



Kevin A. Day

Shareholder

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Practices & Industries

- Litigation
- Energy, Oil & Gas
- Infrastructure & Environmental
- Retail, Food & Beverage

Overview

Kevin Day helps his clients – public entities, transportation agencies, publicly regulated utilities, and private business owners – resolve eminent domain and complex business disputes throughout Southern California. The majority of the public projects on which he has worked have been large-scale and linear in nature, resulting in multi-million dollar challenges and claims that increase in complexity and scope as the project proceeds. His complex business litigation cases have been similarly intertwined with complicated issues featuring dense fact patterns that he must compress to their essence when presenting to the jury.

Kevin has worked on a variety of public projects, including roadway realignments, subterranean pipelines, public transportation facilities, school campus acquisitions and the infrastructure and property rights necessary for the development, production and transmission of renewable energies throughout the state. He has experience in all phases of public projects and heavily-litigated eminent domain actions, including pre-project planning and acquisition, early project implementation, and all aspects of eminent domain and inverse condemnation trial work. In each case, he approaches the situation with the end result in mind – to resolve the matter in a way that aligns with his client's business and strategic objectives.

To that end, Kevin has extensive experience in complex valuation jury trials addressing novel issues in real estate valuation, severance damages, appraisal theory and other compensation areas. His innovative pretrial motion practice and trial preparation methods distill complex issues for the court and jury, and his experience in successfully addressing constitutional right-to-take issues encompasses multiple bench trials with voluminous and varied administrative records.

In addition to his strong eminent domain practice, Kevin regularly helps clients resolve complex litigation matters arising for both public entities and private businesses, to include positive trial experiences (both bench and jury) and

multiple arbitration victories. His business litigation practice has also yielded two published appellate decisions in his clients' favor. Kevin has tried multiple cases and prevailed in matters involving real estate litigation, shareholder derivative and conversion claims, successor liability and complex business disputes.

Kevin is active in professional and business communities, including the International Right of Way Association (Chapters 57 and 67), where he regularly presents and writes for the association's monthly newsletter. He also has presented at the Appraisal Institute's Annual Litigation Seminar on multiple occasions, addressing emerging issues in valuation theory. In addition, he is a standing panelist at Rancho Santiago Community College, presenting to small and emerging businesses on both litigation avoidance as well as tips for success when litigation is inevitable.

Kevin was selected as a "Rising Star" by Southern California Super Lawyers® in 2010, 2015 and 2016.

Memberships

- Orange County Bar Association – Business Section
- International Right of Way Association – Chapter 67

Education / Admissions

Education:

- J.D., University of San Diego School of Law, 2002
- B.A. in Business Administration and Finance, University of San Diego, 1999

Bar Admissions:

State Bar of California

Accolades

Kevin was selected as a “Rising Star” by Southern California *Super Lawyers*® in 2010, 2015 and 2016.

Matters

Recent representations include:

- Successfully representing a large non-profit organization in a breach of a commercial ground lease lawsuit against its tenant, which destroyed a historic hotel on property owned by the non-profit. Under the tenant’s management, the hotel fell into disrepair and later was destroyed by a suspicious fire. The span of litigation included a public nuisance action and appointment of a receiver, the loss of all entitlements for the property, and eventually a forced sale to address the tenant’s failures. Following a lengthy, heavily contested trial, Kevin obtained a \$5.9 million judgment (plus the recovery of attorney fees) for the client, to include a finding of alter ego liability. (*Elk’s Building Association of Santa Ana v. Saddleback Inn, LLC*)
- Assisting one of California’s largest public and investor-owned electric utilities in an eminent domain action to acquire property rights for transmitting renewable energy across property slated for major development that included substantial claims related to electromagnetic fields and the impact on infrastructure. The case was tried to a jury with a large valuation spread that resulted in a favorable result for the firm’s client. (*Southern California Edison Company v. Del Sur Ranch*)
- Prevailing in a complex business dispute to secure the return of ownership shares in a closely-held hotel corporation while simultaneously defeating a \$2.1 million conversion claim from the self-appointed hostile directors. Kevin tried the matter to a complete victory for his client after years of difficult litigation, which was then upheld on appeal. (*Bhikhubhai Patel v. Clocktower Inn, et al.*)
- Successfully representing a large regional grocery distributor with respect to a grade separation project that resulted in the loss of all direct access to a public street. Under Kevin’s advice, the client engaged in a right to take trial that significantly improved its chances of prevailing in the dispute. The valuation portion of the claim was

tried to a jury and the firm obtained a recovery for the grocery distributor that was approximately ten times the original offer for damages. (*Alameda Corridor-East Construction Authority v. MIPCO LLC*)

- Representing a home buyer in a lawsuit that established broker liability in California for the failure to disclose financial encumbrances when marketing residential property, effectively ending the practice of “hidden” short sales. (*Holmes v. Summer (2010) 188 Cal.App.4th 1510*)
- Assisting one of America’s top wind energy producers in a binding arbitration related to the development of a wind farm in the Coachella Valley. The arbitration addressed complex regulatory and project development issues related to renewable energy, and Kevin’s client completely prevailed on all claims asserted. (*Edom Hills Wind Park, LLC v. BP Wind Energy North America, Inc.*)
- Successfully represented a business owner in a jury trial addressing claims of successor liability, alter ego, and fraud, and prevailed 12-0 on all claims. On appeal, established the ability in California to recover attorney’s fees for the defense of a claim for successor liability. (*Brown Bark III L.P. v. Haver, et al. (2013) 219 Cal.App.4th 809*)

Recent Publications / Presentations

- AlvaradoSmith Victory Recognized by Top Verdict for 4th Largest Bench Award in California for 2018
- Kevin A. Day quoted in Orange County Register article, “Santa Ana Elks win \$7.3 million in lawsuit involving old Saddleback Inn”

Other Publications

PUBLIC SPEAKING

- Presents Case of the Month to the International Right of Way Association (Chapter 67) at monthly meeting and publishes an article version of the same in the monthly newsletter.
- Panelist at Rancho Santiago Community College for emerging businesses two times per year. The topic is generally tips to either avoid litigation in business, or to put in place strategic processes to help small business succeed in litigation.

Recent News

- AlvaradoSmith secures a \$7.1 million victory in the 4th District Court of Appeal
- AlvaradoSmith Victory Recognized by Top Verdict for 4th Largest Bench Award in California for 2018
- Kevin A. Day quoted in Orange County Register article, “Santa Ana Elks win \$7.3 million in lawsuit involving old Saddleback Inn”