GAMER TECHNOLOGY LAW

"The Litigation Horizon: What People Need to Know about Product Liability and Class Action Law Suits; Potential Plaintiff Theories; Tips for Calculating your Exposure; Defensive Strategies"

PRESENTED ON
MARCH 27, 2008, 3:45 PM

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I. Theories Used By Plaintiffs In Products Liability Actions Against Video Game Manufacturers

A. Strict Product liability- Design, Manufacture and Warning Defects

The strict product liability theory of recovery permits the imposition of tort liability against all those directly in the marketing chain, not only to manufacturers, but also to wholesalers, distributors and retailers. Liability attaches upon proof of the product defect and a sufficient causal connection between defendant, the product and plaintiff's injury, without requiring proof of "duty" and "breach." It is therefore predicated solely on the nature of the product defect (although defendant's conduct becomes important in "failure to warn" strict liability cases). A prima facie case of strict product liability requires plaintiff to demonstrate that:

(a) The product was legally defective (due to manufacturing, design or failure to warn)

(b) The product defendant was causally connected to the defect, and

(c) Plaintiff suffered injury as a proximate result of the defect.

Cronin v. J.B.E. Olson Corp, (1972) 8 Cal.3d 121, 134-35.

In video game cases, plaintiffs usually sue on all three theories, although the primary claim is usually the defendant's failure to warn. A video game not otherwise defective in manufacture or design may nonetheless be deemed legally defective if a suitable warning about its dangerous propensities is not given. As with any other

product, manufacturers need not warn of dangers that are generally known and recognized. Knowledge of the risks involved is an essential element of the failure to warn theory in a strict liability case.

In other words, a plaintiff suing on a failure to warn strict liability theory must plead and prove that the product defendants either (i) actually knew of the risks involved at the time of manufacture and/or distribution, or (ii) that, based on the state of scientific knowledge at the time of manufacture and/or distribution, they should have known of the risks. When the failure to warn strict liability case turns on the ability to know the risk of harm, the level or status of available scientific knowledge becomes highly relevant.

For example, the risk of epileptic seizures for some video game users has been known in the industry for a long time. Indeed, as early as 1991, Nintendo of America became aware that playing such games may trigger seizures. In that year, they ordered warnings to be included in video game instruction booklets. All video games now contain a warning as to seizure-triggering, and this has been done for more than 10 years. Therefore, knowledge or ability to know of the risk is not an issue in video game cases involving epileptic seizures.

The warning defect theory is actually rooted in negligence to a greater degree than are the manufacturing and design defect theories. Whereas manufacturing and design defects are evaluated solely with reference to the product, warning defects are measured by the product defendant's conduct. The defect relates to a failure extraneous to the product itself. The adequacy of the warning thus becomes the primary issue. The adequacy of a warning is ordinarily a question of fact for the jury. There have been no reported federal or California case decisions where the warnings on a video game were deemed inadequate.

B. Negligence- Design, Manufacture And Failure To Warn

Negligence focuses on “reasonableness” of the defendant's conduct and has four elements:

a) Defendant had a legal duty to conform to a standard of conduct to protect the plaintiff;

b) The defendant failed to meet this standard;

c) The defendant’s failure was the proximate or legal cause of the resulting injury;

d) The plaintiff was damaged as a result.

See, e.g., *Ladd v. Cty of San Mateo*, 12 Cal.4th 913, 917 (1996)

Therefore, under changing consumer and industry standards, a design considered safe at the time the product was placed on the market may be deemed defective several years later at the time of injury. A negligence action may lie for the manufacturer's failure to modify or retrofit the product or to warn users of dangers that became manifest after the product was manufactured. Negligence actions can be based on negligent design but are more commonly based on a failure to warn theory.

C. Breach of Implied Warranty

Unless specifically disclaimed, video games, like every good or service, are subject to an implied warranty of merchantability. Cal. Civ. C. § 1792. Further, every California retail sale of consumer goods by a manufacturer who has reason to know that the goods are required for a particular purpose, and that the buyer is relying on its skill or judgment to furnish suitable goods, shall be accompanied by an implied warranty of fitness for a particular purpose. Cal. Civ. C. § 1792.1.

These implied warranties may only be waived when the goods are sold to the customer "as-is" or "with all faults." Cal. Civ. C. § 1792.3. This means that a conspicuous writing must be attached to the good stating that: (1) the goods are being sold on an "as-is" basis; (2) the entire risk as to the quality and performance of the goods is with the buyer; and (3) the buyer assumes the entire cost of all necessary service or repair if the goods prove defective after purchase. Cal. Civ. C. § 1792.4.

Consumers sued Microsoft under both theories in Nunez v. Microsoft, discussed in more detail below, in which consumers alleged that Halo 3 was unfit for being on their Xboxes.

D. California Consumer Legal Remedies Act

The Consumer Legal Remedies Act, codified at California Civil Code Sections 1750 to 1784, prohibits practices "in a transaction intended to result or which results in the sale or lease of goods or services to any consumer" Such practices include:

1. Misrepresenting the source, sponsorship, approval or certification of goods or services. Cal. Civ. Code § 1770(a)(5).

2. Representing that goods or services are of a particular standard, quality, or grade if they are not. Cal. Civ. Code § 1770(a)(7).

3. Advertising goods or services with intent not to sell them as advertised. Cal. Civ. Code § 1770 (a)(9).

4. Advertising goods or services with intent not to supply reasonable expectable demand, unless the advertisement discloses a limited quantity. Cal. Civ. Code § 1770(a)(10).

At least 30 days prior to the commencement of any action for damages, the consumer must notify the potential defendant of the particular alleged violations, and demand correction, repair, replacement or other rectification of the goods or services allegedly in violation of the act. The notice must be in writing and sent by certified or registered mail to the place where the transaction occurred or to the defendant's principal place of business in California. Cal. Civ. Code § 1782(a).

An action may not be maintained if the prospective defendant agrees to an appropriate correction, repair or other remedy within 30 days of receipt of notice from the consumer. Cal. Civ. Code § 1782(b). This defense only applies to claims brought by individual consumers, not to class actions under the Consumer Legal Remedies Act, which are discussed in more detail below. *Kagan v. Gibraltar Sav. & Loan Assoc.*, 35 Cal. 3d 582, 591 (1984).

II. Potential Defenses

A. Defenses to Claims that Video Games Cause Epilepsy

The epilepsy risk has been known in the industry for a long time. In September of 2005, The Epilepsy Foundation issued new guidelines to help combat the risk of video game-induced seizures, which include playing video games only in a well-lit environment, taking frequent breaks while playing video games, and decreasing the level of brightness on the video game monitor or television screen. However, the general consensus among experts is that exposure to computer and video games does not cause epilepsy. Rather, children with undiagnosed epilepsy may also be photosensitive, and may experience their first seizure while playing a video game.

Video game manufacturer defendants have raised the following defenses to epilepsy lawsuits:

(a) Seizures were unrelated to video game play. The player's condition was congenital.

(b) The manufacturer provided adequate warnings of triggering of seizure in seizure-disposed persons in the documentation that accompanies its video games.

(c) Plaintiff failed to heed the warnings.

B. General Defenses For Strict Product Liability Lawsuits

1. **The defect was not the proximate cause of the injury**: A product defendant cannot be held liable under any of the defect theories unless the defect was a substantial factor in causing the injury. Similarly, despite an apparent "defect," the product defendant will not be liable if the same or similar harm would have occurred even without the defect i.e., where Plaintiff's own negligence was the "superseding cause."

2. **Adequate warning**: The seller, to avoid liability, may be required to give directions or warning about the use of the product, and may reasonably assume that the warning will be heeded.

3. **Misuse of product/ comparative fault:** Product misuse is a defense only when the misuse is the actual cause of plaintiff's injury, not when some other defect produces the harm. Defendant bears the burden of proving misuse as an affirmative defense. However, "the law now requires a manufacturer to foresee some degree of misuse and abuse of his product, either by the user or by third parties, and to take reasonable precautions to minimize the harm that may result from misuse and abuse." The extent to which manufacturers and product designers must anticipate misuse presents an issue of fact.

4. **Intervening third party culpability:** A product defendant is entitled to assert and introduce evidence to prove intervening third party culpability (whether negligence, intentional conduct or strict liability) in its defense. Similarly, strict liability for failure to warn rests only with the particular defendant in the marketing chain responsible for the product that creates the unreasonably dangerous propensity.

C. General Defenses For Negligence Lawsuits

1. **Plaintiff's Negligence**: under the doctrine of comparative negligence the plaintiff's negligence diminishes his or her recovery in proportion to the amount of fault attributable to the plaintiff.

2. **Assumption of Risk**: primary assumption of risk remains as an independent defense that completely bars recovery, while secondary assumption of risk is merged into the comparative negligence system and reduces recovery. In determining the type of assumption of risk that is involved, the presence or absence of

duty is the determining factor.

3. **Failure to Mitigate Damages**: Failure to take steps to minimize the harmful effects of the defendant's completed wrongful act can be shown for the purpose of reducing the amount of recoverable damages.

D. General Defenses For Breach of Warranty Lawsuits

Implied warranties can be disclaimed by a warning that sale is "as-is" or "with all faults." This warning must be in writing, and must be conspicuously attached to the product at the time of sale. It must specify the following:

1. Goods are sold on an "as is" or "with all faults" basis.
2. The entire risk as to the quality and performance of the goods is with the buyer.
3. Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor or retailer assumes the entire cost of all necessary servicing or repair.

Cal. Civ. C. § 1792.4.

III. Recent Consumer Cases Against Video Game Companies

A. Epilepsy

1. *Roccaforte v. Nintendo of America, Inc.*, 917 So. 2d 1143 (2005)

Plaintiffs brought a personal injury action against Nintendo after their child suffered many violent seizures while playing video games. After a seven-day trial, the jury returned a verdict in favor of Nintendo. The jury found that Nintendo did not provide an adequate warning of the seizure risk from playing video games, but that the products were not unreasonably dangerous in design, and that the failure to provide adequate warning was not the proximate cause of the child's injuries. Accordingly, the trial court entered judgment dismissing the claims.

However, the Louisiana Court of Appeal for the Fifth Circuit held that the company's numerous discovery abuses during the Roccaforte trial required that the verdict be vacated and the case remanded for a new trial. No decision has been reported in the second trial.

2. *Eric Martin v. Nintendo of America Inc*, Case No. 6:01-CV-00246 (W.D. La. 2001)

Plaintiffs sued Nintendo for negligence and products liability, alleging that their son suffered epileptic seizures while playing video games. The parents sued under 15 U.S.C. §§ 2063, 2064, and 2074.

On December 10, 2004, the Court ruled in Nintendo's favor, finding that there was no private right of action under those federal code provision. Plaintiffs filed a notice of appeal, but the notice was withdrawn pursuant to settlement negotiations. No appeal was ever brought.

3. ***Spypro New York Litigation***

In March 2007, Plaintiff sued Vivendi Games, Sierra Entertainment, and Sony Computer Entertainment America after her infant suffered an epileptic seizure while playing Spyro: Enter the Dragonfly on PlayStation 2. The suit, filed in New York State Supreme Court, claims that the defendants were "negligent, careless, and reckless with regard to the design and manufacture" of Spyro, such that the game was dangerous when used in the intended manner, and that they failed to properly warn consumers of that danger. There has been no reported decision involving this case.

B. Cases Regarding Violent Content of Video Games

1. ***James v. Meow,*** **300 F.3d 683 (6th Cir. 2002)**

This case was brought after a high school student shot several students at his high school. The parents of the victims sued various video game and movie companies, alleging that the content of games and movies had "desensitized" the murderer to violence and caused the murders. They sued for negligence and products liability.

The court rejected plaintiffs' negligence claim on the basis that defendants did not owe a duty to third-party shooting victims. It further held that the murderer's actions were not reasonably foreseeable results of the defendants' violent video games. *Id.* at 695.

The court rejected plaintiff's products liability claim on the basis that the alleged defect – violent contents in the video games – was not grounds for a products liability claim. The court stated that while products liability would certainly apply if video game cartridges and exploded and hurt somebody, the expressive content in a video game was not "sufficiently 'tangible'" to be grounds for products liability. *Id.* at 701.

2. ***Sanders v. Acclaim Entertainment, Inc.,*****188 F.Supp. 2d 1264 (D.C. Colo. 2002)**

Plaintiffs sued video game makers for negligence and strict liability, alleging that violent video games caused the Columbine school shootings. The court disagreed.

Looking to *Meow*, the court concluded that violence was not a reasonably foreseeable result of creating these video games, and that the shooters' criminal acts were a superceding cause of plaintiffs' injuries. *Id.* at 1276.

The court further held that the violent nature of video games was not grounds for products liability, because the games' content was not a product. *Id.* at 1278. It made a "critical distinction between intangible and tangible properties for which strict liability can be imposed," stating that products liability applies only to tangible products, not to ideas and expression included in a product. *Id.* at 1278, citing *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1034 (9th Cir. 1991).

The court analogized the video game to a book, where products liability would apply to a defect in the physical form of the book, but not to any ideas or information expressed by the book. *Id.* Similarly, the court held that video game manufacturers were not subject to products liability for the violent ideas expressed by video games. *Id.*

3. *Wilson v. Midway Games, Inc.*, 198 F. Supp. 167 (D.C. Conn. 2002)

Plaintiff sued Midway for products liability after her 13-year-old son was stabbed and killed by a friend. Plaintiff alleged that the design and marketing of Mortal Kombat was the legal cause of her son's death.

The court disagreed. It distinguished between tangible products and the ideas expressed therein, relying on the same Ninth Circuit authority relied upon by the *Sanders* court. *Id.* at 173, citing *Winter*, 938 F.2d at 1034. Because the found that the violent content in video games was intangible, it held that violent subject matter was not grounds for Plaintiff's products liability claim. Therefore, the court granted Midway's motion to dismiss. *Id.* at 173.

4. *Video Software Dealers Assoc. v. Maleng*, 325 F.Supp.1180 (W.D. Wa. 2004)

Video game manufacturers sued to enjoin enforcement of a federal law regulating the dissemination of violent video games to children.

The court found that video games were protected speech and that the act was unconstitutional because it was not narrowly tailored enough to pass constitutional muster. The court enjoined enforcement of the law.

C. Class-Action Cases

1. *Smith v. Microsoft Corp.,* Case No. 04:08-CV-00061 (S.D. Tex. 1/4/08)

Plaintiffs sued Microsoft because Microsoft's XBOX Live, an online gaming community, was down for several weeks in December 2007. Plaintiffs filed a class-action lawsuit for breach of contract (subscription agreements), breach of warranty and negligent misrepresentation (in selling the subscription). Defendant has not yet answered; the class has not yet been certified.

2. *In re Grand Theft Auto Video Game Consumer Litigation,* Case No. 1:06-MD-1739 (S.D. N.Y. 2006).

Plaintiffs sued because Grand Theft Auto: San Andreas players, using readily-available third-party code, could see the game's male protagonist having sex with nude, animated women.

Plaintiffs contended that they were defrauded because the game should have been rated "AO" for Adults Only, rather than "M" for Mature.

The Settlement Agreement, in which defendants denied all liability, was filed on November 19, 2007. A copy of the agreement is attached.

3. *Nunez v. Microsoft Corp.,* Case No. CV-07-2209 (S.D. Ca. 2007).

Plaintiffs sued the manufacturer of Halo, a video game allegedly made and sold for use on the Xbox 360 video game console, alleging that Halo makes the Xbox 360 "crash," "freeze," or "lock up" while the game is being played, and that Defendants have ignored repeated customer complaints about this.

According to the complaint, the Halo games are manufactured by Bungie Software Products Corporation, which was acquired by Microsoft in 1991. Halo 3, the video game at issue in the complaint, was allegedly designed, manufactured, and sold to be used on Xbox 3.

The class action lawsuit alleges breach of statutory implied warranty of merchantability, breach of statutory implied warranty of fitness for a particular purpose and violations of Cal. Bus. & Prof. C. §§ 17200 et seq. It claims that Microsoft breached its implied warranties by selling a game that does not work on Xbox 3. The class has not yet been certified.

4. *Ray v. Microsoft Corp.*, Case No. 2:06-CV-01720 (W.D. Wash. 2006)

On November 29, 2006, plaintiff filed a class-action complaint against Microsoft, on behalf of himself and all other persons who experienced hardware problems with their Xbox 360 gaming consoles.

According to the complaint, plaintiff's Xbox 360 console was completely destroyed after he downloaded a software update from Microsoft on November 1, 2006. Plaintiff alleges that Microsoft knew of the serious problems caused by this update, and failed to remedy the problem.

He sued for breach of contract, negligence and violation of a Washington consumer protection law. Microsoft moved for summary judgment on the basis that it had already provided plaintiff with a free replacement Xbox. Subsequently, the parties stipulated to dismiss the case with prejudice on July 12, 2007.

IV. Procedure for Bringing Class Actions in Federal Court

A. Prerequisites to Class Actions

Federal Rule of Civil Procedure 23(a) states that a class action cannot be brought unless the prerequisites of numerosity, commonality, typicality, and adequacy of representation are met.

1. FRCP 23(A)(1): The class must be so numerous that joinder is impractical.

Whether or not a class exists is a question of fact that will be determined on the basis of the circumstances of each case. The class does not have to be so ascertainable that every potential member can be identified at the commencement of the action, nor is the fact that specific members may be added or dropped during the course of the action important. However, the requirement that there be a class will not be deemed satisfied unless the class description is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.

Once the court ascertains that a class exists, it then must determine whether the named representative party is a member of the class that party purports to represent.

Third, a class action may be maintained only if "the class is so numerous that joinder of all members is impracticable." Rule 23(a). The question of what constitutes impracticability (often referred to by the courts as "numerosity") depends on the particular facts of each case and no arbitrary rules regarding the size of classes have been

established by the courts. *Gen. Tel. Co. of the Northwest, Inc. v. E.E.O.C.*, 446 U.S. 318, 330 (1980).

Joinder of individual class members may also be deemed impracticable where the identities of all class members are unknown so that their number cannot be determined, or when the geographical diversity of class members makes joinder impracticable. *Phillips v. Joint Legislative Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981); *Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982), vac. on other grounds 459 U.S. 810 (1982).

2. FRCP 23(a)(2): There must be common questions of law or fact.

It is important to note that this provision does not require that all the questions of law and fact raised by the dispute be common; nor does it establish any quantitative or qualitative test of commonality. From a plain reading of the rule, the use of the plural "questions" suggests that more than one issue of law or fact must be common to members of the class. *Gen. Tel. Co.*, 446 U.S. at 155.

"The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).

3. FRCP 23(a)(3): The claims or defenses of the representatives of the class representative must be typical of the class.

The requirement of "typicality" implicitly requires that the named plaintiff be a member of the class he or she purports to represent at the time the class action is certified. *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962). The claims of the purported class representative need not be identical, but "must be part of the class and possess the same interest and suffer the same injury as the class members." *General Tel. Co.*, 457 U.S. at 156.

A plaintiff's claim is typical if it: (1) arises from the same event or practice or course of conduct as the claims of the other class members and (2) is based on the same theory as the other class members' claims. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).

4. FRCP 23(a)(4): The representatives will fairly and adequately protect the interests of the class.

The representation is adequate if: (1) the attorney representing the class is qualified and competent; and (2) the class representatives are not disqualified by interests

antagonistic to the remainder of the class. *Lerwill v. Inflight Motion Pictures*, 582 F.2d 507, 512 (9th Cir. 1978).

B. Grounds for Class Actions

In addition to satisfying all of the elements set out in Rule 23(a), the case must fall within one of the four categories of class actions described in Rule 23(b). Plaintiff must show either that:

1. There is a risk of prejudice from separate actions establishing incompatible standards of conduct (FRCP 23(b)(1)(A);
2. Judgments in individual lawsuits would adversely affect the rights of other class members (FRCP 23(b)(1)(B);
3. The party opposing the class has acted, or refused to act, in a manner applicable to the class generally, thereby making injunctive or declaratory relief appropriate with respect to the class as a whole (FRCP 23(b)(2); or
4. The questions of law or fact common to the case "predominate" over questions affecting the individual members and, on balance, a class action is superior to other methods available for adjudicating the controversy (FRCP 23(b)(3).

V. Procedure for Bringing Class Actions in California Courts

Class actions in California are permitted by Section 382 of the California Code of Civil Procedure, according to which "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

A. Prerequisites for Bringing a Class Action under Section 382

Under California law, two basic requirements must exist to sustain a class action: "The first is existence of an ascertainable class, and the second is a well-defined community of interest in the questions of law and fact involved."

Whether a class is "ascertainable" within the meaning of CCP § 382 "is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors*, 196 CA3d 1263(1987).

Section 382's "community of interest" requirement embodies three separate factors: predominant common questions of law or fact, class representatives whose

claims or defenses are typical of the class; and class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

B. Prerequisites for Bringing a Class Action under Consumer Legal Remedies Act

The Consumer Legal Remedies Act provides that a consumer with a claim under the Act may bring an action on behalf of other consumers similarly situated, provided that the total award of actual damages is not less than $1,000. Cal. Civ. Code § 1780(a). California Civil Code 1781(b) provides the exclusive criteria for class certification of suits brought under the California Legal Remedies Act. *Hogya v. Superior Court*, 75 Cal. App. 3d 122, 140 (1977).

Prior to bringing such a class-action, the consumer must put the prospective defendant on notice that the alleged violations affect a class of consumers, and that the prospective defendant has failed to correct or to seek to correct the violations as to all similarly situated consumers pursuant to the conditions set forth in California Civil Code Section 1782(c). *Kagan*, 35 Cal.3d 582.

The court must permit the suit to be maintained as a class action if the following conditions are met:

1. It is impracticable to bring all members of the class before the court;

2. The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members;

3. The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class; and

4. The representative plaintiffs will fairly and adequately protect the interests of the class.

Cal. Civ. C. § 1781(b). These are the same as the requirements for bringing a federal class action under Rule 23.

If the consumer meets the conditions set forth in Section 1781(b), the trial court must certify the class. It has no discretion to deny certification based on other considerations. *Hogya*, 75 Cal.App.3d at 140.

BIOGRAPHY
RICHARD J. IDELL, ESQ.

Richard Idell is a principal and founding member of Idell & Seitel LLP. Idell & Seitel LLP is a boutique San Francisco firm engaged in a litigation and transactional civil law practice with particular emphasis on legal issues concerning the intersection of the entertainment and technology industries.

Mr. Idell has both a trial and transactional practice and has handled a wide range of litigation matters in both State and Federal Court in the last 30 years, involving complex business disputes, complex investment banking transactions, including tax shelters, copyright, trademark, unfair competition, trade secret, Internet law (including Internet trademark and copyright issues, domain name disputes, search engine issues, key word and other advertising issues and related matters), real estate matters, construction disputes, professional negligence (including complex attorney-client fee disputes, attorney malpractice, accountancy malpractice, architectural malpractice and insurance broker negligence claims), insurance matters and tort claims.

Mr. Idell's entertainment litigation practice includes matters concerning licensing, copyright, trademark, trade dress, unfair competition, Internet issues and live entertainment performance issues including artist agreements, tour agreements, tour joint ventures, sponsorship contracts, publicity rights, domain name disputes, force majeure cancellations, venue liability for patron claims, insurance, indemnity, ADA compliance, venue construction, CEQA matters, land-use and easement issues, numerous insurance and real estate matters, including complex commercial lease disputes, purchase and sale disputes and tort law.

Mr. Idell has handled many litigation matters requiring pursuit of provisional relief, such as attachments, claim and delivery, temporary restraining orders and preliminary injunctions. He has handled dozens of copyright seizure cases utilizing the ex parte seizure remedies of Section 503 of the Copyright Act and comparable remedies under the Lanham Act.

Mr. Idell's transactional practice primarily involves live entertainment issues, music, and film. He is advisor and counsel to numerous entertainment and technology endeavors and in particular to firms engaged in presentation of live entertainment performances, theatre, music, film, video production and audio-visual delivery.

Mr. Idell has served as an expert witness in a variety of litigation matters involving standard of care, copyright issues and reasonableness of attorney billings. He is a frequent lecturer at local and national legal conferences. He is on the Governing Committee of the American Bar Association Forum on the Entertainment and Sports Industries. Mr Idell is on the Advisory Board of the Bill Graham Foundation. He is Board President of the California Film Institute, which, among other non-profit endeavors,

presents the annual prestigious Mill Valley Film Festival and operates the Christopher B. Smith Rafael Film Center in San Rafael, California (a fully renovated art deco theatre). He is on the Board of Trips for Kids of San Rafael. He is on the Board of Playground, a nonprofit promoting and developing the work of new playwrights in the context of a community theatre environment.

Mr. Idell is a member of the Bar Association of San Francisco (Sports and Entertainment Section), the State Bar of California (Intellectual Property Section and Business Sections), the International Association of Entertainment Lawyers, the American Bar Association Forum on the Entertainment and Sports Industries and the Bay Area Gastronomique Entertainment Lawyers Society ("BAGELS").

Mr. Idell and his wife are grape growers in Sonoma Valley and Mr. Idell's practice includes grape growing and winery issues.

Mr. Idell obtained an A.B. University of California at Berkeley 1970 and his J.D. from Golden Gate University School of Law in 1975. He was admitted to the California Bar in 1976. He practiced law with the Honorable Judge Carlos Bea of the Ninth Circuit from 1977 to 1986, forming the predecessor to the current firm in that year.

Associations:

- American Association Intellectual Property Section
- American Bar Association Forum on the Entertainment and Sports Industries
- American Bar Association Labor Law Section Committee on Entertainment and Sports Industries
- American Bar Association Alternative Disputes Resolutions Section
- State Bar of California Business Law Section
- State Bar of California Intellectual Property Section
- The Copyright Society of Northern California
- Bay Area Gatronomique Entertainment Lawyers Societé ("BAGELS")
- International Associations of Entertainment Lawyers ("IAEL")
- Bar Association of San Francisco Sports and Entertainment Law Section
- Bar Association of San Francisco Intellectual Property Section
- California Lawyers for the Arts
- San Francisco Trial Lawyers Association
- Lawyer Friends of Wine
- Associate Member Sonoma Valley Vinters & Growers Alliance ("SVVGA")

Seminars:

- Panelist, Gamer Technology Law, March 27, 2008, Beverly Hills, California
- Panelist, International Association of Entertainment Lawyers 2008 MIDEM Presentation, January 27, 2008, Caanes, France

- Panelist, State Bar of California, Intellectual Property Law Section, 32nd Annual Intellectual Property Institute, “Piracy: Injunctive Relief from the Trenches”, November 8-10, 2007, Monterey, California
- Moderator, 30th Annual Mill Valley Film Festival, “The Future is Now: New Trends in The Specialty Film Market”, October 6, 2007, Mill Valley, California
- Panelist, Online Market World 2007, “Innovation and Liability: Managing Risks in the Web 2.0 Era”, October 3-5, 2007, San Francisco, California
- Panelist, South by Southwest Music Conference, CLE Panel on Entertainment Contract Issues, March 19, 2005, Austin, Texas
- Panelist, Beverly Hills Bar Association, "Entertainment Law Year In Review & Update of The Law", January 19, 2005, Los Angeles California
- Moderator, Bar Association of San Francisco, "2001 Annual Licensing Institute", September, 2001, San Francisco, California
- Panelist, Practicing Law Institute, "Counseling Clients in the Entertainment Industries", April, 2001, Los Angeles, California
- Panelist, Streaming Media Asia 2001, "Protecting Your Content Against Copyright Theft-- Digital Rights Management and Protection of Copyright", May 4, 2001, Hong Kong
- Panelist, Bar Association of San Francisco, "Breaking into the Sports and Entertainment Industries", November, 2000, San Francisco, California
- Moderator, ABA Forum on the Entertainment and Sports Law, "Live Entertainment Performance Issues", October, 2000, Orlando, Florida
- Moderator, ABA Forum on the Entertainment and Sports Law, "The Impact of Consolidation in the Concert Industry", October 13, 2000, Orlando, Florida
- Panelist, North by Northwest Music Conference (NXNW), "Sex and the Digital Millenium Copyright Act", September 21, 2000, Portland, Oregon
- Panelist, Emerging Artists and Talent in Music Conference (Eat'M), "Artists and Managers", June 6, 2000, Las Vegas, Nevada
- Panelist, Practicing Law Institute, "Counseling Clients in the Entertainment Industries", April 13, 2000, Los Angeles, California
- Panelist, South by Southwest Music Conference 2000: Continuing Legal Education, "The Effect of Consolidation on the Concert Industry", March 17, 2000, Austin, Texas
- Panelist, South by Southwest Music Conference 2000: Continuing Legal Education, "Streaming Media", March 14, 2000, Austin, Texas
- Panelist, California Lawyers for the Arts, Music Business Seminar, "Working with Live Performance Presenters", September 25, 1999, Oakland, California
- Panelist, Emerging Artists and Talent in Music Conference (Eat'M), "Live Performance Contracts", May 19, 1999, Las Vegas, Nevada
- Panelist, Louisiana Music New Orleans Pride ("LNMOP"), "The End of the World as We Know It", April 25-29, 1999, New Orleans, Louisiana
- Panelist, Louisiana Music New Orleans Pride ("LNMOP"), "RIAA v. Diamond Multimedia Systems", April 25-29, 1999, New Orleans, Louisiana

- Lecturer, South by Southwest Music Conference: 1999: Continuing Legal Education, "Live Entertainment Performances-- Legal Issues", March 19, 1999, Austin, Texas
- Panelist, Sports and Entertainment Section, San Francisco Bar Association, Entertainment Licensing Seminar, "Litigation of Licensing Rights", January, 1999, San Francisco, California
- Panelist, California Lawyers for the Arts: "Overview of Music Management", October 27, 1998, Oakland, California
- Moderator and Panelist, Sports and Entertainment Section, San Francisco Bar Association, Entertainment Licensing Seminar, "Enforcement and Litigation of Licensing Rights", January 23, 1998, San Francisco, California
- Panelist, California Lawyers for the Arts, Riding the Shoulder: Cutting Edge Issues in Multi-Media, "Dealing With Lawyers", June 7, 1997, San Francisco, California
- Lecturer, California Lawyers for the Arts, "Clearance Issues in Film Projects" 1997, Fort Mason, California
- Panelist, National Business Institute, "The Law of the Internet", 1997, San Francisco, California
- Panelist, California Lawyers for the Arts: Music Business Seminar, "From Demo Tapes to Recording Contracts", November 9, 1996, Oakland, California
- Moderator and Program Coordinator, The Sports and Entertainment Section of the Bar Association of San Francisco, "Shopping" the Deal and Its Aftermath, January 17, 1996, San Francisco, California
- Panelist, San Francisco Trial Lawyers Association, "Legal and Evidentiary Issues in a Professional Negligence Case", 1996, San Francisco, California

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