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2014 Top Boutiques / APPELLATE



From Left: John S. Addams, David A. Niddrie and Michael H. Fish

Courtesy of Niddrie, Fish & Addams

NIDDRIE, FISH & ADDAMS LLP

San Diego

Appellate

Key partners: David A. Niddrie, Michael H. Fish, John S. Addams

- Representing the landowner in an eminent domain case, the firm successfully defended an \$8 million judgment and secured a remand for an award of attorney fees and costs.
- Representing a nursing facility, the firm obtained reversal of a \$4 million judgment in an alleged elder abuse case.
- The firm represented several contractors in successfully defending the precedence of their stop notice claims over the construction lender's prepayment to itself of interest and fees from construction loan funds.

Appellate lawyers play a different game. "Litigators are geared toward persuading a jury," noted Niddrie. "The old adage is that jury arguments don't work at the appellate level."

Instead, lawyers drafting appeals base their approach on the reality that no trial is perfect, Niddrie said. "You look for error and prejudice that skewed the outcome in a way that would make an appellate court interested in reviewing it."

In a complex international matter involving coastal real property in Mexico, for example, a bankruptcy judge ordered the firm's clients — who were not involved in the bankruptcy — to transfer the property to a third party. Niddrie saw potential issues for review involving the judge's jurisdiction over property in another country and the question of a non-Article III judge determining the rights of his clients in an area not strictly within the bankruptcy setting.

The 9th U.S. Circuit Court of Appeals and other federal circuits have interpreted differently the 2011 U.S. Supreme Court ruling in *Stern v.*

Marshall over the limits of bankruptcy courts' reach.

That circuit split is the kind of opening Niddrie hopes to exploit to gain the high court's attention as he writes his cert petition in the Mexico case.

Niddrie worked as research attorney at the state court of appeal and as a staff attorney at the U.S. Supreme Court before returning to California in the 1980s aiming to focus solely on appellate work.

Two big firms turned down his pitch to establish an in-house appellate practice group, sticking with the then-common approach of having trial lawyers themselves take their losing cases up on appeal.

Those firms now have reversed course and done as Niddrie suggested, he said. He found a smaller firm that let him write appeals, then struck out on his own in 2000, soon partnering with fellow appellate enthusiast Fish, another former state court of appeal research attorney.

"We carved out our niche" in Southern California, Niddrie said. Joining them in 2010 was Add-

ams, an insurance coverage and civil appeals veteran "and a tremendous writer," Niddrie said.

"Collectively, the firm has litigated several hundred civil appeals or writs," he added. We do not delegate work to inexperienced associates.

The partners personally attend to all aspects of the appeal, from reviewing the record, conducting legal research, writing the briefs, and presenting oral argument. They have found that having three appellate specialists allows the firm to provide quality work at a reasonable price.

"Appellate practice requires a specialized skill set, emphasizing superior writing and legal research," he added. "Plus, appellate practice is not limited to any one area of the law. The cases range from personal injury to much more complex examples. The variety is what makes our practice so 'appealing.'"

— John Roemer