

Andrew H. Struve

Orange County, California
Shareholder

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Areas of Practice & Industry Specialties

Health Care Law; Litigation



Andrew Struve is a member of the Health Care and Litigation practice groups in the Firm's Orange County office. Mr. Struve focuses his practice on complex healthcare litigation and unfair competition actions as well as regulatory compliance matters. He has particular expertise in provider and plan representation, private equity, insurance, and the defense of consumer suits.

An experienced litigator in the healthcare field, Mr. Struve has litigated both provider and health plan disputes, class and other representative actions, federal and state qui tam litigation, antitrust suits, RICO actions, managed care contracting suits, earnout disputes, partnership actions, bad faith claims, and payment disputes. He has also conducted numerous sensitive internal investigations and compliance audits, as well as responses to governmental and commercial billing/coding challenges.

Mr. Struve's additional litigation experience encompasses many other areas of the law. In the managed care and insurance fields, he has litigated numerous fraud and other class actions in addition to individual unfair business practices suits, bad faith actions and rescission litigations. He has represented clients in significant matters related to real estate, title insurance, intellectual property, false advertising, employment, misappropriation of trade secrets, product liability, professional liability, partnerships, indemnity, contribution, subrogation, and other areas of the law.

In addition to leading litigation teams in healthcare disputes in federal and state courts across the United States, Mr. Struve serves as national governance, regulatory, and compliance counsel for a number of companies and many healthcare clients.

Mr. Struve is an Elected Member of the American Law Institute, and is rated AV-Preeminent by Martindale-Hubbell, the highest rating it confers.

Representative Matters

- *Epstein v. Vision Service Plan*, 56 Cal.App.5th 223 (2020): affirming decision below rejecting contentions that Plan's provider dispute resolution procedures were violative of Knox-Keene Act; were unconscionable; were not subject to the FAA due to McCarran-Ferguson preemption, and other claims.
- *HealthSmart Benefit Solutions, Inc. v. Principia Underwriting*, (W.D. La. 2014): Denying insurers' multiple motions to dismiss client's insurance bad faith claims; holding both former insurer, and replacement insurer, liable under claims-made-and-reported policies, where claim was "made" under first policy, but insured was not served until after inception of second.
- *MacRae v. HCR Manor Care Services*(C.D. Cal. July 2014): Dismissing Consumer Legal Remedies Act and Unfair Competition claims based on alleged misrepresentations.
- *Wehlage v. EmpRes Healthcare*(N.D. Cal. Feb. 2012): Dismissing claims against affiliated medical providers and parent company due to plaintiff's lack of standing.
- *Walsh v. Kindred Healthcare et al.*, 798 F.Supp.2d 1073, (N.D. Cal. 2011): Dismissal of Unfair

Competition Law claim against nursing homes for alleged understaffing of facilities.

- *Kinder v. Allied Interstate*, (Cal. 4thDist, 2ndDivision): Affirming dismissal of 165 consolidated TCPA actions due to plaintiff's failure to post \$1.5 million security bond following a grant of defense motion for same.
- *Nieto v. Blue Shield of California Life & Health Insurance Co.*, 181 Cal.App.4th 60 (2010): Affirming summary judgment for insurer and making new law on issues of post-claims underwriting and an insurer's right to rescind.
- *Alvarado v. Sun Healthcare et al.*, 153 Cal.App.4th 1292, (2007): First-impression decision affirming dismissal, on demurrer, of Unfair Competition Law action against client nursing homes for alleged violations of statutory nurse hours staffing requirements; the court held that the equitable abstention doctrine foreclosed the plaintiff's attempt to usurp the assigned state agency's regulatory authority over nurse staffing.
- *C.C. v. [Confidential]*, (Cal. 2ndDist., 8th Div.): Affirming dismissal of plaintiff's entire action under sham pleading doctrine.
- *Brockovich v. Kindred Healthcare, Inc.*, (D. Cal. Oct. 2006): Obtained dismissal on the pleadings of claims against hospitals and nursing homes seeking to recover sums allegedly due to the federal government under the Medicare Secondary Payer Act.
- *Pitluck v. Beverly Enterprises et al.*, No. B1796802d Dist., Nov. 10, 2005: Affirming dismissal of Unfair Competition Law action against client nursing home providers, alleging unlawful and unfair practices relating to the purchase of indemnity insurance for claims made under California's Elder Abuse Act.
- *Boales v. Blue Shield of California*, No. B175185 Cal. 2nd. Dist, 3rd: Affirming dismissal based on failure to exhaust administrative remedies.
- *Grauberger v. Saint Francis Hospital et al.*, 169 F.Supp.2d 1172, (N.D. Cal. 2002): Dismissal of RICO claims against hospital system for alleged improper lien and pricing practices.
- *Swanson v. St. John's Regional Medical Center*, 97 Cal.App.4th 245 (2002): Affirming dismissal on demurrer of unfair competition suit challenging hospital's right to assert statutory liens.

Publications

- On the Move, *Daily Journal*, September 7, 2021
- Status Update: Sephora joining 2 local Kohl's; USPS is hiring 'feverishly' for holidays, *The Orange County Register*, September 6, 2021
- Buchalter Welcomes New Health Care Shareholder in Orange County, *General Counsel News*, September 1, 2021
- Wake Up Call: Delta Variant Haunts Law Firms' Fall Return Plans, *Bloomberg Law*, September 1, 2021
- Buchalter Welcomes New Health Care Shareholder, *Attorney at Law Magazine*, August 31, 2021

Presentations

- Speaker, "COVID-19 Financial Relief for Providers—Supplemental Payments, Loans, and Beyond," Webinar, April 16, 2020
- Presenter, "Getting it Right the First Time: Learning from Today's Top Verdicts and Settlements," 8th Annual Conference on Long Term Care, January 18, 2018
- Co-Presenter, "Clowns to the Left of Me, Jokers to the Right: What To Do? Dealing with Unethical Adversaries, Co-Counsel and Even Clients Who Don't Play by the Rules," New Media Legal Publishing and West LegalEdCenter, May 27, 2017
- Presenter, "How Will the Trump Administration Impact Healthcare Litigation," Bloomberg BNA, March 7, 2017
- Co-Presenter, "ACA-Driven Litigation: Cases to Watch (And What's Next)," Bloomberg BNA, March 30,

2016

- Co-Presenter, "Litigation Management for In-House Counsel," New Media Legal Publishing and West LegalEdCenter, November 21, 2015
- Presenter, "Healthcare Compliance and Fraud & Abuse Legal Developments," May 1, 2014
- Presenter, "Persuasive Legal Writing," New Media Legal Publishing and West LegalEdCenter, April 17, 2013
- Presenter, "Health Care Law and Ethics Spotlight: Current Legal Ethics Issues for In-House Attorneys," New Media Legal Publishing and West LegalEdCenter, December 9, 2009
- Co-Presenter, "The American Law Institute, An Insider's Perspective," The American Law Institute, An Insider's Perspective, September 1, 2007
- Presenter, "Hospital Liens: Current Legal Challenges," Veterans Health Administration, July 1, 2002

Education

Mr. Struve earned his J.D. *summa cum laude* from Western State University College of Law and was the valedictorian of his class. He earned his B.A. from Whittier College.

Bar Admissions

- California

Court Admissions

- U.S. District Court for the Central District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. District Court for the Eastern District of California
- U.S. Court of Appeals for the Ninth Circuit, 2017