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Inside

The virtual format has opened many doors

Travis Black
CCTLA President

As I reflected on the content to share in this issue, I was struck by the fact that a year ago I was wondering about the fate of the CCTLA in the wake of the enormous changes we were all facing, professionally and personally. What would happen as we lost our opportunities for in-person networking events? How could we provide mentoring and development to the next generation of attorneys? How would the CCTLA stay relevant?

The answer to most of these questions rests with the hard work of our Education Committee. Our education co-chairs are Dave Rosenthal and Peter Tiemann. The committee members are Dan Del Rio, Kelsey DePaoli, Noemi Esparza, Glenn Guenard, Robert Nelsen, Jacquie Siemans and Kirill Tarasenko. Their efforts have led to record-setting attendance during the last seven months of programming. The virtual format has opened the door for many of our members who were unable to participate in the past due to conflicts with schedules and workloads. There is a notable shift in the energy and collaboration during these programs, and the feedback has been extremely positive.

So, while we may ultimately return to some of our typical calendar events, the board will recommend that some portion of our ongoing education stays in the virtual space. Our Education Committee welcomes your ideas for future webinars as well as introductions to speakers you are hearing in other programs who you think will add value to our association. Please don't be shy: If you have an idea for a program, reach out and share it with us.

Don't miss the chance to bring your questions to the monthly "Problem Solving Lunches" hosted by attorney and board member Dan Glass. This is a fantastic opportunity for tapping into the collective group knowledge to get the help you need.

Watch for details about our Problem Solving Clinic: A Primer on Special Needs Trust for Trial Lawyers on Thursday, Sept. 30, beginning at 5pm. All attendees will receive one hour of MCLE credit towards ethics.

You are our best referral source to add to our membership! There are many at-

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Mike's CITES

By: Michael Jansen
CCTLA Member

Please remember that some cases are summarized before the official reports are published and may be reconsidered or de-certified for publication. Be sure to check for official citations before using them as authority.

The Cal Supremes Clarify Duty

Yazmin Brown vs. USA Tae Kwon Do
2021 DJDAR 3037 (April 1, 2021)

FACTS: Plaintiffs were three teenage girls who trained in the Olympic sport of Tae Kwon Do under coach Marc Gitelman. For years, the girls traveled and trained under Gitelman, who sexually abused the girls. Gitelman was ultimately convicted of multiple felonies and banned by the United States Olympic Committee. The girls sued the United State Olympic Committee (USOC) and USA Tae Kwon Do (USAT). They alleged that USOC and USAT were negligent and failed to protect them from Gitelman's abuse.

Plaintiffs alleged that USOC mandated that national governing bodies such as USAT adopt a safe sport program to protect athletes from sexual abuse. USAT failed to implement such a program and USOC did nothing. Additionally, Plaintiffs alleged that once the sexual abuse allegations were made public, USAT only temporarily suspended Gitelman, and allowed him to continue coaching.

ISSUE: Were USOC and USAT liable to the girls for Gitelman's sexual abuse? Specifically, did USOC and USAT have a duty to protect the teenage female athletes from the coach?

RULING: No, as to USOC, but yes as to USAT. The California Supreme Court issued a rule pertaining to duty, special relationships, and *Rowland v. Christian* (1968) 69 Cal.2d 108.

REASONING: Appellate cases in California prior to this case were divided on how to determine if there is a duty in special relationship situations. The lower court relied upon *Regents of University of California vs. Superior Court* (2018) 4 Cal.5th 607, 619 to conclude that a two-step approach must be utilized to determine if there is liability. The first step is that the defendant must have some special relationship with the perpetrator. The second step is the traditional *Rowland* analysis.

The Supremes outlined the lower courts' methods of handling this issue. Some courts held that plaintiff can establish duty by alleging successfully *either* that the special relationship doctrine exists *or* the *Rowland* factors are in favor of the duty. *Juarez vs. Boy Scouts of America, Inc.* (2000) 81Cal.App. 4th 377, 401-402, 410-411. Some of the lower courts have taken the view that the special relationship test incorporates the *Rowland* examination, and therefore, if the *Rowland* factors point to duty, the special relationship test obviously does too.

Justice Kruger wrote that a plaintiff claiming negligence must show duty, breach and proximate causation. *Nally vs. Grace Community Church* (1988) 46 Cal.3rd 278, 292. A plaintiff may not recover without showing a legal duty of care on the part of the defendant. *Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 395. A duty exists only if a plaintiff has interests that are entitled to legal protection against a defendant's conduct. *Dillion vs. Legg* (1968) 68 Cal.2nd 728, 734. Whether a duty exists is a question of law to be resolved by the Court. *Biley vs. Arthur Young and Company* (1992) 3 Cal.4th 370, 397.

Since 1872, California Civil Code Section 1714 provides that everyone is responsible for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person. However, despite section 1714's broad and expansive language, the law will only impose a liability when a general duty of care of the defendant exists. To have a general duty, a defendant must create a risk of harm or make the plaintiff's position worse. The person who has not created the situation is not liable in tort merely for failure to take affirmative action to assist or protect another from the peril. *Williams vs. State of California* (1983) 34 Cal.3rd 18, 23.

Thus, an actor whose conduct has not created a risk of physical or emotional harm to another has no duty of care. There is no duty to act to protect others from the conduct of third parties. *Delgado vs. Trax Bar and Grill* (2005) 36 Cal.4th 224, 235. Thus, even though a defendant may know of a danger, that defendant has no duty to warn others.

A person may have an affirmative duty to protect the victim of another's harm if that person has a special relationship with the victim *or* the person who created the harm. That special relationship gives the victim a right to expect protection from

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Travel time exception to the going-and-coming rule

By: Peter B. Tiemann

Whether a defendant is in the course and scope of employment at the time of a crash may be overlooked by plaintiff attorneys who do not fully understand the various exceptions to the going-and-coming rule. Under the theory of respondent-superior, employers are vicariously liable for acts committed by employees during the course and scope of their employment. However, under the going-and-coming rule, an employee is ***not*** considered within the course and scope of employment while commuting to or from the work place.

It's imperative for plaintiff attorneys to investigate and make a determination for themselves whether the exceptions apply to hold an employer liable for the acts of their employees. Therefore, the first step is to understand the many exceptions which exist to the going-and-coming rule, such as the vehicle-use exception, the special-errand exception, the work-related telephone calls exception and the travel-time exception. The focus of this article is to introduce litigators to the travel-time exception.

Form interrogatory 2.11 asks the responding party whether they were acting as an agent or employee at the time of the incident. The majority of the time, the response to this request is "No." However, these responses should always be further investigated—especially when you have a case where the amount of coverage for the at-fault driver may not be sufficient to fairly compensate your client. We recommend taking the defendant's deposition to further investigate the at-fault driver's relationship with his employer at the time of the collision. Often you may find that defense counsel has not prepared his client on the issue and is learning about travel pay and / or additional compensation during his client's deposition.

We recently had such a case. Initially, in response to written discovery, the at-fault driver stated that he was not acting as an agent or employee at the time of the collision. However, during the deposition of the at-fault driver, he testified that he was traveling home from a job site. At first impression, this seemed like nothing more than the typical "coming and going" commute from work to home. However, upon further inquiry, the at-fault driver testified that at the time of the collision he was receiving compensation for his ***travel time and expenses***.

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Peter Tiemann, Tiemann Law Firm, is a CCTLA Board Member

The leading case regarding the "travel-time" exception to the going-and-coming rule is Hinman v. Westinghouse. In that matter, the at-fault driver's union contract provided for the payment of ***"carfare"*** and ***travel time***. (Hinman v. Westinghouse Elec. Co. (1970) 2 Cal.3d 956, 959.) The court in Hinman stated that there is an exception to the "going-and-coming" rule where the trip involves an incidental benefit to the employer that is not common to commute trips by ordinary members of the work force. (Hinman v.

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Going & Coming Rule

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Westinghouse Elec. Co., supra., 2 Cal.3d 956, 962.)

The *Hinman* court reasoned that there was a substantial benefit to an employer in one area being permitted to reach out to a labor marker in another area, or enlarge the available labor market, by ***providing travel expenses and payment for travel time***. (Id. at p. 992.) *"[T]he employer, having found it desirable in the interest of his enterprise to pay for travel time and for travel expenses and to* ***go beyond the normal labor market or to have located his enterprise at a place remote from the labor market****, should be required to pay for the risks inherent in his decision." (Ibid.)*

However, the court in *Hinman* did not answer the question of whether the mere payment of travel expenses without additional payment for travel time of the employees reflects a sufficient benefit to the employer. (*Hinman v. Westinghouse Elec. Co., supra*, 2 Cal.3d 956, 962.) Prior to *Hinman*, the court in *Harris v. Oro-Dam Constructors* previously held that payment of a transportation allowance, without more, is equally ineffectual to produce a benefit to the employer. (1969) 269 Cal. App.2d 911, 917.

The court in *Harris* noted that the only requirement to receive the travel allowance was living at a residence beyond the 15-mile zone and that the employee might choose to travel by public transportation, carpool with co-workers or stay overnight at lodging near the worksite. (Id. at p. 917-918.)

Sixteen years after the *Hinman* decision, the court in *Caldwell v. A.R.B., Inc.* noted that the court in *Hinman* did not overrule or disapprove the prior holding in *Harris* and held that the mere payment for travel does not reflect a sufficient benefit to defendant so that it should bear responsibility. (1986) 176 Cal. App.3d 1028, 1042.

The other question that the court in *Hinman* left unanswered was whether the travel-time exception would apply to an employee who had used the time for other purposes. (*Hinman v. Westinghouse Elec. Co., supra*, 2 Cal.3d 956, 962.) The court in *Lazar v. Thermal Equipment Corp.* stated that the categorization of whether an employee's actions are outside the scope of employment begins with the issue of foreseeability (i.e., whether the accident is part of the inevitable toll of a lawful enterprise.) (1983) 148 Cal.App.3d 458, 464.

The court in *Lazar* explained that the more minor the deviation, the more foreseeable the deviation was, and therefore the employee would still be considered within the scope of their employment. "The fact that an employee is not engaged in the ultimate object of his employment at the time of the wrongful act does not preclude attribution of liability." [Citation] "For example, acts necessary to the comfort, convenience, health, and welfare of the employee while at work, though strictly personal to himself and not acts of service, do not take him outside the scope of his employment." [Citation] (Id. at p. 465.) *See also Lobo v. Tamco, (2010) 182 Cal.App.4th 297 (where employer came to reasonably rely upon the vehicle's use while still not requiring it as a condition of employment.); Moradi v. Marsh USA, Inc., (2013) 219 Cal.App.4th 886 (where employer cannot request or accept the benefit of an employee's services and concomitantly contend that they are not performing services growing out of and incidental to the employment.)*

In conclusion, do not solely rely on responses to form interrogatory 2.11. Consider conducting your own investigation during discovery into whether the at-fault party was within the course and scope of his employment.

We recommend taking the defendant's deposition to preserve some element of surprise. If the collision occurred while the at-fault driver was commuting to or from work, be sure to inquire as to what compensation (if any) they received from their employer during the time of the collision.

If payment was made, this may trigger the "travel-time" exception to the coming-and-going rule. Consequently, the doctrine of respondent-superior still may apply.

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Peter Tiemann, a CCTLA board member, is a principal of the Tiemann Law Firm. He focuses on personal injury and trucking cases throughout the state of California.

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the defendant *or* the special relationship between the defendant and the dangerous third party is one that entails an ability to control the third party. Where a defendant has neither performed an act that increases a risk of injury to the plaintiff, nor sits in a relation to the parties that creates an affirmative duty to protect the plaintiff from harm, the defendant owes no legal duty to the plaintiff.

The Supreme Court argued that "the multi-factor test set forth in *Rowland* was not designed as a free-standing means of establishing duty, but instead as a means for deciding whether to limit a duty derived from other sources." Thus, the *Rowland* case serves to provide an **exception** to Civil Code Section 1714's general duty of reasonable care. *Rowland* helps to decide if there should be no duty, not to determine whether a new duty should be created. Thus, the rule in California should be that under section 1714, it is presumed the defendant owed a duty of care. The next step is then to ask whether the circumstances justify a departure from the usual presumption to let the defendant off the hook. *Ballard vs. Uribe* (1986) 41 Cal.3rd 564, 572.

This is not a new approach (where *Rowland* is used to excuse a defendant) *C.A. vs. William S Heart Union High School District* (2012) 53Cal 4th 861, 877. See also *Castaneda vs. Olsher* (2007) 41 Cal.4th 1205, 1213. In this case, USOC had no such special relationship where a duty is inferred, and therefore the *Rowland* test was not necessary. Thus, USOC was properly dismissed as a defendant. USAT, however, did have a special relationship, and the court went on to apply the Rowland test and determined that there were no societal reasons to let the defendant off the hook.

Concurring opinion by Justice Cuellar: "I write separately to explain how those presumptions and exceptions realize a fundamental substantive principal: in California "[t]ort law"—the law of when and how individuals who have suffered harm may seek compensation for their injuries through private actions—"serves society's interest in allocating risks and costs to those who can better prevent them, and it provides aggrieved parties with just compensation"

The Supreme Court granted review for one purpose: to clarify what steps a court should take when deciding whether a duty based on a special relationship exists. That duty requires the process endorsed in *Rowland v. Christian* and regularly followed since.

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TORT OF ANOTHER: How do you prove attorney's fees as damages?

Hue Thi Dang Mai vs. HKT Cal, Inc.
2021 DJDAR 7088 (July 12, 2021)

FACTS: Plaintiff's realtor forged Plaintiff's name on an agreement to sell an apartment house. Plaintiff did not want to sell the apartment house and did not agree to sell the apartment house. A potential buyer sued Plaintiff, claiming that they had a deal based on the realtor's forged offer.

When Plaintiff was able to prove to the buyer that she never intended to sell the apartment house and the offer was a forgery, the buyer dismissed his case. However, Plaintiff had incurred attorney's fees defending the case that should not have been brought but for the forging realtor. Plaintiff then sued the realtor and broker for the attorney's fees incurred by Plaintiff defending the lawsuit regarding the sale of the apartment building. Plaintiff was claiming damages as a result of tort of another.

During discovery, the forger demanded to know who was going to testify about the attorney's fees and demanded the billings for attorney's fees incurred by the plaintiff. Plaintiff's counsel did not disclose, asserting attorney-client privilege.

Plaintiff's counsel anticipated that he would put the plaintiff on the witness stand to testify about the bill, that she paid him, and plaintiff's counsel figured that **he** could testify regarding the attorney's fees he charged her.

However, the trial court refused to allow counsel to testify because he was not a listed witness. The trial court, relying on *Copenbarger v Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, refused to allow judicial notice of the previous case pleadings, papers and litigation files. The trial court also refused to allow Plaintiff to testify about the attorney's fees bills because it was hearsay. The trial court ruled against the plaintiff and told Plaintiff's counsel to "take him up on appeal."

ISSUE: How does plaintiff's counsel prove damages of attorney's fees in a case? Is hearsay a valid objection to evidence regarding attorney's fees?

RULING: *Copenbarger* is severely restricted, and this case is remanded for a new trial on attorney's fees to determine damages.

REASONING: There is a different standard for introducing evidence of attorney's fees when they are damages at trial vs. costs in a post-judgment motion. Costs in a post-judgment motion may be submitted on declarations. If attorney's fees are damages at trial, the rules regarding damages apply much like those that apply to medical treatment claimed as damages.

Testimony that a plaintiff paid attorney's fees or medical treatments caused by the defendant is sufficient evidence that such costs are reasonable and satisfies the plaintiff's initial burden of production. *Malinson vs. Black* (1948) 83 Cal.App.2nd 375, 379. [Note: *Moore vs. Mercer* (2016) 4 Cal.App.5th 424, 446, approved a plaintiff's prepared summary of medical bills rather than an actual invoice going to the jury.] *Pacific Gas and Electric Company vs. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2nd 33, 43, allowed invoices, bills, and receipts to be admitted for the limited purpose of corroborating testimony if the charges were paid. The testimony and documents are evidence that the charges were reasonable. If a party pays a bill, it is assumed to be accurate and reasonable. *Jones v. Dumrichob*, (1998) 63 Cal.App.4th at pp. 1267-1268.

This court gets around *Copenbarger* by finding some different facts. This court stated: "[M]oreover, we question certain of Copenbarger's legal conclusions in light of existing precedent that the opinion either failed to consider or gave insufficient weight to. Finally, even assuming *Copenbarger's* analysis was correct, it need not have been interpreted by the trial

President's message

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torneys who will benefit from the great resources of the CCTLA but who may just not know all that is available. A personal invite from you to these new and established attorneys will bring more perspectives and experience to programs such as the List Serve and our education sessions. Online memberships are available on www.cctla.com. All of our board members are available to make a follow-up call and answer questions and extend the invitation to an interested person. Let's make CCTLA stronger than ever!

Here are a few updates in the good news category (applause!):

- We are being advised that the new courthouse is actually ahead of schedule!
- The board is reviewing the possibility of an in-person Meet and Greet to bring back the joy of a handshake and a cocktail together. We will keep you posted.
- Mark your calendars for the CAOC's 60th Annual Convention (in person!), scheduled at the Palace Hotel in San Francisco from Nov. 18-21, 2021. More information can be found on page 22.

I look forward to shaking your hand very soon! Thanks for being a member of our association!

Mike's Cites

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court as constraining it from exercising its considerable discretion to guide the trial to a fair result."

Despite *Copenbarger's* dicta that judicial notice of the court file cannot be taken, this court states that there are many cases indicating that judicial notice of documents in the court's file is proper and appropriate.

The trial court in this case read *Copenbarger* and felt that the case prevented him from ruling in Plaintiff's favor. This was erroneous, and the appellate court indicated that the trial court should have continued the matter and allowed Plaintiff's counsel to provide discovery to the defense so that the defense would have no objection to the introduction of the attorney's testimony regarding services rendered and their reasonableness. The trial court's failure to continue the trial showed that it did not exercise discretion, and therefore, abused it's discretion.

The trial court awarded $200 in punitive damages despite the egregious conduct by the real estate broker. The appellate court said that low punitive damages do not create an "acute danger of arbitrary deprivation of property" and therefore low punitive damages are okay. [Note: The discussion in this case regarding punitive damages is a must-read if you have a case with punitive damages.]

Noemi Esparza with the late Justice Cruz Reynoso

Hero - Icon - Trailblazer - Inspiration

Remembering the Honorable Justice Cruz Reynoso

By: Noemi Nunez Esparza

On May 7, 2021, we lost an exceptional human being, a champion of civil rights, former California Supreme Court Justice, Cruz Reynoso, who passed away at 90 years of age. Justice Reynoso has been described as a Latino hero, a civil rights icon, a trailblazer and an inspiration.

He took on many roles during his life. He was a professor of law, civil rights advocate, Appellate Court justice, and the state's first Latino Supreme Court justice. He had been on the California Fair Employment Practices Commission and was also an attorney with the U.S. Equal Employment Opportunity Commission in Washington, D.C. The list seems endless.

None of his roles, however, could have been foreseen given his humble beginnings. Justice Reynoso, son of Mexican immigrant farmworkers, was the third of 11 children, born in Brea, CA. When the Sacramento Latino Bar Association, formerly known as La Raza Lawyers Association, changed its name to the Cruz Reynoso Bar Association, Justice Reynoso spoke at the event and chuckled as he recounted the time his mother would tell friends, "…look at how lazy my boys are. They'd rather read books than work in the fields." Little did his parents know that their son would go on to accomplish many achievements—in the pursuit of equality and fairness for the poor and people of color.

Growing up as the child of farmworkers, Reynoso learned at an early age of the injustices faced by Latinos. When he was in elementary school, he attended a racially segregated grade school for children of Mexican descent which made him feel like a second-rate citizen. He later described that witnessing segregation and injustices against farmworkers and his own father compelled him to do something so that his "justice bone would not hurt."

These early childhood experiences shaped his views and his decision to obtain an education. He won a scholarship to Pomona College. and after graduation. served two years in the army. With the help of the GI Bill, he was able to attend UC Berkeley, School of Law. He was the only Latino in his class. After passing the bar in 1958, he moved to El Centro and opened a small law office.

In El Centro, Reynoso volunteered at the community service organization, a grassroots organization that conducted voter registration drives, protested police brutality, fought for farmworkers' rights and brought evening citizenship classes to neighborhood schools. He continued to witness the lack of power faced by the poor, something he was all too familiar with and saw up and down the Central Valley. During this time, he met legendary political activists Cesar Chavez and Dolores Huerta.

In 1968, he was asked to become the director of the California Rural Legal Assistance Program (CRLA), the first rural program in California to serve California's rural poor and which had been in existence only a couple of years. During his time as director, CRLA won farmworker cases and accomplished various changes to unjust laws and practices. One successful battle was the ban of the short-handled hoe, a tool that growers insisted upon, to the physical detriment of the farmworkers.

Another battle thrust him into the spotlight. CRLA sued local school districts because they closed schools due to growers needing more workers at that time. As a result, CRLA was accused of destroying agriculture, and CRLA lawyers, including Reynoso, were pegged as "poverty lawyers" and liberal social reformers. This made CRLA the target of politicians wanting to eradicate the CRLA program for political motives.

It was a three-year battle, with Justice Reynoso at the forefront. CRLA ultimately prevailed, and the program continues to this day, promoting and supporting the interests of migrant laborers and the rural poor.

As a result of the attention Justice Reynoso gained during his time with CRLA, law schools across the nation began to recruit him. In 1972, he began teaching at the University of New Mexico, as one of the first Latino law professors in the nation. However, it was not long before he was recruited to return to California to serve on the bench.

Shortly after Jerry Brown became governor of California in the mid 70s, he appointed Justice Reynoso to the California Appellate Court, where he served for six years.

In 1982, he was the first Latino to achieve the honor of being appointed to the California Supreme

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Noemi Nunez Esparza, of Dreyer Babich Buccola Wood Campora LLP, is a CCTLA Board Member and the Parliamentarian

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Court. However, five years later he was unseated, along with Chief Justice Rose Bird and fellow Justice Joseph Grodin, all remarkable progressive justices, due to a high-profile, highly partisan and unfair campaign of false information organized by those motivated to change the make-up of the Court to fit a political agenda.

Justice Reynoso turned this horrible injustice into a positive for others as he returned to private practice and academia. In 1993, he was appointed vice chairman to the US Commission on Civil Rights when he once again witnessed injustice during an election in Florida when voter fraud intended to keep African-Americans from voting was discovered.

Throughout his life, Justice Reynoso has witnessed the injustices that the poor and people of color endure. Hence why he has always been a strong advocate of the poor and disenfranchised. UCLA Law School, where he taught for 10 years in the 90s, describes him as "…formidable, but thoroughly humble and kind collaborator and mentor…"

He also taught at the University of California, Davis, School of Law from 2001 to 2006 and remained an emeritus professor after his retirement. Throughout his time at Davis and all of academia before that, he was praised as a dedicated professor, beloved by generations of law students.

Justice Reynoso was described by Governor Brown as "a man of outstanding intellect, superior judicial performance, high integrity and rare personal qualities." In 2000, he was awarded the Presidential Medal of Freedom by President Clinton.

By all accounts, Justice Cruz Reynoso was a gentle and humble man who also was a fervent advocate for those whose rights were infringed. What made Reynoso a remarkable advocate is that he did not vilify those with opposing views. He tried to understand them and engage them in meaningful discussions about change.

In 2014, Justice Reynoso was the recipient of the National Hispanic Hero Award. During the award ceremony, Reynoso described that he devoted his life to that which "…we now call social justice…" and which to him meant "…real justice, not just legal justice, so are we doing what we should do in terms of medical attention to all of our people? Are we doing what we should do in terms of educating our young people? Are we doing everything that we need to do in terms of making sure the laws truly represent the interests of the people? Do we have real justice for all the people in this state and this country and this world? That's really what I've devoted my life to."

An award-winning 2010 documentary about Justice Reynoso chronicles the highlights of his accomplishments: "Cruz Reynoso: Sowing the Seeds of Justice" was produced and directed by Abby Ginzberg. It is a great documentary that highlights the life of this wonderful champion of the people. He made many contributions, not only to our communities of color, but to society as a whole. He will forever remain, to many of us, a leader and inspiration.

THANK YOU, ABOTA

Amar Shergill, Shergill Law Firm, is a CCTLA Board Member

By: Amar Shergill

It has been my pleasure to serve as a board member of the Capitol City Trial Lawyers Association since 2014 and as a member of the American Board of Trial Attorneys (ABOTA) since 2018. In both roles, a primary motivating factor in joining was to bring the voice of a person of color into spaces where our perspective often is not heard. As the local bar changes and is increasingly diverse, we must affirmatively seek out opportunities not only to include diverse voices in leadership roles, but also to make room for them to be heard even when it may not be comfortable to do so. What follows is a small story of one such effort that made me proud of our legal community and hopeful for the future.

On June 19, the Sacramento Valley Chapter of ABOTA held an in-person dinner for members to finally be in the same room and enjoy each others' company. For many of you reading these words, you will immediately note that the date of the dinner is "Juneteenth," the date we now celebrate as a national holiday commemorating the anniversary date of the June 19, 1865, announcement of General Order No. 3 by Union Army general Gordon Granger, proclaiming freedom for slaves in Texas, which was the last state of the Confederacy with institutional slavery.

I should note as an initial matter that setting the date of such a dinner for June 19 is likely a mistake, and one that I could easily have made. On a day when many, especially members of our Black community, are celebrating with family, we should not be calendar-ing organizational events. I am confident that, with the declaration this year of Juneteenth as a national holiday, we will all be more cognizant of this.

At the event itself, it was evident that there did not appear to be any intent to honor Juneteenth in front of a crowd with very few people of color and just a few members of the Black community. Those aware that this is unacceptable faced a moment that all people of color know well when faced with workplace situations that are clearly offensive but also carry significant social risk if addressed. Should we let it go? Is this really a problem or am I over-reacting? If I say something, will it affect my participation in this organization? Why should people of color have to raise this issue when there is a room full of people that should know better?

Those who work in civil rights spaces often discuss the challenges with "white allyship." Addressing the same issue, Dr. Martin Luther King, Jr. wrote, in what I believe to be one of the most important works of American literature: *Letter from Birmingham Jail,* "Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will." I am thankful that ABOTA has allies in leadership who stepped forward to do the right thing on that day. It meant the world to me.

Over the years, it has been my duty to represent my clients across the table from Linda Sharpe in litigation and in trial. However, on Juneteenth, it was my honor to stand alongside her in addressing this issue. We had allies in the room. ABOTA Secretary Letty Litchfield and ABOTA President Karen Goodman listened and took action. They recognized the importance of the issue and made space for Linda to eloquently address the attendees regarding the history of the new holiday, her experience as a pioneering Black lawyer and the significance of ABOTA taking time to honor Juneteenth.

Our nation has much work to do on the issue of racism and bigotry but I am inspired when people in positions of influence, like those in ABOTA, do the right thing.

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Amar Shergill, Shergill Law Firm, is a board member of the Capitol City Trial Lawyers Association, executive board member of the California Democratic Party (CDP, and chair of the CDP Progressive Caucus.

LINDA SHARPE

AMAR AND GOLDY SHERGILL

DAN WILCOXEN

Find Yourself A Mentor

Jacqueline Siemans, Demas Law Group, is a CCTLA Board Member

By: Jacqueline Siemens

When I first passed the bar, I felt like I had a decent handle on the law and what my job as an attorney was. I had been a litigation claims adjuster while I was in law school. I knew my clients' needs were paramount, and I was prepared to meet that challenge. I was hired in a boutique medical malpractice defense firm and would be working directly for two of the managing partners. I could not have been happier (and more wrong about my abilities.)

Three days after being sworn in, I was informed by my boss I would be taking my first deposition. Prior to this day, I had never sat in on a deposition nor had I read a deposition transcript. As much as I (foolishly) thought I was prepared, I clearly was not. The partners had intentionally let me sink on my first depo, knowing they would get another shot at this witness for reasons that do not matter. I am forever grateful no one videotaped that one. I learned a fabulous lesson… I needed a mentor, and fast.

Finding a mentor was not that easy. Partners are busy people, and very quickly, so was I. Not only was I learning the unique medical malpractice nuances, I was also learning the applicable medicine for each case. The partners were assigning me numerous tasks, and I had the unfortunate responsibility of hourly billing, which is its own brand of misery. The idea of spending hours watching someone else work and not being able to bill for it was not appealing to anyone, but it had to be done. I realized a lot of mentoring takes place over lunches, happy hours and long car rides to depositions. I was similar to a pesky younger sibling who forced her way into a seat at the table, but then sitting quietly and absorbing the conversation.

For the next six months, I followed around the partners to multiple depositions almost every week. I watched them prepare for depositions with clients and witnesses. After each meeting, I would have a list of questions regarding why certain things were asked or were the focus of preparation. Not all of it was common sense, and there was quite a bit of strategy involved that seems obvious today. Meetings with experts was entirely new and intimidating to me. As a new lawyer trying to keep my head above water, it was a challenge much more difficult that law school, but I was gaining invaluable insight from attorneys who had been practicing for literally decades.

I read depositions transcripts from opposing counsel, something again that is somewhat obvious now but only brought to my attention by my mentors. I began to see patterns in what they would ask clients, which allowed me to prepare mine for specific attorneys' deposition styles. I saw when the objections would come and learned quickly how to ignore them rather than be intimidated or allow objections to throw me off my game. When I felt like I had made a mistake, I would bring the transcript to a more senior attorney and ask for advice. I always left their office with more knowledge than when I came in.

Eventually I made the transition to the plaintiffs' side. I was in a similar position of having to learn a new area of the law. I needed to be ready to take a case to trial, something I never was able to do in my short time as a med mal defense lawyer. I knew I needed new mentors; the more the better. I lucked out finding exactly what I needed.

A good mentor will also let you know when their way of doing things may not work for you. I started off my plaintiff career at a very small firm with two partners and no associates other than myself. It was a positive situation involving close interaction with both partners, but what I learned was their style was quite different from mine. I did not want to be an imposter at a depo or in trial, so I had to figure out what worked for me. I took what worked and left out

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Three days after being sworn in, I was informed by my boss I would be taking my first deposition. Prior to this day, I had never sat in on a deposition nor had I read a deposition transcript. As much as I (foolishly) thought I was prepared, I clearly was not. The partners had intentionally let me sink on my first depo, knowing they would get another shot at this witness for reasons that do not matter. I am forever grateful no one videotaped that one. I learned a fabulous lesson… I needed a mentor, and fast.

Find yourself a mentor

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One piece of advice can change your whole practice and make you the attorney your clients believe you are

what did not. I left that firm as a better attorney than when I got there. I was ready to develop and embrace my own style, but I was still open to learning from those who seemed to be mastering the challenge.

I have spent the last eight years of counsel with Demas Law Group. My second trial was coming up, and I was preparing my opening statement. I had a long conversation with John Demas about my opening and learned how bad it really was. I went home and read some articles he suggested. Utilizing his experience and advice, and understanding the closing needed to mirror the opening, I wrote the closing. I then changed the entire opening from beginning to end. I took what John had offered, took what the articles provided and mixed in my style to share my client's story with the jury. Now it fit me. It flowed because I was me. It was much more effective because I had a mentor help me find who I was and how I could best relate to a jury. And it all worked.

All good mentors will tell you that depositions and trials only go well if you are prepared through constructive and thoughtful discovery. If you know Demas Law Group, you know Brad Schultz. Brad has a wealth of knowledge that I was determined to tap into. He is creative, meticulous and his discovery process was superior to anything I was doing. I had found another mentor and one who was willing to share his knowledge, sources and ideas any time I asked. Brad is a gold mine. Between the mentoring of John and Brad, I was developing skills and my own approach at the same time.

Not all mentors have to be people you know or have even met. About a month before I had another trial coming up, I came across Keith Mitnik and his incredibly helpful book, *Eat the Bruises*. I had found another excellent mentor. Along with his weekly emails and webinars, I have acquired a massive amount of information that, without seeking it out, would not have been available to me.

Today, finding a mentor has never been easier. The one positive Covid has produced has been the free webinars from some of the best plaintiff lawyers in the country. It seems these attorneys missed the audience of a jury and were now performing for us; for our benefit. Nick and Courtney Rowley are regular participants on these webinars, along with Keith Mitnik and other seasoned trial attorneys I had never heard of but was able to utilize their knowledge in my practice. If you're not watching live trials on YouTube, you are depriving yourself of free mentoring as well as subrosa on defense counsel.

If you are one of those who can offer some or all of the insight describe in this article, you are a valuable and possibly untapped resource to new attorneys. The benefit of mentoring goes both ways. CCTLA offers seminars and luncheons designed to put mentors in contact with new attorneys. One piece of advice can change your whole practice and make you the attorney your clients believe you are.

Drew Widders, of Wilcoxen Callaham LLP, is a CCTLA Board Member

The "No Surprise Act'" – Will 2022 Bring an End to Balance Billing?

By: Drew Widders

On Dec. 27, 2020, the "No Surprise Act" was signed into law by President Trump. The Act is intended to ban balance billing nationwide, in most circumstances. The law becomes effective on Jan. 1, 2022. In preparation, on July 1, 2021, the Biden-Harris Administration, through the Department of Health and Human Service, the Department of Labor, and the Department of the Treasury, along with the Office of Personnel Management, released an Interim Final Rule through the Center for Medicare & Medicaid Services (CMS) titled "Requirements Related to Surprise Billing; Part I." The CMS Rule implements and provides guidance on the No Surprise Act's balance billing protections. The Act and Rule have the potential to increase the protections to our insured clients from balance billing providers in California.

Balance billing arises when a healthcare provider attempts to bill a patient more than the patient's insurance company paid, billing the healthcare provider's normal rate rather than the health insurance company's contracted rate. It usually happens when a patient unknowingly receives medical care from an out-of-network provider. This can frequently occur in emergency situations. According to CMS, as many as 40% of emergency visits to an in-network hospital result in an out-of-network bill. The bill usually comes as a surprise to the insured who believes that they are only responsible for co-pays, deductibles and coinsurance, and only up to their plan's annual out-of-pocket maximum.

Balance billing arises when a healthcare provider attempts to bill a patient more than the patient's insurance company paid, billing the healthcare provider's normal rate rather than the health insurance company's contracted rate. It usually happens when a patient unknowingly receives medical care from an out-of-network provider. This can frequently occur in emergency situations.

Balance billing is currently prohibited for those insured by both Medicare and Medicaid/Medi-Cal. The No Surprise Act is intended to extend similar protections to Americans insured through all other health plans. This can protect insureds from surprise medical balance bills for emergency services, including air ambulance services, as well as out-of-network provider bills for services rendered at in-network hospitals and facilities.

In addition to the balance billing protections, under the No Surprise Act and CMS Rule, patients treated for emergency services by an out-of-network provider will only be responsible for the same amount of cost-sharing (which must be counted towards a patient's deductible) that they would have paid if the service had been provided by an in-network provider.

So, if a plan requires 20 percent co-pays for in-network emergency room visits, the plan can impose a coinsurance rate of no more than 20 percent of the in-network rate for an out-of-network emergency room visit. This cost-sharing must also be counted towards a patient's in-network deductible and annual out-of-pocket maximum.

According to the CMS Rule, a non-emergency out-of-network provider **may still balance bill under the No Surprises Act if four conditions are met**: (1) the patient is able to travel using non-medical transportation or non-emergency medical transportation to an available in-network provider or facility located within a reasonable travel distance; (2) the provider or facility furnishing the post-stabilization services satisfies the notice and consent criteria set forth in the Interim Final Rule (in a separate form from other healthcare documents); (3) the patient is in a condition to understand the notice and provide informed consent; and (4) the provider or facility satisfies any additional requirements or prohibitions under applicable state law.

Unfortunately, the No Surprise Act and CMS Rule, while addressing the very high air ambulance transport balance bills, do not protect consumers from ground transport ambulance balance bills.

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Stock photo, used for illustration

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The No Surprise Act did authorize, however, the creation of an advisory committee to recommend options for protecting patients from ground ambulance balance bills.

We will have to wait until next year to assess the true impact of the No Surprise Act on medical balance billers in California. In the meantime, below is a refresher on the current state of balance billing defenses. Also, for reference, a more detailed article on balance billing can be found on the CCTLA website: Litigator Archives for Fall 2019 written by Dan Del Rio. The available defenses against a balance billing medical provider varies depending on the type of health plan.

Balance Billing Defenses

Medicare and Medi-Cal already prohibit balance billing. These plans cover about 19.5 million of the approximately 40 million Californians. About six million Californians are insured by employee-sponsored plans subject to ERISA, which are not subject to the below state defenses against balance billing. However, starting in 2022, all health insurance plans in California should be protected when the the No Surprise Act's balance billing protections go into effect.

The remaining 14 million Californians are covered by California health plans that are regulated by two state departments, the Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI). There are different defenses based on whether your plan is regulated by the DMHC or the CDI.

DMHC-Regulated Plans

The DMHC primarily regulates HMOs. These plans cover around 13 million Californians. You can find the list of the health plans regulated by the DMHC at https://www.dmhc.ca.gov. If your client sought treatment in-network, whether it was emergency or subsequent care, then Health and Safety Code section 1379 should be used to argue that your client is not liable for any sums owed by your client's health plan. If your client sought in-network or out-of-network emergency care, Executive Order S-13-06 and the subsequent DHMC regulation 28 CCR section 1300.71.39 (Unfair Billing Patterns) should be used as they prohibit balance billing by providers of emergency services.

Unfortunately, the No Surprise Act and CMS Rule, while addressing the very high air ambulance transport balance bills, do not protect consumers from ground transport ambulance balance bills. The No Surprise Act did authorize, however, the creation of an advisory committee to recommend options for protecting patients from ground ambulance balance bills.

CDI-Regulated Plans

The CDI generally regulates non-HMO health insurance plans. These plans cover around one million Californians. Unfortunately, 28 CCR section 1300.71.39 (Unfair Billing Patterns), supra, does not apply to these plans. You can find a list of health insurance plans on the CDI website. The direct link is https://www.insurance.ca.gov/01-consumers/110-health/20-look/hcpcarriers.cfm. There is a letter from the CDI to lien specialist Don de Camara that states balance billing is prohibited from in-network providers.

If your client received treatment out-of-network, however, there is currently no prohibition against balance billing. In 2017 though, Health and Safety Code section 1371.9 and Insurance Code section 10112.8 were passed to prevent physicians at in-network hospitals or other facilities from attempting to balance bill patients in non-emergency situations. Unfortunately, this does not address the situation we are usually faced with a balance bill from on emergency hospital and medical provider. Hopefully, the No Surprise Act, will help fill this gap in protection.

Liens Based on a Contract with Your Client's Health Plan

Many times, medical provider lien collectors argue that *Parnell v. Adventist Health Systems* (2005) 35 Cal. 4th 595 and *Dameron Hospital Assn. v. AAA Northern California, Nevada & Utah Ins. Exchange* (2014) 229 Cal.App.4th 549 allow them to contract with your client's health plan to balance bill. At times, lien collectors will even ignore directly applicable prohibi-

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tions against balance billing and still argue they can balance bill if they have a contract with your client's health care plan. If so, demand a copy of the alleged contract. The source of any medical provider's right to balance bill should flow from the contract your client has with their health plan. Many of the health plans I have reviewed limit any reimbursement rights to a third-party settlement to the amount paid by the health plan. Thus, there should be no additional medical-provider reimbursement rights for the difference between the amount paid by your client's health plan and the claimed reasonable value of the services of the medical provider.

In 2017, Health and Safety Code section 1371.9 and Insurance Code section 10112.8 were passed to prevent physicians at in-network hospitals or other facilities from attempting to balance bill patients in non-emergency situations . . . this does not address the situation we are usually faced with a balance bill from on emergency hospital and medical provider. Hopefully, the No Surprise Act, will help fill this gap in protection.

Hospital Lien Act Liens

In addition to medical-provider contracts with your client's health insurance, many hospitals claim balance billing rights under the Hospital Lien Act found in Civil Code sections 3045.1-3045.6. *Dameron Hospital Assn., supra*, confirms that your client should not be on the hook for such liens. As stated therein:

> *The clear import of section 1379 is to protect patients with health care service plan coverage from any collection attempts by providers of such medical care as emergency room services.*

However, many settlement agreements with defendant insurance carriers have a hold harmless provision your client may be responsible for and must be explained to the client or you will hold the defendant insurance carrier harmless.

If your client agrees to hold the defendant harmless from liens, your client can be on the hook because your client has agreed to indemnify and defend the defendant insurance carriers from said liens. If that is the case, the hospital is still limited to the reasonable value of their services, not the billed amount under the Hospital Lien Act (see *State Farm v. Huff* (2013) 216 Cal.App. 4th 1463). This gives you another argument to attempt to reduce any unreasonable medical billed amount for which no contract exists between your client and the provider.

In closing, I am sure that hospitals and providers will continue to attempt to balance bill our clients. The No Surprise Act supported by CMS should give a strong argument in the fight to prevent balance billing against consumers. One can only hope that the advisory commission created by the No Surprise Act will close the loophole for ground ambulance transport balance billing. Current studies show as much as 50-80 percent of all ambulance rides patients received an out-of-network balance bill.

Be Prepared for Motions to Strike Punitive Damages in DUI Cases

By: David Rosenthal

David Rosenthal, of Rosenthal Law, is CCTLA's President-Elect

We are all familiar with the defense tactic of admitting liability in collision cases so that the focus of the litigation is on the plaintiff's damages claims rather than the defendant's dangerous conduct. Allegations of punitive damages in drunk driving cases have for many years allowed the plaintiff to turn the tables in those cases involving the most dangerous driving of all. Insurance defense firms have always looked for strategies to strike punitive damages where possible, and recently carriers have given many in-house firms standing orders to file such motions in all drunk driving cases. The extent to which such motions are entertained will vary from courtroom to courtroom

In opposing motions to strike, plaintiffs typically rely on the seminal case of *Taylor v. Superior Court* (1979) 24 Cal.3d 890, where the California Supreme Court considered whether allegations of drunk driving were sufficient to support a claim for punitive damages.

The complaint included allegations that the defendant had a history of alcoholism, had previously been arrested for driving while intoxicated, was involved in a prior accident while intoxicated, and that his "conscious disregard" of plaintiff's safety justified punitive damages. The defendant filed a demurrer based on lack of intent by the defendant which was sustained by the trial court. (*Taylor v. Superior Court, supra*, 24 Cal.3d at pp. 893-894.)

At the time of *Taylor*, the punitive damages statute did not define "malice." The Court first recognized a prior appellate decision on similar facts in *Gombos v. Ashe*(1958)158 Cal.App.2d 517, 527, where the allegations were simply that the defendant drove while intoxicated and the court said "[o]ne who becomes intoxicated, knowing that he intends to drive his automobile on the highway, is of course negligent, and perhaps grossly negligent," it's a "reckless," "wrongful" and an "illegal thing to do," "[b]ut it is not a malicious act."

The Court then summarized and approved case law since Gombos establishing that "a conscious disregard of the safety of others may constitute malice within the meaning of section 3294 of the Civil Code." (*Taylor v. Superior Court, supra*, 24 Cal.3d at p. 895.)

In reversing the trial court, the Court stated in part:

> *"Certainly, the foregoing allegations may reasonably be said to confirm defendant's awareness of his inability to operate a motor vehicle safely while intoxicated. Yet the essence of the Gombos and present complaints remains the same: Defendant became intoxicated and thereafter drove a car while in that condition, despite his knowledge of the safety hazard he created thereby. This is the essential gravamen of the complaint, and while a history of prior arrests, convictions and mishaps may heighten the probability and foreseeability of an accident,* ***we do not deem these aggravating factors essential prerequisites to the assessment of punitive damages in drunk driving cases****." (Id. at p. 896, emphasis added.)*
>
> *Examining the pleadings before us, we have no difficulty concluding that they contain sufficient allegations upon which it may reasonably be concluded that defendant consciously disregarded the safety of others.* ***There is a very commonly understood risk which attends every motor vehicle driver who is intoxicated****. [Citation omitted.] One who wilfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be*

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held to exhibit a conscious disregard of the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents." (Id. at pp. 896-897, emphasis added.)

Taylor seemed to settle the issue—allegations that a defendant drove while intoxicated while knowing the dangers that are involved are sufficient to support an award of punitive damages. Allegations of additional aggravating factors were not necessary to state a *prima facie* case. The Court suggested that *Gombos* was no longer good precedent because at the time it was decided, it was unclear that punitive damages could be based on the conscious disregard of the safety of others, a definition that had become accepted by the courts in the subsequent 20 years. (Id. at p. 896.)

Given that "[t]here is a very commonly understood risk which attends **every motor vehicle driver who is intoxicated**," the act of consuming alcohol to intoxication knowing that a defendant would drive afterwards, "thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed," was sufficient to show "conscious disregard for the safety of others," regardless of a prior history of drunk driving. (Id. at p. 896, 897, emphasis added.)

Further, "given the demonstrable and almost inevitable risk visited upon the innocent public by [this] voluntary conduct," allowing punitive damages against drunk drivers fit the deterrence purpose of the statute. (Id. at p. 897.)

The import of *Taylor* was recognized by Justice Bird, who stated in her concurring and dissenting opinion, that "[a]lthough I concur in the judgment of the court, I must respectfully dissent from that portion of the majority opinion which allows a cause of action for punitive damages in **every case** where a person has driven under the influence of alcohol." (Id. at p. 900, emphasis added.) Justice Bird's reservations surely reflected widely held social norms surrounding consumption of alcohol, then and now.

While education about the dangers of alcohol consumption have surely evolved, it is still so prevalent that it's hard for many to accept that run-of-the-mill drunk driving is worthy of punishment. Many judges, like ourselves, have driven after drinking alcohol or been in vehicles driven by friends or relatives who had been drinking. Almost all of us have known someone cited for DUI. Given the social acceptance of alcohol, it is understandable that there is a reluctance by some to make the act of driving while intoxicated, by itself, punishable under the law.

One year after *Taylor*, in *Dawes v. Superior Court*(1980)111 Cal.App.3d 82, 85-86, the Fourth District Court of Appeal considered a case in which the allegations were that the driver was intoxicated, ran a stop sign and was zigzagging in and out of traffic in a 35-mile-per-hour zone at speeds more than 65 miles with pedestrians and bicyclists in the area. In reversing the trial court's granting of a motion to strike the punitive allegations, the court clearly attempted to narrow the import of *Taylor*, stating "[t]here is not and there never was one rule of law for intoxicated driving cases and another rule of law for other types of cases." (Id. at 90.)

Quoting a 1975 bar journal article, the court noted that "'[[a]llegations of intoxication, excessive speed, driving with defective equipment or the running of a stop signal, **without more**, do not state a cause of action for punitive damages.'" (Id., emphasis added.) The key for the *Dawes* court was that the facts alleged must evidence a conscious disregard of a **probability** that others would be injured. "The risk of injury to others from ordinary driving while intoxicated is certainly foreseeable, **but it is not necessarily probable**." (Id. at p. 89, emphasis added.) Nevertheless, the court concluded that the plaintiff had "pleaded **specific facts** from which the conscious disregard of **probable injury** to others may reasonably be inferred." (Id. a p. 90, emphasis added.)

The *Dawes* court's holding was that "ordinary driving while intoxicated" did not create enough risk to the public to justify imposition of punitive damages. Requiring additional facts establishing sufficient probability of injury in each case was not consistent with the plain language of *Taylor* to the effect that the "very commonly understood risk" of drunk driving was sufficient to sustain allegations of conscious disregard at the pleading stage. Nevertheless, *Dawes* is regularly cited in motions to strike attacking the complaint as factually deficient.

Effective in 1981, the California Legislature amended Civil Code §3294 to include *Taylor's* "conscious disregard" definition of malice. Shortly thereafter, the Supreme Court considered whether the *Taylor* decision would apply retroactively in *Peterson v. Superior Court*(1982)31 Cal.3d 147. The Court noted that the "rule" of *Taylor* was "that punitive damages are recoverable from an intoxicated driver who causes personal injury." (Id. at p. 150.)

As in *Taylor* and *Dawes,* the complaint in *Peterson* alleged facts in addition to intoxication, including that the defendant

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drove at speeds in excess of 100 miles per hour and ignored the passenger's pleas to slow down. (Id. at p. 162.) The Supreme Court noted that "in accord with" the *Dawes* decision, the facts alleged were sufficient to support a claim for punitive damages. (Id. at p. 163.)

However, it also noted that as in *Taylor*, the "gravamen" of the complaint was that the defendant drove drunk despite knowledge of the dangers. (Id.)

Certainly, the factual allegations in addition to intoxication in *Taylor, Dawes* and *Peterson* buttressed the claims for punitive damages in those cases and, if proven, would have made jury awards for punitive damages much more likely. However, the Supreme Court had expressly stated in *Taylor* that these "aggravating factors" were not essential pre-requisites to punitive damages. The *Dawes* court nevertheless interpreted *Taylor* as requiring specific facts of aggravating conduct.

The Court in *Peterson* recognized that aggravating facts were, as in *Dawes*, sufficient to establish a claim, but lost an opportunity to clarify the statement in *Taylor* that those facts were not required. Thus, whether pleading the "gravamen" of driving while intoxicated with knowledge that it is dangerous is enough, or whether additional specific facts must be pled, will vary from court to court, judge to judge.

In 1997, the legislature again amended §3294's "conscious disregard" definition of malice to add the requirements that the conduct be both "willful" and "despicable." (*College Hospital*

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Inc. v. Superior Court(1994)8 Cal.4th 704, 713.)

While the willful language was likely a codification of existing law, "the statute's reference to 'despicable' conduct seems to represent a new substantive limitation on punitive damages awards." (Id. at p. 725.) "Despicable" connotes conduct that is "base," "vile," or "contemptible." (Id.) It includes conduct that is criminal, that has "the character of outrage frequently associated with crime" or that is in "blatant violation of law or policy." (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*(2002) 96 Cal. App. 4th 1017, 1050.)

Defendants will point to the addition of the "despicable" conduct language to argue that there is an even higher burden a plaintiff must now meet in order to plead punitive damages than existed at the time of the *Taylor* decision. For judges not willing to recognize the act of driving drunk by itself as base or vile, even where it has resulted in injury or death, a motion to strike will be granted unless additional facts are pled.

To ward off these motions, plaintiffs should thoroughly investigate the defendant and the incident to develop facts to be pled in the complaint, including the defendant's blood alcohol level, history of alcohol addiction, prior DUI arrest, conviction or accident history, excessive speed, erratic driving and any other potentially aggravating facts.

Of course, if the defendant was convicted of a misdemeanor under VC §23152 or a felony under VC §23153 as a result of the subject incident, those should also be alleged.

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. The next issue of *The Litigator* will be the Winter issue, and all submissions need to be received by October 29, 2021.

CONFIDENTIAL SETTLEMENT

$45,000,000

Construction Incident

This action involved a construction incident where it was shown that an improper lifting device, being used to lift a significant load, failed. As a result of that failure, the load itself landed on the 49-year-old Plaintiff, resulting in a mild traumatic brain injury and fracturing his upper thoracic spine, rendering him a paraplegic. The specific facts related to the incident and alleged actions and omissions are confidential and not to be disclosed.

Roger Dreyer, Robert Bale and Anthony Garilli, of Dreyer, Babich, Buccola, Wood, Campora, LLP, litigated this case for more than two years before reaching a settlement on behalf of their catastrophically injured client and his spouse. It was settled at mediation prior to a trial date being set. The case was referred by a business litigation lawyer who also was a member of Plaintiff's family.

VERDICT

$21,600,000

Wrongful Death / Product Liability

Madeline J. Metzger, Thomas H. Metzger and John H. Metzger, individually and as the successors in interest to Matthew Mezger and Mary Patricia Hughes, deceased, Plaintiffs, v. Beechcraft Corporation, Defendant

Roger A. Dreyer, Robert B. Bale and Natalie M. Dreyer, of Dreyer Babich Buccola Wood Campora LLP, prevailed in a 19-day bench trial before the Hon. Brian McCarville in San Bernardino County Superior Court. Date of verdict was June 16, 2021.

On May 28, 2013, Decedent Matthew Mezger, M.D., and his wife, Mary Patricia Hughes, died when the 2001 Beechcraft Bonanza A36,tail number N999PK, owned and piloted by Dr. Mezger, crashed shortly after take-off from Pulliam Airport in Flagstaff, AZ. The plane caught fire on impact. The couple was survived by their adult children, Plaintiffs Madeline, 22, Thomas, 21, and John Mezger, 19.

Beechcraft designed, manufactured and distributed the airplane. Former Defendant Continental Motors, Inc. manufactured the IO-550-B engine that failed. The Court granted CMI's motion to quash on jurisdictional grounds, but the case proceeded against Beechcraft, which the evidence showed selected that engine for installation as OEM equipment in the Bonanza model line.

Plaintiffs contended that N999PK lost power during its ascent from Pulliam Field when the exhaust valve in the No. 5 cylinder stuck in the open position. This caused a loss of compression, overheating of the valve, and a loss of horsepower. Pulliam Airport's location at High Density Altitude exacerbated the power loss. N999PK's No. 5 exhaust valve bore classic signs of a burned exhaust valve that evidences a failure of that valve to seat properly, leading to a loss of compression and power.

Plaintiffs provided compelling evidence concerning the backgrounds of both Dr. Mezger and his wife. Individuals who had flown with Dr. Mezger testified to his level of preparation and expertise as a pilot. Witnesses also testified about Dr. Mezger's prior flight experience in and out of the Lake Tahoe region, which is at a High Density Altitude similar to Pulliam Airport.

Additionally, the testimony of family and friends captured the exceptional nature of the Mezgers, the manner in which they raised their children and the rich life experience that each had provided to their three children throughout their lives and into adulthood. This testimony illustrated the Mezger's background, the type of parents they were, and the vacuum their loss created in the lives of each of their children, through adulthood and every important milestone in their lives.

Defendant contested liability and argued that pilot error was the sole cause of the crash. Defendant also sought to shift blame to former Defendant Honeycutt Aviation for an alleged failure to conduct a borescope inspection of the subject engine 11 months prior to the crash. According to Beechcraft, such inspection would have detected the burnt valve, leading to its replacement. Beechcraft also argued that the extent of any burning of the No. 5 exhaust valve did not cause a significant loss of power.

Beechcraft also argued that federal preemption applied because it did not manufacture the subject engine. Beechcraft also argued that California law holding the ultimate manufacturer responsible for the installation of OEM components it selected did not apply because all six cylinders in N999PK were replaced in 2004. Defendant made this argument despite evidence that Beechcraft replaced the cylinders under warranty, using Continental parts identical to the cylinders installed in the original engine.

This last claim revolved around Plaintiff's affirmative showing drawn from warranty records produced through Beechcraft's designated Person Most Qualified and from service invoices for work performed on the subject aircraft. These latter records, evidenced that all of the original cylinder valves were replaced after just 242 hours on the engine.

Beechcraft's own specifications and warranties recommend a Time Between Overhaul, or "TBO," for cylinder replacements

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Member verdicts & settlements

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of 1700 hours.

Plaintiffs adduced evidence that Beechcraft never advised, warned or recommended any earlier overhaul interval. Plaintiffs' expert Colin Sommers testified that according to FAA records, these Continental valves regularly failed at hours far below the 1700-hour TBO. In addition, Beechcraft's own warranty records showed an occurrence of cylinder issues far below the recommended TBO. The OEM cylinders in the aircraft at the time of the power loss had less than half of the rated hours.

During trial, the Court allowed a 30-day continuance for Beechcraft to locate and call a former Continental Motors employee who was part of the crash inspection team. Because Beechcraft failed to depose this witness before trial, there was no admissible record of her alleged observations that satisfied Plaintiff's *Sanchez* objections. Beechcraft called this witness to provide first-hand testimony as to whether the No. 5 cylinder was stuck and lost compression.

When called at trial, the witness confirmed that although she had conducted a borescope inspection of the cylinders and valves post-crash, she did not see burning on any valves, including the No. 5 exhaust valve. She also confirmed that despite this, the No. 5 exhaust valve was burned when removed from the cylinder. Based on these admissions, the Court ruled out any apportionment of fault to Honeycutt Aviation. The Court reasoned that if Continental's own inspector did not appreciate that a burnt valve existed during her post-crash borescope, Beechcraft's argument that Honeycutt Aviation should have seen it 11 months prior to the crash had no merit.

Beechcraft called their piloting expert, Thomas Carr, to opine about Dr. Mezger's flight operations. Carr blamed Dr. Mezger as the sole cause of the crash. Like virtually every manufacturer of private aircraft in similar cases, Beechcraft's focus at trial was to blame the pilot, who did not survive the crash and could not defend himself. The crash also caused a massive fire that destroyed critical evidence, including the flight data recorder. This opened the door for Beechcraft to speculate about what actions the pilot took, or should have taken.

Throughout trial, and for seven years before trial, Plaintiffs listened to Beechcraft blame their father for the crash that killed him and their mother. In its verdict, the Court specifically singled out the testimony of Thomas Carr as "overly speculative" and gave it no credence. The Court apportioned 100% of the fault to Beechcraft and none to Dr. Mezger.

The Court did not find persuasive any of Beechcraft's attempts to shift the blame to Honeycutt Aviation, or its legal arguments that federal law preempted Plaintiffs' claims, or that California products liability law did not apply to Beechcraft, which sold the plane with the Continental engine that Beechcraft specified, selected and approved installed as OEM equipment.

The Court found by clear and convincing evidence that Beechcraft manufactured the aircraft with the Continental engine, and that Decedent Matthew Mezger was not at fault for the crash. The Court found that the only reasonable conclusion from the evidence is that prior to the crash the engine suffered a stuck valve due to its design, causing a power loss and subsequent crash. Plaintiffs proved the subject aircraft did not perform as safely as an ordinary consumer would have expected. The Court also found that no fault accrued to former Defendant Honeycutt Aviation for any alleged failure to detect a burned valve prior to the incident date. The Court relied on the post-crash inspection by Continental's employee as the basis for that finding.

Plaintiffs sought recovery only for non-economic wrongful death damages; Plaintiffs made no claim for economic loss. The Court awarded past non-economic damages from the date of the crash on May 28, 2013, to date of judgment in the amount of $4,800,000, as to the loss of Matthew Mezger and future non-economic damages in the amount $6,000,000, for total damages of $10,800,000.

As to the loss of Mary Patricia Hughes for past non-eco-

Continued on next page

Share your experiences, victories, 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; website art 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.

Member verdicts & settlements

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nomic damages the Court awarded $4,800,000 and future non-economic damages $6,000,000, for a total of $10,800,000. Total non-economic damages as a result of the death of Matthew Mezger and Mary Patricia Hughes was $21,600,000.

Plaintiffs settled with former Defendant Honeycutt Aviation prior to trial for $575,000, approved by the Court as a "good faith" settlement. Defendant Beechcraft never made any offers during the course of the litigation and declined any invitations to mediate the matter. Beechcraft ignored Plaintiff's 998 offer to compromise for $3,000,000 made in December, 2020. A week before trial, Beechcraft made its only offer for a "nonnegotiable" total amount of $500,000, which it described as its cost of a defense.

SETTLEMENT
$1,750,000

The Law Office of Black & DePaoli, along with the Simon Law Group (Southern California), obtained a $1,750,000 settlement for their 49-year-old client who was struck by the defendant's truck turning left in front of him. This case was venued in Sacramento County.

This collision occurred on Nov. 15, 2016, on Clay Station Road at the intersection of Tavernor Road. Plaintiff was driving his Ford F-350 truck northbound on Clay Station Road, and Defendant was driving a large tractor-trailer southbound on Clay Station Road. As Plaintiff approached the intersection, Defendant began to make a left turn in front of the plaintiff, and Plaintiff struck the defendant's truck.

Property damage to the plaintiff's truck was more than $30,000. Defendant denied liability throughout the course of litigation, arguing the plaintiff was traveling at an excessive speed. Plaintiff ultimately had an anterior cervical discectomy and fusion at C5-C7 which were performed by Dr. Adebkola Onibokun, a neurosurgeon out of San Jose, whose deposition was taken by the plaintiff's counsel.

Plaintiff also was treated by Dr. Van Lemons, who was providing additional care and treatment. Lemons provided an opinion that the plaintiff would require at least one more cervical fusion in the future. Plaintiff had more than $200,000 in lost earnings and future medical expenses estimated at $500,000.

Defendant's IME was Dr. Ronnie Mimran, neurosurgeon (Exam Works), whose opinion was that the plaintiff's condition was all pre-existing degenerative disc disease and would have required surgery, even if the crash had not occurred.

The case was mediated by Nick Lowe. Defendant's insurance company was Nationwide, and defense counsel was David Yates.

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SETTLEMENT

$1,000,000 Policy Limit

Kapakly v. Prince Rai, Sacramento County

Kirill Tarasenko, of Tarasenko Law, represented Plaintiff Kapakly, a long-haul trucker operating a big rig with trailer attached when he suffered head trauma when he was run off the road by another trucker passing on his right using the bike land and shoulder.

Plaintiff was in the through lane on northbound Raley Boulevard when the other trucker accelerated through the bike lane and road's shoulder attempting to pass Plaintiff on right. The other trucker had his friend in the cab, who filmed part of the reckless maneuver. Driving in Plaintiff's blind spot, the other trucker was rapidly approaching houses and yards, running out of space, and forced Plaintiff off the road, through a median with trees and into the oncoming lanes, causing Plaintiff to to strike his head on the metal shelf in his truck's cab.

Years later, after exhaustive conservative care, Plaintiff underwent a cervical fusion. The defense adamantly contested liability to the very end, blaming Plaintiff's cervical and lumbar injuries on his being a trucker and on obesity generally, even though Kapakly had no notable history of neck or back injuries or treatment prior to the collision.

The carrier paid out its policy limit of $1,000,000 following the depositions of their experts just before trial.

Plaintiff's retained experts were Paul Herbert for trucking, Dennis Meredith for orthopedic surgery, Laura Ines for economic damages and Vinay Reddy for pain management.

Defendant's retained experts were Larry Miller for trucking, Sean Shimada for biomechanics, Youjeong Kim for orthopedic surgery, Larry Neuman for reconstruction, Jerome Barakos for radiology, Craig Enos for economics and Agnes Grogan for medical billing, among other experts the defense later withdrew.

Donahue & Davies represented the defendant.

SETTLEMENT

$1,000,000 plus

M. R. vs J. A.

Venue: Santa Cruz County

CCTLA past president Bob Bale, of Dreyer Babich Buccola Wood Campora LLP, handled a miraculous negotiation that yielded $1,000,000, plus a house.

On July 10, 2019, Plaintiff was riding his motorcycle from his home to the grocery store less than a mile away when suddenly, and without warning, Defendant made an illegal left turn and collided with him. Plaintiff was taken to Santa Rosa Memorial Hospital, where he remained for more than a month before being released to San Jose Veteran Hospital for further treatment.

The crash changed his life completely. He was rendered a quadriplegic with no hope of ever being able to walk, work or recreate again. Plaintiff was 56 years old at the time of the incident, was gainfully employed as a construction worker, earning $50,000 per year. He was healthy, fit, with no physical limitations or pre-existing morbidities. He was not married and has no children.

Plaintiff had no appreciable savings and no health insurance. He did not own a home and had no close family who could care for him. Fortunately, he is a veteran, but because his injuries were not service-related, the VA asserted a lien for $1.2-million. In addition, MediCal sought recovery of $88,000 for treatment costs incurred at Santa Clara Valley Medical before Plaintiff's transfer to the VA.

AAA was third-party insurer. Defendant had $1,000,000 in coverage, with no excess or umbrella, and no course and scope. Plaintiff had minimal limits UIM. AAA did not dispute liability and tendered its $1 million almost immediately. Plaintiff did not have to file suit.

In a background investigation of the defendant, Plaintiff's counsel learned that Defendant had other fungible assets, including a home valued at approximately $600,000. Plaintiff's counsel, working closely and cooperatively with AAA and with the defendant's private attorney, negotiated a settlement that included the $1,000,000 AAA policy limits, plus free and clear title to the house to settle the case. A key appeal of the house was its open floor plan, which made it especially suitable for renovations to make it handicapped accessible.

In the months it took to negotiate the settlement and complete due diligence, the house appreciated significantly in value, to Plaintiff's benefit. Plaintiff's counsel also secured a 90% reduction of the VA lien, and just over 80% reduction in the MediCal lien. The acquisition of the house allowed Plaintiff to move from his small apartment, which was not wheelchair friendly, into a large, attractive and accessible single family residence in a good neighborhood, with room for a live-in care provider.

This was an unusual case to the extent that everyone involved wanted to do their best for Plaintiff. The Defendant, a wonderful person who just made a mistake, not only admitted it, but literally gave up her home for the person she harmed. The VA and MediCal both reduced their statutory liens far more than is typical for either. Even AAA got involved, advancing funds before the case settled to help Plaintiff, who was in desperate straits and could not afford to even pay his apartment rent or buy food, since he was no longer able to work.

It felt a little bit like a miracle, truth be told.

ARBITRATION AWARD

$949,033/$1,000,000

*Johnson v. USA*A

Auto Collision UIM

Anthony Garilli and Natalie Dreyer, of Dreyer, Babich, Buccola, Wood, Campora, LLP, have obtained an arbitration award of $949,033 / $1,000,000 for their client who was rear-

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The Judicial Diversity Summit has been held every five years since 2006 to assess the efforts to increase judicial diversity in California, and to make recommendations for future activities and initiatives to diversify the judiciary. This year, the summit is titled Stronger Together: Judicial Diversity Summit 2021, and will be held remotely on three Tuesday evenings on September 14, 21 and 28.
The intended audience for the summit is judicial officers, attorneys, and law students.

Leading up to the summit, we will be hosting a series of events planned by affinity associations in August and September, including a kickoff event and five lunchtime 1-hour educational sessions:

- 8/4 – 5:00 PM **Judicial Diversity Yesterday**
- 8/11 – 12:00 PM **Judicial Mentoring: Inside and Out**
- 8/18 – 12:00 PM **Affinity Judicial Associations**
- 8/25 – 12:00 PM **From the Cafeteria to the Courtroom**
- 9/1 – 12:00 PM **Increasing Diversity in Underrepresented Courts**
- 9/8 – 12:00 PM **Barriers to the Bench**

9/14 - SUMMIT DAY 1
JUDICIAL DIVERSITY TODAY
Opening remarks by Hon. Tani G. Cantil-Sakauye, Chief Justice of California
4:30 PM - 6:00 PM

9/21 - SUMMIT DAY 2
SHARING WHAT IS WORKING - "SIDE BARS"
4:30 PM - 6:00 PM

9/28 - SUMMIT DAY 3
JUDICIAL DIVERSITY TOMORROW
4:30 PM - 6:30 PM

LEARN MORE

Please contact us at JDS@calawyers.org or (916) 516-1721 if you seek accommodations or have questions about this event.

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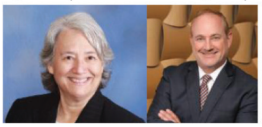
CCTLA has resumed holding programs, via Zoom

See Calendar of Events on back page, check the website at www.cctla.com and watch for future announcements

PROGRAM RECORDINGS AVAILABLE FOR PURCHASE BY CCTLA MEMBERS
$25 each

Developing a Worthy Plaintiff: Techniques for Maximizing Non-Economic Damages
Speakers: *Robert Buccola, Robert Nelsen and Ryan Dostart*
March 25, 2021 | 5:30 to 7:05 p.m. | 1.5 Hours

Workers' Compensation and Third Party Liability Crossove Cases: Working with the Workers' Compensation Lawyer to Maximize the Client's Recovery
Speakers: Sherri Lira and Michael Walters with Walters and Zinn
April 23, 2021 | 12 noon to 1:30 p.m. | 1 Hour



Bad Faith: Fighting Insurance Abuse in UM/UIM Cases
Speakers: Ognian Gavrilov and Gregory O'Dea | Gavrilov & Brooks
May 20, 2021 | 5:30 p.m. to 7:15 p.m.| 1.5 Hours

Lessons of a MTBI Trial: Overcoming Common Defense Contentions
Speaker: John N. Demas | Demas Law Group, P.C.
June 24, 2021 | 5:30 p.m. to 7:15 p.m.| 1.5 Hours

ERISA for Trial Lawyers – Practical Strategies to Resolve and Close Files
Speaker: John J. Rice, Esq. Director of Lien Reduction Services | The Lien Project
July 23, 2021 | 12 noon to 1:30 p.m. | 1 Hour

To purchase any of these, mail your check payable to CCTLA ($25 per recording) to PO Box 22403 Sac CA 95822 and indicate the recording/s you wish to purchase

Member verdicts & settlements

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ended on Jan. 28, 2017, by a third party while stopped for an emergency vehicle that was entering the roadway with lights illuminated and siren sounding.

Claimant reached a settlement for the third-party's policy limits of $50,000. Claimant then pursued a claim through her Underinsured Motorist Coverage with USAA. Her policy limits were $1,000,000, leaving $950,000 after the credit for the third-party policy limits.

In 2004, Claimant had suffered a burst fracture in her lumbar spine, resulting in a multi-level fusion. Claimant fully recovered, and by 2006, and no longer had low back pain. She traveled the world extensively each year thereafter, exercised and performed all activities of daily living without pain or restriction. After the collision, however, where Claimant's low back was injured, she returned to her surgeon for a consult after multiple conservative therapies failed to relieve her pain. Her surgeon determined her hardware looked good and surgery was not recommended.

He referred her for pain management, and at the time of the arbitration hearing, Claimant had undergone seven injection procedures that included epidural steroid injections (ESIs), medial branch blocks and radio frequency ablation.

Claimant was a Medicare recipient with past paid medical expense of $9,017.53 *(Howell)*. Claimant's recommended future medical care costs established by her treating pain management doctor were $515,016. Claimant was still able to travel abroad and made several overseas trips after the collision, but she could only do so by planning an ESI within 30 days of her departure. While on her travels, her activity level was diminished as compared to her prior trips before the collision.

Claimant made a demand for the remainder of her policy limits before initiating litigation in the first-party case. The offer was ignored by USAA. Once in litigation, claimant repeated her demand by way of a CCP §998 Offer of Compromise in the amount of $949,999.

USAA asked for more time to evaluate the demand, and Claimant gave USAA an extension and opportunity to take her deposition and subpoena her medical records. USAA failed to respond to the new deadline. Claimant additionally underwent a Defense Medical Examination.

At 2 p.m. on the afternoon before the arbitration, USAA made its very first offer in the case, in the amount of $150,000, which was rejected by Claimant. The parties proceeded to arbitration, and the arbitrator was not made aware of the policy limits. USAA argued in closing that Claimant should be awarded $50,000 – $100,000 less than it had offered the previous day. Claimant was awarded $949,033, subject to any applicable third-party set-off, resulting in a net award of $899,033.

Following the arbitrator's award, Claimant's counsel wrote USAA a letter setting forth its bad-faith conduct toward its insured and demanded USAA tender the full $1,000,000 policy limits with no offset or credit for the third-party settlement. Claimant's counsel gave USAA eight days to deliver the $1,000,000 check, and asserted a bad-faith lawsuit would follow should it only deliver the net sum of $899,033. Four days later, USAA tendered the full $1,000,000 policy limits to Claimant.

VERDICT

$75,000—Injury Accident

Robert Carichoff, Carichoff Law, completed a jury trial in Contra Costa Aug. 12 where his client was completely absent between opening statements and the reading of the verdict. Jury was picked on a Thursday, then the judge then went on vacation for the next 11 days. Before the judge returned, Plaintiff informed Carichoff he would not be attending trial because he had obtained employment after going without for five years.

Carichoff served him with a trial subpoena. Didn't work. Asked the judge for a continuance. Didn't work. So the case went forward.

The case had challenging facts without the plaintiff's absence, including a low-speed impact, not a lot of visible property damage, a right shoulder injury and a very small Medi-Cal lien (waived).

Defense fought hard, spending almost as much on its three experts (DME, biomechanical and radiologist) as their policy limits ($100k). Defense tried to bring in character evidence, employment history evidence—anything it could find to try to besmirch Plaintiff. The judge kept all that out.

Dr. Jamali testified that the plaintiff did injure his right shoulder and that surgery was ultimately necessary as a result of the crash. Several treating doctors, one physical therapist and the responding CHP officer testified to establish causation and damages (most via video).

In the end, the jury awarded plaintiff $75,000 for past non-economic damages. Future damages were requested, but not awarded. The jury definitely punished the plaintiff for not attending trial. Members of the jury said they would have awarded the plaintiff more money if he had testified at trial.

Be Prepared for Motions to Strike Punitive Damages in DUI Cases

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CCTLA COMPREHENSIVE MENTORING PROGRAM — The CCTLA Board has developed a program to assist new attorneys with their cases. For more information or if you have a question with regard to one of your cases, contact: Dan Glass at dsglawyer@gmail.com, Rob Piering at rob@pieringlawfirm.com, Glenn Guenard at gguenard@gblegal.com, Chris Whelan at Chris@WhelanLawOffices.com, Alla Vorobets at allavorobets00@gmail.com or Linda Dankman at dankmanlaw@yahoo.com

TUESDAY, SEPT. 14, 2021
Q & A PROBLEM SOLVING LUNCH - NOON
CCTLA MEMBERS ONLY - ZOOM

THURSDAY, SEPT. 30, 2021
PROBLEM SOLVING CLINIC - 5:30-7:15 PM
A Primer on Special Needs Trust for Trial Lawyers
Speakers: James Cunningham Jr., ESQ., and Daniel G. Van Slyke, Esq., of Cunningham Legal
1.5 MCLE Credit - Cost $25
CCTLA MEMBERS ONLY - ZOOM

TUESDAY, OCT. 12, 2021
Q & A PROBLEM SOLVING LUNCH - NOON
CCTLA MEMBERS ONLY - ZOOM

TUESDAY, NOV. 9, 2021
Q & A PROBLEM SOLVING LUNCH - NOON
CCTLA MEMBERS ONLY - ZOOM

TUESDAY, DEC. 14, 2021
Q & A PROBLEM SOLVING LUNCH - NOON
CCTLA MEMBERS ONLY - ZOOM

CCTLA Calendar of Events