Spring 2025

The LITIGATOR

Volume XXII Official Publication of the Capitol City Trial Lawyers Association Issue 1

Inside

Inspired, Challenged and Gratified

Glenn Guenard
CCTLA President
Guenard & Bozarth, LLP

Sitting at my desk, I often find myself looking at the framed Cornell Law School degree hanging on the wall behind my computer. The degree, conferred to Robert Guenard in 1969, belongs to my uncle. I vividly remember attending his graduation in Ithaca, New York. Everyone was so happy for him. Tragically, within months, his life came to an unexpected end. The never-ending Catholic funeral inevitably followed. At 12 years old, I made a decision that would shape my future: I would become a lawyer, just like Uncle Robert.

For a child that age, processing such a loss was overwhelming, particularly because Uncle Robert represented so much more than an uncle in my life. With my father absent during my childhood, Uncle Robert filled multiple roles—father figure, mentor, older brother and friend. He was my hero, and before his passing, I dreamed of following in his footsteps, playing sports and attending college. His inspiration has guided me every single day since.

The path through college, law school and the bar exam seemed daunting, but I frequently found myself asking, "What would Uncle Robert do?" I wasn't sure if I really wanted to be a lawyer or why I wanted to be a lawyer other than to be like Uncle Robert. Even receiving my law degree brought more relief than joy—a milestone achieved that would allow me to pursue my true calling.

That calling revealed itself during my first position at a prominent plaintiff's personal injury firm. It was love at first sight that has endured for 38 years, and I plan to continue representing plaintiffs as long as possible. The opportunity to help those who have suffered injuries while earning a living is deeply fulfilling. As the saying goes, when you love what you do, it never feels like work—even with the sacrifices, stress and long hours involved. Thank you, Uncle Robert, for inspiring me!

It is with equal enthusiasm that I embrace my role as CCTLA president for 2025. Having been part of this community since my law school days, I've had the pleasure of meeting many members and look forward to connecting with everyone. Please reach out to me in person, via email at gguenard@gblegal.com, or by phone at (916) 296-7570. I welcome your input on speakers, topics, events or any suggestions to enhance the CCTLA. Our monthly board meetings provide a forum to address these matters.

CCTLA's strength lies in its community. When we share our knowledge and support one another, we not only grow professionally but also strengthen the quality of legal representation in our region. Whether you're a seasoned trial attorney or newly admitted to the bar, your perspective is valuable. Some of our most insightful discus-

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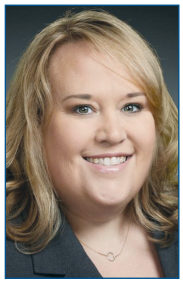

Marti Taylor, Wilcoxen Callaham LLP, CCTLA Secretary

NOTABLE CITES

By: Marti Taylor

MAKSIMOW v. CITY OF SOUTH LAKE TAHOE

2024 3DCA California Court of Appeal, No. C098705 (November 4, 2024)

CITY MUST HAVE ACTUAL OR CONSTRUCTIVE NOTICE THAT ICE IS A DANGEROUS CONDITION TO HAVE LIABILITY

FACTS: Plaintiff Lorenza Maksimow visited the City of South Lake Tahoe for several days in March of 2020. During her stay, she parked her car in a public lot. On the morning of Mar. 26, 2020, she went to retrieve her car. At that time, temperatures ranged from 12 to 30 degrees Fahrenheit.

As Plaintiff walked toward her car, she was talking to an acquaintance and looking at her car. She did not see a large (3x4-foot) ice sheet on the ground and fell. She was taken to the emergency room and underwent surgery for an injured ankle.

Maksimow sued the City of South Lake Tahoe alleging that the ice sheet was a dangerous condition of public property. The city filed a motion for summary judgment, arguing that Maksimow could not establish the existence of a dangerous condition or actual or constructive knowledge of any such condition.

Maksimow argued that illegally parked cars in the lot had led to the accumulation of snow from the city's snow abatement plowing that had turned to ice. She argued that the city should have been reasonably aware that said accumulation would result in in ice formation under those circumstances.

The court granted defendant's summary judgment, finding that Maksimow had failed to prove that the city had any actual or constructive knowledge of the dangerous condition (eg. the ice accumulation).

ISSUE: Can elements of constructive notice be proven with inferences?
RULING: No. Affirmed.

REASONING: The primary and indispensable element of constructive notice is a showing that the obvious condition existed a sufficient period of time before the accident. See *Strongman v. County of Kern* (1967) 255 Cal.App.2d 308. The plaintiff was unable to establish how long the dangerous condition had existed, thus making it impossible for a trier of fact to determine if the dangerous condition existed for a sufficient period of time before the accident such that the city should have discovered it.

SMITH v. MAGIC MOUNTAIN, LLC

2024 2DCA/2 California Court of Appeal, No. B330833 (November 21, 2024)

COMMON CARRIER DESIGNATION DOES NOT APPLY UNTIL THE PASSENGER HAS ACTUALLY SURRENDERED CONTROL OF THEIR SAFETY

FACTS: On November 5, 2016, Plaintiff Tessa Smith went to Six Flags Magic Mountain with her significant other and two of their children. While in the queue line for the Twisted Colossus ride, she leaned on a railing near an air gate with her hand dangling down. Despite being warned to stand clear of the opening air gates, she did not move. When the air gates swung open, they compressed the area where Plaintiff's hand was resting, and her hand was smashed. Later that evening, Plaintiff went to the emergency room, and she was later diagnosed with CRPS related to the injury.

Plaintiff thereafter sued Magic Mountain for negligence and products liability. The matter proceeded to a jury trial.

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New Complications

Re: What damages are allowable, as determined by the Third District Court of Appeals

By: Daniel E. Wilcoxen

John Demas, a well-respected and well-known attorney in the Sacramento area, tried a case in Sacramento County Superior Court titled *Yaffee v. Skeen, et al.*, which was appealed by the defense to the Third District Court of Appeal (2024) 106 Cal. App. 5th 1281. The Third District filed its opinion on November 25, 2024. This case seems to have complicated how past and future damages can be awarded pursuant to Civ. Code § 3045.1. John Demas will be appealing the case to the Supreme Court of the State of California.

Daniel Wilcoxen, WilcoxenCallaham LLP, is a CCTLA Past President and a Current Board Member

The jury awarded Plaintiff David Yaffee $3,299,455 in damages for past and future economic and non-economic losses. He was injured in an absolute liability rear-end collision when struck by a truck driven by defendant Joseph Skeen while acting as an agent for a corporate entity. The award was appealed by the defense to the Third District Court of Appeal appealing: 1) the award for past medical damages; 2) the award for future medical damages; 3) the awards for past and future lost earnings; 4) the award for future economic damages, pain and suffering; and 5) the award for costs and pre-judgment interest.

The award for past and future medical expenses was reversed, and the award for costs and pre-judgment interest was vacated. The remainder of the judgment was affirmed.

Underlying Facts

After the accident that occurred on June 16, 2015, Plaintiff began suffering a burning sensation in his back and neck and tingling in his right leg. After a short time, in July 2015, Plaintiff's back pain became severe, requiring a trip to UC Davis Emergency Room where he reported pain of 9 out of 10. Plaintiff underwent an MRI of his lumbar spine, showing disc herniation at the L5-S1 level. A UC Davis surgeon found that the herniation was acute and consistent with being caused by the collision.

Plaintiff was treated with a muscle relaxer and pain medication and was discharged the same day.

A microdiscectomy was performed in December 2015, and the numbness and tingling in his right leg persisted. Thereafter, the spine surgeon performed another surgery on the adjacent level to the prior surgery, and Plaintiff was off work through August 2020.

A further revision surgery was performed in 2021 to remove scar tissue; however, the symptoms returned thereafter. Plaintiff stopped working in May 2021. He was diagnosed with "failed spine surgery syndrome." Subsequent treating physicians found there was no accommodation that could be made such that Plaintiff could return to work as nothing helped with the pain. At trial, Dr. Ronnie Mimran testified medically that Plaintiff's condition was permanent. Carol Hyland, a lifecare planner, testified regarding the reasonable value of Plaintiff's past medical bills and future medical services Dr. Mimran had identified. Craig Enos, a CPA, translated Carol Hyland's estimates of medical expenses into present value amounts and the amount of past and future income loss. The jury awarded Plaintiff $3,299,455 in total damages. A JNOV and a motion for a new trial filed by the defendants was denied. An additional $1,645,685 was awarded in costs and interest.

The Third DCA first considered past medical expenses. The court found it must establish that the services were reasonable. Defendants challenged the award for past medical services on two bases. First, they argued the trial court erred in proper measurement of past medical damages and thus made an erroneous decision regarding the admissibility of evidence concerning said damages. Second, they claimed the substantial evidence did not support the award.

As a result of defendants' appeal, the Third DCA reversed and remanded for a

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President's Message

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sions have emerged from members at all experience levels.

I strongly encourage all members to utilize CCTLA's events, resources, and educational programs. These offerings benefit attorneys at every experience level in achieving better outcomes for their clients. Don't remain on the sidelines—get involved and participate! While many excellent lawyers dedicate significant time to our organization, we also have outstanding members whose participation we rarely see (I know who you are). We need your expertise and knowledge! The more we share our collective wisdom, the more effectively we can advocate for our clients.

Some of our resources, programs and events include the following:

- *The Litigator* publication which you are reading right now.
- Our website, www.cctla.com, which is being redesigned with new features and is expected to launch in the next few months.
- Our List Serve: Sharing of ideas and information with over 300 CCTLA members.
- CAOC Justice Day, April 8, 2025: Meet with state legislators and key members of staff in their Capitol offices.
- Spring Reception & Silent Auction benefiting Sacramento Food Bank & Family Services, May 29, 2025: This event routinely raises more than $100,000 for the food bank.
- Annual Meeting & Holiday Reception: CCTLA's end-of-year party and awards presentation held lately at Sutter Club.
- Monthly Q & A Problem Solving Lunches by Zoom.
- Educational programs including luncheons, seminars, webinars

Upcoming educational programs include:

- March 13-14, 2025: Napa/Sonoma Travel Seminar co-sponsored by CCTLA with CAOC.
- March 28, 2025: Dorothy Clay Sims – "Defeating the DME"
- April tba, 2025: John Demas – Voir Dire.
- September 26, 2025: Dan Wilcoxen – Liens Update

As we move through 2025, CCTLA's goal is to enhance member engagement and continue building on our organization's legacy of excellence in plaintiffs' advocacy. Together, we can make this year one of unprecedented growth and achievement. I'll be attending as many of our events as possible and look forward to hearing your stories, challenges and successes. Our profession thrives on personal connections and shared experiences.

I extend my gratitude to Dan Glass for his leadership as president this past year, and warmly welcome Kellen Sinclair as an excellent addition to our board. I look forward to seeing all of you at our programs and events this year and collaborating with the board to make it all happen.

New Complications

Continued from page 3

new trial on the amount of past medical damages "because the trial court improperly interpreted the scope of the Hospital Lien Act (HLA); section 3045.1, et seq."

The court stated, "Plaintiff brought a motion *in limine* to prevent defendants from introducing evidence that Plaintiff incurred any amount other than the reasonable and customary charges for his past medical expenses. The trial court granted the motion 'in that' it permitted Plaintiff to present evidence of the reasonable value of medical services he received that were subject to a lien UC Davis had perfected under HLA."

Defendants argued that the HLA only applied to emergency medical services. Citing language in the Civil Code section 3045.1 that applies the HLA to "emergency and ongoing medical or other services" and *Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595, 604 (*Parnell)*, the trial court concluded the HLA intended to capture all hospital services provided because of a third party's negligent or wrongful act.

Defendants brought a motion *in limine to* preclude Plaintiff from presenting evidence that Plaintiff incurred anything for past medical services above what he actually paid for medical services. The court denied said motion to the extent it sought to prevent the plaintiff from presenting evidence of the reasonable value of services Plaintiff received that were subject to a lien by UC Davis under the HLA, but otherwise granted the motion.

The Hospital Lien Act

HLA Section 3045.1 states, every person or entity "maintaining a hospital licensed under the laws of this state **which furnishes emergency and ongoing medical or other services** to any person injured by reason of an accident or negligent or other wrongful act not covered by [workers' compensation] shall, if the person has a claim against another for damages on account of his or her injuries, have a lien upon the damages recovered, or to be recovered, by the person . . . to the extent of the amount of the reasonable and necessary charges of the hospital and any hospital affiliated health facility, as defined in Section 1250 of the Health and Safety Code, in which services are provided for the treatment, care, and maintenance of the person in the hospital or health facility affiliated with the hospital resulting from that accident or negligent or other wrongful act." [*Emphasis added*]

Parnell, supra, 35 Cal.4th at page 598, states, "If hospitals wish to preserve their right to recover the difference between usual and customary charges and the negotiated rate through a lien under the HLA, they are free to contract for this right."

Although, defendants did not dispute the UC Davis contract, the defendants argued that the HLA does not permit recovery under a lien for the services UC Davis provided i.e. the argument was "it wasn't emergency care."

Defendants argued that "the HLA only allows hospitals to collect when a plaintiff receives emergency services; and under the facts of this case, Plaintiff never received emergency services because he did not receive medical services immediately following the accident. "

Plaintiff disagreed, stating all medical services and ongoing medical or other services were related to the original accident. The court looked to the legislative history as enacted in 1961 re § 3045.1 and found the legislative history to originally have a time period not exceeding 72 hours.

The Third DCA stated, "If we were to read the statute to allow for HLA liens on patients that never receive emergency services, we would render the use of the words "emergency surplusage." The court went on to state, "The history suggests the 72-hour limit was removed because some patients treated in hospital emergency rooms remain in the hospital "for longer than 72 hours" and require "routine care after the initial emergency care is given." The court went on to state, "Under the revised (and current) version, the hospital could now recover for all 'treatment, care, and maintenance of the [patient] . . . resulting from [the] accident or negligent or other wrongful act.'"

In discussing the meaning of "emergency services", the appellate court stated, "The use of the term "emergency . . . services" is ambiguous. The term could refer to services provided by a hospital when a person arrives at the hospital's emergency department and seeks care. It could refer to any services a hospital provides when a patient needs immediate care even outside the emergency room.

The appellate opinion is an attempt to rationalize not allowing the lien for ongoing care arising from the original accident. They justify this argument by stating, "We may assume that, when the Legislature amended section 3045.1, it was aware of how 'emergency services' was defined in statutes that require hospitals to provide emergency services to uninsured patients."

The court went on to state, **"We conclude the HLA only applies to services obtained while the patient remains in the emergency room, hospital, or an associated care facility as needed to relieve or eliminate the emergency medical condition—i.e., the acute status that brought the patient to the emergency room—within the capability of the facility. That is, it applies to services received before the patient is discharged to go home. The HLA does not apply so broadly as to also include services UC Davis provided plaintiff after the emergency room staff discharged him. To the extent *Newton v. Clemmons* (2003) 110 Cal.App.4th 1, 10-13 (Newton), suggests otherwise, we disagree." [***Emphasis added***]**

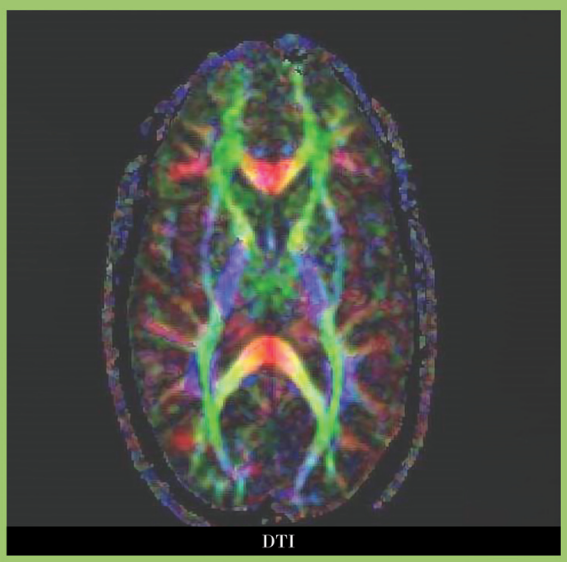
The Third DCA went on to state, "A variety of factors convince us that the term 'ongoing' is limited to services a hospital (or affiliated facility) provides a patient while the patient remains undischarged from the hospital (or affiliated facility) following admission through an emergency room. **It does not include all future services the patient may receive from the hospital related to the underlying injury that led to the emergency treatment."** [*Emphasis added]*

The court further stated, "This language suggests the lien is meant to cover inpatient care a patient receives following admission through the emergency room." They go on to state thereafter, "Though the Legislature expanded the scope of covered services by dropping the 72-hour requirement and allowing for services that were 'ongoing' to the emergency services, it did so with the understanding that, "[s]eriously injured persons **are in the hospital for longer than 72 hours and often require routine care after the initial emergency care is given."** [*Emphasis added*]

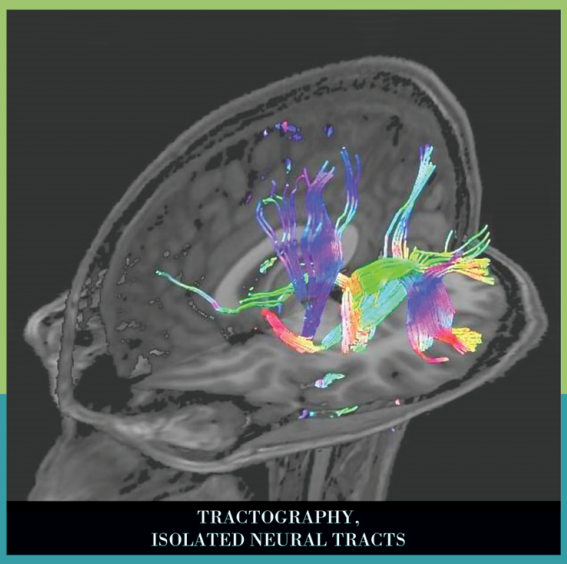
Regarding future damages, disregarding the fact findings of the jury the court said, "We find the total amount awarded as damages for future medical expenses is not supported by substantial evidence." Enos calculated as a present value of $749,986. The jury awarded $685,993. The court stated, " 'there must be evidence to show such a degree of probability of their occurring **as amounts to a reasonable certainty** that they will result from the original injury.' [*Emphasis added*] [*Citations*]"

It appears to me that the court was weighing the evidence as opposed to giving deference to the jury verdict.

Standard MRI



DTI



TRACTOGRAPHY,
ISOLATED NEURAL TRACTS

DTI *and* TBI

DTI stands for diffusion tensor imaging, a type of medical resonance imaging (MRI) scan.

The DTI MRI is more sensitive than regular MRIs, so it will give you more details about a head injury, whether an explosion, anoxic injury, motor vehicle accidents, fight, fall, or another violent event was experienced. The DTI validates the injury. So, if the brain trauma does exist a DTI is your best option to detect an injury. It's more accurate than the PET Scan, CAT Scan or SPECT for determining the presence and severity of your traumatic brain injury. Particularly in cases where a CT or even a normal MRI doesn't show abnormalities, the DTI can show the real impact of your high-velocity accident.

The DTI software runs on MRI machines, with a 3T magnet at University Medical Imaging. It runs concurrently with regular MRI scans. DTIs have been used long enough here at University Medical Imaging, with a solid preponderance of evidence to hold up in court. If you are seeking a DTI MRI, a doctor must send a medical referral to us. **Contact us at 916-922-6747**

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2025 Deadlines for The Litigator

CCTLA's magazine, The Litigator, is published quarterly, and the remaining 2025 deadlines for submitting items for publication and for advertising are:

Summer issue: May 8
Fall issue: Aug. 7
Winter issue: Nov. 6

For advertising, contact Debbie Keller, 916-917-9744 or debbie@cctla.com

To submit an item for publication, contact Jill Telfer, at jtelfer@telferlaw.com

New Board Member: Kellen Sinclair

Kellen Brian Howard Sinclair is partner at Stawicki, Anderson & Sinclair, a law office focusing on personal injury. Sinclair received his Bachelor's degree in Political Science from the University of California, Los Angeles, and his Juris Doctor degree from the University of the Pacific, McGeorge School of Law. He was admitted to the State Bar of California in 2014.

Throughout his career as a personal injury attorney, he has represented clients who need assistance on claims related to car accidents, dog bites, wrongful death and more. He performs extensive pre-litigation and litigation work, which involves resolving disputes with insurance companies and their attorneys to get his clients the most value for their case.

Sinclair resides in Fair Oaks, CA, with his wife, two daughters, two dogs and cat. He often returns to his hometown in the Bay Area to visit with family and friends.

KAYVAN HADDADAN, M.D.

ADVANCED PAIN DIAGNOSTIC & SOLUTIONS

Kayvan Haddadan, M.D., is board-certified in pain medicine, physical medicine and rehabilitation. As the founder, CEO and medical director of Advanced Pain Diagnostic & Solutions, he ensures that his patients receive the very best care by taking a comprehensive approach to pain management and taking the time to find the best treatment for individuals under his care. He understands that pain can be psychological as well as a physiological response and strives to provide his patients with minimally invasive, comprehensive options to ensure that they maintain better overall well-being in the long run.

What types of pain does your practice treat?

Our medical professionals treat chronic pain conditions including but not limited to: Whiplash, pain after back or neck surgery, spinal pain, sciatica/nerve pain , joint and arthritis pain, peripheral nerve pain, muskuloskeletal pain and injuries, cancer pain, degenerative disc disease, diabetic nerve pain, and depression post MVA.
Most medical conditions involving pain are resolved through the body's normal healing process.

What type of insurance do you accept?

We work on liens. We also accept medical payments (Medpay) and various private and commercial insurances. For more inquiries, you can reach the office at the contact information below.

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Reflections on Department 59

By: Judge Geoffrey Goodman, Ret.

I had the privilege and pleasure of serving in Department 59 as Sacramento Superior Court's Supervising Settlement Judge for 2023 and 2024. I found the assignment to be the most satisfying of my 15 years on the bench. Though I enjoyed the energy of a calendar court and loved presiding over trials, both civil and criminal, I found in Department 59 I could devote my time to sitting down with the attorneys and their clients to understand not only the facts and legal issues as the litigants saw them, but also intangible factors and motivations that might be driving the lawsuit.

It was enormously gratifying when a case resolved, particularly those where the parties were far apart and convinced there was no hope of settlement when the conference began (I have to admit, being called a miracle worker on occasion can go to one's head!). Of course, it is not the judge who settles cases. It is the parties and their counsel who choose to resolve the case instead of continuing to litigate. The settlement judge can only hope to help the parties understand the benefits of settlement compared to the risks of litigation.

Long-Cause Civil Settlement Program

Recognizing that good-faith efforts to settle civil cases are an integral part of the judicial process, the Sacramento Superior Court established a mandatory civil settlement program. Sections 2.93 and 2.94 of the Local Rules of Court prescribe the program's requirements. All long cause civil cases to be heard downtown are set for a mandatory settlement conference in Department 59 about 30 days before trial. The conferences are scheduled for half-day sessions Monday through Thursday, with Fridays reserved for voluntary settlement conferences. During my tenure we heard, on average, four to sixMSCs each day and settled roughly 60% of those cases.

Our settlement program could not proceed without the volunteer efforts of our local legal community. Each week, the clerk identifies cases needing coverage and emails those on the pro tem list seeking volunteers. We are fortunate to have many CCTLA members who volunteer their time to act as pro tems. Because we anticipate the number of conferences may increase as the court is able to process more civil cases, I hope that those who currently serve as pro tems will set a goal to handle at least one more case than they did last year! I also encourage those who have not done so, to apply to be on our pro-tem panel by contacting Department 59 to request an application. Many have asked if they can serve as pro tems if they are inactive status. The answer is yes. Any member of the state bar in good standing, whether on active or inactive status, may act as a temporary settlement judge.

"Our settlement program could not proceed without the volunteer efforts of our local legal community. Each week, the clerk identifies cases needing coverage and emails those on the pro tem list seeking volunteers. We are fortunate to have many CCTLA members who volunteer their time to act as pro tems . . . Many have asked if they can serve as pro tems if they are inactive status. The answer is yes. Any member of the state bar in good standing, whether on active or inactive status, may act as a temporary settlement judge."

Mandatory Settlement Conference Statements

Not less than 10 days before the hearing, each side must file with Department 59 a settlement conference statement. The statements may be emailed to the court. The statement must be sufficiently detailed to provide the settlement judge with the information necessary to conduct a meaningful conference. Counsel must certify they are aware of the rules governing settlement conferences and that they have a good faith belief in the accuracy of the contents of the statements. The statement must follow the format prescribed in Appendix C to the Local Rules.

The statement must identify the parties and their counsel, provide a brief summary of the case and identification of major factual or legal issues in dispute, and set forth prior offers and settlement efforts. Plaintiffs are to explain their position on the case and list economic and general damages and efforts to negotiate any liens. For economic damages in personal injury cases, counsel must include a list of all special damages claimed,

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Court 59 / Settlement Program

Continued from page 11

listing separately and totaling damages for medical care and loss of earnings. If applicable, plaintiffs must also list the basis and amount of attorney fees or punitive damages sought. Defendants are to explain their position on the case, any attorney fees that may be awarded, medical payment reimbursement issues and any anticipated post-trial reduction in special damages.

In all cases, counsel are expected to bring to the settlement conference medical records, deposition excerpts and other physical evidence that may be pertinent to the settlement of the case.

The settlement conference statements are not made part of the court's file. Counsel should be aware that mandatory settlement conference statements must be served on opposing parties. If you have information you wish to share with the settlement judge but not the other side, do not include it in your statement.

While the parties are encouraged to include attachments to their statements, because many of these are often voluminous, it has been the practice of our clerk to email the statement and attachments to the settlement judge, but print out only the statement itself. After reviewing the statements and attachments I would often print out portions of the attachments I thought were important, but generally not all of the attachments. Since the judge may not have a printed copy of all of your attachments, counsel should bring a copy of any exhibits that would be helpful in settlement discussions even if they had been attached to the filed settlement conference statement.

Settlement Conference

All persons whose consent is required to achieve a binding settlement must personally attend the settlement conference. This requires attendance by each individual party, authorized representative of an entity party, the attorneys for each party, and if a defendant is insured, the attorney and claims adjuster for the insurance company. Each attendee must come with full authority to negotiate and settle the matter. The attorneys must be thoroughly familiar with evidence as to liability and damages. The attorney scheduled to try the case should personally appear unless there is good cause for his or her absence.

If there is good cause, the above personal attendance requirements may be modified or a remote appearance can be granted by the supervising judge. A request, stating the reasons, must be filed and served on the opposition at least seven court days before the hearing. Before submitting the request, the requesting party should have met and conferred with other parties. A formal objection to the remote appearance request can be filed within three court days of the hearing. Since I generally tried to rule on the remote request the day it was received, the objection may come after the remote request was approved. To my recollection, I only received two formal objections in

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Court 59 / Settlement Program

Continued from page 12

my two years in the Department. I found one of these objections raised valid concerns and revoked the previously granted permission to appear remotely. Local attorneys should be aware that those residing in the greater Sacramento area must appear personally absent a compelling justification.

This, of course, brings up the question of the impact of remote versus in-person appearances on the quality and likely success of the settlement conference. I have heard many opinions on the subject. Most seem to believe in-person conferences are more likely to result in settlement than those held remotely. The willingness to attend in person may suggest a greater desire to settle. Personal appearances avoid the potential distractions of zooming from home or the office. And personal appearances probably afford the settlement judge a better opportunity to evaluate a party's potential as a credible and/or sympathetic witness and foster a better environment for building empathy. For these reasons, and a desire to have more, rather than less, personal interactions in the post-pandemic world, I strongly encourage folks to appear in person. Even so, it seemed to me that cases settled at the same rate, whether the conference was held in person or when some or all participants appeared remotely.

Settlement conferences are informal and unstructured. At the outset, I advise the participants that the role of the settlement conference is not to decide disputed issues of fact, but to understand each party's position and desired outcome and try to assist in achieving a mutually acceptable result. Sometimes attorneys seem to want to try their cases before the settlement judge. While certainly it is important for the settlement judge to understand how the parties view the strengths of their case, the settlement judge will try to steer the conversation into a problem-solving, as opposed to adversarial, focus.

Attendees should try to be flexible in their time commitment. Many attorneys, particularly those from out of town, begin by asking how long we have. I have always replied "as long as it takes." It is not unusual for a morning conference to continue throughout the day or an afternoon conference to go into the evening if progress is being made

The court's minute order following a settlement conference records only whether or not the case was settled. Since Department 59 does not have a court reporter, the parties need to have something in writing to memorialize the key terms of the settlement for it to be enforceable as a Judgment pursuant to Code of Civil Procedure section 664.6. Often this is accomplished in a detailed settlement and release document prepared days after the settlement conference. At the settlement conference the parties may use the court's settlement template or prepare their own. In cases where all or some of the parties are appearing remotely, counsel often exchange emails to serve as a written record of the terms of the settlement and their stipulation that the settlement is enforceable pursuant to section 664.6.

Here are some things counsel can do to assist Department 59 and create the best chance of settling.

• Keep the Court Informed and Timely File Documents

This is pretty basic, but important. Each week, the clerk prepares the following week's calendar. Often, many cases still on our calendar have been settled but counsel has not provided immediate notification as required by Rule of Court 2.94 (G). Please contact the department as soon as a case settles or you know of another reason the settlement conference should not go forward. Also make sure your documents are filed on time. This includes settlement conference statements and requests for remote appearances.

• Submit a Thorough Settlement Conference Statement

A bare-bones statement often requires the settlement judge to take valuable conference time learning the basic facts of the case. Detailed and comprehensive settlement conference statements allow the settlement judge to quickly identify and focus discussions on key areas of dispute and the core issues that will determine if the case can be resolved.

• Confirm with Opposing Counsel Latest Demands and Offers Before Conference

The settlement conference statement must list all C.C.P. 998 offers and prior settlement negotiations. I was surprised at the number of cases where the parties disagreed over what prior offers or demands had been made or where the parties stood. As a starting point, I always found it helpful to clarify and seek agreement on the last demand or offer and who made the last move to facilitate the discussions.

Also, if a party is going to substantially change its settlement position at the conference, a not uncommon occurrence, I would encourage them to notify the other side in advance of the conference so they can factor the new demand into their expectations and perhaps seek different settlement authority.

• Prepare Your Client for the Conference

The client should understand the goal of the settlement conference and what their role will be. Counsel should discuss with the client settlement ranges they believe are reasonable given the nature of the case and risks of litigation.

• Be Patient and Flexible

Often participants get frustrated at the slow pace of negotiations at settlement conferences. Many also enter with the notion that the other side will never agree to what they want. But, as they say, you never know until you have tried. For example, often in a settlement conference one side will say something to the effect of "I'll make this move, but the other side needs to respond with X." Of course, the other side responds with a move, but something less than X. For whatever reason, sometimes litigants are only willing to move with baby steps rather than broad strides. Maintaining patience and flexibility as long as progress is being made is an important asset to have the best chance of success.

Conclusion

Department 59 plays a key role in the administration of justice in the Sacramento Superior Court. By achieving settlements in the majority of cases pending trial, the Civil Settlement Program helps to insure that there will be courtrooms available for cases that need to be tried. Thanks again to the volunteers who act as temporary settlement judges who make the settlement program work.

Now more than ever, we'll need to carefully evaluate insurance policies early in cases. Identifying additional layers of coverage, such as umbrella policies or excess liability policies, will remain essential for maximizing recovery

New Minimum Auto Insurance Limits in California: What They Mean for Personal Injury Attorneys and Our Clients

By: Kelsey DePaoli

Kelsey DePaoli, Law Office of Black and DePaoli, PC, is a CCTLA Board Member

As of January 1, 2025, California has enacted significant changes to its auto insurance laws, raising the minimum liability insurance limits for the first time in decades. For personal injury attorneys like me, and for the clients we tirelessly advocate for, these changes represent a seismic shift in how claims are handled and compensation is secured. The archaic limits we have had for so long just did not cut it anymore. It's been nearly six decades with the same minimum auto insurance limits, even though everything costs more. California's minimum auto liability limits lagged behind the realities of modern medical costs and economic losses. Under the previous law, drivers were required to carry only:

- $15,000 for bodily injury or death of one person
- $30,000 for bodily injury or death of more than one person, and
- $5,000 for property damage

These outdated limits often left our clients with insufficient compensation to cover their medical bills, lost wages and other damages. Thankfully, the new law increases these limits to:

- $30,000 for bodily injury or death of one person,
- $60,000 for bodily injury or death of more than one person, and
- $15,000 for property damage

Although I would have liked to see this increase be higher, it's a step in the right direction. This change will have a direct and positive impact on injured parties across California. Higher minimum limits mean greater access to adequate compensation, especially for those who suffer severe injuries in auto accidents. For too long, personal injury victims were sometimes left with inadequate compensation for that they went through due to the lack of coverage to pursue.

Many people carry the state minimum, and as we know, $15,000 would hardly cover your medical if you went by ambulance to an emergency room. It left so many innocent people upside down when they didn't do anything wrong.

However, while the changes are a step in the right direction, they still may not be enough for catastrophic injuries that result in hundreds of thousands—or even millions—of dollars in damages. It remains crucial for drivers to carry sufficient coverage, including underinsured motorist policies, to protect themselves and others on the road. As attorneys, we need to make sure we get the word

Continued on page 17

New Auto Insurance Minimums

Continued from page 16

out that you must carry uninsured/underinsured motorist on your policy to protect yourself and your loved ones.

The Impact on Personal Injury Attorneys

As personal injury attorneys, we play a vital role in advocating for victims, and these new limits will significantly impact our practice. Here's how:

1. Increased Settlement Opportunities

Higher insurance limits will likely result in more cases resolving at the policy limit, that which will at least cover the medical for smaller to moderate injury cases.

2. Potential Shift in Case Values

The new minimums will raise the baseline for case values, particularly for moderate-to-severe injuries. Attorneys will need to adjust settlement expectations in their firms. Bills are higher than ever, costs are higher than ever. Cases need to be evaluated higher.

3. Focus on Policy Analysis

Now more than ever, we'll need to carefully evaluate insurance policies early in cases. Identifying additional layers of coverage, such as umbrella policies or excess liability policies, will remain essential for maximizing recovery.

As a personal injury attorney, I've witnessed firsthand the frustration and heartbreak that can result from insufficient insurance coverage. Especially when someone is hurt and needs continued care, but there simply is not enough coverage or assets to pursue. These new minimum limits are a step in the direction of fairness and accountability on California roads. However, they are only part of the equation.

We must have these conversations with our clients right away, on the first call. They need to know of limits issues and the changes in the laws moving forward. Continued advocacy, education and legislative efforts are necessary to ensure that injured parties receive the justice they deserve.

For our clients, these changes bring hope for more equitable outcomes, although we are still going to see cases where a party could suffer great loss without enough to pursue. For us as attorneys, they present an opportunity to strengthen our commitment to serving as steadfast advocates. By staying informed and adapting our strategies, we can ensure that this new era of insurance law in California truly benefits those who need it most.

Navigating the Ethical Maze

California Advertising Laws for Personal Injury Attorneys

By: Justin M. Gingery

Justin Gingery
Gingery, Hammer & Associates, LLP, is a CCTLA Board Member

In the competitive world of personal injury law, advertising plays a critical role in attracting clients. However, California imposes strict regulations on legal advertising, particularly for personal injury attorneys, to ensure that potential clients are not misled. The California Rules of Professional Conduct (CRPC), particularly Rules 7.1 through 7.5, serve as the backbone of these regulations. Adherence to these rules is essential to avoid State Bar discipline, civil liability and reputational harm.

Truth and Transparency in Advertising

Rule 7.1 of the CRPC sets the standard: attorney advertising must be truthful and non-misleading. This rule extends beyond avoiding outright falsehoods. Attorneys must navigate the gray areas where even truthful statements could mislead when taken out of context. Some examples of advertising violations include:

- **Misleading information:** Advertising that provides a specific fee range for a service, but the lawyer intends to charge more
- **False or deceptive statements:** Making statements that are false, misleading or deceptive
- **Omitting necessary facts:** Failing to state facts that are necessary to make statements not false, misleading or deceptive
- **Implying money will be received by the client:** Depicting dollar signs or other monetary symbols, or implying that money will be received
- **Presenting the result of a case without facts or law:** Presenting the result of a case without providing the facts or law that led to the result
- **Depicting events that give rise to claims for compensation:** Using displays of injuries, accident scenes or other injurious events

Personal injury attorneys who advertise past case results must include disclaimers clarifying that outcomes depend on the specifics of each case. Statements like, "We've won millions for our clients" should be accompanied by disclosures that not all cases result in such outcomes. Similarly, promises like "Guaranteed success" or "We'll get you the highest settlement" are strictly prohibited.

The rule also applies to visual elements in advertising. Images of cash, luxury cars or extravagant lifestyles could imply unrealistic outcomes and run afoul of ethical guidelines. Transparency and accuracy are not just ethical obligations--they are essential to building trust with potential clients.

Solicitation: Ethical Client Outreach

California takes a firm stance on direct solicitation, especially in personal injury law, where clients are often vulnerable. Rule 7.3 prohibits direct in-person, live telephone or real-time electronic solicitation of prospective clients for pecuniary gain, unless the individual has a prior professional relationship with the attorney.

The law also bans the use of "runners" or "cappers" -- individuals paid to solicit clients on behalf of attorneys. This practice, illegal under Business and Professions Code Section 6152, is a persistent issue in personal injury law. Attorneys engaging in or benefitting from such practices face severe penalties, including disbarment and criminal prosecution.

Solicitation rules are particularly relevant in high-stakes cases, such as those involving catastrophic injuries or wrongful death. Attorneys must ensure that all outreach is ethical and respectful, avoiding any appearance of coercion or exploitation.

Specific Challenges for Personal Injury Attorneys

The nature of personal injury law invites heightened scrutiny of advertising practices. ***Here are some common pitfalls:***

- **Contingency Fee Advertising:** Personal injury attorneys often advertise their services on a "no fee unless you win" basis. While this is permitted, the advertisement must explain the contingency fee structure clearly, including any

Continued on page 19

Advertising's Ethical Maze *Continued from page 18*

costs that may still be charged to the client, such as court fees.

- **Testimonials and Endorsements:** Client testimonials are a powerful marketing tool, but they must accurately reflect actual experiences. Any endorsements from non-clients, such as celebrities or community leaders, must disclose whether compensation was provided.
- **Case Results:** Advertising past settlements or verdicts is allowed but must include disclaimers emphasizing that past results do not guarantee future outcomes.

By adhering to these principles, personal injury attorneys can avoid misleading potential clients while still promoting their expertise and success.

The Digital Advertising Frontier

The rise of online platforms has created new opportunities and challenges for personal injury attorneys. Websites, social media pages, and digital ads are now primary tools for client outreach, but they are subject to the same strict regulations as traditional advertising.

- **Pay-Per-Click (PPC) Ads:** Attorneys using PPC campaigns must ensure that their ads comply with Rule 7.1, avoiding hyperbolic claims or misleading language.
- **Social Media Marketing:** Posts and advertisements on platforms like Facebook and Instagram should be carefully crafted to avoid violating ethical guidelines. This includes avoiding sensationalist language or images designed to attract clicks.
- **Online Reviews:** While reviews are valuable for building trust, attorneys must not manipulate them. Offering incentives for positive reviews without disclosure or fabricating testimonials is both unethical and illegal.

The online world offers unparalleled reach, but it also demands vigilance to maintain compliance with California's advertising laws.

Billboards: Balancing Visibility and Ethics

Billboard advertising is a staple of personal injury law, particularly for firms seeking broad name recognition. These ads often feature bold claims, attention-grabbing slogans and high-visibility graphics. However, they are not exempt from California's strict advertising rules.

- **Bold Claims Require Careful Disclaimers:** Billboards that highlight large verdicts or settlements must include disclaimers in a readable format, clarifying that past results do not guarantee future success. Given the limited space on a billboard, attorneys must ensure that disclaimers are sufficiently prominent and legible to meet ethical standards.
- **Avoiding Misleading Imagery:** While dramatic images of car crashes or injured individuals can draw attention, they risk crossing the line into misleading advertising. Attorneys must ensure that such imagery does not create unrealistic expectations about the outcomes they can achieve.
- **Location Matters:** Billboard placement near hospitals, accident hotspots or locations frequented by accident victims may be perceived as exploitative. While not explicitly prohibited, such placements should be approached cautiously to avoid ethical concerns.

Billboards are a powerful tool for brand recognition, but their simplicity and visibility require careful adherence to the rules.

Penalties for Noncompliance

Failing to comply with California's advertising regulations can lead to unforeseen consequences. Attorneys found in violation may face:

- **State Bar Discipline:** This can range from private admonition to suspension or disbarment, depending on the severity of the violation.
- **Civil Liability:** Misleading advertising can result in lawsuits from clients who feel they were misled.
- **Reputational Damage:** In the age of social media, public exposure of unethical advertising practices can cause lasting harm to an attorney's reputation.

Compliance is not merely a legal obligation -- it is a cornerstone of professional integrity.

Enforcement

In California, enforcement of attorney advertising is primarily handled by the State Bar of California through its Rules of Professional Conduct, specifically Rule 1-400, which governs both advertising and solicitation; complaints regarding violations can be filed with the State Bar, and they can investigate, and discipline attorneys found to be in breach of these rules.

Key Points about California Attorney Advertising Enforcement

- **Governing body:** The State Bar of California.
- **Primary rule:** Rule 1-400 of the California Rules of Professional Conduct.
- **Who can file a complaint:** Anyone, including clients, other attorneys, or court officers.
- **Enforcement actions:** The State Bar can investigate complaints and take disciplinary action against attorneys found to have violated advertising rules.

A search of the State Bar website cases of discipline dating back to April of 2023 did not result in any examples or instances of attorneys who were disciplined for violating advertising rules. If discipline fails to act as a deterrent, what reason do attorneys have to follow the rules?

Ethical Advertising Builds Trust

California's advertising laws for personal injury attorneys are among the strictest in the nation, reflecting the legal profession's commitment to protecting consumers. Accordingly, attorneys must navigate these regulations carefully, ensuring that their advertising is truthful, respectful and transparent.

Whether through billboards, digital platforms, or traditional media, the goal of any advertisement should be to inform potential clients of their options -- not to mislead or coerce them. By adhering to the rules, personal injury attorneys can build trust, enhance their reputation, and most importantly, serve their clients with integrity.

Spring Reception 2025!

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

cordially invite you to attend

CCTLA's 21st Reception & Silent Auction

Thursday, May 29, 2025
5 p.m. to 7:30 p.m.
The Lady Bird House
1224 44th Street, Sac 95819

RSVP Deadline Wednesday May 22, 2025

Contact
Debbie Keller:
916 -917-9744
debbie@cctla.com

For over two decades, Allan Owen & Linda Whitney joined with CCTLA to support our Sacramento Food Bank & Family Services by hosting CCTLA's Auction & Reception that gives to those in need by raising funds for SFB&FS. This year, Chris and Amy Wood are again hosting the event in their home, the famous Lady Bird House!

Hosted beverages and appetizers will be provided, as well as valet parking.

This reception is free for CCTLA members, honored guests, and reception sponsors, including one guest, with all proceeds benefiting those in need within our community .

Sacramento Food Bank & Family Services

Silent Auction proceeds benefit Sacrmento Food Bank & Family Services, a local non-profit agency committed to serving individuals and families in need

CCTLA

Post Office Box 22403 Sacramento, CA 95822
Telephone: (916) 917-9744 Website: www.cctla.com

CCTLA'S 21st Reception & Silent Auction May 29, 2025

All Sponsorships and Silent Auction Proceeds Benefit Sacramento Food Bank & Family Services.

Sponsorship Opportunities

You will be helping the Sacramento community, and you will enjoy exposure to CCTLA members, the judiciary and more. A wonderful opportunity!

SILVER SPONSOR - $1,000 Donation to SFBFS

- 2 Quarter-page color ads in CCTLA's quarterly publication, The Litigator.
- Your name on event signage, announced at the reception & sponsor ribbon.
- Your name listed as a sponsor by SFBFS on several social media sites.
- 2 Tickets* to the reception.

GOLD SPONSOR - $2,500 Donation to SFBFS

- All of the above listed in the Silver Sponsorship, with 1 full-page color ad in The Litigator instead of the 2 quarter-page ads.
- 4 Tickets* to the reception.
- 2 Registrations for "Run to Feed the Hungry".

PLATNIUM SPONSOR - $5,000 Donation to SFBFS

- All of the above listed in the Silver Sponsorship, with 2 full-page color ads in The Litigator instead of 2 quarter-page ads.
- 6 Tickets* to the reception.
- 6 Registrations for "Run to Feed the Hungry".

DIAMOND SPONSOR - $10,000 Donation to SFBFS (1 Available)

Sponsorship Claimed

- All of the above listed in the Silver Sponsorship, with 2 full-page color ads in The Litigator instead of 2 quarter-page ads.
- Company logo/name on wine glasses & napkins used at the reception.
- 8 Tickets* to the reception.
- 8 Registrations for "Run to Feed the Hungry".

***Tickets are exclusive to the sponsor's business, including owners, partners, associates, employees, and their significant others.**

Your donation is tax-deductible.

Checks can be made payable to Sacramento Food Bank & Family Services and mailed to CCTLA (address below) or to pay by credit card, contact Heather Steves at SFBFS at 916-456-1980 x 3385 hsteves@sacramentofoodbank.org or pay online: http://www.sacramentofoodbank.org/cctla

Donate to the Silent Auction

The Spring Reception Committee is seeking donation for this year's silent auction. Donations can be event tickets (sports, theater, etc.), golf at a private club, vacation home/timeshare, artwork, professional services, dining, wine/liquor, gift baskets, electronics, gift cards, etc. When donating an item, please provide the item description, value and minimum bid amount and email the information to Debbie Keller (debbie@cctla.com). **Legal vendors who wish to donate to the auction, please reach out to Debbie Keller for donation details.**

Donated items/certificates can be dropped off at 2114 K St, Sac, CA, 95816 no later than Friday, May 16, 2025. If you are unable to drop off your donation, please contact Debbie at debbie@cctla.com.

CCTLA

Post Office Box 22403 Sacramento, CA 95822

Telephone: (916) 917-9744 Website: www.cctla.com

SACRAMENTO Food Bank & Family SERVICES

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

CCTLA Wraps Up 2024 with Honors, Scholarships, Mustard Seed Support and Induction of its 2025 Board

Advocate of the Year honors went to Kirill Tarasenko above, with Leeanne Tarasenko, and to Bryan Nettels

Honorees Jill Talley, Judge of the Year, and Stuart Talley, who received one of two Awards of Merit. Also honored was Maria Minney.

More Event Photos on page 25

Above, Cynthia Carillo, Courtroom Attendant of the Year, and Jill Talley, Judge of the Year

Below, Liana Luna, of the Mustard Seed School, with Dan Glass, CCTLA's 2024 president

CCTLA recognized the best of the best at its Annual Meeting and Holiday Reception on December 4 at The Sutter Club and made a large donation to the Mustard Seed School, from CCTLA and individual donations. The event was attended by more than 180 people, including 20 judges. Attendees enjoyed delicious food and drink and music provided by Bob Bale and Res Ipsa Loquitur.

The Honorable Jill H. Talley of the Sacramento County Superior Court was presented with CCTLA's Judge of the Year award. Judge Talley's court attendant, Cynthia Carrillo, was presented with the Courtroom Attendant of the Year award, and courtroom clerk, Trevor Shaddix (not present) received the Laura Lee Link Clerk of the Year award.

CCTLA Board Member Kirill Tarasenko and CCTLA member Bryan Nettels (not present) were announced as Advocates of the Year for their outstanding advocacy in the last 12 months, on behalf of consumers.

CCTLA members Stuart Talley and Maria Minney received Awards of Merit for their outstanding efforts on behalf of consumers. Talley was honored for his outstanding efforts on behalf of more than 100,000 public employees, standing up to CalPERS during a 10-year Class Action battle to obtain a $650-million result. Minney was recognized for her selfless, and so far, unpaid, work defending three nurses who were wrongfully sued by their physician employer after they cooperated with the California Medical Board in reporting his wrongdoing.

Three law students were recognized as the winners of CCTLA's law scholarships, as selected by the CCTLA board. Dan Glass, CCTLA's 2024 president, presented each with a $1,500 check: Deborah Ikenador, Lincoln; Erica Ramos, McGeorge; and, Gitty Shah, Lincoln (not present).

Mustard Seed School representative Liana Luna, was presented with CCTLA's $1,500 donation. Including the $1,500 from CCTLA, a total of $15,450 was donated to Mustard Seed School by CCTLA board members, members and friends.

Glass then turned the gavel over to Glenn Guenard, 2025 CCTLA president, who presented Glass with a plaque and thanked him for all his work as pesident during the past year.

Special Thanks to Our Holiday Reception Sponsors!

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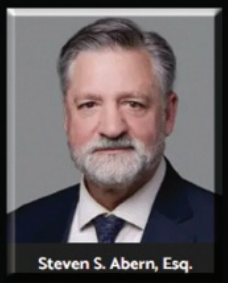
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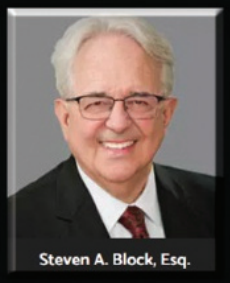
Hon. Paul L. Beeman (Ret.)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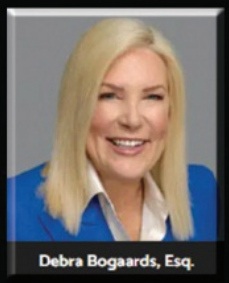
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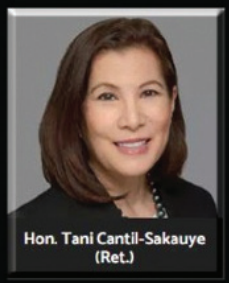
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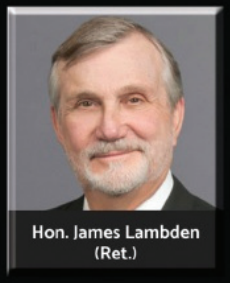
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Hon. Thomas Warriner (Ret.)


Hon. Marie S. Weiner (Ret.)

For information and scheduling, please contact Joanna Barron at Joanna@adrservices.com (415) 772-0900

CCTLA Reception

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CCTLA's 2025 Board of Directors

Hank Greenblatt and Bob Bale

Thao Duong, George Chryssafis, Mina Chryssafis and Melissa Yoest

Cynthia Carillo, Judge Emily Vasquez (Ret.), Jill Telfer, Judge Russell Hom (Ret.), Judge David De Alba (Ret.), Angela Lamarre and Rosemarie Chiusano Aubert

Chadwick Johnson, Dionne Choyce and CCTLA Vice President Amar Shergill

Judge Jill Talley, Judge Curtis Fiorini, Judge Christopher Krueger and Judge Peter Southworth

Eugene Willis and Dionne Choyce

Judge Michael Bowman, Judge Emily Vasquez (Ret.) & Commissioner Martin Tejada

Judge Geoffrey Goodman (Ret.), Judge Laurie Damrell and John Demas

Cynthia Crow, Elisa Zitano, David Smith and Rick Crow

THANK YOU

CCTLA Members and Friends for Helping CCTLA Raise $15,450 for Mustard Seed School!

- Michael Borkowski ($250)
- CCTLA ($1,500)
- Annaliza Chao ($50)
- Creative Legal Funding ($500)
- Rick & Cynthia Crow ($250)
- Cutter Law ($1,000)
- Kelsey DePaoli ($500)
- Dreyer Babich Buccola Wood Campora ($2,500)
- David Foos & Susana Russ ($500)
- Debbie Frayne Keller ($100)
- Daniel S. Glass ($500)
- Virginia Martucci ($250)
- Kellen Mayberry ($250)
- Piering Law Firm ($1,000)
- Eric Ratinoff ($1,000)
- Jay Renneisen ($250)
- Jacquie Siemens ($250)
- David Smith & Elisa Zitano ($250)
- Telfer Law ($1,000)
- Tiemann Law Firm ($1,000)
- Thomas Walker ($50)
- Wilcoxen Callaham ($2,500)

LEGAL TRIVIA NIGHT

THURSDAY, MARCH 13 | 8:00-9:30 PM

COMPLIMENTARY BEVERAGES & APPETIZERS

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Status of Civil Justice System at Sacramento Superior Court from the Civil Advisory Committee

1. Trials and Courtroom Availability

a. Success of getting trials out:

Judge Awoniyi reported that the court has been successful in getting more civil trials out as scheduled. The following statistics for civil trials were shared and are as follows:

Between January 2024 and the present:

- 432 civil trials were set
- 153 trials were assigned to a department for trial
- 7 cases were preassigned
- 0 cases were reset due to courtroom unavailability
- 140 cases were continued by stipulation of the parties
- 85 cases were settled
- 24 cases were dismissed
- 22 cases had non-appearances
- 560 total civil trials for 2023

b. Impact of 8/1/24 opening of more slots for trials:

• There are currently additional openings online for trials to take place in the next few months.

c. Current use and success of pre-assignments:

• The pre-assignment program started in August 2024 and the court has had 10 stipulations submitted so far for pre-assignment and all were granted.

• The court will add information about pre-assignments to the Department 47 webpage and the trial setting page on the court's website.

d. Complex Department availability:

• Judge Damrell reported that the complex calendar availability was impacted by the holiday schedule. The first available date for complex trials is February 28, 2025, but parties are encouraged to call the Complex Department if they need to get on the calendar sooner.

2. Retirements and Appointments

• Judge Andre K. Campbell has announced his retirement.

• Four (4) new judges were appointed by Governor Newsom: Judge Robert Artuz (elevated from commissioner to judge); Judge Lee S. Bickley, who will take her oath of office shortly and be assigned to the civil division; Judge Joseph M. Cress, a former public defender; and Judge Brenda R. Dabney, experienced in juvenile law.

3. Law and Motion Department Update – Judge Krueger and Judge Sueyoshi

• Delays in obtaining hearing dates remain an issue. Civil filings are materially increasing, which contribute to availability of law and motion hearing dates.

• To ease the backlog and increase hearing date availability Judge Gevercer has been assisting in law and motion and handling demurrer motions/hearings on Fridays.

• Court administration is working on developing a new design for the law and motion department, including adding one to two additional judges.

• The law and motion department requests that parties not over-reserve hearing dates. If a party no longer needs a hearing date (e.g., the issue has been resolved or if the case settles), then they should release that hearing date as soon as possible so that other parties can use the date.

• It is the department's preference to receive the actual motion at the same time applications to shorten hearing time are being filed. This gives the Judge an idea of the issues at hand in the motion and greatly assists the court.

• Judge Sueyoshi wants to make sure that attorneys know the difference between requesting an order shortening time and moving to advance a hearing date utilizing California Code of Civil Procedure (CCP) 1005 (b) (e.g., a motion for summary judgment hearing date before a trial date). With respect to moving for an order shortening the statutory notice period, the moving party must show "good cause" which includes a showing of due diligence. In contrast, a motion to advance a hearing date (just finding another hearing date) simply requires providing CCP 1005 (b) notice versus establishing good cause to shorten time. Attorneys should make sure that their applications contain the requisite good cause and due diligence showings with respect to the latter.

4. Update on Courthouse Construction

• The new courthouse is almost completed. It (was) expected that occupancy will be officially certified in early January 2025, and the court will be moving in during the summer of 2025.

• At this time, it does not appear as though the court will be able to also continue to utilize the Halls of Justice Building once the new courthouse opens.

5. Other

• Two new OSC assignments/calendars were announced in order for the court to be more robust in managing cases. When cases are not at-issue for a long period of time and are stuck going nowhere in case management (e.g., unserved parties; cases sitting for more than 3 years; etc.), they will be sent to this new OSC calendar.

• The first such OSC calendar (was) Nov. 1, 2024

Continued from page 2

Prior to deliberations, the trial court instructed the jury on negligence and premises liability but refused to instruct on the heightened duty of care for common carriers. Following two hours of deliberations, the jury came back with a defense verdict.

Plaintiff filed a motion for a new trial, arguing that the court erred in declining to instruct on the common carrier theory. The motion was denied, and Plaintiff appealed.

ISSUE: Does the heightened duty of a common carrier apply while waiting just prior to transit.
RULING: No. Affirmed.

REASONING: Common carriers owe a heightened duty of care to their passengers. Amusement park owners are common carriers while operating their rides. However, no common carrier relationship arises unless a passenger surrenders control of their safety to another. Sometimes a person surrenders their safety in brief windows immediately before transit. This occurs when (1) the person demonstrates an intent to become a passenger; (2) the carrier takes some action indicating acceptance of the person as a passenger, and (3) the person is placed under the control of the carrier.

In the instant case, Magic Mountain did not take any action to accept Plaintiff on the ride. She had not yet stepped onto the boarding platform, and the ride operator had not conducted any final checks, which would mean she had been accepted for transit. The court found that Plaintiff had not placed herself under the control of Magic Mountain because, at that point in time, she still had the opportunity to exit the line/boarding area without riding the ride.

MURPHY v. CITY OF PETALUMA
2024 1DCA/1 California Court of Appeal,
No. A168012 (November 25, 2024)

PARAMEDICS DO NOT OWE DUTY TO INJURED PERSON WHO REPEATEDLY DECLINES MEDICAL ASSISTANCE

FACTS: In February of 2020, Plaintiff Marites Murphy was involved in a head-on car collision. After the accident, both drivers were able to get out of their vehicles and walk around. When paramedics arrived at the scene of the accident, that is how they found all the parties.

Once on the scene, the paramedics approached Murphy and inquired if she was hurt and needed medical attention. She told them that she was not hurt and did not need medical assistance. Paramedics asked Murphy a second time if she was hurt, and she again declined any medical care or intervention telling them that she was fine.

At the scene Murphy did not show any signs of head trauma and to all witnesses she appeared responsive and alert. Despite her normal appearance, one of the paramedics approached her and explained it was possible she could have a head injury that she was unaware of or that could delay in presenting itself and be life-threatening. The paramedic advised that Plaintiff be transported to the hospital as a precaution, but she again declined.

Later that evening, Plaintiff suffered a stroke at home. The stroke left her with permanent brain damage, paralysis and language impairment.

Plaintiff thereafter sued the City of Petaluma for gross negligence. The city thereafter moved for summary judgment on several grounds, including that the paramedics owed Murphy no duty based upon her repeated refusals of medical assistance. The court agreed and granted the city's motion.

ISSUE: Do paramedics assume a duty of care to provide an injured person with medical care if the person repeatedly declines?
RULING: No. Affirmed.

REASONING: To assess liability for an assumed duty under a "negligence undertaking doctrine," a court must assess the scope of the duty assumed based on the nature of the undertaking.

The paramedics in this case did not make Murphy any promises with respect to medical assistance, and they did not fail to follow through on any such promises. They did not ignore requests for assistance; on the contrary, they urged plaintiff to accept medical assistance and warned her that symptoms of a serious, even life-threatening, injury could occur if delayed. Thus, the paramedics left plaintiff in exactly the position she occupied before they arrived on the scene. Murphy's repeated refusal of medical care dictated the particular level of service provided in the viewing the duty of care through that scope, any duty was satisfied.

CHAVEZ v. CALIFORNIA COLLISION, INC.
2024 1DCA/3 California Court of Appeal,
No. A167658 (December 10, 2024)

CALIFORNIA LABOR CODE SECTION 218.5 SUPERCEDES CCP 998 PROHIBITING COST SHIFTING IN A WAGE AND HOUR CLAIM LAWSUIT WHERE THE EMPLOYER IS PREVAILING PARTY

FACTS: Plaintiff Samuel Zarate sued his employer, California Collision, for various wage and hour employment claims. During the pendency of the litigation, defendant made a settlement offer to Zarate that was not accepted, and the case proceeded to trial. The jury found in Zarate's favor, but the amount of the damage award was less than defendant's settlement offer.

The trial court thereafter awarded costs to defendants pur-

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suant to section 998 of the California Code of Civil Procedure in the amount of $33,152. Zarate appealed arguing that CCP 998 was superseded by Labor Code 218.5, which precludes an award of costs to an employer in wage an hour lawsuit where the employee has prevailed. The court disagreed and entered judgment for defendants.

The plaintiff appealed. arguing that the trial court erred when it awarded costs to defendants under CCP section 998 due to the contrary provisions of Labor Code section 218.5.

ISSUE: Does Labor Code section 218.5 supersede CCP 998?
RULING: Yes. Reversed.

REASONING: CCP section 998 allows a party to recover costs if the opposing party rejects a qualifying settlement offer and fails to secure a more favorable outcome at the time of trial. That conflicts with Labor Code section 218.5, which states that in any action brought for the nonpayment of wages, an employer is only entitled to costs if they were the prevailing party and if the court determines the employee brought the action in bad faith.

The court found that California precedence dictated that the Labor Code superseded general cost-shifting provisions. The court also emphasized a strong public policy in supporting the rights of employees to bring wage and hour claims without the fear of exposing themselves to significant costs.

Because Zarate was the prevailing party, the trial court's order awarding costs to defendants was reversed.

GREENER v. M. PHELPS, INC.
2024 4DCA/1 California Court of Appeal,
No. D082588 (December 31, 2024)

JURY INSTRUCTION ON INCREASED RISK WAS PROPER WHERE JIU-JITSU INSTRUCTOR CHOSE TO USE IMPROPER MOVE, INJURING PLAINTIFF

FACTS: Plaintiff Jack Greener was a student of Brazilian jui-jitsu and suffered a fractured neck and spinal cord injuries due to a series of moves his instructor, Francisco Iturralde, performed on him while sparring at Del Mar Jui-Jitsu Club. The club was owned and operated by M. Phelps, Inc.

Greener sued Iturralde for negligence and alleged M. Phelps, Inc. was vicariously liable. At trial, defendants invoked the primary assumption of risk doctrine, contending they had no duty to protect Greener from incurring these injuries in the inherently risky sport of Brazilian jui-jitsu.

The relevant jury instruction on primary assumption of risk, CACI No. 471, provides two alternative standards under which a sports instructor may be liable to an injured student. The applicable standard depends on the particular facts of each case. Option 1—the primary assumption of risk doctrine—holds an instructor liable only if the instructor intentionally injured the student or acted so recklessly that the conduct was "entirely outside the range of ordinary activity involved in teaching" the sport. Option 2—a sports-specific negligence standard—imposes liability if the instructor "unreasonably increased the risks to" the student "over and above those inherent in" the sport. (CACI No. 471.)

The court instructed the jury on option 2, finding it most applicable to the facts. The special verdict form mirrored the instruction. The jury, by a vote of 9 to 3, found in favor of Greener and awarded him $46 million in damages.

Defendants appealed on several issue,s including that the trial court: (1) prejudicially erred by (a) instructing the jury on CACI No. 471, option 2, and (b) furnishing a verdict form based on option 2.

ISSUE: Is it proper to instruct a jury on increased risk where the evidence supports that there was risk created above and beyond those inherent in a dangerous sport?
RULING: Yes. Affirmed.

REASONING: The trial court correctly instructed the jury on option 2 of CACI No. 471 and properly used the corresponding verdict form. Although the California Supreme Court has limited liability to option 1 when "it is alleged that a sports instructor has required a student to perform beyond the student's capacity or without providing adequate instruction" (*Kahn v. East Side Union High School District* (2003) 31 Cal.4th 990, 1011 (Kahn)), Courts of Appeal have applied option 2 in cases where the instructor, for example, (1) "encourag[ed] or allow[ed] the student to participate in the sport when he or she [wa]s physically unfit to participate or" (2) permitted the student "to use unsafe equipment or instruments" (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 845 (Eriksson)).

While sparring with Greener during a Brazilian jui-jitsu class, Iturralde gave no demonstration or active instruction. Instead, he acted more like a student co-participant than an instructor when he immobilized and executed a series of maneuvers on Greener.

But as an instructor with superior knowledge and skill of Brazilian jui-jitsu, Iturralde was differently situated from other students, and thus he can—and the court concluded, should—be held to a different standard.

There was evidence Iturralde knew he had created a situation posing heightened risk to Greener's safety beyond that inherent in Brazilian jui-jitsu and had the time and skill to avoid that risk, yet he consciously chose to proceed.

The risk an instructor will perform a maneuver on a student after immobilizing the student and knowing it will injure the student is not an inherent risk of Brazilian jui-jitsu sparring. On those facts, the court concluded the trial court elected the proper standard—option 2 of CACI No. 471—under which Iturralde could be held liable.

Member Verdicts & Settlements

Verdict: 8,525,390.07

Lee/Foster v. Sundial Lodge

Wrongful Death

Total Verdict: $8,525,390.07, plus costs and interest TBD
$6,394,042.55 net verdict after comparative fault
$3,000,000: Past pain, suffering, and disfigurement
$2,000,000: Loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support from date of death to verdict
$3,000,000: Loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support from verdict through Decedent's life expectancy
$500,000: Loss of training and guidance from verdict through Decedent's life expectancy
$15,180.07: Past medical expenses
$10,210: Past funeral and burial costs

Plaintiff's Counsel: CCTLA Board member **Anthony Garilli of Dreyer Babich Buccola Wood Campora, LLP,** and Catie Barr and Brandon Storment of Barr Mudford, LLP
Defendant's counsel: Dana Denno and Christopher Kent of McCormick Barstow, LLP
Court & Judge: Shasta Superior, Hon. Judge Benjamin Hanna
Trial Dates: Nov. 4, 2024 – Dec. 18, 2024

Case Summary

Decedent Jenell Foster was as 67-year old African-American woman being housed at Defendant Sundial Lodge as part of a program to assist the homeless in Redding, CA, during the COVID-19 pandemic. Defendant alleges that the motel had rules against 3rd Party appliance usages. Foster possessed a toaster and a hot plate in her room. Defendant admitted it was aware Foster possessed these items but allowed her to keep them. A fire broke out in Foster's room, and the origin and cause was determined to be the toaster.

Defendant alleged that at the time of the fire, Foster was standing on the 2nd-floor balcony in front of her room with her door open and the window open approximately 12 inches. Defendant further alleged that the owner of the motel was outside for three to four minutes, watering plants, and observed Foster standing on the balcony smoking a cigarette.

Defendant's owner claimed that after three to four minutes, she noticed smoke billowing from Foster's window and that 10 to 30 seconds later, Foster also noticed the smoke and ran back into the room, shutting the door behind her. Foster was found badly burned in the bathroom and perished in the fire. Plaintiffs alleged there was no single-station smoke detector in the motel room. Defendant claimed there was and that Defendant's owner tested it weekly.

Trial Summary

- There were a total of 55 MILS filed.
- Plaintiffs were Foster's adult children. Garilli represented the three adult daughters, and Barr and Storment represented the adult son.
- Plaintiffs propounded a CCP § 998 Offer of Compromise for Defendant's represented policy limits of $2,000,000 on May 2, 2023, that was allowed to lapse. Plaintiffs made an offer of settlement of $4 million on November 1, 2024 just before MILS were heard. Plaintiffs then made an offer of settlement of $6 million after MILS that was available to Defendant until the close of jury selection and opening statement.
- Defendant's offer before trial was $250,000 to the Estate of Jenell Foster, $50,000 to Foster's adult son, and no offer was made to the adult daughters.
- The jury's verdict was unanimous as to all questions, except for the issue of comparative fault. The jury found Defendant Sundial Lodge negligent at apportioned 75% fault to the Defendant. The jury also found Foster was negligent and apportioned 25% fault to her.

Verdict: $479,418

Sisson v. Sandie, et al. and related cross-action Sandie v. Sisson

Breach of Contract, Real Estate Project

Total Verdict: $479,418
1st Phase: Verdict in favor of Plaintiff as to dispositive issue.
2nd Phase: Verdict on contract/equitable liability and damages.
Verbal Management Fee: $115,000
Implied in Fact Design Fee: $85,000
Reimbursement for Expenses: $279,418

Plaintiff's Counsel: CCTLA Member Christopher J. Fry, Fry Law Corporation
Defendant's Counsel: Serge Tomassian and Talin Grigorian (2nd Chair), Tomassian, Inouye & Grigorian, LLP, Irvine, CA.
Court & Judge: Orange County, Dept. C13, Jonathan Fish.
Trial Dates: Sept. 23, 2024 to Nov. 14, 2025
(eight weeks with 25 court days)

Case Summary

Plaintiff is an investor and flips properties. He worked with another persom on up to 10 projects before the subject project. At some point, Plaintiff and the other person decided to flip the other person's inherited duplex in Newport Beach. The only difference between this and the other projects is that there were two more co-owners in addition to Plaintiff's partner.

Plaintiff is promised a flat fee for managing the project and is promised that he'll be reimbursed for the money he fronts

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Member Verdicts & Settlements

Continued from page 38

to do the work. Property sells for $4.5M, well above expectations. Defendants refuse to pay, originally claiming the budget was exceeded. Then, after the lawsuit, cooked up an argument that Plaintiff had acted as an unlicensed general contractor by managing the project.

Trial Summary

First phase of the trial was solely on the issue of licensing. There were six questions for the jury. The jury was 12-0 on five and 11-1 on the 6th in Plaintiff's favor. Second phase, the jury found that, 1) Plaintiff and Defendants had entered into verbal contracts relating to the management fee and reimbursement; and 2) there was an implied in fact contract warranting additional monies because Plaintiff saved money by designing the property himself as opposed to hiring a designer. Defendants were not awarded anything on the cross-complaint.

Verdict: $273,287.57

Chiurazzi v State Farm

Uninsured Motorist Arbitration

Total verdict: $273,287.57
Economic damages: $23,287.57 ($16,509.76; $1,285.77 out-of-pocket medicals
Canceled trip: $5,492.00 canceled trip
Non-economic damages: $250,000
Verdict was reduced to the policy limit of $250,000

Plaintiff's Counsel: CCTLA President Glenn Guenard and CCTLA member Anthony Wallen, both of Guenard & Bozarth, LLP
Defendant's Counsel: Gareth Umipeg & Mary Greene, Tiza Serrano Thompson & Associates
Court & Judge: Judge David De Alba (Ret.), Judicate West
Trial Date: Nov. 14, 2024

Case Summary

On Jan 4, 2022, Plaintiff Chiurazzi was driving his 1997 Toyota Tacoma southbound on I-5 in Elk Grove when he was rear-ended, without warning, at a high rate of speed by an uninsured motorist. The impact caused Chiurazzi's chest to impact the steering wheel. There was significant damage to both vehicles, but after a roadside exchange of info, both vehicles were driven away. Plaintiff then noticed pain in his chest when he took a deep breath, coughed or sneezed. About eight hours later, he went to Kaiser ER. Chest x-rays were normal. The diagnosis was chest wall pain.

Chiurazzi avoided physical activity for the next 10 days. He then returned to playing tennis, which he had done regularly before the collision. However, he had to stop playing in the middle of a match because of breathing difficulties, an increase in heart rate and fatigue. The next, day the same thing happened so he returned to Kaiser ER because he thought he was having a heart attack. He was diagnosed with atrial flutter, which was confirmed by an EKG and echocardiogram. He was prescribed Pradaxa, a blood thinner, and metropolol for high blood pressure. The atrial flutter persisted, and eight months after the collision, Chiurazzi underwent an atrial flutter ablation under general anesthesia at Kaiser. An echocardiogram confirmed his heart function was normal within 14 months after the collision, and he was back to full activities.

Trial Summary

Liability was undisputed. The sole issue in the arbitration was whether the collision caused Plaintiff to suffer atrial flutter. The claim was mediated with Dan Quinn in December 2023. Plaintiff Chiurazzi demanded payment of his $250,000 policy limits. State Farm's top offer prior to arbitration was $15,000. Chiurazzi argued that the atrial flutter was caused by the collision because (1) He was a very healthy 69-year-old with no health problems, restrictions or limitations when his chest hit the steering wheel. (2) He had immediate onset of symptoms; (3) There is no likely alternative explanation for the cause.

His primary care doctor at Kaiser opined that while it was not diagnosed at the ER, Chiurazzi probably sustained a myocardial contusion, which can cause atrial flutter. Dr John MacGregor from UCSF, Chiurazzi's retained cardiologist, testified that he agreed with the primary care doctor that the blunt force trauma of hitting the steering wheel caused the myocardial contusion, which caused the atrial flutter.

State Farm's retained cardiologist, Dr Mark Eaton, from Roseville, testified the atrial flutter was not caused by the collision. He opined it was "remotely" possible that a myocardial contusion "might" cause atrial flutter but there was no evidence of a myocardial contusion. Eaton further testified that the atrial flutter was a pre-existing condition and that it was simply a "coincidence" that it became symptomatic within 10 days of the collision.

The arbitrator found the temporal proximity of symptoms within 10 days was compelling and that the testimony of Plaintiff's doctors support the most likely cause of the atrial flutter.

New Auto Insurance Minimums & Their Legal Impact

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Capitol City Trial Lawyers Association
Post Office Box 22403
Sacramento, CA 95822-0403

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, or Alla Vorobets at allavorobets00@gmail.com

FEBRUARY

Tuesday, February 11
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

Monday, February 24
CCTLA Luncheon – Noon to 1 p.m.
Topic: The State of the Sacramento Court: 2025 and Beyond
Speakers: Judge Bumni Awoniyi & Judge Steven Gevercer – 58 Degrees and Holding
Cost: $35 Members / $45 Nonmembers

MARCH

Tuesday, March 11
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

March 13-14: Napa/Sonoma Seminar
Co-sponsored by CCTLA with CAOC. See page 28

Friday, March 28
CCTLA Program
Topic: Defeating the DME
Speakers: Dorothy Clay Sims & Dr. Oregon Hunter
10 a.m. to 2 p.m. – Del Rio & Caraway

APRIL

Tuesday, April 8
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

April TBA:
John Demas / Voir Dire

MAY

Tuesday, May 13
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

Thursday, May 29
CCTLA Spring Reception & Silent Auction
5-7:30 p.m. / Lady Bird House
See pages 20 & 21

JUNE

Tuesday, June 10
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

JUNE TBA

CCTLA Program
Topic: "Easy AI Tips to Win Your Case"
Speakers: Dorothy Claim Sims, Esq., Oregon Hunter, M.D., John Washington, Esq., and David Washington, Esq - Zoom

CCTLA Calendar of Events