

ANNUAL CONFERENCE

prop.65clearinghouse

MONDAY, SEPTEMBER 24, 2018

JULIA MORGAN BALLROOM

11:15 to 12:15

Federal Preemption: Legislative and Legal Challenges Facing Prop. 65

Federal Preemption

Moderator: Hon. **Richard Kramer** (ret.) San Francisco Superior Court, JAMS
Panel **Howard Hirsch**, Principal, Lexington Law Group
Trent Norris, Partner, Arnold & Porter Kaye Scholer
David Roe, Principal, Law Offices of David Roe
Karyn Schmidt, Senior Director, American Chemistry Council

Description

This panel will discuss recent cases where federal preemption has been an issue. It will also discuss what the potential impact of federal legislation (HR 6022 and S3109) would have on Prop. 65.

Bios

Hon. **Richard Kramer** (ret.)
San Francisco Superior Court, JAMS

Hon. Richard Kramer (Ret.) joins JAMS as a full-time neutral after nearly two decades as a well-respected judge in San Francisco Superior Court. For the thirteen years prior to joining JAMS, he presided over cases in the Court's Complex Litigation Department. Lauded as astute and energetic by his fellow judges, he has also been called the "architect of complex litigation" management by attorneys. He is highly regarded for his smart, practical approach to difficult cases as well as his pragmatic approach towards settlement.

During his prestigious judicial career, Judge Kramer presided over all stages of civil cases, particularly those designated as "complex" due to their need for close judicial supervision. He is known for his hands-on management of all phases of the case, including organizing the progress of the litigation, establishing cost-efficient discovery plans and resolving discovery disputes, as well as offering appropriate assistance with settlement. Judge Kramer has heard hundreds of cases involving a wide array of legal issues in such areas as consumer and commercial financial services, employment law, antitrust, unfair business practices, taxation, insurance coverage and allocation, construction defects, interpretation of legislation, judicial

review of administrative determinations, drug and medical device mass torts, water rights, environmental claims (including under California Proposition 65), and a variety of complicated contractual and business disputes.

Prior to his time on the bench, Judge Kramer practiced commercial trial law for 24 years in practice areas that included anti-trust, restructuring of businesses in the context of bankruptcy, and general commercial litigation. He tried dozens of cases throughout California and in several states, including class actions, environmental litigation, employment cases, construction disputes, SEC Enforcement Division investigations, shareholder class actions, fraud cases, and banking matters.

Howard Hirsch

Principal, Lexington Law Group

Howard Hirsch has devoted his career to representing plaintiffs in public interest litigation to enforce consumer protections, conserve natural resources, and protect human health from toxic chemicals. After obtaining two years of training and experience at complex litigation with a large commercial law firm, Mr. Hirsch spent five years as a staff attorney at a national, non-profit environmental group representing individuals and non-profit groups in citizen suits against polluters under the Clean Water Act, Clean Air Act, and other federal statutes.

Mr. Hirsch joined the Lexington Law Group in 2003 and is a principal of the firm. Since joining LLG, Mr. Hirsch's practice has included significant experience enforcing California's Proposition 65 and litigating class actions against, among others, technology companies, airlines, and health care providers and insurers. These cases have resulted in significant reductions in human exposures to toxic chemicals, changes in deceptive business practices, and the recovery of millions of dollars for the benefit of consumers. Mr. Hirsch has also volunteered his legal services to the homeless community of San Francisco and currently serves as a volunteer arbiter for the San Francisco Department of Human Services resolving disputes between homeless shelters and their residents.

Mr. Hirsch graduated from the University of California Berkeley Boalt Hall School in 1996 and from Boston College in 1993. When not practicing law, Mr. Hirsch enjoys listening to music and spending time outdoors with his family.

Trent Norris

Partner, Arnold & Porter Kaye Scholer

Trent Norris litigates complex scientific and technical disputes involving consumer protection, advertising, environmental, product safety, and food and drug law.

Mr. Norris represents manufacturers and retailers of everyday products and services. His work involves diverse products, technologies, and industries, including foods, beverages, dietary supplements, cosmetics, hospitality, medical devices, electronics, vehicles, and pharmaceuticals. He often represents trade associations and joint defense groups in strategic counseling and litigation.

Mr. Norris represents clients regarding regulation of consumer products and services, with an emphasis on reporting and labeling requirements. Common issues include preemption, commercial speech, interstate commerce, citizen enforcement, jurisdiction, and class action requirements.

Mr. Norris has advised and defended hundreds of companies regarding California's unique toxics and labeling law, Proposition 65, and California's expansive consumer protection laws. Chambers USA (2012) notes that he "is renowned as one of the region's leading experts in toxic tort and Proposition 65 matters. Clients particularly laud his ability to focus on the issues at the core of the problems they take him."

Mr. Norris served as a legislative aide to a US Senator and as an Editor of the Harvard Law Review. He headed the firm's Northern California offices from 2008 to 2013.

Mr. Norris is registered as a lobbyist before the California Environmental Protection Agency and its sub-agencies.

David Roe

Principal, Law Offices of David Roe

David Roe was a Senior Attorney for the Environmental Defense Fund for 25 years, during which he drafted Proposition 65. He was educated at Yale, Oxford, and Yale Law School.

Karyn Schmidt

Senior Director, American Chemistry Council

Karyn M. Schmidt is a Senior General Counsel at the American Chemistry Council (ACC). Ms. Schmidt provides legal and policy advice to the Plastics Division of ACC and she also supports ACC's Value Chain Outreach committee, which focuses on value chain efforts to improve sustainability of products and services through the development and deployment of sustainability standards and initiatives. With the Value Chain Outreach activity as well as legal support to various chemical and plastics-specific groups, she has focused on the building and construction, children's products, electronics, plastics packaging markets and the retail sector.

Ms. Schmidt has been with the American Chemistry Council since 2000 and has served a wide range of ACC's chemical-specific and plastics-specific products groups. She has extensive experience supporting integrated strategic efforts to prevent and challenge unwarranted state and federal legislative and regulatory restrictions on chemicals and plastics, including preparing and delivering comments and testimony as well as litigation management. She has also worked to create private sector solutions to a variety of sustainability challenges in lieu of regulation.

Before joining ACC in 2000, Ms. Schmidt was in private practice in Charleston, West Virginia, where her work included chemical regulatory matters and environmental and commercial litigation. Ms. Schmidt received her J.D. from the College of William and Mary, Marshall-Wythe School of Law in 1991, and her B.S. from James Madison University in 1988 magna cum laude with distinction.