

# Daily Journal

February 9, 2022

## Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

### TOP PLAINTIFF'S VERDICTS (BY IMPACT)

## The Athletics Investment Group LLC. v. California Department of Toxic Substances Control et al.

### Case Info

**CASE NAME:** THE ATHLETICS INVESTMENT GROUP LLC. V. CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL ET AL.

**TYPE OF CASE:** WRIT OF MANDATE REQUIRING THE STATE TO ENFORCE ENVIRONMENTAL LAWS AGAINST SCHNITZER STEEL

**COURT:** ALAMEDA

**JUDGE(S):** SUPERIOR COURT JUDGE PAUL D. HERBERT

**PLAINTIFFS ATTORNEYS:** Keker, Van Nest & Peters LLP, R. James Slaughter, Eric H. MacMichael, Travis S. Silva, Divya Musinipally, Rylee K. Olm, Venable LLP, William M. Sloan, Tyler G. Welti

**DEFENSE ATTORNEYS:** California attorney general's office, Edward H. Ochoa, Dennis L. Beck, Jr., Elizabeth B. Rumsey, Pillsbury Winthrop Shaw Pittman LLP, Ronald E. Van Buskirk, Margaret N. Rosegay

The Oakland A's court victory last March, in an environmental action against the state of California and a large metal recycling plant is really a victory for the people of West Oakland, according to R. James Slaughter of Keker, Van Nest & Peters LLP, one of the attorneys who represented the team in the litigation.

"It's a huge victory because this is a community that's often overlooked and taken advantage of," Slaughter said. But in this case, the court's decision means that "the environment in this com-

munity is just as important as anywhere else in the state." *The Athletics Investment Group LLC. v. California Department of Toxic Substances Control*, RG20069917 (Ala. Super. Ct., filed Aug. 5, 2020).

In his ruling, Oakland Superior Court Judge Paul D. Herbert ordered the state's toxic substances control department to rescind the exemption from California's Hazardous Waste Control Law it had awarded to Schnitzer Steel Industries Inc. decades earlier.

Slaughter said the ruling is unusual "because courts rarely issue writs of mandate directing that a government agency take action."

The dispute centers on the property at Howard's Terminal in West Oakland where the A's are planning to build a new stadium and other development. Schnitzer Steel's recycling facility is near the property, and the company has opposed the ballpark.

The problem is, according to the team, the company's metal shredding and recycling process releases hazardous waste into the air, soil and groundwater. A 2014 law required the state toxics department to rescind exemptions it had granted Schnitzer and other metal recyclers and either apply the state hazardous waste law to them or develop alternatives to manage the plants in a comparable manner.

"Unfortunately, they did neither of those things. And that is what caused the A's to sue," Slaughter said.

In seeking a writ of mandate to force the department to revoke

the exemptions, the Keker team and their co-counsel from Venable LLP focused on the language of the 2014 statute and the legislative intent behind it, he said. "The statute itself in its recitations is very clear that the intent was to have these [exemptions] revoked."

The department and Schnitzer argued that the statute was unclear and that providing an exemption to the Hazardous Waste Control Law was itself a form of regulation, Slaughter said.

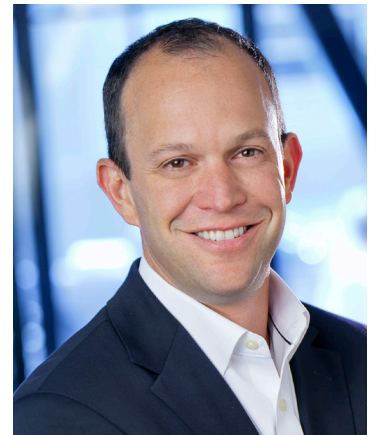
But, he added, "the trial court has been very, very clear that an exemption from regulation is... the antithesis of regulating."

And although the department has now revoked the previous exemptions, it announced replacements, according to Slaughter.

Dennis L. Beck Jr. of the attorney general's office for the state department and Margaret N. Rosegay of Pillsbury Winthrop Shaw Pittman LLP for Schnitzer Steel did not respond to requests to comment on the verdict.

The litigation is continuing. Schnitzer appealed Herbert's ruling, but the judge lifted the stay pending appeal on his order that normally would have relieved the DTSC from revoking the exemptions pending Schnitzer's appeal. The appellate court denied Schnitzer's request for a writ reversing the trial court and imposing a stay pending appeal. And a separate federal lawsuit by the team against the recycler is also pending.

— DON DEBENEDICTIS



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