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Your Contributions of Time, Service Lead to Success

By: Kyle Tambornini, CCTLA President

CCTLA has presented this year's Friedman Humanitarian Award to Jill Telfer. In addition to trying more cases than anyone I know, Jill finds time to work with a number of charitable organizations, including the American Cancer Society, the Keaton Raphael Memorial, animal rescue organizations—including Teaching Everyone Animals Matter—and Court Appointed Special Advocates for Children ("CASA"). She also serves as editor of *The Litigator*—and is past CCTLA president.

The presentation was made at Allen Owen's house on May 27, during our annual Spring Fling, which included a silent auction—where all monies raised are donated to the Sacramento Food Bank. Thanks to the generosity of CCTLA members, the amount raised this year totaled $16,500!

Appreciation goes to all of our members who made Lobby Day a huge success. We had more than 25 CCTLA members at the Capitol on May 4, meeting with legislators

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Jill Telfer (light suit) is congratulated after being named winner of the Friedman Award at CCTLA's Spring Fling in May. The award's namesake, Mort Friedman, is seated on the right. More photos on pages 16-18.

Allan's CORNER

By: Allan J. Owen

Here are some recent cases I found while basking in the sun in Kailua Kona. These come from the *Daily Journal*. Please remember that some of these cases are summarized before the official reports are published and may be reconsidered or de-certified for publication, so be sure to check and find official citations before using them as authority. I apologize for missing some of the full *Daily Journal* cites.

1. Insurance Law—Rescission. In Nieto v. Blue Shield, 2010 DJDAR 861, plaintiff "forgot" to disclose on her application that she was seeing a doctor for back and leg pain, had received two steroid injections in February, 2005, and had seen a chiropractor between February and May, 2005, for lower back and hip pain. In May, 2005, she filled out an application for Blue Shield health insurance and failed to disclose this, saying her last medical appointment was three years earlier. Not surprisingly, when she got a referral for a hip replacement due to necrosis of the hip about four months after the policy was issued, Blue Shield opened an investigation and rescinded the policy. The court held that an insurer is entitled to rescind the policy where the insured has engaged in fraud in the application process.

2. Invasion of Privacy. In Catsourias v. Department of California Highway Patrol, 2010 DJDAR 1703, CHP officer sent gruesome photos showing plaintiff's decedent's decapitated body from the accident scene out on the Internet on Halloween. Photos were widely disseminated on the Internet and came back to plaintiff in the form of taunts and accompanied by hateful messages. Trial court sustained demurrer, finding surviving family members have no right of privacy in context of written media discussing life of a decedent. Appellate court reverses finding that publication of death images is different and therefore there is an invasion of privacy cause of action as well as causes of action for intentional infliction of emotional distress.

3. New Trial. In Bell v. BMW, 2010 DJDAR 1977, plaintiff suffered severe injuries when he lost control of his '96 BMW Z-3 Roadster. He sued for negligent strict liability breach of warranty. Basic theory was there was not sufficient roll-over protection in that plaintiff's head hit the ground through the soft top of his convertible. Court granted a new trial, and the appellate court reversed. There is an excellent discussion of use of juror affidavits, etc., too complicated to go into in such a short forum. If you have potential juror misconduct and using juror affidavits, you should certainly read this case.

4. Civil Procedure—Prevailing Party. In Goodman v. Lozano, 2010 DJDAR 1925, the California Supreme Court holds that a party whose net judgment is zero based on prior settlements is not a prevailing party to get costs. Bad law.

5. Employer Liability. In Lobo v. Tamco, 2010 DJDAR 2827, defendant was leaving work when he struck plaintiff. Defendant was in his own vehicle. Trial court granted summary judgment since he was leaving work at the end of his work day, intending to go home and driving his personal vehicle. Appellate court reversed finding a triable issue of fact as to whether the conditions of his employment required him to have his personal vehicle available for employer's benefits. Apparently, he was an engineer who drove to customers' businesses to check for defective products manufactured by the employer. He didn't do it very often; however, the appellate court found that the frequency of use is not what is important, it's whether or not the employee is required to have the car available and if so, then the jury could find that the "required-vehicle" exception to the going

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Please Consider Not Showing Them the Money!

By Jonathan Marcel

In the classic Rod Serling Twilight Zone episode, *"The Monsters are Due on Maple Street,"* friendly neighbors on a bucolic small town street are transformed into a violent mob through the simple introduction of fear of the unknown into their midst. The agent of fear in that instance was a calmly malevolent alien presence.

Personal injury attorneys have, for some time now, been in the thrall of a similarly induced fear. It is the fear of tort reform, and the reaction to the induction of that fear, that has likely inspired California personal injury attorneys to contribute significant sums to Democrat Party politicians. The solicitations on behalf of these candidates are often couched in the kind of barbarians-at-the-gate and-wolf-at-the-door hysteria that usually accompanies Tea Party rallies and conservative mass mailings.

Personal injury attorneys are convinced that their incomes, the security of their families, and their very way of life are all threatened by the specter of Republican candidates hell-bent on repealing "consumer"-friendly legislation and imposing draconian limits of personal injury verdicts and recoveries. Trial lawyers sometimes refer to it as a military campaign to be waged on divergent "fronts."

Like it of not, most of this whipped-up panic is quite misdirected and benefits only Democrat office-holders and candidates who, when elected, ignore the single-issue interest groups that got them there. Why? Because they know that such groups, due to their induced fear, are always reliable sources of campaign cash. This should not come as a shock to anyone: It is the path all single-interest groups tread.

1. Single-Issue Groups are Almost Invariably Ignored

Talk to any right-to-"life" advocate. In the 40 years between 1968 and 2008, Democrats held the White House for only 12 years. Presidents Nixon, Ford, Reagan, Bush and Bush all paid at least modest obeisance to the pro-"life" agenda, yet never took any serious steps to advance it through Constitutional amendment. While the Hyde Amendment continues to restrict federal funds, the alleged "murder" of innocent "children" continues unabated.

While one could argue that physical intimidation and physician murder have sharply reduced the number of procedures performed, abortion itself has not been a calling card or a hot-button issue for any serious Republican presidential candidate. It is an issue as to which the partisans are almost insanely committed, but the politicians couldn't really care less. Legalized murder, like "junk lawsuits," is a simple way to berate a despised enemy (liberal Democrats), and is therefore routinely paraded in front of the conservative electorate the way a parent appeases a child with a sweet. There is no substance to any of it, and it is just trotted out as a reminder of one's conservative *bona fide*s.

Like abortion foes, trial lawyers are completely taken for granted by Democrat politicians. One can imagine the pols asking, rhetorically, "Where else are they gonna go?" It's a complete no-lose proposition for Democrat politicians. They have a ready source of funding from a group of lawyers that may grumble when nothing positive happens, but always keeps the donations coming during election cycles.

2. There is a Glaring Lack of Public Support for Tort Reform

The Gallup organization may be able to explain Republican politicians' inertia when it comes to sweeping anti-abortion legislation. Since 1975, Gallup polling has shown that 75-85% of respondents favor legalized abortion in at least some circumstances. Focus group participants, according to an April 16 Newsweek article, regularly complain about the moral compass of those who choose abortion, but they still don't think the government should be in the business of forbidding it. All of the noise comes from organized, well-funded

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Show them the money?

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single-issue groups.

Tort reform, like abortion, is another conservative whipping-boy. Conservatives trot it out at election cycles, because they can count on reflexive support from business interests and chambers of commerce.

Without engaging in too much of a digression, it is interesting to note that American business seems to *love* lawsuits…that it initiates. It just doesn't like getting sued, and who can blame it? This is reminiscent of the remark attributed to Ben Franklin that a rebellion is only illegal in the third person—as in "their rebellion." In the first person, however, "our rebellion" is *always* legal. Lawsuits are only job-killers and "bad for business" when they are lawsuits that corporations disapprove of.

The Judicial Council reports that beginning in 2000, civil lawsuit filings started declining to a 10-year low of 1.42 million in 2005. Since then, however, filings have rebounded to 1.58 million, or about where they were a decade ago. "The increase in civil filings is driven by *non-tort cases*, classified as other civil complaints, and includes cases such as contract, employment, real property, and unlawful detainer." (DataPoints, August 2009, AOC Office of Court Research)

It turns out that tort filings actually fell in 2007-2008, yet "total unlimited civil filings grew by 10 percent on the strength of a 17 percent jump in the number of other [non-PI] civil complaints." Like most people, businesses don't despise lawsuit that they file, just lawsuits that others file against them.

Businesses and conservative politicians complain about "frivolous lawsuits," but never take any real action against them. As with abortion, "lawsuit abuse" is a handy tool for stirring up moneyed interests, and convincing those moneyed interests to divest themselves of their moneys into the coffers of Republican candidates.

If public opinion polling exists on lawsuit issues, there can be little doubt that most people would say there are too many lawsuits, but also would exempt from that classification any lawsuit that they themselves happened to file. It is no accident that dramatic limitations in tort damages and plaintiffs' attorney fees have regularly lost at the ballot box, as in the 1980s and more recently with the "terrible twos."

Voters may think that lawsuits are out of control, but they will tenaciously defend their right to file a lawsuit (which would be a righteous lawsuit, of course) on behalf of themselves or their loved ones in the event of an injury-producing event.

There have been only a handful of successful anti-lawsuit ballot propositions and legislation. However, they have as a common theme the perceived need to fix an unfairness, or other crisis, in the system. MICRA was prompted by a likely-artificially-created malpractice "crisis." But it was also under-girded by a rational belief that a jury system of laypeople were remarkably unqualified to divine whether a trained specialist deviated from a standard of care of which the jury had zero personal knowledge.

Responsible commentators have supported the idea that, absent instances of bad faith or gross / obvious error, physicians should be entitled to exercise their professional judgment without fearing legal liability. Any personal injury lawyer whose judgment has been called into question in court by a second-guessing plaintiff legal malpractice lawyer is likely to think twice before taking on a medical malpractice case.

Proposition 213 was a no-brainer as far as being passed by the electorate. Those who break the law by driving uninsured on public roads should not receive monetary benefits from injurious accidents over and above their out-of-pocket expenses. Proposition 51 also addressed a reasonably-perceived imbalance in the system permitting a minimally-liable party to shoulder 100% of the fiscal responsibility in the event of the other parties being judgment-proof. Neither of these electoral "victories" can really be described as tort reform.

Regular as clockwork, however, the politicians will make their noise about lawsuits, whether their names are Schwarzenegger or Whitman. But they take only the most token action, such as introducing

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Supreme Court Decides Rent-a-Center v. Jackson: Companies Can Delegate Unconscionability Challenges to the Arbitrator

From the Consumer Law & Policy Blog
Sponsored by Public Citizen's Consumer Justice Project

A divided Supreme Court on June 21 dealt a major blow to consumers and employees seeking to challenge arbitration agreements on the ground that they are unfair or unconscionable. Public Citizen was co-counsel in the case, Rent-a-Center v. Jackson, and will be spearheading efforts in Congress to curtail its effects.

In a 5-4 decision by Justice Scalia, the Court held that if a company's arbitration agreement includes a clause delegating fairness challenges to the arbitrator, a court must enforce that agreement and send the matter to arbitration. The Court's decision arose out of an employment discrimination claim brought by Antonio Jackson, an African-American Nevada man, against his former employer. When Jackson sued, the company invoked its arbitration agreement and claimed that, under the agreement, any challenges to the agreement had to be decided by the arbitrator.

Until this Supreme Court decision, consumers and employees had the right, under Section 2 of the Federal Arbitration Act, to go to court and ask a judge to find an arbitration agreement unconscionable or unfair and therefore unenforceable. Although most arbitration agreements are enforceable, court review weeded out the very worst abuses—like imposing exorbitant fees, forcing consumers or employees to travel great distances to arbitrate, or allowing a corporation to pick an arbitrator that is clearly biased in its favor.

This Supreme Court decision will leave many challenges to the fairness of a corporate arbitration system entirely in the hands of arbitrators themselves. Nothing will stop companies from inserting clauses like the kind approved by this decision into standard-form arbitration agreements. Companies would then be

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Supreme Court

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free to impose one-sided terms or select clearly biased arbitrators with close ties to the company, secure in the knowledge that any challenge to the fairness of arbitration will be decided by the arbitrator whose very authority comes from the challenged arbitration agreement.

In a stinging dissent, Justice Stevens pointed out that neither party had urged the rule adopted by the Court and characterized the Court's reasoning as "fantastic."

The June 21 decision will spur efforts in Congress to pass the Arbitration Fairness Act (H.R. 1020, S. 931), a measure that would ensure that any decision to arbitrate in a consumer, employment, or franchise dispute is made voluntarily and after a dispute has arisen, so that corporations cannot take advantage of their unfair bargaining power to force individuals into arbitration.

Public Citizen's co-counsel in the case were the Hardy Law Group of Reno, Nevada, and Public Justice of Washington, D.C. Oral argument was presented by Ian Silverberg of the Hardy Law Group.

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"Pillah" Talk©

with Daniel Wilcoxen

An ongoing series of interview with pillars in the legal community
By Joe Marman

Daniel. . . Could you give a brief history of your work as a lawyer, or even your history leading up to becoming a lawyer.

My father was in the military, and my mother was a nurse, so, I dreamed of either being in the military or becoming a doctor. It would have been difficult to get into medical school, since there were only 220 "chairs" per year, and there were approximately 200 applicants per chair. The likelihood of being accepted into medical school was very remote, so I decided on electrical engineering but I really didn't enjoy that endeavor.

I saw the graduating class at U.O.P. McGeorge School of Law getting their diplomas in 1967, which caused me to become interested in law. I graduated Cum Laude in 1972.

During my last year of law school, I worked for the state's Division of Highways' legal department (now CalTrans Legal), pending the results of the bar exam. I met my friend, Gary Callahan, in law school. He convinced David Rust of Rust & Mills to hire me as an insurance defense lawyer. I began with the Rust, Armenis & Matheny law firm on January 2, 1973. I worked in insurance defense and did some plaintiff's work up until 1979. I opened my own law firm on March 1, 1979, and when I started, I had four cases: two defense cases and two plaintiffs' cases.

I had made a lot of friends in the plaintiff's bar when I was a defense lawyer (strange as that sounds). Within six weeks after opening my office (renting one office from an existing law and accountancy firm), I had been referred 84 additional files. As we all know, luck plays an important role in one's success. As a result of a double death and burn case arising from a propane explosion that occurred in Bakersfield in February of 1979 (good luck for me, bad luck for the injured parties), I was very successful in my first year. The burn case (with multiple defendants) began settling in 1979 and culminated in 1981 with a total settlement of $5.3 million. Based on that success, I purchased my current office building in 1979 and moved into it in 1980. I have now been practicing law for 37 years.

What do you think are some of your most memorable victories?

The most memorable was the burn case in the beginning of my career that settled for $5.3 million. I have had the good fortune to resolve over 50 cases for in excess of $1 million. Most of these were subject to confidentiality agreements. I believe the most rewarding (emotionally and financially) case I ever handled was another propane explosion case, which resolved in the late 90s for $13.5 million. This amount of money took care of my severely injured minor plaintiff and her entire family. We are still friends.

I also tried a case for three months in Auburn with my friends Russell Porter, Steve Gurnee, Fred Schwartz and the enemy, Bowman & Brooke, the result of which, is still subject to a confidentiality agreement. I found this case very rewarding in that we were able to settle the case with the City of Auburn for $3.5 million and then proceed against the car manufacturer under a Mary Carter agreement whereby if we were extremely successful, the City of Auburn would recover back $2.5 of the $3.5 million paid pursuant to the Mary Carter agreement. Although subject to the confidentiality order, the City of Auburn was in fact paid back its $2.5 million, plus attorney's fees to Russ Porter.

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Pillah Talk

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You recently had an amazing settlement when an inmate smashed his head into a cinder block wall at a jail, paralyzing himself, and you got a more than ***$5 million settlement*** *against Glenn County. How did you accomplish that?*

I was asked to help out on this case by my friend, Dick Molin of Chico, who did a lot of work on the case. The plaintiff was in jail and had serious emotional issues and received no psychiatric care or treatment.

The client, due to his emotional distress, intentionally rammed his head into the wall, attempting to injure himself so that he could obtain medical care and treatment. He suffered a C4 burst fracture, causing him to be a quadriplegic. Based on his care and treatment and/or lack thereof, we were able to resolve this case for in excess of $5 million.

Do you still take cases into trial yourself?

Yes. I don't see in the foreseeable future me calling it quits with the law. There is no other profession that is as inspiring, imaginative and/or rewarding as the practice of law. Being able to help somebody change their life is the ultimate reward. Teaching young lawyers is extremely rewarding.

Is there anything that you don't like in the legal profession?

There is. It's become way too technical, too paper-driven, and sometimes feels like you are walking through a minefield. The law is less forgiving and less friendly than it used to be. It's also less civil.

Are there any other memorable cases that you were involved in?

Some time ago, I was asked by one of my lawyers how to handle a lien. It was a pretty simple lien dealing with Medi-Cal. I researched the law, both statutory and case law, and worked out some formulas on how to resolve Medi-Cal liens.

I wrote a two-page memo to give to my lawyers so they would understand the concepts. It began to dawn on me that there were various entities (insurance companies, governmental entities, ERISA plans, health care providers) demanding repayment from sums derived from the resolution of personal injury cases. This often interfered with the ability to resolve a case. I therefore dedicated myself to trying to figure out methodologies for getting rid of liens.

I find it very rewarding to continue to do research on this issue, and to update my lien article (which has now grown from two pages to 36 pages). I now teach other lawyers how to handle liens. There are many attorneys now discussing liens and I believe that I have assisted in elevating the state of knowledge concerning liens.

I was very happy with the results in the cases of Garcia v. County of Sacramento, (2002) 103 Cal.App. 4th 67, Cement Masons Health & Welfare Trust Fund v. Raymond Stone, (9th Circuit, 1999) 197 F.3d 1003 Lopez v. Daimler Chrysler (2009) 179 Cal.App.4th 1373 because it assisted my clients, clarified the law and avoided the payment of $1,377,000 in liens in just those three cases.

Do you have any life's heroes whot you admire and why?

I have had many heroes in the practice of law, and they are too numerous to name. Most of them were my heroes because they took the time to share their knowledge with me. Gordon Schaeber, the dean at UOP McGeorge School of Law, had a profound influence on my education and success. He is one of many, but one of the most important.

Do you think any laws should change?

The most damning system of laws that I have been faced with since 1975 is MICRA. The restrictions on suing health care providers set forth in MICRA have been unchanged now for 35 years. This is merely a system that was politically enacted to wipe out the ability to receive compensation for injuries caused by negligent medical care.

The studies done at Harvard University have established that over 90,000 are killed by medical negligence each year, which is double the amount killed in auto accidents. As they say, some doctors bury their mistakes.

Do you recall any brilliant decisions by any court?

I thought that Arkansas Dept. Health Services v. Ahlborn was a brilliant decision, which caused our Welfare and Institutions Code Section 14124.76 to be amended as a result of that decision. Ahlborn held a lien could only apply to the amount that was actually recovered for past medical bills. A horrendously bad decision was decided two weeks later when on May 15, 2006, when the Supreme Court decided Joel Sereboff vs. Mid Atlantic Medical Services LLC, 126 S. Ct. 1869 (2006), which I though was not well reasoned. When you have to rely upon a territory of Arizona case from 1914, you are reaching.

Another brilliant decision, I thought, was made based on the Ahlborn decision by our Third District Court of Appeal in Lopez v. Daimler Chrysler. It has been very rewarding for me to work on these cases and to have helped to cause some major changes in lien cases in California.

Where is your favorite vacation place?

My condo in Cabo San Lucas.

What would you like to do with your retirement?

I don't think I am ever going to retire.

What is your current favorite form of entertainment or relaxation?

Fishing.

Show them the money?

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legislation that they know goes nowhere. It's a stylized Kabuki dance where futile legislation is proposed so that the right can tell their corporate "base" that they tried, and Democrat politicians can tell the CAOC that they were victorious in keeping the wolf from the door…this time. But in order to keep doing so in the future, they will need money. Lots of money. Prodigious efforts by plaintiffs' attorneys to raise money, and thereby fend off tort reform, seem largely wasted.

3. Let's do the Contributor Math

Unfortunately, polling data will not tell us whether trial lawyer money made any difference in any particular legislative district. Elections are likely not decided based on trial lawyer money, but instead on voter registration efforts, local issues and personalities of the candidates. The bare facts are that California Legislature has been predominantly Democrat for some time. California hasn't had a GOP Speaker of the Assembly in 14 years (Curt Pringle). It hasn't had a GOP president pro tem of the Senate since at least 1998, if not before. Barbara Boxer's Senate seat hasn't been Republican in over 40 years (although it may be in play this year), and Dianne Feinstein's has been Democrat since 1991, a generation ago. This would all be the case with or without personal injury lawyers' money. Researchers from the University of Georgia studied contributions trends in relation to election results for non-state-wide races and found that there is no simple relationship between candidates' characteristics and the amount of campaign contributions they raise, or even between the amount of money a candidate raised and outcome of the election.

Trial lawyers have spent $34 million in donations to California legislative candidates in the seven-year period between 1997 and 2004 (a comparatively paltry $8.5 million per two-year election cycle). Can this really be said to have made any difference? According to FollowtheMoney.org, California Democrat candidates in 2008 raised over $130 million. Even if trial lawyer contributions doubled (from 2004) to $17 million in the 2008 election cycle, that would be only 13% of Democrat contributions, hardly making personal injury lawyers a major player.

Lawyers and lobbyists *generally* (not limited to plaintiffs' lawyers) were sixth from the bottom, at $10.3 million, on the list of total campaign contributors (Democrat and Republican) to 2008 California elections. Meanwhile, $220 million was contributed by business interests involved in finance, insurance, real estate, communications, agriculture, construction, and transportation.

While the money from attorneys generally is not significant, the fact is that Democrat candidates know that unions and consumer lawyers will always be there for them. This is an odd posture for a group of attorneys that always attempts to use its negotiation prowess to maximize its clients' recoveries. Trial lawyers have been convinced they have no choice and are therefore at the absolute mercy of the candidates, even as the poor lawyers are being outspent by commercial interests at a rate of 20 to 1 (Labor interests, at $56.6 million in total contributions, are far more important to Democrat candidates). The legitimate question is: does unquestioning financial support of Democrat candidates make turn trial lawyers into king-makers and important political players, or does it make them (under-performing) chumps that are taken for granted?

4. Aren't there Better Ways to Spend the Money?

The $34 million that trial lawyers donated between 1997 and 2004 was, in the greater scheme of things, probably not that much. Think of what a handful of responsible charitable organizations could do with such funding. This would really be a step toward the "making a difference" that plaintiffs' lawyers routinely claim they practice, as well as preach.

CCTLA members Matt Donahue and Jeff Sevey secured a $96,400 verdict for their client against Mercury Insurance, based on a May 17, 2007, low-impact collision.

Defendant testified that he took his foot off the brake and rolled into Plaintiff's vehicle at 1 mph. There was very little visible damage, so we had a teardown performed, which revealed a dimple on the structure of the bumper. This allowed Larry Neuman to testify that the speed at impact was closer to 7-10 mph. Defendant's expert said 6-8 mph.The repair estimate was $600 to the Defendant's vehicle and $1,300 to Plaintiff's.

Plaintiff contended the collision caused two herniated discs in the cervical spine. Mercury took the position that the forces were not sufficient to cause any injury, other than "perhaps" a sprain.

The 37-year-old plaintiff had no history of neck pain and had never been treated for neck pain. The onset of pain was immediate to the collision. Drs. Montesano and Shin testified that the herniations were caused by the collision. Defendant's experts were: Sfakianos, and Rivani.
Defense Counsel: Sam Swenson
Offer: 998—$5,000
Demand: Arbitration award of $22,000
Past medical: $16,800
Future medical: $24,100
Past non economic: $25,000
Future noneconomic: $30,500

***

CCTLA members Lori Gingerly and Travis Black received a $38,537 jury verdict for their client who was injured in a rear-end motor vehicle accident. Special damages were comprised of $2,903 in chiropractic bills and $2,000 in property damage. The Mercury Insurance policy limit was $15,000.

Defense Counsel: Sam Swenson (house counsel) and John Hallissy

Defense Expert: IME—Susan Bromley, D.C.

Property Damage: $2,000

Facts: Plaintiff was treated for four months by a chiropractor, then was involved in a much more serious accident. The second case was settled. Chiropractor apportioned injuries to neck and back as neck 60% first crash, 40% second crash,low back 25% first crash, 75% second crash. Chiropractor argued permanent facet and ligament damage would 100% cause future impairment. Defense withdrew expert Susan Bromley, D.C., just prior to trial. Since a defense medical exam had been performed, the court admitted evidence one had been conducted, and in closing, Plaintiff argued the defense had an opportunity to put on a better defense but did not under CACI Jury Instruction 203.

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Robert A. Buccola and Steven M. Campora of Dreyer Babich Buccola Callaham & Wood, LLP, obtained a jury verdict of $24,300,000 for their client against Freeway Transport, Inc.

In November 2004, Plaintiff was severely injured when she was pinned beneath a large tractor trailer. At the time of the accident, Defendant driver was hauling produce owned by United Salad Co., pursuant to a contract with Freeway Transport, Inc. In a bifurcated liability trial, Freeway Transport, Inc., was found to be a common carrier and vicariously liable for the acts of the independent contractor driver.

Freeway Transport, Inc., admitted that negligence on the part of the truck driver was 100% the cause of the subject accident, but denied having vicarious liability for the acts of the driver and disputed the nature and extent of Plaintiff's injuries.

Plaintiff, who at the time of the accident was nine years old, suffered severe soft tissue degloving injuries to her thighs and buttocks, as well as orthopedic injuries to her hip and pelvis. She suffered rectal and vaginal injuries, necessitating the use of a colostomy bag and suffered severe upper thigh and buttock scaring. Plaintiff's injuries will require that she undergo potentially two hip replacements over the course of her life, as well as extensive plastic surgery procedures over her buttock and thigh area to replace scar tissue and to guard against skin breakdown. At the time of trial, Plaintiff was able to enter the courtroom without any visible abnormalities, but her covered conditions were disfiguring, and she faces a lifetime of periodic future surgical care.
Breakdown of Verdict:
$4,300,000 in economic damages
$20,000,000 in non-economic damages.
Judge: Hon. David Abbott
Attorney for Defendant: Gary C. Ottoson of Bacalski, Ottoson & Dube, LLP, and Paul Bozych (Chicago) and Ian R. Feldman (Irvine) from Clausen Miller PC.

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CCTLA members Lawrence Boehm (for husband) and Gregory R. Davenport (for ex-wife) tried a low-impact collison during a four-week trial in San Joaquin County and received a $2,309,000 verdict. A Honda Civic collided with a Suburban at approximately 10-15 mph, Lodi, CA. Plaintiff was a 39-year-old male, married, two kids and a successful car salesman $100k/year. Mild degenerative disc disease and depression (pre-existing and non-debilitating), bulging discs L4-S1, annular tear. Eight months later, he receives 2 level global fusion from Dr. Montesano. Post surgery 8/10 permanent low back pain and unemployable. Wife asserted loss of consortium claim. She divorced two years after accident.
Judge: Hon. Lesley Holland
Defense: David A. Melton, Lindsay Goulding, Porter Scott

Husband:
Past Pain and Suffering: $900,000
Past Earnings: $330,000
Past Medical Expense: $329,000
Future Medical Expense: $100,000
Future Wage Loss: $0
Future Loss Household Earnings:$0
Future Pain and Suffering: $100,000
Total:$1,859,000. (Plaintiff 998–Offer–1,999,999 – so close)

Wife:
Loss of Consortium: $350,000
(Plaintiff 998–Offer: $100,000)
Interest (35 months): $100,000
Total: $450,000

Defense 998 Offers: $1,000,000 for husband; $10,000 for wife

RECENT VERDICTS & SETTLEMENTS

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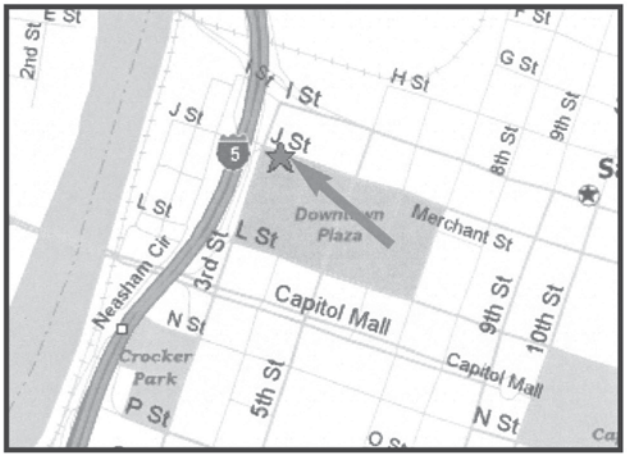

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For More Information, please contact: **Diane Stanley**
916-442-0482

Allan's Corner

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and coming rule does apply.

6. Employer Liability. In Diaz v. Carcamo, 2010 DJDAR 2852, the court holds that even where an employer admits that they were vicariously liable for the employee's conduct, the court should have allowed in evidence of negligent hiring and retention. Appellate court found they are two separate liability theories and in order to do a proper Proposition 51 apportionment, the court should allow the evidence in because one is direct liability.

7. Workers' Comp. In Lara v. WCAB, 2010 DJDAR 2935, injured worker was a gardener who was hired twice in the space of 12 months to prune bushes. The board found he was an independent contractor, not an employee. He supplied all his own equipment including ladders, blowers, etc. No one told him how to do the job, and he was entitled to decide how to do it on his own. Court of Appeal affirms.

8. Witness Statements. In Coito v. Superior Court, 2010 DJDAR 3289, the Fifth District holds that witness statements are not work product and therefore are not protected and available through discovery. In other words, you can ask Interrogatory 12.3 and you can request production of the witness statements themselves. This case is in direct conflict with Nacht & Lewis Architects, Inc., which is a Third DCA case and therefore binding on the Sacramento Superior Courts unless and until the California Supreme Court takes this up. (Again, if you read the Coito case, you will see that they are following the earlier Cal Supreme decisions while Nacht & Lewis seemingly ignored them.)

9. Cooperation Clause in Insurance Policy. In Abdelhamid v. Fire Insurance Exchange, 2010 DJDAR 3603, plaintiff purchased a home and hired contractors to do extensive remodel work. Contractors were halted by the city for failure to get permits and found asbestos during the work they had done and refused to complete the job. Shortly after the red-tagging, the house burned to the ground. and plaintiff reported it to her insurance company, Fire Insurance Exchange. Fire investigator felt the fire was suspicious (imagine that!), and the fire department believed it was the result of arson, given that plaintiff had paid more for the property than it was worth. Fire Insurance Exchange requested a completed proof of loss, a bunch of documents and to appear for an examination under oath. Material was produced, Fire Insurance Exchange requested more documentation and claimant refused. At the examination under oath, claimant repeatedly refused to answer questions about her business or personal finances, refused to answer questions about a bankruptcy. Fire Insurance Exchange denied the claim. Insured produced further documentation, insurer requested a second examination under oath, and that was never responded to. Insured then filed suit for breach of contract, breach of the duty of good faith and fair dealing, bad faith denial of the claim, etc. Judge McMaster granted summary judgment, and the Court of Appeal affirmed. Remember, cooperation clause runs both ways.

10. Punitive Damages. In Amerigraphics, Inc., v. Mercury Casualty Company, 2010 DJDAR 4326, the court in a bad-faith case holds that punitive damages in the amount of 10 times compensatory damages is constitutionally too high and the ratio should not exceed 3.8 to 1.

11. School District Liability. In Agbeti v. LA Unified School District, 2010 DJDAR 4556, plaintiff minor was sexually assaulted during an after-school program on school grounds. Trial court sustained demurrer finding that neither the school district nor its employees have an affirmative duty of care to students in after-school programs. Appellate court reverses.

12. Insurance Law. In Risely v. Interinsurance Exchange at the Automobile Club, 2010 DJDAR 4569, insurer denied a defense or indemnification under homeowner's policy but provided defense under the auto policy. There was a settlement demand in the amount of the homeowner's policy ($300,000); insurer denied the demand on the basis that it exceeded the pol-

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Allan's Corner

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icy limits. Stipulated judgment in the amount of $434,000 was entered into and a bad faith case filed based on the stipulated judgment and assignment of rights. Insurer was granted summary judgment on the basis that since they defended the claim under the auto policy. this stipulated judgment was inappropriate under Hamilton v. Maryland Casualty, 27 Cal 4th 718. Court of Appeal reverses finding that the refusal to defend under the auto policy may have increased personal exposure.

13. Privett Cases. In Seabright Insurance Company v. US Airways, 2010 DJDAR 4641, the court holds that a hirer is liable for injuries suffered by an independent contractor's employee where the hirer contributes to the injury by failing to provide guards for a conveyor.

14. Insurance. In Dominguez v. Financial Indemnity Company, 2010 DJDAR 4771, the First District holds that a step-down in liability amounts for permissive user's policy provision was conspicuous, plain and clear and therefore enforceable.

15. Host Liability. In Melton v. Boustred, 2010 DJDAR 4951, defendant held a party at his residence with live music and alcohol and advertised the party using an open invitation on myspace.com. Plaintiffs arrived at the party, were attacked, beaten and stabbed by a group of unknown individuals and sued defendant for negligence, premises liability and nuisance. Trial court sustained demurrer without leave to amend and appellate court affirms finding that defendant did not owe plaintiff any duty because they did not create the peril that injured the plaintiffs, there was no special relationship, the criminal act was unforeseeable, and security measures would have been unduly burdensome. Probably the right result, but you cannot, in my opinion, define duty by determining whether or not the defendant created the peril.

16. Legal Malpractice Statute of Limitations. In Jocer Enterprises, Inc., v. Price, 2010 DJDAR 5059, the court holds that the tolling provision of CCP §351 (defendant outside the State of California) does apply to legal malpractice actions under CCP §340.6(a)(4).

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Allan's Corner

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17. Mediation Privilege. In Porter v. Wyner, 2010 DJDAR 5312, the court holds that the mediation privilege does not extend to communications between the attorney and client so in a lawsuit between the attorney and client, the mediation privilege does not preclude evidence of the communications made at mediation (the attorney/client privilege has an exception for cases involving disputes between the attorney and the client).

18. Summary Judgment/Government Tort Liability. In Laney v. City of Sacramento, the Third DCA (Robie with Blease and Raye) reverse Judge Chang's granting for summary judgment in a dangerous condition case. Of note is the fact that Bragg & Associates keeps a database of all claims filed against the city for dangerous condition. Here, the city used a declaration from the Bragg person saying he couldn't find any claims at the same place. The trial court held that was dispositive on the issue of a dangerous condition and the appellate court reversed. In the first place, claims are not the same as accidents so this proved nothing about the number of accidents. Also, there was insufficient foundation. More importantly, even if there are no similar accidents, that doesn't mean that the condition is not dangerous and there were expert opinions basically saying it was. The other two grounds for summary judgment were hornbook law wrong, so I won't summarize them here.

Spring Fling 2010

Above, Spring Fling hosts Linda Whitney and Allan Owen. Right, Friedman Humanitarian Award winner Jill Telfer with Marcie and Mort Friedman.

CCTLA's 7th annual Spring Fling & Silent Auction raised $16,500 for the Sacramento Food Bank through the generous donations and participation of CCTLA members, the Sacramento judiciary, consumer-friendly legislators, friends and family.

Jill Telfer received the Mort Friedman Humanitarian Award at the May 27 event attended by 135 and hosted by Linda Whitney and Allan Owen.

Sacramento Food Bank Senior Bridge Builder and Special Events Coordinator Dorothee Mull; Genevieve Deignan, Sacramento Community Learning Center director; and Kelly Slefkin, Sacramento Food Bank communication and development director.

Special thanks must be given to those who worked many hours behind the scenes to make the event a success, including Debbie Keller, Allan Owen, Linda Whitney, Margaret Doyle, Kerrie Webb, Lena Dalby, Travis Black, Kyle Tambornini, Rob Piering, Joe Marman, Jo Pine, David Lee, Bob Bale and company, Carol Johns, Brianne Doyle, Sunny Paley, Alicia Hartley, Gabe Quinnan, and Aaron Andrachik.

For more information on the Sacramento Food Bank & Family Services, including ways to contribute to its programs, visit www.sfbs.org.

Above left: Linda Hart, John Airola and Donna Gray. Above right: Commissioner Kathleen Newman and Mark Norton.

Above left: Sharon and the Hon. Judge Joe Orr. Above right, John Demas, the Hon. Judge Robert Hight, CCTLA President Kyle Tambornini, Bill Kershaw and Justice Art Scotland.

Spring Fling 2010

Left: Bob Bale, Eliot Reiner and Hank Greenblat.

Right: the Hon. Judge Michael Virga and the Hon. Judge David Brown chat with Mort Friedman.

Right photo includes, from left in front: Patrica Campini, Dorothee Mull and Ed Campini. Far right photo: bartender Bill Seabridge.

More photos on page 18.

Above: the Hon. Judge Darrel Lewis, Isabell Flores, Assemblyman Dave Jones and Casey LeClair.

Left, Catherine Cowden, David Barzaga, Linda Whitney, Carol Gurel and Lisa Huffman DC .

Spring Fling 2010

Popular local band performs at Spring Fling

The Res Ipsa Loquitur band rocks out at December 2009 Red Lion Show.

Fresh on the heels of an international tour, local rock band Res Ipsa Loquitur was on hand to perform live and in person at CCTLA's annual Spring Fling.

Best known for its mega-hit, "Law School Sucks," this group of attorneys-turned-musicians has gone platinum with original songs about the legal profession.

Led by singer/songwriter/guitarist Bobby "Hollywood" Bale, the band also features Hank "Axeman" Greenblatt on rhythm electric; Eliot "Sweet" Reiner on harp and vocals; and Robbie "Kix" Nielsen on drums. They all are from Dreyer, Babich, Buccola, Callaham & Woods.

Tim Dierkes (the band's musical brain) and Randy Frazier (smart enough not to go to law school) handle lead guitar and bass, respectively. The band not only performed, but was willing to be put up for auction to benefit Spring Fling charities, with the top bidder winning a live performance by the band. CCTLA also was to auction autographed copies of the band's latest release, "Digital Dog."

Rock on, CCTLA!

CCTLA participated in the 2010 Walk 'N Rock for Kids which raised more than $476,000 for 16 local children and youth charities. Steve Davids and Suzie Loustalot (pictured), along with Debbie Keller, Laressia Carr, Elia Ungerman and Jill Telfer, made up the Law in Motion team. Special thanks to Steve Davids, Peter Timewell, Larry & Margaret Telfer and Suzie Loustalot for their generous contributions. This year, we raised funds for the Keaton Raphael Memorial, which supports children with cancer and their families by providing emotional, educational, and financial support, while increasing awareness and funding research toward a cure. To find out more about the Keaton Raphael Memorial and how you can help, you can visit childcancer.org.

President's Message

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to discuss a number of bills that will affect our practice. These include creating liability for homeowners who knowingly provide alcohol to minors, allowing service of process on rental car companies, and a proposal for a one day jury trial for small cases.

Our members are showing great success in trial results. Make sure to take a look at the list of excellent trial and arbitration results being turned out by our members, including Bob Buccula, Steve Campora, Lawrance A. Bohm (three verdicts greater than $1 million this year), Jill Telfer and Steve Shultz. Capital City Trial Lawyers Association continues to produce the best litigators in the state. Let's continue to set record verdicts for clients in 2010.

Our educational programs continue to provide skills and knowledge to make us better trial lawyers. With the Tahoe seminar behind us, we look forward to this month's "interactive" voir dire seminar, which includes Josh Karton (Gerry Spence Trial College) and Judy Rothschild (jury consultant, National Trial Project). We are also planning a "practical" lien seminar for the summer, designed to provide each of our members with a step-by-step process to deal with the liens.

Finally, thanks to all who have submitted articles for *The Litigator*. Your contributions continue to make this publication and our organization a success.

Thank You to Our Spring Fling Donors

Carlos Alcaine
Ron Arendt
Arnold Law Firm
Ardavan Aslie, M.D.
Joseph Babich
Bob Bale
Ray Ball
Don Britt
Judge David Brown & Debbie Brown
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Lee Schmelter
Noah Schwinghamer
Justice Art Scotland
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Bill Seabridge
Sevey, Donahue & Talcott
Craig Sheffer
Judge Ellen Sickles James (Ret.)
David Smith
Ed Smith
Judge W. Scott Snowden (Ret.)
Sofia Restaurant
Jon Stein
Kyle Tambornini
Marti Taylor
Jill Telfer
George Joseph Tichy, II
University Medical Imaging
John Vaclavik, The James Street Group
Dolores Velazquez
Jack Vetter
John Virga
Katherine Waki
Kerrie Webb
Chris Whelan
Linda Whitney
Drew Widders
Dan Wilcoxen
Woodbridge Winery
Wendy York
Elisa Zitano

Politicians: Why We Should Consider NOT Showing Them the Money!

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Capitol City Trial Lawyers Association
Post Office Box 541
Sacramento, CA 95812-0541

JUNE

Friday, June 25
CCTLA Luncheon
Topic: MEDICARE SET ASIDES
Speaker: Doug Brand
Noon - Firehouse Restaurant
CCTLA Members Only - $30

JULY

Thursday, July 8
CCTLA Problem Solving Clinic
Topic: "How to Beat the 'Bumper Cars' Defense in Low-Speed Impact Cases"
Speaker: Lawrance Bohm, Esq. and Dr, Gary Moran, Ph.D
Arnold Law Firm
(First Bank Building)
865 Howe Avenue, 2nd Floor
5:30 to 7 p.m.
CCTLA Members Only - $25

Tuesday, July 13
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

Friday, July 30
CCTLA Luncheon
Topic: "Economists/Vocational Rehabilitation"
Speaker: Richard Barnes, CPA
Noon, Firehouse Restaurant
CCTLA Members Only - $30

AUGUST

Tuesday, August 10
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

Thursday, August 12
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: Cliff Carter, Esq. & Steve Davids, Esq.
Arnold Law Firm
(First Bank Building),
865 Howe Avenue, 2nd Floor
5:30 to 7 p.m.
CCTLA Members Only - $25

Friday, August 27
CCTLA Luncheon
Topic: TBA- Speaker: TBA
Noon, Firehouse Restaurant
CCTLA Members Only - $30

SEPTEMBER

Thursday, September 9
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: Chris Kreeger, Esq.
Arnold Law Firm
(First Bank Building)
865 Howe Avenue, 2nd Floor
5:30 to 7 p.m.
CCTLA Members Only - $25

Tuesday, September 14
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

Friday, September 24
CCTLA Luncheon
Topic: TBA Speaker: TBA
Noon, Firehouse Restaurant
CCTLA Members Only - $30

OCTOBER

Tuesday, October 12
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

Thursday, October 14
CCTLA Problem Solving Clinic
Topic: TBA - Speaker: TBA.
Arnold Law Firm
(First Bank Building)
865 Howe Avenue, 2nd Floor
5:30 to 7 p.m.
CCTLA Members Only - $25

Friday, October 22
CCTLA Luncheon
Topic: TBA- Speaker: TBA
Noon, Firehouse Restaurant
CCTLA Members Only - $30

NOVEMBER

Tuesday, November 9
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

DECEMBER

Thursday, December 9
CCTLA Annual Meeting & Holiday Reception
Location: TBA - 5:30 to 7:30 p.m.

Tuesday, December 14
Q&A Luncheon
Noon - Vallejo's (1900 4th Street)
CCTLA Members Only

MARCH, 2011

March 25-26
CAOC/CCTLA Tahoe Ski Seminar
Speakers: TBA - Location: TBA

CCTLA COMPREHENSIVE MENTORING PROGRAM

The CCTLA Board has developed a program to assist new attorneys with their cases. If you would like to receive more information regarding this program or if you have a question with regard to one of your cases, please contact:

Jack Vetter: jvetter@vetterlawoffice.com or Chris Whelan: chwdefamation@aol.com

Contact Debbie Keller at CCTLA at (916) 451-2366 for reservations or additional information about any of these events

CCTLA Calendar of Events