

# Damian D. Capozzola

## Resume and Representative Matters

- **Experience**

*The Law Offices of Damian D. Capozzola*, Los Angeles, CA, August 2013-present

Representing large and small businesses, cities, and individuals in commercial, employment, tort, and health care matters.

*Crowell & Moring LLP*, Los Angeles, CA, May 2011 – August 2013

Commercial, health care, and employment matters: Supervising discovery and leading presentations of evidence and argument in court trials and arbitrations, and providing associated advice.

*Epstein, Becker & Green, P.C.*, Century City, CA, April 2007 – May 2011

Commercial, employment, and health care litigation: Supervising discovery and leading presentations of evidence and argument in court trials and arbitrations.

*Kirkland & Ellis, LLP*, Los Angeles, CA, September 1996 – March 2007

Commercial litigation: Diverse practice covering all phases of litigation in contract, tort, bankruptcy, environmental, employment, and criminal matters. Elected to partnership November 1, 2002.

- **Education**

University of Virginia, J.D., 1996

Advanced Trial Advocacy Seminar, 1996

Moot Court, 1994-1995

Westlaw Representative, 1994-1996

University of California, Santa Barbara: B.A. (Highest Honors) Philosophy, Law & Society, 1993

Phi Beta Kappa

UCSB Male Scholar-Athlete of the Year, 1993 (Track & Field)

Big West Conference Champion, 1500 meters, 1993

UCSB School Record Holder (1993-2014), Mile (4:07.58)

▪ **Representative Matters**

**Business Litigation**

Commercial Litigation

Lead counsel defending online sports media company against creditor looking to enforce prior judgment for two million dollars against allegedly related company. Matter dismissed by stipulation, and client paid nothing.

Commercial Litigation

Lead counsel defending concert promotions company against breach of contract suit. Motion to dismiss granted.

Commercial Litigation

Lead counsel for medical device company suing to recover payment for pumps delivered to hospital. Pretrial settlement obtained for damages and attorney's fees.

Commercial Litigation

Lead counsel for individual manager of investment fund in lawsuit alleging fraud and breach of contract against investment fund and managers individually.

Commercial Litigation

Lead counsel for online sports media company suing to recover damages for fraud and breach of contract related to the purchase of an exotic automobile to be used for business development purposes.

Contract / Lease Disputes

- Retained as lead counsel by local municipality to take over matter from another firm two months before trial, draft last round of summary judgment briefing, and argue at summary judgment hearing. Court's tentative summary judgment ruling announced in open court embraced positions advanced in most recent briefing; the parties adjourned the hearing and the matter settled on terms favorable to the municipality. Presently still serve as lead counsel for this municipality in ongoing disputes with this tenant and other tenants concerning related issues.
- Lead counsel for computer customer support company suing for damages arising out of refusal of lessor and sublessor to permit client to sublease property.

Contract Dispute / Arbitration

First-chaired a breach of contract dispute held before the AAA in Los Angeles, California regarding German client's claim to proceeds stemming from the sale of two large textile machines sold to a manufacturing company located in Los Angeles. Successfully negotiated the release of the majority of the proceeds to client, then led discovery, pre-hearing, and hearing proceedings on client's behalf regarding the remainder.

Tort Liability

Lead counsel for logistics company in lawsuit brought by individual injured during loading process at customer facility. Secured walkaway dismissal for client.

### Commercial / Health Care Litigation

Took and defended numerous depositions of fact witnesses and other side's industry expert, then split second-chair duties in a three week breach of contract arbitration for Client against two hospital systems. At trial, examined numerous witnesses, including the other side's industry expert and one hospital system's General Counsel. The arbitrator issued a sweeping written ruling in favor of Client, in the process referencing the testimony of those two witnesses and adopting the arguments advanced for Client.

### Commercial / Health Care Litigation

Drafted complaint, led discovery efforts, took and defended all major depositions, and co-chaired trial in declaratory relief action for client in breach of contract dispute with hospital regarding whether or not client's contract remained in place after a change in hospital ownership. Judge ruled in favor of client and client recovered over \$80,000 in litigation costs.

### **Employment Litigation and Advice**

#### Constructive Discharge in Violation of Public Policy

Claim for constructive discharge in violation of public policy brought by high-ranking Ethics Officer against defense contractor. Managed document production and document review / databasing projects; deposed and defended all key witnesses; oversaw expert reports; participated in settlement negotiations.

#### Contract Negotiations and Other Advice

Lead counsel advising clients in various situations:

- Renegotiated severance on behalf of terminated employee, resulting in tripling of cash component (a 1200% return on fees) and significantly enhanced non-monetary terms.
- Drafted and revised termination documents for defense contractor.
- Drafted and revised employment documents for financial services company.
- Drafted and revised employment documents for shipping company.
- Represented physician in negotiations with medical services company concerning establishment of clinic.
- Supervised major overhaul of employee handbook for catering company.
- Drafted and revised employment documents and liability waivers for startup children's fitness company.

### **Copyright Litigation**

#### Infringing Software

Ran fact and expert discovery, authored motions, and participated in confirmation and summary judgment concerning a client accused of infringing a designer's copyright in certain software. Designer's objection at the client's bankruptcy confirmation hearing was

overruled, and claim of \$40 million was estimated at \$100,000; months later comprehensive summary adjudication was obtained against a related post-petition lawsuit in another venue, effectively gutting most of plaintiff's case. At trial in early 2006 plaintiff claimed over \$50 million in damages on the remaining issues; the jury awarded only \$57,000.

## **Environmental Litigation**

### Proposition 65 Matters

Investigated and negotiated satisfactory nuisance value settlements for national retail store in multiple matters brought by plaintiffs alleging environmental violations under Cal. Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65").

## **Pro Bono / Trial Advocacy Prosecution Program**

Prosecuted misdemeanors and infractions for Hermosa Beach and Redondo Beach (ten wins, two losses, and one hung jury in ten jury trials and three bench trials) on a first-chair basis as a City Prosecutor by Special Appointment.

### ▪ **Lectures / Speaking Engagements**

"Technology and the Effective Deposition," presented at LiveNote Partners Conference, San Francisco, CA, November 5, 2005.

"Technology and Discovery," large firm panel representative, Thomson-West National Sales Meeting, Phoenix, Arizona, February 2, 2007.

"Local Rules in Legal Practice," presented at Pepperdine Law School, Trial Preparation and Settlement class, February 22, 2007.

Testimony before California Senate Judiciary Committee (July 10, 2007, in opposition to 2007 AB 1324 regarding payments to medical service providers and health care rescission issues).

"The Elephant in the Room: Will ERISA Prevent Health Care Reform in California?," Co-Presenter, California Association of Health Plans 22<sup>nd</sup> Annual Conference, October 17, 2007.

Served as deposing attorney in LiveNote deposition training video for lawyers and technical personnel. January 10, 2008.

Thomson-West Attorney Podcast: Expert Witnesses in Civil Trials – Effective Preparation and Presentation. March 1, 2008.

"Pioneers of Exploration: What Your Peers Have Discovered About LiveNote Technology," Panelist, 2008 LiveNote User Conference, San Francisco, CA, September 16, 2008.

"We've Been Sued. Now What?" Presentation to the Chinese Chamber of Commerce of Los Angeles, December 10, 2008.

“The Employment Deposition on Behalf of the Defense.” Lead presenter, Bridgeport Continuing Education *Preparing for the Employment Trial* Workshop, San Francisco, CA, July 17, 2009.

“Defending Depositions in Employment Cases.” Lead presenter. Live Webcast, West LegalEdcenter, July 22, 2009.

“The Use of Real-Time Transcription Technology During and After a Deposition.” Co-presenter, Bridgeport Continuing Education *Mastering the Deposition* Workshop, San Francisco, CA, December 4, 2009.

“Litigation Avoidance and What to do When it Fails.” Litigation Presentation in EBG Technology Team’s seminar *Challenges Facing Technology Companies in the Recovering Economy*, March 18, 2010, Miami, Florida.

“The Use of Real-Time Transcription Technology During and After a Deposition.” Co-presenter, Bridgeport Continuing Education *Mastering the Deposition* Workshop, Los Angeles, CA, September 17, 2010.

“The Use of Real-Time Transcription Technology During and After a Deposition.” Co-presenter, Bridgeport Continuing Education *Mastering the Deposition* Workshop, San Francisco, CA, January 6, 2011.

“Effective Deposition Fundamentals and the Use of Technology Before, During, and After a Deposition,” Co-Presenter, Internet Podcast, January 10, 2011, produced by New Media Legal Publishing, Inc. and West LegalEdcenter.

Instructor, National Institute of Trial Advocacy Deposition Training Seminar, Los Angeles, California, March 20, 2012.

Speaker and afternoon panel member, “Mastering the Deposition: A Critical Skills Workshop.” Presented by Pincus Professional Education, San Francisco, CA, April 13, 2012.

Speaker and afternoon panel member, “Mastering the Deposition: A Critical Skills Workshop.” Presented by Pincus Professional Education, Los Angeles, CA, April 20, 2012.

Presenter, “The Use of Real-Time Transcription Technology During and After a Deposition.” Bridgeport Continuing Education *Mastering the Deposition* Workshop, San Diego, CA, June 14, 2012.

“New ERISA Litigation Trends,” Presenter, Crowell & Moring’s Health Care Ounce of Prevention Seminar (HOOPS) (June 22, 2012).

Instructor, National Institute of Trial Advocacy Fact Investigation Training Seminar, Irvine, California, November 16, 2012.

“What You Don’t Know Can Hurt You: An Introduction To The False Claims Act For Health Care Lawyers,” Moderator and Co-Presenter for CLE Video recorded April 12, 2013 in Los Angeles, California by New Media Legal Publishing, Inc.

Panelist on expert depositions and effective use of technology in depositions, “Powerful Deposition Techniques,” telephonic national CLE Seminar presented by The Rossdale Group, June 5, 2013.

Instructor, National Institute of Trial Advocacy Advanced Deposition Skills Program, Los Angeles, California, June 20, 2013.

Speaker and afternoon panel member, “Mastering the Deposition: A Critical Skills Workshop.” Presented by Pincus Professional Education, Los Angeles, CA, June 27, 2013.

Speaker and afternoon panel member, “Mastering the Deposition: A Critical Skills Workshop.” Presented by Pincus Professional Education, San Francisco, CA, July 11, 2013.

Presenter, “Effective Use of Technology Before, During, and After a Deposition.” Bridgeport Continuing Education *Mastering the Deposition* Workshop, Los Angeles, CA, September 17, 2013.

Speaker and morning panel member, “Superior Court Boot Camp: A Motion and Trial Practice Skills Program.” Presented by Pincus Professional Education, Los Angeles, CA, October 18, 2013.

Moderator and afternoon panel member, “Superior Court Boot Camp: A Motion and Trial Practice Skills Program.” Presented by Pincus Professional Education, San Francisco, CA, October 24, 2013.

Presenter, “Marketing and Networking for Young Lawyers: What You Probably Didn’t Learn In Law School 101.” CLE seminar videotaped by New Media Legal Publishing, Los Angeles, CA, January 29, 2014.

Moderator and panel member, “The Value of Bar Associations for Young Lawyers,” presented to students at UCLA and USC Law Schools, February 4 and 10, 2014.

Speaker and afternoon panel member, “Federal Court Boot Camp Conference (10<sup>th</sup> Annual): How to Practice in Federal Court (CA).” Presented by Pincus Professional Education, Los Angeles, CA, May 15, 2014, and in San Francisco, CA, June 5, 2014.

Panelist on preparing executives for trial examinations, “Powerful Trial Preparation and Jury Selection.” Telephonic seminar presented by Rossdale CLE, April 23, 2015.

Moderator and morning panel member, “Federal Court Boot Camp Conference (11<sup>th</sup> Annual): How to Practice in Federal Court (CA).” Presented by Pincus Professional Education, Los Angeles, CA, May 15, 2015.

Panel Member, “Anatomy of a Trial,” Presented by Financial Poise Webinars, October 27, 2015.

Speaker and morning panel member, “Superior Court Boot Camp: A Motion and Trial Practice Skills Program.” Presented by Pincus Professional Education, Los Angeles, CA, October 29, 2015.

Moderator and morning panel member, “Superior Court Boot Camp: A Motion and Trial Practice Skills Program.” Presented by Pincus Professional Education, Los Angeles, CA, October 21, 2016.

Panel Member, “Evidence Rule Refresher,” Presented by Financial Poise Webinars, March 21, 2017.

Panel Member, “Settlement & Mediation,” Presented by Financial Poise Webinars, April 18, 2017.

Panel Member, “Anatomy of a Trial,” Presented by Financial Poise Webinars, May 2, 2017.

Speaker and morning panel member, “Federal Court Boot Camp Conference (13<sup>th</sup> Annual): How to Practice in Federal Court (CA).” Presented by Pincus Professional Education, Los Angeles, CA, May 5, 2017.

Speaker and morning panel member, “Superior Court Boot Camp: A Motion and Trial Practice Skills Program.” Presented by Pincus Professional Education, Los Angeles, CA, October 13, 2017.

▪ **Publications**

Co-author, Walter S. Lancaster and Damian D. Capozzola, *Expert Witnesses in Civil Trials: Effective Preparation and Presentation*, 3<sup>rd</sup> Edition (Trial Practice Series) (2006-present).

Lead author, “Punitive Damages in the United States: A Fork in the Road?” International Bar Association Legal Practice Division Negligence and Damages Committee Newsletter, Vol. 5, No. 2, September, 2006.

Co-author, “Ten Steps to Harness the Power of Your Expert’s Knowledge,” ABA Expert Alert Newsletter, December, 2006.

Author, “Jump Start Your Litigation Defense to Seize Momentum and Minimize Expense,” ABA Pretrial Practice and Discovery Newsletter, Winter, 2007.

Author, “Product Review: LiveNote.” The Legal Tech Newsletter, July, 2007 (subsequently picked up and republished on law.com and a number of other legal journals)

Co-Author, “Eight Tips for Working With Enviro Experts”. Guest Column for *Environmental Law 360*, April 17, 2009.

Author, “Using Real-Time Transcription Technology In Depositions,” *IALA Bollettino* (Quarterly Newsletter for the Italian American Lawyers Association of Los Angeles), September, 2009. (Republished in December, 2009 issue of Illinois State Bar Association newsletter, “The Corporate Lawyer,” and in the April, 2010 issue of the ISBA’s “Administrative Law” newsletter).

Author, “Amendments to FRCP 26 raise important issues for litigators.” Posted February 10, 2011 to Round Table Group’s “Engaging Expert Witnesses” Litigation Blog.

Co-Author, “Insurers Acting as ERISA Fiduciaries May Be Required to Disclose Certain Attorney-Client Communications,” (October 1, 2012), Crowell & Moring Client Alert, subsequently published in the January 2013 edition of the Journal of Compensation & Benefits (Thomson-Reuters).

Quoted extensively in “Does expert say your care was negligent?”, *Physician Risk Management*, March 2013, Vol. I, No. 9, p. 104.

Co-Author, “Does California Law Now Require Privilege Logs With Initial Responses To Inspection Demands?”, *Thomson-Reuters News & Insight – California Legal* website, posted March 6, 2013.

Quoted extensively in “Demanding Upfront Money from ED Patient?”, *ED Legal Letter*, March 2013, Vol. 24, No. 3, p. 34.

Quoted extensively in “No Specialist Available? Protect Yourself Legally”, *ED Legal Letter*, May 2013, Vol. 24, No. 5, pp. 54-55.

Lead Author, *Supreme Court Reinforces Importance of Uniform Application of Clear ERISA Plan Language in US Airways v. McCutchen*, Crowell & Moring LLP Client Alert, April 26, 2013, subsequently supplemented and published in the Bloomberg BNA Pension & Benefits Reporter, June 25, 2013.

Lead Author, *Legal Review and Commentary*, Supplement to Healthcare Risk Management, published monthly October, 2013-present.

Lead Author, *Legal Review and Commentary*, Supplement to Physicians Risk Management, published monthly December, 2013-July, 2014.

Quoted extensively in “Year in Review: 2013 in ERISA Litigation,” *Bloomberg BNA Pension & Benefits Daily*, January 21, 2014.

Quoted extensively in “This Charting Can Prevent Allegations of Delayed Transfer Against EP,” *ED Legal Letter*, March 2014, Vol. 25, No. 3, pp 34-35.

Quoted extensively in “Change of Shift is Rife with Potential Legal Exposure for Both EPs,” *ED Legal Letter*, May, 2014, Vol. 25, No. 5, pp. 57-59.

Quoted extensively in “Treating difficult patient differently can backfire legally for physician,” *Physician Risk Management*, June, 2014, Vol. 2, No. 12, pp. 137-138.

Quoted extensively in “Don’t Overlook Patient’s Relevant Medical History,” *ED Legal Letter*, December, 2015, Vol. 26, No. 12, p. 142.

Lead Author, *The Devil You Know: Investigating the Opposing Expert Witness*, published online by Thomson-Reuters Legal Executive Institute, August 4, 2016.



- **Selected Opinions**

*Frontline Medical Associates, Inc. v. Coventry Healthcare Workers Compensation, Inc., et al.*, 263 F.R.D. 567 (C.D. Cal., 2009) (requiring specificity in initial damages disclosures).

*Frontline Medical Associates, Inc. v. Coventry Healthcare Workers Compensation, Inc., et al.*, 620 F.Supp.2d 1109 (C.D. Cal., 2009) (denying request for temporary restraining order and preliminary injunction against Defendant client).

*Asante v. Disque America, Inc.*, 2001 WL 1923043 (E.D. Pa., 2001) (dismissing complaint against Defendant client).

- **Political Appointments**

California Law Revision Commission, December 13, 2010 – November 10, 2011. Appointed by Governor Schwarzenegger (R).

California Law Revision Commission, July 25, 2012 – September 30, 2017 (also Commission Chair, September 1, 2013 – August 31, 2014; Commission Vice-Chair, September 1, 2012 – August 31, 2013). Appointed and reappointed by Governor Brown (D).

- **Professional and Civic Activities**

Board of Directors, National Italian American Bar Association, September, 2013-present; West Region Vice-President, May, 2014-present.

Italian American Lawyers Association of Los Angeles, 1996-present; Board of Governors, 2007-2009; Officer 2010-2013; President, 2014.

Lunada Bay Little League Board of Directors, 2014-present; Secretary, 2015-present.

AYSO Region 10 Board of Directors and Division Commissioner, 2017-present.

UC Santa Barbara Gaucho Order, Executive Committee Member, 2012-2016.

Part-Time Assistant Track & Field Coach, Palos Verdes High School, 2004-2014.

Settlement Attorney selected for Los Angeles Superior Court's "DISPO 2012" Settlement Program, September 10, 2012.

Board of Managers, Downtown Los Angeles YMCA, 2006-2010; StairClimb Chairperson, 2007-2010.

- **Interests**

Travel, Sports, Scuba Diving (PADI-Certified Rescue Diver, June, 2006; over 400 dives throughout the world).

- **Personal Contact Information**

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