

# The LITIGATOR

VOLUME XX OFFICIAL PUBLICATION OF THE CAPITOL CITY TRIAL LAWYERS ASSOCIATION

ISSUE 3

## Inside

AI & ChatGPT:  
A Word of Caution  
Based on Experience  
**Page 3**

Identifying, Establishing  
Your Client's MildTBI  
**Page 7**

Support Urged for  
SB 403 Diversity Bill  
**Page 12**

Avoiding the  
'Excess Verdicts' Trap  
**Page 16**

Making Effective Use  
of the Treating Physician  
**Page 25**

New Law Restores  
Credibility of  
the Expert Witness  
**Page 26**

Notable Cites ..... 2  
Spring Fling ..... 20-22  
Member Verdicts..... 28-29  
Calendar ..... 32

## CCTLA: Coming Together



Justin Ward  
CCTLA President

I hope everyone is enjoying their summer. As I prepare this President's Message, it's the beginning of August, and the summer is almost over.

On May 12, CCTLA hosted "Everything You Never Wanted to Know About Liens and More" at McGeorge School of Law. The panel included CCTLA board member Dan Wilcoxon, as well as Don M. de Camara, John J. Rice, and Chris Viadro. The four presenters did a great job of informing all in attendance about liens and the most recent laws regarding liens. Everyone in attendance received a booklet that contained case law on liens and sample lien reduction letters and motions. The information we all learned should help us save our clients a lot of money.

On June 1, we had our 19th Spring Fling Reception and Silent Auction at the beautiful home of CCTLA board member Chris Wood. By any measurement, it was a success (See *photos, pages 21-22*). There were 129 people in attendance, and we raised more than \$110,000 for the Sacramento Food Bank! Thank you to everyone who supported the event by sponsoring, donating auction items, and/or buying auction items.

During Spring Fling, Dan Wilcoxon was presented with the Morton L. Friedman Humanitarian Award, and Walter Loving was presented the Joe Ramsey Professionalism Award. I would especially like to thank Debbie Keller and her family for working the event and making sure all went smoothly. We could not have pulled it off without her.

As for upcoming programs, our first law school mixer/presentation will be with Lincoln Law School on Sept. 6 at 5:30pm at the Lincoln Law School campus. Thank you to Margot Cutter and Chris Wood for helping to coordinate this. We also are scheduling mixers/ presentations with McGeorge and UC Davis.

We have created a private CCTLA Facebook page/group and are in the process of inviting members. It will only be open to those who are eligible for the listserve, i.e. civil plaintiff and criminal defense attorneys. If you would like to be added to the group, please email me your Facebook contact info, and I will add you.

The CCTLA Women's Caucus continues to gain steam. It is in the process of getting its own listserve and scheduling seminars and network events. If you are interested in joining, please email Debbie Keller at [debbie@cctla.com](mailto:debbie@cctla.com).

We continue to hold "brown bag" Question and Answer Lunches once a month via Zoom. The Q & A Lunches are a great opportunity for lawyers of all experience levels



Marti Taylor,  
Wilcoxon  
Callahan LLP,  
CCTLA  
Parliamentarian

# NOTABLE CITES

By: Marti Taylor

## Give us your opinions

### MOSES v. ROGER-McKEEVER

2023 1DCA/1 California Court of Appeal,  
No. A164405 (May 5, 2023)

*Condo owner has no duty to protect invitees  
from hazards in common walkway or  
the building when owner has no control*

**FACTS:** On Feb. 3, 2018, Plaintiff Eleanor Moses slipped and fell on a walkway outside a condominium rented by Defendant Pascale Roger-McKeever after attending an event she hosted. She tripped and fell on the entryway steps of the building where Defendant's condominium was located.

Two years later, in 2020, Plaintiff filed a complaint against Roger-McKeever for personal injury alleging premises liability. Defendant later filed a motion for summary judgment, arguing that Defendant did not owe a legal duty to Plaintiff because the slip and fall occurred in a common area or on the public sidewalk, areas not in the control of Defendant.

Defendant further argued that even if a duty could be established, she could not be held liable because she had no actual or constructive notice of any dangerous condition that caused the fall. Further, still she was not involved in the construction, maintenance or repair of the walkway.

The court granted the summary judgment motion, finding that Defendant as a tenant had no control over the entryway steps and thus did not owe a duty. Plaintiff appealed, arguing that she raised a triable issue of fact regarding Defendant, telling her a light was out in the entryway of the building.

**ISSUE:** Does a tenant owe a duty to persons injured in common areas of a shared building?

**RULING:** Affirmed.

**REASONING:** The elements of a premises liability claim are: a legal duty of care, breach of that duty, and proximate cause resulting in injury. (See Kesner v. Superior Court (2016) 1 Cal.5th 1132, 1158.)

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A tenant is not ordinality liable for injuries to invitees occurring outside the leased premises or on common passageways over which they have no control. The crucial element is control. Absent evidence that a tenant exercised "actual" control of that portion of the premises where the plaintiff was injured, the tenant will not be held liable.

### KINDER v. CAPITSRANO BEACH CARE CENTER, LLC, et al.

2023 2DCA/7 California Court of Appeal,  
No. B316937 (May 18, 2023)

*Plaintiff cannot be compeled to arbitration  
of elder abuse claims based upon forms signed  
by adult children placing mother in care facility*

**FACTS:** Plaintiff Nancy Kinder was a resident at Capistrano Beach Care Center, a skilled nursing facility, when she sustained injuries in a fall. Plaintiff had fallen from an elevated bed without guardrails and fractured her hip, requiring surgery. She sued the facility.

Defendants sought to compel arbitration, claiming Plaintiff was bound by arbitration agreements signed on her behalf by her adult children. Defendants argued that her children were her

See NOTABLE CITES on page 4





# Artificial Intelligence and ChatGPT: *My Experience With ChatGPT and Some Words of Caution*



Drew Widders,  
Wilcoxon Callahan, LLP, is  
CCTLA Board Treasurer

million users. Recently its popularity has seemed to wane a bit, and there have been several articles about how the accuracy of its responses seems to be going down.

When I questioned ChatGPT about how it could assist an attorney in civil litigation, it provided a long list of items, including research assistance, document review, drafting letters or basic legal motions, brainstorming legal strategies, emotional support, education on legal process and laws, communication skills, discovery assistance, mock interviews, and ethic guidance. This is an impressive list.

However, ChatGPT did add a caveat:

*It's essential to recognize that while ChatGPT can be a valuable tool, it does not replace professional legal advice. Legal rules and procedures can be incredibly complex and vary widely depending on the jurisdiction, the specifics of your case, and even changes in the law that might have occurred after the knowledge cut-off date of the model. Always consult with a qualified attorney who is familiar with the laws and regulations specific to your jurisdiction and situation.*

---

By: Drew Widders

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That caveat is important in my mind. As you may have heard, there is a case out of New York involving a law firm being sanctioned for citing to fake cases provided by ChatGPT. The 43-page opinion can be found with a Google search of ChatGPT sanction in the Opinion and Order on Sanctions can be found at [Mata v. Avianca, Inc.](#), No. 1:2022cv01461 - Document 54. It is an interesting read and a cautionary tale about the importance of double-checking the work performed for you. As stated by the court at the beginning of its Opinion and Order on Sanctions:

*"Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings"*

In that case, ChatGPT was asked by an attorney to argue that the statute of limitations is tolled by bankruptcy of defendant pursuant to montreal convention. ChatGPT said that yes it was. When ChatGPT was asked to provided case law in support of the argument, ChatGPT did so. The case also included holdings and legal citations. The problem was that case law did not exist. When faced with on OSC by the court about the validity of the cases, the attorney became suspicious of ChatGPT and so asked it if the case were real. ChatGPT responded yes. As stated by the lawyer who was sanctioned:

*The First OSC caused me to have doubts. As a result, I asked ChatGPT directly whether one of the cases it cited, "Varghese v. China Southern Airlines Co. Ltd., 925 F.3d 1339 (11th Cir. 2009)," was a real case. Based on what I was beginning to realize about ChatGPT, I highly suspected that it was not. However, ChatGPT again responded that Varghese "does indeed exist" and even told me that it was available on Westlaw and LexisNexis, contrary to what the court and defendant's counsel were saying."*

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Continued on page 5

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## Notable Cites

*Continued from page 2*

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agents and thus could execute the arbitration agreements on her behalf.

The trial court denied Defendant's petition to compel arbitration, concluding that Defendants had not proved that Plaintiff's children have actual and/or ostensible agency to execute an arbitration agreement on her behalf.

**ISSUE:** Can adult children bind their mother to an arbitration agreement?

**RULING:** Affirmed.

**REASONING:** Agency relationships are established by the conduct of both the principal and the agent. Said relationships are created through their words or actions surrounding the purported establishment of the relationship. In proving an agency relationship to compel arbitration, the moving party bears the burden of proof.

Defendant in this case failed to establish such a burden. Merely producing a form and arguing that it had authority to bind their mother is not adequate. Defendant needed to show some proof that Plaintiff authorized her adult children to enter into an arbitration agreement on her behalf.

### **BEEBE v. WONDERFUL PISTACHIOS**

2023 5DCA California Court of Appeal,

No. F083502 (June 6, 2023)

Evidence of extensive bird feces at job site was sufficient to prove a reasonable probability that plaintiff's fungal infection was caused by exposure

**FACTS:** Dale Beebe worked as an electrical foreman for Braaten Electric, Inc., which was hired to do electrical work on two con-

struction projects to build silos at a nut facility owned by Wonderful Pistachios and Almonds, LLC.

The nut facility was plagued by flocks of birds (swallows) that had roosted on its roof. Over time, the birds had left droppings on the roof to the point that there was an accumulation of bird feces approximately two inches thick. Wonderful Pistachios and Almonds, LLC, was aware of the bird problem and had taken various steps to remove the roosting birds and the feces from the roof. This included attempts at hydro-blasting the feces, which caused particles to become airborne.

After working at the site, Plaintiff developed a fungal infection: histoplasmosis, which can be caused from inhalation of airborne spores that can be found in bird feces. Plaintiff filed suit against Wonderful Pistachios and Almonds, LLC, alleging its negligence in allowing the feces to accumulate and in exposing him to airborne fecal particles during the remediation process.

Defendant filed a motion to summary judgment objecting to declarations by Plaintiff's infectious diseases expert and his standard of care expert as speculative. The court excluded the expert declaration and granted Defendant's motion. Plaintiff filed the instant appeal.

**ISSUE:** Can experts make reasonable medical inferences in their expert declarations or are such statements speculative?

**RULING:** Reversed and remanded. The trial court improperly excluded the declarations of Plaintiff's infectious diseases expert and his standard of care expert as speculative. This was the basis for the granting of the summary judgment, which should have been denied because Plaintiff demonstrated triable issues of material fact.

**REASONING:** For tort causation, a plaintiff must show that the defendant's actions were a "substantial factor" in causing the harm based upon a reasonable probability that "it is more likely true than not that plaintiff's injury was a result of defendant's act or omission."

In the instant case, Plaintiff had to show that he was exposed to toxic waste. But he also had to show that said toxic exposure was more likely than not a medical cause of his injury. To do so a plaintiff must employ medical experts who can draw reasonable medical inferences drawn from substantial evidence to defeat summary judgment.

The court found that Plaintiff Beebe had submitted ample evidence showing the presence of the birds at the facility and the attempts by the facility to remediate the feces problem. He also presented experts who cited academic evidence that histoplasmosis cases were known to occur in person exposed to bird feces and that this was more likely than not the cause of Plaintiff's fungal infection.

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## President's Message

*Continued from page one*

to get some advice on cases they have in a safe, judgment-free space. If you have questions, they probably can get answered at the Q & A Lunch.

The September Problem Solving Clinic will be Sept. 13, with John Roussas, on Discovery. We are in the process of scheduling October and November Problem Solving Clinics. As always, if you have suggestions for any programs you'd like to see, please let me or any of the board members know. And as always, topics and dates are subject to change.

Finally, our annual meeting and holiday reception will be on Dec. 14, at The Sutter Club. Officers for 2024 will be installed. Please mark the date on your calendar. More details to come.



The court lists each case in opinion along with the alleged citation. The cases simply do not exist.

Despite this cautionary tale, AI will likely impact the legal field sooner rather than later. According to both Lexis and Westlaw websites, they intend to offer ChatGPT-style features by the end of the year. For now, anyone can access ChatGPT for free to give it a try. Simply navigate over to [www.openai.com](http://www.openai.com) and sign up with your email. An app is also available for download on Android and iPhone.

My experience with ChatGPT has been mixed. And while this may be a recent response to the above New York case, its ability to perform legal research seems to be drastically limited. When I queried ChatGPT to find legal cases it responded as follows:

*"I'm sorry, but as an AI language model, I don't have browsing capabilities, and I don't have direct access to databases or the internet. Therefore, I cannot find specific legal cases for you. My responses are generated based on the data I was trained on, which includes a wide range of general knowledge up to September 2021."*

If you are looking for specific legal cases or information related to a legal matter, I recommend consulting legal databases, law libraries, or qualified legal professionals who have access to legal resources. They will be able to assist you in finding relevant cases and providing legal guidance based on your specific needs."

While aspects of ChatGPT may be limited, I have found it does generate generic templates to act as a starting point. For example, I asked it to generate some discovery requests for a trip-and-fall case. Within seconds, it generated four interrogatories, three Request for Production of Documents and three Request for Admissions in a trip-and-fall case against a grocery store.

When I asked it to provide more Request for Production of Documents, it generated 10 relatively good ones that would

serve as a starting point. I then asked it for discovery requests to establish a prime contractor was in control of a subcontractor for purposes of a non-delegable duty. Again, within seconds, it provided mostly relevant questions related to the issue. Similarly, it can provide general deposition questions on any topic you ask it about.

When used for drafting legal arguments, however, my results were less than satisfactory. When I asked ChatGPT to argue that freight broker is responsible for a highway common carrier, it wrote a very persuasive argument. Unfortunately, the argument was not supported by the law and almost completely wrong.

Another aspect of ChatGPT I found useful is submitting emails I drafted and asking it to rewrite and adjust for stronger or weaker tones. It seems to do a good job of this. However, before you give it a try, you must keep in mind the duty of confidentiality toward your clients. When I queried ChatGPT on providing confidential information, it responded as follows:

*"As an AI language model, I don't have the ability to retain or remember any information shared with me in the course of our conversation. However, it is not advisable to share confidential or sensitive information with AI language models like me. While I am designed to respect user privacy and confidentiality, there is always a small risk of unintended data exposure."*

While the idea that ChatGPT does not remember information sounds good, the advice to not share confidential information seems to call this into question this claim. Furthermore, the above case strongly calls into question my willingness to trust ChatGPT if it has the ability to make up fake cases with citations.

In closing, who knows what the future of AI will do to the legal profession. For now, I am hesitant to use it for anything but the most basic tasks. We will see what happens when companies like Lexis and Westlaw provide their own versions of ChatGPT AI sometime soon. Until then, I will remain skeptical about its ability to replace attorneys anytime soon.



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# IDENTIFYING AND ESTABLISHING YOUR CLIENT'S MILD TRAUMATIC BRAIN INJURY

By: Jacqueline Siemens



One of the most difficult injuries to prove to a jury is the mild traumatic brain injury. Unless your client has a catastrophic brain injury, a mild traumatic brain injury (“TBI”) is, for the most part, invisible. How you address this injury early on can make all the difference in obtaining compensation for the true extent of your client’s injuries.

Establishing the evidence for this TBI is critical and needs to start immediately. Too many times we have clients come in weeks after a collision or fall and mention symptoms that sound like TBI but have little to no medical evaluation to address the symptoms. If your client did not lose consciousness at the scene, the proper TBI work-up was not likely performed at the hospital and certainly not at the primary care physician’s office. Our clients are typically also dealing with orthopedic injuries, which seem to take precedence and are simply easier for a physician to address.

## Identifying a Mild TBI

The key issue to keep in mind for your client and when communicating their injury is we can’t just call it a “concussion.” A concussion is a mild traumatic brain injury. The blow to the head or shifting of the brain within the skull causes the brain to bounce around or twist in the skull, causing chemical changes to the brain. A concussion involves a loss

of brain function, whether it be short or long lasting. Don’t downplay the injury when communicating with the adjuster, defense attorney or jury. Make sure they understand how your client’s brain was affected and what they experienced as a result. There are few injuries more concerning than an injury to the brain, even if the symptoms are mild and temporary.

The obvious symptoms of a TBI include the losing consciousness, inability to recall the events that occurred shortly before and after the event that caused the injury; appearing to be dazed or stunned immediately after the event; confusion and being unable to follow instructions. Within a days after the TBI, the client can exhibit mood, behavioral and personality changes.

Other less obvious TBI symptoms are sometimes attributed to orthopedic injuries, specifically neck injuries. These symptoms include headaches, head pressure, nausea, difficulty with memory, being off- balance, and inability to concentrate. In the days and weeks after the initial injury, your client may suffer from unexplained crying or anger, inability to sleep or rest, noticeable concentration difficulties and sensitivity to light or sound. Often these symptoms are confused with a reaction to the medication to treat orthopedic injuries, attributed to inability to sleep due to pain or an emotional reaction to the incident that caused the injury.

If your client lost consciousness at the scene and was transported to the hospital, the protocol is for the physician to perform a TBI evaluation. Most imaging done at this stage is to evaluate the potential for a brain bleed, brain swelling or some obvious sign of damage to the brain tissue that caused the symptoms. These cases are fairly easy to establish injury and causation.

Many times, the Emergency Department will perform a CT, X-Rays and an

MRI, none of which are particularly helpful in establishing a TBI. Do not allow the defense to use these tests as evidence your client did not suffer a TBI. If these tests are administered later in your client’s treatment, these tests are helpful in eliminating an alternative cause for the ongoing symptoms your client is experiencing and can be used to support the TBI claim.



Jacqueline Siemens,  
Demas Law Group,  
is CCTLA Board  
Secretary

## The Primary Care Provider

Your client’s family physician can be a significant ally or entirely unhelpful in establishing your client’s case. As we have experienced, many clients do not have brain bleeding, but have all the symptoms of TBI. This is when it is important to enlist your client’s family in identifying the concussion symptoms. By communicating the client’s changes in personality, confusion or inability to easily perform the same tasks they had before the injury, the physician can understand the extent of the impairment and correlate them to a head injury rather than an orthopedic injury. Your client’s employer and/or teachers can offer helpful testimony as the symptoms will typically extend to the workplace or classroom.

I prefer to use my client’s existing medical provider to start the referral process for TBI evaluation and treatment. Knowing the provider who had a history with the patient believed there was a lingering brain injury, makes a jury less likely to be skeptical of the TBI diagnosis. By laying out the foundation through

*Continued on page 8*

Continued from page 7

family members and symptoms consistent with a TBI, a referral to a neurologist or neuropsychologist is reasonable and likely required. Emails to the physician are a great way to confirm the information that is in the chart but be particularly careful it does not sound like it's coming from the attorney but is truly from concerned family members.

If the PCP will not refer your client for additional care with this information, referring the client to a provider on a lien can be easily understood by the jury. If your client's primary doctor isn't concerned about a brain injury, of course they are going to seek help somewhere else.

### **Enlisting the Neurologist or Neuropsychologist**

Many Mild TBIs resolve on their own, and by following the recommendations under concussion protocol. If your client falls into the post concussive syndrome category, it is essential they are referred to an expert in the field. Since concussions can only be diagnosed clinically and manifest in different ways, diagnosis and management often require a multi-disciplinary team approach. Do not rely on your primary care doctor to establish the TBI.

Neuropsychologists are important to assess the extent of the TBI and provide treatment to assist in the recovery process. Their involvement is critical to establish damages as trial. The provider will consider if your client has a history of concussions which can exacerbate symptoms from a new TBI. They will also

obtain a history to determine if your client has depression, anxiety or other factors that can impede recovery.

The purpose of neuropsychological testing is to understand how the different networks in the brain are functioning. The areas tested can include attention, concentration, language skills, general intelligence, and ability to learn. A review of your client's education and employment history is critical to determine if there are new deficits.

The neuropsychologist can explain how these changes in the brain effects your client's daily life situations which is critical in communicating your client's damages to the jury for an injury they cannot "see."

### **Use of DTI**

DTI (Diffuse Tensor Imaging) is a relatively new tool that can identify areas of the brain that have been injured. Disruptions in the white matter of the brain can provide an explanation for disturbances in cognitive function and behavioral anomalies. Utilizing the information from your client's family members, employers and friends that there was a noticeable change in personality or decline in function, the DTI can be a productive tool for the neurologist to bring this evidence to a jury.

There are still many clinicians and venues that oppose the use of DTI imagery in the courtroom even if there is a benefit to the treater in establishing the extent and location of the damage. The usefulness of the imagining allows the expert to correlate the viewed brain injury

with the cognitive deficits expressed by your client, his physicians, family members and employer/employees. As we know, jurors want their CSI moment, and this gets us a bit closer to those who are already inclined to believe the client may have a brain injury.

### **Maybe It Isn't a TBI**

Ironically, the neuropsychologist can identify when your client is not suffering from post-concussive syndrome but symptoms that are related to other injuries sustained in the collision.

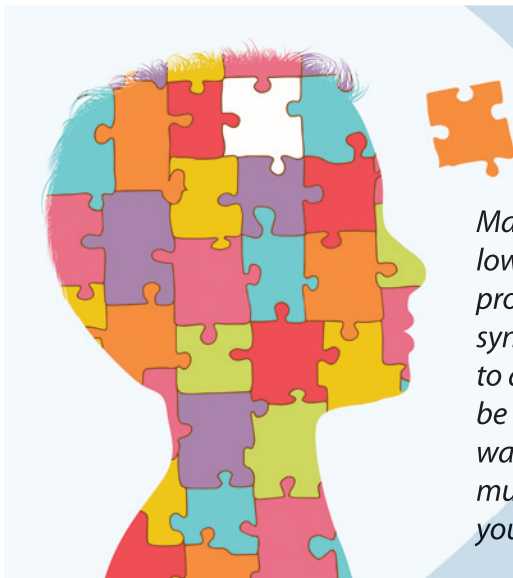
Recently, I had a client who had all the post-concussive syndrome symptoms. He was diagnosed with a concussion by his primary care doctor; however, did not have any immediate symptoms at the scene or at the emergency room. Nevertheless, he suffered from irritability, confusion, memory difficulties, lack of concentration, along with headaches. A referral to a neuropsychologist and his evaluation indicated that the initial diagnosis of concussion was likely incorrect. The symptoms he was having were related to a lack of sleep which came from a painful condition radiating from the neck into his extremities.

I was grateful to learn this early in my case rather than have the defense expert be able to quickly identify that this was not a TBI case. The assessment also helped ease my client's concerns that he would not regain his cognitive function.

Fortunately, the public has been educated on the severity of the TBI through the highlighting the damage to professional athletes from repeated concussions.

The decline in youth football participation, use of helmets in sports that previously were not used, and concussion protocol extending to young athletes shows an understanding that the brain is damaged much more easily than previously understood.

The mainstreaming of this information is helpful in convincing a jury that an auto collision can also result in a TBI, and the significant damage that can result from it.



*Many Mild TBIs resolve on their own, and by following the recommendations under concussion protocol. If your client falls into the post concussive syndrome category, it is essential they are referred to an expert in the field. Since concussions can only be diagnosed clinically and manifest in different ways, diagnosis and management often require a multi-disciplinary team approach. Do not rely on your primary care doctor to establish the TBI.*



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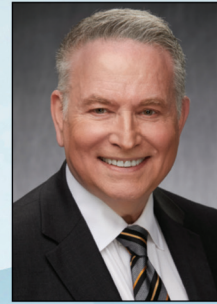


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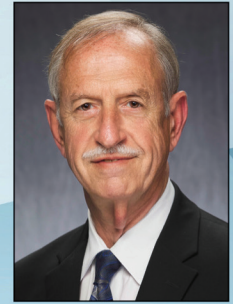
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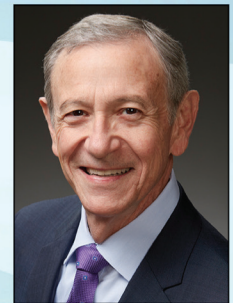
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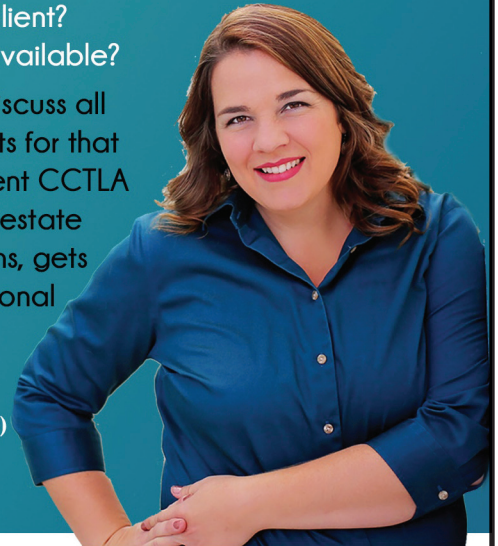
Does your client receive public benefits (like SSI, Section 8 housing, Medi-Cal)?

Did you just work hard to receive a positive result for your client?

Do you want to ensure that your client knows all of the options available?

Don't let your hard work become a problem for your client. Let's discuss all available options for your client and try to preserve public benefits for that person. Ashley Clower is a former personal injury attorney and current CCTLA member who has been in your shoes. Settlement planning by an estate planning attorney ensures that your client knows all of the options, gets individualized attention, and most importantly, makes the personal injury attorney look like the hero that you are!

- \* Settlement planning (determining the best course of action for your client)
- \* Special Needs Trusts (drafting, funding, notifications to the proper agencies)
  - \* Estate planning, probate, conservatorships (if needed)
  - \* Free 30 minute consultation for personal injury attorneys



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& Installation of the  
2024 CCTLA Officers and Board**

**Date: Thursday, December 14, 2023**

**Time: 5:30 p.m. to 7:30 p.m.**

**Location: The Sutter Club  
1220 9th Street, Sacramento**

CCTLA will be contributing to Mustard Seed School for the holidays and invites members to join in.

Every month, thousands of students in the Sacramento region experience homelessness. Mustard Seed School, a program of Loaves & Fishes, is a free private school for children ages 3-15 who are currently homeless. Mustard Seed School provides a safe place for children while parents access other services on the Loaves & Fishes campus, including breakfast and lunch meals, mental health services, housing information, showers and various other survival services.

Sponsorship opportunities for this reception are available. Contact Debbie Keller:  
debbie@cctla.com for sponsorship information.

# NONE OF US IS FREE UNTIL ALL OF US ARE FREE

*Join the many who are advocating for SB 403,  
a civil rights bill for a diverse California*

By: Amar Singh Shergill

If we found ourselves in the midst of a new civil rights movement, we would challenge the prejudice, add our voices to those of the oppressed, and demand action to change the laws that burden us. We would do the right thing...wouldn't we?

In recent months, the State Capitol in Sacramento has been at the leading edge of a new civil rights movement against caste-based discrimination. Although the concept of caste may be new to many of us, after hundreds of years of oppression in regions around the world, our increasingly diverse state is now host to some of the same challenges that immigrants came here to escape.

The proponents of a bill to ban caste discrimination in California are being subjected to ruthless and violent online harassment. The author of the bill (SB 403), Senator Aisha Wahab, and her staff have been the subject of direct and credible death threats simply because they believe that every Californian should have equality of opportunity and there should be accountability for those that use caste to deny employment, education, or other fundamental civil rights.

## What is Caste?

Caste is an individual's position in a system of social stratification based on inherited status. Caste discrimination can manifest as discrimination in employment and housing or as human trafficking, gender-based violence, and sexual abuse. It is also imperative to acknowledge that South Asian communities are not alone in experiencing this injustice. The Japanese, Somali, Nigerian, Oaxacan and other communities also face the challenges of caste-based discrimination.

## Is Caste Discrimination Actually Happening in California?

During the advocacy and hearings related to SB 403, many brave survivors of caste discrimination have come forward to describe their experience in employment and education. Although this is a foreign concept to many, those Californians with origin in caste-burdened cultures often find that their emigration to the United States does not end the prejudice they sought to escape.

In the cases where caste discrimination claims have been litigated, employers are quick to make dispositive motions arguing that caste is not a protected class. Given this experience, Democrats, Republicans, labor, and civil rights leaders have some together on a legislative solution that ends the uncertainty regarding the place of caste in



Amar Shergill,  
Shergill Law Firm,  
is a CCTLA  
Vice President

SB 403 is a rare bill that has support from both Democratic and Republican leadership. Further, it is endorsed by a diverse multi-faith, multi-race and multi-ethnic coalition that includes the California Labor Federation, the ACLU, the Asian Law Caucus, the California Faculty Association, Consumer Attorneys of California and the California Employment Lawyers Association, among many others.



Amar Shergill, center, with other supporters of SB 403.

*Continued on page 13*



California civil rights discussions.

### What does SB 403 do?

The language of the bill is quite simple. It expands the definition of “Ancestry,” a protected class, to include “Caste” in the Unruh Civil Rights Bill and the Fair Employment and Housing Act (FEHA). It also provides a definition for “Caste” that courts may rely upon in litigation. In short, it provides recourse to those who are targeted for caste discrimination just as we provide recourse for those targeted on the basis of sex, race, religion or other categories.

SB 403 is a rare bill that has support from both Democratic and Republican leadership. Further, it is endorsed by a diverse multi-faith, multi-race and multi-ethnic coalition that includes the California Labor Federation, the ACLU, the Asian Law Caucus, the California Faculty Association, Consumer Attorneys of California and the California Employment Lawyers Association, among many others.

As a measure of this consensus support, the bill passed unanimously in the Senate Judiciary Committee, the Assembly Judiciary Committee, and with only one vote against on the floor of the Senate. The Assembly will vote later this month before it goes to the governor for signature.

Opposition to the bill has been based on the misplaced fear that it may result in reverse discrimination against dominant-caste South Asians who do not adhere to the caste bias of their ancestors. These concerns, although often made in good faith, have not been substantiated in our long experience

with civil rights cases. When we grant protections to women, it is not an attack on men; when we grant protections to people of color, it is not an attack on our white siblings; and when we grant protections to the LGBTQIA community, it is not an attack on the rest of the community. SB 403, like its civil right predecessors, seeks only to provide equality of opportunity for all Californians.

### What's Next and How Can You Help?

As SB 403 approaches its final hurdle, a vote on the floor of the Assembly, we ask our colleagues in the Bar to do the right thing. Take a simple step that will add your voice to challenge prejudice and amend the law in California. Please choose one of the following:

- \* Add your name or the name of your Bar organization to the list of endorsers

- \* Have your Bar organization write a support letter

- \* Post Your Support on Social Media (Twitter)

The Capitol City Trial Lawyers Association recently added its name in support of SB 403, joining its statewide colleagues in the Consumer Attorney of California. Consider asking your local Bar organization to do the same.

\*\*\*

*Amar Singh Shergill, Shergill Law Firm, is vice president of the Capitol City Trial Lawyers Association, chair emeritus of the California Democratic Party Progressive Caucus, managing committee member of the Sacramento Sikh Gurdwara, and founding president of the South Asian Bar Association of Sacramento.*



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## DON'T ACCEPT BAD FAITH ASSIGNMENTS AFTER EXCESS VERDICTS

By: Ognian Gavrilov

As a plaintiff's personal injury attorney, you dream of hitting an insurance company with a trial verdict that exceeds the policy limits. When that happens, you feel an incredible sense of professional accomplishment. You are thrilled that you helped your client achieve an outcome that most can only dream of, because many personal injury lawyers are afraid to stand-up to massive insurance companies armed with billion-dollar war chests.

You get the verdict, and you are faced with a slew of post-trial motions where the insurance carrier is attempting to annihilate the success of the verdict. After several weeks of anguish, the court denies the carrier's motions for new trial, judgment notwithstanding the verdict, motion to tax costs, motion challenging the validity of your 998 offer, and their request for remittitur.

You are over the moon—you now have a final verdict, and you can see the dollar signs that validate your hard-earned win. But then you receive the dreaded call from defense counsel alleging you failed to open the policy and will only receive a check for the policy limits. The insurance carrier is throwing their insured under the bus, and they could care less. The insured has limited resources and thus, there is no way for you to collect. Your client is devastated, and you are in a bind.



Ognian Gavrilov,  
Gavrilov & Brooks,  
is a CCTLA  
Board Member

Someone tells you that you need to accept an assignment from the defendant of their bad faith claim and sue the insurance company, likely in federal court, for the difference between what the insurance carrier paid and the judgment you obtained. You are about to do it because you are told that's what everyone does after an excess verdict. There is no other way...or is there?

Let's explore the options: You accept a bad faith assignment in exchange for not executing the excess verdict; or you force the defendant into filing for a personal bankruptcy; or the defendant hires you direct to sue his insurance carrier and his defense attorney.

All three options require a subsequent lawsuit, so you might as well pick the option that come with the biggest upside.

### OPTION 1

If you accept an assignment of the bad faith claim, you have no upside—because you are limited to winning the difference between what you were already paid and the judgment. The defendant cannot assign you their emotional distress or punitive damages claims because these claims are not assignable by operation of law. You just telegraphed to the insurance carrier that you are looking to accept a discount on what you are owed because pushing a second case to trial is bad business and the carrier knows it.

To put it in perspective, if you have a \$5-million excess verdict, the insurance carrier knows that their worst day in court is about \$5 million. Their attorneys' fees are nominal relative to what you are asking, and they will fight you

*Continued on page 17*



Continued from page 16

tooth and nail to get you to accept a discount or you get stuck in court for another five years. Thus, you have no leverage if you pick this option. Unfortunately, this is the option most personal injury attorneys pick.

## OPTION 2

So you don't pick the assignment and you start the collection process against the defendant. You levy bank accounts, lien defendant's home, and garnish his wages. The defendant files bankruptcy, and everyone who told you to accept the bad faith assignment is gloating that you screwed up.

Fortunately for you, these people likely don't have a clue what they're telling you. But you read this article, and you know that if the defendant files bankruptcy you can get the trustee to hire you to prosecute both the bad faith claim against the insurance company and the malpractice claim against the defense attorney (malpractice claims are also not assignable). Since the bankruptcy trustee is step-

ping in the shoes of the defendant, you can now ask for emotional distress and punitive damages in addition to the difference between the policy and your judgment.

Thinking back to our \$5-million excess verdict, the insurance company is now exposed to the \$5-million judgment, emotional distress damages, damages for ruined credit due to the bankruptcy, and punitive damages. In other words, the insurance carrier's worst day in court is likely now 10 times worse than your \$5-million verdict. You now have all the leverage, and you don't have to accept discounts to get your money.

## OPTION 3

The last option presents itself when the defendant contacts you before filing bankruptcy and asks you to sue the insurance carrier for insurance bad faith and his prior attorney for malpractice in a new lawsuit. This option is a bit more complicated than getting the case from the bankruptcy trustee, due conflicts of interest be-

tween the defendant and the plaintiff, your original client. Obviously, if you plan to go with Option 3, ensure all parties knowingly sign off on the conflict by way of independent counsel.

Aside from the conflict issue, Option 3 is very similar to Option 2. The one difference is that the defendant, your new client, has an incentive to aggressively pursue a large verdict, because a \$5-million offer from the insurance carrier will leave him with a shortfall due to the contingency fee charged in the new bad faith case. Risks aside, the defendant's desire to go big may result in a recovery that not only makes the plaintiff whole, but also puts money in the defendant's pocket. You now know what to do when you get an excess verdict at trial. When defense counsel threatens you with his client's impending bankruptcy, you can tell him you're more than happy to take his insurance bad faith and professional malpractice case on contingency. As for defense counsel, he better be careful what he wishes for.



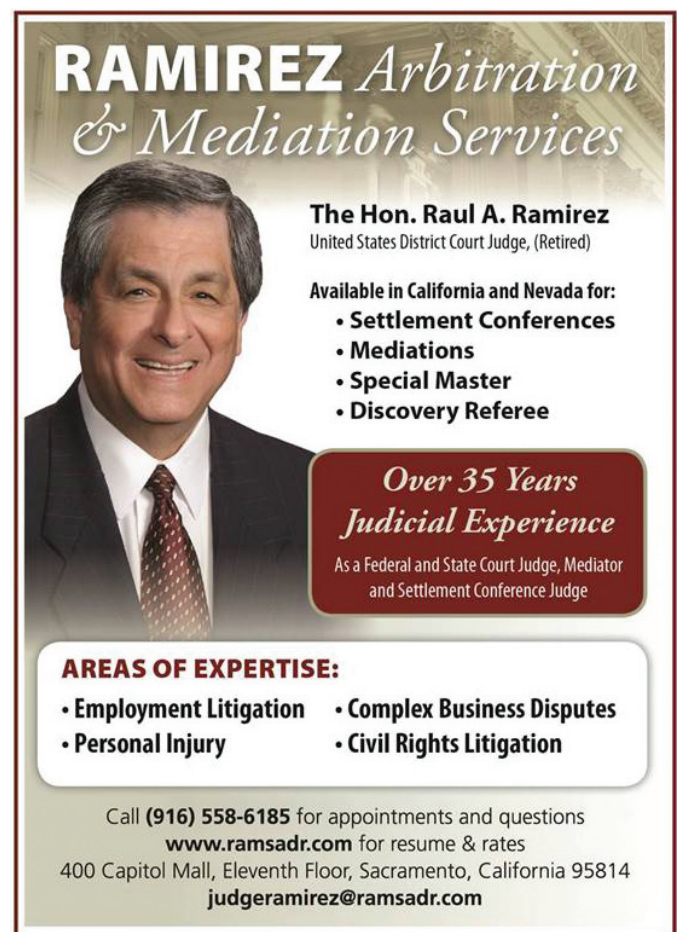
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*to CCTLA's 2023 Spring Reception  
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We raised \$110,081 for the Sacramento  
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## SPECIAL THANKS

*to Chris & Amy Wood for hosting the event at their beautiful home  
and to Miner's Leap for its generous donation of wine.*



CCTLA President Justin Ward with Amy and Chris Wood, who hosted Spring Fling 2023 at their "Lady Bird House."

Right: Dan Wilcoxon,  
recipient of CCTLA's 2023  
Morton L. Friedman Award

Additional photos  
on page 22



## Spring Fling returns as a resounding success, honoring two and raising more than \$110,000 for SFBFS

CCTLA's return-to-Spring reception raised funds for the Sacramento Food Bank & Family Services, and winners of the organizations two major member awards were announced.

There were 129 at Spring Fling, the return of one of CCTLA's primary events. It hadn't been held since 2019 due to the Covid-19 pandemic shutdown. As everything began to reopen in 2022, CCTLA was able hold a fall reception, but everyone was excited this year to have Spring Fling back on the calendar—and hosted by Amy and Chris Wood at their "Lady Bird House" the evening of June 1. Miner's Leap Winery donated the wine for the event.

The event raised \$110,081 for Sacramento Food Bank & Family Services through sponsorships (\$88,170) and from the auction and cash donations (\$21,911), and CCTLA President Justin Ward announced the organization's honorees as Daniel E. Wilcoxon and Walter Loving, both of the firm of Wilcoxon Callahan, LLP.

Wilcoxon, who received the Morton L. Friedman Award that recognizes individuals who demonstrate a passionate commitment to public service through their work and community leadership, has been generous with his time, his knowledge and financially since he began practicing law in 1972.

Wilcoxon's nomination said that whenever he is asked for his support, it has never been a matter of if he would help. His response has been a matter of "What do you need?" He has long supported CCTLA, including serving on the board, as well as Sacramento Food Bank and Family Services.

Wilcoxon has donated time and funds to St. Albans Country Day School in Rocklin and to Granite Bay High School. He has been a supporter of KVIE public television and his alma mater, the McGeorge School of Law, recently making a major contribution to the latter.

He has been a mentor to young lawyers and always has been an available resource for the legal community. Anyone who has ever had a lien issue knows Wilcoxon will be the first to assist. As per his nomination: "Dan is very deserving of this award as he has demonstrated his 'heart, soul and passion as a trial lawyer in service to the community' in Sacramento for the last 50 years."

Walter Loving, who received the Joe Ramsey Professionalism in Law Award that recognizes civility, honor, helpfulness, legal skills and experiences, began practicing law in 1983. He has been serving the plaintiffs' community since 2005.

Almost 20 years ago, he was inducted onto the American Board of Trial Advocates (ABOTA), serving as president of the Sacramento Valley Chapter in 2012. Loving is one of approximately 150 plaintiff injury lawyers in California certified as a "Civil Trial Specialist" by the National Board of Trial Advocacy, and in 2016, he received the "Civility Award" from ABOTA for his professionalism in dealing with counsel and the judiciary.

His willingness to give back to the community is exemplified by his numerous volunteer activities. These include serving as a mentor at Hiram Johnson High School, for five years, as a member of the 100 Black Men. He has coached youth sports, including three years as assistant coach for the Davis High Varsity Football team.

While president of ABOTA, he initiated and continues to lead the annual Feed the Hungry Barbecue at St. Philomenes Church in Carmichael.



Walter Loving and his family with his Joe Ramsey Professionalism in Law Award



# Spring Fling 2023 . . . . .



Justice Art Scotland (Ret.), Parker White and Judge David Abbott (Ret.)



Judge Emily Vasquez (Ret.) and Judge Russell Hom (Ret.)



Ognian Gavrilov, Brooks Cutter and Judge David De Alba (Ret.)



Jack Vetter, Chris Whelan, Amar and Goldy Shergill, and in front, Dan Wilcoxon



Blake Young and the Sacramento Food Bank & Family Services crew



Noah Schwartz, Amy Wood, Brian Robbins and Wendy York



Dan Wilcoxon, Michelle Jenni, Marti Taylor, Judge Russell Hom (Ret.), Alan Brutman and Parker White



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# Making effective use of the treating physician

By: Christopher W. Wood



medical examiner who has maybe seen your client one time or maybe not at all.

These physicians have also seen and treated the patient for months, and maybe even years, giving them the benefit of a long-term personal relationship with the client and building a foundation for their opinions at trial. This includes opinions on causation, reasonableness of past medical care/expenses and future medical needs, or what we know as “Life Care Plans.”

Treating physicians/medical providers can provide testimony regarding causation (*Schreiber v. Estate of Kiser* (1999) 22 Cal. 4th 31, 39), reasonableness of medical expenses (see *Ochoa v. Dorado* (2014) 228 Cal. App. 4th 120) and can provide testimony and opinions formed during their treatment of the patient. (*Id.*) This may include expertise and training in biomechanics of injury (injury causation), which most physicians, especially those that deal with trauma, have received training, and have experience in. This may include the review of other medical records from other physicians that were part of their care and treatment. It may also include opinions regarding vocational issues acquired independently of the litigation.

On the issue of injury causation, providing the treating physician with medical records from other providers (including priors), allows the treating physician to be prepared and competently testify on the topic. The medical provider can obtain those medical records either from the client during treatment or from the patient’s attorney. As soon as the physician is provided medical records/billings outside of their own treatment, the physician is now being transformed into what can be argued as a “retained expert” and no longer a treating physician.

Once the transformation is made, the Disclosure of Experts needs to identify the treating physician as a retained expert and provide the following in the way of an attorney Declaration: CCP §2034.260(c) If a witness on the list is an expert as described in subdivision (b) of Section 2034.210, the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain

all of the following:

- (1) A brief narrative statement of the qualifications of each expert.
- (2) A brief narrative statement of the general substance of the testimony that the expert is expected to give.
- (3) A representation that the expert has agreed to testify at the trial.
- (4) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including an opinion and its basis, that the expert is expected to give at trial.
- (5) A statement of the expert’s hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.

An example of an Attorney Declaration is referenced below:

It is a simple addition to the Disclosure of Experts and pro-

1	<b>EXPERT WITNESS DISCLOSURE AND DECLARATION</b>
2	<b>PURSUANT TO CCP SECTION 2034.260(c)</b>
3	<b>I, CHOOSE ATTORNEY, DECLARE:</b>
4	I am an attorney at law duly licensed to practice before all of the courts of the State of
5	California. I am a partner with the law firm of Dreyer Babich Buccola Wood Campora, LLP, attorneys
6	for Plaintiffs, in the above-entitled matter. I make this Expert Witness Declaration as required by
7	CCP section 2034.260.
8	<b>1. Name (RETAINED EXPERT)</b>
9	a. Dr. _____ is a _____ since _____. He specializes in
10	_____. Dr. _____ received his medical degree from _____ in _____. He
11	completed his internship at _____ in _____. Between _____ and
12	_____. Dr. _____ completed his _____ at _____ in _____. A copy
13	of his curriculum vitae (CV) is attached.
14	b. Dr. _____ will testify regarding _____, and any other injuries
15	sustained by Plaintiff. Dr. _____ may also testify regarding _____ by the first
16	responders, emergency room staff, clinicians and other medical personnel as well as by any other
17	treating healthcare providers.
18	c. Dr. _____ has agreed to testify at trial, and will be sufficiently familiar
19	with the pending action to submit to a meaningful oral deposition concerning the specific testimony,
20	including any opinion and its basis, that he is expected to give at trial.
21	d. His hourly fee for providing deposition testimony is _____.
22	I declare under penalty of perjury under the laws of the State of California, that this
23	Declaration was executed on _____, 20____, and that the foregoing is true and correct of
24	my own personal knowledge, except as to matters stated and based upon information and belief,
25	as to such matters, I am informed and believe that they are true and correct.
26	
27	<b>CHOOSE ATTORNEY</b>
28	
	<b>Plaintiff's/Plaintiffs' Disclosure of Expert Witnesses</b>

Continued on page 26



# California restores credibility for expert witness testimony with new law

## CAOC-sponsored SB 652 earns Governor Newsom's signature

Sacramento, CA – Governor Newsom on July 13, 2023, signed SB 652 (Umberg) into law. The measure, sponsored by Consumer Attorneys of California (CAOC), sets a uniform standard requiring all expert witnesses to testify that a given cause was more likely than not the cause of someone's injuries, instead of just "possibly" a cause of injury.

"Maintaining a high legal standard for what evidence an expert can present to a jury is critical to protecting the integrity of our justice system," said Greg Rizio, president of CAOC. "SB 652 ensures that expert testimony and the evidence that expert can present to a jury is firmly grounded in that expert's education, training and experience. Governor Newsom's signature on this bill restores a victims' confidence that jurors will not be misled by junk science or absurd expert testimony. CAOC is so grateful to Senator Tom Umberg for his hard work in making sure this important measure got across the finish line."

Senate Bill 652 corrects a recent, errant court decision that threatened to upend the credibility of expert witness testimony. The decision in *Kline v. Zimmer, Inc.* resulted in a weaker standard for defense experts only, opening the floodgates for junk

science and absurd expert testimony.

In one elder neglect case, a woman was left unsupervised at an assisted living facility. She died after a hard fall on the concrete floor in the courtyard that left blood on her head and the cement. All experts agreed the cause of death was from severe traumatic brain injuries – an assessment that was confirmed by the coroner.

Expert witnesses for the defense, however, were able to argue that the woman could "possibly" have suffered a stroke or an aneurysm. One expert witness made the bizarre testimony that a bird could have flown into the woman's face, causing her to fall. Neither opinion was based on evidence nor a reasonable degree of medical probability. Where the errant decision in *Kline v. Zimmer* would find this absurd testimony admissible, SB 652 would see it rightly thrown out.

###

*Reprinted from CAOC.org. 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.*

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Continued from page 25

vides you the opportunity to ask the physician questions on any of the topics you want to cover.


Also, physicians are not familiar with Expert Disclosures, so you want to prepare the physician for their deposition when they will inevitably be asked about when they were "retained" as an expert. The physician will have no idea as he or she was a treating physician and in that capacity was asked to review additional records and be prepared to have opinions on the topics discussed. The physician's label as treating physician or retained expert is not known to the doctor. The doctor is simply there to answer questions regarding their patient.


You just want to make sure the physician is prepared for that line of questioning as it is perfectly acceptable that they are not familiar with the nuances of legal disclosures. Nor are they required to be.

An effective and persuasive use of the treating physician at trial is to have the physician address the defense medical experts' opinions. By disclosing them as retained and providing them with the defense medical report in advance of their deposition, you can ask the treating physician if they agree or disagree with the defense medical expert's opinions as stated in the report. This discredits the defense witness before they even take the stand.

Proceed with caution. If you are going to give the treating physician any information that they did not have or they did not obtain independently through the treatment of the patient, side with caution and include that treating physician in the Declaration pursuant to CCP §2034.260.

Otherwise, the treating physician may be limited to opinions formed on the basis of facts independently acquired and informed by their training, skill, and experience, or vulnerable to exclusion.





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## Nominations now being accepted for the SCBA's 2023 Distinguished Attorney of the Year Award

The SCBA annually honors a member of the association as the distinguished attorney for the year. The award, presented at SCBA's Annual Meeting, will be given to the nominee who most exemplifies the best qualities in the legal profession and who, through the practice of law, has made Sacramento a better place to live and work. Emphasis is placed on the attorney's efforts within the past five years

Link for nomination form:

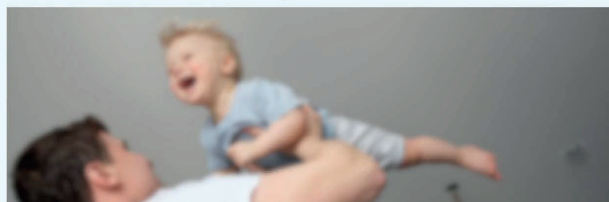
[https://cdn.ymaws.com/sacbar.site-ym.com/resource/resmgr/misc/2023\\_Atty\\_of\\_Year\\_Nomination.pdf](https://cdn.ymaws.com/sacbar.site-ym.com/resource/resmgr/misc/2023_Atty_of_Year_Nomination.pdf)

To submit a nomination form, send email to [theresa@sacbar.org](mailto:theresa@sacbar.org) or mail it to: 8928 Volunteer Lane, Suite 250 Sacramento, 95826

Deadline is Monday, Sept. 11, 2023 by 5pm.



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# MEMBER VERDICTS & SETTLEMENTS

CCTLA members are invited to share their verdicts and settlements: Submit your article to Jill Telfer, editor of *The Litigator*, [jtelfer@telferlaw.com](mailto:jtelfer@telferlaw.com). The next issue of *The Litigator* will be the Winter issue, and all submissions need to be received by November 1, 2023.

## WRONGFUL TERMINATION

**\$1,373,181**

CCTLA Member James Clark, of Tower Legal Group, received a \$1,373,181 verdict on behalf of his client, former Placer County Deputy Megan Yaws, against the Placer County Sheriff's Department, for wrongful termination.

This was a difficult case because the client was one of four officers arrested for a terrible incident where an inmate was abused by other officers. The incident resulted Plaintiff's arrest, along with the other three officers. However, charges against the plaintiff were later dismissed by the court during a preliminary hearing. Plaintiff's counsel argued the publicity and the fact the sheriff was running for re-election motivated the termination, making Plaintiff a scapegoat.

The case was based on a violation of Labor Code 432.7, which prohibits using the record of arrest or detention as a factor in hiring, firing or promotion unless the charges result in a conviction. Plaintiff was arrested and charged, but not convicted. The county's position was that underlying conduct resulted in her termination, not the arrest.

Placer County never made a settlement offer before trial. The case was set to begin on four prior separate occasions but was rescheduled because of a lack of courtroom availability. Finally, the case was tried in front of the Honorable Michael Jones. Defense attorney was

Greg Warner of the Placer County Counsel Office. Dr. George Jouganatos was the plaintiff's economic expert. The trial lasted 45 days.

## MEDICAL MALPRACTICE WRONGFUL DEATH

**\$1,082,437**

CCTLA Past President Michelle Jenni and CCTLA member Blair Widders of Wilcoxon Callahan, LLP, won a \$1,082,437 medical malpractice wrongful death verdict for the husband and three children, ages 14, 17 and 19 at the time of their mother's death. Decedent had turned 47 on the day she died.

The decedent, who underwent a gastric bypass surgery performed by Dr. Ruby Gatschet, had a history of an umbilical hernia which was asymptomatic, but very unsightly. Decedent and her husband inquired whether the surgeon could repair the hernia at the time of the gastric bypass surgery. They were told that it would be better to defer the repair until about six months post gastric bypass surgery because repairing the hernia would require the use of mesh, which in light of the gastric bypass surgery, would create an increased risk of infection.

Surgery occurred on Aug. 10, 2018. Once the surgeon opened the abdomen, she needed to lift the omentum (an apron of tissue covering the abdominal organs) in order to expose the surgical field. The surgeon discovered she was unable to lift up

the omentum because a large part of it was herniated through the umbilical hernia opening and entrapped. She then pulled the large portion of omentum out of the hernia sac, leaving a defect. She then proceeded with the gastric bypass surgery but did nothing to repair the hernia defect that had been left by removing the omentum. Decedent was discharged to her home the next day, Aug. 11, 2018.

During the following days, Decedent had pain, but she and her husband chalked it up to post-operative pain, and she was able to control it with pain medications. Saturday, Aug. 18, 2018 was the decedent's 47th birthday. Her husband checked on her, got her pain meds and left her seemingly fine and watching TV while he went the store to get some birthday decorations for a family celebration that evening.

Fifteen minutes after leaving, his 14-year-old son called, saying his mom had fallen, and he couldn't get her up. The son also alerted his brother and sister. The sister saw her mom was not responding and called 9-1-1 and then her dad, who rushed home to find his daughter performing CPR on her mom. He took over until the paramedics arrived. Decedent was pronounced dead at the scene.

An autopsy revealed 15 cm of her small intestine had herniated through the defect left during surgery. The intestine had become entrapped, much like the omentum that was previously removed, and was strangulated and became necrotic, causing sepsis and ultimately, death.

The issue was whether the surgeon's failure to repair the defect during surgery was below the standard of care. The jury found liability, and \$550,000 of the verdict was for non-economic damages. The remainder of the \$1,082,437 verdict was for loss of household services, as well as funeral and burial expenses.

The \$550,000 for non-economic damages will be reduced to the old MICRA cap of \$250,000. However, Jenni served a CCP 998 Offer to Compromise in the amount of \$499,999.99 in August of 2022. Defendant never made a settlement offer before trial.

The case was tried before Judge Jill Talley. Jon Corr of Porter Scott was defense counsel. Plaintiffs' experts were Barry Gardiner, MD, and Craig Enos, CPA. Defense experts were William Fuller, MD, and Erik Volk.

## SEXUAL HARASSMENT & RETALIATION

**\$750,000**

A former Plumas County Sheriff's Department correctional officer has been awarded more than \$750,000 after winning her sexual harassment and retaliation lawsuit against the County of Plumas and her former supervisor. The plaintiff was represented

*Continued on page 29*

# Share your experiences, verdicts, lessons learned

CCTLA is seeking legal-themed articles for publication in its quarterly publication, *The Litigator*, which presents articles on substantive law issues across all practice areas. No area of law is excluded. Practice tips, law-practice management, trial practice including opening and closing arguments, ethics, as well as continuing legal education topics, are among the areas welcomed. Verdict and settlement information also welcome.

*The Litigator* is published every three months, beginning in February each year. Due to space constraints, articles should be no more than 2,500 words, unless prior arrangements have been made with the CCTLA office.

The author's name must be included in the format the author wishes it published on the article. Authors also are welcome to submit their photo and/or art to go with the article (a high-resolution jpg or pdf files; no website art, which is too small).

Please include information about the author (legal affiliation and contact and other basic pertinent information) at the bottom of the article.

For more information and deadlines, contact CCTLA Executive Director Debbie Keller at [debbie@cctla.com](mailto:debbie@cctla.com).

## VERDICTS

*Continued from page 28*

by CCTLA member Calvin Chang, of Cal Law APC, along with attorneys Joseph Maloney and Eric Lambdin.

In her lawsuit filed in federal court, Plaintiff alleged her supervisor, a sergeant, had subjected her to unwelcome sexual conduct in the Plumas Jail, including grabbing her breasts. Almost immediately after her complaint, the Sheriff's Department ordered an Internal Affairs investigation of Plaintiff and later terminated Plaintiff; in part, for making a false report of sexual harassment.

During a two-week trial in Sacramento, the former sergeant testified, admitting to having grabbed Plaintiff's breast but claimed it was accidental. The US District Court judge found: "The county relied on [IA investigator and undersheriff's] dubious, one-sided and even false accusations against [Plaintiff] to justify its decision to terminate her employment . . . The notice of [undersheriff's] recommendation to terminate [Plaintiff's] employment, which he wrote on the county's behalf and which the county adopted, was retaliatory on its face."

The court ordered the parties to return to court to determine attorneys' fees and to determine additional injunctive relief against the county. [US District Court, Eastern District of California, Case No. 2:18-cv-03105-KJM-DB].

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# Identifying and Establishing Client's Mild Traumatic Brain Injury

Page 7

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## SEPTEMBER

### Tuesday, September 12

Q & A Problem Solving Lunch - Noon - CCTLA Members Only - ZOOM

### Wednesday, September 13

Problem Solving Clinic - 5:30 p.m. to 7p.m.

Topic: Taming Gas Lighters — Speaker: John Roussas, Esq., Cutter Law P.C.

CCTLA Members Only — ZOOM

## OCTOBER

### Tuesday, October 10

Q & A Problem Solving Lunch - Noon - CCTLA Members Only - ZOOM

## NOVEMBER

### Tuesday, November 14

Q & A Problem Solving Lunch - Noon - CCTLA Members Only - ZOOM

## DECEMBER

### Tuesday, December 12

Q & A Problem Solving Lunch - Noon - CCTLA Members Only - ZOOM

### Thursday, December 14

Annual Meeting/Holiday Reception & Installation of the 2024 Officers and Board

5:30 to 7:30 p.m. at The Sutter Club



# CCTLA CALENDAR OF EVENTS