbitration, mediation and expert consulting and testimony in matters involving insurance, reinsurance, and/or lawyers professional responsibility.

2009-2012: Member, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., New York and San Diego. Practice consists of domestic and international arbitration and litigation; insurance, reinsurance, and lawyers' professional responsibility matters; environmental law; commercial, banking, securities and complex civil litigation.

2003-2009: Partner and Of Counsel, Duane Morris LLP, New York and San Diego. Practice consisted of domestic and international arbitration; insurance, reinsurance, and lawyers' professional responsibility matters; environmental law; and complex civil litigation.

Professional Employment (cont'd):

1994-2003: Partner, Luce, Forward, Hamilton & Scripps LLP, San Diego, New York, San Francisco and Los Angeles. Practice consisted of domestic and international arbitration and litigation; insurance, reinsurance, and lawyers' professional responsibility matters; environmental law; commercial, banking, securities and complex civil litigation.

1986-1994: Senior partner, Adams, Duque & Hazeltine, New York, Los Angeles, San Diego and San Francisco. Member of the Executive Committee of the Firm. Firm Chairman, 1992-1993. National environmental counsel for groups of property and casualty insurance companies. Practice consisted of environmental law; insurance coverage issues; reinsurance arbitration and litigation; civil litigation involving the defense of accountants and attorneys; and complex business litigation.

1980-1986: Partner, Rogers & Wells, New York and San Diego. Partner-in-Charge, San Diego Office, 1980-1986. Practice consisted of complex civil litigation, principally involving environmental law, federal and state securities laws; and insurance, reinsurance, and lawyers' professional responsibility matters.

1971-1980: Partner, Macdonald, Halsted & Laybourne, Los Angeles and San Diego. Partner-in-Charge, San Diego office, 1976-1980. Practice consisted of civil litigation, principally in the areas of federal and state securities laws; complex business litigation; the defense of accountants, attorneys and officers and directors of publicly-held companies; and insurance and reinsurance arbitration and litigation.

1968-1971: Associate Attorney and subsequently Partner, Brill, Hunt, DeBuys & Burby, Los Angeles. Practice consisted of civil litigation, primarily in the areas of aviation defense, eminent domain, products liability and professional liability defense; and reinsurance arbitration and litigation.

1966-1968: Deputy County Counsel, County of Los Angeles. Practice consisted of civil litigation, primarily in the area of general liability defense. Principal clients were the Los Angeles County Sheriff's Department and Los Angeles County General Hospital.

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