

# ANNUAL CONFERENCE

## prop. 65 clearinghouse

MONDAY, SEPTEMBER 24, 2018

JULIA MORGAN BALLROOM

3:45 to 4:45

### How to Create Prop. 65 Warnings for Internet Platforms

Moderator: **Eric Somers**, Principal, Lexington Law Group

Panel: **Alejandro Bras**, Associate, Morrison & Foerster

**Stan Landfair**, Partner, Dentons

**Carol Monahan-Cummings**, Chief Counsel, OEHHA

#### Description

Internet platforms unique area for Prop. 65 warnings. This panel will discuss how to implement warning language that will meet the new regulation's criteria.

#### Bios

##### Eric Somers

Principal, Lexington Law Group

Eric S. Somers specializes in complex environmental and consumer public interest litigation on behalf of nonprofit organizations, aggrieved individuals and public entities. Mr. Somers has significant experience enforcing California's landmark Right-to-Know law, Proposition 65, against Fortune 500 companies in the food, tobacco, pharmaceutical, chemical, cosmetics, water quality, costume jewelry, fashion accessory and retail industries. These cases have led to reformulation of millions of products designed for children to eliminate toxic chemicals such as lead, arsenic, toluene, di-n-butyl phthalate (DBP) and di-2-ethylhexyl phthalate (DEHP). Examples of consumer products that have been reformulated to remove these toxic chemicals include children's playsets (arsenic treated wood), water filters (lead and arsenic), children's jewelry (lead), fashion accessories such as handbags, belts and footwear (lead) and cookies made with molasses (lead). Many of these private enforcement actions have been co-litigated with the California Attorney General and other public enforcement agencies.

Mr. Somers also has substantial experience in false advertising and unfair competition matters. Mr. Somers recently was lead counsel in a greenwashing case against a company making false environmental claims about disposable plastic bags. He has also represented a group

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of plaintiffs in a case against major inkjet printer manufacturers regarding false and mis-leading print speed representations. Mr. Somers was Liaison Counsel in a complex coordinated proceeding alleging violations of the Truth In Lending Act by California automobile dealers that resulted in industry wide changes in advertising practices. In a class action case alleging violations of the Fair Debt Collection Practices Act against Chase Bank, Mr. Somers negotiated a significant class settlement.

Mr. Somers founded the Lexington Law Group in 1996 and is a principal of the firm. He currently serves on the Advisory Board of the Prop. 65 Clearinghouse. Mr. Somers has been selected as a California SuperLawyer in each year since 2014. When not working, Mr. Somers enjoys spending time with his wife and children, skiing down large mountains and playing golf.

## **Alejandro Bras**

Associate, Morrison & Foerster

Alejandro Bras is an attorney in Morrison & Foerster's Environment and Energy Group. Mr. Bras focuses primarily on environmental, resource, and consumer product-related litigation; federal and California environmental compliance and regulatory matters; and environmental liability and risk assessment for complex bankruptcies and corporate transactions.

Mr. Bras has represented clients in both federal and California courts, as well as before environmental regulatory agencies, and has provided environmental counseling on multi-billion dollar transactions. He frequently defends small and industry-scale California Proposition 65 actions, multiparty actions, and complex designation actions and works closely with expert witnesses on sophisticated science and evidentiary issues. He also advises clients with respect to air, water, and product- and chemical-related agency regulations. Mr. Bras' clients operate in a range of industries, from consumer products, electronics, and food, to energy and real estate.

Mr. Bras is actively involved in the firm's pro bono work. He has represented low-income individuals in housing disputes; contributed to the conservation efforts of The Nature Conservancy; overseen the work of Berkeley law students in providing legal assistance to Iraqi refugees; worked alongside an international nonprofit to aid in the protection and preservation of a designated World Heritage Site; and assisted with the development of guidelines and best practices for project environmental impact assessments in Central and South America.

Before joining Morrison & Foerster, Mr. Bras served as an extern for the Honorable John A. Mendez of the United States District Court in the Eastern District of California.

Mr. Bras received his J.D., with pro bono distinction, from Stanford Law School. He was an executive board member of the Stanford Latino Law Students Association and an editor of the Stanford Law & Policy Review. Mr. Bras also worked at the Environmental Law Clinic at Stanford, advising nonprofit clients on a variety of issues involving natural resources use, climate change, and marine resources. Prior to law school, Mr. Bras received his B.A., cum laude, in politics from Princeton University.

## **Stan Landfair**

Partner, Dentons

Stanley W. Landfair counsels and represents companies in the chemicals, aerospace, electronics and other manufacturing industries on environmental compliance matters and represents them in environmental enforcement proceedings and other litigation matters. He has represented clients before administrative forums, state and federal trial and appellate courts and the US Supreme Court.

Mr. Landfair is known for his experience in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and counterpart laws in California that regulate the manufacture, distribution, sale and use of pesticides. He counsels clients regarding their requirements under these laws, and has defended numerous federal and state enforcement actions against manufacturers and distributors. Mr. Landfair also is known for his vigorous defense of intellectual property rights of companies that submit trade secret health and safety testing data to federal and state agencies under FIFRA and state laws.

Mr. Landfair is similarly well-known for his experience in the Toxic Substances Control Act (TSCA) and similar laws in other countries that regulate the manufacture, distribution and use of chemicals in the United States and around the world. He has defended manufacturers of chemical, petroleum, aerospace and electronic products in TSCA enforcement actions.

In California, Mr. Landfair is a recognized authority on "Proposition 65," the State's Safe Drinking Water and Toxic Enforcement Act of 1986. He has defended over a thousand companies against "failure to warn" claims under the Act, arising from the sale and use of products such as asphalt roofing materials, orthodontic devices, intravenous feeding devices, dental amalgam, firearms and bullets, cookware, pipe nipples, smoking cessation devices, dry cleaning fluid, tobacco smoke, bulk chemicals, paints, and spray paints. Mr. Landfair won landmark victories in the case of *As You Sow v. Shell Oil Company*, resulting in a ruling Proposition 65 cannot be enforced against out-of-state manufacturers of workplace chemical products; and *Consumer Defense Group v. ARCO*, resulting in a ruling that the Proposition 65 "discharge prohibition" does not give rise to claims for the "passive migration" of chemicals after a discharge occurs.

Mr. Landfair also advises and represents companies and industry task forces in preventing the unwarranted listing of chemicals under Proposition 65. He has appeared numerous times before the Cancer Identification and Developmental and Reproductive Toxicant Identification Committees, regarding chemicals such as PFOA, Bisphenol-A, PFOS, Chlorpyrifos, and others.

Mr. Landfair co-authored the TSCA Handbook (Government Institutes, Fourth Edition, 2006) and contributed to the Environmental Law Handbook (Government Law Institutes, Twentieth Edition, 2009).

## **Carol Monahan-Cummings**

Chief Counsel, OEHHA

Carol Monahan Cummings was appointed Chief Counsel at the Office of Environmental Health Hazard Assessment (OEHHA) in October 2003 and was reappointed by Governor Brown in December 2012. In this capacity, Ms. Cummings advises the Director, other Executive Office members, as well as OEHHA staff on all legal matters affecting the Office. Principal areas of practice include: Proposition 65 implementation, developing and amending various regulations, serving as counsel for the Carcinogen Identification Committee, the Developmental and Reproductive Toxicant Committee, and the California Biomonitoring Scientific Guidance Panel as well as serving as liaison to the Attorney General's Office for all lawsuits where OEHHA is a party.

Prior to coming to OEHHA Ms. Cummings served as an Assistant General Counsel for the California Environmental Protection Agency between September 2001 and October 2003. She was primarily responsible for providing legal support for the Environmental Justice program, legal advice concerning ethics and personnel issues for the Agency as well as for coordinating cross-media enforcement task forces, investigations and related litigation.

Before coming to Cal/EPA, Ms. Cummings was a prosecutor with Sacramento County where she prosecuted criminal and civil environmental enforcement cases including illegal hazardous waste transportation, storage and disposal cases; and water and air pollution cases.

Ms. Cummings received her law degree from Empire College School of Law in Santa Rosa, California where she graduated Magna Cum Laude in 1995.