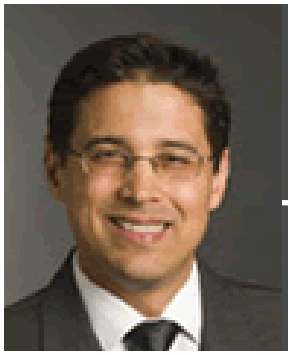


BREAKING BAD: CREATIVE SOLUTIONS FOR LITIGATING IN CHALLENGING JURISDICTIONS

Greg Marshall
Snell & Wilmer (Phoenix, AZ)
602.382.6514 | gmarshall@swlaw.com

Breaking Bad – Creative Solutions for Litigating in Challenging Jurisdictions

Greg Marshall

Defending businesses in unfamiliar and challenging jurisdictions – like New Mexico – can present unique obstacles and unusual challenges. Greg Marshall will discuss creative solutions to defending problematic consumer litigation in places where the chips seem stacked against the company.

Every year the American Tort Reform Association ("ATRA") compiles its infamous list of "judicial hellholes" in which that organization attempts to identify where throughout the United States judges in civil cases seem to apply laws and court procedures unfairly, generally to the disadvantage of corporate defendants.[1] While the report attempts to single out the most unfavorable venues – California, Florida, and New York among the top – the list is by no means all-inclusive.

Real or perceived, unfairness in the civil justice system translates into big dollars in the aggregate. It drives up defense costs and verdicts, and consequently drives up settlements. To illustrate, the latest "judicial hellhole" report cited an October 2018 study by the U.S. Chamber Institute for Legal Reform, which estimated payments of $244 billion to injured claimants during calendar year 2016 (the most recent year such data was available for analysis), and another $135 billion paid to the attorneys prosecuting and defending those cases.[2] These are enormous sums.

But we hardly need to cite studies or statistics, as experienced counsel are acutely aware of the impact of venue on litigation costs, settlement values, and the size of judgments. Regardless of whether you agree with the methodologies employed by ATRA, experienced counsel know the warning signs of an unfriendly venue: courts who require only the barest of pleading standards; courts who rarely grant dispositive motions; courts with little or no proportionality in discovery matters; jurisdictions with generous consumer protection laws; and courts with a long history of head-line grabbing, eye-popping civil judgments.

My primary practice area is consumer financial services litigation, which means most of my clients are banks and lenders. Even with the height of the mortgage crises ten (10) years over, the political environment and public sentiment remains starkly negative, amplifying the effect of being sued in one of these challenging jurisdictions. This article discusses litigation strategies that can be employed when you find yourself in one of them.

Get out of Dodge (if you can)!

While it is axiomatic that you should raise personal jurisdiction challenges when you have them, the U.S. Supreme Court gave corporate defendants a powerful new argument in the personal jurisdiction area to limit the reach of multi-state putative class actions when they are filed in unfavorable jurisdictions, through the Bristol-Myers decision.[3] In-house counsel defending class and mass actions need to be aware of Bristol-Myers, and the brewing circuit split on whether it applies to class actions. To set the stage, we'll briefly review the law of personal

1 www.judicialhellholes.org

2 www.instituteforlegalreform.com

3 Bristol-Myers Squibb Co. v. Superior Court, 137 S.Ct. 1773 (2017).

jurisdiction.[4] Personal jurisdiction over a defendant must exist in one of two variants—general or specific.[5] General jurisdiction exists against a corporate defendant where that defendant is "at home"—not everywhere it does business.[6] "With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction'."[7] In contrast, specific personal jurisdiction is available only when the particular claim in suit "arise[s] out of or relate[s] to" the "defendant's contacts with the forum."[8]

Bristol-Myers — a company incorporated in Delaware and headquartered in New York — was sued in California state court by hundreds of plaintiffs from around the country over its blood-thinning medication, Plavix, in a "mass action."[9] Bristol-Myers argued that the court lacked jurisdiction over non-residents' claims. The California courts ruled against it, but the U.S. Supreme Court reversed. Applying settled specific jurisdiction principles, the Court held that because the non-residents were not prescribed, did not purchase, did not ingest, nor were injured by Plavix in California, there was no "connection between the forum and the specific claims at issue." The Court explained that "[t]he mere fact that [some] plaintiffs were prescribed, obtained, and ingested Plavix in California — and allegedly sustained the same injuries as did the nonresidents — does not allow the State to assert specific jurisdiction over the non-residents' claims." In sum, in Bristol-Myers, the Supreme Court mandated that each plaintiff must establish personal jurisdiction regardless whether it is established for another claimant in the action.

Because Bristol-Myers was decided in the mass action context, it doesn't expressly apply to class actions, as Justice Sotomayor observed in her dissent. While there may be reasons to distinguish mass and class actions,[10] the question has continued to percolate in the lower courts since, resulting in a notable split between the Northern District of Illinois (whose judges have consistently held that Bristol-Meyers applies to class actions)[11] and the Northern District of California (whose judges have generally disagreed).[12] None of the circuit courts have yet decided the issue. While the lower courts go both ways on the question, there is strong momentum in favor of applying Bristol-Meyers to class actions.[13]

If you are hit with a multi-state class action – and certainly a multi-state mass action – take a careful look at the developing law on Bristol-Myers and consider moving to dismiss (or moving to strike) non-resident claims as a means of removing the bulk of the claims (and the company's exposure) from an otherwise unfavorable jurisdiction.

Don't give up too easily on removal.

If you are stuck in a challenging jurisdiction, usually your next best option is removal to federal court. Federal judges are appointed for life, so they don't feel the pressures of appealing to constituents or campaign donors, as some of their state court counterparts. They tend to have more experience, better resources, and published rulings, making their decisions more predictable. Federal courts typically have a higher pleading threshold, a more rigorous expert admissibility threshold, better proportionality in

4 The need for personal jurisdiction over an out-of-state defendant stems from the Due Process Clause, which "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 268, 269, 100 S. Ct. 559, 567 (1980).

5 See Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011).

6 See Daimler AG v. Bauman, 571 U.S. 117, 139, 134 S. Ct. 746, 762 (2014) (error to conclude that defendant doing extensive business in California and having multiple facilities in California was "at home" in California).

7 Daimler AG, 571 U.S. at 137 (citations omitted); see also BNSF Ry. Co. v. Tyrrell, 137 S.Ct. 1549, 1558 (2017) ("The 'paradigm' forums in which a corporate defendant is 'at home,' . . . are the corporation's place of incorporation and its principal place of business."). See also, e.g., Cahen v. Toyota Motor Corp., 147 F. Supp. 3d 955, 964 (N.D. Cal. 2015), aff'd, 2017 WL 6525501 (9th Cir. Dec. 21, 2017) (no general jurisdiction over Delaware corporation with its principal place of business in Michigan).

8 Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cty., 137 S. Ct. 1773, 1780 (2017) (quoting Daimler, 134 S. Ct. at 754).

9 A "mass action" is a civil action involving numerous plaintiffs against one or a few defendants.

10 Fitzhenry-Russell v. Dr. Pepper Snapple Group, 2017 WL 4224723 (N.D. Cal. Sept. 22, 2017) (noting that unlike class actions, each plaintiff in mass actions like Bristol-Myers was a real party-in-interest); but see Practice Mgmt. Support Servs., Inc. v. Cirque du Soleil, Inc., 301 F.Supp.3d 840, 861 (N.D. Ill. 2018) (noting that Rule 23 "must be interpreted in keeping with Article III constraints, and the Rules Enabling Act, which instructs that the federal court rules of procedure shall not abridge, enlarge, or modify any substantive right.") (citations and internal quotation marks omitted).

11 Anderson v. Logitech Inc., 2018 WL 1184729 (N.D. Ill. March 7, 2018) (striking nationwide class claims); DeBernardis v. NBTY, Inc., No. 17 C 6125, 2018 WL 461228, at *2 (N.D. Ill. Jan. 18, 2018) (dismissing counts seeking to recover on behalf of out-of-state class members, noting "The Court believes that it is more likely than not based on the Supreme Court's comments about federalism that the courts will apply Bristol-Myers Squibb to outlaw nationwide class actions in a form, such as in this case, where there is no general jurisdiction over the Defendants."); McDonnell v. Nature's Way Products, LLC, 2017 WL 4864910 (N.D. Ill. October 26, 2017) (one of the first decisions to apply the reasoning of Bristol-Myers to class actions) ("a state may not assert specific jurisdiction over a nonresident's claim where the connection to the state is based on the defendant's conduct in relation to a resident plaintiff."); Practice Mgmt. Support Servs., Inc., No. 14 C 2032, 2018 WL 1255021, at *18 ("Because these nonresidents' claims do not relate to defendants' contacts with Illinois, exercising specific personal jurisdiction over defendants with respect to them would violate defendants' due process rights. Thus, . . . the Court finds it appropriate to dismiss the claims of the non-Illinois-resident class members.").

12 Fitzhenry-Russell, 2017 WL 4224723; see also Broomfield v. Craft Brew Alliance, 2017 WL 3838453 (N.D. Cal. Sept. 1, 2017) (deferring consideration of personal jurisdiction arguments under Bristol-Myers until class certification).

13 See, e.g., Roy v. FedEx Ground Package System, Inc., No. 3:17-CV-30116-KAR, WL 6179504, at *4 (D. Mass. Nov. 27, 2018) ("Bristol-Myers requires that the defendant be subject to specific jurisdiction as to the claims of FLSA opt-in plaintiffs in putative collective actions. Similarity of claims, alone, is not sufficient to extend personal jurisdiction to out-of-state opt-in plaintiffs."); Maclin v. Reliable Reports of Texas, Inc., 314 F. Supp. 3d 845, 850 (S.D. Ohio Oct. 31, 2018) (dismissing non-Ohio plaintiffs where the court lacked general jurisdiction over the corporate defendant); Chavez v. Church & Dwight Co., 2018 WL 2238191, at *11 (N.D. Ill. May 16, 2018) ("The Court therefore concludes that Bristol-Myers extends to class actions, and that Chavez is therefore foreclosed from representing either a nationwide and multistate class comprising non-Illinois residents in this suit."); Am.'s Health & Res. Ctr., Ltd. v. Promologics, Inc., No. 16 C 9281, 2018 WL 3474444, at *2 (N.D. Ill. July 19, 2018) ("The Court lacks jurisdiction over the Defendants as to the claims of the nonresident, proposed class members. As such …those class members who are not Illinois residents and who allegedly received the fax outside of this state's borders may not be part of this case."); McDonnell v. Nature's Way Prod., LLC, No. 16 C 5011, 2017 WL 4864910, *5 (N.D. Ill. Oct. 26, 2017)(dismissing, for lack of personal jurisdiction, the portions of plaintiff's class action complaint that encompassed claims on behalf of out-of-state putative class members); Spratley v. FCA US LLC, 2017 U.S. Dist. LEXIS 147492 at * 18 (N.D.N.Y. September 12, 2017) (same). See also Wenokur v. AXA Equitable Life Ins. Co., No. CV-17-00165-PHX-DLR, 2017 WL 4357916 at* 4, n. 4 (D. Arizona October 2, 2017) (determining, during a dispute over venue, the impact of Bristol-Myers: "[t]he Court also notes that it lacks personal jurisdiction over the claims of putative class members with no connection to Arizona and therefore would not be able to certify a nationwide class.").

discovery disputes, and other benefits.[14] While there may not be any empirical studies that show a clear pro-plaintiff bias in state courts, at least one study has shown that plaintiffs suffer a significant drop in win rates after removal.[15]

Savvy plaintiff lawyers know this, and they structure their complaints in ways that resist removal. While they may bury federal questions in state common law claims of general application – muddying the waters on whether they are state or removable federal claims – they will almost invariably attempt to join some nominal, local defendant against whom they have no intention of pursuing a judgment, just to defeat removal.

Concerned with this sort of jurisdictional manipulation, the U.S. Supreme Court recognized the fraudulent joinder doctrine in 1907, ignoring the citizenship of a resident defendant who had no real connection to the lawsuit, thereby enforcing limits on a plaintiff's right to determine the removability of a case.[16] But the Court hasn't spoken to the issue of fraudulent joinder in almost 100 years,[17] resulting in different standards employed by the circuit courts. For example, the Third Circuit's standard is very high and requires that the claim against the resident defendant be "wholly insubstantial and frivolous," akin to a Rule 11 standard.[18] Other circuit courts, like the Ninth, find that fraudulent joinder exists "[i]f the plaintiff fails to state a cause of action against a resident defendant, and the failure to is obvious according to the settled rules of the state."[19]

Defendants usually only have one shot at removal, and one narrow window in which to remove (generally, 30 days after service). As the basis for removal must be set forth in the removal notice, and Defendants bear the burden of proof, there can be a lot of work to do in a limited amount of time. In fact, in light of the lag time between service and outside counsel retention, the window can be very narrow. Adding to the time crunch, defendants must secure consents from all defendants[20] to remove (except the fraudulently-joined defendant).

When you are stuck in a challenging jurisdiction, have your outside counsel expedite review of the claims against any diversity defeating defendants, even at the expense of delaying their assessment of the claims against the company. Consider taking an aggressive stance on removal too. There is little downside risk to making an aggressive removal argument other than the expense of briefing a motion to remand (and possibly paying your opponents' fees occasioned by a wrongful removal). In the meantime, the prospect of a federal court venue may help facilitate a pragmatic settlement, or provide much needed time to investigate and assess the claims.

Remember, Article 3, section 2, of the U.S. Constitution provides original, federal jurisdiction of controversies between citizens of different states, and right of removal has been enjoyed by defendants since the Judiciary Act of 1789. Defendants should not be shy about enforcing it.

There's gold in them bankruptcies.

Whether defending a consumer class action or individual claim, you can find powerful defenses when consumers emerging from bankruptcy file lawsuits that accrued before their bankruptcy discharge orders were entered. Consider including on your new case intake checklist a bankruptcy search regarding the plaintiff.

Individuals filing for bankruptcy under Chapters 7[21], 11[22], or 13[23] are required to disclose their income and assets in their schedules or disclosure statements, and expressly among assets are legal claims. Courts have held that by not disclosing legal claims, the debtors are taking the position that they do not have any.[24] The position is "accepted" by the bankruptcy court when it grants the discharge or plan confirmation. By later filing a lawsuit based on a pre-petition claim, the plaintiff is taking an inconsistent position in an unfair manner, having already received the benefit of the bankruptcy stay and discharge based on an incomplete disclosure of assets.

There is a legal doctrine that prevents this injustice – the judicial estoppel doctrine.[25] The doctrine generally

14 See Paul Rosenthal, Improper Joinder: Confronting Plaintiffs' Attempts to Destroy Federal Subject Matter Jurisdiction, 59 Am. U. L. Rev. 49, 50 (2009); Thomas A. Mauet, The New World of Experts in Federal and State Courts, 25 Am. J. Trial Advoc. 223, 234 – 35 (2001).

15 See Kevin M. Clermont & Theodore Eisenberg, Do Case Outcomes Really Reveal Anything about the Legal System? Win Rates and Removal Jurisdiction, 83 Cornell L. Rev. 581, 593 (1998) (concluding that, generally, a plaintiff had a 71% chance of winning a case brought in state court, and if the case was removed to federal court, that rate decreased to 34%.).

16 Wecker v. National Enameling & Stamping Co., 204 U.S. 176 (1907).

17 The last case where the Supreme Court addressed allegations of fraudulent joinder was Wilson v. Republic Iron & Steel Co., 257 U.S. 92 (1921).

18 Batoff v. State Farm Ins., Co., 997 F.2d 848, 852 (3d Cir. 1992).

19 McCabe v. Gen. Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987).

20 Some courts only require the consent of other served defendants.

21 Hamilton, 270 F.3d at 783; Hay v. First Interstate Bank of Kalispell, N.A., 978 F.2d 555, 557 (9th Cir. 1992).

22 11 U.S.C. § 1125(a)(1) (Chapter 11).

23 Because a chapter 13 bankruptcy estate includes property acquired by a debtor after the filing of the petition but before the case is closed, the debtor may be judicially estopped from asserting claims arising post-petition that debtor never disclosed in a supplemental or amended schedule of assets and liabilities. See, e.g. In re Kemp, Case No. 03-52422, 2011 Bankr. LEXIS 3197, at *9-11 (W.D. La. Aug. 19, 2011) ("[T]he weight of authority imposes a continuing obligation on Chapter 13 debtors to disclose post-petition causes of action, and a debtor's failure to disclose such causes of action may result in application of judicial estoppel.").

24 Hamilton, 270 F.3d at 784 ("[A] debtor who failed to disclose a pending claims as an asset in a bankruptcy proceeding where debts were permanently discharged was estopped from pursuing such claim in a subsequent proceeding." (citing Hay, 978 F.2d at 557)); Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 416 (3d Cir. 1988); Payless Wholesale Distribs., Inc. v. Alberto Culver, Inc., 989 F.2d 570, 571 (1st Cir. 1993).

25 Whaley v. Belleque, 520 F.3d 997, 1002 (9th Cir. 2008); New Hampshire v. Maine, 532 U.S.

requires the following: (1) that the party's positions must be clearly inconsistent; (2) that the party must have succeeded in persuading a court to accept the earlier position; and (3) the party seeking to assert the inconsistent position must stand to derive an unfair advantage if the court adopts the new position.[26]

Even if in response the plaintiff petitions to reopen the bankruptcy and amend the schedules to include the legal claim, in a Chapter 7 bankruptcy proceeding the legal claim would then be the property of the bankruptcy estate, and therefore belong to the bankruptcy trustee, not the plaintiff.[27] In that situation, the plaintiff would lack standing to prosecute the claim.[28] While the bankruptcy trustee is motivated to collect money for the creditors of the bankruptcy estate, and thus motivated to pursue a valid legal claim, dealing with a level-headed, unemotionally-involved bankruptcy trustee is far more likely to result in a resolution favorable to the company.

Don't give up on pick-off strategies just yet.

In 2016, the U.S. Supreme Court decided Campbell-Ewald Co. v. Gomez – a case arising under the Telephone Consumer Protection Act – and concluded that a defendant's unaccepted offer to fully satisfy the plaintiff's clam does not moot the plaintiff's case. In other words, a defendant may not "pick off" individually-named plaintiffs merely by offering to settle their individual claims at full value.

But the Court's decision left open the possibility that a defendant may achieve the same result by actually paying, rather than merely offering to pay, the plaintiff the full amount of the individual claim. Specifically, the majority opinion did not decide whether a plaintiff's claim would become moot where "a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff."[29] As Justice Roberts noted in his dissent, "the majority's analysis may have come out differently if Campbell had deposited the offered funds with the District Court,"[30] and Justice Thomas' opinion suggests that he might have reached a different conclusion had Campbell just paid Gomez's claims or taken other "further steps" beyond an offer to pay.[31]

Accordingly, in appropriate cases, consider employing pick-off strategies to moot litigation when it starts, particularly when the amount in dispute is nominal and certain, and when the company has an existing account with the plaintiff such that it can simply credit the account for the disputed amount.

Don't take nominal damages claims for granted.

Individual consumer cases with nominal damages can be deceptively dangerous because companies are not motivated to devote a lot of resources to defending them. Many of the challenging jurisdictions that are the focus of this article provide for consumer-friendly claims of wide application and generous remedies, like treble damages and attorneys' fees. For example, New Mexico provides a statutory cause of action called "Unfair Practices," which provides for treble damages and attorneys' fees to the prevailing consumer.[32] The application of that tort is as wide as the name suggests.

In these cases, attorneys' fees are the real concern, which is easy to overlook until they have eclipsed actual damages. They can turn a small damages case into a relatively high one. The risk is compounded if punitive damages are alleged. While there are certainly due process limitations as to what a punitive damages award can be in relation to actual damages (typically no more than 10 to 1),[33] there's no definitive authority prohibiting the use of an attorney fee award as a multiplier for punitive damages.[34]

When you're hailed into an unfriendly venue, don't take nominal damages cases for granted when the law provides for attorneys' fees to the prevailing consumer. If you can't settle them quickly, spend the resources needed to determine your liability exposure. If your investigation reveals a significant risk of exposure – even if actual damages are nominal – put in place an aggressive resolution strategy before the consumer's attorneys' fees drive settlement, including seeking an early settlement conference or mediation.

742, 749-50 (2001); Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir. 2001).

26 Maine, 532 U.S. at 750-51; Hamilton, 270 F.3d at 782-83.

27 11 U.S.C. § 541(a)(1). Note, the lack of standing argument usually does not apply where the debtor filed a proceeding under Chapter 13, because under a Chapter 13, the debtor remains in possession of all property of the estate preconfirmation. 11 U.S.C. § 1306(b). And, unless otherwise provided for in the plan, property of the estate vests in the debtor post-confirmation. 11 U.S.C. § 1327(b).

28 11 U.S.C. §§ 323(b); Estate of Thelma v. Spirtos, 443 F.3d 1172, 1176 (9th Cir. 2006); Moneymaker v. CoBen, 31 F.3d 1147, 1451 n.2 (9th Cir. 1994); Parker v. Wendy's Int'l, Inc., 365 F.3d 1268, 1272 (11th Cir. 2004).

29 Majority Op. at 11-12.

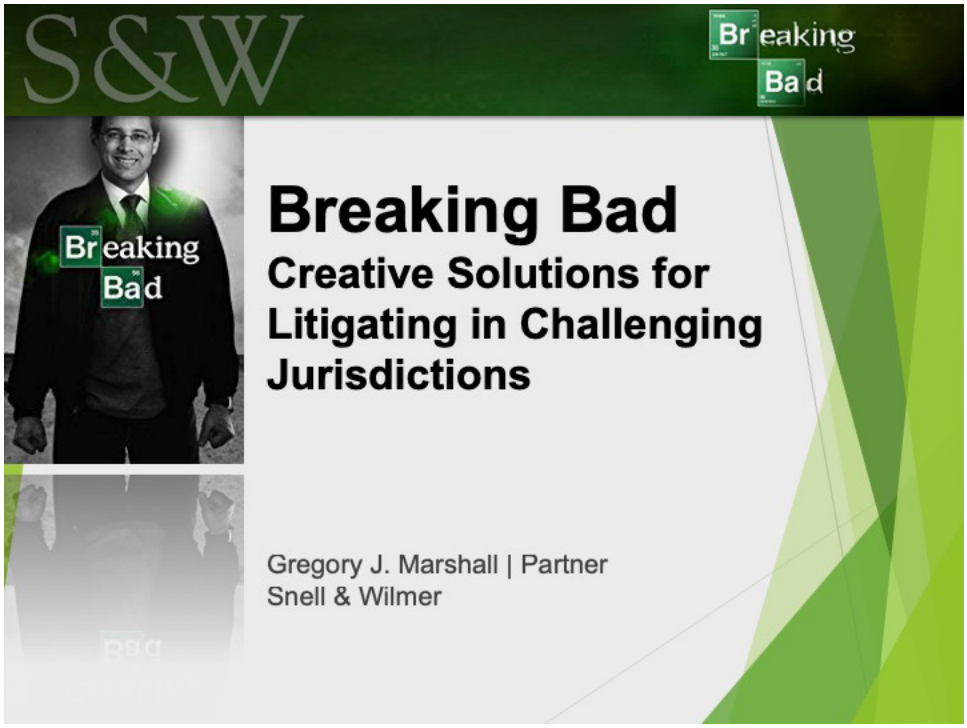
30 But see Radha Geismann, M.D., P.C. v. ZocDoc, Inc., 909 F.3d 534, 542 (2nd Cir. 2018) (Defendant deposited $20,000, pursuant to Rule 67, to resolve all individual claims for a plaintiff seeking class action. The district court entered judgment in favor of the plaintiff and ordered the plaintiff's class action claims moot. The Second Circuit reversed, finding that a Rule 67 deposit cannot render an individual's claims moot.)

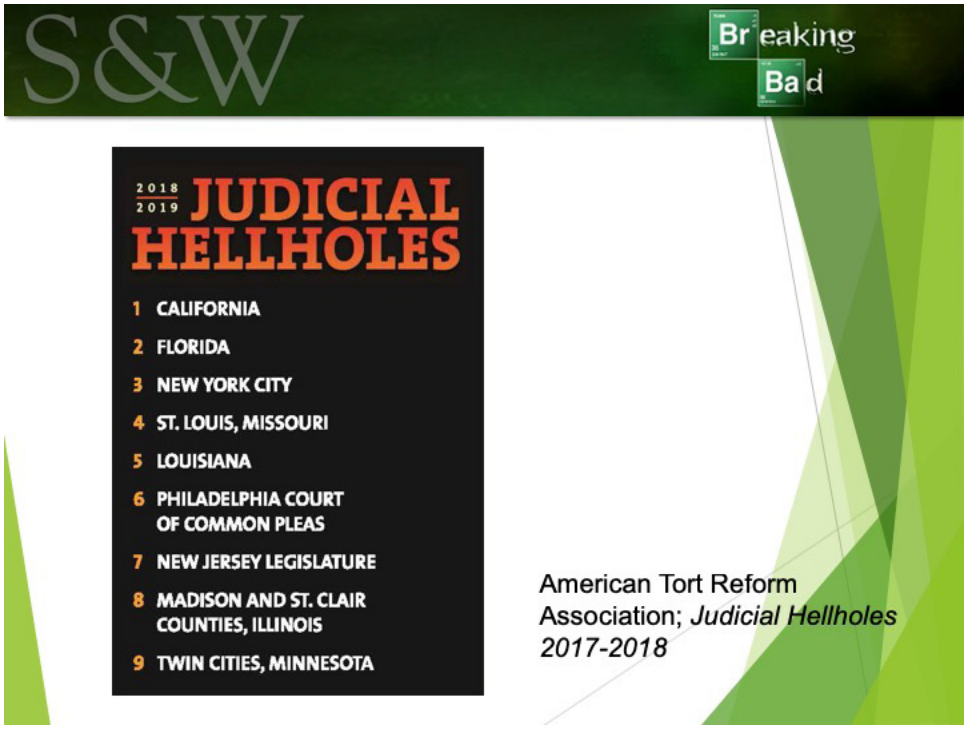
31 Concurring Op. at 5 (Thomas, J.)

32 NMSA § 57-12-2(D).

33 BMW of N. Am. v. Gore, 517 U.S. 559 (1996) (noting that "[s]ingle digit multipliers are more likely to comport with due process," except in "egregious cases.") (quoting Campbell, 538 U.S. at 425).

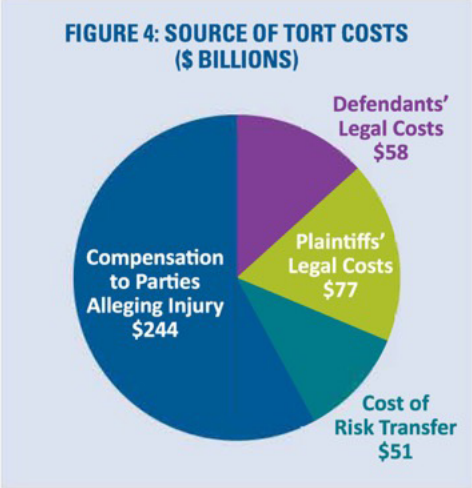
34 See Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co., 399 F.3d 224, 235 (3d Cir. 2005) (affirming punitive damage award with 75:1 ratio to compensatories but 1:1 with respect to fees).


S&W
Breaking Bad
Breaking Bad
Creative Solutions for Litigating in Challenging Jurisdictions
Gregory J. Marshall | Partner
Snell & Wilmer


S&W
Breaking Bad
2018 2019 JUDICIAL HELLHOLES
1 CALIFORNIA
2 FLORIDA
3 NEW YORK CITY
4 ST. LOUIS, MISSOURI
5 LOUISIANA
6 PHILADELPHIA COURT OF COMMON PLEAS
7 NEW JERSEY LEGISLATURE
8 MADISON AND ST. CLAIR COUNTIES, ILLINOIS
9 TWIN CITIES, MINNESOTA
American Tort Reform Association; *Judicial Hellholes 2017-2018*

S&W

Breaking Bad

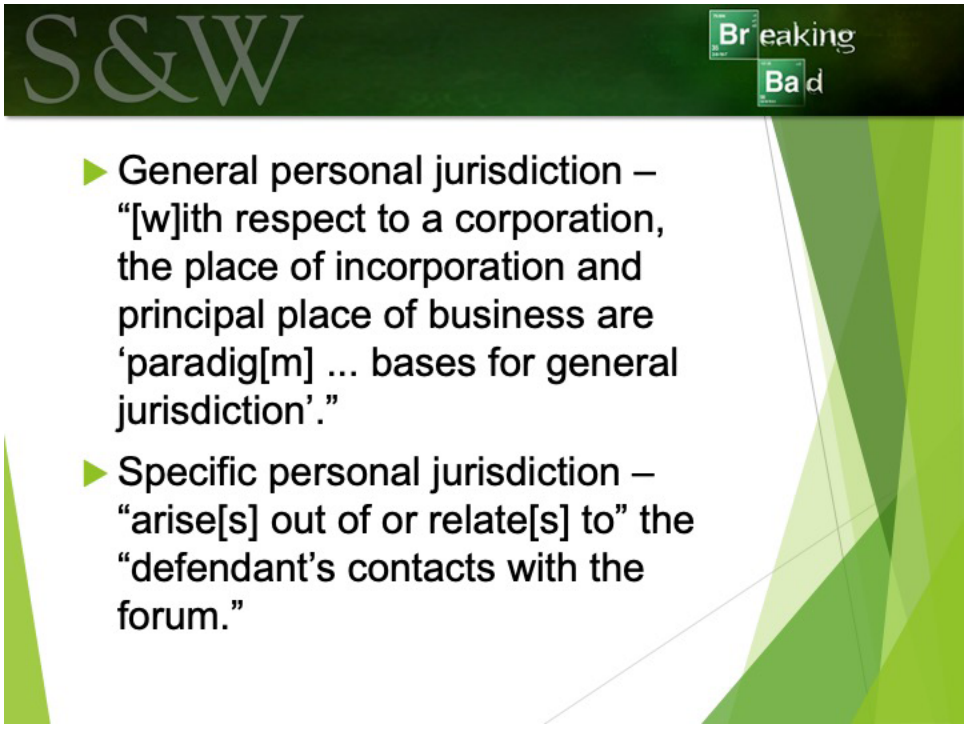


U.S. Chamber Institute for Legal Reform; *Costs and Compensation o the U.S. Tort System*

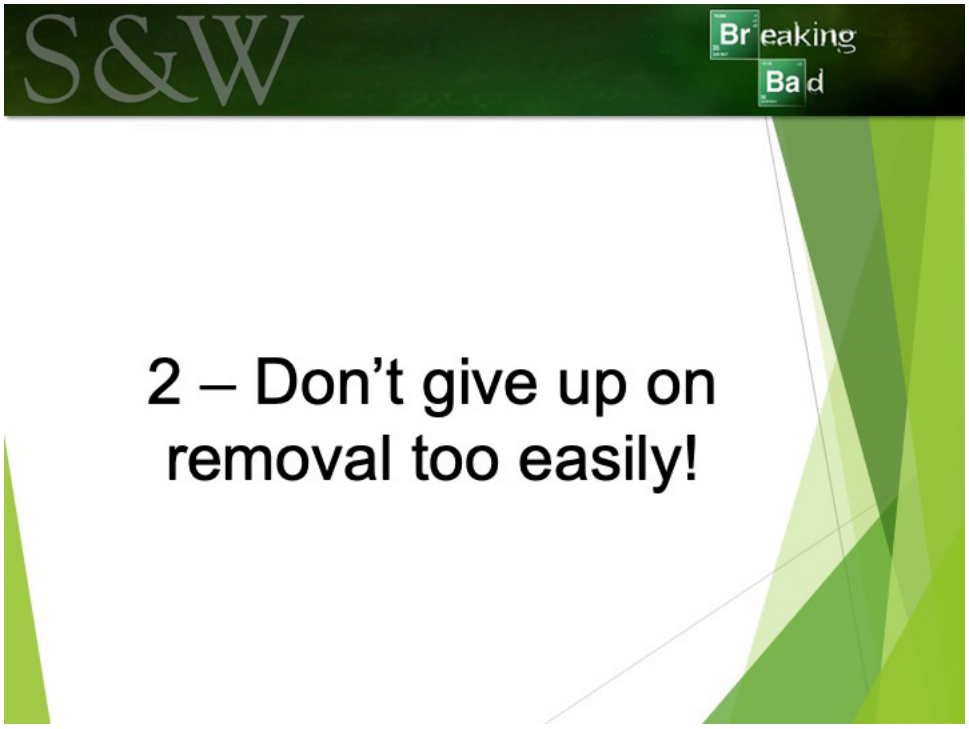
S&W

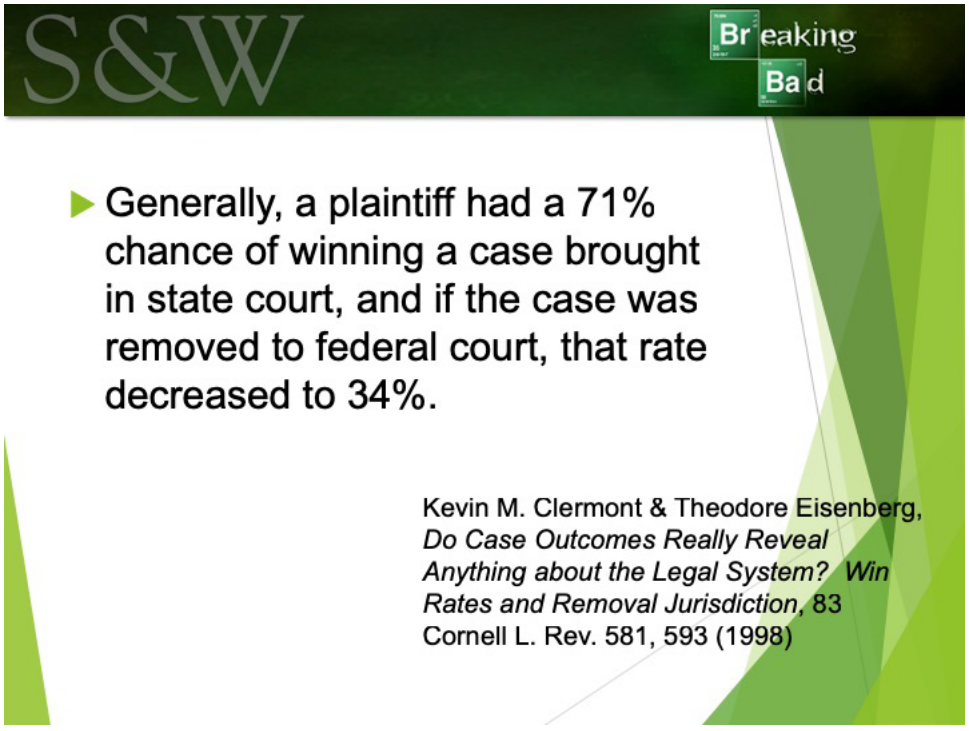
Breaking Bad

1 – Get out of Dodge (if you can)!

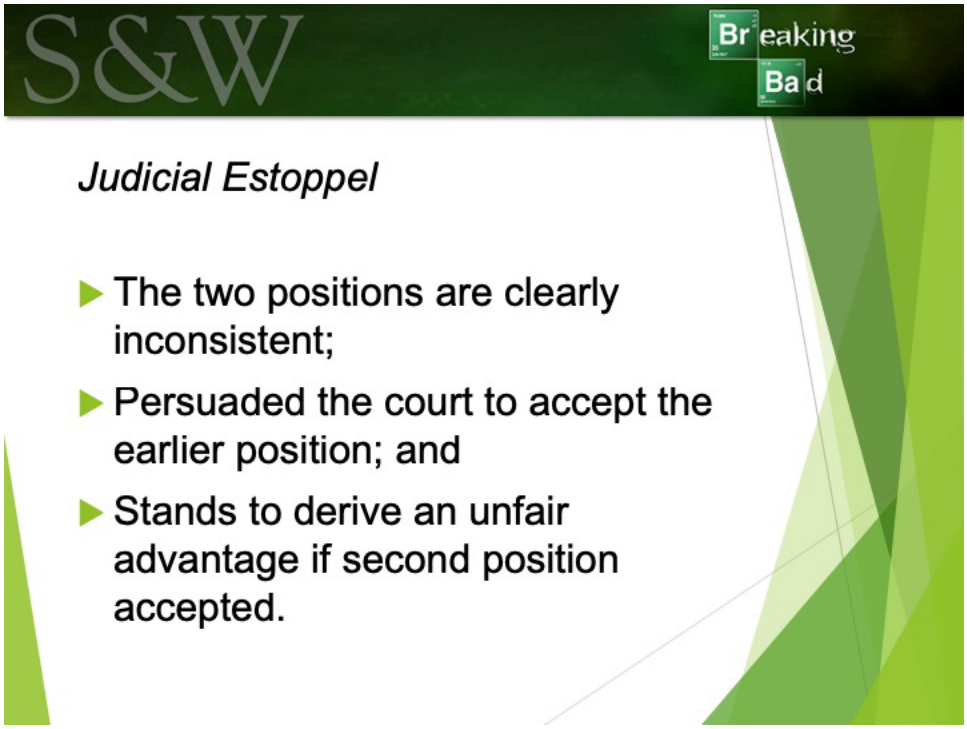

S&W
Breaking Bad
General personal jurisdiction – "[w]ith respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction'."
Specific personal jurisdiction – "arise[s] out of or relate[s] to" the "defendant's contacts with the forum."

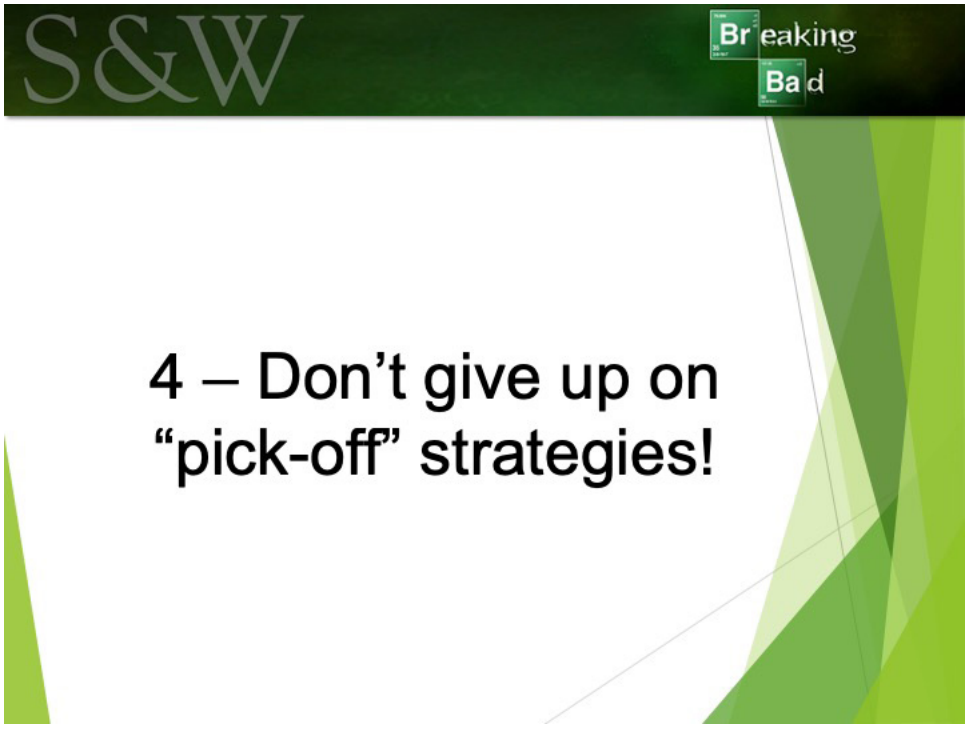

S&W
Breaking Bad
Bristol-Myers Squibb Co. v. Superior Court, 137 S.Ct. 1773 (2017)
Northern District of California
Northern District of Illinois

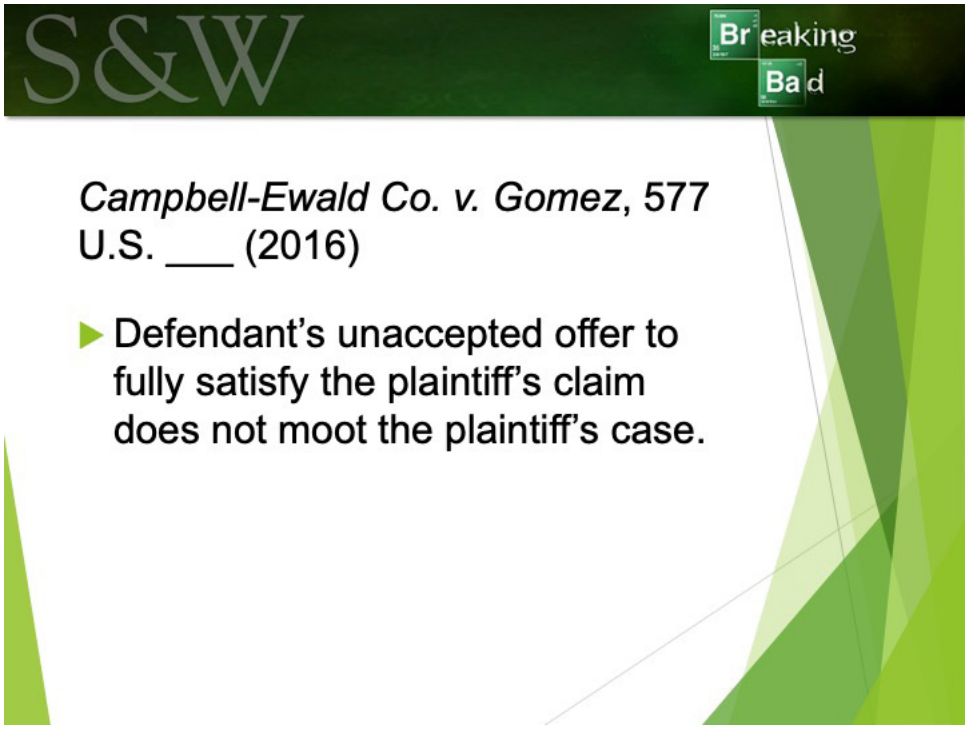

S&W
Breaking Bad
2 – Don't give up on removal too easily!

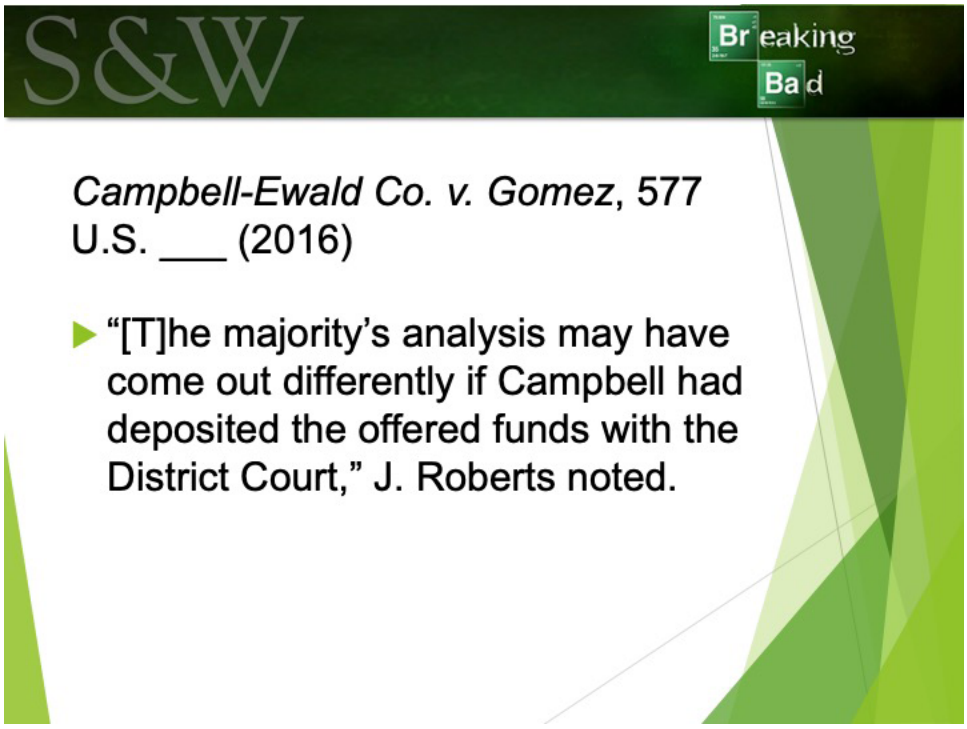

S&W
Breaking Bad
Generally, a plaintiff had a 71% chance of winning a case brought in state court, and if the case was removed to federal court, that rate decreased to 34%.
Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything about the Legal System? Win Rates and Removal Jurisdiction*, 83 Cornell L. Rev. 581, 593 (1998)

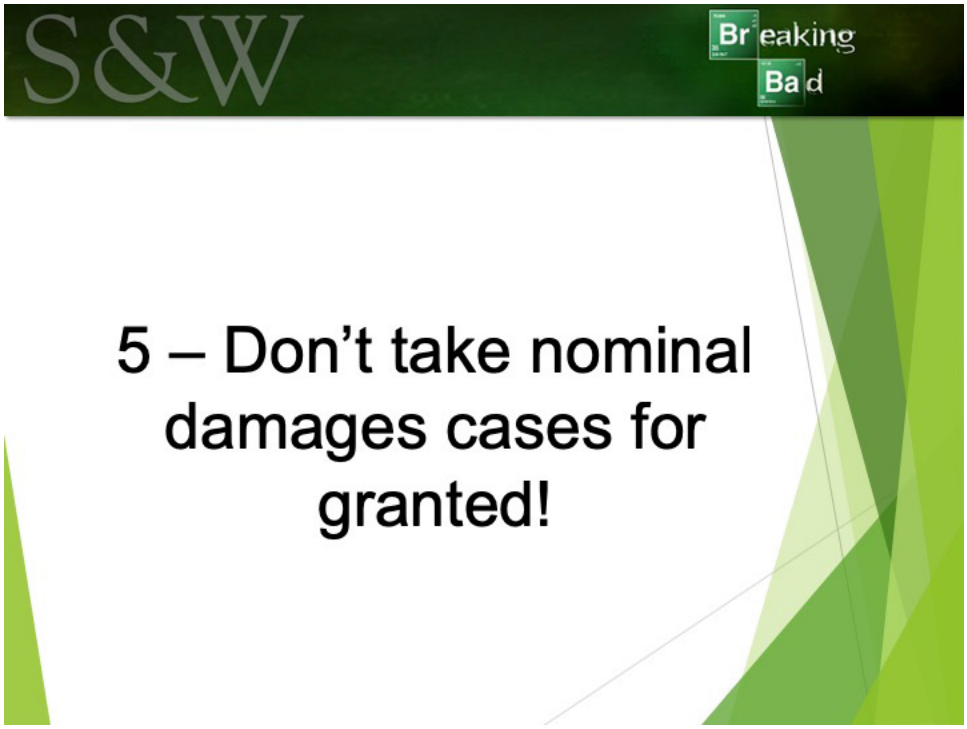

S&W
Breaking Bad
3 – There's gold in them bankruptcies!


S&W
Breaking Bad
Judicial Estoppel
The two positions are clearly inconsistent;
Persuaded the court to accept the earlier position; and
Stands to derive an unfair advantage if second position accepted.


S&W
Breaking Bad
4 – Don't give up on "pick-off" strategies!

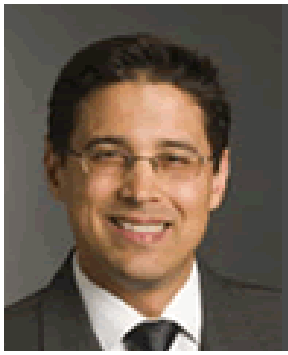

S&W
Breaking Bad
Campbell-Ewald Co. v. Gomez, 577 U.S. ___ (2016)
Defendant's unaccepted offer to fully satisfy the plaintiff's claim does not moot the plaintiff's case.


S&W
Breaking Bad
Campbell-Ewald Co. v. Gomez, 577 U.S. ___ (2016)
"[T]he majority's analysis may have come out differently if Campbell had deposited the offered funds with the District Court," J. Roberts noted.


S&W
Breaking Bad
5 – Don't take nominal damages cases for granted!


S&W
Breaking Bad
AMC


S&W
Breaking Bad



GREGORY J. MARSHALL

Partner

SNELL & WILMER (Phoenix, AZ)

602.382.6514 | gmarshall@swlaw.com

Mr. Marshall co-chairs the firm's Financial Services Litigation Group, focusing his practice on the defense of banks and lenders. Mr. Marshall's clients include national and international banks, regional banks, mortgage lenders and servicers, credit card issuers, automobile finance servicers, credit unions, and money transmitters. Mr. Marshall's practice includes management of regional and national defense programs involving pattern litigation. Mr. Marshall has defended clients in a wide variety of litigation and regulatory matters, including qui tam, class action, and multi-district litigation (MDL). Mr. Marshall has substantial experience litigating claims involving the Dodd-Frank amendments, CFPB regulations, U.S. Treasury regulations and directives, HAMP and HARP, MERS, and lien priority disputes. Mr. Marshall also has substantial experience defending claims arising under the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Fair Credit Reporting Act (FCRA), the Telephone Consumer Protection Act (TCPA), the Unfair Debt Collection Practices Act (UDCPA), and state unfair and deceptive acts or practices (UDAP) statutes.

Related Services

- Class Action Litigation
- Commercial Litigation
- Financial Services Litigation
- Insurance
- International
- Non-Profit/Tax-Exempt Organizations
- Product Liability Litigation

Representative Experience

- Defended and tried bellwether case involving Fair Credit Reporting Act claims against secondary mortgage market participant.
- Defended national mortgage servicer against putative class action claims challenging servicing fees.
- Defended national banks in pattern qui tam litigation regarding unpaid transfer taxes.
- Defended several national mortgage lenders and servicers in MDL litigation involving mortgage origination claims.
- Defended mortgage originators and servicers in actions filed by government officials and entities involving mortgage origination practices.
- Defended national bank in appeal of precedent setting putative damages award.
- Defended and tried case for mortgage lender involving construction loan and allegations of deceptive practices.
- Defended and tried bad faith claims on behalf of mortgage servicer and credit life insurer.
- Managed regional defense program for mortgage servicer in consumer mortgage cases.
- Defended national mortgage lender in putative nationwide class action involving payoff fees.

Professional Recognition and Awards

- Southwest Super Lawyers, Rising Stars Edition, Banking (2012-2013)
- Arizona's Finest Lawyers
- Top 50 Pro Bono Attorneys, Arizona Foundation for Legal Services & Education (2011)

Education

- Emory University School of Law (J.D., 1999) -- Dean's Fellow; Order of the Barristers; Order of the Advocates
- University of Arizona (B.A., cum laude, 1995)