

# Daily Journal

February 13, 2013

## TOP VERDICTS OF 2012

### TOP DEFENSE VERDICTS

## California Communities Against Toxics v. EPA

The need in the Los Angeles area to control air pollution while also meeting the demand for new power plants has resulted in a long-running battle between local regulators, environmental groups and energy companies over how to move forward.

Last year, the struggle spilled into court, where lawyers for a proposed gas-fired power plant in the Coachella Valley successfully fought to keep the \$1 billion project on track for construction.

Environmental groups had sued local and federal air pollution regulators, claiming the power plant would exceed allowed pollution levels in the region. The regulators had failed to properly analyze the veracity of pollution emission credits regulators used to issue permits to the CPV Sentinel LLC project, according to the suit, and plaintiffs appealed directly to the 9th U.S. Circuit Court of Appeals.

Michael J. Carroll, a Latham & Watkins LLP partner who was CPV Sentinel's lead attorney, intervened in the case and argued in support of the federal Environmental Protection Agency and the South Coast Air Quality Management District's move to greenlight the project. Construction had already begun when the case came up for oral argument before the 9th Circuit, and it was crucial the project not be stopped in mid-

#### CASE INFO

##### Environmental

9th U.S. Circuit Court of Appeals  
Judges Alex Kozinski, Stephen S. Trott and Sidney R. Thomas

**Defense attorney:** Latham & Watkins LLP, Michael J. Carroll

**Plaintiff's attorneys:** Law Offices of Angela Johnson Meszaros, Angela Johnson Meszaros and Timothy Ray Gabriel; Communities for a Better Environment, Maya Golden-Krasner and Shana Lazerow

stream, Carroll said.

The case began to look bad for Carroll when the EPA admitted it needed to fix some problems in its analysis and asked the court to remand its permit decision. Typically in those situations, the court will also vacate the permit, so Carroll had an uphill battle to convince the court that it was in the public interest to keep the permit in place while the EPA redid its analysis. The EPA also supported keeping the permit in place.

In the end, the three-judge panel agreed with Carroll's arguments that the project was necessary to meet electricity demand but also to prevent the use



MICHAEL J. CARROLL

of dirtier diesel generators that could be used if the project stopped.

"It took a very broad view of the benefits associated with the project, not only grid stability but environmental protection," Carroll said. The ruling "opens the door for other parties facing remand and vacatur to say we have a really compelling reason to keep this rule in place."

— Fiona Smith