Spring 2018

The LITIGATOR

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Inside

CCTLA membership brings many benefits

Lawrance Bohm
CCTLA President

Greetings and gratitude to all of you for 2018. This year is already starting off great. I was fortunate to attend the What's New in Tort and Trial seminar at McGeorge last month. Once again, I am blown away by the written materials that seemed to catch every significant case from 2017. If you missed this seminar, please contact us to obtain the recording and materials for a very low cost. This seminar is but one of the many great programs CCTLA is planning this year.

CCTLA is excited to announce more terrific programs and benefits for CCTLA members. In addition to Tort and Trial, we already welcomed back the Trojan Horse team for its "Horse in Action" seminar on Feb. 22 at the downtown Holiday Inn. This two-day program continues to be attended by many very skilled trial attorneys who highly endorse the program. As an added plus, the Trojan Horse team is donating 50% of CCTLA member registration fees back to our organization.

CCTLA has approved a new monthly event, "CCTLA's Monthly Membership Mixer." Generally, the event will be held the last Thursday of every month. This event is intended to give members the means, mode and opportunity to meet on a regular basis to discuss "Hot Topics" relevant to our mission. Roundtable discussions, short thought provoking presentations (think TED talks), war stories and mentorship will be on the menu. The event will feature wine and light snacks sponsored by The Alcaine Halterbeck Group of Baird. The March 29 mixer will begin at 6 p.m. at the Justice Centers of California and will run until 7:30 p.m. And, you get free wine and snacks.

Our Sonoma Travel Seminar is coming up fast, on March 16 (Friday) and 17 (Saturday). Book your room immediately unless you prefer to commute back and forth to Sonoma. Information on pages 18-19 of this issue will tell you all you need to know about this seminar, which draws some of the best attorneys in the state. The program looks terrific and is easily worth the price of admission. CCTLA is co-hosting the welcome reception with The Alcaine Halterbeck Group of Baird (www.thealcainegroup.com/). I hope you will join me and your fellow CCTLA board members in toasting our continuing education and success.

In June, CCTLA again will host the Spring Fling Reception and Silent Auction, once again a fundraiser for Sacramento Food Bank & Family Services. You can help CCTLA make this a big success by donating goods for the auction and sending in your RSVP to attend. Spring Fling information starts on page 29 of this issue.

You can learn about these and other awesome free/low cost CCTLA programs by participating in our Listserve. If you are a CCTLA member, you should go ahead and join the listserve. It is free—so what are you waiting for? Email Debbie Keller at debbie@cctla.com to obtain the CCTLA List Serve Agreement. Hope to see you soon.

Congress introduces record number of bills to prevent people from taking industry to court

By: Mark Hand

Published in ThinkProgress.org and reprinted from PublicJustice.net

Feb. 12, 2018—Industry-friendly lawmakers are waging a coordinated campaign with the Trump Administration to strip Americans of their legal rights to use the courts to hold polluting companies and the government itself accountable for violations of bedrock environmental laws and other important public protections.

Members of Congress have introduced more than 50 bills in the past year that would make it extremely difficult or impossible for people to seek justice in a court of law, according to an in-depth analysis by Earthjustice, a nonprofit environmental law organization. The proposed bills are targeting laws related to environmental protection, public health, consumer rights and civil liberties.

The number of bills introduced in the current 115th Congress that would strip individuals of their legal rights to seek justice in a court of law have doubled from the previous Congress and quadrupled since the 112th Congress that ended in 2013. Similar to how credit card companies and other retailers block consumers from the use of a court of law to resolve disputes, these bills would have a similar effect by preventing aggrieved members of the public from filing lawsuits to ensure laws are enforced.

"The corporate interests that stand to benefit from these types of provisions see this window of time as an opportunity," said Patrice Simms, vice president of litigation at Earthjustice, in an interview with ThinkProgress. "They have a president that they know will sign anything that benefits them, and they have majorities in the House and Senate that they believe are willing to move the bills forward."

Earthjustice has created an interactive tool that tracks each of these pieces of legislation. If passed into law, these bills would erect permanent obstacles that will prevent people and communities from going to court to defend their rights.

During the current Congress, 12

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The regular feature, Mike's Cites, appears on page 22

Public Justice Wins Huge Ruling on Behalf of Generic Drug Victims in California Supreme Court

By: Leslie A. Brueckner, Senior Attorney, Public Justice

In a huge blow to Big Pharma immunity, the California Supreme Court on Dec. 21, 2017, issued a decision of enormous importance to victims of inadequately labeled prescription drugs.

In its watershed 73-page ruling in TH v. Novartis, a state supreme court has ruled for the very first time that because brand-name drug companies write the labels for all drugs, a brand-name drug company can be sued for injuries caused by mislabled *generic* versions of its drug.

I represented the plaintiffs in the case, along with Ben Siminou, formerly with Thorsnes Bartolotta McGuire LLP of San Diego.

Writing for a unanimous Court on this point, Justice Cuellar held that, because generic manufacturers are "required to follow the brand-name manufacturer's label to the letter," a brand-name manufacturer "owes a duty of reasonable care in ensuring that the label includes appropriate warnings, regardless of whether the end user has been dispensed the brand-name drug or the its generic equivalent."

The decision could have a domino effect nationwide, because it is the first standing decision of any state supreme court to grant drug victims the right to seek compensation for injuries caused by generic drugs, which make up over 90 percent of all drugs currently sold in America.

The decision is hugely significant because it opens the courthouse doors to millions of generic drug victims who are injured by unsafe drugs. Under current federal law, generic manufacturers are entirely immune from suit for injuries caused by their inadequate labels, because the brand-name manufacturers control the label. Despite this fact, most courts have refused to allow generic consumers to sue brand-name manufactured for injuries caused by mislabeled drugs, leaving them totally unprotected.

Today's decision rectifies that gross unfairness and gives consumers of generic drugs the right to seek justice for their injuries. It will also protect public health and safety, by giving brand-name manufacturers a strong incentives to update their labels when new risks emerge after their drugs go generic.

The underlying lawsuit

This case is a vivid example of why it's important to allow lawsuits against brand-name drug companies for injuries caused by generic drugs.

The lawsuit was filed on behalf of fraternal twins who were injured in utero by a generic version of a brand-name drug called "Brethine," which their mother took to control preterm labor during her pregnancy.

The defendant, Novartis, is the brand-name drug company that wrote the label for Brethine. Novartis knew that Brethine (and its generic equivalents) could cause fetal brain damage, but it didn't want to say so on the drug's label because it was making too much money selling Brethine to pregnant women.

So it didn't change the label. Instead, it sold the rights to the drug to another company for a big profit and went on its way. A few years later, the twins' mother was prescribed Brethine to control her preterm labor. Her prescription was filled with a generic version of the drug, and her children were born with brain damage.

The twins couldn't sue the generic drug maker for their injuries because generic drug manufacturers are required, by federal drug laws, to use same label as the brand-name equivalent and can't be sued as a result.

Instead, they sued Novartis. They argued that the brand-name company should be held liable because Novartis (a) wrote the label for the drug; (b) knew that manufacturers of generic Brethine were required by law to use Novartis's label; (c) knew its label was inadequate and failed to warn of its drug's dangers; and yet (d) chose to prioritize profits over safety by declining to update the label in order to protect the drug's market value as a therapy for preterm labor.

The California Supreme Court agreed with these arguments up and down the line. Not only did it hold that brand-name manufacturers have a duty to victims of generic drugs, it also held that Novartis's sale of its drug to another company doesn't let it off the hook for its negligence.

On the latter point, a majority of the Court agreed that "if the person exposed to the generic drug can reasonably allege that the brand-name drug manufacturer's failure to update its warning label foreseeably and proximately caused physical injury, then the brand-name manufacturer's liablity for its own negligence does not automatically terminate merely because [it] transferred its rights in the brand-name to a successor manufacturer."

The upshot

This decision will make America a much safer place. The risk of tort liability creates an incentive for drug companies to

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Big win vs. Big Pharma

Continued from page 3

change their labels when new risks emerge. But when drug companies know they can't be sued for negligent misrepresentation, all bets are off. Unless there's a risk of liability in the courts, there's little incentive for drug companies like Novartis to change their labels to warn of newly discovered risks. Today's decision creates that much-needed incentive and, as a result, drugs will be much safer for everyone.

As the unanimous Court wrote Dec. 21, 2017, "We therefore conclude that warning label liability is likely to be effective in reducing the risk of harm to those who are prescribed (or are exposed to) the brand-name drug or its generic equivalent."

What's next?

Because there are no federal issues of law in the case, the U.S. Supreme Court can't overrule this decision—instead, the California Supreme Court's ruling is the last word on the subject.

This issue is wide open in other jurisdictions, though, and more cases are sure to follow. The California Supreme Court's reasoning is sure to be influential when this issue comes up in other states.

Stay tuned for more updates on this front. We are going to keep fighting this battle for injury victims across the country, and this result gives us hope that they can all soon see their day in court.

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Reprinted from PublicJustice.net's blog dated Dec. 17, 2017.

Tort reform threatens right to a jury trial

Backed by corporate heavyweights, tort reform threatens the right to a jury trial. They have poured billions of dollars into a propaganda war vilifying the citizen jury system

Americans have always loved to cheer on the underdog. In our political system, the courts remain the only arena where the common citizen can take on corporate bad actors and hold them accountable. So why recent decades seen a flurry of tort reform legislation? And what does it mean for the average American? Though specific legislation may vary, tort reform generally seeks to limit an individual's right to file a lawsuit, make it more difficult to obtain a trial by jury, and to limit the amount of damages awarded to the injured party.

For 30 years, "tort reform" has been the battle cry of corporate America. Major companies like Philip Morris, Dow Chemical, Exxon, General Electric, Aetna, Geico, and State Farm funnel millions of dollars every year into ATRA (American Tort Reform Association), CALA (Citizens Against Lawsuit Abuse) and other groups bent on undercutting our constitutional civil justice system. These groups, along with corporate-funded think tanks like the U.S. Chamber of Commerce's Institute for Legal Reform, have erected an entire rhetoric surrounding the myth of a "litigation crisis" in America.

In recent years, for instance, the "tort reform" lobby introduced legislation to limit the legal rights of veterans, dockworkers and others exposed to dangerous asbestos. Never mind that the asbestos industry hid the dangers of asbestos from their workers for decades and are now, in an effort to shift blame and avoid accountability, claiming they need more "transparency" within the system they created. The proposal will force injured or dying victims and their families to jump through a number of expensive and time-consuming hoops before being allowed to move forward with a claim in state court. People suffering from fatal asbestos-related diseases, such as mesothelioma and lung cancer, do not have extra time or money to spare, and aim of asbestos defendants is to exploit that fact.

Below are some of the common myths perpetuated by tort reform groups:

Myth: "Litigation happy" trial lawyers are clogging the courts with "frivolous" lawsuits.

Reality: In California, the number of civil lawsuits has plummeted by more than 42% during the past decade. The same goes nationwide: The Department of Justice performed a study of civil trials in state courts and found that the number of civil trials dropped by 21%

Myth: "Runaway jurors" in "judicial hellholes" are awarding excessive damages.

Reality: Data released by the Justice Department's BJS shows that in state courts, the median jury verdict in all tort suits was $43,000 in 2005 – a 40% drop from $72,000 in 1992.

CAOC supports honest business people. Unfortunately, some major corporations would like to see the individual's access to the civil justice system restricted. Join CAOC in the fight to preserve our civil justice system.

Above, members of CCTLA's What's New in Tort & Trial seminar panel, from left: Andje Medina, Anne Kepner, Kirsten Fish and Patrick Becherer.

Right, Noah Schwartz, seminar sponsor; and Lawrance Bohm, CCTLA president.

CCTLA Tort & Trial materials available

CCTLA's What's New in Tort & Trial: 2017 in Review drew almost 50 people to McGeorge School of Law in January. Special thanks to the speakers, Patrick Becherer, Kirsten Fish, Anne Kepner and Andje Morovich Medina, who came from the Bay area, again, to provide this annual informational program to CCTLA members. CCTLA especially thanks Noah Schwartz/Offices of Noah S. A. Schwartz at Ringler, for his continued sponsorship of this popular program.

Materials and DVD are available:

For those who missed this year's program, materials are available for purchase. Materials, $60; DVD, $50; materials and DVD, $90. Mail your check payable to CCTLA to CCTLA, Post Office Box 22403, Sacramento, CA 95822.

Are you aware of your client's alternatives?

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Stop secrecy. End harassment.

With the increase in public consciousness and discussion of sexual harassment in the workplace, a nefarious part of many employment contracts and settlement agreements has also come under long overdue scrutiny: non-disclosure agreements (NDAs). Public Justice has been at the forefront of the battle against NDAs and other secrecy provisions around sexual harassment and other issues for years.

Such provisions are a common feature of arbitration agreements used in many employment contracts, and with our noted expertise in arbitration law, as well as court secrecy, Public Justice is helping to educate the public, and this critical moment of public debate, about how secrecy agreements empower harassers and silence victims of sexual harassment.

Soon after the revelations about Harvey Weinstein's decades of sexual harassment, it was reported that he had spent years continuing his pattern of abuse by buying his victims' silence through the use of settlement agreements that included NDAs. Women who took such settlements were forced into silence, and Weinstein's history of harassment was kept out of the public eye.

Even before the reports about Weinstein's use of NDAs, Public Justice Executive Director Paul Bland highlighted the use of arbitration clauses with secrecy provisions by the likes of former Fox News Chariman Roger Ailes, actor Charlie Sheen, and the former head of American Apparel, Dov Charney, to conceal harassment and abuse.

When Gretchen Carlson – now an outspoken advocate for ending forced arbitration clauses – fought back against the clause in her own employment contract in order to make her allegations against Ailes public, Public Justice amplified Carlson's voice by explaining in *The New York Times* and *other media outlets* why these provisions are so dangerous.

The problem of NDAs, however, goes far beyond celebrities and public figures in media. Secrecy clauses are frequently part of the arbitration provisions that are in more than half of employment contracts in the United States. Companies use these provisions to keep accusations of impropriety out of public view, such as when Jared and Kay jewelers sought to keep allegations of discrimination from tens of thousands of female employees secret through arbitration. NDAs are also forced upon people seeking to make complaints about harassment in Congress, which also mandates a process of mediation resembling arbitration. Staff Attorney Leslie Bailey spoke about this issue, and the bills currently in Congress, that could fix this unfair system in a recent radio interview.

Public Justice's work has always been focused on making sure everyone has access to justice, and a key part of that mission is making sure people's voices are heard. By silencing the voices of victims, NDAs and secret arbitration prevent justice from being served, and we will continue to fight against them. Fortunately, Congress is now beginning to take notice, too. Legislation has recently been introduced – with bipartisan support – to ensure victims, and not harassers, are empowered to decide if settlements are made public or not. At the end of the day, the law should look out for those who are the targets of harassment and assault, and not those who are engaged in such behavior.

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Reprinted from PublicJustice.net

Three CAOC-backed bills protecting victims of sexual misconduct introduced

SACRAMENTO (Jan. 18, 2018) – California would offer additional protection against sexual misconduct in the workplace under two bills, both supported by Consumer Attorneys of California, that have been introduced at the State Capitol.

Assembly Bill 1870, the SHARE (Stopping Harassment and Reporting Extension) Act, would extend the time to file claims of harassment and discrimination under the California Fair Employment and Housing Act from one year to three years. The bill is jointly authored by Assembly Members Eloise Gomez Reyes (D-San Bernardino), Laura Friedman (D-Glendale) and Marie Waldron (R-Escondido) and is co-sponsored by CAOC along with the California Employment Lawyers Association and Equal Rights Advocates.

Reyes is also the author of Assembly Bill 1867, which would require California businesses with 50 or more employees to keep records of employee complaints of sexual harassment for 10 years from the date of filing. This will make it harder for employers to conceal a history of harassment by an employee and provide evidence that

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Bills seek to protect victims of sexual misconduct

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an employer was aware of previous issues with an employee's behavior.

CAOC also sponsors Senate Bill 820, the STAND Act (Stand Together Against Non-Disclosures), introduced in January by Sen. Connie Leyva (D-Chino) and co-sponsored by the California Women's Law Center. It would prohibit non-disclosure agreements related to sexual assault, sexual harassment and sexual discrimination in settlements involving California employers, both public and private.

"Californians have made it clear that enough is enough with regards to sexual misconduct in the workplace," said Consumer Attorneys of California Legislative Chair Micha Star Liberty. "The legislation we are backing will give victims more opportunity to speak out, make it harder for employers to claim ignorance about problem employees and ban secrecy clauses that hide illegal behavior. We need to do more to make the workplace safe for all Californians."

Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

For more information: J.G. Preston, CAOC press secretary, 916-669-7126, jgpreston@caoc.org or Eric Bailey, CAOC communications director, 916-669-7122, ebailey@caoc.org.

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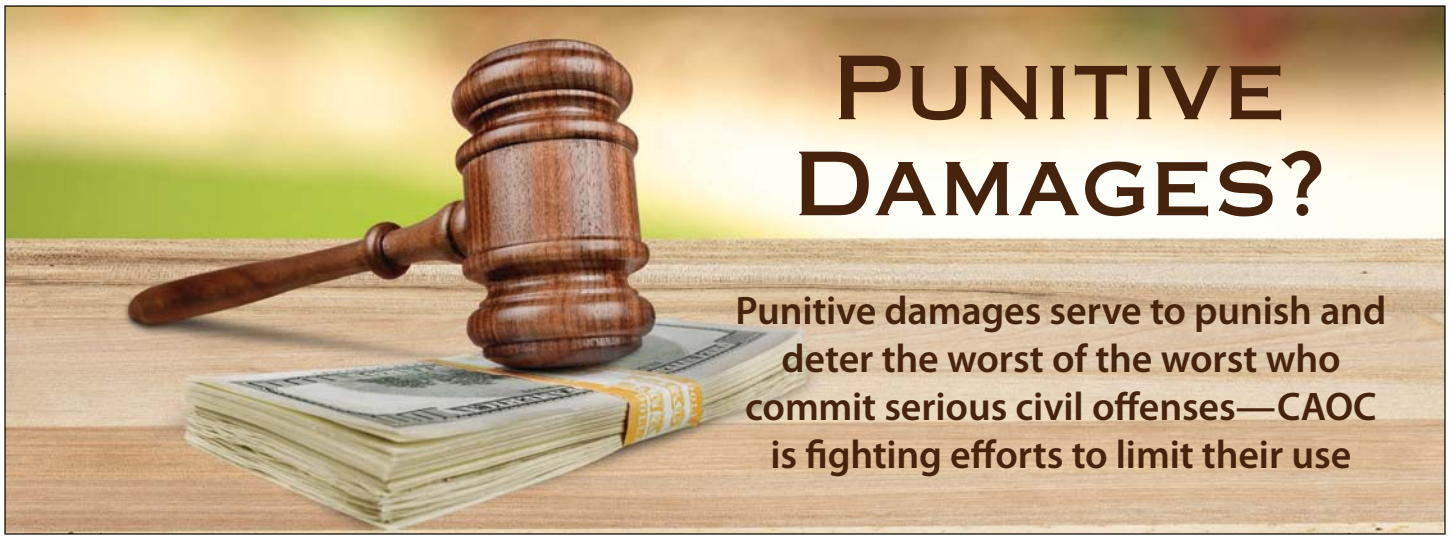
Reprinted from CAOC.org



Reprinted from CAOC.org

The civil justice system is about making victims whole and holding responsible parties accountable for their own mistakes. But in some rare cases, the responsible party's conduct is not a mistake at all. When someone is injured because someone else deliberately disregards public safety, simply making the victim whole is not enough.

Civil courts use punitive damages in the same way extensive prison time is used in criminal court. It is saved as a punishment for the worst of the worst behavior and to deter future bad acts. Like common criminals, some big businesses decide that it is more cost effective to break the law than follow it. But unlike ordinary criminals, corporations cannot be sent to jail. Punitive damages are the only method the civil courts have to protect society from the most dangerous and deceptive business practices.

While the use of punitive damages is infrequent and highly targeted, corporations are waging an aggressive and sustained attack on our courts' ability to use such legal punishments to protect society. Many powerful people would like to escape responsibility for their misdeeds. They spend money to spread misinformation. Big businesses and the insurance lobby paint a distorted picture of runaway juries and evil trial lawyers bankrupting harmless mom and pop operations for a few innocent mistakes.

In fact, punitive damages are reserved for the most egregious cases of civil misconduct. When the truth is fully learned about the reprehensible conduct of a corporation or individual, both a jury and public at large understand the necessity of punitive damages as a punishment. Consider the following cases where large punitive damages were awarded:

❖ A hospital in Sacramento that repeatedly refused to reprimand surgeons for sexually harassing subordinate staff members.

❖ A big tobacco company that knowingly defrauded the public about the dangers of cigarette smoke.

❖ A oil-tanker captain who was drunk and missing from the bridge when the tanker ran aground causing the Exxon-Valdez oil spill, the largest in history at the time.

CAOC is committed to protecting the public's safety by defending punitive damages – it starts with telling the truth about punitive damages:

Punitive damages are rare: One of the biggest myths about the civil justice system is that punitive damage awards are running rampant. A report from the United States Department of Justice (pdf) shows just how rare they are:

❖ Plaintiffs asked for punitive damages in only 12% of all contract and tort lawsuits in state courts across the country.

❖ In all trials where plaintiffs win, only 5% are awarded punitive damages.

❖ Of all plaintiffs who seek punitive damages and win their case, only 30% are actually awarded punitive damages.

Punitive damages awards are modest—and often reduced

❖ The median punitive damages award was only $64,000.

❖ Approximately half of all cases with punitive damage awards are subject to some form of judicial review, which often results in reduced punitive damage awards.

The runaway jury is a myth

❖ Only 13% of cases with punitive damages involve awards over $1 million.

❖ Under a quarter of all punitive damage awards exceed three times the amount needed to make the plaintiff whole – these cases typically involve a defendant who wantonly defied the law but was fortunate enough not to cause substantial harm, like a drunk driver who hits a light pole instead of a child.

Caps on punitive damages are unnecessary because several safeguards already exist

❖ California jury instructions tell every juror considering punitive damages to consider:

- The reprehensibility of the conduct of the defendant.
- The amount of punitive damages which will have a deterrent effect on the defendant in the light of defendant's financial condition.
- That the punitive damages must bear a reasonable relation to the injury, harm, or damage [actually] suffered by the plaintiff.

❖ This means that the jury will assign an appropriate amount of punitive damages, based on the defendant's financial situation, to deter the defendant and others from engaging in the same practices again.

❖ Judges may reduce punitive damage awards when it looks like juries have not followed instructions.

The inescapable truth is that punitive damages are a necessary part of our civil justice system to punish and deter the worst of the worst conduct. CAOC is committed to protecting the courts' ability to punish corporate wrongdoers and protect consumers from unfair business practices.

CCTLA salutes 2017's best at year-end event



Above left, 2018 CCTLA President Lawrance Bohm and outgoing Pres. Bob Bale at CCTLA's Annual Meeting & Holiday Reception in December. Above center, Advocate of the Year David Smith with his wife and partner, Elisa Zitano. Above right, Judge of the Year Ben Davidian and Rena Williams.


Above left, Judge John Winn, Judge David Brown, Judge Alan Perkins, Assoc. Justice Ronald Robie, Presiding Judge David De Alba, Judge Jim Mize and Judge Russell Hom. Above right, CCTLA former president John Demas, Jelena Tiemann and CCTLA board member Peter Tiemann.

More than 200 attended CCTLA's Annual Meeting & Holiday Reception at The Citizen Hotel in December, including 20 judges. CCTLA announced its annual awards to the year's best judge, advocate and clerk.

The Honorable Ben Davidian was recognized as the Judge of the Year; David E. Smith as the Advocate of the Year; and Paula Adams as the Laura Lee Link Clerk of the Year. Noah Schwartz of Noah S. A. Schwartz Office of Ringler received special recognition for his ongoing support of CCTLA.

Outgoing Pres. Bob Bale turned the gavel over to 2018 Pres. Lawrance Bohm.


Above left, CCTLA board member Noemi Esparza, CCTLA board member Jesse Atwal, Roger Dreyer, John Martin and Heather Maxey. Above right, CCTLA board members Amar Shergill and Justin Ward and Goldy Shergill.

Above, Judge John Winn, Margaret Doyle, Leonard Wong, Denise Magnussen, and Amy Brummel.

Join us in Sonoma this March

By: Lori Gingery, CCTLA Board Member

Gorgeous setting for annual travel seminar

March 16 and 17 is a perfect time to be in Sonoma, CA! That's when Consumer Attorneys of California (CAOC) is holding its Donald L. Galine Travel Seminar at the Fairmont Sonoma Mission Inn & Spa, and I'm hoping you will want to attend.

This year is the second year CAOC has hosted the travel seminar in Sonoma, and it's easy to see why Sonoma is such an amazing setting. If you choose to bring your family or you find yourself with some free time during or after the seminar, checking out the downtown Sonoma Plaza is a must. Historic downtown Sonoma boasts a rich historical lesson with a Mexican military outpost and the Fleeting Frontier Republic to visit. You'll also find an eclectic mix of restaurants, tasting rooms, cafes, artisan boutiques, galleries and even a vintage movie house.

Sonoma Plaza is a slow-paced culture center, a pedestrian's paradise. You'll discover old adobe storefronts, meandering alleyways, sunlit courtyards and many historic landmarks that you can enjoy in your spare time, perhaps after experiencing a keynote speech by Frank M. Pitre from Crochett, Pitre & McCarthy LLP, based in the Bay Area.

Pitre will be discussing wildfire litigation in Northern and Southern California—a topic near and dear to Sonoma as well as neighboring Napa County and Santa Rosa, all ravaged by wildfires last fall. Two of which were recently found by the Santa Rosa Fire Department to have been caused by power lines buffeted by heavy winds. I personally have seen the devastation in our beloved wine country and the financial hardships these fires have caused. On a happier note, most of the Sonoma and Napa Valley tasting rooms are open for business and would love to see you.

One place in particular that I enjoy visiting whenever I am in the Sonoma area is the wine tasting room at Galatea Effect. This is a rather new winery, with its tasting based in Sonoma Plaza, wines made with grapes chosen from across the state and only from the best growers. I met with Joel Clapick in the tasting room late last year, and he described how he makes his amazing syrahs, which are well worth a trip to try out.

Now this weekend in March can't be all spectacular wines and quaint shops. We're also going to have an opportunity to hear from perhaps one of the best trial attorneys I personally know: the esteemed Robert A. Buccola from Dreyer Babich Buccola Wood Campora, LLP, right here in Sacramento.

Early information says he will be speaking on "Making Your Case a Winner." I think we can all benefit from that, and I'm sure there will be quite a few takeaways that could help all of our practices.

Pair that with a visit to Kamen Estate Winery, and you will have the best of the best. I first visited the Kamen tasting room a couple years ago, and who walks right in but Robert Kamen himself. Remember "The Karate Kid" movies? "Taken"? How about "The Transporter", "The Fifth Element", "Tap"s or "A Walk in the Clouds"? All written by Robert Kamen.

He has some of the best cabernet sauvignon and blends around. Think velvety lush berries, balanced tannins and just all around yummy. If you get a chance, go on over to the Sonoma Plaza and check it out. Tell Jenny I said "Hi."

You can see I'm excited about the Sonoma/CAOC Seminar this year, and I encourage you to sign up. Seminar information and a registraton form can be found on pages 18-19 of this issue of The Litigator.

Two years ago this seminar also was here in Sonoma, and the seminar was incredibly well attended. You will likely see friends and acquaintances from all over the state here. The evening reception is always a lot of fun, and the topics this year are as varied as they are valuable. Registration is at 1 p.m. on Friday March 16, and the sessions go through Saturday, ending with the closing reception.

What better way to earn up to 9.75 MCLE credits?!

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2018 SONOMA REGISTRATION

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ADDITIONAL CAOC OR CCTLA MEMBER OF SAME FIRM	$245	☐$270	☐$300
NON-MEMBER ATTORNEY	☐$365	☐$390	☐$415
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SONOMA TRAVEL SEMINAR

FRIDAY, MARCH 16
1:00 PM REGISTRATION

MCLE 9.75 CREDITS

SATURDAY, MARCH 17
8:00 A.M. BREAKFAST

1:55 TO 2:55 P.M. (MCLE 1.0 GENERAL)

TRACK 1 - AHLBORN, FEDERAL MEDICAL CARE RECOVERY ACT, ERISA AND RECENT LIEN DEVELOPMENTS

Moderator: Kelsey D. DePaoli, Travis G. Black & Associates

Ahlborn And The Federal Medical Care Recovery Act
Steven B. Stevens, *Steven B. Stevens, APC*

ERISA And Recent Liens Developments
Donald Mitchell de Camara, *Law Offices Of Donald M. de Camara*

1:55 TO 3:25 P.M. (MCLE 1.5 GENERAL)

TRACK 2 - HOT TOPICS IN THE AUTO WORLD

Moderator: Noah Schwinghamer, Schwinghamer Law

Dangerous by Design: Litigating Motor Vehicle Cases Against Caltrans
Jason J. Sigel, *Dreyer Babich Buccola Wood Campora, LLP*

Using Technology To Prepare And Try Your Auto Case on A Budget
Elise R. Sanguinetti, *Arias Sanguinetti Wang & Torrijos LLP*

Accident Reconstruction And Black Box Technology In Auto and Truck Cases
John N. Demas, *Demas Law Group, P.C.*

UM/UIM: Nuts & Bolts & More
Lorraine D. Gingery, *Gingery Law Group P.C.*

3:00 TO 4:00 P.M. (MCLE 1.0 GENERAL)

TRACK 1 - ELDER ABUSE: QUICK HITS FROM THE MASTERS (ROUNDTABLE)

Moderator: Anoush Lancaster, Stebner & Associates
Kathryn Stebner, *Stebner & Associates*
Anne Marie Murphy, *Cotchett, Pitre & McCarthy, LLP*
Kimberly Valentine, *Valentine Law Group*
Karman Guadagni, *Stebner & Associates*

3:30 TO 4:30 P.M. (MCLE 1.0 GENERAL)

TRACK 2 - KAISER UPDATE

Moderator: Michelle C. Jenni, Wilcoxen Callaham, LLP

Kaiser-Generated Sources Of Standard Of Care
Michael Kelly, *Walkup, Melodia, Kelly & Schoenberger*

Smart Sets And Decision Making: The Kaiser Algorithms
Andrew McDevitt, *Walkup, Melodia, Kelly & Schoenberger*

4:05 TO 5:05 P.M. (MCLE 1.0 BIAS)

TRACK 1 - SEXUAL HARASSMENT – IT S NEVER BEEN OKAY

Moderator: Gretchen M. Nelson, Nelson & Fraenkel LLP

Sexual Harassment In Our State: It Is Time To Take A Stand
Jacquie Serna, *Legislative Counsel, CAOC*

Harassment In Sacramento: The Good, The Bad, And The Ugly
Micha Star Liberty, *Liberty Law*

New Federal Policies And Legal Developments In Response To #METOO
Jennie Lee Anderson, *Andrus Anderson LLP*

4:45 TO 6:15 PM (MCLE 1.5 GENERAL)

TRACK 2 - QUICK HITS

Moderator: Justin L. Ward, The Ward Firm

Proving Damages In Antitrust Cases
Adam J. Zapala, *Cotchett, Pitre & McCarthy, LLP*

Class Action Update
Brian S. Kabateck, *Kabateck Brown Kellner, LLP*

Gig Economy Employment: A Go, Or No Go?
Stephanie D. Biehl, *Cotchett, Pitre & McCarthy, LLP*

Mass Torts Update
Mike Arias, *Arias Sanguinetti Wang & Torrijos LLP*

Workers' Comp Update
Jennifer Elise Scotto, *Law Offices of Vincent J. Scotto, III*

5:15 TO 6:15 P.M. (MCLE 1.0 GENERAL)

TRACK 1 - SETTING THE STAGE FOR YOUR CLIENT'S VICTORY

Moderator: Jennifer Fiore, Mary Alexander & Associates

Arbitrator: Friend Or Foe
Wendy York, *York Law Firm*

Preparing For, Taking And Effectively Using A Deposition
Steven M. Campora, *Dreyer Babich Buccola Wood Campora, LLP*

6:30 TO 7: 30 P.M. WELCOME RECEPTION

8:30 TO 10:00 A.M. (MCLE 1.5 GENERAL)

TRACK 1 - TRIAL SKILLS

Moderator: Daniel S. Glass, Law Office of Daniel S. Glass

Voir Dire: Picking A Jury Under Difficult Circumstances
Sarah R. London, *Lieff Cabraser Heimann & Bernstein LLP*

How To Prepare And Present Your Client And Other Witnesses To Maximize General Damage Awards
Anne J. Kepner, *Needham Kepner & Fish LLP*

The Art And Architecture Of Closing Argument
Richard Schoenberger, *Walkup, Melodia, Kelly & Schoenberger*

TRACK 2 - GETTING READY FOR TRIAL FROM CASE THEMES TO OPENING

Moderator: Robert Boucher, Law Office of Robert L. Boucher

Themes Of The Case
C. Brooks Cutter, *Cutter Law, PC*

Mining Expert Depositions For Gold
Robert Bale, *Dreyer Babich Buccola Wood Campora, LLP*

Show And Tell Your Case Story During Opening Statement
John M. Feder, *Rouda, Feder, Tietjen & McGuinn*

10:15 TO 11:45 A.M. (MCLE 1.5 GENERAL)

TRACK 1 - EFFECTIVE PREP FOR TRIAL

Moderator: Alison Cordova, Cotchett, Pitre & McCarthy, LLP

Effective Prep 100 Days Before Trial, And What You Need To Get Done In Those 100 Days
Gregory L. Bentley, *Bentley & More, LLP*
Robert A. Piering, *Piering Law Firm*

Demonstrative Exhibits And How To Avoid Trial Pitfalls With Effective Prep
Chantel Laura Fitting, *Galine Frye & Fitting*
Ilya D. Frangos, *Galine Frye & Fitting*

Getting Your Experts And Pretrial Documents In Order
Megan Demshki, *Aitken*Aitken*Cohn*
Casey R. Johnson, *Aitken*Aitken*Cohn*

TRACK 2 - EMPLOYMENT

Moderator: Erik M. Roper, Law Office of Erik M. Roper

Advantages Of Multi-Plaintiff Litigation In Employment Cases
J. Gary Gwilliam, *Gwilliam Ivary Chiosso Cavalli & Brewer APC*

Whistleblowing - Report From The Trenches
Lawrance A. Bohm, *Bohm Law Group*

How to Successfully Try the Most Challenging Of Employment Cases
Jill P. Telfer, *Telfer Law*

Beating MSJs In Employment Cases
Kelsey Ciarimboli, *Bohm Law Group*

12:00 TO 1:00 PM (MCLE 1.0 GENERAL)

LUNCH KEYNOTES

Moderator: Lee S. Harris • Goldstein, Gellman, Melbostad, Harris & McSparran LLP

WILDFIRE LITIGATION IN NORTHERN AND SOUTHERN CALIFORNIA
Frank Mario Pitre, *Cotchett, Pitre & McCarthy, LLP*

MAKING YOUR CASE A WINNER...
Robert A. Buccola, *Dreyer Babich Buccola Wood Campora, LLP*

1:15 TO 2:45 P.M. (MCLE 1.5 GENERAL)

MASTERS ROUNDTABLE

Moderator: Alexandra Hamilton, The Veen Firm, PC

Tactical Considerations When Dealing With Sexual Abuse Cases In An Education Setting
Roger A. Dreyer, *Dreyer Babich Buccola Wood Campora, LLP*

Trying A Dangerous Condition Case
Thomas J. Brandi, *The Brandi Law Firm*

Telling Your Client's Story
Deborah Chang, *Panish Shea & Boyle LLP*

6:00 TO 7:00 P.M. CLOSING RECEPTION

CO-CHAIRS: ANNE MARIE MURPHY, LAWRANCE BOHM, GRETCHEN NELSON, DEBORAH CHANG, **CAOC PRESIDENT** LEE HARRIS, **EDUCATION CHAIR** CRAIG PETERS.
COMMITTEE: ROBERT BALE, ALISON CORDOVA, ROB PIERING, ROBERT L. BOUCHER, PETER TIEMANN, RACHAEL MCCAFFERTY, KELSEY DEPAOLI, LORI SARRACINO, WENDY MURPHY

Overcoming legal hurdles in seeking civil justice vs. a foreign government

By: Beth Terrell / Public Justice Board Member

Reprinted from PublicJustice.net

Michael Withey's experience in "*Summary Execution: The Seattle Assassinations of Silme Domingo and Gene Viernes*" began with a shock: the brazen broad-daylight slaying of his two friends outside the Local 37 Cannery Workers Union where they were labor leaders. At the time, Withey could not have known how this terrible crime would lead to an even more shocking revelation of international intrigue. Reading at times like a spy novel, "*Summary Execution*" covers a conspiracy linked to Cold War politics, dictators, and international espionage. Withey was able to successfully navigate these forces and achieve courtroom justice for Silme and Gene through tremendous personal dedication and innovative legal strategy.

Attorney and activist Withey was the lawyer for the Local 37 at the time of the killings, and worked closely with the family and friends of the victims. Together they formed the Committee for Justice for Domingo and Viernes (CJDV) to seek answers and justice. Their mission would take them from Seattle to Alaska, and from the Philippines to DC, and ultimately resulted in an unprecedented verdict against a foreign head of state, and millions of dollars in restitution to the families of Silme and Gene.

Withey explains how the union represented Filipino immigrant workers in Alaskan salmon canneries and the pervasive presence of gangs and violence in the Filipino labor community. Not only active in labor politics, many Filipino laborers were closely tied to the politics of the Philippines under Ferdinand Marcos' military dictatorship. The regime was supported by the Reagan administration as bulwark against communism in Southeast Asia but was very sensitive to opposition movements in the United States. It would quickly become apparent that the murders were not about the gangs surrounding the cannery workers, but rather about Silme and Gene's leadership of anti-Marcos activists and their connections to the labor movement in the Philippines.

The CJDV assisted the local Seattle authorities convict the gunmen who carried out the murders, but encountered resistance when they sought to get the leaders of the conspiracy prosecuted under the theory of a Marcos regime connection. Withey and the CJDV therefore turned to the civil courts to seek justice, and found themselves in the middle of a bizarre web of intrigue – from a surprise witness who claimed to be Howard Hughes' bagman, a military intelligence operative who gained access to government reports on Gene's activities in the Philippines, and eventually the revelation that Philippine government operatives had been closely monitoring and harassing his opponents in the U.S. Withey even found himself personally staking out a key accomplice to the murders after he successfully evaded a SWAT team.

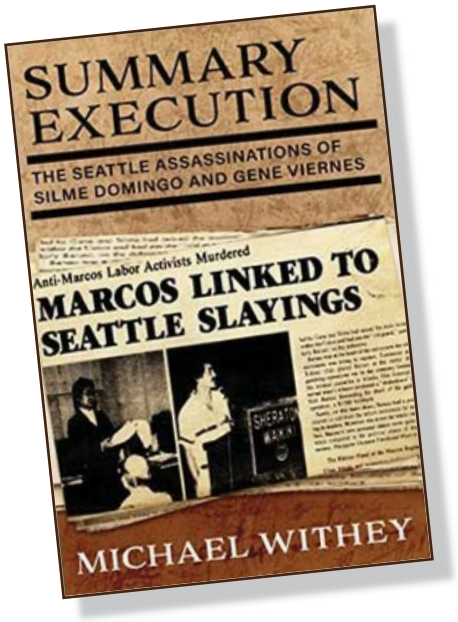
Terrible crime leads to a new book, 'Summary Execution,' from Public Justice Foundation Past President Michael Withey

Then-Trial Lawyers for Public Justice, now Public Justice Foundation, was enlisted in the justice efforts. TLPJ, through its then-Executive Director Arthur Bryant, enlisted as co-operating counsel the experienced former Watergate prosecutor Richard Ben-Veniste whose office provide valuable resources in scheduling and taking the depositions of key US intelligence agencies, including the FBI, DIA, CIA and NSA.

"*Summary Execution*" shows how Withey and his team overcame legal hurdles in seeking civil justice against a foreign government under the Foreign Sovereign's Immunity Act. It also details fascinating episodes, such as the daring service of notice to Marcos during a state visit to Washington, DC, and the rapid political developments in the Philippines that converged with their efforts to bring Marcos to justice. Marcos eventually fled to Hawaii after a national uprising, bringing a trove of financial documents that Withey was able to subpoena.

Withey was eventually able to depose Marcos himself and carried on the case even after the former dictator's death from illness.

Thanks to the subpoenaed documents and Withey's skillful depositions, the team was able to prove the conspiracy to the jury, which found Marcos and his wife liable for the murders. They awarded Silme and Gene's estates $15.1 million, and the judge found Marcos' accomplice in the U.S. liable for $8.3 million. As appeals continued, they settled with the defendants for $3 million.



Withey's book illustrates the importance of the civil justice system, even in cases that begin with a criminal act. Civil remedies are especially important when state authorities are unwilling to go after higher ups due to political pressure.

If not for Withey and the CJDV's dogged combination of activism and legal work, Silme and Gene would have never gotten the full justice they deserved.

Unfortunately the story is not yet done. The case revealed that the federal government participated in Marcos's infiltration and monitoring of U.S.-based opponents to his regime. Withey is still seeking information about the full extent of American intelligence agencies' participation in the scheme, and has encountered resistance to his Freedom of Information Act requests. Still, he perseveres, and the quest for justice continues.

• • •

Beth Terrell is a founding member of Terrell Marshall Law Group PLLC in Seattle and board treasurer of the Public Justice Foundation, a non-profit legal advocacy organization. Public Justice served as cooperating counsel in the civil case highlighted in "*Summary Execution.*"

Mike Withey is a past president of the Public Justice Foundation. Copies of "*Summary Execution*" are now available from Barnes & Noble and Amazon.com.

Mike's CITES

By: Michael Jansen
CCTLA Member

Here is a recent case culled 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.

Vasilenko v. Grace Family Church
(2017) DJDAR 10732
[Filed November 13, 2017]

California Supreme Court Reverses Favorable Appellate Court Decision for Plaintiff

In June 2016, the Third District Court of Appeal reversed a Sacramento trial court's summary judgment decision against an injured plaintiff. The California Supreme Court herein reversed the Appellate Court, finding that there is no duty owed by a landowner to a pedestrian to prevent injury on abutting streets.

FACTS: Plaintiff Vasilenko was hit by a car while he was crossing busy Marconi Avenue in Sacramento on his way from the overflow parking lot across the street from the Grace Family Church (GFC).

Vasilenko sued the driver and the driver's employer and also sued GFC for breach of the duty of reasonable care. Vasilenko argued that the church parking lot on the opposite side of a busy street with no traffic controls created an unreasonable risk of harm to invitees.

The trial court judge granted defendant GFC's motion for summary judgment on the ground that the church did not breach its reasonable duty of due care because the church did not control traffic on Marconi Ave. where plaintiff Vasilenko was hit.

HOLDING: The Appellate Court held that the church could have breached its duty of care by exposing its invitees to an unreasonable risk of harm when they foreseeably would be required to cross Marconi Avenue with no crosswalk or traffic signal.

A reasonable juror could infer that Vasilenko would not have been struck by a car when he was crossing Marconi Avenue had GFC not maintained and operated a parking lot across the street from the church. There was also an issue of breach of duty regarding the instructions by the overflow parking lot attendants in telling or not telling people to cross Marconi Avenue at Root Avenue, about 100 feet away. That crossing was also highly dangerous even though it was at an intersection.

The majority at the Third District Court of Appeal felt that rather than carve out a rule of no duty, the better decision required a jury to determine if the defendant breached any duty of due care. Rather than deny plaintiff his day in court, the majority said it was up to the jury to determine if there was a breach of duty.

On appeal, Justice Liu, writing for the unanimous Supreme Court, recited the Rowland v. Christian test to see if this case should be an exception to the rule of finding duty under Civil Code §1714. Justice Liu wrote that finding duty in this case is supported by the first two questions under Rowland: foreseeability and certainty.

The third factor, closeness of the connection between the defendant's conduct and the injury, wrote Justice Liu, "bears only an attenuated relationship to the invitee's injury" because the motorist and the invitee acted independently of the landowner.

It was in the policy considerations under Rowland where plaintiff Vasilenko lost. The public policy of preventing future harm is ordinarily served by allocating costs to those responsible for the injury and thus best suited to prevent it. Justice Liu wrote that the church could not control the public streets, control traffic, erect signs or lights, so the church could not possibly prevent the injury.

Thus public policy dictates the church should have no duty to an injured pedestrian. So many possibilities of future harms exist to confront the church landowner because the volume and speed of traffic along the street changes by the minute; and crime rates and perceptions of safety on the sidewalks varies significantly depending on who you talk to.

Thus, a landowner would be confronted with a constellation of variables it would find difficult or impossible to evaluate. For instance, an invitee could have been mugged between the closer parking lot and the church; or an invitee could have slipped in a puddle on the sidewalk *anywhere;* or an invitee's car could be broken into or an invitee carjacked. Surely, a landowner as a matter of public policy should not be held responsible for all of these crazy possibilities.

Justice Liu wrote that Vasilenko urged invitees to commit crimes (Penal Code §602, trespass) and/or violate parking restrictions (Vehicle Code §22953) by parking where the invitees did not have permission, which certainly is not a public policy goal. What if a landowner took all these steps and a safer parking lot opened up. Would the landowner be liable for mis-evaluating the safety of the competing parking lots? If the court found a duty in this case, that would encourage landowners not to provide parking so they could *not* become liable, which is counter to positive public policy.

Moreover, imposing a duty on the landowners will take away the need by the public entity, which really is in a better position to control traffic, from stop lights, signs to crossing guards, all of which a landowner really cannot do.

Despite Vasilenko's argument that the landowner could perform its' duty inexpensively and simply, Justice Liu demurred that the above-described problems clearly show that the duty could not be carried out straightforwardly or beneficially.

Verdicts

Verdict: Almost $3,000,000
Negligence & Medical Damages

CCTLA Past President John Demas prevailed for his client, Brian R., in two separate incidents that occurred 10 days apart in May 2012. The first incident involved a wooden garage door that fell on Plaintiff's back, pinning him to a truck. The second incident, 10 days after the garage-door incident, occured while Brian was a passenger in a truck when it was rear-ended.

At the time Plaintiff was injured, he was 42 and had recently moved from Washington state to California. He was in the middle of a work comp retraining program that brought him to Sacramento for an accounting/business program at MTI. In 2002, Plaintiff had been injured at work and ultimately had to have two neck surgeries due to his injuries. In 2008, he was injured again at work, which disabled him from working as a finish carpenter. The second work injury ultimately lead to two shoulder surgeries and two additional neck surgeries.

By 2012, Brian had two levels at his neck fused (four prior neck surgeries) and screws in his right shoulder. Due to his previous injuries and then to the injuries he suffered as a result of the garage door falling on his back, he did not work from 2008 until September 2015.

Garage Door Incident (#1): The first incident took place at a home that he and his wife had rented in Sacramento from the Defendant. A spring-hinged wood garage door became unhinged and ultimately fell on Plaintiff's back when he was in the garage, pinning him to a truck. He went to the Emergency Room complaining of severe low back pain and left leg weakness. He did not have any visible bruising at the time, and his CT scans and X-Rays showed no fractures. He was given four injections of pain medication, a diagnosis of "a contusion" and a prescription for additional pain medication. For the next 10 days, Brian stayed home and did not return to the doctor.

Car Collision/Rear Ended (#2): On that 10th day, Brian was riding as a passenger in a pickup truck. At a stop, the truck was the last vehicle to be rear ended in a four car rear-end crash. Ten days after that crash, he returned to the Emergency Room, complaining of low back pain and left leg weakness.

Plaintiff ultimately got an MRI that showed a small disc herniation at L5-S1. He tried conservative treatment (traction, physical therapy, epidural steroid injections and a discogram) which gave him little-to-no-relief. He sought out a second opinion from another specialist, where another epidural steroid injection was administered. Like the first injection, this one gave him no relief, and it was recommended he have a microdiscectomy and laminectomy.

In December 2013, Brian had the recommended surgery, and initially, it provided him great relief for his leg pain and some relief of his low back pain. Six to nine months later, his symptoms returned and he was back at square one. To support his family, he went to work as a commercial roofer in September 2015 and worked for two years—until his pain reached a point he could no longer tolerate it.

In 2017, six weeks before trial, Brian underwent a one level anterior fusion at L5-S1. At the time of trial, the surgery appeared to have been a success as He has no leg symptoms, very little low back pain and testified at trial he is doing great and is off pain meds. Brian told all of his medical providers his injuries started from the car crash and never mentioned the garage door incident to any of them. He also testified at deposition that his symptoms from the garage door incident resolved prior to the car crash.

The defendant in the car collision accepted responsibility for his actions and entered into a "Mary Carter" agreement after tendering their remaining policy limits of $285,000. The homeowner Defendants maintained throughout the course of the case that Plaintiff was the cause of his own injury or was never truly injured by the garage door in the first place. Defendant homeowners refused to put forth a legitimate offer. Their only offer until the eve of trial was $5,000 and then increased to $50,000. Their policy limits were $500,000, which were demanded multiple times.

After 12 days of trial and two days of deliberations, jurors rejected homeowner Defendants' arguments when all 12 returned the verdict that the homeowners were negligent and that their negligence was a substantial factor in causing Plaintiff's injury. The jury found the defendant homeowners 93% responsible for Plaintiff's injury and awarded Plaintiff all the economic damages asked for (approximately $800,000) and more than $2,000,000 in non-economic damages. The final verdict, with costs and interest, against the homeowner defendants will be close to $3,000,000.

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Verdict: $2,659,877.36
Lonny Johnson v. Davis Development Company, Inc.
Auto v. Auto: Rear-End Collision

Roger A. Dreyer and Joshua T. Edlow of Dreyer Babich Buccola Wood Campora, LLP, obtained a $2,659,877.36 verdict when a Sacramento Superior Court jury found Defendant's negligence was a substantial factor in causing harm to Plaintiff after an automobile accident. The case was tried before Judge Kevin Culhane, and after a day of deliberations, the jury awarded damages for past and future medicals as well as past and future non-economic damages.

FACTS

On March 3, 2014, Plaintiff Lonny Johnson, a 45-year-old male, was stopped on southbound Highway 680 when an employee of Davis Development Company, Inc., driving a work truck, struck the rear of his vehicle. The impact caused a chain reaction, propelling Plaintiff's car forward, into the vehicle in front of him.

As a result of his injuries, Plaintiff sued Davis Development Company, Inc., alleging negligence and claiming damages for past/future medical expenses, past/future loss of household services and past/future non-economic damages. He did not make a lost-income claim.

Defendant admitted course and scope, as well as liability for the collision, and the matter proceeded to a trial on causation and damages only.

Plaintiff claimed injury to his neck, including cervical facet mediated pain, producing headaches. He also claimed radiating symptoms caused by disc herniations resulting from annular tears at the C4-5 and C5-6 levels of the spine as a result of the subject collision. He alleged these injuries resulted in the need for multiple epidural steroid and facet injections, as well as medial branch blocks and radiofrequency ablations, and that this condition resulted in his undergoing a two-level cervical discectomy and fusion three years after the incident. Plaintiff claimed past medical bills were $115,000.

Plaintiff's treating surgeon testified that the plaintiff would require an additional fusion surgery in his lifetime. His treating physical medicine doctor opined he would require two facet injections and other pain management over the course of his life expectancy (32 years). The future medical bill claim was $1,220,000.

Plaintiff claimed that while he could continue to do his job of interactive history presentations to elementary school students, he could not enjoy his recreational activities.

Defense claimed that while Plaintiff did sustain soft-tissue cervical strain in the incident, his acute cervical strain healed after physical therapy approximately six weeks after the collision and before he left for a trip to Greece. Defense had the Plaintiff seen by an orthopedic surgeon Dr. Edward Younger and retained the services of a neurosurgeon Dr. Hamidreza Aliabadi and a radiologist Dr. William Hoddick.

These Defense experts opined that Plaintiff's symptoms and treatment after his return from Greece were the result of a longstanding pre-existing condition from medieval martial arts injuries sustained in 2003 and 2008. Both doctors noted Plaintiff's 150-plus chiropractic visits in the three years prior to the collision as a basis for their opinions. They based this on

Plaintiff having reported doing better after physical therapy, citing 1/10 "negligible pain" and then traveled to Europe approximately three months after the collision occurred. Defense said Plaintiff took a total seven trips to Europe in the four years after the collision, in an effort to suggest that the non-economic damage portion of the claim was being exaggerated.

The Defense's radiologist testified that the results of the Plaintiff's MRI imaging studies revealed longstanding, age-related degeneration and did not reveal any evidence of a single traumatic event-producing injury. All of Defendant's medical experts were of the opinion his prognosis was from degeneration and from prior complaints and problems he had prior to the collision.

Plaintiff served a $1M 998 in 10/15 and then a $250k 998 in June 2016. Plaintiff increased the demand after the MSC to the $2mm policy limits (the first $1M with Mercury, the second with Topa Insurance). At the Mandatory Settlement Conference, Defendant offered $300,000. Ten days before trial, Defendant served a 998 demand for $500,000.

Following one day of deliberations, the jurors awarded Plaintiff $2,659,877.36: past and future medicals of $865,000 and past and future non-economic damages of $1,720,000. **Notably, Plaintiff is filing a cost bill for experts and prejudgment interest of approximately $700,000.**

Defense attorney was John P. Hallissy.

•••

Verdict: $294,000
Injuries from Auto Accident

Lance Curtis and Erik Gutierrez obtained a verdict of $294,000 in a case tried in Judge Gerrit Wood's courtroom in Sacramento.

On August 17, 2013, Plaintiff was rear-ended by an empty box truck and trailer while she was making a right turn. Following the collision, Plaintiff's vehicle continued across the intersection and collided with a garage. There was almost no damage to the rear of Plaintiff"s vehicle, although there was a frontal delta-v of 10 mph from the garage collision. Defendants admitted liability for the collision. Plaintiff claimed chronic neck pain with the need for future treatment.

Dr. Christopher Stephenson, MD, initially treated Plaintiff and suspected a facet injury. She was offered ESIs and facet blocks, which she refused, concerned about her diabetic condition. She was referred to Dr. Tyler Smith, MD, who indicated she would be a candidate for a 2-level fusion. Plaintiff sought a second opinion from Dr. Ravi Patel and also from Dr. Praveen Prasad. Neither believed the benefits of surgery outweighed the risks, and neither indicated they would perform a surgery.

Plaintiff had several long gaps in treatment, including a six-month gap. During the following two years, she only had conservative treatment. By late 2016, her neck pain worsened. She was treated at Mercy pain management, with Dr. Andrew Linn, MD, and in July 2017, she had her first ESI, followed by medial branch blocks in November 2017. Based on the successful facet blocks, Dr. Linn scheduled her for an cervical ablation, which was scheduled for later this month.

Dr. Stephenson, Plaintiff's retained expert, told the jury that the facet blocks were the best test to diagnose a facet injury in spite of defense experts noting no trauma to the spine appearing on the MRIs or CT scans. His report outlined future care, including future RFAs, regenerative injections such as trigger point injections and PRP. He also testified he did not believe her prior complaints of neck pain and some reference to radicular complaints were chronic in nature because there was never any referral for radiological studies, physical therapy or pain management prior to this collision. Dr. Smith was not retained as an expert, but did testify as a treating physician.

Defendants' retained experts included Dr. Michael Cluck, MD, who testified that she had prior neck complaints and DDD in her spine which were causing a chronic symptomatic neck. There were prior medical records indicating limited sporadic neck pain and radicular complaints. Other defense-retained experts were Dr. Sean Shimada, Ph.D, who testified the forces in the impact were not sufficient to cause long-standing problems in her neck or aggravate a pre-existing condition, and Dr. William Hoddick, MD, who testified he found no evidence of trauma on any of the radiological studies. To the extent she had pain, he claimed it was a result of DDD.

Plaintiff had a subsequent motor vehicle accident in 2014 in which she may have been at fault and from which she claimed no injuries. Plaintiff claimed $33,000 in past medical expenses.

Defendant's counsel was Craig Rolfe.

Carrier: State Farm

Total Verdict: $294,000; Interest and costs will result in another $75,000-$80,000

Policy limits: $250,000

Verdict Break-down: Past medical expenses: $26,000; future medical expenses: $169,000; past generals: $70,000; future generals: $40,000.

Plaintiff's 998: $249,999 expired two years ago; Defendant's 998: $40,000.

Contested Ahlborn Motion

CCTLA Officer Rob Piering recently finished a contested Ahlborn motion in San Francisco Superior Court wherein Judge Kahn awarded MediCal $121,000. Notably, MediCal did not raise the issue of Congress' statutory changes of Ahlborn effective Oct. 1, 2017.

The case involved a $683,000 lien and significant comparative negligence on the plaintiff, who was riding a motorcycle. As required by Welfare & Insuance Code 14124.76, Piering attempted to informally resolve the matter with MediCal, whose lowest demand was $417,000. MediCal indicated that its new procedure was that no supervisor or attorney would communicate with Plaintiff's counsel until an Ahlborn motion is filed. Ultimately, the Department of Justice attorney reduced its demand to $226,000. Plaintiff originally offered $80K and countered with a $120K offer. DOJ thereafter refused to further negotiate.

Based on the most recent Aguilera case, MediCal made the argument during the Ahlborn hearing that it should receive a full reduction for the Plaintiff's future Life Care Plan if it could prove it will be paying for those services. The judge agreed, even though MediCal's reimbursement rate is only about 7-10% of normal provider rates. This appears to provide MediCal with a windfall in excess of 90% in the calculation of full value and needs to be clarified on appeal.

Arbitration Awards

Arbitration Award: $732,669, plus recoverable costs
Birth Injury

CCTLA Past President Eric Ratinoff got an arbitration victory against Kaiser of San Diego after a three-week binding arbitration, representing Angelina, a young child of Chaldean immigrants from Iraq who speak limited English. The total award was $732,669 plus recoverable costs. This case was a six-year battle in which the parties stipulated to waive the five-year statute. There were more than depositions and 20 experts, with cost more than $400,000. About two years into the case, co-counsel, a well-known birth injury lawyer from Southern California, withdrew from the case.

During Angelina's birth, the obstetrician used a vacuum to assist in the delivery after it became clear that she wouldn't deliver without instrumentation. The baby was not descending past the "plus 2" station for over two hours, meaning her head was not descending past the pelvic bones/ischial spines. With the first vacuum attempt, there was no further descent. It was Plaintiff's position at arbitration that the standard of care required the obstetrician to stop and to deliver by c-section.

Defense's position was that the obstetrician reasonably exercised her medical judgment in attempting to use the vacuum two more times. On the third attempt, the vacuum had a "pop-

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off," and the obstetrician then delivered the baby by c-section. Angelina had no sign or symptom of injury at birth. She was fully evaluated by the neo-natal team, and was transferred to the "well baby" section of the maternity ward.

Her father noticed she appeared "jittery." A nurse determined it was normal. It is common for newborns to be jittery because of their immature nervous systems, but the father remained concerned and continued to tell the nursing staff, who continued to reassure him. A neonatologist did a full evaluation of Angelina, finding her to be completely normal.

Kaiser had a written policy for hypoglycemia (low blood sugar) that dovetails, in part, with the nursing standard of care to evaluate jitteriness in a newborn. When a newborn is jittery, the standard is to gently hold the jittery limbs. If that stops the jittering, then the cause is likely the immature nervous system. If not, it is possible the child is having a seizure. The nurses testified that every time they checked on Angelina's jitteriness, it stopped when they held her limbs. They also testified that the jitteriness was bilateral. The father testified that the jitteriness was left-sided. That is an important distinction because that means the jitteriness may be a focal sign of seizure and suggests there may be a problem on the right side of the child's brain. If "normal" newborn jitteriness persists, the standard of care is to check blood sugar, which can also cause jitteriness.

Kaiser's written hypoglycemia protocol for the nurses requires them to check the blood sugar, and if it indicates normal, to check it a second time sometime thereafter. The protocol is silent as to how long after, but testimony was that it needed to be at least one hour. If the second blood sugar test comes back normal, there should be a calcium test. The reason for that is low calcium can (rarely) be a cause for jitteriness. No repeat blood glucose test was ever done. No calcium checktest was ever done.

On day two of Angelina's life, after a nursing shift change, Angelina's father asked the new nurse to look at Angelina. When this nurse saw the left-side jitteriness, she immediately took Angelina to the Neonatal Intensive Care Unit, where, Angelina was diagnosed with a seizure and was given anti-seizure medication. A CT scan of her brain showed she had a skull fracture and a very large subdural hemorrhage. Even in the NICU, however, other than the jitteriness, she was found to have no external sign of any injury whatsoever.

There was a single entry in the medical record that was helpful. About two hours before Angelina was taken to the NICU, a nurse became concerned about the jitteriness. There was a late entry into the medical record that the nurse added after Angelina was transferred to the NICU. The nurse noted that she asked the floor nurse if the child had had a calcium check done and if the doctor had been notified of the jitteriness. Apparently the floor nurse told her that the calcium test had been ordered and that the doctor was notified. Other than the late entry into the record, there is no record of any of that being done.

As to the nursing staff, Ratinoff argued there was a delay in diagnosing the seizures and thus a delay in the administration of care and the diagnosis of the fracture and the bleed. He said he was going to abandon this entire, very complicated theory before arbitration because the causation and damages were very tenuous. Plaintiff's standard-of-care expert on the nursing issues testified that any injury from the delay in diagnosis was "minimal" but Plaintiff's pediatric neurologist was more helpful. Ratinoff said he was thankful he didn't abandon it.

The arbitrator found that the doctor reasonably exercised her medical judgment in continuing to use the vacuum and that its use was not the cause of the skull fracture and brain bleed. He agreed with Defense that it was more likely that the fracture and the bleed were caused by the more than two hours the baby's head hit the pelvis while she was stuck at the +2 Station.

However, he then found that the nurses breached the standard of care by failing to address subtle seizure activity and by failing to order the second blood glucose or the calcium test. He was particularly bothered by the late-entered note and the lack of evidence in the record that a doctor was called or that a calcium test was ordered. He ruled there was a two-hour delay in diagnosis and treatment of seizure that caused additional harm.

Angelina ended up with a significant left-sided hemiplegia as a result of the brain injury. However, that predominantly resolved by age four. The regional center discharged her from care, and the school district canceled her IEP. Her kindergarten and first grade teachers describe her as a model student, whom the other kids love. On academic testing she scores high.

Plaintiff's pediatric neuropsychologist, however, found a number of subtle abnormalities on testing done over the course of two-and-a-half years. With few exceptions, those abnormalities, however, showed up as predominantly in average range. It was generally the mix of where in that average range the weaknesses were, in relation to each other, that demonstrated that she had deficits that would appear later in life. The mix of tests suggested a future that was likely to reveal additional deficits.

All of the testing performed by the school district and by the defense neuropsychologist and pediatric neurologist showed that Angelina was completely normal. Her one notable physical deficit is difficulty with fine motor in her right hand. There was a big fight over this because the typical presentation of a right-sided brain injury would be left-sided deficits. Ratinoff argued that the right hand problem was further evidence that the delay in diagnosing the seizure caused more global brain injury (that can't be seen on MRI or CT).

Plaintiff's pediatric neuropsychologist, pediatric physiatrist, pediatric neurologist and brain-injury education expert all testified she would struggle in school if she didn't get help in the later grades and that she needed assistance to succeed in her education.

The arbitrator found that her true future needs totaled $1.4m. He then attributed 1/3 of her need to the nursing error and the other 2/3 to the skull fracture and bleed. Additionally, he awarded the $250,000 MICRA cap for general damages. The total award was $732,669, plus recoverable costs.

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CCTLA Past President Jack Vetter reecently prevailed with an award in a case that shows that CC3040 can assist in a high comparative case.

In October of 2015, a 40-year-old father of three fell out of the back of a pickup truck after a friend's wedding, when eight people decided to move the party. Seven were seriously inebriated, so a sober friend agreed to drive the 12 blocks to the new location. This was in a six-passenger pickup, so two rode in the back.

On the way to the house, there was a moment's hesitation in a residential intersection while the directions were worked out. For some unknown reason, Plaintiff started to get out, falling on his head. The other person in the bed of the truck alerted the driver a block away.

Vehicle Code §23116 makes it illegal to ride in the back or allow anyone to do so, and both adjusters laughed at the claim when first presented, but reluctantly, both policy limits were eventually offered. Policy limits were $100,000 on the truck and $15,000 on the driver. The Rawlings/Blue Shield medical lien was $159,000.

CC 3040 provides that the comparative fault of the plaintiff can reduce the amount that the medical lien holder can recover from the settlement. As a condition to accepting the limits, Plaintiff demanded that Defense participate in a binding arbitration to determine the degree of comparative fault.

Two hundred emails later, all agreed that the policies would be paid and the parties released, no matter the result of the arbitration. The value of the injury was agreed at $1,250,000.

Rawlings belatedly asked to participate in the arbitration but had no standing to do so. The demand on the lien was $15,000, assuming 85% comparative.

The issues were explained to the arbitrator, who determined there was 95% comparative fault on the plaintiff. Net payment to the lien holder is about $3,000.

Congress races to protect industry from lawsuits

Continued from page 2

bills with a combination of threatening provisions have passed the House of Representatives. The president has signed one into law: H.J.Res. 111 repealed the Consumer Financial Protection Bureau's rule prohibiting banks, lenders and other corporations from forcing consumers with grievances into arbitration. This law also prevents individuals from joining together in class action lawsuits in federal courts against banks, predatory lenders, and other bad actors.

Members of the George W. Bush administration, including some appointed by President Donald Trump to high-level positions in his administration, wanted to see similar restrictions placed on the rights of individuals to have their day in court. "Usually, it's been a pretty extremist view," said Jessica Culpepper, an attorney with Public Justice, a nonprofit law firm that focuses on environmental protection, consumer rights, and civil liberties.

For many years, a contingent in Congress has tried to limit the ability of citizens to use "bedrock environmental laws" like the Clean Water Act to protect themselves. "What is frightening is that at least with the Bush Administration, some things were sacred. You still couldn't get a lot of support for stripping citizens' abilities to protect themselves," Culpepper said. "And now those things are on the table."

Congressional Republicans have been trying for years to get these types of bills passed. They've been introduced before, but typically only to make certain industry constituents happy, with little chance of passage, according to Culpepper. The bills "have not been as big of a threat" as they are under the current Congress, Culpepper told ThinkProgress.

According to Earthjustice, the list of bills from the current Congress attacking individuals' access to justice include:

• 6 bills with provisions to eliminate judicial review, eroding the role of courts as a check and balance on other branches of government.

• 14 bills that could effectively strip people of their right to sue by either forcing them into arbitration or blocking their ability to join together in class action lawsuits.

• 17 bills that would make it too expensive to sue, forcing members of the public to bear the burden of costly litigation against the government.

• 10 bills that meddle with timely resolution through settlements, forcing government agencies to draw out challenges through costly litigation fights.

One bill, dubbed the "Farm Regulatory Certainty Act" by its industry backers, was introduced in the previous Congress and didn't move at all. But in the current Congress, the bill is gaining momentum, with more than 60 co-sponsors.

Culpepper delivered testimony to a congressional hearing in November in which she described the bill as an effort to shield "an entire industry from liability." The bill "would essentially "strip rural Americans from their right to protect their drinking water," she told lawmakers

Congress recognizes it cannot simply repeal the laws it doesn't like. Its members can't say, "We're going to get rid of the Clean Water Act." But what they do see they can do is engage in "this furtive attempt to undo the protections that those laws actually provide," explained Simms.

By furtive attempts, Simms is referring to how certain lawmakers now realize that if an environmental law, for example, cannot be undone by direct repeal, they can try to pass bills that make the laws impossible to enforce. For example, the House of Representatives last October passed a bill that would prevent the Environmental Protection Agency (EPA) and other federal agencies from settling lawsuits, even when the government has acted unlawfully.

House Republicans have dubbed the bill, H.R. 469, the "Sunshine for Regulations and Regulatory Decrees and Settlements Act." Earthjustice prefers to call the bill by describing its real intent: "Delaying Public Health Protections." The bill still has not passed the Senate.

Simms said this particular bill is a prime example of how congressional Republicans are working closely with the Trump Administration on these types of bills. "There's a degree of coordination between Congress and the administration that I have not seen in the past," he said. "They're coming back over the course of the last year with an intensity that we have not seen before and a coordination that I have not seen in the past. This is really something frightening."

H.R. 469 reflects almost exactly the policy adopted by the Trump Administration. In mid-October, EPA Administrator Scott Pruitt announced his agency would no longer engage in settlement discussions with public interest lawyers, what anti-environment lawmakers refer to as "sue and settlement" practices. "What did we see several weeks later? A bill gets passed in the House that would essentially codify that and apply it not to just EPA but all agencies," Simms said.

The bill would inhibit the EPA and other federal agencies from settling lawsuits, even when the government has acted unlawfully. This drags out legal action, raising costs for plaintiffs, and allows the administration to avoid enforcing environmental regulations, leading to more pollution and industrial harm to communities, according to Earthjustice.

In her 10 years as an environmental and public interest attorney, Culpepper said she's never seen so many bills introduced at once—bills that would roll back individuals' ability to use the courts to seek justice—that have a good chance of moving through Congress. "I spent more time fighting these things in 2017 than I have in my an entire career," she said.

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SPRING

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All Silent Auction Proceeds Benefit Sacramento Food Bank & Family Services

Sacramento Food Bank & Family Services is a local, non-profit agency committed to serving individuals and families in need.

President Lawrance Bohm and the Officers and Board of the Capitol City Trial Lawyers Association & Sacramento Food Bank & Family Services

cordially invite you to the

16th Annual Spring Fling Reception & Silent Auction

June 14, 2018, from 5 p.m. to 7:30 p.m. at the beautiful Ferris White home, 1500 39th Street, Sacramento 95816

Free Valet Parking

Deadline for Reservations is Friday, June 1, 2018
Contact Debbie Keller at 916 / 917-9744 or debbie@cctla.com

This reception is free to honored guests, CCTLA members and one guest per invitee. Hosted beverages and hors d'oeuvres will be provided.

** Deadline for Auction Items: June 1, 2018

CCTLA
Capitol City Trial Lawyers Association

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Sacramento, CA 95822
Telephone: (916) 917-9744
Website: www.cctla.com

In honor of Allan Owen & Linda Whitney

Sponsorship Opportunity

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CCTLA is offering sponsorship opportunities for this event

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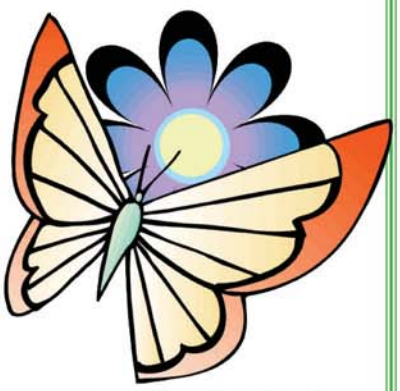
THANK YOU!



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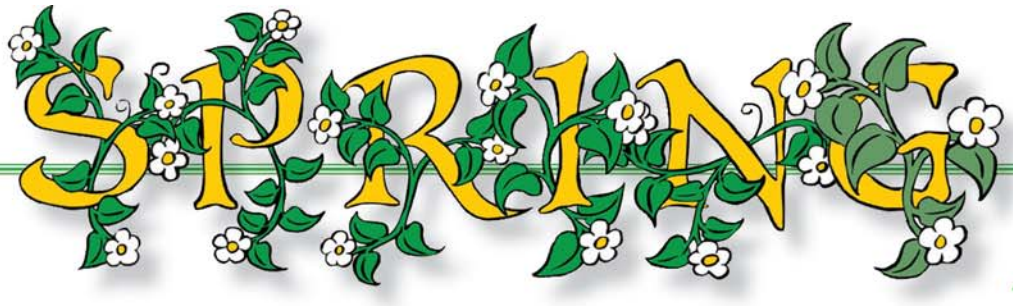

Auction Donor Sign-Up Form

The committee is seeking donations of goods and services for the Silent Auction. Examples might include event tickets (sports, theater, etc.), golf at a private club, lessons (water or snow skiing, sailing, hunting, crafting, quilting, etc.), vacation home/ timeshare, artwork, professional services, dining, wine, gift baskets, electronics.....just about anything you can think of!

If you are able to donate an item, please provide the necessary information:

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Donated items/certificates can be dropped off at Margaret Doyle's office, located at 901 F Street, Suite 120, Sacramento, CA 95814, by June 1, 2018. If you are unable to drop off your donation, please contact Debbie at CCTLA: 916 / 917-9744 or debbie@cctla.com.

THANK YOU!

Spring Fling Reception & Silent Auction June 14, 2018

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Big Win Vs. Big Pharma for Generic Drug Victims

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CCTLA COMPREHENSIVE MENTORING PROGRAM — The CCTLA Board has developed a program to assist new attorneys with their cases. If you would likemore information regarding this program or if you have a question with regard to one of your cases, please contact Jack Vetter at jvetter@vetterlawoffice.com, Glenn Guenard at gguenard@gblegal.com, Rob Piering at rob@pieringlawfirm.com, Chris Whelan at Chris@WhelanLawOffices.com, Alla Vorobets at avorobets@vorobetslaw.com or Linda Dankman at dankmanlaw@yahoo.com

MARCH 2018

Tuesday, March 13
Q&A Luncheon
Noon, Shanghai Garden
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA members only

Thursday, March 15
CCTLA Problem Solving Clinic
Topic: TBA; Speaker: TBA
Location: Arnold Law Firm
5:30-7 p.m., 865 Howe Avenue, 2nd Floor
CCTLA members only, $25

March 16-17
CAOC/CCTLA SONOMA TRAVEL SEMINAR RSVP: Contact CAOC at 916/442-6902 or www.caoc.org
(Information on Litigtor pages 18-19)

Friday, March 23
CCTLA Luncheon
Topic: THE STATE OF THE SACRAMENTO JUDICIARY & THE JUDICIARY: 2018 & BEYOND
Speakers: Judge David Alba
and Judge David Abbott
Noon, Sacramento County Bar Association
CCTLA members, $35; non-members, $40

Thursday, March 29
Monthly Membership Mixer
6 to 7:30 pm., Justice Centers of California,
3835 N. Freeway Blvd., Suite 210, Sac.
CCTLA members only. Free

APRIL 2018

Tuesday, April 10, 2018
Q&A Luncheon
Noon, Shanghai Garden
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA members only

Thursday, April 19
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: Judge Robert Hight (Ret)
Location: Arnold Law Firm
5:30-7 p.m., 865 Howe Avenue, 2nd Floor
CCTLA members only, $25

Contact Debbie Keller at CCTLA at 916/917-9744 or debbie@cctla.com for reservations or additional information with regard to any of these programs

Friday, April 20
CCTLA SEMINAR
Topic: MOTIONS IN LIMINE
Speakers: Robert T. Simon, Brad M. Simon
2-5 p.m., McGeorge School of Law
(Courtroom)
Cases and Cocktails to follow, location TBA
CCTLA members only: member $100;
CCTLA member staff $75; non-member plaintiff attorney $150

Tuesday, April 24
CAOC Justice Day
7:30 a.m. to 5 p.m. Sutter Club,
1220 9th St, Sacramento

Thursday, April 26
Monthly Membership Mixer
6 to 7:30 pm., Justice Centers of California,
3835 North Freeway Blvd., Suite 210, Sac.
CCTLA members only. Free

Friday, April 27
CCTLA Luncheon
Topic: "THE ART OF DEPOSITION"
Speaker: Lawrance Bohm, Esq.
Noon, Sacramento County Bar Association
CCTLA members, $35

MAY 2018

Tuesday, May 8
Q&A Luncheon
Noon, Shanghai Garden
800 Alhambra Blvd
(across H St from McKinley Park)
CCTLA members only

Thursday, May 17
CCTLA Problem Solving Clinic
Topic: TBA
Speaker: TBA
Arnold Law Firm
5:30-7 p.m., 865 Howe Avenue, 2nd Floor
CCTLA members only, $25

Friday, May 18
CCTLA Luncheon
Topic: "ELIMINATION OF BIAS"
Speaker: Adrienne Publicover, Esq.
Noon, Sacramento County Bar Association
CCTLA members, $35

Thursday, May 31
Monthly Membership Mixer
6 to 7:30 pm., Justice Centers of California,
3835 North Freeway Blvd., Suite 210, Sac.
CCTLA members only. Free

CCTLA Calendar of Events