

ATTORNEY

Howard J. Franco, Jr.



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SUMMARY

Mr. Franco is a trial attorney in the firm's San Diego and Orange County offices. He is a Certified Legal Malpractice Law Specialist, State Bar of California: Board of Legal Specialization. Mr. Franco focuses his practice on the representation of lawyers, residential and commercial designers, insurance, directors and officers of non-profit and for profit boards, and real estate professionals. He also represents consumer product, life science, products liability, public entities, medical technology manufacturers in catastrophic injury cases, and also handles insurance coverage disputes and related litigation. Mr. Franco has researched and provided over 300 coverage opinions during his career. In addition, he has tried cases involving coverage issues including, but not limited to: rescission, duty to defend, duty to indemnify, intercarrier reimbursement and the reasonableness, necessity and relationship of attorney's fees. Mr. Franco also provides contractual review and business advice to a wide variety of clientele. Mr. Franco has received an [AV® Preeminent™](#) rating from Martindale-Hubbell®, the highest rating that organization bestows, for both ethics and ability.

He is a member of the Orange County Bar Association Masters Division and of the San Diego County Bar Association, President of the Bar Association of Northern San Diego County, Master, Fiorenzo V. Lopardo Inn of Court, Member of the Lawyers Professional Liability Consortium, Risk Insurance Management Society (S.D. RIMS) and has been a Judge Pro Tempore of the San Diego County Superior Court. Mr. Franco was selected as a Top Lawyer in San Diego in *San Diego Magazine* for 2015 through 2022 and in Southern California in the *Los Angeles Times* from 2017 to 2022 and a Lawyer of Distinction appearing in the *New York Times* in 2020. Mr. Franco has been selected as a Super Lawyer for 2022. Mr. Franco was selected as a Leader in Law of the Top 100 by the San Diego Business Journal for 2022.

Mr. Franco received his Bachelor of Arts degree, *cum laude*, from the University of Dayton in 1981, his Juris Doctor from Pepperdine University School of Law and was admitted to practice in 1984. Mr. Franco has represented professionals for over thirty years, has authored and lectured on risk management for lawyers to the Orange, North San Diego and Riverside County Bar Associations including: *Ethics for Trust and Estates Attorneys*; *Pivoting in Pandemic: Risk Management Tips for*

Solos and Small Firms for 2020 and Beyond; Understanding Legal Malpractice and Cyber Liability and Lifting the Veil: The Future of Confidentiality in Settlement; A Heavy and Expensive Burden: Managing Data in the Age of Data Privacy Legislation.

He is an Allied Member of the American Institute of Architects San Diego and Palomar Chapters and has presented on: *Contracts 101 for Architects during COVID-19; Americans With Disabilities Act and Risk Management; Design Build: An Old Idea for a New Age* and *King of the Road: The Future of Design and Construction of Roadways; Supply Chain: Time to Saddle Up.*

He is a Member of the Claims and Litigation Alliance and has been a featured speaker at the CLM Annual National Conference from 2016 to 2022. Mr. Franco presented at the CLM National Conference in March 2022 in Palm Springs, California with distinguished panel on industry wide initiatives for professional outreach and retention in "Cross-Generational Mentoring-2022." He spoke at the CLM National Construction Conference in September 2022 on "Supply Chain: Time to Saddle Up 2.0" and is scheduled as a featured speaker again in 2023.

EXPERIENCE

Complete Defense in Trial For Non-Profit Board of Directors: A for-profit conglomerate sought to leverage bulk third-party ownership purchases to challenge governance of an independent, non-profit, volunteer board of directors and approximately \$2.5 million dollars with substantial attorney fees. The defense marshalled elements of the business judgment rule, prohibited commercial use under the CC&Rs, comparative unclean hands conduct and the reasonable protection of over 3,400 members of an association of vacation timeshare owners. The decision by the trial court was a complete vindication of the non-profit association after a grueling discovery and trial process. CCM+S will seek recovery of its client's attorney's fees, expert and related costs of suit. Mr. Franco obtained a complete defense decision with a judgment and recovered over \$1.4 million in fees and costs.

Summary Judgment for Family Law Attorneys Affirmed on Appeal: Mr. Franco led the CCM+S team which won summary judgment and successfully defended it on appeal for a prominent family law firm. The case involved multiple issues including the scope of representation, use of experts, accounting, and tracing of community assets. CCM+S marshalled the evidence through a detailed discovery plan, synthesized testimony and documents, obtained evidence from opposing parties in the underlying action and presented a successful motion for summary judgment on no causation for and no legal damage. On appeal, CCM+S won a unanimous Court of Appeal decision for their client preserving the hard fought summary judgment entered for their clients. CCM+S anticipates recovering costs of suit at both the trial and appellate court levels.

Defense Verdict for Product Manufacturer: Mr. Franco represented a product manufacturer in a wrongful death action based on design defect and failure to warn. The Plaintiff's demand was for \$2.5 million. Mr. Franco successfully tried the case and obtained a defense verdict.

Defense Verdict for Product Manufacturer: Mr. Franco represented a product manufacturer in a catastrophic injury case based on design and manufacturing defects. The plaintiff's demand was for \$5 million. Mr. Franco successfully tried the case and obtained a defense verdict.

Early Dismissal and Costs Awarded in Legal Malpractice Defense: Mr. Franco represented an

attorney in a legal malpractice lawsuit based on an alleged failure to protect client accounting licensure resulting in a lifetime revocation. Mr. Franco successfully recovered defense costs as well.

Anti-SLAPP Victory for School Teacher in Fraud Action: Mr. Franco represented a school teacher sued by her former husband for alleged mischaracterization of assets from divorce proceedings. Mr. Franco prevailed on an Anti-SLAPP Motion to Strike. As a result of this success, the client was awarded costs of suit and attorney's fees.

Swift Dismissal with Prejudice in Business Dispute: Mr. Franco represented a private physician sued by former partners in business dispute over patients. Mr. Franco successfully obtained a dismissal with prejudice for waiver of costs within 45 days of assignment of the case.

Summary Judgment for Product Manufacturer and Retailer: Mr. Franco represented a product manufacturer and retailer in wrongful death action based on design and manufacture defects and failure to warn with expired policy limits demand. Through a motion for summary judgment, Mr. Franco prevailed by defending all claims based on the affirmative defense of product misuse.

Dismissal State Bar Disciplinary Action: Mr. Franco successfully obtained voluntary dismissal for an attorney in practice convicted of a crime and had the record of referral of charges expunged.

PROFESSIONAL MEMBERSHIPS

- State Bar of California
- AV Preeminent by Martindale Hubbell TM
- Allied Member: San Diego Chapters of the American Institute of Architects
- Orange County Bar Association Masters Division
- President of North San Diego County Bar Association and San Diego County Bar Association
- San Diego Magazine: Top Lawyers in San Diego 2015 through 2022
- Los Angeles Times: Top Lawyers in Southern California 2017 through 2022
- Member, Claims & Litigation Management Alliance
- Lawyers Professional Liability Consortium
- Professional Liability Underwriting Society (PLUS)
- Risk Insurance Management Society-San Diego Chapter
- San Diego County Superior Court, Judge Pro Tem
- Member, San Diego County Bar Association
- Master, The Honorable Fiorenzo V. Lopardo American Inn of Court
- Member, Society of Construction Law
- California Association of Discipline Defense Counsel
- Selected as Super Lawyer in 2022
- Selected as Top 100 Leaders in Law in San Diego by the San Diego Business Journal

PUBLICATIONS/SEMINARS

- *Lawyer's Professional Liability and Cyber Risk*
- *Americans with Disabilities Act Lawsuits and Risk Management*
- *Preventing and Defending Legal Malpractice for the Small Firm*
- *Keeping the Meal Happy: A Risk Manager's Recipe to Restaurant Liability*
- *Trip, Fall and Catch A Wave: Accidents and Evidence*

- *Obstacles and Opportunities: Indemnity and Insurance*
- *If the Price is Right-Keep Reading*
- *Lifting the Veil: The Future of Confidentiality in Mediation and Settlement*
- *King of the Road: The Future of Claims Arising From The Design And Construction of Roadways*
- *So What Do Those Magic Words Really Mean? - Defining Physical Loss of Property for Business Interruption Policies*
- *What to expect from the new Montrose decision issued by the California Supreme Court*
- *Insurance Coverage and Employment Issues During COVID 19 (Webinar)*

PRACTICE AREAS

- [Directors and Officers Liability](#)
- [General Casualty Litigation](#)
- [Insurance Coverage and Litigation](#)
- [Product Liability](#)
- [Professional Liability](#)
- [Public Entity Liability](#)
- [Construction Litigation](#)
- [Trial](#)

EDUCATION

- Pepperdine University School of Law (J.D., 1984)
- University of Dayton, Ohio (B.A. cum laude Political Science, 1981)

BAR ADMISSIONS

- California, 1984
- Certified Legal Malpractice Law Specialist, California Board of Legal Specialization

COURT ADMISSIONS

- Supreme Court of the United States, 2015
- United States Court of Appeal for the Ninth Circuit, 1985
- United States District Court, Central District of California, 1984
- United States District Court, Southern District of California, 1985
- United States District Court, Eastern District of California, 2016
- United States District Court, Northern District of California, 2018