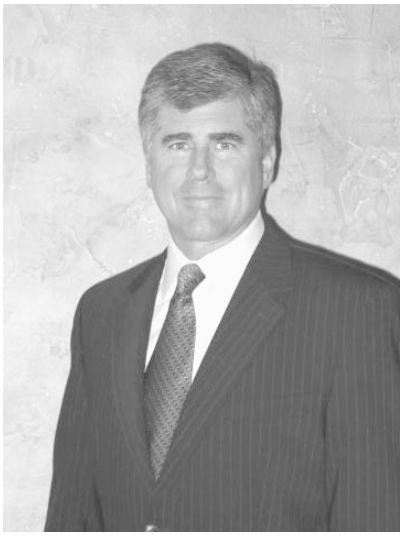
JULY 2005

The LITIGATOR

VOLUME IV *Official Publication of the Capitol City Trial Lawyers Association* ISSUE 4

President's Message

By: Craig Sheffer, President 2005



We'll call this the "big verdict" issue. You will see in reading this issue that our members have been effectively trying cases all over the state – and winning impressive verdicts for their clients. And, no, it is not only the usual cast of characters who are putting up the big numbers, as we have some new faces on the "verdicts" page. Congratulations to Roger Dreyer, John O'Brien and John Demas, for their most impressive results on extremely difficult cases.

It is a real privelege to live in a society that allows one who has suffered harm at the hands of another who has acted badly to plead his case for damages in front of a jury of his peers. With the privelege, however, comes the responsibility, for those of us who present the case on behalf of the injury victim, to keep ourselves educated—both in the classroom CEB setting as well as networking with our peers—and our skills honed. Only with proper and ongoing education and training can we expect to present our client's case properly, and prevail in the courtroom. So, for yourself, your clients, and the betterment of our system, support and participate in the CCTLA, CAOC and other educational and training programs that are offered throughout the year.

For those of you who attended the event in support of the retention of Judge McMaster, and in support of the independence of the judiciary, THANK YOU. The event was a smashing success, and Judge McMaster, along with his committee members, sent a note of appreciation to the CCTLA for its support. Such a large turnout, from all factions of the bar, will clearly send a message well beyond Sacramento County that such frivolous, irresponsible, recall attempts will not be tolerated.

As always, keep up the good fight.

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Check out our web page at: www.cctla.com

Do It Because It Is The Right Thing

By: Allan Owen, CCTLA Board Member

I know I'm going to catch some flack for this article. But I'm writing it anyway, because it is the right thing to do. And for me, that is why I became a trial lawyer – to do what is right for myself and for those who can't do it without us. And I willingly accept the consequences even if they hurt my business or me.

There were some recent messages on the listserve regarding proposed legislation to change California's ADA lawsuits. I was recently sitting in the Senate Judiciary Committee waiting to testify in favor of CAOC's proposed legislation to allow substitute service on a defendant's insurance carrier as an alternative to publishing the summons and complaint when I heard debate on a proposed Senate Bill that was designed to change California's ADA lawsuit provisions. The new bill would have required that, before suit could be filed against a business owner for violation of ADA requirements, where no physical harm had befallen the plaintiff, the plaintiff would have to provide the business owner with notice of the violation and an opportunity to repair it. If repairs were accomplished, no suit could be filed. The stated basis for the bill is that there are too many "extortion lawsuits" being brought against small businesses for "technical violations" of the ADA laws; these suits hurt small businesses; the law should be changed to stop these frivolous lawsuits; by giving a business the opportunity to correct the violation, the best interests of the disabled will be served while protecting businesses from "extortion lawsuits".

Other than the Republican buzzwords about litigation that I found to be offensive, the idea seemed fairly good and straightforward. Until, that is, I heard from the opposition.

Virtually every group that sounds the voice of handicapped Californians opposed this bill, as did CAOC. It seems that, unbeknownst to me (and probably to most people), compliance with ADA building requirements is woeful. The requirements have existed for years; compliance is under 15% nationwide. If allowing private suits hasn't forced compliance, how will doing away with private suits help generate more compliance? Handicapped advocates pointed out that no other group is required to give a defendant the right to correct the violation AFTER it has affected the plaintiff and avoid liability. For example, a restaurant that refuses service to persons of Asian descent can be sued right away; the plaintiff need not ask the owners to correct their unlawful policy first. Manufacturers of dangerous products need not be given one free accident. Property owners are charged with constructive notice of other conditions; we don't need to give them a written notice and opportunity to correct a dangerous condition before filing suit. Even dogs no longer get one free bite.

I was proud to see one of my ex-clients (a 16 year old paraplegic when I represented her) there to oppose the bill. I listened to the opponents point out that what seemed to be only a technical violation to the business owner could have devastating effects on a disabled person. For example, a hook on the back of a bathroom stall that is "only one inch too high " (according to the business owner who complained about the lawsuit brought against her) meant, to the woman in a wheelchair who opposed the bill, that is was completely out of her reach and meant she could not use the stall without assistance. While a threshold that is only two inches too high may seem like a "technical violation" to the Republican Senator who sponsored the legislation, it may has well have been a five foot fence to the young lady who could not enter the restaurant to dine with her friends. The list went on.

Some of our members feel we should support the legislation. They themselves may have been sued in a frivolous ADA lawsuit. To them I say, should we really support doing away with *all* ADA suits just because *some* are frivolous? If so, I guess all trip/slip and fall cases should be banned – most generate defense verdicts at trial so one could argue at least some are frivolous (not to mention the ones that end in Summary Judgment based upon the trivial defect rule) and they hurt businesses. Maybe we should do away with product liability cases, too. And what about Med Mal cases – most end up with defense verdicts so some are frivolous. It is the same with these ADA cases. Sure, some are brought by plaintiff's mills; some are brought by professional ADA plaintiffs. So what? That doesn't meant they are all frivolous; it certainly doesn't mean we should throw out the baby with the bathwater by doing away with all compliance suits. It means we should look for a way to do away with that small percentage of frivolous suit without taking away the rights of those who need the ADA.

Others in our organization wanted to not publicly oppose the bill because it would give our opponents such a free shot at us – point out how trial lawyers are hurting business by opposing a change to ADA statutes to stop the extortion lawsuits. After all, our public image is bad; we shouldn't do anything to make it worse.

Of those members, I ask, "why did you become a trial lawyer?" Was it simply to make money? Was it to satisfy your own ego? If so, do me a favor – find another area of law in which to specialize. Sometimes it is hard to remember the real reason we do this – to help others who need us. Sure, the money is good, but if that is the biggest reason we do this, we deserve the bad reputation our opponents are trying to give us.

CAOC opposes this bill. I believe that is because CAOC has no right to give away the rights of others? WE are supposed to be dedicated to helping others keep and enforce their rights.

I oppose this bill. Not because I don't think there are some frivolous ADA suits. Not because I don't think some changes need to be made to avoid needlessly hurting businesses. Not because I don't understand how our opponents will use this opposition against us. I oppose the bill, and I hope you will join me in opposing it because, after listening to all of the arguments, I realized that, for and with the people I became a trial lawyer to help and serve, opposing this bill was the right thing to do

The Dark Corner

Raise Your Hand If You Know He Did It

"The most innocent actions can appear sinister to the poisoned mind."
Doubt: A Parable (2005)

During vastly different luncheon engagements on recent consecutive work days, Darkbloom was drawn into discussions of the Michael Jackson verdict. Darkbloom's companions, regrettably, elected to join the herd instinct and voice (in varying degrees and manner) their conviction of his guilt. Based on what? As one of Darkbloom's few friends retorted after Darkbloom was ill-advisedly excoriating the first Rodney King verdict, "Were you in the courtroom? Did you hear all the evidence, or are you judging the entire case based on the 5-second excerpt from the infamous video clip that ran on the news over and over?!" Point taken, friend. It is with much resignation, however, that Darkbloom must report that his recent luncheon companions did not fold up and go away so easily. (Maybe they *did* see all the evidence, thanks to the E! Entertainment Channel re-enactments.) What force of nature impelled them to cling determinedly to the pre-ordained guilt of His Jacko-ness? Fear not. Darkbloom is here to de-conundrum-ize the situation.

In *Doubt,* recent winner of the Antoinette Perry award, a Roman Catholic priest in 1964 is accused by the parish school principal (a Sister of Charity) of having an inappropriate attachment to a pre-teen boy who happens to be the only black student in the school. The priest doggedly and persuasively professes his innocence, but the nun's unshakeable conviction of the priest's inappropriateness is based on the logical leap that *something* must have happened since the boy returned to class with alcohol on his breath after meeting the priest in the rectory for what the priest admits was a "private" conversation. The nun's dogmatic adherence to her beliefs ends up immutably altering several lives, and by the time of the final blackout, she herself is shaken by the eponymous emotion of the play.

In his eloquent preface to the published version of *Doubt*, playwright John Patrick Shanley correctly observes that "There's a symptom apparent in America right now. It's evident in political talk shows, in entertainment coverage, in artistic criticism of every kind, in religious discussion. We are living in a courtroom culture. We *were* living in a celebrity culture, but that's dead. Now we're only interested in celebrities if they're in court. We are living in a culture of extreme advocacy, of confrontation, of judgment and of verdict. Discussion has given way to debate. Communication has become a contest of wills. Public talking has become obnoxious and insincere. Why? Maybe it's because deep down under the chatter we have come to a place where we know that we don't know ... anything. But nobody's willing to say that."

As Oscar Wilde (an appropriate personage to introduce into this discussion) wrote in *The Ballad of Reading Gaol,* "I know not whether laws be right or whether laws be wrong..." Similarly, Darkbloom knoweth not whether Mr. Jackson is guilty or innocent of the crime with which he was charged. The point is that those of us who practice the courtroom culture that Mr. Shanley thinks is overwhelming our society have an awesome responsibility to resist the tendency to find people (celebrities or otherwise) guilty of civil or criminal offense based on a collection of personal eccentricities, combined with innocent actions that appear sinister to minds poisoned by a lack of perspective, or proportion, or doubt. It is also wise to remember the words of Oliver Cromwell, who would have been advised to heed his own counsel to the Church of Scotland, "I beseech you, in the bowels of Christ, think it possible that you may be mistaken."

Darkbloom understands that this is counter-intuitive for those who earn their livelihoods divining the correct argument for the correct situation. Too often, though, our ostensible goal of discerning the truth in the crucible of cross-examination is more appropriate to the cut-and-run of the bloggers or the appallingly misguided medieval practitioners of trial by ordeal. The ordeal to which we put the *dramatis personae* of our cases is one of words and PowerPoint images. Juries conflate glibness and the ability to be quick on one's feet with the ability to tell the truth. Defense practitioners conflate "different" personalities (or eccentrics, or "characters") with liars. Plaintiff's practitioners play to prejudices and pre-conceived notions about the workings of bureaucracy,

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DARK CORNER …

Continued from page 3

or of corporate culture. All of us conflate people whose memories are not perfect with people who are confabulators. Lawyers, after all, are responsible for what happened to Mr. Wilde, Mr. Jackson, and also Damien Echols, Jason Baldwin, and Jessie Misskelley. The latter three are commonly known as the West Memphis Three, and in 1983 they were convicted of a triple child murderer based on an allegedly coerced (and almost-immediately recanted) confession by Mr. Misskelley, and based largely on the fact that the other two were the town freaks who dressed in black, listened to Metallica, and read books by Anton LeVey. In the Bible Belt, this was sufficient for a capital murder conviction. (Please go to www.wm3.org for more details about the case.) The underlying forces that impelled these three young men to now face the rest of their lives in the state penitentiary are the same that impelled Darkbloom's luncheon companions to opine on the certainty of Mr. Jackson's guilt.

Darkbloom recently darkened the threshhold of his son's 5th grade classroom in one of the celebrated school districts of a reasonably affluent suburb. There he presented the story of the West Memphis Three and showed the students a photograph of a random person who had nothing to do with the case, and asked the student if the picture alone, without more, allowed them to opine as to his responsibility for the crime. A sizeable majority had opinions based on the photograph, and more than one pointed out that the individual appeared unkempt and unwilling or unable to care about himself and his appearance. This was enough to convict him in their minds. From the mouths of babes, indeed.

Darkbloom is not afraid of terrorists, even those driving ice cream trucks in Lodi. Darkbloom is not afraid of child abductors or molesters. Darkbloom is not afraid of Willie Horton, or the boogeyman, or even death. The only thing that frightens Darkbloom is a person, any person, who cannot even remotely accept the possibility that they have not been somehow ordained to know the truth. About anything.

As for Mr. Jackson, he trades the unknown nightmare of the Californian prison system for the known nightmare of life at Neverland. And the thoughts of relocating to the Continent. With no career, no real family or friends, he has now of necessity sworn off the company of children at his ranch, the only thing that gives him joy in his pained, bizarrely constrained and insular little life. We oughta be right proud of ourselves, folks.

Thank you to the following Sacramento Advocates Club members.

Because of YOUR Advocates Club commitment, consumers' rights are being protected in our State Capitol, our courtrooms and our offices. Without YOU, big business would slap a permanent "gag order" on the plaintiffs' bar.

GOLD

Robert A. Amendola
C. Brooks Cutter
Roger A. Dreyer

SILVER

Leland J. Aiken • Robert E. Barnett • Todd S. Bissell • Deborah Dudley • Charles L. Hastings • John H. McKinley • Daniel Francis Quinn • Craig C. Sheffer • Jill P. Telfer

REGULAR

Clayeo C. Arnold • Joseph Cooper • Lena L. Dalby • Lance Daniel • Hank G. Greenblatt • Joseph F. Harbison, III • Lawrence M. Knapp • James L. Kouretas • Joseph H. Marman • Holly J. Mattice • Allan J. Owen • William Owen • Eliot M. Reiner • Gregory M. Stroup • Stewart M. Tabak • Kyle K. Tambornini • Lea-Ann Tratten • Davey Turner • Jack Vetter

A minimum $1.00 a day is less than a cup of coffee. We need our colleagues to understand that their clients' rights are worth at least that. They're glad YOU do!

With the tort reformers working to further erode punitive damages, cap government entity liability, go after the Americans with Disabilities Act, and expand MICRA to nursing homes ... we need more attorneys to join our fight!

If you would like information about how you can help protect consumers' rights and help your practice, please call CAOC at (916) 442-6902 or get an Advocates Club application from our website at www.caoc.com.

A listing of local Advocates Club members will run bi-monthly in this publication. We hope everyone associated with the plaintiffs' bar will thank these members for their commitment to the protection of justice and consumer rights!

tAdvocates Club list updated 1.31.05

CCTLA Spring Fling 2005

By: Allan Owen, CCTLA Board Member

CCTLA's annual Spring Fling was held on Thursday, May 26, 2005. All of us who attended had a fantastic time! The weather was perfect; food great; wine divine.

The Spring Fling, now in it's third year, is our annual FREE party for members, judges and guests. Approximately 70-80 people showed up this year to relax, enjoy some libations (donated by a local winery and a local brew pub) eat some fine food and network with fellow members and judges.

In keeping with our spirit of doing good things for good causes, the Spring Fling incorporates a silent auction with all of the proceeds from the donated items going to the Sacramento Food Bank. This year we raised over $4400 for the Food Bank with the proceeds from such items as a week in a Kona Condo, a specially baked cake, several bottles of wine, artwork, yacht racing adventures, to name a few.

If you participated, thank you for helping us make this such a success. Special thanks to all of the judges who came to help us celebrate spring and raise funds for the Food Bank. If you are a member and did not come this year, please be sure to stop by next year to drink, eat, talk, enjoy, and BID! Admission is free; fun is mandatory, and there couldn't be a better way to meet other members, talk to judges in a relaxed atmosphere, and win wanted items while helping an important local charity. Besides, how often do you get a chance to visit Sacramento's favorite Cathouse for a legitimate business reason?

Roger Dickinson, Jean Cain, John Virga and others

Hon. Art Scotland and Hon. Jim Mize

Hon. Ronald Robie, Dan Wilcoxsen and Alan Owen

Hon. Allen Sumner and Brianne Doyle

Jennifer Wagstaffe, Assemblyman Dave Jones, Peter Berghuis and Dorothy Mull

Margaret Doyle, Jill Telfer, Paul Wagstaffe, Kyle Tambornini and David Lee

Dorothy Mull/ Hon. Leighton Hatch

Hon. Anthony Ontiveros and Loren McMasters .

Dave Smith, Jack Vetter and Hon. Leighton Hatch

Hon. Art Scotland, Glenn Ehlers, Hon. Brian Van Camp, Hon. Loren McMasters and Craig Sheffer

Recent Verdicts & Results

Dryer Hits $17M Verdict in El Dorado County

Roger Dreyer reports that this matter involved an incident that took place on 12/01/01 on US 50 at the Wright's Lake four lane chain installation location. This is the location that Caltrans designates for a chain installation location and a chain checkpoint during snow conditions that Caltrans deems it necessary to require that motorist are either in a vehicle with chains or one with snow tires and four wheel drive. Caltrans has exclusive control over the chain installation decision making process, and control over the process itself. While they will use independent installers who act as independent contractors, they have the ability to dictate where, when and how those individuals do their job.

Prior to the incident Caltrans maintenance workers had complained that motorist entered the Wright's Lake chain installation site too fast and made it unsafe for the motorists, the chain installers and the Caltrans workers. They had issued a request by way of a safety meeting memo that speed reduction signs be posted so that motorist would slow down. That memo was never produced during discovery despite being admitted to by the superintendent and the Caltrans supervisor for this region. The location is devoid of any signs or warning devices notify the public of the upcoming chain installation area, that the right lane is effectively closed to through traffic as it is used for chain installation, that traffic will be stopping and that there will be pedestrians in the roadway. The only sign is a sign that says "Chains Required one mile ahead" which references the chain checkpoint. This sign is approximately .6 of a mile from the location where the incident happened and chains are actually being installed. Additionally, the chain installation starts on the back side of a curve that prevents motorist from seeing the installation site until they are within a few hundred feet. The curve goes to the right and then to the left and it is only after a motorist makes the curve that they would be able to see anything being done in terms of chain installation.

Caltrans took the position this set up was fine, that there had never been a need for any other precautions and that the "one mile ahead" sign was adequate. They had a number of Caltrans and privately hired experts form Washington and Iowa who indicated that this was not a dangerous condition at the time of the incident and that the plaintiffs' claims were not well founded.

Dean Betts was 70 years old at the time of the incident. His wife of 47 years, Lynn Betts, was 67. He was a retired logger who was in excellent health and extremely physically fit. He had been doing the independent chain installation for nearly twenty years. On this day he was at the Wright's Lake location and was first in line to install chains. The chain installation work had just been moved from a lower elevation site, Fred's Four Lane, which was 3 miles West of this location and 400' lower where there was no ice or snow on the road. Caltrans had made the decision to move to Wright's Lake despite the fact that the road was covered with snow and was slick. Mr. Betts had to go to the Wright's Lake location if he wanted to install chains.

A vehicle entered the location and needed to have chains installed. It moved into the right lane and stopped as directed and Mr. Betts started the chain installation process. Immediately thereafter another motorist entered the area and came to a stop in the through left lane because he was confused by all the pedestrians and thought that the location was the checkpoint which was another .4 mile up the road. There were no signs to assist the public in recognizing that physical set up.

Immediately thereafter defendant Sayed Hashimi came around the curve at approximately 30 mph, in his estimation, and saw that both Eastbound lanes were blocked and that he was going to strike the vehicle in the left lane. He had his wife and three children in the car with him. He panicked and slammed on his brakes and lost control as a result of the slick road conditions. In the process he struck Mr. Betts, catapulted him 60' through the air, and as a result he suffered a severe and life altering frontal lobe brain injury.

Mr. Betts was in a coma for 30 days and spent five months in rehabilitation facilities regaining his ability to walk, feed himself independently and talk. He was released to a convalescent facility and ultimately home to the care of his wife. This was despite his severe cognitive injury, his inability to control himself, take care of his daily acts of living or have the cognitive ability to know when to urinate or have a bowel movement. His wife took care of him 24/7. Ultimately this proved too difficult for her as he would turn on her physically and act out inappropriately. He was hospitalized and ultimately lost the ability to speak, feed himself or walk.

His medical expenses to date are $585K. The future expenses ranged from a low of $1m to $2.5m. The jury returned a verdict for all of his medicals, $2.5m in future medicals and $9.5m for his noneconomic losses and $4.25m for Mrs Betts' loss of consortium for a total verdict of just over $17m.

The jury determined that the location was a dangerous condition of public property, that it was foreseeable and that the State had notice of the problem. The jury also found Mr. Hashimi negligent. They allocated responsibility for Mr and Mrs. Betts damages 65% as to the State and 35% as to Mr. Hashimi. The State had refused to ever make an offer indicating that, in their attorneys' view, there was simply no liability or exposure.

Congratulations to John Demas on His Riverside County Verdict of $1.577 M

John Demas reports that the Plaintiff was a tow truck driver called out to Defendant's house for a dead battery jump start. Defendant's car was in a small single car garage; the driveway leading up to the garage was at a slight decline down to the street from the garage. Plaintiff decided to push the car out of the garage and into the driveway because he felt the driveway was too narrow and his tow truck wouldn't fit. Plaintiff claimed that he told Defendant to stay away and while pushing the car from the driver's side, Defendant pushed from the front, causing Plaintiff to turn and tell Defendant not to push. After Plaintiff turned back to the original direction he was facing, he was pinned between the garage door frame and the car. Plaintiff had to push the car off him to free himself. Defendant claimed he was never told by P to stay away, that the push was insignificant, that Plaintiff was the professional and should have chosen a better course of action (i.e. pull tow truck up, call for help, use portable jumper cables), that Plaintiff was negligently trained and was not AAA certified. Defendant also alleged that Plaintiff was never pinned, caused his own injury by pulling on the car once the rear wheels left the garage and increased momentum from the slope of the driveway.

Defendant retained accident recon., biomechanic, voc rehab counselor, orthopedic surgeon and economist.

Plaintiff retained biomechanic, voc. rehab counselor and economist. Treating surgeon's depos taken and shown by videotape.

Plaintiff had minor L4-5 disc bulge with 2 discectomies. Also had electrical stimulator implanted to relieve pain in left leg.

Past meds: 94k – amount/reasonableness not disputed.

Future Meds: Per P: $192k; Per D: None necessary. Residual complaints should resolve in no more than 3 years.

Past wage loss: between 56-65k--No major disagreement.

Future Wage loss: Per P: 2 different scenarios--either part time work in future or no work at all; between 150k to $560k depending on the different scenarios.

Per D: None.

Verdict: Past Meds: 94k; Future meds: 192k; Past Wage: 58k; Future Wage: 383k; Non-economic: $850k

Plaintiff and employer got hit for some fault. Total net after after Prop. 51 issues/deductions, costs, etc., will be close to 900k.

Salek v. Wal-Mart Verdict

As reported by John O'Brien the Salek v. Wal-Mart was tried to verdict last friday, May 28, 2005. George Salek is a 42 year old husband and father of three children. He immigrated to the United States from Syria when he was 14 years old and became the classic American success story. After graduating from high school in San Diego, he and his family started Damascus Pastries (taking over a local donut shop) and then parlayed that into a successful Greek restaurant business. George and his father were the owners/proprietors of the Greek Palace restaurant in San Diego when George was injured.

George suffered a "mild traumatic brain injury" on September 2, 2001 while shopping for a house warming present for a cousin at a Wal-Mart in Antelope. A Wal-Mart asociate had displayed a 10 pound cast iron water pump on a 7 foot high shelf (known as a "riser") in the garden department. The pump was part of a decorative water fountain set which included a wooden rain barrel and various accessories. To customers, the pump appeared to be part of a display featured on a lower shelf. George reached up for the pump to get a closer look, lost his grip, and it fell on his head. He suffered a concussion and was taken by ambulance to Mercy San Juan Hospital.

My co-counsel, David Goldin, and I proceeded to trial on a simple negligence theory. Wal-Mart defended on two grounds: (1) it wasn't negligent, George was; and (2) George was exaggerating/faking his injury.

Wal-Mart's own rules strictly prohibit placing any "loose, heavy objects on risers unless they can be secured." Every manager and other employee except the one who placed the pump on the shelf admitted that the pump's placement was a falling hazard and a violation of Wal-Mart's own policy. All also admitted that when Wal-Mart takes an item out of its box, it is for display purposes and the store expects the cus-

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Recent Decisions ...

Continued from page 8

tomer to pick it up and handle it. However, Wal-Mart argued that this fact didn't apply here because there were signs posted every 8 feet which said, "please ask for help with items on the top shelf."

The case was tried in federal court before Chief Judge Levi. Consequently, attorney voir dire was limited. However, in my alloted ten minutes, I managed to establish that three individuals on the nine-member panel (two men and one woman) had all reached for items over their head in a warehouse store despite the presence of a sign advising them to seek assistance. Several others had used whatever means available, including stepping on other merchandise, pallets, etc. to reach for items over their heads. Given Wal-Mart's superior position to remedy this hazard (i.e., by storing it on a lower shelf, not taking it out of its box, securing it with a zip tie or some other means), employee training, and superior knowledge of the hazard itself (weight and awkwardness of the water pump), I knew we had a jury more disposed to find fault with Wal-Mart as opposed to the customer. Moreover, there was testimony that George tried to find help but nobody was available (another concept explored on voir dire with several jurors expressing frustration with the lack of assistance in warehouse-type stores).

After cross-examining five Wal-Mart witnesses on liability issues, we called an expert in industrial safety and human factors to talk about the importance of safe stocking procedures in a warehouse type environment like Wal-Mart. We also called a biomechanic expert who opined that the forces generated by this falling pump from a height of just three inches were more than sufficient to cause a level III brain injury. Wal-Mart called no witnesses, lay or expert, to refute any of this testimony. We then put on a neurologist, neuropsychologist, psychiatrist, licensed clinical social worker, and a rehabilitation specialist to describe George's injuries. Wal-Mart's only witness in rebuttal was its IME neurologist.

George suffers from chronic post-concussion syndrome. His neurologist, Dr. James Grisolia from San Diego, testified that all of his higher level brain functions like short term memory, concentration, ability to plan/organize, and even his personality were permanently damaged. As a direct result, he also suffers from severe mood disorders, including chronic depression and suicidal ideation. George went from running a successful restaurant business and being a dynamic father and husband to living most of the time in a darkened room at home. He recently lost his driver's license. He is sensitive to light and loud noise and is constantly focused on his deficits. He has not worked in the restaurant since his injury.

Of course, most of these symptoms are subjective and difficult to prove to a skeptical jury. Both our neurologist and neuropsychologist, Dr. Ronald Ruff, are very experienced in presenting these issues to a jury. Both described the cascade of deficits, and the cumulative effect that each one has on a person's psyche. Dr. Ruff used an effective flow chart to explain the interrelationship between the cognitive, psychological, emotional, and quality of life deficits facing someone with a frontal lobe injury. The cumulative effect usually overwhelms its victim, causing despair, and feelings of inadequacy and hopelessness. Our rehabilitation expert then addressed the need for a "life care" plan, i.e., a qualified care giver (not the wife) who acts as a prosthesis for George's injured limb (in this case his brain) to overcome these deficits.

Wal-Mart's malingering defense relied heavily on the testimony of George's brother-in-law, Tony Azar. Mr. Azar professed love and adoration for his family and for his brother-in-law and then proceeded to testify that in the past three years George has never shown any symptoms of the brain injury we described. He said, "George is healthier than you and me." He also testified that he overheard George and his father-in-law conspiring about the best way to convince a jury that his injuries were real. On cross examination he admitted that he is extremely angry at his father-in-law and George over a bad real estate deal and the fact that his father-in-law is continuing to collect on a debt that Mr. Azar owes in excess of $24,000. Regardless, though, his testimony was certainly problematic.

In the end, the jury was persuaded by the overwhelming evidence to the contrary. They found Wal-Mart 100% negligent. Although they decided that George was negligent in reaching for the pump, his negligence was not a substantial factor in causing his injury. They awarded $1,120,000 to George and $280,000 to his wife for loss of consortium.

With respect to evidentiary issues, Judge Levi retained a court-appointed expert to assist him deciding whether we met the Daubert standard on our PET scan evidence which showed an abnormality in the location where George was struck. He was leaning toward excluding the evidence and would have delayed starting the trial by several weeks were we to press the issue. We chose to try the case without the corroborative evidence provided by the PET scan. Of course, Wal-Mart's counsel, Craig Caldwell from Porter, Scott, et al., never let the jury forget that we had no MRI, x-ray, or orther objective evidence of George's brain injury.

Wal-Mart also introduced several family videotapes showing George attending weddings and other events post-accident. Caldwell argued that his smiling face and cultural dancing at these events was somehow inconsistent with his claims of headaches and sensitivity to loud noise. We tried to introduce evidence that Wal-Mart had tried several times to acquire damaging sub-rosa footage on its own, but in each instance, the footage only confirmed George's limitations.Judge Levi excluded any reference to Wal-Mart's surveillance tactics.

Wal-Mart's pretrial offer was $250,000, which it raised to $300,000 the first day of trial.We served a 998 for $900,000.

Calendar of Events ...

(Capital City Trial Lawyers Association's Upcoming Activities)

TUESDAY, JULY 12, 2005
Q&A Luncheon • Time: 12 Noon
Location: Vallejo's (1900 4th St.) • CCTLA Members Only

THURSDAY, JULY 28, 2005
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: *TBA*
Time: 5:30 to 7:00 p.m. • Sacto Courthouse, Dept. 2
CCTLA Members Only – $25

FRIDAY, JULY 29, 2005
CCTLA Luncheon
Topic: TBA
Speaker: *TBA*
Time: 12 Noon • Firehouse Restaurant
CCTLA Members Only – $25

SATURDAY, AUGUST 6, 2005
CCTLA Seminar
Topic: "Liens Update"
Speaker: *Glenn H. Ehlers, Esq.; David E. Smith, Esq.; Jack Vetter, Esq.; Daniel El Wilcoxen, Esq. and Elisa Zitano, Esq.*
Time: 9:00 a.m. to 12>30 p.m. • Capitol Plaza Holiday Inn, 300 J Street

TUESDAY, AUGUST 9, 2005
Q&A Luncheon • Time: 12 Noon
Location: Vallejo's (1900 4th St.) • CCTLA Members Only

THURSDAY, AUGUST 25, 2005
CCTLA Problem Solving Clinic
Topic: "TBA"
Speaker: *TBA*
Time: 5:30 to 7:00 p.m. • Sacto Courthouse, Dept. 2
CCTLA Members Only – $25

FRIDAY, AUGUST 26, 2005
CCTLA Luncheon
Topic: TBA
Speaker: *TBA*
Time: 12 Noon • Firehouse Restaurant
CCTLA Members Only – $25

TUESDAY, SEPTEMBER 13, 2005
Q&A Luncheon • Time: 12 Noon
Location: Vallejo's (1900 4th St.) • CCTLA Members Only

THURSDAY, SEPTEMBER 22, 2005
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: *TBA*
Time: 5:30 to 7:00 p.m. • Sacto Courthouse, Dept. 2
CCTLA Members Only – $25

FRIDAY, SEPTEMBER 23, 2005
CCTLA Luncheon
Topic: TBA
Speaker: *TBA*
Time: 12 Noon • Firehouse Restaurant
CCTLA Members Only – $25

TUESDAY, OCTOBER 11, 2005
Q&A Luncheon • Time: 12 Noon
Location: Vallejo's (1900 4th St.) • CCTLA Members Only

THURSDAY, OCTOBER 27, 2005
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: *TBA*
Time: 5:30 to 7:00 p.m. • Sacto Courthouse, Dept. 2
CCTLA Members Only – $25

FRIDAY, OCTOBER 28, 2005
CCTLA Luncheon
Topic: TBA
Speaker: *TBA*
Time: 12 Noon • Firehouse Restaurant
CCTLA Members Only – $25

Contact Debbie Keller @ SCA @ 916/451-2366 for reservations or additional information with regard to any of the above seminars.

Capitol City Trial Lawyers Association (CCTLA)

PROUDLY PRESENTS A SEMINAR ON

"MEDICAL LIENS UPDATE"

WITH SPEAKERS Glenn H. Ehlers, Esq. · David E. Smith, Esq. · Elisa Zitano, Esq. · Jack Vetter, Esq · Daniel E. Wilcoxen, Esq.

This is a can't miss seminar offered to attorneys and others interested in resolution of injury cases.
What are the ramifications of recent California and U.S. Supreme Court decisions?
Are you up-to-date on Medi-Cal/Medicare/hospital and other liens?

Miss this and it will cost your client money.

You can not afford to miss this seminar!

DATE: SATURDAY, AUGUST 6, 2005 ~ TIME: 9:00 A.M. TO 12:30 P.M.
LOCATION: CAPITOL PLAZA HOLIDAY INN, 300 J STREET, SACRAMENTO, CALIFORNIA
COST: $175.00* CCTLA MEMBERS ~ $225.00* FOR NON-MEMBERS
**Includes syllabi and continental breakfast.*

Contact Debbie Keller @ CCTLA (916) 451-2366 to reserve your seat today!!!!

Limited seating available! Reserve your space now!

"LIENS" ~ August 6, 2005 ~ 3 MCLE CREDITS*

Thank you to the following Sacramento attorneys who are leading the fight to stop measures that limit access to justice, including CAPS ON FEES!!

DIAMOND

Clayeo Arnold - Joseph Babich - Robert Buccola - William Callaham - Roger Dreyer
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Jonathan Stein - Paul Wagstaffe - Michael Zinicola

A listing of local Advocates Club members will run every other month in this publication. We hope everyone associated with the plaintiffs' bar will thank these members for their commitment to the protection of justice and consumer rights!

If you would like information about how you can help protect consumers' rights and your practice, please call CAOC at (916) 442-6902 or get an Advocates Club or Initative Defense PAC application from our website at www.caoc.org.

Advocates Club list revised 6.22.05

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Governor Appoints …

MICHAEL A. SAVAGE TO THE SACRAMENTO COUNTY SUPERIOR COURT

BY: CURTIS NAMBA, CCTLA PUBLIC APPOINTMENTS CHAIR

Governor Arnold Schwarzenegger recently announced the appointment of Michael A. Savage to a judgeship in the Sacramento County Superior Court.

Savage, 46, of Rocklin, has served as deputy district attorney in the Sacramento County District Attorney's Office since 1986. For the last six years, he has been assigned to homicide prosecutions, sexual assaults and other serious violent felonies. From 1992 to 1995, he served in the Sexual Assault Unit. Savage's experience also includes one year as supervisor of a felony trial team.

Savage earned his Juris Doctorate degree from McGeorge School of Law and Bachelor of Arts degree from University of California, Los Angeles. He is a member of the Sacramento County District Attorneys Association. He fills the vacancy created by the appointment of Judge Tani Gorre Cantil-Sakauye to the Third District Court of Appeal. Savage is a Republican.

The compensation for this position is $149,160.