Winter 2020-2021

The LITIGATOR

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

Inside

Recognizing the gifts of the 'Great Pause'

Joe Weinberger
CCTLA President

A Japanese proverb says, "When the character of a man is not clear to you, look at his friends." While those who know me best may question the wisdom of this proverb, there is no doubt that I have been blessed with friends of the highest character. Without the many people on the board and in this association who have leant me their ear and their wisdom, I don't believe we, as an organization, would have come through the trials and the tribulations of this past year so well.

This was truly an interesting year. It started with very high and lofty goals. I wrote my first message and set out my goal of starting an annual lecture series in honor of my mentor, Hartley Hansen. We had lined up a top-flight warrior who would teach us about being human and truly feeling the pain and experiences that our clients go through so that we could share that intimacy with a jury.

And then the world changed.

The question that went through my mind then was: How will we continue? What has pervaded my mind as I write this is that we as trial attorneys find a way. What I didn't anticipate is that despite the awful toll this pandemic has taken, we have found new ways to be better attorneys. We have found that we can work remotely and be just as good, if not better, at our jobs. We have found that we can work with the courts to better use our time through virtual appearances and hearings. We can take depositions, listen to lectures and communicate via Zoom.

The "great pause" allowed us to get up close and personal with our families and friends. We were given the gift of unplanned time to spend with those we care about. We had the opportunity to live and grow closer without school and work and other commitments interfering with our most important relationships.

It has allowed us to hear and speak with incredibly gifted lawyers and take the time to learn from them. Off the top of my head, I recall learning from Gary Dordick, Robert Simon, Matt Morgan, Keith Mitnik, Gary Dodd, Brian Panish, Nick and Courtney Rowley, among a host of others. I have been fortunate to be able to reach out to these incredible trial attorneys both through their lectures and through their incredible generosity to speak with me about my cases and their outlook on life and being a trial attorney. I would not have had this opportunity without the pandemic, and as a result, I am a better lawyer and a better person.

I am also proud that CCTLA has stood up for the rights of our clients and stood against bias and racism. In June, I wrote that the board approved CCTLA's Statement

Continued on page 6

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.

Is Witness Allowed to Tell the Jury What a Video Shows?

People v. Troy Son, 2020 DJDAR 11289; Oct. 19, 2020

FACTS: In this murder trial, the investigating detective, who had studied a surveillance video 50 times, narrated as the jury watched the video. The detective told the jury what she saw when she viewed the video, including when the murder weapon, a knife, flew out of the defendant's hand, and when the defendant's hat flew off during the attack. The video was of poor quality and very difficult to discern.

Defense counsel objected on the basis the jury could see the video for itself. Moreover, the defense counsel argued that the video was ambiguous (poor quality, grainy and dark) so that the investigator's narration was not helpful. Lastly, the defense attorney argued that the prosecution narration was highly prejudicial.

On appeal, the defense argued that the detective's narration was inadmissible under the secondary evidence rule, Evidence Code Section 1521. Additionally, Defendant argued that the detective was offering inadmissible expert testimony. Lastly, Defendant argued on appeal that the probative value of the detective's testimony was outweighed by the prejudicial effect.

ISSUE: Can a witness narrate a video and explain what is seen while it is played for the jury?

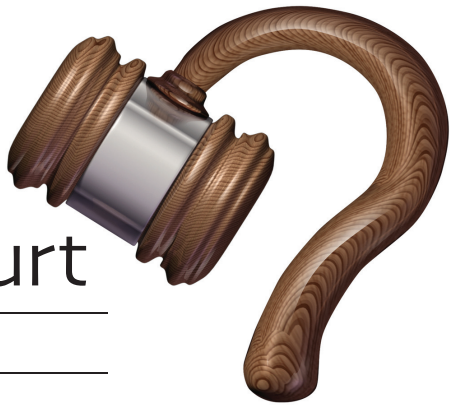
RULING: Absolutely, YES.

REASONING: The video was admitted into evidence. A video is a writing for purposes of the secondary evidence rule. *Evidence Code* Section 250. *People. v. Goldsmith*, (2014) 59 Cal.4th 258, 266. The secondary evidence rule does not apply to writings admitted into evidence. The detective's testimony was not to prove the content of the video but was to highlight details that otherwise might be missed. Therefore, the secondary evidence rule does not apply.

Moreover, the detective's testimony was not inadmissible lay opinion testimony but was helpful to the understanding of the evidence by the jury. The detective did not express opinions; she testified to what she saw. Therefore, it was not inadmissible lay or expert opinion testimony. This rule is consistent with federal law. *Torralba-Mendia* (9th Cir. 2015) 784 F.3d 652.

Lastly, the detective's narration was not unduly prejudicial and therefore inadmissible under *Evidence Code* Section 352. The appellate court determined that the detective's testimony was correct and uncontested, truthful and not directed to the real issue in the case: defendant's mental state. Therefore, a lay witness may narrate a video and explain what is depicted while the jury is watching.

Deciding the Right Venue for a Civil Rights Case: State Court vs. Federal Court



By: Justin Ward, CCTLA Second Vice President

When taking on civil rights cases, attorneys are often faced with the decision of whether to file in federal court or state court. When I had one of my first civil rights cases, I called a few of my colleagues who handle these types of cases and asked which jurisdiction they preferred.

The answers varied. Most filed in federal court and stated it was because they could get attorney's fees. One person explained he filed in state court because he did not have to have a unanimous verdict. He also pointed out that you could still obtain attorney's fees in some state causes of action. After hearing that, I decided to do my own research. Here is what I found.

Circumstances where the case should be filed in federal court

1. California government claims statute has passed.

You have six months from the date of the harm or when the plaintiff becomes aware of the harm to file a claim with the applicable government agency or entity. If the plaintiff fails to do so, he or she can file an application for late claim as long as it is within one year of the harm or knowledge of the harm. Getting judges to find the plaintiff is entitled to assert his or her state claims after six months is very difficult and not likely to occur, so do not count on that happening.

If your six months has passed, you should always file the application for late claim with the applicable governmental agency. If it rejects the late claim, then you should always file the petition for relief from the filing requirement. If that is rejected, then you have no choice but to file in federal court because federal civil rights act 42 United States Code Section ("U.S.C.") §1983 has a two-year statute of limitations from the date of the harm or knowledge of the harm

2. Venue is better.

Depending on whe the harm occurred, you not want to be venued i the local county superi court because it may b pro-government or anti rights. For example, when a colleague of mine first started handling civil rights cases, he had a case that occurred at the Amador County Jail in Jackson, CA. His client was harmed by the Amador County sheriff's deputies who worked at the jail. Next to Jackson is the city of Ione, where Mule Creek Prison is located. Mule Creek Prison is the primary employer in Amador County, along with the Jackson Rancheria Casino.

Because he was not familiar with federal court at the time, he filed in Amador County Superior Court because he thought the process would be easier. He learned very quickly that he was not likely to have a very favorable jury pool. He eventually settled the case at the Mandatory Settlement Conference, but in hindsight, the case should have been filed in the Eastern District of California, where he would have had a much larger jury pool and likely one that was not completely dependent on law enforcement for its financial well-being. He likely would have been able to settle for significantly more money.

Circumstances where the case should be filed in state court

1. More difficult facts.

State court requires nine jurors out of 12 to prevail. Federal court requires a unanimous verdict. There is no question that it is easier to get 75% than 100%. If you have a case with "issues," which most civil rights cases do, then you probably would prefer not to have to convince everyone on the jury.

2. Favorable venue.

Just as you probably want to be venued in federal court if your case occurred in a conservative county or one that does not look kindly upon civil rights cases, you may prefer to be in the local superior court if it is a more liberal jurisdiction.

3. Less formal rules.

Federal court has very rigid timelines and rules. For instance, some districts only allow a respondent two weeks to respond to a motion for summary judgment or adjudication. Two weeks! State court requires the motion to be filed 75 days before the hearing on the motion.

Additional Things to Know

1. Attorney's Fees

There is a common misperception that you have to file in federal court to get attorney's fees. That is not true. While it is true that 42 U.S.C. §1983 allows for attorney's fees if the plaintiff wins the case, there are at least three state civil rights laws that allow a plaintiff to receive attorney's fees if they are the prevailing party:

a. *The Unruh Civil Rights Act* (Cal. Civil Code §§51, 52) states: All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary lan-

Continued on page 5

Continued from page 3

guage, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

b. *The Tom Bane Civil Rights Act* (Cal. Civil Code §52.1) is applicable against anyone whether or not acting under color of law, who interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.

c. *The Ralph Civil Rights Act of 1976* (Cal. Civil Code §§51.7, 52) states in part: All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.

All three acts allow for attorney's fees. As such, you are likely to recover the same amount of money in attorney's fees in state court as you would in federal court.

2. Claims can be brought in either venue.

State courts have the power to hear and decide federal civil rights causes of action, so you can file federal causes of action in state court. However, defense attorneys almost always will file to remove the case to federal court if there are federal causes of action. In the rare instance that they do not, it likely is due to the fact that the local superior court and/or jury pool is much more favorable to their case/client.

Similarly, federal courts have the power to hear state civil rights and tort causes of action, as long as the government claim statute has been complied with.

COVID-CANCELED

2020 CCTLA ANNUAL MEETING & HOLIDAY RECEPTION

Due to health concerns and regulations brought on by the continuing pandemic, CCTLA's 2020 Annual Meeting & Holiday Reception has been canceled. Awards for Judge, Clerk and Advocate of the Year and the slate of the 2021 CCTLA Officers and Board will be announced soon. CCTLA's Annual Meeting & Holiday Reception normally is a benefit for the Mustard Seed School, through donations. Despite the cancellation, CCTLA's Board has approved making its usual $1,000 donation to Mustard Seed School. Any members who wish continue the tradition of donating to Mustard Seed School, may do so online at https://secure.sacloaves.org/np/clients/sacloaves/survey.jsp?surveyId=1&.

2020 CCTLA SPRING RECEPTION

The 2020 Spring Reception also had to be canceled earlier this year. The event benefits Sacramento Food Bank and Family Services (SFBFS) through sponsorships, an auction and donations. It is SFBFS's second largest fundraiser of the year. The reception was not held, but thanks to CCTLA members and friends, $52,783.90 has been raised to date. Last year's Spring Fling raised over $130,000 for SFBFS. Donations are desperately needed this year due to the pandemic. If you haven't already donated to SFBFS, please consider doing so online at https://www.sacramentofoodbank.org/cctla-spring-fling.

President's message

Continued from page one

of Solidarity. I believe this to be a strong statement of our commitment to fighting for justice for our clients and against any form of bigotry that seeks to demean anyone for their race, religion, sexual preference or heritage.

The good news is that despite the pandemic, CCTLA has continued to thrive. Although our annual Spring Fling and holiday party were canceled, we have found a way to continue to operate and provide benefits to the community through our philanthropic endeavors and to our members.

I would be remiss in not thanking our many sponsors for their support during this period. Without the help and assistance of these business and individuals, our work would be impossible. The vendors that we support with our business and that in turn support our organization have been amazing. From the various court reporting agencies, the structure and finance companies, the medical companies, mediators and arbitrators, and other logistical partners, we thank you for your support.

So where are we as this year comes to an end? We are strong and poised for a great year. Starting Jan. 4, civil trials will take place in the Sacramento Courthouse. Presiding Judge Hom, Judge Bowman, Judge Sueyoshi and their staffs have worked long and hard to bring justice back to our clients. In December, Judge Hom, in conjunction with the Sacramento County Bar Association, will be giving a virtual lecture on the workings of civil trials in this new age. I urge all of you to be on the lookout for notice of this lecture. In addition, the civil trials will be livestreamed, so you will be able to watch how these trials are conducted and learn from these initial efforts.

Judge Hom has also advised that the construction of the new courthouse remains on schedule, with completion anticipated in the last quarter of 2023 and occupancy in the first quarter of 2024.

I am pleased to be handing the reins of this organization over to my good friend, Travis Black. I have every confidence and trust in Travis and look forward to watching as he moves this organization into the future. In addition, Noemi

Esparza has been elevated to the CCTLA Executive Board and will serve as next year's parliamentarian. I am also pleased to announce that Jacqueline Siemens and Dionne Choyce have been appointed to the CCTLA Board of Directors.

Sadly, Randy Pausch, a professor at Carnegie-Mellon University, was diagnosed with terminal cancer shortly before giving "The Last Lecture." In this lecture, he spoke of life and achieving your dreams. He gave advice about how one is to live life, including being earnest instead of hip, learning to compromise, and not complaining or obsessing over what others think. His philosophy was to be honest, humble and never give up, to be positive, show gratitude and to not be afraid to try something new.

I believe that through this past year, we have all had the ability to learn these lessons and try something new, even if we weren't given a choice in the matter. I personally have had to learn humility and compromise. I have been forced (sometimes kicking and screaming) to never give up and to be thankful for those around me. To this end, I want to take this opportunity to thank a number of people.

For those of you who have not had the pleasure of working with our super-human executive director, I hope you take the opportunity to reach out and get to know her. Debbie is the heart and soul of the organization. Without her hard work and dedication, this association would fall to pieces. She is the glue that holds us together, and the engine that drives us forward. I cannot conceive of this association without her. She is truly amazing, and I take this opportunity to thank her publicly for everything that she does.

In this past year, I have relied upon the wisdom and encouragement of a number of individuals. While I am sure I will miss a few, special thanks are deserved for Past President Rob Piering, President-Elect Travis Black, Glen Guenard, Amer Shergill, Kirill Tarasenko, Kelsey DePaoli, Dan Wilcoxen, Dave Rosenthal and Chris Kreeger. Thank you all for your time and offering your thoughts and advice. Your assistance has been invaluable. I count each of you as my friends, and for that I thank you. Your character has proven to be of the highest quality. This association is in good hands.

Defeating or reducing the Workers' Compensation lien or credits in your client's third-party case

By: Ashley Amerio, CCTLA Board Member

As a plaintiff's attorney, you have many duties regarding liens when accepting a personal injury case. In injury cases, it is imperative to identify whether or not your client's third-party case is subject to a Worker's Compensation lien.

Usually one can assess rather quickly whether or not this lien exists by asking numerous in-depth questions regarding how your client's injury occurred, while you're first discussing the case with your client. Quite simply, if your client gets a job as an "employee," and she gets injured while on the job, your client is entitled to Workers' Compensation benefits (Lab. Code, § 3600).

In most instances, your client is subject to the *Exclusive Remedy Rule*, whereby your client is limited in her recovery to Workers' Compensation benefits. In some instances, you will find there may be a viable third-party case from which recovery may be sought. In order for a viable third-party case to exist, a person or entity other than the employer must have caused injury to your client. There are many ways this can occur, and it is important to probe your client effectively to discover potential employer fault.

If you determine your client has a viable third-party claim after being injured as a worker, the employee must serve a copy of the filed complaint on the employer and file a proof of service stating as such (Lab. Code, § 3853). Upon filing and service, the employee or the employer may join as a party plaintiff in the third-party case (Lab. Code, § 3853).

Resolving liens with a fault-free employer is vastly different from resolving a lien or credits whereby the employer has some or complete fault in the injuries sustained by your client. Careful consideration must be taken in assessing whether or not the employer was negligent in causing your client's injuries. In determining whether or not employer fault exists, it is critical to review all discovery in order to determine exactly how your client was injured. It may also be necessary to conduct depositions to determine whether or not the employer was in fact negligent.

If you are able to establish the employer was negligent in some way, your client may be able to defeat or decrease the Workers'Compensation lien and credits in her case. Defeating or decreasing your client's lien and credits may greatly affect the ultimate outcome of the case in a positive way, therefore identifying potential employer fault is imperative in third-party cases which contain a Workers' Compensation overlay.

Upon establishing employer fault in your client's case, strategy and timing is everything in achieving the goal of defeating or decreasing the lien and credits. Employers will often assist or conduct discovery in the third-party case and will be your most powerful ally during the course of pretrial litigation against the third-party defendant.

It can greatly benefit your client to maintain the employer as an ally dur-

Continued on page 9

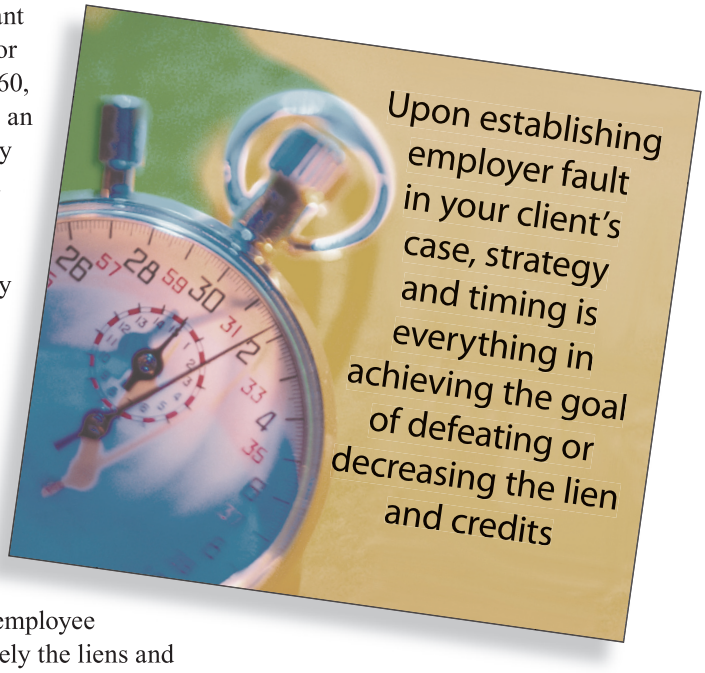
Continued from page 8

ing the course of discovery and in your dealings with the third-party defendant. Disclosing employer negligence to the employee will quickly destroy the power brought by having the employer as your ally during the discovery phase and ultimately negatively affect the outcome of your client's case. Thus, strategically holding your cards close, so to speak, will greatly benefit your client at the conclusion of her case.

It is contrary to the policy of the law for the employer—or his subrogee, the insurance carrier—to profit by the wrong of the employer… the concurrent negligence of the employer [can be invoked] to defeat its right of reimbursement. *Witt v. Jackson* (1961) 5 Cal.2d 57, 72.

As plaintiff's counsel, you may determine it is in your client's best interest to enter into a settlement with the third-party defendant and proceed in your civil case trial solely on the issue of employer negligence against the plaintiff in intervention.

Before doing so, be sure you have notified the employer of any settlement with the third-party defendant as required by the Labor Code (Lab. Code, § 3860, subd. (a).) This may be an excellent scenario to try as a bench trial instead of utilizing a jury. In the interest of judicial economy, the court may well prefer this issue be tried as a bench trial. The trial court's ruling on the issue of employer fault will in fact be binding on the employer. The WCAB may act as an alternative forum to resolve the issue of employee negligence and ultimately the liens and credits associated with the case, if you are not able to resolve that issue in civil court.



As plaintiff's counsel, you may also attempt to reduce your client's Workers' Compensation lien and credits by negotiating with the employer and demonstrating that evidence exists to establish employer fault which may ultimately wipe out the employer's lien and credits.

"When.. the employer seeks to recover the amount paid .., from such third-party, his [or her] hands ought not to have the blood of the dead or injured work[er] upon them." (*Id.* 57 Cal.2d at 71.)

Utilizing the *Witt* case in your negotiations with the employer on the issue of employer negligence can be very powerful. There is very little-to-no jury appeal in cases where the employer is negligent in causing their employee injury yet demands monetary reimbursement after causing such injury.

When attempting to negotiate, keep in mind, "The Board must …deny the employer credit until the ratio of his contribution to the employee's damages corresponds to his [or her] proportional share of fault." *Associated Construction & Engineering Company v. WCAB* (1978) 22 Cal.3d 829. The potential denial of employer credits coupled with the complete lack of jury appeal, when established, should lend itself to compelling negotiating power with the employer on the issue of its lien and credits.

In attempting to negotiate the Workers' Compensation lien and credits after you have determined employer fault, you should consider something commonly referred to as a "threshold" number, which refers to the amount of money the employer spends on the injured worker for any given item. This number includes medical care, wages or any other item covered monetarily by the employer. The threshold is the total money spent by the employer before it has the right to recover its lien or credits.

Consider the *Associated Construction & Engineering Company* case when looking to calculate the threshold number if settlement of the lien and credits appears to be the best option for your client in her case. A careful case-by-case analysis should be conducted to consider whether defeating or reducing an employer's Worker's Compensation lien and/or credits in the context of employee negligence is applicable to your client's case.

Not just good for your clients, but good for you, too

By: Travis Black, CCTLA President-Elect

When I was a fairly new attorney, I represented a woman who had been severely injured in a roll-over traffic collision. We were able to secure a very good settlement. At the time, my client was living with a minimum amount of financial resources and personal support. She lived in a run-down apartment complex and had two grown children living with her. She was also a recovering drug addict.

Sharon came into my office to discuss her settlement and was surprised at the generous amount we had secured in the settlement. While talking with her, she started to cry and told me she didn't want any of the money! She was convinced that her adult children who were living with her would take her money. She also feared that when her friends learned how much she had recovered, they would be coming out of the woodwork, asking her for money. She told me she doubted that her money would last a month! I told her I would see what we could do to protect her and her settlement.

As a young attorney, I was uncomfortable about inserting myself into the personal life of a client. The decisions that my clients made about how to live their lives were absolutely theirs to make, and I was conscious of the boundaries of our relationships. It soon became evident to me, though, that the connection I was developing with my clients provided me an opportunity to provide them with knowledge and opportunities that typically were out of reach.

I sought out my friend and mentor, Andy Wohl, and he suggested I set up a structured settlement for her. He gave me the name of a local company that could help me. Sharon had never owned a new car, had never had a comfortable living space, had never been on a vacation. We were able to set up a structured settlement and helped her buy a brand-new Toyota Camry and move into a nice apartment, with new furniture. My office staff helped her plan a vacation to Hawaii. Her annuity was set up so that she received a monthly allowance, which was enough to pay for her living expenses with a little left over. Every year, she would receive what she called a bonus, which allowed her to go on a small vacation.

Fast forward about 25 years: I was in a grocery store, and this woman who I didn't recognize ran up to me, threw her arms around me and gave me a huge hug! I then recognized Sharon, who explained that her whole life had turned around because of this annuity. She had sent one of her grown children to a trade school and was helping out with her grandchildren. She told me she has been able to live quite comfortably, and her money is protected from what she described as her "vulture" friends. It was a truly good feeling that I was able to help her in such a tangible and long-lasting way.

While setting this structured settlement up for Sharon, I also learned about structuring my fees. I put a big chunk of my fees into an annuity, setting it up so that I wouldn't receive any of the proceeds until I was 65 years old.

At the time I set this up, I thought it would be an eternity until I started receiving any of this money. Well, I'm now 68 years old, and it has been a nice addition to my income. I have set up several more structured settlements for both my client and myself.

A structured settlement can be a valuable tool for ensuring the future financial support of injured clients and their families. Many of us routinely use a structured settlement for our clients, but many of us do not think about using this

Continued on page 11

A structured settlement can be a valuable tool for ensuring the future financial support of injured clients and their families. Many of us routinely use a structured settlement for our clients, but many of us do not think about using this powerful tool to protect our own financial future.

Continued from page 10

powerful tool to protect our own financial future.

We have all had those cases where we have fought hard to get justice for our clients, and when the case is resolved, we sadly learn that up to 50 percent of our fee is given to the government! That is a huge amount of money that we will never see. What if you could put that 50 percent away into a structured account? This option provides you receive this money over 15-20 years and then you would be able to enjoy the money that you have earned, paying taxes only on the amount paid to you during the year you received it!

In Childs v. Commissioner of Internal Revenue, 103 TC 634 (1994), 89 F3d 56 (11 Cir. 1996), the U.S. Tax Court held that contingency-fee attorneys are not considered to have received income in the year a case is resolved if the fees are paid periodically in the future pursuant to an annuity contract.

By virtue of this ruling, the tax court created a benefit for contingency-fee attorneys that no other legal practitioners (or taxpayers, for that matter) can utilize; i.e., the ability to structure legal fees and defer taxes on earned income.

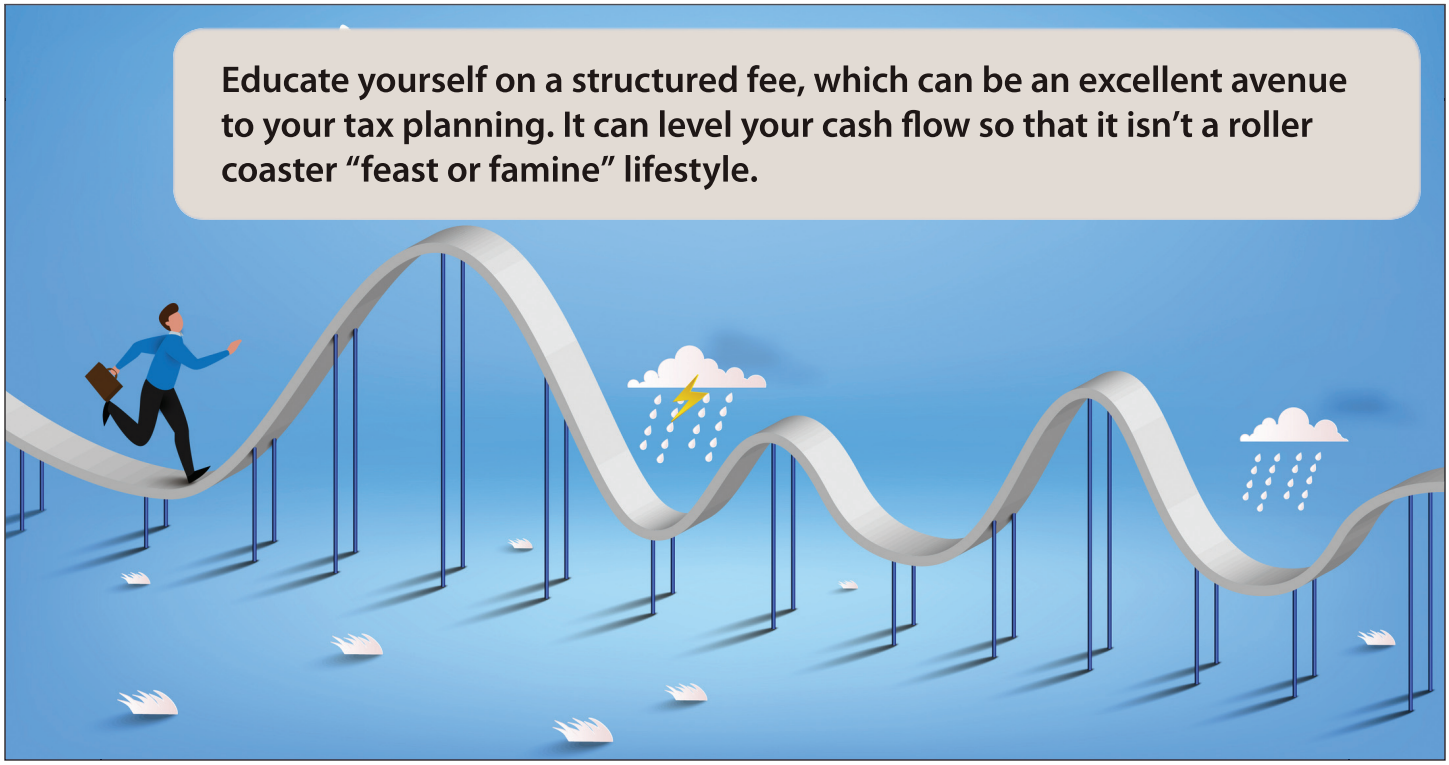
Accordingly, a substantial fee can be paid out over several years, thus leveling a practitioner's "cash flow," or income stream. By structuring your fee, you may possibly reduce taxes by postponing when you begin taking income and spreading the taxable income over time! Payments are reported to the IRS in the year that you receive them. In other words, taxes are deferred until payments begin. There may be no limits to how much you can defer by structuring your fees. Thus, it allows counsel to plan his/her cash flow to meet periodic needs such as retirement and/or children's education and stabilizing income for your practice. You can even add a cost-of-living adjustment to help offset inflation.

There are some very stringent requirements if you chose to structure your attorney fees.

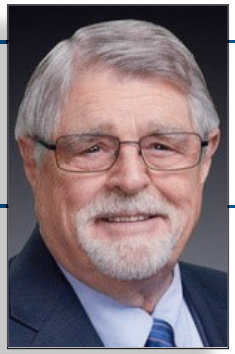
1. The attorney's fee is structured as part of a case in which the settled claim involves only amounts received as Workmen's Compensation and/or damages on account of personal physical injury or physical sickness.
2. The assignment of the periodic payment obligation under the Settlement Agreement is made by the Defendant and/or its insurer, with the consent of the Plaintiff and the Plaintiff is designated as the Claimant in all assignment documents
3. A Hold Harmless Agreement, signed by the attorney who is due fees is required on all cases involving structured fees.
4. The periodic payments made to the attorney for the attorney's fee is part of the structured settlement of the case (even if the Plaintiff/Claimant chooses not to have structured payments made to himself).
5. Once the payment structure is set, it cannot be altered.
6. Finally, and probably most importantly, you cannot ever take possession of any funds you wish to structure. If you take receipt of settlement funds—even by placing the same in an attorney-client trust account—you are considered to have "constructive receipt" of the funds and cannot structure the attorney fee.

Work with your financial planner and CPA in advance to make sure you understand this vehicle. The Mediation Agreement and Settlement Release must contain special language confirming your election that the attorney's fee will be structured. In addition, along with the settlement release, you will need to execute structure documents that will be provided by the insurance company tendering payment. You are not required to use the defendant's insurer to set up a structured settlement.

Educate yourself on a structured fee, which can be an excellent avenue to your tax planning. It can level your cash flow so that it isn't a roller coaster "feast or famine" lifestyle. it can definitely improve your quality of life for you, your family and your law firm.



By: Daniel E. Wilcoxen,
CCTLA Board Member
and Past President



What are the lien claimants up to now?

Very recently, the new trend for health insurance carriers is to put into their agreement a clause that they are entitled to be paid from UM coverage if sums have been paid as a result of injuries arising from an auto accident and the insured's health insurance was used to pay for medical care resulting from the auto accident. I have now seen four difference insurance carriers stating that they are entitled to recover from any source of insurance, including, but not limited to, underinsured motorist or uninsured motorist coverage. Another ploy hospitals are dealing with is requesting an assignment of rights by patients as they arrive at the hospital. I am happy to provide copies of Damaron Hospital's documents to our members upon request.

I have recently been involved with a case handled by another local attorney in responding to Equian's claim for reimbursement from UIM coverage, wherein Equian stated:

> "As far as I know, in California, there are no regulations or statutes which specifically address a health insurer's right to be reimbursed from the member's own UM/UIM coverage. The health plan's own language should control."

My response to Equian was:
"I totally disagree with your statement.

"The case of *St. Paul Fire & Marine Ins. Co. v. Murray Plumbing & Heating Corp.* (1976) 65 Cal.App. 3d 66, on page 75 states:
'St. Paul obligated itself for a substantial premium to pay this loss. Having accepted the premium and paid the loss, it would be inequitable to permit it to recoup under the guise of equitable subrogation in this case.

'We have refrained to this point from discussing the case law, if any, applicable hereto. It is conceded that this is a case of first impression in this state. We have examined the cases cited by all parties and concede that the bulk of authority elsewhere establishes the principle that an insurer may not subrogate against a co-insured of its subrogor. We see no reason not to follow this line of authority particularly since the logic and the equities would seem to support such a rule. As it was said in *Holm Ins. Co. v. Penski Bros. Inc.* (1972) 160 Mont. 219 [500 Pacific Second 945, at pg. 949]:

'To permit the insurer to sue its own insured for liability covered by the insurance policy would violate these basic equity principles, as well as violate sound public policy. Such action, if permitted, would (1) allow the insurer to expend premiums collected from its insured to secure a judgment against the same insured on a risk insured against; (2) give judicial sanction to the breach of the insurance policy by the insurer; (3) permit the insurer to secure information from its insured under the guise of policy provisions available for later use in the insurer's subrogation action against its own insured; (4) allow the insured to take advantage of its conduct and conflict of interest with its insured; and (5) constitute judicial approval of a breach of the insurer's relationship with its own insured.

'No right of subrogation can arise in favor of an insurer against its own insured since, by definition,

Continued on page 14

Continued from page 13

subrogation only exists with respect to the rights of the insurer against third persons to whom the insurer owes no duty.'"

"Also see *Truck Insurance Exchange v. County of L.A.* (2002) 95 Cal.App. 4th 13.

"Further, in the 9th Circuit case of *Boston Mutual Ins. v. Murphree*, 242 Fed. 3d 899 (9th Cir. 2001), the Court stated at page 903:
'An auto policy's UIM coverage differs significantly from first party medical coverage. For example, first party medical coverage by definition only covers medical expenses. While UIM insurance covers all damages for which an under insured driver would be liable, such as pain, suffering, lost income, emotional distress, lost earning capacity, loss of consortium, and property damage, just to name a few. See *California State Auto Assn. Inter-Insurance Bureau v. Carter*, 210 Cal. Rptr. 140, 143 Cal. Court App. 1985. Moreover, unlike first party medical coverage, UIM is fault based, meaning that insured must establish a third party's liability in tort to trigger coverage. (Citations) Finally, while first party medical insurance covers medical expenses up to the policy limits, UIM insurance only covers damages exceeding the third party tort feasor's own insurance limits.

"Given the functional differences between these coverages, no reasonable insured would expect that the plan's coordination clause, which at most implicates other first party medical coverage, could possibly apply to UIM coverage. See generally *Salterarelli v. Bob Baker Grup Medical Trust*, 35 F. 3d 382 at 387 (9th Cir. 1990) adopting the reasonable expectations doctrine as a principle of federal common law.'

"Thus, the case law in the 9th Circuit, which includes California, and the State of California case law, does not allow one insurance company who was paid to provide insurance to collect from another insurance company paid by the insured to provide benefits to him. Public policy and equitable principles do not allow indemnity by one of the insured's insurance carriers against another of the insured's insurance carriers.

"Further, regarding your claim that California Civil Code §3040 allows subrogation against UIM recoveries, there is no such authority I am aware of.

"As I informed you in my last communication, California allows, pursuant to Code of Civil Procedure §1788 et. seq., punitive damages, attorney's fees, general damages, and injunctions against debt collectors who attempt to collect sums they are not entitled to."

I thereafter received a letter from a lawyer hired by Equian, who refuted my authority set forth above and stated in part:

"Please be advised that the health plan's contractual right of reimbursement applies to any recovery made by your client, including uninsured motorist claims. I have reviewed your correspondence with Equian claiming the health plan has no right to recover from underinsured motorist coverage. There is no support for this position found in California law and failure to address the health plan's lien from the UIM settlement will expose your client to liability.

"Your reliance on *Boston Mutual Ins. v. Murphree*, 242 F.3d 899 (9th Cir. 2001) is also misplaced. That case involves a coordination of benefits provision. Coordination of benefits provisions attempt to allocate liability among policies that are available for the same loss. Health insurance is not the proper coverage for damages where a third-party is at fault. Hence, the health plan is pursuing a contractual reimbursement claim under the third party liability provision of its policy. Coordination of benefits is not a consideration. The health plan specifically states:

"In the event any Recovery is

Continued on page 15

Continued from page 14

obtained by the Member or his or her Representative due to such injury, illness or death, the Member and his or her Representative must reimburse WHA for the value of Covered Services as set forth below.

"'Recovery' is defined as: compensation received from a judgment, decision, award, insurance payment or settlement in connection with a civil, criminal or administrative claim, complaint, lawsuit, arbitration, mediation, grievance or proceeding which arises from the act or omission of a third party, **including uninsured and underinsured motorist claims**.
"*Id.* (emphasis added).

"This is an unambiguous right of recovery that reaches the UM/UIM settlement under a valid contract. Your client's obligation to reimburse the plan began when settlement funds were received and is covered by the statute of limitations governing contracts in the State of California."

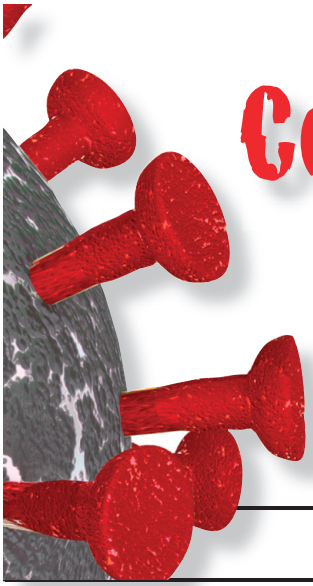
I thereafter informed him that the funds had been disbursed and that if they wanted to file a lawsuit, I would respond appropriately. That was in June of 2020, and I have not heard anything back to date.

In the above case, I am ready, willing and able to litigate this case, because I view this as no different from the carrier attempting to take money out of the bank account of the insured. The federal case cited concerning what is recovered from UM and the California law citations seem abundantly clear and, so far, there has been no attempt to litigate this matter by the attorneys or Equian.

The second new lien development is that Dameron Hospital now forces each and every patient they suspect of being injured in a potential personal injury litigation scenario in the guise of "just sign here," is now filing lawsuits against various auto insurance carriers such as Liberty Mutual, AAA, Hartford, etc., claiming they are entitled to their actual billed amount, ergo, attempting to have another shot at the balance billing routine.

I am attempting to contact the defense attorneys for the various automobile insurance carriers to see what they are doing since it appears they have not used all the appropriate defenses that would be available to them on these actions where the difference between what the health insurance paid and the Dameron Hospital normal billing rate.

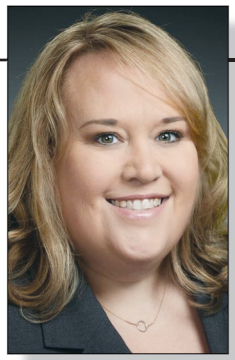
Obviously, all the arguments that they used in balance billing cases to avoid paying balance billing should be used to force Dameron Hospital to litigate these matters. They stand in the same shoes as health insurance carriers not wanting to get an opinion out of the appellate courts that is going to limit their collection from attorneys they have placed in fear of their litigation tactics.



Covid-19 Changed the Game

Mental Health Awareness for Attorneys in the Covid-Era

By: Marti Taylor, CCTLA Board Member



The Covid-19 pandemic drastically affected and changed the world that we live in. The restrictions have been especially tight here in the State of California, and we have all felt that. It seems that there is no imminent end in sight, with the likelihood that we will be continuing the status quo until at least the middle of 2021.

Like everything else in the world right now, the legal profession has been drastically impacted. We have all seen this in the form of court closures, the end of in-person depositions and the like. As attorneys this has increased our already stressful practices and led to an increased need for mental health awareness.

As if the legal profession wasn't already stressful enough, the Covid-19 pandemic added another layer of challenges. With shutdowns and restrictions, there has been a decrease in productivity and ability to make money, uncertainty about how long the pandemic will last and what the future will look like. These new challenges have most certainly increased anxiety; depression and panic among attorneys.

As attorneys, we are skilled in dealing with high-pressure situations; however, due to this pandemic, attorneys are now being pushed like never before. Unexpected and unforeseen needs arise each day on our cases, which often require our immediate attention. Many of us are working remotely from home. And some have a new second career as an educator teaching children at home.

The U.S. Centers for Disease Control and Prevention has warned that the increased stress levels from the pandemic can cause myriad health problems, including mental health issues. As a profession, attorneys are even more vulnerable to mental health issues, including, but not limited to, anxiety and depression, which are sometimes leading to substance abuse—all of which occur at higher rates for attorneys than in the general population.

It is well known that the practice of law is one of the most stressful careers out there, with high levels of alcohol and substance abuse and mental health issues. The statistics are staggering and eye opening. Lawyers are 3.6 times more likely to be depressed as people in other jobs. A study done by the American Bar Association in association with the Hazelden Betty Ford Foundation in 2016 found that 28 percent of employed lawyers suffer from some form of depression. The study further found that 61 percent of attorneys reported having had anxiety and 11 percent reported having suicidal thoughts at some point in their career.

As a community, we must recognize the mental health struggles that exist inherently in our profession and the worsening affect that the Covid-19 pandemic has had. In response, we must work together to keep ourselves and our peers mentally healthy.

First and foremost, we have an ethical duty to ourselves and our clients to maintain competence at all times. This includes staying mentally competent. California Rules of Professional Conduct 1.1 Competence states in pertinent part:

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.

Lawyers who suffer from untreated mental health issues potentially impair their ability to provide competent services to their clients. Despite possessing the requisite learning and skill, mental health issues can mask their ability to competently handle their cases.

Recognizing the importance of mental health in the legal community, we must take care of our mental health and help others do the same. As a community, we can recognize mental health risks and work on healthy coping skills to all come through it together.

There are myriad programs and resources available to attorneys to address and assist with mental health issues. The ABA

Continued on page 18

Continued from page 17

has developed a COVID-19 Mental Health Resources website, which includes a useful database that categorizes resources by topic (e.g., anxiety; depression; law practice management/leadership; social distancing; mental health; stress; substance use, etc.) relevant to the COVID-19 pandemic. The State Bar of California also maintains Lawyer Assistance Programs to help lawyers who are grappling with stress, anxiety, depression and substance abuse about their career and need support.

Although attorneys are generally well-experienced in navigating normal stress, there may be those who need assistance during this pandemic. Exercising on a regular basis can help alleviate stress and has been proven to be a natural mood-booster because it releases endorphins, serotonin, dopamine and other important neurotransmitters. Other mechanisms that may assist with stress include meditation, maintaining a regular sleep schedule and eating healthy, all of which can help the mind and body deal with both the mental and emotional ramifications of living through a pandemic.

Finally, as lawyers in a community, it is imperative that we reach out to our peers who might be struggling in silence. Attorneys can rally for each other if they become concerned that one of their colleagues is suffering from mental health issues. We can assist them with being an ear to listen and assist in getting them whatever mental health assistance they may need.

Tips for Lawyers to Cope with Stress

- **Practice Self Care:** your life cannot only be about work. Do something that brings you joy and doesn't involve work. Try exercise, taking walks, spending quality time with a family member in your household;
- **Limit how often you check your email:** try checking three times a day, in the morning, after lunch and near the end of the day;
- **Limit your checks** to social media sites and news outlets;
- **Use the Do Not Disturb settings** on the cell phone and office line;
- **Have a dedicated time** to unplug once you are home;
- **Take healthy breaks.** Don't tie yourself to your computer.

GET IMMEDIATE HELP IF YOU ARE IN CRISIS:

- **Reach out to the ABA** or State Bar of California Lawyer Assistance Resources;
- **Reach out to a peer** in your legal community;
- **Find a healthcare or mental health provider** for treatment;
- **Call 911** if your mental health is an emergency, or;
- **Call the National Suicide Prevention Lifeline,** if you are contemplating self-harm: 1-800-273-TALK.

CCTLA members among finalists for CAOC's Consumer Attorney of the Year honors

Consumer Attorneys of California (CAOC)'s finalists for one of the organization's two major member awards include CCTLA members, both in the category of Consumer Attorney of the Year. CAOC's other major award is Street Fighter of the Year. Award winners were still to be announced as this issue of *The Litigator* went to press.

Consumer Attorney of the Year is awarded to a CAOC member or members who significantly advanced the rights or safety of California consumers by achieving a noteworthy result in a case. Eligibility for Street Fighter of the Year is limited to CAOC members who have practiced law for no more than 10 years or work in a firm with no more than five attorneys. To be considered for either award the case must have finally resolved between May 15, 2019, and May 15, 2020, with no further legal work to occur, including appeals.

CCTLA members who were announced as finalists for the Consumer Attorney of the Year award are:

1. C. Brooks Cutter, Robert A. Buccola, Steven M. Campora and John R. Parker Jr.

Doan, et al. v. State Farm General Ins. Co.

ENDING AN ILLEGAL PRACTICE OF OVER-DEPRECIATING INSURED LOSSES

After a legal battle that lasted more than 10 years, California consumers won the right to receive fair compensation from their insurers for their damaged personal property.

For many years, State Farm shorted its policyholders by over-depreciating personal property. State Farm used a secretive "depreciation guide"—violating California law by failing to calculate depreciation based on the physical condition of property at the time of loss. State Farm's guide calculated depreciation based on age only, even if the item had never or rarely been used.

In this case, after a fire at the Doan residence, State Farm would not agree to pay what was owed, even on items that were in "like new" condition, and it illegally over-depreciated the insured's losses by more than $20,000.

The case was filed in 2008 on behalf of all State Farm policyholders. In June 2009, the trial court dismissed the case, but that ruling was completely reversed on appeal in 2011, in a published decision. As the case proceeded, the attorneys learned that all California insurers calculated depreciation almost entirely through the use of a "depreciation guide," and that State Farm failed to provide a written explanation of how it calculated depreciation, as required by California law.

In the first phase of an expert-intensive trial, the trial court found entirely for the plaintiff class and held that State Farm's was breaking the law in how it over-depreciated claims.

A settlement was later reached before a trial on the damages to the class. The settlement provided complete relief to class members, with interest paid to class members who elected to reopen their claims and who were shorted on their payouts. As a result, policyholders and their attorneys are now able to force ALL insurance carriers in California to follow the law when adjusting personal property claims.

2. Christopher B. Dolan, Dianna L. Albini and Megan R. Irish

Castro and Perez v. Edwards and City of Long Beach

HOLDING A CITY RESPONSIBLE FOR AN OBSTRUCTED STOP SIGN

On a dark evening in February 2015, Richard Castro sustained a brain injury when his car was broadsided at a four-way intersection in Long Beach. The intersection was controlled by stop signs on the north and south corners. Castro, heading west, was struck by Lindy Edwards, who admittedly ran the stop sign while traveling at 35 mph, 10 miles over the speed limit.

Following the collision, Edwards, for the first time, saw the stop sign that had been partially occluded by a tree. Dolan and Albini sued Edwards for negligence and the City of Long Beach for a dangerous condition of public property. Discovery revealed that Long Beach was aware that this tree, between trimming cycles, would grow to block the stop sign, yet the city did nothing to trim it more frequently.

The case presented significant hurdles because there was no prior documented collision because of a failure to stop because of the tree; Edwards admittedly was traveling above the speed limit and ran the stop sign; Castro suffered from an "invisible injury," Pseudo Bulbar Affect, which causes sudden, exaggerated, emotional outburst, causing him to cry, get angry or laugh, and his PBA made it impossible for him to testify: When he took the stand he just burst into tears.

Arduous jury selection, over four days, led to Dolan having 62 jurors dismissed for cause. Strategically, and with great risk, a deputy city attorney from Los Angeles who handled government tort defense was left on the jury by Dolan and Albini.

The trial lasted two months with the jury, including the deputy city attorney, returning a unanimous verdict holding the City of Long Beach 55% liable. Since the lawsuit, the tree has been heavily pruned to prevent further collisions.

***

Finalists for the awards were selected by a committee consisting of members of CAOC's Executive Committee, representatives of the attorney groups that won these awards in each of the last three years and six randomly selected members of CAOC's Board of Governors.

***

For more information:
J.G. Preston, CAOC Press Secretary, 916-600-9692, jgpreston@caoc.org ; Eric Bailey, CAOC Communications Director, 916-669-7122, ebailey@caoc.org

***

From CAOC.org.
Full article on all finalists available at CAOC.org

MICHAEL T. SHEPHERD
530-893-3700
MICHAEL@SHEPHERDLAW.COM

Mediation and Arbitration Services offered
in Sacramento, Yuba City & Chico since 2011

With more than 40+ years of litigation experience, including plaintiff & defense personal injury, commercial, trust & aviation cases, I bring a wide range of litigation knowledge to my mediation practice.

Mediation is an important tool in today's litigation climate while keeping trial costs down and providing closure for your clients.

Contact me for successful resolutions for your cases

They are only young once

By: Ryan Sawyer,
CCTLA Board Member

Stock Illustration

A little over 10 years ago, I was a brand-new attorney, working as in-house counsel for Farmers Insurance. I was given my own caseload, for which I was personally responsible for handling everything from the initial pleadings to settlement or through trial. Of course, most financial decisions were made in consultation with the claim adjusters, as they held the purse strings, but at the end of the day, I gained extensive litigation and trial experience that is often hard to come by as a young associate at many firms.

Most of the other attorneys in the office had been practicing law for many years. There were countless occasions where I would go walking down the hall, looking for an open door of one of these senior colleagues to ask a question or discuss how I should handle a situation I had never faced before. They would usually patiently listen to my thoughts and graciously provide valuable advice. They helped me to become a better attorney and avoid many mistakes. I will be forever grateful for the lessons they taught and the kindness they showed to me.

There is obviously great wisdom to be learned from those who have gone before us in our profession. Over time, and especially when I started to consider opening my own practice, I talked with plaintiff and defense attorneys about their experience striving to excel in the law while living a balanced and happy life.

When sharing the fact that my wife and I had one child, with another on the way, a number of these attorneys earnestly instructed, "Remember, your children are only young once."

"Why did you decide to be a lawyer?"

This topic came up with an esteemed member of our legal community who sadly passed away this year. We had a few minutes to talk during a mediation once, and he told me a story from earlier in his life. He was sitting in his study at home one evening, pouring over a case file. His young son, who as I recall was somewhere around five years old, came and asked him, "Dad, why did you decide to be a lawyer?" This accomplished attorney gave some kind of response, presumably touching on the nobility of the law or the opportunity to serve others, to which his son dejectedly responded, "Well, I wish you would have become a Dad."

This comment caused a flash of emotion that led him to cancel his next week of appointments. He then used this week to take his son to their cabin where he could spend uninterrupted time holding his little boy. Years later, this moment still brought tears to his eyes.

Six Pennies

A great mentor and friend of mine, Robin J. Smith, had a similar experience when the oldest of his two daughters was only three years old. He was working at his first job as an attorney. The firm did not have a formal billing requirement, but it was a small firm, and he had a lot of self-imposed pressure to make sure he was pulling his weight. He intentionally purchased a home within walking distance of his office. Nonetheless, he returned home later and later. Five o'clock drifted to almost six o'clock, which soon became seven o'clock. Before long, he was spending 12 hours a day at the office. In his words, "It was important for me to learn the practice of law, and critical that I not let down those who relied on me. Of course, that was exactly what I was doing—to the most important people in the world."

One particular evening, his three-year-old daughter climbed into his lap wearing her pajamas and presented Robin with six pennies she had saved. As she handed them to him, she innocently said, "Dada, give these to work, so work will

Continued on page 23

Continued from page 22

give you back to me."

Robin was crushed.

This sincere attempt by his daughter to reclaim him in her life caused him to immediately change how he did things. He started coming home on time unless work took him out of town, and he walked home for lunch when he could. He still put in long hours, but he brought files home and only worked on them when his girls were asleep. As a reminder, he taped these pennies together and kept them at work, and though his girls are long-since grown, he still has these pennies today. As he says, "The message of the pennies is still true."

A Conscientious Approach

These two stories are etched in my mind, and I am confident many other attorneys have similar stories of their own. The work of litigators and trial attorneys is valuable, important, and can be very fulfilling, yet it is time-intensive and has the potential to become all-consuming.

We have important duties to our clients that can't be delegated, employer demands to satisfy, and those who are self-employed have a host of various hats to wear. There are limitless nuances of the law to study, and then study again as it continues to change. That is to say nothing of efforts to continually improve one's trial skills and efficacy in the courtroom. This list goes on and on.

These are the practical realities of our profession, but so is the undisputable fact that our children are only young once. It is an unfortunate, but understandable, reality that the lowest income period of an attorney's career often corresponds with the time when their children are young. This obviously creates financial and other pressures that may limit the options available to those who wish to spend more time with their children.

With so many situational differences among us, there is no one-size-fits-all approach. While some may be in a position to reduce their case load, hire additional staff, relocate their office, change their employer or shift their work hours, others may not be.

Perhaps there are other adjustments that can be made outside of work hours, such as limiting other unnecessary demands on our time, or simply putting away our mobile devices more often when we are with our children.

Everyone has different professional aspirations, career expectations and financial needs. There is the honorable desire to help more people, the exhilarating feeling of standing up for the "little guy" and taking on a bully, the excitement of growing your own practice and the alluring call to make more money. There are endless opportunities to do more and involve ourselves in important causes within the community. I do not wish to minimize any of these. My hope in sharing these experiences is simply to remind all of us with children at home to be conscientious about how we treat this valuable time of life.

I am grateful for the wisdom of my senior colleagues who over the years have cared enough to help me to improve professionally and personally, including sharing their life experiences in hopes to spare me from some regrets.

I still frequently have moments where my profession calls me one direction, and the little voices of my children call me in another. I do not know for sure if I always make the right decision, but I have found myself to be much more conscientious in these moments because I often hear the words in my mind, "Remember, your children are only young once."

What's your MSP strategy?

Medivest assists settling parties with their obligations under the Medicare Secondary Payer Statute.

CMS has signaled LMSAs are coming.

Medivest can help you develop strategies to address future medicals in liability cases.

Professional Administration

A proven tool to assure settling parties remain in compliance with MSP obligations. Now for as low as a one-time $950 administration fee.

Trust Advisor Services

Guidance and bill review services for trusts with a Medicare set-aside component. MSP obligations are handled for the trustee. Ideal for Special Needs Trusts.

Self-Administration Kits

MSP compliance assistance for self-administering beneficiaries. Includes lifetime access to pharmacy and durable medical equipment discount network.

Medicare Set-Aside Allocations

Accurate projections of future Medicare allowable expenses in 10 days guaranteed. Includes a lien investigation, and Medicare/Social Security status determination.

MEDIVEST®
MSP Compliance Solutions

Joe Anderson | Director of Sales
(415) 606-1332
janderson@medivest.com
2054 Hyde Street, Unit 8, San Francisco, CA 94109

20 YEARS
MEDIVEST®
MSP Compliance Solutions
EST. 1996

www.medivest.com

We Accept Worker's Comp & Personal Injury Cases!

Common Pain Types

Neuromuscular Pain *causes muscle pain and nerve pain, can take place anywhere in the body.*

Neck Pain *causes the neck to be tense and stiff, making it difficult for one to move their head at all.*

Low Back Pain *creates difficulty performing easy everyday functions, like going to the bathroom.*

Dr. Haddadan along with Dr. Conrad, a pioneer in Pain Management in the community, and Dr. Baradia, UC Davis graduate Pain Doctor are available to see patients in:

Sacramento: *650 Howe Ave #600*
Roseville: *729 Sunrise ave #602*
Rocklin: *2160 Sunset blvd #502 (Surgery Center)*
Yuba City: *470 Del Norte Ave*
Davis: *1921 Sycamore Ln.*

Comprehnsive Pain Management

inlcudes but is not limited to:

Treatment as Primary Physician
Evaluation of Impairment/Causation
Medication Management
Trigger Point Injection
PENS Treatment (as needed)
Joint injections (as needed)
Innovative Spinal Injections
-Epidural Injections
-Facet Blocks and RFA
-Spinal Cord Stimulation
State Of The Art
AAAHC Certified Surgery Center
On-site X-ray in Roseville Office
Internal Urine Lab Testing
Outside Specialist Referrals

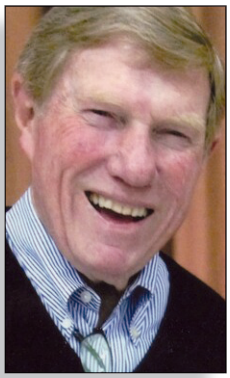
CALL FOR APPOINTMENT!

Advanced Pain Diagnostic & Solutions

Kayvan Haddadan, M.D.
Phone: (916) 953 - 7571
Fax: (916) 771- 8515
www.apdss.com

A Tribute to Donald S. Walter

By: Michael J. Conlan and Steven H. Gurnee



DONALD WALTER

It is with great sadness that we report the death of our dedicated and beloved member and former partner, Donald Steele Walter. Don died at home on Monday, Aug. 17, after a long and courageous battle with Parkinson's Disease. Don's wife, Katherine (Tooper), and his caregiver, Robert, were with him when he died.

Don was born in San Francisco in 1935. He graduated from Berkeley High School and then attended U.C. Berkeley. There he was a member of Sigma Nu Fraternity and became its president. He was a lifetime Bear Backer. It was there he met his future partner, Al Gawthrop.

After graduation, Don fulfilled his ROTC obligation with the U.S. Air Force and spent two or three years stationed in Japan where he learned to speak Japanese. After his discharge, he enrolled in law school at Berkeley's Bolt Hall, from which he graduated in 1963. While there and "hashing" at the Pi Beta Phi house, Don met the love of his life, Tooper, and they were married on Dec. 18, 1962. Following graduation and admission to the Bar, Don and Tooper moved to Sacramento, where Don took his first job as a lawyer with CalTrans. In 1964, he began his long and successful career as a defense trial lawyer, joining the Sacramento firm of Fitzwilliam, Memering, Stumbos & DeMers. Eleven years later, in 1975, he left with several other partners (Dick Bolling, Marion Pothoven, Al Gawthrop, Jerry Peterson, Michael Conlan and Larry Angelo) to establish a new firm, widely known as Bolling, Walter & Gawthrop. Although since disbanded, that firm became one of the largest defense firms in the Sacramento Valley.

Don was an exceptional trial lawyer who tried more than 100 jury trials. He became a member of the Sacramento Valley Chapter of the American Board of Trial Advocates (ABOTA) in 1978 and during that the same year, he served as president of the Association of Defense Counsel of Northern California and Nevada (ADCNC).

Don also helped found and served as president of California Defense Counsel, the political arm of the civil defense bar. He remained active in and a strong supporter of those organizations throughout his career.

Known for his integrity and professionalism, Don was the recipient of the Sacramento Valley ABOTA Chapter's James Gilwee Civility Award in 1999 and was honored as a "Legend of ABOTA" in 2013. After retiring from active trial work, Don became known as a respected mediator and arbitrator who was instrumental in resolving hundreds of cases.

In addition to Tooper, he leaves two sons, Michael and Brian, and one grandchild, Brian's son, Zander. He also leaves many friends as a member of the Sutter Club, Del Paso Country Club and the Grandfathers Club of Sacramento. Many who traveled with ABOTA when Don was on the trip will remember how he loved to sing and dance, knew the words and melodies of many, many songs and sang them well. He also played the ukulele. He will be missed by so many.

Arrangements are pending with W.F. Gormley & Sons of Sacramento. An obituary and guestbook can be found at www.gormleyandsons.com. Donations can be made to the Parkinson's Assoc. of Northern California, 1024 Iron Point Road #1046, Folsom, Calif. 95639; Panc@panctoday.org and (916) 357-6641.

Newsom signs measure to help streamline settlements

Gov. Gavin Newsom has signed legislation backed by Consumer Attorneys of California (CAOC) that will help streamline the settlement process, allowing an attorney to sign off on an agreement if a client who isn't present gives the OK.

AB 2723 by Assemblyman David Chiu (D-San Francisco) and sponsored by CAOC and the California Defense Counsel, will help avoid the extra step of having clients travel sometimes great distances to sign off in person.

The bill, which becomes law Jan. 1, allows an attorney who represents a party to sign off on the agreement. If the party is an insurer, an agent who is authorized in writing by the insurer may sign on the insurer's behalf.

Chiu's bill updates the rules to fit the realities of the process: Attorneys act on behalf of their clients during mediation or settlement negotiations, but more often than not, the represented parties choose not to be present at these negotiations. Under the old rules, an agreement would not be lawful without the extra step of getting signatures from all parties, which slowed the process.

For example, in wrongful death cases, plaintiffs' counsel often will represent heirs scattered about the country. It is impractical to fly them all into town for mediation on the hope of reaching an agreement. AB 2723 will allow a settlement agreement signed by an attorney for plaintiffs to be legally enforceable by the court.

Similarly on the defense side, defendants typically are not present at mediation. A defense attorney or insurance adjuster, if the matter is pre-litigation, will be able to sign an agreement and have it legally enforceable by the judge.

***

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

For more information: J.G. Preston, CAOC Press Secretary, 916-600-9692, jgpreston@caoc.org or Eric Bailey, CAOC Communications Director, 916-201-4849, ebailey@caoc.org

Reprinted from CAOC.org

What are lien claimants up to now?

Page 13

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, Chris Whelan at Chris@WhelanLawOffices.com, Alla Vorobets at allavorobets00@gmail.com or Linda Dankman at dankmanlaw@yahoo.com

CCTLA Q & A Problem Solving Zoom Lunch

Noon, Tuesday, December 8, 2020 — Join Zoom Meeting:
https://zoom.us/j/97070697849?pwd=emcxZldVL3N6YUZQYzM3bDM2YzQ0UT09
Meeting ID: 970 7069 7849 / Passcode: 994463
CCTLA members only

CCTLA Calendar of Events