

## Richard B. Kendall

*Partner*

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Richard B. Kendall's practice focuses on complex litigation, and his experience spans more than four decades, several continents, and leading judicial and arbitration forums worldwide.

A former federal prosecutor, Mr. Kendall has prevailed in every one of the dozens of civil trials and arbitrations in which he has served as lead counsel representing both the defense and plaintiff sides. Over time, he has become the go-to litigator and trial counsel for his clients, some of whom, like Paramount and MTV, that he has represented for more than 25 years. He is currently leading the defense of one of the world's top talent agencies in one of Hollywood's biggest disputes between talent agencies and the Writers Guild of America (WGA) over the use of agency packaging fees.

Mr. Kendall has argued and successfully resolved sophisticated, contentious, and unprecedented challenges to the First Amendment and the rights of privacy and publicity. He has argued on preemption of state consumer laws and environmental claims against the military before the U.S. Supreme Court. In addition, Mr. Kendall also litigated asset confiscation and recovery claims that were connected to the fall of Saigon and the overthrow of former Philippine President Ferdinand Marcos.

His courtroom background includes serving as lead trial counsel in dozens of trials and appeals in the federal and state courts, including two arguments before the U.S. Supreme Court. *The Hollywood Reporter* has recognized him as a Power Lawyer multiple years, and the other leading Hollywood publication, *Variety*, has named him one of the industry's leading lawyers for the last three years. In addition, the prestigious Chambers & Partners legal ranking organization has repeatedly ranked him among the top media and entertainment litigators since 2004. It also has quoted clients as saying that Mr. Kendall is "very analytical and experienced," as well as one of the West Coast's "strongest litigators."

As a commercial litigator and an advisor on transactional matters, Mr. Kendall represents major entertainment studios, leading media companies, securities, banking and financial institutions, and foreign governments in complex, sensitive, and high-stakes disputes and negotiations. Current significant areas of his counsel include distribution rights battles, copyright, financing, and profit-participation disputes.

## Education

**University of Southern California School of Law, J.D., 1979**

• *Southern California Law Review*, Executive Notes Editor

**Wesleyan University, B.A., 1974**

## Representative Matters

### Media, Entertainment, and Intellectual Property

- Representing CAA in a major lawsuit filed by Writers Guild of America (WGA) and eight individual writers, alleging breaches of fiduciary duty, constructive fraud, and violations of the Unfair Competition Law related to the use of agency packaging fees and the corresponding lawsuit filed by CAA against the WGA for antitrust violations.
- Won summary judgment for Paramount Pictures Corporation in a \$40 million lawsuit filed by Middle Pictures, Inc. (MPI) over the distribution of the film, *Middle Men*.
- Secured settlements and a verdict for clients Regency Entertainment Inc. and Monarchy Enterprises S.A.R.L. in an \$18 million breach of contract lawsuit they filed against a group of film financiers who failed to fulfill their promise to repay certain expenses for Warren Beatty's *Rules Don't Apply* box-office flop.
- Representing a prominent talent agency in a \$55 million lawsuit brought by producers and film financiers of motion picture projects alleging misrepresentations, fraud, and breaches of fiduciary duty.
- Defended a studio at trial in federal court in New York against claims of securities fraud.
- Defended TV networks in a class action suit that was brought by composers and music recording companies. The plaintiffs were alleging that Mr. Kendall's clients had committed copyright infringement resulting from their use of music in TV programming.
- Handled dozens of disputes on behalf of film studios and TV networks in federal and foreign courts that were related to the ownership or control of copyrighted materials.
- Retained by video game manufacturers and developers to handle litigation over the rights to use likenesses and images.
- Advised and counseled clients on the use and infringement of trademarks related to numerous entertainment properties and brand-name retail goods.

## Clerkships

**U.S. Court of Appeals for the Ninth Circuit**

• Law Clerk, Hon. J. Clifford Wallace

- Resolved litigations between TV networks over reality TV formats.
- Defended a TV network against claims of invasion of privacy that arose from its television programming.
- Litigated between TV networks or film studios and the many authors, composers, and submitters of ideas who claim ownership of successful TV shows and theatrical motion pictures.
- Defended media companies in actions that involved major injuries suffered in accidents that had occurred during the filming of theatrical motion pictures and TV shows.
- Represented several of the largest national media companies in litigation with cities over fees and restrictions related to outdoor advertising.
- Defended a major media company against claims that arose from its use of text-messaging advertising.
- Defended TV networks and retail stores against consumer false advertising claims.
- Provided defense in a consumer class action that involved the video game industry and involved allegations of the use of false advertising and the distribution of defective products.
- Defended a TV producer at the appellate level against the plaintiff's charges that the producer had discriminated against a pregnant actress. The allegations claimed the producer had decided to terminate the actress rather than to retain her as the vixen in the cast of a prominent soap opera.
- Defended an environmental activist website against claims of a prominent celebrity that a photograph of her personal residence infringed on her privacy rights and misappropriated her publicity rights.
- Represented a TV network in a grand jury investigation that was related to the content of broadcasts that allegedly depicted harm to animals.
- Represented most of the major film studios and producers of TV programs in litigation with both international free and pay TV broadcasters, as well as firm-processing and video-distribution vendors.
- Managed sophisticated commercial conflicts involving contract rights of refusal and first-negotiated and

most-favored nation clauses. Other issues Mr. Kendall handled include terminations, renewals of long-term output agreements, and insolvencies. As part of the resolution process, Mr. Kendall appeared before numerous state and federal courts in the U.S., European, and Asian Courts, and Alternative Dispute Resolution (ADR) forums.

### Complex Commercial Litigation

- Prevailed at trial for HR-MWC Partners, LLC, in a multimillion-dollar dispute arising from the failure of a land-development project in Tianjin, China.
- Obtained a complete defense victory at the trial and appellate court level for Paramount Pictures Corporation in federal securities, contract, and business tort actions related to complex domestic and international film financing transactions.
- Obtained summary judgment for the estate of Robert Philpott, who had been sued by the ex-wife of Dick Wolf, creator of the *Law and Order* TV franchise. She had claimed Mr. Philpott and a mediator deceived her when they helped negotiate the couple's divorce settlement, thus denying her a financial share of Mr. Wolf's subsequent agreement for additional years of *Law and Order*.
- Secured summary judgment and a financial award on behalf of Viacom International Inc. in a lawsuit against toymaker MGA Entertainment Inc. for breach of contract over unpaid advertising bills and a 2012 co-finance agreement with Viacom to broadcast a TV series based on the toymaker's line of Lalaloopsy dolls.
- Successfully defended Citibank before the LA Superior Court, the California Court of Appeal, the California Supreme Court, and the U.S. Supreme Court in a consumer class action challenging credit-card late fees. When the argument eventually came before the U.S. Supreme Court, Mr. Kendall prevailed on the basis that state consumer laws were preempted by the National Bank Act (NSA).
- Advised and counseled some of the nation's largest banking institutions in disputes with borrowers and asset-backed insurers relating to unpaid loans and insolvencies. Disputes ranged from domestic litigation between banks and major borrowers arising from underwater real estate loans to international litigation over loan portfolios that covered resort properties in the U.S. and throughout the world.
- Represented two U.S.-based international banks against claims that were brought by Vietnamese citizens who held deposits in those banks when Saigon

fell and the banks' assets had been confiscated by the Communist government.

- Represented a major TV studio in securities litigation in the federal courts of New York stemming from an unsuccessful film-state financing. Engaged previously in connection with similar litigation in England and New York involving insurance-backed, film-slate financings.
- Represented a major investment bank in the trial of a class action suit alleging improper payment of "greenmail" to a corporate raider.
- Conducted internal and international investigations into frauds committed by executives employed by domestic and multinational companies, and defended the resulting securities claims brought by shareholders or government entities.
- Won summary judgment for the California State Senate in a redistricting challenge.
- Served as counsel to the Brunei Investment Authority and related entities in cross-border litigations stemming from Prince Jefri's management of Amedeo Group.
- Engaged as counsel for the Bank of China in civil prosecutions in Australia, England, Hong Kong, and California to recover funds stolen during an internal fraud scheme.
- Represented China National Coal Development Corp. in a dispute regarding the dissolution of a coal-mining joint venture in northeastern China.
- Represented a major film studio in litigation arising from the failure and bankruptcy of a Japanese TV distributor.
- Served as counsel for Sonatrach, the Energy Ministry of Algeria, in a breach-of-contract action to recover \$44 million in contract fees relating to a hydrochemical plant constructed in Algeria.
- Represented the Republic of the Philippines in worldwide actions to recover assets, in the aftermath of the overthrow of Ferdinand Marcos that the Marcos family had secreted in the U.S., France, Switzerland, and Hong Kong.

### Pro Bono Litigation

- Served as the *pro bono* counsel for the Natural Resources Defense Council (NRDC) and other environmental organizations. Successfully obtained an injunction in 1994 that blocked the Navy's planned detonation of explosives near the Channel Islands Marine Sanctuary. *Natural Resources Defense Council v. U.S. Dept. of Navy*, 857 F. Supp. 734 (C.D. Cal. 1994)

- Argued before the U.S. Supreme Court on behalf of the NRDC in the *Winter v. NRDC* case, in which the Navy appealed a lower court's ruling in favor of the NRDC that had limited the Navy's use of underwater sonar during training drills because of its harmful effect on whales and other marine mammals. *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008)

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## Recognition and Affiliations

- *Top Ranked - Chambers USA*, 2014–present
- *Best Lawyers*, Bet-the-Company and Commercial Litigation, multiple years to present
- *Southern California Super Lawyer*, 2004–present
- *The Hollywood Reporter Power Lawyer*, multiple years to present
- John Marshall Award for Trial of Litigation, Recipient
- University of Southern California Law School Adjunct professor
- Western Center on Law and Poverty Board of Directors, 1989–1997
- Legal Aid Foundation of Los Angeles Board of Directors, 2001–2007
- The Broad Stage Chair, Board of Directors, 2014–Present Member, Board of Directors, since 2011
- Human Rights Watch Member, Southern California Committee, since 2011

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## Publications and Appearances

- "Federal Pretrial Civil Procedure in California," R. Kendall, R. Seeborg, M. Shartsis, and F. Smith

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## Prior to Kendall Brill & Kelly

- **U.S. Department of Justice, 1980–1985**  
Assistant U.S. Attorney, Los Angeles, 1980–1985  
Criminal Division, Assistant Chief, 1983–1985  
John Marshall Award for Trial of Litigation, Recipient
- **Munger Tolles & Olson, LLP, 1986–1988**  
Partner
- **Shearman & Sterling, LLP, 1988–1997**  
Partner
- **Irell & Manella, LLP, 1997–2009**  
Partner

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## Bar and Court Admissions

- **California, 1979**
- **U.S. District Courts**  
Central, Eastern, Northern, and Southern Districts of California  
Northern District of Illinois
- **U.S. Court of Appeals for the Ninth Circuit**
- **U.S. Court of Appeals for the Second Circuit**
- **U.S. Supreme Court**

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