

Appellate Cases

The following are examples of cases successfully handled by Steve McNichols in Appellate Courts.

1. Hicks v CalTrans (2003) Sixth Appellate District, No. H022364.

Represented the owner of property, whose property was damaged by a massive flow of water, mud, rocks and debris. The damage occurred because of an obstruction of a culvert running under the highway. Our client sued The State of California (CalTrans) in inverse condemnation. The trial court rendered a verdict in favor of CalTrans. Steve McNichols obtained a reversal of that judgment. In an unpublished opinion, the Court of Appeal ordered that judgment be entered in favor of our client and that the case be returned to the trial court for determination of the amount of damages. The Court of Appeal also awarded our client attorneys fees and costs on appeal. The case was settled and the total recovery exceeded one million dollars.

2. Bartelson v U.S.A. (9th Cir. 1996) 96 F.3d 1270.

Represented two ranchers in Monterey-San Luis Obispo counties who owned property adjacent to Camp Roberts. During military exercises, the property was repeatedly hit with artillery firing. The court could not enjoin the Government to stop the shelling, and the Government could not guarantee that future incidents would not occur. The main injury alleged by the plaintiffs was diminished property value due to the stigma caused by the past shelling and the uncertainty about future shelling. The U.S. District Court rendered a verdict in favor of our client, and the U.S. Government appealed. The appeal raised issues regarding the right of plaintiff to elect to treat a nuisance as permanent or temporary in certain situations, the time for accrual of the statute of limitations in nuisance cases, and the propriety of the award of damages for diminution in value. The Ninth Circuit affirmed the District Court judgment. This case was cited by the California Real Property Journal as one of the Top Cases of 1996.

3. Hubbard v. United States. United States Court of Appeals for the Federal Circuit, No. 2008-5062 (2008)

United States Court of Appeals for the Federal Circuit, No. 2008-5062 successfully defeated an appeal by the United States Department of Justice, challenging the award of attorneys fees and costs to our client issued by the United States Court of Federal Claims. The attorney fees and cost were awarded under the Equal Access for Justice Act based upon on a trial court finding that the government's position was not substantially justified and the result of bad faith.

4. F.D.I.C. v Jackson-Shaw Partners No. 46, Ltd. (N.D. Cal. 1994) 850 F.Supp. 839.

Represented the owners of a large office-building complex who were sued for judicial foreclosure by the F.D.I.C. as the assignee of a twenty million dollar acquisition and construction loan. Our client filed a cross-complaint against the neighboring landowners who had contaminated the ground water under our client's property. The existence of the contamination had caused the foreclosure. Because of the groundwater contamination, the owners were not able to pay the acquisition/construction loan and could not obtain take out financing or sell the property. The Court denied the defendants' motion to dismiss our clients' claim for contractual indemnity and held that diminution in value damages could not be recovered under the cross-claim for continuing trespass and continuing private and public nuisance. The case was eventually settled on terms favorable to our client.

5. Graybehl, et al. v American Motorist Insurance Co. Inc., et al. (1992) 1st Dist. Ct. of Appeal, Div. 3, A053567

Unpublished opinion. Preliminary injunction enjoining bonding company from collecting on letter of credit and collateral security upheld.

6. Geldermann, Inc. v Bruner (1991) 229 Cal.App.3d 662.

Represented a property owner who was sued by a real estate broker for a real estate commission. Trial judge voluntarily disqualified himself after completion of the court trial and issuance of a tentative decision. He then adopted a tentative decision as the Statement of Decision and entered judgment against our client. We obtained a reversal of the adverse judgment on appeal on the grounds that the trial judge by voluntarily disqualifying himself was precluded from taking any further action in the case, including the issuance of a Statement of Decision. The case was sent back to the trial court for a new trial. The case settled before the new trial was held.

7. Balcor Real Estate Finance, Inc. et al. v Superior Court, Civil No. A054513.

(David Haley, Dabco Builders Inc. Real-Party-In-Interest) represented real-party-in-interest in opposing writ arising from lender liability case.

8. Clark Equipment Company v Wheat (1979) 92 Cal.App.3d 503.

In this action, our clients were sued by Clark Equipment Company for money that they claimed was due. We filed a cross-complaint for fraud and misrepresentation on behalf of our clients. The jury rendered a verdict in favor of our clients and awarded compensatory and punitive damages. The issues on appeal included the liability of various corporate entities for compensatory and punitive damages resulting from the acts of their agents and attorneys, whether or not the jury was justified in awarding punitive damages, the propriety of a finding of liability based on the tort of abuse of process and the denial of the defense of waiver. The Court of Appeal upheld the jury verdict in favor of our clients.