

**Kelly Savage Day**  
**Associate, San Francisco, California**

Appellate Litigation  
 Complex Civil Litigation  
 Products Liability  
 Pharmaceutical, Medical Device and Nutritional Supplements



**KELLY SAVAGE DAY**  
 415.781.7900 tel  
 415.781.2635 fax  
 kelly.savage@sdma.com

### Current Scope of Practice

Kelly Savage Day represents clients in the pharmaceutical, manufacturing, transportation, computer, real estate and insurance industries. She has almost a decade of experience counseling and defending companies in state and federal court at both the trial and appellate level. She combines aggressive advocacy with practical, common sense advice to achieve the best results for her clients.

Ms. Savage Day recently helped generic drug manufacturer Perrigo Pharmaceuticals Company (Perrigo) avoid several multi-million dollar claims by convincing the Northern District of California that plaintiffs' state-law claims against the generic drug manufacturer were preempted under the federal Food, Drug and Cosmetics Act (FDCA). The court's ruling has broad implications, because it is one of the first to explicitly recognize the preemptive effect of federal Food and Drug Administration's (FDA) labeling requirements with respect to generic drug manufacturers, who are required to provide the exact labeling information used by the brand-name drug manufacturer — no less, but also no more.

In the last year alone, she rescued a small local business from bankruptcy by persuading the California Court of Appeals to vacate a \$1.7 million judgment in a high-profile employment case featured on both *The Oprah Winfrey Show* and *Today Show*. She also saved an international pharmaceutical company from hundreds of thousands in attorney's fees by persuading a trial court to dismiss a class-action complaint filed by plaintiffs claiming the company's warnings on prescription and non-prescription products violated California's Proposition 65 and the UCL. In both instances, Kelly worked closely with clients to control legal expenses and prevent wasteful and unnecessary activity.

### Affiliations, Activities and Accomplishments

Ms. Savage Day is admitted to practice in California and Ohio. She is a member of the California Bar Association and is active in both professional and community activities. Ms. Savage Day is a former state appellate court law clerk and federal district court law clerk. She is a contributing editor to one of the preeminent California appellate practice guides and frequently authors articles and presents presentations on a wide variety of issues.

## Presentations

- “A Prescription for Managing the Risk of Off-Label Activities,” Medmarc Insurance Company Webinar, Oct. 26, 2009.
- “Brand Companies at Risk for Products Manufactured by Generic Firms: *California’s Conte v. Wyeth Decision*,” FDANews’ RxTrials Institute, Webinar, Jan. 15, 2009.
- “Managing the Risk of Worker E-Mail and Blog Misuse,” People-on-the-Go, Webinar, December 4, 2008.
- “Managing the Risk of Worker E-Mail and Blog Misuse,” Northern California Human Resources Association, Oakland, California, September 16, 2008.
- “Preempting Product Liability Claims Against Generic Drug Manufacturers,” Medmarc Insurance Company, Chantilly, Virginia, July 11, 2008.
- “Wits and Writs, Rights and Wrongs,” The Bar Association of San Francisco, Appellate Section, January 29, 2007.

## Publications

- "A Prescription for Managing the Risks of Off-Label Activities," white paper for Medmarc Insurance Company, (pending publication in an upcoming client alert).
- “Federal Court Rejects Brand-Name Drug Liability for Generic-Caused Injury,” Washington Legal Foundation's *Counsel's Advisory* (July 2009).
- “Preemption: Deliberations Continue,” *Sedgwick Issue Tracker* (May 2009).
- “Oklahoma Court Rejects Conte and Concludes Innovators Not Liable for Injuries Arising from Use of Generic Competitors' Products,” in Sedgwick’s *Drug & Medical Device Alert* (March 23, 2009).
- “Preserving the Record for Appeal: Protecting Your Clients’ Interests as Well as Your Own,” Sedgwick University, San Francisco, CA (March 2009).
- “Strategies for Managing Liability & Risks Associated with Outsourcing Overseas,” Kelly J. Savage & Genese K. Dopson, Pilgrim Software Webinar (February 2009).
- “Risks Associated with Outsourcing in Less Regulated Markets,” White Paper for Medmarc Insurance Company, pending publication in an upcoming client alert (January 2009).
- “California Court Finds Wyeth Liable for Injuries Arising From Use of Generic Drug,” in Sedgwick’s *Drug & Medical Device Alert* (November 2008).
- “Responsive Pleadings and Petitioner’s Reply,” in *California Civil Writ Practice 185* (Continuing Education of the Bar, 4th ed. 2008).
- Co-author, “Extraterritoriality and Punitive Damages: Setting Limits on California’s Ability to Punish

Defendants for Out-of-State Conduct,” *The Recorder* (August 2008).

- “Has California Provided a New-End Run Around Preemption,” *18 Washington Legal Foundation* 8 (May 2, 2008).
- “Hon. William Alsup, U.S. District Judge for the Northern District of California: A No-Nonsense Judge Who Takes the Pursuit of Justice Seriously,” *The Federal Lawyer* (October 2007).
- “Can You Save Your from U.S. EPA Overfiling,” *Dayton Daily Bar* (Dec. 2000).

## Education

Ms. Savage Day obtained her undergraduate degree from Ohio State University, where she graduated *cum laude* in the field of history. She obtained her J.D., with honors, from Ohio Northern University, where she served as an associate editor for law review and as a member of a national moot court team.

In her spare time, she is finishing a Master's thesis on the use of biomarkers to detect and treat ovarian cancer. She plans to obtain her Master's Degree in Environmental Health from Wright State University later this year.