



Patrick J. Kearns

Partner

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Patrick Kearns is a civil trial lawyer whose practice focuses on aviation defense. Patrick represents major commercial airlines, helicopter operators, Air Ambulance operators, and related entities in a variety of claims ranging from small-plane crashes and accidents to high-profile aviation disasters in which hundreds of millions of dollars were at stake. Patrick also has significant experience defending product liability matters, Ambulatory Surgery Centers, and medical, dental, and legal professionals in malpractice suits. Patrick serves as cochair of the firm's national Aviation & Aerospace Practice and its Helicopter Defense team.

Patrick has successfully tried multiple cases to jury verdict. In addition, he has substantial experience defending appeals. Patrick also has handled numerous appeals in the California State Courts of Appeal, the Ninth Circuit Court of Appeals, and the United States Court of Appeals for the Federal Circuit, and has reported decisions in each. An active member of the legal community, Patrick served as the 2018 President of the San Diego Defense Lawyers Association, one of the largest local defense organizations in the country. He currently serves on the Board of Directors for the Association of Southern California Defense Counsel and is a former Program Chair (2014) for DRI's Medical Liability and Health Care Law Seminar. Patrick served on the San Diego County Bar Association's Legal Ethics Committee for 10 years and was chair of that committee in 2015. He speaks frequently to various professional groups on important and emerging issues and legal ethics. Patrick is the Regional Managing Partner for the San Diego office of Wilson Elser.

Patrick is an experienced litigator and trial attorney known for his thoughtful yet aggressive advocacy on behalf of those he represents. His careful analysis of every case coupled with his natural abilities in the courtroom has resulted in consistent successes for his clients.

Services

- Appellate
- Aviation & Aerospace
- Commercial Litigation
- e-Discovery
- Medical Malpractice & Health Care
- National Trial Team
- Product Liability, Prevention & Government Compliance
- Professional Liability & Services

AVIATION

Patrick defends complex aviation matters, including litigation arising from product issues and aviation-related injuries, to cases involving aircraft crashes and wrongful death. Patrick is a cochair of the firm's Aviation practice and a member of its Helicopter Defense team. This dedicated team with national reach immediately provides what is needed for a successful representation of Patrick's clients, including guidance through the NTSB investigation, identification and preservation of relevant documents and electronic information, counsel on remedial measures, retention of relevant outside forensic experts, and preparation for litigation and trial.

PROFESSIONAL LIABILITY

With a practice covering all areas of professional liability including medical, dental, legal, and other professionals in malpractice cases and licensing board matters. Patrick handles matters involving medical and health care professionals, ambulatory surgical centers, lawyers and various other professionals. Drawing on the resources of a national law firm, Patrick maintains a clear advantage in handling individual cases as well as high-volume programs in a comprehensive, purposeful and timely manner.

COMMERCIAL LITIGATION

Defending businesses and corporations in contract, warranty and product liability actions, Patrick also provides clients with innovative and timely strategic counsel to help them make better-informed decisions, resolve complex legal challenges and achieve specific business goals.

APPELLATE

Patrick has significant appellate experience and successfully defends individuals and corporations in a variety of appeals before state and federal courts. He has briefed and argued before multiple California state courts of appeal; the United States Court of Appeals for the Ninth Circuit; and the United States Court of Appeals for the Federal Circuit. Among his many appellate victories, he has secured three published decisions, reported at *Sukumar v. Nautilus, et al.*, 785 F. 3d 1396 (Fed. Cir. 2015); *Contreras v. Dowling, et al.* (2016) 4 Cal. App. 5th 774; and *Riggs v Airbus Helicopters, Inc.*, 939 F.3d 981 (9th Cir. 2019).

Education

- Thomas Jefferson School of Law (J.D., *cum laude*, 2005)
- University of Wisconsin–La Crosse (B.S., 2001)

Bar Admissions

- California

Court Admissions

- Supreme Court of the United States
- Supreme Court of California

- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California

Professional Affiliations

- San Diego County Bar Association, Past Chair of Legal Ethics Committee, 2015
- Association of Southern California Defense Counsel, Board of Directors
- San Diego Defense Lawyers, President (2018)
- DRI: The Voice of the Defense Bar, Medical Liability & Health Care Law Steering Committee Member; Program Chair, 2014 Medical Liability & Health Care Law Seminar
- Association of Defense Trial Attorneys
- Association of Business Trial Lawyers
- Professional Liability Underwriters Society

Awards & Honors

- Selected for inclusion in *The Best Lawyers in America®*, 2025-2026
- Selected for inclusion in San Diego *Super Lawyers*, 2018-2024
- Selected for inclusion in *The Best Lawyers in America®* in the area of Medical Malpractice Law – Defendants, 2018-2024
- 2021 Lawyer of the Year, Medical Malpractice Law – Defendants, *The Best Lawyers in America®*
- Top Young Attorneys of 2007, *San Diego Daily Transcript*
- 2008 Outstanding New Lawyer, San Diego Defense Lawyers Association
- San Diego Super Lawyers Rising Stars, 2015-2016
- Best of the Bar 2015, *San Diego Business Journal*

Representative Matters

Reported Decisions

Obtained a defense verdict following a jury trial in Federal Court in the Central District of Los Angeles. The case stemmed from a 2014 crash of a Sikorsky MH-60 Special Operations Helicopter flown by the United States Army's 160th SOAR Division on base at Fort Hunter, Georgia.

Riggs v Airbus Helicopters, Inc., 939 F.3d 981 (9th Cir. 2019).

Contreras v. Dowling, et al. (2016) 4 Cal. App. 5th 774.

Sukumar v. Nautilus, et al. 785 F. 3d 1396 (Fed. Cir. 2015.)

Obtained summary judgment on behalf of an endodontist in a malpractice case in the San Diego Superior Court. A month prior to trial, the court determined the plaintiff could not meet her burden as a matter of law and granted summary judgment.

Obtained a defense verdict following a three-and-a-half-week jury trial in a multimillion-dollar product liability action. The case was a multi-defendant action brought by the plaintiff who was severely injured when thrown from the seat of a tractor and subsequently run over. Wilson Elser's client manufactured the seat on the tractor, which was equipped with a safety mechanism that was alleged to have failed, therefore failing to stop the tractor once the operator was lifted off the seat. Plaintiff alleged both a manufacturing and design defect under product liability principles. All parties had settled prior to trial with the exception of Wilson Elser's client. At the conclusion of the lengthy trial, the plaintiff's counsel asked the jury for approximately \$40 million in damages. The jury returned a defense verdict on all counts.

Obtained defense verdict at trial in a breach of contract action where the plaintiff brought an action against two Wilson Elser clients in connection with the sale of a large number of exercise machines. The plaintiff included causes of action for breach of contract, intent to induce breach of contract and intentional interference with contract. Ultimately, the case included two jury verdicts in favor of the defense as well as two separate appeals.

Obtained summary judgment in a federal "false patent marking" lawsuit on behalf of a major manufacturer of exercise and fitness equipment. After more than three years of litigation in the U.S. District Court for the Western District of Virginia, the court granted summary judgment in favor of Wilson Elser's client in one of the first cases to directly address the "competitive injury" requirement of the 2011 "American Invents Act." The case was one of several lawsuits brought against the client by a stroke rehabilitation corporation over the past 13 years.

Obtained summary judgment for a law firm and related attorneys in a legal malpractice case based on the defendants' alleged negligent representation of the plaintiffs in an underlying medical malpractice matter. The complaint alleged that the defendants negligently prosecuted the underlying medical malpractice arbitration, resulting in the loss of the ability to recover damages. The complaint also alleged ordinary negligence, breach of fiduciary duty, fraud and intentional/negligent infliction of emotional distress.

Obtained Judgment as a Matter of Law following jury trial in a federal court warranty action. The plaintiff brought a breach of warranty action under California law that was removed to federal court. Wilson Elser's client contended that the plaintiff had failed to provide adequate notice of the breach of warranty before suit. After the plaintiff rested at trial, the defense moved for Judgment as a Matter of Law. The court decided to allow the defense to present their case, after which the motion was renewed. The court granted the Judgment as a matter of law finding that no evidence was offered that could reasonably allow a jury to rule for the plaintiff.

Successfully defended major corporations on appeal in breach of contract and breach of warranty matters before the California Courts of Appeal and the U.S. Court of Appeals for the Ninth Circuit.

Client Wins

Kearns and Kustic Obtain Dismissal with Prejudice at the Pleadings Stage

Patrick Kearns (Partner-San Diego) and Sarena Kustic (Of Counsel-San Diego) obtained dismissal of a complaint with prejudice in a case before the U.S. District Court for the Eastern District of California. The case involved allegations of discrimination arising from the plaintiff's removal from a flight and being banned from using a national airline, Wilson Elser's client. Patrick and Sarena removed the state court case to the Eastern District of California, then moved to dismiss the complaint for failure to state a claim. The court granted the motion but gave the pro se plaintiff leave to amend. Instead of filing and amended complaint, the plaintiff filed a new state court action adding more causes of action to the complaint. Patrick and Sarena removed the case to federal court once more and filed a second motion to dismiss for failure to state a claim. This time, they argued leave to amend would be futile because, despite the court providing the plaintiff with clear examples of how to plead his claims, the plaintiff's new complaint contained the exact same defects as the prior one. The court agreed and dismissed the complaint with prejudice.

Kearns and Kustic Vacate Seven-Figure Default Judgment and Then Obtain Dismissal of Complaint with Prejudice

Patrick Kearns (Partner-San Diego) and Sarena Kustic (Of Counsel-San Diego) successfully vacated a seven-figure default judgment, and thereafter obtained a dismissal of the complaint with prejudice. The underlying case, filed in 2017, involved a claim against a hospital, a surgeon and Wilson Elser's client, a national medical air transportation provider. The plaintiff alleged she sustained injuries during surgery that were exacerbated by a delay in medical transport. In 2018, the hospital and surgeon were dismissed at the pleadings stage. By 2021, the plaintiff obtained a default judgment against our client, and nearly a year and a half later the plaintiff served the client with a notice of judgment. Patrick and Sarena moved to vacate the default and default judgment, and quash the false return of service, on the grounds that the plaintiff had served some entity other than the client's registered agent for service of process in California. On the eve of the opposition's deadline, the plaintiff stipulated to vacate the default and quash service. Thereafter, Patrick and Sarena moved to dismiss the complaint due to the plaintiff's failure to effectuate personal service within California's mandatory period of three years from the date the complaint was filed. The court agreed and dismissed the complaint with prejudice.

Aviation Team Obtain Defense Verdict in Case Arising from Special Ops Helicopter Crash

Patrick Kearns (Partner-San Diego) and Sarena Kustic (Of Counsel-San Diego) obtained a defense verdict following a six-day jury trial in Federal Court in the Central District of Los Angeles. The case stemmed from a 2014 crash of a Sikorsky MH-60 Special Operations Helicopter flown by the United States Army's 160th SOAR Division on base at Fort Hunter,

Georgia. Litigation against numerous parties were ultimately separated, and litigated in different venues around the country. Wilson Elser's client manufactured and sold a tactical transponder and emergency locator transmitter (ELT) which the 160th had installed on the aircraft. Upon impact, the ELT did not transmit a signal and the plaintiffs alleged it was defectively designed and manufactured, resulting in a delay of first responders to the site of the crash and resulting injuries. The original suit was filed in 2014, and the case against Wilson Elser's client was stayed for approximately five years due to the bankruptcy of a co-defendant. A jury trial finally proceeded in mid-July 2023. After the conclusion of evidence and argument, the jury returned a unanimous defense verdict after approximately 45 minutes of deliberation.

Kearns and Kustic Obtain Dismissal with Prejudice in a Premises Liability Case against National Airline

Patrick Kearns (Partner-San Diego) and Sarena Kustic (Of Counsel-San Diego) obtained dismissal of a case with prejudice at the pleadings stage. The case involved allegations of personal injuries stemming from an employee of Wilson Elser's client, a national airline, playing with a remote control car outside the airline's hangar. The plaintiff claimed the remote control car struck his foot at a high rate of speed and caused severe injuries. Patrick and Sarena succeeded in removing the state court case to the Northern District of California, then moved to dismiss the complaint for failure to state a claim. The plaintiff filed a late opposition and failed to respond to the court's order to show cause. The court dismissed the case without prejudice. Six days after the statute of limitations expired, the plaintiff filed the same complaint once again in state court, and Patrick and Sarena removed the case to the Northern District once more. They then moved to dismiss the complaint for failure to state a claim and included an argument based on the expiration of the statutory period. The plaintiff again missed the deadline to oppose and failed to respond to the court's order to show cause. The court thereafter granted the defense's motion and dismissed the case with prejudice.