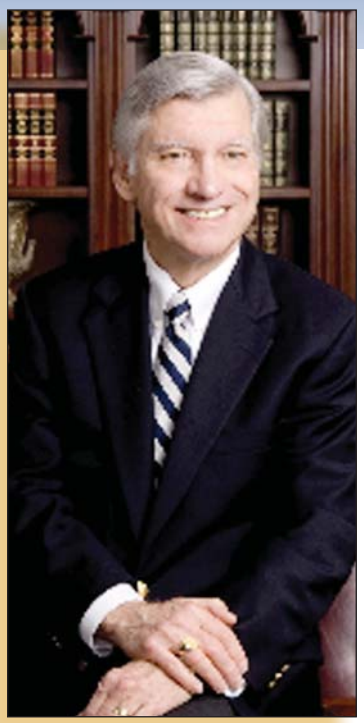
Winter 2009

The LITIGATOR

VOLUME VIII OFFICIAL PUBLICATION OF THE CAPITOL CITY TRIAL LAWYERS ASSOCIATION ISSUE 4

Inside This Issue

We *ARE* a Special Interest group, and we need to do it better



"It is fundamental to us that every person gets a level playing field in the eyes of the law."

— David Lee
2009 CCTLA President

By: David Lee, CCTLA President

As we near the end of calendar year 2009, it is worthwhile to reflect on what we do well and what we can do better. Anyone who watches the news is well aware of the turmoil caused by competing interests in the fight over health care, global warming, Wall Street regulation, and the like. It is commonplace to conclude that special interests have corrupted the actions of government. I think it is helpful to recognize that we, as trial lawyers, consumer lawyers, or however we think of ourselves, are an interest group. The difference, of course, is that we believe we are on the right side of the issues. And we generally are.

Regardless of our personal politics, we all believe that everyone should have access to the courts. It is fundamental to us that every person gets a level playing field in the eyes of the law. From simple, straightforward principles such as these, flow such things as the right to contingent fees so that individuals can litigate against wealthier corporate defendants.

So, if we are an interest group, let's be better at it. For example, let's give greater support to our state organization. At the state level, CAOC has the expertise and horsepower to effectively deal with the Legislature. Some recent legislation that CAOC has been involved with includes a bill to protect consumers from old and dangerous tires. Another bill would prevent insurance companies from rescinding insurance policies of people who make innocent mistakes on their application forms. These kinds of legislative campaigns are beyond the capacity of our local organization, but CAOC needs our support.

At the local level, we can be more aware of the views of local candidates for the Legislature and support them in their campaign efforts. CCTLA makes an effort to

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Allan's CORNER

By: Allan J. Owen

Here are some recent cases my friend Minnie and I culled from the *Daily Journal*. Please remember that some of these cases were 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.

Common Carriers. In Diaz v. Los Angeles County MTA, 2009 Cal. LEXIS 11314, the court holds that in a case against a common carrier, even where the common carrier alleges that the accident was caused by the negligence of a third party, the court must give a res ipsa instruction when requested.

Summary Judgment. In Labbs v. So. Cal. Edison Company, 2009 (reported at 175 Cal App 4th 1260), Plaintiff's vehicle collided with another vehicle, and then struck a light pole. Plaintiff claimed the light pole was too close to the curb. Defendant owner of light pole moved for summary judgment on the grounds they owed no duty as a matter of law. Trial court granted the motion, and appellate court reversed. The concrete light pole was 18 inches from the curb. The case has an excellent analysis of forseeability, duty and proximate cause issues.

Malicious Prosecution. In Drummond v. Desmarais, 2009 DJDAR 11505, the Sixth District Court of Appeals holds that a voluntary dismissal after an appeal was decided against Plaintiff in the underlying action (defendant in the malicious prosecution action) is not a favorable termination but instead a termination on a technicality and therefore no malicious prosecution action could lie.

Insurance - Intentional Act. In Delgado v. Inter-Insurance Exchange, 2009 DJDAR 11344, the California Supreme Court holds that an unreasonable belief in self-defense does not turn an intentional assault and battery into an accident creating coverage under the policy.

Complaint in first cause of action alleged an intentional assault and battery, second cause of action alleged that defendant negligently and unreasonably believed he was engaging in self-defense and unreasonably acted in self-defense when he negligently and unreasonably, physically and violently struck and kicked the plaintiff. Defendant tendered to his homeowner's policy. Homeowner's carrier said no coverage because not an occurrence because not an accident and instead was intentional act and excluded. At trial, Plaintiff dismissed the first cause of action and then entered into a stipulated judgment including a finding that the defendant's use of force occurred because he negligently believed he was acting in self-defense. Defendant paid some of the money and assigned his rights for the remainder.

Trial court sustained demurrer by carrier on the ground that this was an intentional act. Even in an amended complaint, the injured person's counsel stated they could not allege what facts led to the belief in self-defense and eventually demurrer was sustained without leave to amend. Court of Appeal reversed finding that harmful acts done with an unreasonable belief in self-defense describe conduct that is properly characterized as non-intentional and therefore an accident. Supreme Court reverses the Court of Appeal and concludes that an insured's unreasonable belief in the need for self-defense does not turn the resulting purposeful and intentional act of assault and battery into an accident.

Insurance Law. In Hinton v. Beck (Grange Insurance Group), Grange denied coverage and refused to defend its policyholder. Plaintiff sued the policyholder and

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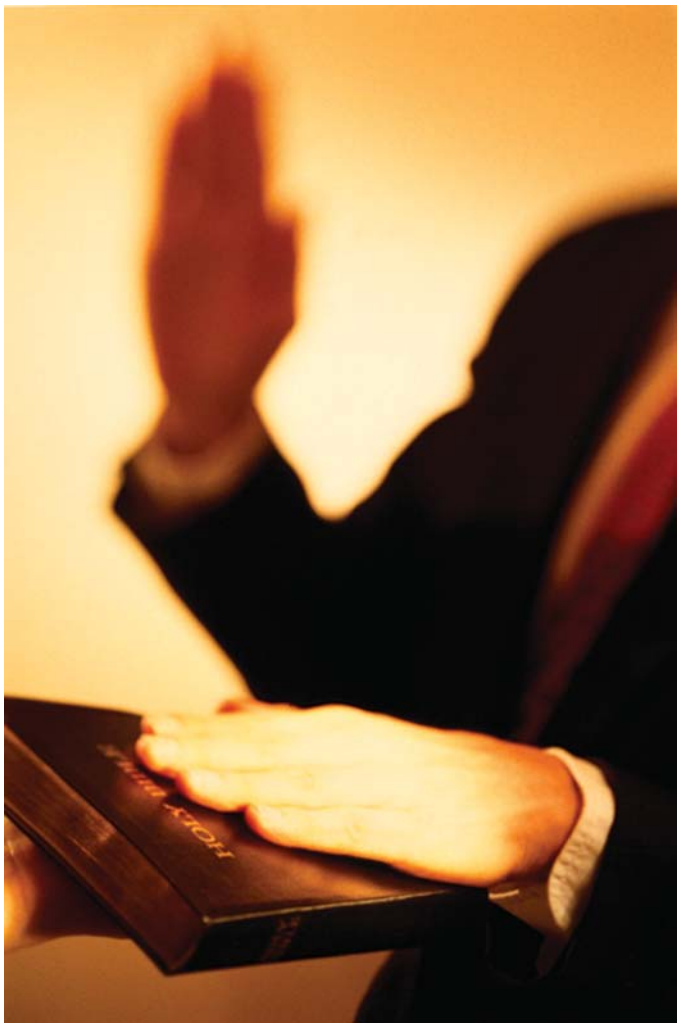


Witness Preparation: The Neglected Art

By: Don Keenan

Trial lawyers are meticulous in their evidentiary presentation of their case, choosing the right experts, developing the proper themes and doing much to ensure the case success. However, the most powerful element—the client—is often overlooked in shortcut non-effective preparation methods.

Sadly, every year, half dozen or more cases that my firm is requested to associate, on the eve of trial are rejected because there are fatal flaws in the client depositions, despite the fact that the referring lawyer has done exceptional work on all other aspects of the case. We have followed most of these cases, and they have ended in either a defense verdict or a low settlement.

Many lawyers, including myself, believe that one cannot secure a favorable plaintiff's verdict unless and until the client is likeable and empathetic to the jury. Often lawyers fail to use the right approach and tools to make their client likeable and it begins in depo preparation.

Defense lawyers and insurance carriers ironically place far more importance on the plaintiff's deposition than many other aspects of the case. On the other hand, many plaintiff lawyers delegate to a junior associate or paralegal the complete client preparation and the client is thus rendered vulnerable.

After practicing nearly 34 years, it is my considered opinion that there are no bad clients, just bad lawyers. I realize this sounds harsh but with many clients who are unlikeable and frankly, with whom I don't bond initially, rolling up your sleeves and doing proper client preparation will produce a superstar witness.

Many of you know that three-and-a-half years ago I embarked on an intense new form of jury research with the most noted jury expert in the country, David Ball, and two accomplished lawyers: Jim Fitzgerald, a fellow Inner Circle member from Wyoming, and noted Kentucky lawyer, Gary Johnson. Our research has centered on uncovering the subconscious mind and motivation of not only the jurors but clients, witnesses, defense lawyers, claims managers and judges. The subconscious motivations, preconceptions, biases, etc., are often termed "the Reptile," which became the target of our research that covered nine states and 22 separate focus groups.

At the heart of the Reptile brain is the subconscious desire to survive. Fear and misconceptions are often the driving force of the Reptile.

We have all witnessed clients who are savaged at deposition and then do poorly at trial. It is my opinion that this occurs primarily because the lawyer has failed to identify the client's fears, misconceptions and another powerful Reptilian/subconscious motivation: guilt.

Let me now address the method I have used for the last dozen years, without realizing the depth of these Reptilian phenomena that has proven success in deposition and trial.

1. CLIENTS' MISCONCEPTION

I always begin the client preparation process by simply asking what they think they are going to be doing during the preparation process. An overwhelming number of clients say, "I'm here for you to tell me what to say."

Before this initial preparation day, I also ask them to bring a written list of their concerns and fears to the office. Thus far, all clients have dutifully complied, and they list virtually the same fears and concerns: 1) the lawyer will put words in their mouth; 2) they will be confused on the facts and not remember correctly; and 3), the defense will attempt to blame them for what's occurred.

Unlike the role of a lawyer where we immediately tell the client what to do and how to do it, I play the role of a therapist asking open-ended questions and giving no answers until all of the misconceptions, fears and concerns are on the table. I have found that if you interrupt as to each and give the answer, this will prevent the client from fully disclosing all of them.

I have also been shocked that most clients have an unbelievable misconception of what a deposition is. Some believe it's all the parties sitting around in one table and everyone asking everyone questions. Others believe that they will be required to answer yes or no to all questions and cannot explain. Obviously when you hear these concerns, you know this creates fear in the client. It's fear of the unknown and worse yet, it is fear based often on misconceptions.

After all misconceptions and fears are on the table, that's the time, in the voice of a therapist, to calmly reassure the client that proper rules will protect them and that they will be able to tell their truth in a clear way.

Now let me turn to the most danger-

ous misconception and fear and that is client guilt.

2. CLIENT GUILT

This is perhaps the most overlooked area in lawyer preparation of the client, yet the most important to reveal and even more important to remove. This is also the area that skilled defense lawyers know exist and will take advantage of it during deposition and trial unless the client is properly prepared.

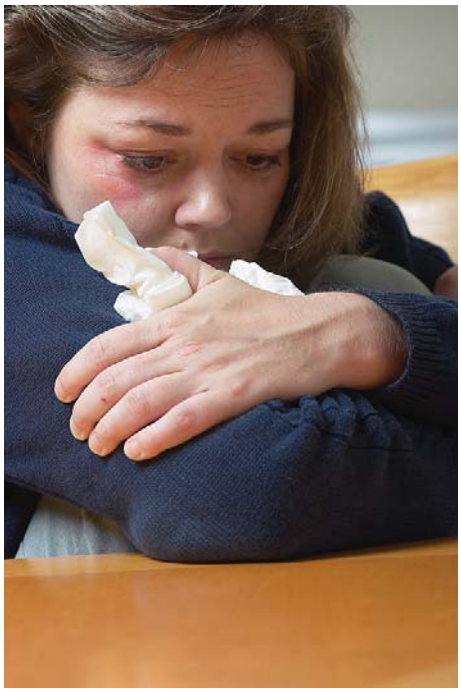
As with the concern listed by many clients that "the defense will blame me for what happened," many clients will not even talk about it unless the lawyer gives the client permission to do so.

I simply tell the client that guilt is a process which is human, natural and known to all of us. Even when an elderly person in our family dies, we burden ourselves with unnecessary guilt such as "we should have visited more often" or "I wish I could have told them how I really felt about them before they died." Once again this is natural, it's part of the grieving process but it's purely emotional and not logical. By outlining this, the client now has permission to talk about their guilt.

Remember also that the client is viewing the catastrophic event in retrospect and that they now know they would have done something different. This is purely Reptilian because we strive to have a mechanism to know that we are protected if the same or similar event ever occurs again. But as stated previously, this is emotional and not logical. Of course the client wouldn't have continued with that doctor had they known the end, of course the client wouldn't have gone to that retail parking lot if they would have known the high criminal statistics and crimes that occurred there in the past. Of course they wouldn't repeat their act. But they are nonetheless burdened with the fact that it happened.

The lawyer must engage in a logical autopsy of the events at the time they unfolded. They must convince the client that what they did was what anybody would do and that they have no reason to blame themselves. The lawyer has to engage in vigorous feedback until they are convinced that the client's guilt is removed and no longer a cancer on the case to destroy a deposition or trial testimony. The client must be convinced that they did everything right without hesitation and without any afterthoughts.

At the two-day seminars that David Ball and I are now conducting around the country, we have played DVD vignettes of various parts of the witness preparation process. According to the attendees, the removal of the client's guilt that produces a reassured and confident client is an amazing occurrence and the tipping point in the process.



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3. CLIENT MAJOR TRUTHS

In my preparation technique I always identify five to seven Major Truths that I want the client to understand is their armor; their protecting shield that will guard them against any harm in the deposition. But these truths cannot be my truths but rather truths identified and embraced by the client themselves.

In my recently published book, co-authored with David Ball, we came to realize that "truth" is very reptilian and the importance of which is learned at a very early age. We are called as little children to always tell the truth, there is not a single child that doesn't know the George Washington story about chopping down the cherry tree. Being truthful is a major theme in the scriptures, "the truth will set you free." The truth is a major component of the Reptile's safety.

How do you develop the client's Major Truths? Begin by thinking like the defense lawyer and listing the five to seven points they want to establish. Then, during the preparation process, play devil's advocate and challenge the client to disprove the defense points. This approach is also akin to Karl Rove's strategy of hitting the opponent at their strength—remember swift boats?

As an example, in a child injury or death case there is always a component that the defense will attempt to blame the parents. Therefore, I play devil's advocate and say to the client, "The defense will blame you for the outcome; you didn't do enough." Then I get the client to recite every fact and circumstance that disproves this defense point.

The end result is I asked the client what then is their Major Truth in response to the defense claim and they will usually say, "I was a good parent and did my job." I want it to be in their words so it's their Major Truth, not mine. Whenever they are confronted with any form of question that goes to blame them, they can immediately grasp their Major Truth and recite not only the Major Truth but all of the facts and circumstances that proves it in a logical manner.

The other Major Truths will be case-specific. Consider the paraplegic woman who had undiagnosed cauda equina syndrome where the defense contended that she should have gone back to the emergency room on Sunday following her Saturday visit. Her Major Truth became, "I was told not to come back until symptoms changed, and they did not change until early Monday morning, and I then went immediately to the emergency room."

It does not matter the nature of the case. Five or seven Major Truths can always be created during client preparation. In a complicated securities case where clients lost millions of dollars and ultimately sued the securities lawyer for not creating the proper legal documents to protect them, the first Major Truth of the clients became: "The number one job of the lawyer was to protect our money."

These Major Truths, being simple and solid, are necessary. During the protracted deposition where the same questions are

often asked over and over, the client must have a safety net in the form of these simple Major Truths to catch them. The formation of these Major Truths provides a survival mechanism for the client and removes all fears. They know they are protected from any question.

Without the certainty of these Major Truths, the client will be threatened during the deposition and will often resort to uncontrolled, unconscious Reptilian responses. Those uncontrolled responses can either be simply getting confused and saying something wrong, or worse yet, lashing out in anger at the defense lawyer. We all remember that famous scene in the 1992 movie *A Few Good Men* where lawyer Tom Cruise is bearing down on witness Jack Nicholson until finally the subconscious Reptilian response of Nicholson screams out, "You can't handle the truth!" If either of these uncontrolled subconscious Reptilian responses occur stating the wrong answer or lashing out in anger, the case is often over. Careful formulation of the Major Truths in the case and preparation will prevent the disaster.

4. MOCK DEPO DRILLS

After the client's misconceptions have been removed, the client guilt is gone and the client's five or seven Major Truths are solidly embraced. What follows is a vigorous mock deposition drill, usually on day two of preparation. During the mock deposition drill, we normally start out with hard, searing questions for 10 or 20 minutes and then break to autopsy the responses and inform the client where they did wrong. Often we videotape this and simply play the videotape back to the client, and without our editorializing, they critique themselves and know what they did wrong, which is an even better approach.

We have all witnessed clients who are savaged at deposition and then do poorly at trial. It is my opinion that this occurs primarily because the lawyer has failed to identify the client's fears, misconceptions and another powerful Reptilian/subconscious motivation: guilt.

We often bring in a second lawyer, a new face, to also do the questioning so the client doesn't become comfortable with just one lawyer. This process lasts as long as it takes to get immediate, correct and counterpunching responses. The end of the mock depo drill is usually softball questions: Easy for the client to answer, and intended to build absolute confidence in the client.

5. THE PROMISE

At the end of this one, two- or three-day process, I always end by making this promise to the client: "If on the day of the deposition you get to the office and you, for whatever reason, lack of sleep, a busy prior day, whatever, don't feel absolutely confident—then we will postpone the deposition." I tell them I've done it before, and I won't hesitate to do it again. I then say that even if they are absolutely confident but if I don't feel they're ready, "We

will also cancel the deposition."

At the conclusion of the process I ask the client to assume that they are on "go," and I agree they are ready, then how should they feel? Invariably they say, "Well, if I feel I'm ready and you feel I'm ready then I will do a great job in deposition and let's go." I feel that this promise is important to infuse 100 percent confidence in the client and over the years it proved true in their deposition performance.

CASE-SPECIFIC APPLICATIONS

• *The Wrongful Death Witness*

Every trial lawyer recognizes that the genuine display of emotion on the part of the client is important for its known affect on the jury. In the wrongful death case, each client has a different set of emotional buttons that trigger the emotional outpouring.

The technique of preparation must uncover these buttons. The most proven method is open-ended questions and the discipline of silence.

In normal human dealings when someone is expressing grief or sadness, the knee-jerk reaction is to offer soft words of condolence, Kleenex and perhaps a hug. During the preparation process, these human reactions will stop the flow of true emotions. In my experience, the flow of emotion comes in segments that if interrupted will prevent reaching the depth of true grief.

An example is the open-ended question: "Tell us what you miss most about your husband." The client will often speak a minute or two and then stop, wanting some reaffirmation from the lawyer. Here's where the discipline comes in: Don't respond; let the client sit and think. With the silence, virtually all clients will go deeper into their emotions and then express more thoughts. When their head is bowed, this is a clear sign that they want another question, that they don't want to dig deeper. But once again the discipline of silence will force the client to dig deeper, each time going a little farther. At some point during the head bowing and the continued silence will come the true expression of unbelievable angst, despair and raw emotion. This is a technique long used by psychiatrists; disciplined silence which always brings forth more depth of emotion.

My record of silence is 18 minutes. The client began with a minute or two of detail, then silence, then client bowed head, then deeper emotion narrative followed by more silence, followed by head bowed again, then deeper emotion. While most clients will express their deepest emotions sooner than 18 minutes, let me assure you that when the 18 minutes was over with this particular client, we had reached a true understanding of all of the components of the client's emotions.

Through this client's narration will come anecdotal stories, past events, observations, etc. These are the buttons that can be later used during trial testimony to retrigger and capture the true emotions.

With the wrongful death surviving client, it is extremely important to remain in the role of a therapist and not the lawyer. From the science of Teratology, named after the Greek god of death, we learn that the extent and severity of grief is often dependent on individual past life experiences. The science recognizes the following factors: 1) How close was the relationship between the deceased and the client? 2) What is the client's past experience with death? 3) Was the death longterm and expected or sudden? and 4) Was the death of disease or natural consequences versus human-induced? These factors all influence the level of grief. For example, for someone who has never experienced death, the unexpected death of a close loved one i.e. spouse/friend combines to predict a high level of grief. Death as the result of negligence also increases the intensity of grief—all factors that must be explored with the client.

While it's still important to run through the list of the "cannot dos," it's more important to spend time examining the life that remains for the client. Jurors connect more with what the client has left than what's been taken away.

Unfortunately, many lawyers don't examine the Teratology predictors of the level of grief and simply launch into questions regarding their specific death. The lawyer must take time to examine these other important factors in order to discover the true level of grief.

Unfortunately many of our clients are never received professional counseling after the death and this therapeutic process of the lawyer, while not substituting the professional approach, can help the client come to grips with something they truly don't understand.

• *The Client with Injuries*

All lawyers are trained to march through with the client everything they cannot do; however, remember the brilliance of Moe Levine years ago when he developed the concept of "old man" (see the new publication by Trial Guides, *Moe Levine On Trial Advocacy*).

Moe taught that it's not important what the client cannot do and that it was taken away but the true importance is what life remains for the client.

While it's still important to run through the list of the "cannot do's," it's more important to spend time examining the life that remains for the client. Jurors connect more with what the client has left than what's been taken away.

David Ball, my co-author on the *Reptile* book, set the standards on squeezing damages in injury cases, and you should not attempt a case without reading David's *Damages,* second edition (the third edition, out in 2010, will incorporate our new knowledge of the Reptile).

For those wanting to perfect the art of Witness Preparation, there is a 15-page chapter in the new book, *Reptile: 2009 Plaintiff's Revolution Manual,* recently published. Further, the topic is a two-and-a-half hour portion of our two-day Reptile seminar now occurring throughout the United States. There is now a newly available six-hour DVD available with part lecture but most importantly video vignettes demonstrating the actual process with clients. Portions of these DVDs have already been shown at the seminars and have confirmed that "seeing is believing."

Bottom line: A fully prepared client who is without misconceptions, fears and guilt and who has embraced their own five or seven Major Truths will virtually guarantee a superstar client. Never again should a client be a weak link in your case.

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Don Keenan is co-author of "Reptile: 2009 Revolution Plaintiff's Manual." For more information, go to www.reptilekeenanball.com.

GOVERNMENT TORT WARS
Episode 4: New Hope from the Court

By: Stephen Davids

In this context, hope is not a political mantra and does not spring from some wellspring of The Life Force. Instead, it derives strictly from following the procedural rules, which, if you are in this pickle, is what got you into the pickle jar to begin with. So, the best advice is to ignore the rest of this article and make sure that all claims are filed on time.

Presenting the Late Claim Application

Government Code section 911.4 allows for the filing of a late claim application with the government entity. This may be done within a "reasonable time" after discovery of the need to file the late claim application, and in no event later than one year after accrual of the claim. This application is asking the government entity for permission to bring a claim after the expiration of the initial six month claims filing statute. One can imagine how many times such late applications are granted.

The late claim application must (1) state the reasons for the delay, and (2) attach the proposed claim which you are asking the government to accept for consideration. (Government Code section 911.4(b).) The government must then respond as to whether it will grant the application for leave to submit the late claim (as opposed to deciding on the merits of the claim itself) within 45 days, and provide notice using the statutory form required by Government Code sections 911.6(a) and 911.8.

If the government takes no action, then the late claim application is deemed denied. (Government Code section 911.6(c).) If lighting strikes, the Red Sea parts, and the late claim application is granted, the claim is considered "presented" to the government on the day the late claim application is granted. (Government Code section 912.2.) Then, the government has another 45 days, this time to accept (right!) or reject the claim on its merits. Similar to timely presented claims, a late claim is deemed rejected if the government does not act on it within 45 days of presentation. As with an initial claim, the late claim application must be presented to the proper office designated by Government Code section 915 to receive claims and applications for late claims. (See Munoz v. State (1995) 33 Cal.App.4th 1767.) The courts have held that the government is powerless to grant or deny the late claim application if it is made after the one-year deadline. (Hom v. Chico USD (1967) 254 Cal.App.2d 335, 339.) *The fact that the claimant is a minor does not extend this one-year period.* Hom and several other cases hold that there is no statutory basis for extending the one-year deadline, which is an absolute maximum. Remember that the one-year deadline begins running from the date of the accrual of the cause of action within the meaning of the statute of limitations. (Government Code sections 901, 911.4.)

A good (but tough) lesson is learned from Wall v. Sonora Union High School Dist. (1966) 240 Cal.App.2d 870, in which the minor received a head injury during a school sports event, but the brain damage was not diagnosed for almost one year. His father retained counsel with only six days remaining on the one-year deadline. Counsel's delay in filing was inexcusable, and the claim was lost. The Court found that the discovery of the brain damage was *not* the accrual of the cause of action, and that the one-year deadline was not tolled by the fact that the claimant was a minor.

Tolling for Mental Incapacity

Government Code section 911.4(c)(1) provides that the one-year deadline is tolled if the claimant is (1) mentally incapacitated, and (2) does not have a guardian or conservator. The courts, somewhat shockingly, have been a little lenient as to the guardian/conservator requirement and have allowed the late claim when there was some reason that the guardian / conservator could not act for the claimant: Kagy v. Napa State Hosp. (1994) 28 Cal.App.4th 1, 6 (public guardian had no authority to file a civil action), and Favorite v. County of L.A. (1998) 68 Cal. App.4th 835 (heavy medication made the claimant incapable of communicating the subject sexual assault to her conservator). The CEB authors on Government Tort Liability correctly, in my view, predict that this rule will be limited to mental injuries, and that if the claimant suffered physical

injuries that would be evident to a guardian/conservator, then there would likely be no tolling.

Similarly, if the claimant is a minor, then the one-year deadline continues running unless the minor was mentally incapacitated and had a guardian or conservator. (Government Code sections 911.4(c)(1) and 946.6(c)(3).) A mentally incapacitated minor, however, is not entitled to tolling due to age or serious injury: there should be a parent or guardian able to pursue the claim. (Hernandez v. County of L.A. (2001) 94 Cal.App.4th 1303.)

On the other hand, if the minor happens to be a ward of the juvenile court and does not have a guardian *ad litem*, then tolling will apply. (County of L.A. v. Superior Court (2001) 91 Cal.App.4th 1303.) In that case, bizarrely enough, "independent counsel" were appointed by the court to represent the minors "in all potential third-party personal injury actions," but tolling still applied, because the independent counsel were not charged with the same responsibilities as a guardian: the one-year deadline would have commenced running when the dependency case terminated and the kids were returned to their parents.

Along similar lines, Government Code section 911.4(c)(2) provides that the one-year deadline may be tolled when the minor is a dependent of the court. The legislative intent was to protect foster children from the failure of social services agencies to do their jobs. And this was long before the Sacramento CPS crisis.

Reasonable Diligence

One huge potential "trap for the unwary" is that a late claim application filed *within the one-year deadline* may still be denied for not being submitted within a "reasonable" time. The courts apply a CCP section 473 analysis: there must have been reasonable diligence in pursuing the claim after learning that a cause of action may exist. How much delay is too much delay is, of course, a very factual matter, and here are some examples provided by the CEB authors:

Munoz v. State (1995) 33 Cal.App.4th 1767: after the claimant suspected that the subject death was due to medical malpractice, the attorney unreasonably delayed in waiting for medical records to confirm this.

Drummond v. County of Fresno (1987) 193 Cal.App.3d 1406: unreasonable delay when a late claim application was filed eight months after the accident, and three months after the claimant was released from the hospital, during which time he didn't hire counsel.

Torbitt v. State (1984) 161 Cal.App.3d 860: unreasonable delay when the late claim was filed five months after expiration of initial claim period (then, 100 days), because the attorney did not research potential State liability until it was suggested to him by a layperson.

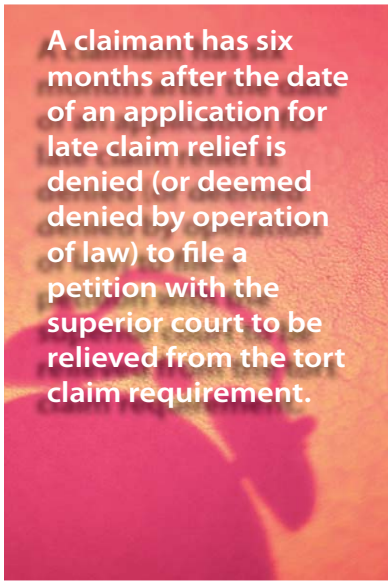
Dunston v. State (1984) 161 Cal. App.3d 79: unreasonable delay when the attorney waited 10 months to contact experts to evaluate a chemical spill.

Baber v. Napa State Hosp. (1984) 154 Cal.App.3d 514: 10-month delay was

reasonable in light of un-contradicted evidence of the claimant's mental illness.

Hasty v. County of L.A. (1976) 61 Cal. App.3d 623: unreasonable delay when counsel waited two months after determining the claim was viable.

Roberts v. State (1974) 39 Cal.App.3d 844: unreasonable delay when counsel waited seven months after being retained before filing late claim application.



Now, *that's* what I call a wake-up call.

As the CEB authors also note, some cases have suggested that possible prejudice to the government as a result of delay is a factor in determining the reasonableness of late claim relief. (Nilsson v. City of L.A. (1967) 249 Cal.App.2d 976.) I personally feel this is somewhat silly, since the investigative tools available in the current day and age make prejudice a rather hazy concept. Plus, how many public entities use the claims period to truly investigate claims against them so as to preserve vital evidence? Give us a break, please.

There are four essential points about the late claim application:

1. There must an *evidentiary* showing of the reason for delay. Use affidavits/declarations, and go into factual detail. As in many other contexts, courts are not impressed by argumentative conclusions.
2. It will not hurt (and may likely help) to point out that the government is *not* prejudiced by the delay.
3. In the affidavits/declarations, address why the late claim application could not have been presented any earlier than it was. Once again, factual showings will be required regarding mental incapacity, disability, *etc*. Declarations from physicians, parents, and others, must be utilized.
4. The application and all supporting documents must be presented to the government in the manner provided for in Government Code sections 915 to 915.4. The "New Hope": Petitioning the Court for Relief if Late Claim Application is Denied

A claimant has six months after the date of an application for late claim relief is denied (or deemed denied by operation of law) to file a petition with the superior court to be relieved from the tort claim requirement. (Government Code section 946.6.) It is important to note the obvious: without having filed a timely claim, and without having received the permission of the government to present a late claim, there is no right to file a complaint. Failure to file the section 946.6 petition finally bars the claim, and forever.

Important is that the section 946.6 petition is *not* an appeal of the government's decision on the late claim: the superior court does a *de novo* review and makes an "independent determination" based on the petition, affidavits, and any evidence provided at the hearing on the petition. (Government Code section 946.6(e).) As

the CEB authors astutely point out, nothing in section 946.6 *limits the petition to what was in the late claim application*. Of course, submitting new evidence to the court in the section 946.6 petition could be met by an argument of waiver. The other point to be cognizant of is that if the underlying late claim application was untimely, then the superior court lacks jurisdiction to act on the section 946.6 petition.

The six-month deadline for filing the section 946.6 petition is *mandatory*. (Lineweaver v. So.Cal. Rapid Trans. Dist. (1983) 139 Cal.App.3d 738.) Also, and fortunately, the six-month deadline is not accompanied by any annoying "reasonableness" requirement, as with the late claim application itself. (Cabamongan v. City of Long Beach (1989) 208 Cal.App.3d 946. And for those who love calendrics, the six-month deadline means six calendar months or 182 days, *whichever is longer*. (Gonzales v. County of L.A. (1988) 199 Cal.App.3d 601.) An important warning, however, is that the six months runs from the date of denial, and not the date of mailing, even if the mailing occurs on a later date. (Rason v. Santa Barbara City Hous. Auth. (1988) 201 Cal.App.3d 817.)

Importantly, the tolling provisions for minority *do not apply* to section 946.6 petitions.

On a procedural note, some attorneys try a two-pronged attack and file the petition while also just filing a complaint without permission. The fact that an impermissible complaint has been filed, however, does not rob the court of the jurisdiction to hear and decide the section 946.6 petition. (Savage v. State (1970) 4 Cal.App.3d 793.)

And for those who enjoy technicalities, the order requested in the section 946.6 petition is an order to be relieved of the claims filing requirement. It is not an order granting permission to present a late claim. In other words, when the government denies a late claim application, and then the court grants a section 946.6 petition, the government cannot complain that it never had a chance to actually accept or reject the claim itself. (Ard v. County of Contra Costa (2001) 93 Cal.App.4th 339, 343.)

Government Code section 946.6(b) contains the requirements for the petition:

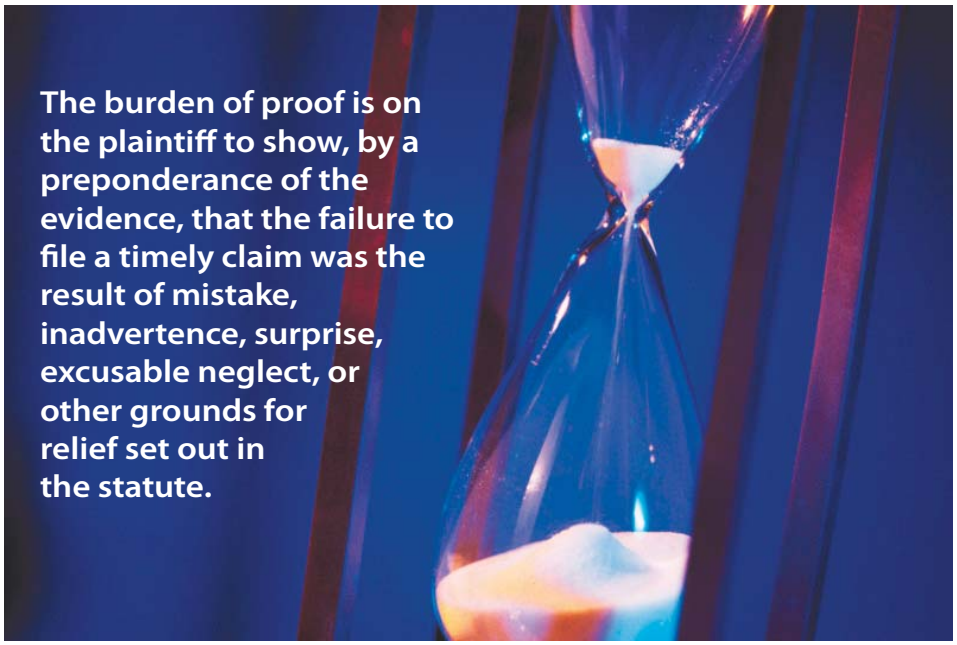
1. It must show that the application for leave to present a late claim was made and denied.
2. It must show the reasons why the claim was not timely presented.
3. It must contain the information required in a claim, pursuant to Government Code section 910.

The point is that the section 946.6 petition is not like a complaint: a series of allegations to be proven later. It is the equivalent of putting on the plaintiff's case at trial: it must be an *evidentiary showing*. As with the late claim application, the section 946.6 petition must contain affidavits/declarations and evidence. A points and authorities, while not required in section 946.6, is nonetheless absolutely essential. Especially when the issues revolve around mental capacity or physical disability, declarations from physicians must be detailed and factual, not merely conclusory. (Martin v. City of Madera (1968) 265 Cal.App.2d 76.)

The burden of proof is on the plaintiff to show, by a preponderance of the evidence, that the failure to file a timely claim was the result of mistake, inadvertence, surprise, excusable neglect, or other grounds for relief set out in the statute. The plaintiff must also show by a preponderance of the evidence that the application for late claim relief was presented within a reasonable time, not to exceed one year from the accrual of the cause of action. (Santee v. Santa Clara office of Educ. (1990) 220 Cal.App.3d 702, 708; Reyes v. County of L.A. (1988) 197 Cal. App.3d 584, 590.)

Fortunately, the court is under a duty to give a liberal and sympathetic interpretation to the statutory scheme to implement its remedial purpose *and resolve doubt in favor of granting relief*. (Viles v. State (1967) 66 Cal.2d 24.)

While it might be interesting to debate whether hearsay and conclusory allegations are sufficient to support a section 946.6 petition, the fact is that the plaintiff's back is to the wall in these proceedings. An unfavorable ruling ends the case. All the stops should be pulled out, because losing is not an option (not to sound too much like a football coach.) The CEB authors rightly caution that attorney declarations about what his/her client knew or didn't know are generally *not* competent evidence. (Maltby v. Shook (1955) 131 Cal.App.2d 349, 353.)



Once the plaintiff meet his/her burden of showing, by a preponderance of evidence, that there was mistake, inadvertence, surprise, or excusable neglect, the burden shifts to the government to show prejudice. (Government Code section 946.4(c)(1).)

Reverting to procedural requirements, the petition must be served on the clerk, secretary, or board of the government. (Government Code section 946.6(d).) If the case involves Caltrans (State of California Department of Transportation), service can be made on the Caltrans' headquarters in Sacramento, or on any office of the Attorney General. (*Ibid.*)

There is no appellate law on whether discovery is allowed before the petition is heard. However, since the petition must be noticed based on the standard periods for

Continued on page 17

Seminar "trial" wows "jury" and attorneys

By: Lawrance A. Bohm
Bohm Law Group

The California Employment Lawyers Association produced and performed the most impressive trial-skills seminar this lawyer has ever seen. That is no small accomplishment, considering the impressive talent showcased by our local ABOTA chapter every year in Sacramento.

The Oct. 8 one-day seminar at the Oakland Marriott Conference Center condensed a steamy sexual harassment fact pattern, complete with trampoline-bouncing strippers, a seductive calendar and an evil witch (played by a company human resource manager). A jury of 24 ordinary participants was shuffled in and out of a massive conference room full of approximately 200 attendees. Alameda County Superior Court Judge John True and Magistrate Judge Elizabeth Laporte (Fed. Ct. N.D. Cal) presided over the proceedings.

Although the seminar did not involve "legendary" names from yesteryear, the talent was contemporary and impressive, including CCTLA's Wendy York, Chris "Defamation King" Whalen and Jill Telfer. It was clear to all that the participating attorneys were intelligent, creative, leather-necked warriors.

If this was the complete extent of the program, it would have been enough. However, the event was undoubtedly distinguished by the National Jury Project's active participation, training and analysis. While the attorneys showcased their skills, jury consultants collected data from the attendees and the jury regarding the strength or weakness of each side. After each phase of the mock trial, jury consultants shared statistical information collected from the prior phase.

In the beginning, the attendees and jury were on the same page regarding the perceived weakness of the mock plaintiff's case. The exercise proved that lawyers know too much to be on a jury. As the proceedings continued, attorneys in the audience shifted away from the defense in response to some obvious "legal" problems implicated by the mean HR lady's testimony. By the end of the case, the majority of attendees predicted a win for plaintiff. In reality, jurors' initial beliefs and perceptions (which probably existed at voir dire) never changed. The moral of the mock story seemed to be: "Don't give a naked calendar to the guy who is sexually harassing you." For attendees, the poignant lesson was: "A strong start means more than a brilliant finish."

After the "trial" was complete, the participants conducted the obligatory roundtable and answered all questions. Jury deliberations were tape-recorded and later shared with seminar participants.

Those staying for the CELA conference beginning the following day were invited to another session analyzing the jury video footage and asking mock jurors questions about their experiences. Given the success of the program, it likely will be offered again next year.

Protecting the Public From the Dangers Created in the Quest for On-Air Ratings

William Strange, et al v. Entercom Sacramento, LLC, et al

By: Jill Telfer — Editor, The Litigator

Jill Telfer

The largest non-economic wrongful death verdict in Sacramento County, possibly in Northern California, came as the result of an on-air radio show contest in which one contestant died. Although we have all heard the size of the verdict, the untold story is the fortitude of the decedent's husband, Bill Strange, and the relentless prosecution by Plaintiffs' counsel. Jennifer Strange's husband, on behalf of himself, their children and Jennifer's child from a previous relationship, saw this case to the end to ensure changes would be made in how radio stations conduct on-air contests.

Although the FCC requires commercial broadcast stations to fully and accurately disclose the material terms of the contest, the Morning Rave crew failed to do so during its "Hold your wee for a Wii" contest that required the winner to drink and "hold" the most water (See Verdicts & Settlements, page 14).

Although contest rules were drafted for the safety of the contestants, the Morning Rave crew ignored them. The most critical written rule ignored by the Morning Rave was that contestants were to drink one eight-ounce bottle of water every 15 minutes. Unfettered by written or broadcast rules, the Morning Rave crew decided that contestants would drink water every 10 minutes, not every 15. This increased the number of bottles consumed from four to six per hour. Instead of drinking eight ounces of water per break, the Morning Rave crew increased this to 16 ounces halfway through the contest. They also imposed a strict time limit to get the water down. These off-the-cuff, ill-considered changes played a substantial role in Jennifer Strange's death.

When the contestants arrived at 6 a.m., two interns from the radio station's Promotions Department let them into the station lobby and distributed documents titled, "Release for All Claims Including Personal Injury." There was no discussion and no explanation of the document by anyone from the

station. All contestants signed the form.

Later, as they continued to drink water, the remaining contestants became less able to make rational decisions, despite worsening symptoms. These are classic symptoms of hyponatremia. Excess water causes the brain to swell. As it swells, cognitive reasoning abilities, including rational thought processes, deteriorate. So, the more water contestants drank, the less able they were to appreciate the physiological impact on their bodies.

There was ample notice to the Morning Rave crew, including calls in from nurses and others warning of the dangers of water intoxication, but all of this information was concealed from the contestants.

According to Dr. George Kaysen, the Plaintiffs' retained medical expert in the area of kidney function, 4.8 to 5.2 liters of water constituted a lethal dose for Jennifer. Had the Morning Rave crew followed the written rules and had the contest ended at 9:30 a.m., Jennifer Strange would at most have consumed 104 ounces of water (13 eight-ounce bottles), or 3.07 liters, dramatically less than the 4.8 liters threshold that could lead to death, and far from the 208 to 216 ounces (6.15 to 6.38 liters) Jennifer ultimately consumed.

The cruelest part of that equation was that rules made up on the spot by the Morning Rave crew on Jan. 12, 2007, served only one purpose: sheer entertainment value.

The case exemplifies the lengths a radio station will go to obtain ratings. Significant settlement offers were made to the Plaintiffs and their counsel, but Plaintiffs had the foresight to realize that nothing would change, the public would not be protected, until Defendants agreed to remedial changes that would protect others from a similar tragedy.

The jury's verdict will have a significant impact on the radio industry, including the need to research their contests and vet them before subjecting contestants to them. It is clear that the desire of the family to hold the responsible people accountable and send a message to the industry that getting people to sign releases does not absolve them of responsibility.

Roger Dreyer, Bob Bale and Stacey Roberts represented Bill, the husband, 28 years old at the time of his wife's death, and their two children, Ryland, 3, and Jorie, 11 months, at the time of her death. Jennifer also had another child from a previous relationship, Keegan Sims, who was represented at trial by Harvey Levine from San Diego. This team, with their tireless commitment, courage and skill have become stewards for public safety. The eight-week trial included 60 motions in limine, a week-long jury selection where a substantial number of potential jurors expressed a bias toward the victim concerning responsibility, 41 witnesses, and nine days of deliberations.

The key aspects of the verdict are not only the amount of the non-economic damage verdict, but the fact that the jury found no comparative against Jennifer, and the remedial changes Defendant is now required to follow. These changes include: training, the presence of medical, first responder or other appropriate personnel at similar contests, and significant research surrounding the potential danger and risk of harm to contestants posed by the contest under consideration.

RECENT VERDICTS, SETTLEMENTS & APPEALS

Wayne Ochsner v.
Clarence Youngren
Sacramento Superior Court
Motor Vehicle Collision
Verdict: $321,537.88

Plaintiff Wayne Ochsner, represented by Noah Schwinghamer and Mike Loewen, Defendant Clarence Youngren represented by Matthew Jaime, State Farm Insurance Claims Representative Tom Couch.

Judge: The Hon. Van Camp

The collision left the 28-year-old Plaintiff with ongoing neck and arm pain, treated with a disc replacement surgery by Dr. Phil Orisek. The treating doctors all diagnosed Plaintiff with a bulged C3-4 disc.

Jury consultant: Dan Dugan at Trial Science

Experts: Larry Neuman and Gary Moran. Defense counsel used Defense Medical Examainer B. Barry Chehrazi to argue that there was a pre-existing bone spur which caused all of the Plaintiff's problems. Plaintiff served a CCP 998 demand for the sum of $299,999; Defendant's response was a CCP 998 offer of $50,000.

Sanchez v. Diestel Turkey Ranch etc.
Tuolumne County Superior Court
Wrongful Death
Verdict: $2.5 million: $1.3-million in medical expenses on the survival cause of action, $1.25-million in wrongful-death damages; 30% comparative fault.

Attorneys for Plaintiffs: John Demas and John O'Brien. John Demas represented the driver (71), his wife (64) and the two adult daughters. A passenger who died is survived by a brother (87) and sister (93) who live in Mexico, represented by John O'Brien.

Defendant driver, operating a truck and double trailers loaded with turkeys, pulled out from a turkey farm onto Highway 120 at night, effectively covering both east bound lanes when he swung very wide and turned into the fast lane.

Plaintiff's vehicle was coming at the speed limit of 65 mph and struck the rear trailer. Plaintiff vehicle was driven by 71-year-old Mexican-American with wife and two other passengers. Two fatalities at the scene. The driver sustained major injuries, then died six months later while on a trip to Mexico (causation an issue).

Plaintiffs argued Defendant's turn was unsafe because it took him too long, and he should have turned into the slow lane. Defendant testified that he could not turn into the slow lane because it would cause him to tip his load (top-heavy trailers). The safety director of the company testified that it was impossible to turn into the slow lane. He claimed that the trailer lights were on, although a lone witness said they were off.

Defense maintained that Plaintiff driver was completely at fault for the collision. Their experts said that Plaintiff driver had plenty of time to perceive and stop for the truck.

It was determined Defendant was 5% at fault and his employer 65% at fault. Plaintiff found to be 30% at fault.

State Farm's offer via defense shortly before trial was a waiver of costs. Plaintiff's CC.P. §998 offers were $200,000 for each plaintiff.

State Farm had the primary one-million-dollar policy and Uniguard had the excess. Uniguard made an effort to settle the case the day of trial by offering $400,000. State Farm never offered anything at any time.

Bob Post was the visibility expert for Plaintiffs; Tom Ayres for the Defendants. The State Farm adjustor was Aaron Alston.

William Strange, et al. v.
Entercom Sacramento, LLC, et al
Sacramento Superior Court
Wrongful Death
Verdict: $16, 577,000: $1,477,000 in economic, $15,100,000 in noneconomic and remedial action. This is the largest noneconomic wrongful death verdict in Sacramento County, and possibly Northern California.

The Strange family was represented by Roger Dreyer, Robert Bale and Stacey Roberts of Dreyer Babich Buccola Callaham & Wood; the guardian for minor Keegan Sims was represented by Harvey Levine. Defendants were represented by the firm Carlson, Calladine & Peterson and Folger, Levine & Kahn

Judge: The Hon. Lloyd Phillips

Twenty-eight-year old Jennifer Strange died following her participation in a radio contest created, marketed and managed by Defendant Entercom Sacramento, LLC . Contestants were to drink water and hold their urine, or "wee" to win a "Wii." On Jan 12, 2007, Jennifer Strange entered the contest to try and win the Nintendo Wii for her family. She and the other contestants signed a release of liability. Jennifer Strange began drinking water at 6:30 a.m. At 9:30 a.m., she dropped out of the contest after consuming 208-216 ounces of water. She died six hours later alone at home from hyponutremia.

The jury found no comparative fault. In addition to the monetary verdict, Defendants entered into a consent decree to make remedial measures to ensure such a tragedy never happens again.

For a more detailed account of this case, see the article, Protecting the Public from the Dangers Created in the Quest for Ratings, on page 12.

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Allan's Corner . . .

Continued from page 2

the insurer denied coverage and refused to defend. Plaintiff and Defendant then entered into a covenant not to execute on any judgment in exchange for an assignment of rights and the trial court entered a default judgment for approximately $2 million. Plaintiff then filed a separate action against Grange alleging breach of contract, breach of the duty of good faith and fair dealing, etc.

The case was dismissed because in the underlying action, no statement of damages had been served; after some procedural wrangling, a statement of damages was served, a new default was entered, and another default judgment was entered. Six months later, trial court granted Grange's motion for leave to file a complaint in intervention and the court set a hearing date to determine whether the second default was valid because there was a failure to serve a second amended complaint and to determine whether the action should be dismissed for failure to serve summons and complaint within three years or to bring to trial within five years. Trial court found the operative complaint had not been properly served and therefore set aside the default judgment and dismissed the action for failure to serve and prosecute.

On appeal, the Third District affirmed setting aside the default for failure to serve the complaint but reversed the order dismissing the action for failure to prosecute or serve within three years because while the default judgment was in effect, the action was stayed. After all wrangling was done, Plaintiff entered a new request for entry of default; Grange filed an amended complaint in intervention and Plaintiff moved to strike the complaint in intervention. The trial court denied it, later reconsidered and granted the motion to strike and Grange appeals. Third DCA finds that an insurer who denies coverage and refuses to defend does not have a direct interest in the litigation and therefore cannot intervene.

Implied Assumption of the Risk. In Leavenson v. Owens, the Third District affirms summary judgment on the grounds of implied assumption of the risk. Here, Plaintiff (an attorney) was asked if she wanted to come to a barbecue; horses were available for guests to ride, and she and one other guest rode. Horse galloped off with her, and she was severely injured. The court held implied assumption of the risk applied here in a very well-reasoned decision which traced almost every case involving horseback riding and assumption of the risk.

Respondeat Superior. In MP v. City of Sacramento, 2009 DJDAR 12981, the Third District holds that the City of Sacramento cannot be liable for an on-duty sexual assault by firefighters. Here, the fire department had a policy that allowed firefighters to take their trucks to bars and parties with captains present and pick up women and take women on the fire trucks (quoting the complaint). Scotland went through the case law and held that the city could not be liable, distinguishing firefighters from police officers. As Cantil-Sakauye notes in her dissent, here there was a policy that allowed this to happen and thus the case should have gone forward and summary judgment not granted.

Arbitration. In Burlage v. Superior Court, 2009 DJDAR 12987, the court vacated an arbitration award and the appellate court affirmed the order. This is a decision by the Second District which also decided Moncharsh, 3 Cal 4th 1, which held that even though an error of law is on the face of an arbitration award and causes substantial injustice, the arbitration award is not subject to judicial review. Here, the trial court and the appellate court conclude that the arbitrator excluded material evidence which substantially prejudiced the defendants in an arbitration and therefore affirmed the order vacating the arbitration award. The excluded evidence was the fact that a title company bought the land that the swimming pool of the house was on which had been encroaching on a country club so there were no longer any damages and the arbitrator had granted a motion in limine to not allow this evidence and instead found that the damages were set at the time escrow closed.

Key-in-Ignition Cases. Carrero v. Sopp & Son, 2009 DJDAR 13141, parolled felon stole tow truck from tow yard. Tow truck had keys in ignition and that's how he was able to steal it. Injured many, killed three. Trial court granted summary judgment; appellate court reverses, finding special circumstances as required by Richards v. Stanley.

Physician/Patient Privilege. In Manella v. Superior Court, 2009 DJDAR 14048, the court holds that giving a history to a doctor while wife is in attendance constitutes a waiver of the physician/patient privilege for that particular doctor visit in litigation between the spouses. The court also notes that a defendant does not tender their medical condition by denying allegations in a complaint (for example, if the complaint alleges defendant was intoxicated, Defendant denies that, his medical records are not discoverable) and further notes that constitutional right to privacy is waived in this particular setting of a child custody dispute.

Service of Summons and Complaint. In Hern v. Howard, 2009 DJDAR 14053, the court holds that substituted service at a commercial post office box (Mail Boxes R Us, etc.) is valid service.

Sanctions. In Clement v. Alegre, 2009 DJDAR 14084, Defendant served interrogatories asking Plaintiff to specify their economic damages. Plaintiff objected on the basis that "economic damages" was vague and ambiguous. Interrogatories also asked Plaintiff to itemize the damages set forth in the previous answer. Plaintiff objected on the grounds that interrogatory was not complete in and of itself. Court affirmed sanctions in the amount of $6,000 for this kind of games playing in discovery. Interesting and good discovery and sanctions case.

Tort Wars

Continued from page 10

motions, there likely would not be time unless the court continued the hearing to allow discovery. Section 946.6(e) specifically refers to "evidence received at the hearing," so preparing your client (or others) to testify at the hearing could be extremely important. As with most things in life, more preparation usually (not always) yields better results. Further, what is the one and only thing that a trial court judge fears? Say it with me: reversal. The more of an evidentiary dog-and-pony show that you put on, the more likely your judge will feel flooded with a warm and intoxicating feeling that the right result is not only ordained, but also bullet-proof from what the late Judge Cole liked to refer to as the geniuses on the Capitol Mall.

On the other hand, the CEB authors take the position that section 946.6 gives the parties "no absolute right" to present live testimony at the hearing. The court certainly has the discretion to decide the matter on the papers. (County of Santa Clara v. Superior Court (1971) 4 Cal.3d 545.) The authors provide invaluable advice on this subject, urging compliance with Calif. Rule of Court 3.1306, providing that a party desiring to present oral evidence at a hearing must file a written statement three days before the hearing "stating the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing."

Not that anyone would want one, but there are no jury trials on section 946.6 petitions. (County of Sacramento v. Superior Court (1974) 4 (1974) 42 Cal.App.3d 135.)

Last and not least (I can just feel your disappointment that this discussion is drawing to a close), is appellate review. An order granting the petition for leave to file a complaint is interlocutory, and so the only challenges are a motion for reconsideration, or possibly a demurrer once the complaint is filed. (Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1501; City of L.A. v. Superior Court (2006) 139 Cal. App.4th 499, 505, fn. 2.) I would think a writ petition is also in order. However, the doomsday order denying the petition ends the action and is immediately appealable. (Santee v. Santa Clara Office of Educ. (1990) 220 Cal.App.3d 702, 710.)

As with all other appeals, if you are on the short end of a section 946.6 petition, remember to *get a judgment*. Your appeal will be immediately dismissed unless a judgment is submitted to the superior court based on the denial of the section 946.6 petition. Those pesky appellate types are sticklers for this kind of thing. Speaking of which, the standard of review on appeal is abuse of discretion, which is the hardest to prevail upon. (Ebersol v. Cowan (1983) 35 Cal.3d 427, 435.)

Yes, my friends, there is hope. But as a prize-winning advocate of this concept has recently learned, hope is only brought to fruition through hard work, and even some compromise. That is why it often comes and always springs eternal.

Coming Next: the Statutory Bases for Government Liability (Stay Awake!)

Special Interest

Continued from page one

make you aware of candidates who support consumer issues.

Also on the local level, we can continue to give you information that will help you in your practice. If you are a longtime reader of this column, you know that I am particularly positive about the list serve. It has been a tremendous source of information and insight. Again, thank you to all of those who have contributed their time, wisdom, experience and work product to this valuable asset.

Another thing we can do at the local level to help our common interests is to put on in-depth educational programs. We had a great one on Oct. 30, on Trial Mechanics. Supposedly, Al Capone said something to the effect that you get more with a kind word and a big gun than you do with just a kind word. The big gun that you have when dealing with insurance companies or other moneyed interests is the trial. If they know you try cases, you get better settlements. Take a look at the short list of powerhouse plaintiff firms, and you will see that they all try cases. But you have to know how to do it. And you need the confidence that you can do it. This seminar was very helpful in giving us the tools to properly present a case. Look for more programs like this in the future. There are a lot of talented attorneys in the local trial bar who are willing to share their skills. 2010 should be a great year.

Looking for a fresh point of view?

During the October Q&A Luncheon, we addressed the impact of lost evidence on a slip-and-fall case, evaluated several cases resulting in some being undertaken and some refused, discussed expert issues and lien issues, resolving all of them well and reaching consensus on all of them.

Come join us. Put it on your calendar and set aside a question. All you need is a question and your membership in CCTLA in order to participate. Members helping members. Add a couple fresh viewpoints to your own "take" on the cases in your drawer. You may find they are worth more than you thought!

Remember: the Second Tuesday of the month at noon. Next lunch is on Dec. 8 at Vallejo's, on the corner of S and Fourth streets. We look forward to your viewpoint.

Capitol City Trial Lawyers Association

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Web site: www.cctla.com

Annual Meeting/Holiday Reception
&
Installation of the 2010 CCTLA Officers and Board

TO ALL MEMBERS OF THE
CAPITOL CITY TRIAL LAWYERS ASSOCIATION
& THOSE WHO MAKE OUR JOBS POSSIBLE

You are cordially invited to the CCTLA Annual Meeting & Holiday Reception, to be held on:

Date: *Thursday, December 10, 2009*
Time: *5:30 p.m. to 7:30 p.m.*
Place: *Sofia's Restaurant, 815 11th Street, Sacramento*

This Annual Meeting & Holiday Reception is free to honored guests, CCTLA members, and one guest per invitee.

Reservations must be made no later than Friday, December 4, 2009, by contacting Debbie Keller at 916/451-2366 or debbie@cctla.com

We hope to see you there!
DAVID G. LEE, President, & the Officers and Board of CCTLA

For the holiday season, CCTLA is asking its membership to assist the Mustard Seed School. A representative from Mustard Seed will be present at this reception to accept donations from the CCTLA membership. CCTLA will be contributing $500 to Mustard Seed for the holidays. CCTLA thanks you in advance for your donation.

Ski with the Judge

Darrel Lewis, retired judge and now a mediator, is a host for Alpine Adventures Ski Tours. Every Wednesday from January through March, the group goes to various Tahoe ski resorts for the day. The day trip in a luxury coach includes breakfast on the way up and cocktails and hors d'oeuvres on the return trip, served by Lewis and the other hosts. At the resort, you can ski on your own or join one of several small groups, consistent with your skiing ability, for a guided tour of the slopes.

Other major events this season will include:

• Three special "Furlough Friday" trips.

• Several Saturday trips.

• "Learn to Ski Days" where you will get luxury coach transportation, host assistance, a lift ticket, a lesson and ski/board and boot rental for $95.

• Hosted weeklong trips to Whistler, Canada in January and to Bansko, Bulgaria in March (with an optional four-day extension in Istanbul, Turkey). All at surprisingly affordable prices.

Alpine Adventures also offers weekend trips for kids ages eight to 18.

For full information, call Alpine Adventures at (916) 737-7669 or go to www.AlpineAdventuresOnline.com. You may also call Judge Lewis at (916) 483-2222. Alpine hosts typically receive a $20 referral fee. As an additional benefit to CCTLA members, Judge Lewis will deduct that fee from your trip cost or donate it to Loaves and Fishes.

Children and adults also can take ski or board lessons in Sacramento on the endless slope. Go to www.endlesslope.com or call Sam Morishima at (916) 205-0609. Don't forget to ask for the Judge Lewis discount here, too. In fact, you can join Judge Lewis for a free demo on the endless slope. Call Sam to reserve a spot.

Best approaches to witness examination

The Sacramento Valley Chapter of the American Board of Trial Advocates (ABOTA) will present the seminar, "Masters in Cross Examination," on Friday, Nov. 20 at the Sacramento Convention Center.

The program includes substantive law discussion as well as step-by-step approcahes to witness examination, followed by real-time examples of cross-examination crafted by some of the country's most noted attorneys.

The seminar begins with registration at 7:45 a.m. and continues until 5 p.m. (lunch is not included). The seminar is worth MCLE credit: seven credit hours plus one hour of ethics. ABOTA is offering a specail rate of $330 to members of the Capitol City Trial Lawyers Association.

To sign up for the seminar, contact the CCTLA office for a registration form, which can be emailed to you as a pdf file.

Is Your Witness Really Prepared for the Rigors of Deposition and Trial?

Page 3

Capitol City Trial Lawyers Association
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NOVEMBER

November 12 -15
CAOC 48th Annual Convention
Location: The Fairmont, San Francisco
For more information contact Lori at CAOC:
916/442-6902 or lori@caoc.org.

DECEMBER

Tuesday, December 8
Q&A Luncheon
Location: Vallejo's—Noon
1900 4th Street
CCTLA Members Only

Thursday, December 10
CCTLA Annual Meeting & Holiday Reception
Location: Sofia Restaurant
Time: 5:30 to 7:30 p.m.

JANUARY

Tuesday, January 12
Q&A Luncheon
Location: Vallejo's—Noon
1900 4th Street
CCTLA Members Only

Tuesday, January 19
CCTLA "What's New in Tort
& Trial: 2009 in Review"
Speakers: Craig Needham, Esq.
& Patrick Becherer, Esq.
Location: Holiday Inn, 300 J Street
Time: 6 to 930 p.m.
Cost: CCTLA Members TBA * Non-Members TBA

FEBRUARY

Tuesday, February 9
Q&A Luncheon
Location: Vallejo's—Noon
1900 4th Street
CCTLA Members Only

MARCH

Tuesday, March 9
Q&A Luncheon
Location: Vallejo's—Noon
1900 4th Street
CCTLA Members Only

March 19-20
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
Chris Whelan: chwdefamation@aol.com

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

CCTLA Calendar of Events