

# Michael J. Duvall

## Partner



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## Overview

Michael Duvall defends companies in consumer class actions, complex litigation, and related regulatory actions. Michael has defended more than 100 class actions at all levels, including successfully trying a class action, arguing in federal and state appellate courts throughout the country, and litigating class action questions in the US Supreme Court.

For much of his career, Michael has defended insurance companies in consumer fraud and financial class actions. Michael also defends a multitude of clients in the food and beverage, diet and nutrition, and personal care and beauty product industries against the wave of product labeling and false advertising class actions. Michael's practice is national in scope, and he regularly defends his clients in popular litigation forums such as California, New York, New Jersey, Illinois and Missouri. Michael regularly evaluates whether settlement is in his clients' business interests, and in many of cases, has reached favorable agreements prior to the initiation of suit.

Michael also leverages his defense experience and knowledge of his clients' industries to advise companies on potential class action risks in connection with possible labeling changes, new advertising campaigns, potential corporate transactions, and other strategic initiatives.

Michael also has defended bodily injury and product liability class actions involving concussions, chronic traumatic encephalopathy (CTE), and chemicals such as Bisphenol-A (BPA). Michael also has experience in data privacy, security and incident response litigation, employee misclassification and similar collective actions, and business shareholder litigation. He also actively represents toy and consumer product companies in intellectual property litigation involving copyrights, patents, trademarks and trade dress.

An active member of the Los Angeles legal community, Michael serves on the Board of Governors of the Los Angeles chapter of the Association of Business Trial Lawyers (ABTL) and regularly presents to in-house counsel, including the Association of Corporate Counsel–Southern California, on a range of topics including how to avoid class actions and the use of alternative fee arrangements (AFAs) in litigation matters.

Michael is dedicated to providing pro bono representation to victims of domestic violence. He has obtained restraining orders and other important protections for many clients through expedited and emergency hearings, trials and appeals. The Legal Assistance Foundation of Chicago named him a Volunteer of the Year in 2016. Michael also serves on the Board of Directors of Rainy Day Pennies, a Los Angeles-based charitable organization whose mission is to involve both parents and children in supporting the needs of their area's underprivileged children.

Michael was a judicial law clerk to the Honorable Pasco M. Bowman, II, United States Court of Appeals for the Eighth Circuit, in Kansas City, Missouri.

## Experience

### Insurance litigation and class action defense

- **Genworth Life Genworth Financial, Inc. & Genworth Life Insurance Co.:** Defended long-term care insurance company and obtained final judicial approval of settlement in nationwide class action concerning premium rate increases. See *Skochin v. Genworth Life Ins. Co.*, 2020 WL 6697418 (E.D. Va. 2020).
- **Long-term Care Insurance Co.:** Representing leading long-term care insurance carrier in several litigations against policyholders involving fraud and related conduct.
- **First American Title Insurance Co.:** Obtained full orders of dismissal and defense judgments in two class actions pursued for more than 13 years against the state's largest title insurer. *Sjobring v. First American Title Insurance Co. et al.*, BC329482 (Los Angeles Superior Court); *Kaufman v. First American Title Insurance Co. et al.*, BC382826 (Los Angeles Superior Court).
- **Old Republic Title Ins. Co.:** Obtained decertification of a class action and full summary judgment in favor of defendant title insurer. *Markocki v. Old Republic Title Ins. Co.*, 2015 WL 3421401 (E.D. Penn. 2015).
- **United Gen. Title Ins. Co. and First American Title Ins. Co.:** Defeated class certification, obtained decertification and won affirmances on appeal in several "refinance rate" class actions filed over the course of a decade. *E.g.*, *Randleman v. Fidelity Nat'l Title Ins. Co.*, 646 F.3d 347 (6th Cir. 2011); *Hamilton v. First American Title Ins. Co.*, 423 Fed. App'x 425 (5th Cir. 2011); *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 442 Fed App'x. 2 (4th Cir. 2011); *Lewis v. First American Title Ins. Co.*, 2017 WL 3269381 (D. Idaho 2017).
- **Leading insurance agencies:** Served as lead trial counsel for the defense in administrative enforcement actions brought against insurance agency and its officers involving licensing issues.
- **Insurance carrier:** Obtained full dismissal of administrative collective action brought by the California Employment Development Department (EDD) involving allegations of misclassification of workers as independent contractors.

### Food and product labeling and advertising

- **Atkins Nutritionals, Inc., The Simply Good Foods Company:** Led the defense of this leading nutrition bar company against putative class actions challenging the company's "net carbohydrates" labeling statements, pending in California, New York and Missouri federal district courts. See, *e.g.*, *Colella v. Atkins Nutritionals, Inc.*, 348 F.Supp.3d 120 (E.D.N.Y. 2018); *Smith v. Atkins Nutritionals, Inc.*, No. 2:18-cv-04004 (W.D. Mo. 2020).
- **Beaverton Foods:** Successfully defended this leading condiment company in putative class action filed in New York federal district court challenging its "no preservatives" labeling. See *Quiroz v. Beaverton Foods, Inc.*, No. 1:17-cv-07348 (E.D.N.Y.).
- **Quest Nutrition:** Defended this leading nutrition bar company in putative class actions alleging mislabeling and false advertising of ingredients and flavors in products.
- **Food and beverage companies:** Advising multiple additional food and beverage companies on labeling and advertising matters including with respect to litigation and regulatory risks.
- **Leading nutrition supplements manufacturers, distributors and sellers:** Obtained dismissals and early resolutions of putative class actions against leading manufacturers, distributors and sellers of nutrition supplements such as collagen, gelatin, and amino acid products.
- **Personal care, beauty product and cosmetics companies:** Advising and defending multiple personal care,

beauty product and cosmetics companies against threatened class actions including under California's Consumers Legal Remedies Act (CLRA), Unfair Competition Law (UCL), and other states' consumer protection statutes.

## Consumer class actions

- **SAFE Security, Inc., A3 Smart Home:** Leading defense of a putative nationwide class action involving automatic contract renewals and cancellations. *Griffin v. SAFE Security, Inc. et al.*, No. MSC18-00869 (Cal. Sup. Court, Contra Costa Cty.).
- **Leading Media Company:** Defending putative class actions involving California's Automatic Renewal Law (ARL). See, e.g., *Granillo v. Advance Magazine Publishers, Inc.*, 2020-00009732 (Cal. Sup. Court, San Diego Cty.).
- **First American Title Co.:** Following a two-month trial in Los Angeles Superior Court, obtained a favorable final decision and judgment, fully affirmed on appeal, in a class action brought against California's largest underwritten title company. *Kirk v. First American Title Co.*, BC 372797 (LASC 2014), 2016 WL 3564241 (Cal. Ct. App. 2016).
- **First American Title Insurance Co.:** Represented the defendant-petitioner in a closely watched and highly publicized class action argued to the US Supreme Court on constitutional question of the named plaintiff's Article III standing, in case preceding *Spokeo*. *Edwards v. First American Title Insurance Co.*, U.S.S.C. No. 93-2099.
- **First American Title Insurance Co.:** Obtained a full dismissal in federal district court, and affirmance after oral argument to the US Court of Appeals for the Ninth Circuit, of a putative Fair Debt Collection Practices Act (FDCPA) class action challenging several title, trustee and banking companies' foreclosure practices. *Diehl v. First American Title Insurance Co. et al.*, 420 F. App'x 716 (2011).
- **Credit Report Reseller:** Successfully transferred a putative nationwide Fair Credit Reporting Act (FCRA) class action and obtained a voluntary dismissal by the plaintiff. *Grammont v. Open Dealer Exchange LLC* (C.D. Cal. & E.D. Mich.)

## CTE and concussion litigation

- **National Operating Committee on Standards for Athletic Equipment (NOCSAE®):** Served as lead litigation counsel for NOCSAE® and obtained a full dismissal from a highly publicized putative nationwide class action alleging failure to adequately protect youth football participants from the risk of brain injury. *Archie v. Pop Warner Little Scholars, Inc., et al.*, 2017 WL 3084160 (C.D. Cal. 2017).
- **NOCSAE:** Served as NOCSAE's lead litigation counsel and obtained a dismissal from case alleging failure to adequately protect youth football participant and decedent from the risk of brain injury. *Arruda v. Riddell, Inc. et al.*, No. 18-1-2072-12 (First Circuit Court, Hawai'i, 2019).

## Domestic abuse pro bono matters

- **Domestic abuse victim:** Won unanimous reversal by Illinois Court of Appeal and reinstatement of original, broader order of protection for a victim of abuse. *M.N. v. S.N.*, 2019 WL 3119748 (Ill. Ct. App. 2019).
- **Domestic abuse victim:** Obtained a precedential opinion interpreting the Illinois Domestic Violence Act (IDVA) and secured a full order of protection for a victim of abuse and a full reversal of a trial court's decision denying the order. *Sanchez v. Torres*, 48 N.E.3d 271 (Ill. Ct. App. 2016).
- **Domestic abuse victim:** Following a trial, obtained a full order of protection in an adult abuse case and, after argument to the Missouri Court of Appeals, a full appellate affirmance. *M. W. v. Mabry*, 304 S.W.3d 744 (2010).
- **Domestic abuse victims:** Obtained, for several victims of domestic violence, expedited hearings and trials

resulting in many additional preliminary orders of protection, full orders of protection and orders barring their abusers' misuse of the court system.

## Insights

- "Ag Legal Issues in the Time of Covid," *Western Growers*, October 2020
- "Litigating During Coronavirus: What to Do (And What Not to Do) Now, and How to Best Position Yourself for the Future," Dentons client alert, April 2, 2020
- "Examining California's Recent "Slack Fill" Law and Litigation ," Dentons client alert, April 5, 2019
- " 'Grass-fed' case dismissed: Reasonable consumers would not expect cows to be fed 'only' grass ," Dentons client alert, April 1, 2019
- "Ninth Circuit affirms summary judgment in favor of dietary supplement manufacturer in deceptive labeling class action," Dentons client alert, January 23, 2019
- "Ninth Circuit upholds decertification of baby formula labeling class action," Dentons client alert, January 7, 2019
- "Ninth Circuit finds reasonable consumers don't confuse almond milk with cow's milk ," Dentons client alert, January 3, 2019
- "Court declines to certify "slack fill" class action ," Dentons client alert, October 8, 2018
- "Protein manufacturers beware: Muscle Milk in hot water again," October 2, 2018
- "Judge tosses Diet Dr Pepper False Advertising Class Action for the Fourth and Final Time," Dentons client alert, August 28, 2018
- "Consumer Class Actions Against Franchise Systems," ABA Forum on Franchising, October, 2014

## Activities and Affiliations

- Association of Business Trial Lawyers (ABTL), Los Angeles
  - Board of Governors
- American Bar Association
  - Editorial Board, *Appellate Practice Journal*
  - Litigation Committee, Appellate Practice Committee and Rules Subcommittee
- State Bar of California
- Los Angeles County Bar Association
- Missouri Bar Association
- Illinois Bar Association
- Rainy Day Pennies, Board of Directors

## Presentations

- "Cross-border class action update," Dentons CPD Event, January 22, 2021
- "Technology and Legal Ethics for In-House Counsel," Dentons CLE Presentations for In-House Counsel,

January 13, 2021

- "Legal Ethics in a Virtual World," Presented to ACC Southern California, September 2020
- "Agricultural Trade: Current Climate and Trends: Practical Considerations During COVID and Beyond," Presented to Western Growers Association, September 2020
- "Cannabis in the Age of COVID-19 Handling Litigation Risks," Dentons webinar, May 2020
- "Coronavirus (COVID-19) Litigation: What to do (and what not to do) now, and how to prepare for the future," Dentons webinar, April 2020
- "Preparing for and Handling Litigation," ACC Southern California In-House Boot Camp, November 2019
- "Long-Term Care Insurance Developments," Dentons Gotham Insurance Symposium, October 2019
- "Business-Oriented Solutions for Nuisance Litigation," ACC Southern California CLE Luncheon, June 2019
- "Legal Ethics and Alternative Fee Arrangements for In-House Counsel," ACC Southern California CLE Luncheons, May 2018
- "Document and ESI Retention: Professional and Other Responsibilities of In-House Counsel," Dentons CLE Presentations for In-House Counsel (Los Angeles and San Francisco), January 2018
- "Cross-Border Transactions," Presented to ACC Southern California, August 2017
- "In House Counsel Considerations in Document and ESI Retention," ACC Southern California CLE Luncheons, August 2017
- "Breaking the Cycle: Class Action Litigation and Regulatory Enforcement," Dentons Chicago In-House Counsel CLE, May 2017

## Areas of focus

### Practices

- Class Action Defense
- Commercial Litigation
- Regulatory and Administrative Tribunals
- Appellate Advocacy
- Intellectual Property Litigation

### Industry sectors

- Insurance
- Title Insurance
- Insurance Litigation and Arbitration
- Food and Beverage
- Consumer Products
- Cannabis
- Media and Entertainment

- Media, Entertainment and Sports
- Advertising

## Issues and opportunities

- Global Smart Cities & Connected Communities Initiative and Think Tank

## Education

- University of Missouri-Columbia, 2006, JD, Order of the Coif, Order of the Barristers, Note and Comment Editor, *University of Missouri Law Review*
- Rockhurst University, 2003, BA, *cum laude*

## Admissions and qualifications

- California
- Illinois
- Missouri
- US Court of Appeals for the Eighth Circuit
- US Court of Appeals for the Fifth Circuit
- US Court of Appeals for the Fourth Circuit
- US Court of Appeals for the Ninth Circuit
- US Court of Appeals for the Seventh Circuit
- US Court of Appeals for the Third Circuit
- US District Court for the Central District of California
- US District Court for the Eastern District of California
- US District Court for the Eastern District of Michigan
- US District Court for the Eastern District of Missouri
- US District Court for the Northern District of California
- US District Court for the Southern District of California
- US District Court for the Southern District of Illinois
- US District Court for the Western District of Missouri
- US Supreme Court