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Inside

GET IN THE GAME!

Glenn Guenard
CCTLA President
Guenard & Bozarth, LLP

In sports, the margins of victory are often very slim. The difference between winning and losing can be less than an inch, less than a second or even one small mistake can cost you the game. The same thing applies to all of us plaintiff attorneys fighting to obtain justice for victims damaged by the negligent and intentional acts of others. The time, effort and money required to obtain justice for injured clients against billion dollar companies and entities can be stressful and exhausting. But it is rewarding and all worth it if you are able to get the win and obtain that full cup of justice for your clients.

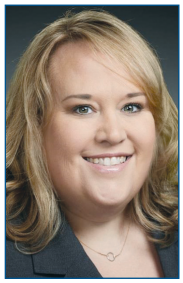
CCTLA has numerous resources to make us all better advocates for our clients. You may learn something that could tip the scales in winning your case. I strongly encourage all 407 of our members to get off the sidelines and get in the game! Go to educational seminars and luncheons. It's a great way to learn something, meet people and pick up MCLEs. Go to the Problem Solving Lunches by Zoom led by past president Dan Glass once a month. Bring a specific question and the participants may be able to help you or you may be able to help someone. Participate on the list serve. Don't be afraid to post a question or to respond to an inquiry where you could answer a question. Also, check out our website at www.cctla.com.

Go to events for charities and also political events sponsored by CCTLA and its members. Yes, I said "political." That is part of what we do as an organization. CCTLA in conjunction with the CAOC supports state and local politicians that align with consumer rights and oppose those politicians who seek to take away those rights. I encourage all members to donate to CAOC and to attend fundraising events for local politicians who are aligned with consumer rights and protections.

This sounds trite, but we are all in this together. The billion-dollar corporations seek to cripple the plaintiffs' attorneys by reducing attorneys' fees, generally and specifically, and also lower insurance limits for billion-dollar corporations and entities. Rideshare companies are among those seeking to limit uninsured motorist limits for their passengers. One way for the billion-dollar companies to do that is a marketing campaign to trash plaintiff lawyers as sue-happy, money-hungry scoundrels who make insurance rates and the price of riding Uber or Lyft skyrocket at the expense of the consumer.

Protecting American Consumers Together (PACT) is a new corporate-backed

Continued on page 8



Marti Taylor, Wilcoxen Callaham LLP, CCTLA Secretary

NOTABLE CITES

By: Marti Taylor

KAUSHANSKY v. STONECROFT ATTORNEYS, APC
2025 2DCA/7 California Court of Appeal
No. B317069 (March 14, 2025)

Legal Malpractice Award Was Overturned Where Plaintiff Failed to Prove Collectability

FACTS: Plaintiff Shalome Kaushansky brought a legal malpractice action against her former attorney, Stonecroft Attorneys, APC, for professional negligence, breach of fiduciary duty and unfair competition. After a bench trial, the court entered judgment in favor of Kaushansky, awarding her total damages of $116,734.29.

In 2014, Kaushansky had retained Stonecroft to represent her in a legal action against her landlord related to multiple water leaks resulting in mold, fires from recurrent electrical problems, a series of faulty water heaters, lack of heat due to a defective heating unit, a gas leak, and dog feces and urine in the hallway.

Stonecroft filed a complaint against the landlord on Kaushansky's behalf on July 24, 2014, asserting causes of action for breach of the implied warranty of habitability and negligent maintenance of the premises.

From July 2014 to September 2015, Stonecroft did almost nothing to advance Kaushansky's case. It failed to propound or respond to discovery. It did not appear for scheduled hearings. It failed to coordinate dates for Kaushansky's deposition with opposing counsel despite Kaushansky's stated willingness to attend.

Stonecroft also stipulated to strike claims for punitive damages and attorney fees from the complaint without advising Kaushansky.

On Sept. 4, 2015, less than two weeks before the discovery cut-off date and six weeks before trial was scheduled to begin, Stonecroft persuaded Kaushansky to sign a substitution of attorney form. Unable to retain other counsel, Kaushansky settled the case against her landlord for $2,500.

On June 24, 2016, Kaushansky brought suit against Stonecroft, alleging causes of action for professional negligence, breach of fiduciary duty, and unfair competition under Business and Professions Code section 17200. The court conducted a bench trial over several days in March and April of 2021.

After the bench trial the court found in favor of Kaushansky, finding she was entitled to recover $91,734.29 in damages on the professional negligence claim and $25,000 on the breach of fiduciary duty claim for a total damages award of $116,734.29.

Stonecraft appealed, claiming that Kaushansky failed to prove at trial the collectability of the judgment against the landlord.

ISSUE: Does professional negligence award have to be supported with evidence that damages are collectible?

RULING: Yes.

REASONING: In an action for professional malpractice, a plaintiff must demonstrate, among other things, proximate causal connection between the alleged breach and resulting injury, and actual loss or damage. The plaintiff must establish that, but for the defendant's negligent acts or omissions, the plaintiff would have obtained a more favorable judgement or settlement in the action in which the malpractice allegedly occurred.

Importantly, collectability of the hypothetical underlying judgment is a component of the causation and damages, and failure to present evidence of the solvency of the defendant in the underlying case means a verdict in plaintiff's favor must be reversed.

Continued on page 37

Trying a Case in Federal Court? The Rules of Evidence Have Changed

By: Margot Cutter

Margot Cutter,
Cutter Law,
is the CCTLA Board
Parliamentarian

Federal Rule of Evidence 107: Illustrative Aids

(a) Permitted Uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweigh by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Use in Jury Deliberations. An illustrative aid is not evidence and must not be provided to the jury during deliberations unless:

(1) all parties consent; or

(2) the court, for good cause, orders otherwise.

(c) Record. When practicable, an illustrative aid used at trial must be entered into the record.

(d) Summaries of Voluminous Materials Admitted as Evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 1006.

Federal Rule of Evidence ("FRE") 107 was an entirely new rule adopted in December 2024. It allows parties to present summaries, charts, or calculations to assist the trier of fact in understanding evidence or arguments. These aids are intended to assist the trier of fact in understanding complex evidence or arguments but are not themselves admissible as evidence.

FRE 107 explicitly limits the use of illustrative aids to their role as tools for comprehension. The court must balance their utility against potential risks, such as unfair prejudice or confusion. This balancing test ensures that illustrative aids serve their intended purpose without compromising the fairness of the trial.

The recent adoption of FRE 107 codified practices that were previously governed by Rule 611(a). Courts referred to illustrative aids as pedagogical devices or demonstrative presentations and admitted them at the court's discretion.

Although illustrative aids are not admitted as evidence, courts will expect all illustrative aids to be entered into the record. Thus, if the counsel intends to use PowerPoint slides during opening statement, closing statement, or with a witness,

Continued on page 4

Continued from page 3

they will need to bring printed copies to submit to the court. Additionally, if counsel plans to use the document camera to outline any witness testimony, they must plan to snap a photo for preservation and immediately provide the original document to the court.

Federal Rule of Evidence 613: Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Unless the court orders otherwise, extrinsic evidence of a witness's prior inconsistent statement may not be admitted until after the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

FRE 613(b) governs the admissibility of extrinsic evidence of prior inconsistent statements. Under the rule, extrinsic evidence may not be admitted unless the witness is first given an opportunity to explain or deny the statement, and the opposing party is given an opportunity to examine the witness about it.

The December 2024 amendments to FRE 613(b) introduced a significant procedural change by requiring that a witness be given an opportunity to explain or deny a prior inconsistent statement before extrinsic evidence of the statement is introduced. This amendment codified a common law principle that has long been applied in federal courts. The prior foundation requirement ensures that the impeaching evidence is presented in a manner that allows the witness to address the alleged inconsistency in a timely and efficient manner.

The Advisory Committee's Notes emphasize that this change is designed to address practical challenges that arise under the existing rule. For example, the current rule allows extrinsic evidence to be introduced before the witness is given an opportunity to explain or deny the statement, which can lead to inefficiencies, such as recalling witnesses solely for this purpose. The amended rule eliminates these issues by requiring the foundational opportunity to explain or deny the statement before extrinsic evidence is introduced.

FRE 801(d)(2): Exclusions from Hearsay; An Opposing Party's Statement

A statement that meets the following conditions is not hearsay:

The statement is offered against an opposing party and:
(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

If a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party.

The recent amendment added the final paragraph of FRE 801(d)(2). This amendment addresses situations where a party "stands in the shoes" of a declarant or the declarant's principal. For example, if an estate brings a claim for damages suffered by a decedent, any hearsay statement that would have been admissible against the decedent as a party-opponent under FRE 801(d)(2) is equally admissible against the estate.

Similarly, this principle applies to relationships such as assignor-assignee or debtor-trustee when the trustee is pursuing the debtor's claims. However, the rule does not apply if the

Continued on page 5

Continued from page 4

statement is admissible against an agent but not the principal, such as when the agent's statement was made after the termination of employment.

The Advisory Committee on Evidence Rules explained that this amendment resolves a circuit split regarding the applicability of the party-opponent hearsay exemption in cases where claims or defenses have been transferred to another party. The rule ensures that a successor party is not placed in a better position regarding the admissibility of hearsay than the original declarant or principal would have been.

FRE 804(b)(3): Hearsay Exceptions; Declarant Unavailable; Statement Against Interest

A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.

FRE 804(b)(3), applies to hearsay exceptions for statements against interest. The amendment requires courts to assess the trustworthiness of such statements by considering the totality of the circumstances, as well as any evidence that supports or undermines the statement. The amendment applies to all declarations against penal interest offered in criminal cases.

FRE 1006: Summaries to Prove Content

(a) Summaries of Voluminous Materials Admissible as Evidence. The court may admit as evidence a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence.

(b) Procedures. The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(c) Illustrative Aids Not Covered. A summary, chart, or calculation that functions only as an illustrative aid is governed by FRE 107.

FRE 1006 governs the admissibility of summaries, charts, or calculations of voluminous materials. The amendment clarifies that such summaries may be admitted regardless of whether the underlying materials have been introduced into evidence. Procedural requirements for the use of Rule 1006 summaries remain in place, including the obligation to make underlying materials available for examination by other parties.

Additionally, the amendment distinguishes FRE 1006 summaries from illustrative aids governed by the newly proposed FRE 107 (see above). FRE 1006 summaries are substantive evidence used to prove the content of voluminous materials. In contrast, FRE 107 illustrative aids are pedagogical tools designed to assist the trier of fact in understanding evidence and are not themselves evidence.

ABOTA updates its admission rules

JILL TELFER

The American Board of Trial Advocates ("ABOTA"), a national organization of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution, has made some changes to its admission requirements.

ABOTA, which has 94 chapters across the United States, also is dedicated to Judicial Independence and the Rule of Law. In 2023, the Sacramento Valley Chapter of ABOTA was the recipient of the prestigious National Chapter of the Year award in the large chapter category.

Jill Telfer, 2025 president of the Sacramento Valley Chapter, explained the changes and noted that Aug. 15 is the membership application deadline.

Telfer said she is "pleased to inform you we have changed our admission requirements recognizing the difficulties in getting cases to trial and acknowledging the trial experience of felony trials and lengthy trials. Members must have at least five years of active experience as trial lawyers, have tried at least seven civil jury trials to conclusion as lead trial counsel, and possess additional litigation experience that is determined by a point system."

She said "30 of the 100 required points may come from felony jury trials. The longer a trial, the more points. Further, you receive points from trials which resolved prior to verdict as lead trial counsel and cases where you would have been the associate attorney on the case.'

The chapter's activities include interaction with the judiciary through events honoring local, state, and federal judges, juror education and recognition, civics education for the public, educational programs for attorneys, community service activities, members social events and scholarships for local law students.

Aug. 15, 2025, is the deadline to apply for membership. Applications must first be submitted to the chapter, not to National ABOTA. To access the application, visit https://www.sacabota.org/become-a-member. "We look forward to your application," Telfer said.

GET IN THE GAME!

Continued from page one

501(c)(4) which has launched a multimillion-dollar national campaign to discredit the civil justice system under the false banner of "consumer protection." PACT has a billboard campaign to mock personal injury lawyers and soften public opinion for legal reforms that would make it harder for everyday people to hold corporations accountable in court. Plaintiff's attorneys need to expose PACT's true agenda and funders by the media and with counter-billboards. CAOC has formed a PACT board, funded by the 20 firms that donate the most money to address the PACT and fee initiatives.

The way for us to combat Uber, Lyft and the rest of the billion-dollar corporations and entities is by giving money to organizations like CAOC and to fundraisers for politicians who will fight for consumer rights and protections.

Our members have been lagging behind in donations to CAOC and politicians in general at sponsored events. Don't be a bystander. Be engaged by attending these events. You don't have to be a sponsor or donate the maximum. Donate what you can. Make your donations part of your business plan. If everyone does it then it can make the difference, just like getting that first down by one inch! It takes a team effort to do that.

Another way to combat the tort reform campaign is to not shoot ourselves in the foot and help fuel the tort reformers position. I have heard from many lawyers and clients that many of the "out of town lawyers" who litter our freeways with billboards and with television advertisements often charge attorneys' fees of 40-50%. That is indefensible.

To make matters worse, I have heard from many health care providers that these same "out of town lawyers" are very difficult to deal with and expect massive cuts to medical bills and liens.

Finally, I have heard from several former clients of the "out of town lawyers" the very sketchy circumstances of how they came to be retained and how the client received only a small fraction of a large settlement. This conduct just validates the tort reformers' position against plaintiff attorneys. We don't need to create negative publicity by our own actions. Keep the practice of law professional and dignified.

If all of us as a group are not willing to pitch in by making donations and self-policing fellow plaintiffs' attorneys, our practices will change, and it won't be for the better.

This is not a new issue. It has been going on for decades. But it is especially important now, given the shift in wealth and power.

SPRING FLING

CCTLA's 21st Spring Reception & Silent Auction, also known as "Spring Fling," was held May 29. It was sponsored by CCTLA and the Sacramento Food Bank and Family Services.

CCTLA board member Chris Wood and his wife Amy, who for the fourth consecutive year, generously agreed to host the event at their home, the Lady Bird House in the Fab Forties neighborhood. It was free for CCTLA members, including one guest, sponsors and honored guests, with all proceeds benefitting those in need by raising funds for SFB&FS. There were hosted beverages, appetizers and valet parking.

A thank you to all who helped sponsor this event, with a special thank you to Noah A. Schwartz of Ringler Associates, our Diamond Sponsor with a donation of $10,000. We also appreciate the many $5,000, $2,500 and $1,000 sponsors. Our goal every year is to exceed $100,000 in donations.

As part of Spring Fling, CCTLA honors the recipients of the Joe Ramsey Professionalism Award and the Morton L. Friedman Humanitarian Award. Chris Wood and Joe Babich, both of Dreyer Babich Buccola Wood Campora, are this year's recipients, recognizing their outstanding contributions to the legal community.

ChrisWood received the Morton L. Friedman Humanitarian Award, which recognizes an attorney for his/her demonstrated "heart, soul, and passion as a trial lawyer in service to the community.

Joe Babich received the Joe Ramsey Professionalism Award, which recognizes an attorney who has distinguished himself/herself as committed to professionalism, civility and "in recognition of his/her integrity, wisdom, helpfulness, legal skills, and experience." My congratulations to both.

RECENT EVENTS

• On Feb. 24, Presiding Judge Bunmi Awoniyi and Supervising Civil Judge Steven Gervercer conducted "The State of The Sacramento Court" luncheon, with 28 members in attendance. The luncheon was hosted at CCTLA board member Ognian Gavrilov's 58 Degrees Wine Bar and Restaurant. There was a lot covered, but

Continued on page 9

GET IN THE GAME!

Sacramento attendees at Justice Day held at the state Capitol in April. CCTLA and OCTLA (Orange County Trial Lawyers Association) co-hosted the "Nightcap" Reception on April 7.

Continued from page 8

some of the highlights include: the court acquired 10 new judges and two new commissioners in 2024; the Sacramento Superior Court has 66 filled judicial positions with only two vacancies; Judge Yap and Judge Miadich were added to Law and Motion to relieve the bottleneck in Judge Sueyoshi's and Judge Krueger's calendars; e-filing and e-Court implemented for civil cases; total civil filings for 2023-2024 up 19%; there are plans for significant investment and restructuring of civil case management.

• On Mar. 14 & 15, CCTLA and CAOC co-sponsored the Donald Galine Napa Sonoma Travel Seminar at the Meritage Resort in Napa. Dreyer, Babich Buccola Wood & Campora was one of the sponsors. Roger Dreyer was the co-chair, and I was the vice co-chair. There were a total of 180 attendees from around the state, including 55 CCTLA members.

CCTLA was well-represented by speakers and moderators at the MCLE sessions, including Roger Dreyer, John Demas, Wendy York, Edward Dudensing, Nolan Jones, Wesley Griffith, Natalie Dreyer, Noemi Esparza, Glenn Guenard and board members Kelsey DePaoli, Margot Cutter, Anthony Garilli and Neil Ferrera who did a great job filling in for Chris Wood at the last minute.

Attendees were able to obtain up to 11 hours of MCLE credits in a wide range of topics including New Developments in Liens, Federal Practice, Solo and Small Firms Roundtable, Lessons Learned Advancing From Second to First Chair, Mediation, Ethics and Media in SexAbuse Cases, The Challenging Landscape of Auto Cases, Lessons from Elder Abuse Veterans, Putting Money Where Mouth is in Injury Cases, Unlocking AI Power, Insights From Seasoned Trial Experts, Claims in Sex Abuse and Discrimination Cases and Ethical Boundaries After Natural Disasters.

Senator Adam Schiff was the closing keynote speaker. Senator Schiff greatly respects what organizations like CAOC and CCTLA do in terms of protecting victims and keeping the access to justice open and available to all Californians and people beyond the Golden State. He believes that at this moment in time, we are at the center of two crises that are deeply intertwined, and that we as consumer attorneys, have a pivotal role to play in each of them. The first is the economy, and the second is our democracy.

The problem is that people are working hard and barely getting by, which is a dire challenge to our democracy if it isn't meeting the economic needs of the people, who then look for other models of leadership. Also the problem is that there has been an acceleration of the concentration of wealth and power in the hands of a smaller and smaller group of corporations and individuals. And with that concentration of wealth has come a concentration of power.

As plaintiffs' attorneys, we can hold the rich and powerful accountable when representing the little guy because we are a nation of laws not men, with the idea that the rule of law applies to everyone, even the most powerful. Everybody gets a fair shake. Everybody's held to the same standard. We will get through these challenging times. It's important to do one's job and influence events within one's sphere of influence.

Senator Adam Schiff and Glenn Guenard

• On Mar. 28 the Defeating the DME seminar was held at the office of board member Dan Del Rio, of Del Rio & Caraway. A total of 32 members attended. The speakers were Dorothy Clay Sims, Esq, and Oregon Hunter, M.D.

Clay Sims is the author of the highly regarded book, "*Exposing Deceptive Defense Doctors,"* which is widely recognized for its insight on challenging defense doctors. She has authored numerous articles in peer reviewed journals on the topic of defense medical examiners. She is a frequent speaker at plaintiff organizations. She now limits her practice to assisting lawyers in medical or psychological discovery and cross examination.

Hunter is board-certified in physiatry. He works with Clay-Sims as a non-testifying forensic consultant. He has extensive experience in treating pain, TBI and CRPS. He is also well-published and a frequent flyer as a speaker at seminars for plaintiff's organizations. Hunter shared examples of very detailed critiques of defense medical reports that he prepared for plaintiff's attorneys. He also assists lawyers in determining causation and damages and attends depositions as the plaintiff's consultant.

• On Apr. 7-8, the CAOC Justice Day was held at the Capital. CCTLA and OCTLA (Orange County Trial Lawyers Association) co-hosted "A Nightcap" reception the evening of April 7.

Continued on page 11

GET IN THE GAME

Continued from page 7

There were a total of 167 attendees at Justice Day, with 20 attendees from Sacramento. Since this is in our backyard, we really need to make a push to at least double that number next year.

It takes time to participate in these events, but you will be glad you did so. We were able to meet with state legislators and key members of their staff, learn about enacting meaningful social change from CAOC's advocacy team, stand up for the rights of California consumers, help protect the civil justice system and connect with fellow consumer attorneys including Geoff Wells, CAOC president.

Wells' message was aligned with Schiff's message that our justice system is under attack and that CAOC and all other plaintiffs' organizations need to join together in order to protect the justice system amidst threats and attacks on judges, clerks and their staff for unpopular rulings, political pressure on legal professionals and law firms and growing mistrust of the legal system, which threaten the very foundation of fairness and equal justice in California and in our country. We must protect the rule of law. The mission of CAOC, after all, is justice for all.

• On May 1, 2025, CCTLA was one of the sponsors for the Law Day Dinner by Operation Protect & Defend (OPD).

OPD was established in 2001 through the efforts of the Hon. Frank C. Damrell (Ret.) The local bench and bar and Sacramento area teachers work together to design a curriculum including selected readings and court opinions to help high school students on critical constitutional topics.

At the dinner, high school students were honored for winning essays and art. The student at our table wrote an essay on limiting peremptory challenges in criminal cases.

Board member Kellen Sinclair also attended the event, as well as past presidents Dan Glass and Jack Vetter. The highlight of the night for me was meeting the keynote speaker, Hon. Ana De Alba, who is on the U.S. Court of Appeals for the Ninth Circuit. Judge De Alba has a very inspiring story as a first-generation Mexican-American who worked with her with her farmworker parents in the fields in Merced, CA.

UPCOMING EVENTS

• A new date soon will be announced for the *Voir Dire* Seminar, originally set for June 6. The seminar will feature John Demas of Demas Law Group and Chris Wood of Dreyer Babich Buccola Wood Campora as the speakers, along with trial consultant Judy Rothschild, PhD.

The topics include *voir dire* logistics and common issues, including exercising challenges and how to prepare and frame your *voir dire*. This will not just be lectures. It will be an interactive approach. Attendees will be expected to get up and practice *voir dire* while others serve as mock jurors.

• Dorothy Clay Sims will speak in a Zoom program titled "Easy AI Tips to Win Your Case." The date has not been finalized as of this writing but will likely take place in June or July.

Judge Ana De Alba and Glenn Guenard

DON'T FORGET WHO WE ARE

As a 501(c)organization, CCTLA provides a non-profit, public service, educational, scientific, fraternal, benevolent association for our members and the public.

Per our By-Laws, CCTLA has 11 specific purposes:

(1) Uphold the U.S and California Constitutions;

(2) Advance the science of jurisprudence, promote the administration of justice and uphold the honor of the profession and the practice of law;

(3) Protect the rights of the consumer, safeguard the environment and apply its knowledge and experience in promotion of public good;

(4) Advance the cause of those damaged in person and property and enforce their legal rights through courts and other tribunals and to resist efforts of others to curtail those rights;

(5) Help persons whose rights may be in jeopardy or accused of violation the law;

(6) Publish newsletters and other written material for educational purposes including education of members, the judiciary, lawyers generally and the public;

(7) Encourage scholarship and increase proficiency among members specifically and the bar;

(8) Cooperate with CAOC, AAJ and other professional organizations with the same goals as CCTLA;

(9) Encourage and promote changes in California law by legislative or court action and to oppose injustice in existing contemplated legislation, seek or correct unfair, unjust and oppressive legislation or judicial decisions;

(10) Recognize and make appropriate meritorious awards to outstanding persons who have made distinctive contributions to the improvement of the law;

(11) Promote diversity as stated in the CCTLA Diversity Mission Statement.

ABOTA's Judge, Clerk of the Year

The Sacramento Valley Chapter of the American Board of Trial Advocates (ABOTA) had its annual Judicial Reception on May 8, honoring the 2025 Judge of the Year, the Honorable Lauri Damrell; and and the 2025 Clerk of the Year, Victoria Aleman.

Judge Damrell has been a Sacramento Superior Court Judge since 2018. During her judicial career, she has presided over various civil and criminal trials and other proceedings, including misdemeanor arraignments and sentencing, civil harassment and domestic violence restraining order hearings, and family court proceedings. She is one of two judge assigned to the complex civil cases. In addition to her commitment to the civil justice system, she is active in the legal community, including being a past president of the Kennedy Inn of Court, and she teaches at local law schools.

Clerk Victoria Aleman has been a dedicated member of the Sacramento County Courthouse team for 17 years. In 2019, she became Judge Damrell's courtroom clerk, and they worked side by side for three years in the Family Law Department before moving downtown together in 2022, where Aleman and Judge Damrell played key roles in transforming complex civil from an ancillary assignment into a full direct calendar department.

Far left, ABOTA President Jill Telfer, CCTLA member and past CCTLA president, with Judge Lauri Damrell, ABOTA's Judge of the Year; and left, with Clerk of the Year Victoria Aleman.

CCTLA Sponsors DIBAS Unity Event Honoring Judge Dylan Sullivan

On May 19, the Disability Inclusivity Bar Association ("DIBAS") honored Judge Dylan Sullivan (Ret.) at an event where CCTLA was a sponsor. DIBAS is the first unity bar of its kind in California, with members of the legal community with disabilities and their allies. Keynote speaker was Judge Larry Brown. CCTLA members participating included President Glenn Guenard, board members Kellen Sinclair and Michelle Jenni, member Letty Litchfield and Past President Jill Telfer.

DIBAS awarded Judge Sullivan with the DIBAS Community Service Award for her courage, creativity and grace in battling her aphasia disability. Displayed during the event were some of her beautiful artwork, which she openly describes as a coping method in living with aphasia.

Below is a link to a recent article about her from the San Francisco Chronical:
https://www.sfchronicle.com/health/article/northern-california-judge-aphasia-artist-20180560.php

Above, Judge Dylan Sullivan receives DIBAS' Community Service Award from Judge Andi Mudryk

Right: Among those attending the DIBAS event were, from left, CCTLA President Glenn Guenard, CCTLA Past President Jill Telfer, Alexa Greenbaum, CCTLA board member Kellen Sinclair, Letty Litchfield, CCTLA Past President Michelle Jenni, Judge Art Scotland (Ret.) and Judge Andi Mudryk

Affirming the Rule of Law

Our legal system is only as powerful as those who uphold it

By: Jasjit Singh

Jasjit Singh is Director of Programs for California ChangeLawyers

On National Law Day, I proudly re-read my oath, alongside other attorneys from the Sacramento region, at the Robert T. Matsui Federal Courthouse in Sacramento. We joined thousands of attorneys across California and the United States, reaffirming our duty to uphold the Constitution, the rule of law, and the application of it.

In a world of modernized warfare, the biggest battle is taking place right before our eyes: the war of (mis)information. The task at hand is frankly overwhelming. As attorneys, we may hold varying political opinions, but our oath to the Constitution and our promise to our profession is one that requires us to put our clients first, to ensure due process is preserved, and the rule of law is applied equitably for all. This means that anyone, regardless of their sexual orientation, religious belief, or even immigration status, is entitled to protections due to the Constitution and the law itself.

At California ChangeLawyers (formerly known as the California Bar Foundation), our mission is simple, to build a better justice system. As its director of programs, I have spent the past seven years leading our scholarships program, grants funding, and policy efforts. When I personally think of our system, however, I immediately think about the impact of positional power. Those who make rulings, advocate for their clients, or create the policies that affect community: What lived experiences, backgrounds, and history do they bring?

I don't believe merely diversifying the bench or the profession will equate change. However, I also don't believe that we can build a better justice system for a state as diverse as California without providing equitable opportunities for people of all backgrounds to be in positions of influence and power. Diversity, Equity, and Inclusion: Three words that should be celebrated and honored in the vibrant demographic makeup of modern-day America, but which have instead become weaponized to bring about fear, animosity, and hatred.

We all have a duty to uphold the rule of law and apply it equitably.

In January, President Trump announced that he was rescinding a long-standing ICE policy that generally stopped immigration enforcement at schools, hospitals, and places of worship. As president of the Sacramento City Unified School District Board of Education, I was on the receiving end of frantic phone calls from parents and messages from community leaders, all asking one thing, "What will you do to protect our children?" The announcement sent shockwaves through our district, the city, county, and our country.

In that moment, I recalled my oath, I recalled my commitment, and I realized that one of the great powers we as attorneys have, is our understanding of the law. We know that due process exists and that the rule of law must be applied to ensure justice is truly served.

After publicly announcing our intent to safeguard our students, I launched the first of its kind "Know your Rights" tour across the City of Sacramento. In collaboration with the Asian Pacific Bar Association of Sacramento, we held one "Know your Rights" session per week for seven weeks in a row.

The sessions were heavily attended, translations were provided in multiple languages, and the message to the community was clear: that regardless of your immigration status, regardless of what you are hearing from unverified sources, you, too, have rights; you, too, have protections; and you, too, are protected through the lens of due process, legal recourse, and representation, thanks to our Constitution.

Through our presentations, we learned that community members are often un-informed and ill-informed, and

Continued on page 17

Continued from page 16

disinformation is prevalent. While we made assurance of due process under the law, a statement from a student resonated with me deeply. She said, "While you all are ready to follow due process and law, what good is it if the president of this country cherry picks who it applies to and in what manner?"

It's a valid question.

Every week we read stories of U.S. citizens being deported, U.S. permanent residents being sent to foreign maximum-security prisons, and ICE enforcement at immigration hearings. These incidents should have us all concerned. Our legal system is only as powerful as those who uphold it. Not every gesture needs to be grand nor public. So, I urge you, even if in private, to re-affirm your oath, re-affirm your commitment to the rule of law, and help build a legal system that works for all.

Jasjit Singh, center right, with attendees at the launching of his seven-week "Know Your Rights" tour across Sacramento, launched in collaboration with the Asian Pacific Bar Association.

***

Jasjit Singh is an attorney, elected official, non-profit leader, and community organizer. He is director of programs at California ChangeLawyers, president of the Sacramento City Unified School District board and on the board of Jakara Movement, the largest Sikh Youth non-profit in the United States.

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Amazon's Not-So-Independent Delivery Service Partners

By: Dan Del Rio

Daniel Del Rio, Del Rio & Caraway, is a CCTLA Board Member

With Amazon now becoming the world's largest retailer, it has had to tackle the logistical challenge of how to offer next-day, or in some cases even same-day delivery. This means that it needed to create an infrastructure that could scale with its huge bandwidth, give it control over the delivery times, control over the delivery costs, and yet would not give it the responsibility/liability that an internal transportation fleet would bring them. Amazon's answer to this logistics problem was to outsource it.

It's important to do the discovery to make sure that Amazon remains liable for the delivery service partners (DSPs) and delivery associates/drivers because without getting Amazon on the hook, you will be limited to the one million-dollar liability policy that Amazon requires every DSP to carry. In addition, if you don't bring Amazon into the lawsuit then you will not have access to most of the critical documentation as all data collected on the DSPs and delivery associates/drivers is forwarded only to Amazon and is in its sole control.

Amazon created Amazon Logistics, Inc. The entire purpose of this company is to substitute out all of the transportation and delivery work to delivery service partners who are independent companies, and thus, in Amazon's point of view, relieve it of liability. However, further investigation will reveal that there is no independence between these companies and that it is just another form of the old taxicab shell corporation to try and insulate Amazon. See below....

In brief review, the jury instruction CACI 3704 Existence of "Employee" Status Disputed states:

> In deciding whether [name of agent] was [name of defendant]'s employee, the most important factor is whether [name of defendant] had the right to control how [name of agent] performed the work, rather than just the right to specify the result. One indication of the right to control is that the hirer can discharge the worker [without cause]. It does not matter whether [name of defendant] exercised the right to control.
>
> In deciding whether [name of defendant] was [name of agent]'s employer, in addition to the right of control, you must consider the full nature of their relationship. You should take into account the following additional factors, which, if true, may show that [name of defendant] was the employer of [name of agent]. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.
>
> **(a)** [Name of defendant] supplied the equipment, tools, and place of work;
>
> **(b)** [Name of agent] was paid by the hour rather than by the job;
>
> **(c)** [Name of defendant] was in business;
>
> **(d)** The work being done by [name of agent] was part of the regular business of [name of defendant];
>
> **(e)** [Name of agent] was not engaged in a distinct occupation or business;
>
> **(f)** The kind of work performed by [name of agent] is usually done under the direction of a supervisor rather than by a specialist working without supervision;
>
> **(g)** The kind of work performed by [name of agent] does not require specialized or professional skill;
>
> **(h)** The services performed by [name of agent] were to be performed over a long period of time; [and]
>
> **(i)** [Name of defendant] and [name of agent] believed that they had an employer-employee relationship[./; and]
>
> **(j)** [Specify other factor].

Now, let's relate this to how Amazon and Amazon Logistics, Inc. work with their Delivery Service Providers (DSPs).

First, Amazon has created an application process which requires that the DSP:

1. complete an application and interview,

2. create their own legal business entity with specific imitations on what can be included in the DSPs name including that they cannot use the word Amazon, Prime, or DSP,

3. and approve to Amazon that they have at least $30,000 in liquid assets.

If they are approved, then the DSP must attend a two-week

Continued on page 21

Continued from page20

orientation program and sign a contract with Amazon Logistics, Inc.

Now there are three primary documents covering the relationship between Amazon and the Amazon DSP. These include the DSP Contract, the US Program Policies, and the Operations Manual.

The DSP Contract is seven pages long, drafted solely by Amazon; the DSP has no right to make changes or edits, and the DSP must comply with all the terms of the contract. (Contract of adhesion)

The US Program Policies is 11 pages long, drafted solely by Amazon; the DSP has no right to make changes or edits, and the DSP must comply with all the terms therein. (Contract of adhesion)

The Operations Manual is 293 pages long, drafted solely by Amazon; the DSP has no right to make changes or edits, and the DSP must comply with all the terms of the Operations Manual. (Contract of adhesion regarding the day-to-day operations of these "independent" companies)

What are some of the terms of the governing documents?

1. The DSP must manage its business through Amazon's online portal,

2. the DSP must provide Amazon with access to its business records within 24 hours upon request,

3. the DSP receives a higher per-package compensation rate by agreeing to become an Amazon-branded DSP. This means:

- **a.** the DSP must lease a branded delivery vehicle through a vendor assigned to them by Amazon,
- **b.** each DSP delivery driver must wear an Amazon-branded uniform,
- **c.** and the DSP cannot use Amazon-branded vehicles to make non-Amazon deliveries.

4. Amazon provides the DSP with a workstation located inside and Amazon hub warehouse, which often times will be the DSPs only physical office,

5. the DSP must comply with Amazon's wage, hour, and benefit rules,

6. the DSP must allow Amazon to collect data on the DSP and its personnel, including vehicle location and driving behavior data,

7. the DSP must get each employee's consent to allow Amazon to collect all data.

How does a typical day of operations go?

Morning Operations:

1. DSP delivery driver uses Amazon's instructions via the Mentor App to inspect their vehicle,

2. follow Amazon instructions on where to park the Amazon-branded delivery vehicle,

3. follow Amazon's instructions on the Flex App on what and how to load the vehicle,

4. follow Amazon's instructions when to start the vehicle and leave Amazon's warehouse

5. work towards Amazon school of spending 24 minutes or less in the warehouse to maximize on road time.

On-Road Operations:

1. Must remain logged into Amazon's Flex App and Mentor App during the entire delivery driver shift,

2. the flex app is how Amazon provides daily route assignment to each driver with GPS directions to each delivery location including time assignments for each delivery,

3. each DSP delivery driver must use the flex app to scan and photograph each delivery at each location,

- **a.** this provides Amazon with proof of delivery and delivery behavior data which is provided solely to Amazon and used to refine delivery routes,

End-of-Shift Operations

1. Use a credit card provided by Amazon to fill up the Amazon branded delivery vehicle with gas,

2. follow Amazon's instructions on where to park the vehicle,

3. follow Amazon's instructions via the Mentor App to complete a post-trip inspection the vehicle.

The Apps

There are two apps that every DSP driver must be logged into throughout their entire shift: the Mentor App and the Flex App.

The Mentor App is how the DSP delivery driver completes their pre-trip and post trip vehicle inspections every day. This app also tracks DSP driver driving behavior data which is made available solely to Amazon. This app also calculates the FICO safe driving score to each DSP driver.

The Flex App is how the DSP delivery driver gets all the route assignments, GPS directions, time assignments, and how the DSP driver scans and photographs the delivery of each package.

Amazon then uses its Cortex Tool to collect and analyze the DSP driver driving data so it can at all times see how many deliveries have been completed, how many are left to complete, how many need to be re-delivered, how much time each delivery has taken, how long it will take to complete all deliveries for the day, etc.

How else does Amazon have control over the DSPs?

1. Amazon requires that each DSP maintain a $1-million liability policy

2. Amazon requires that Amazon Logistics, Inc., is listed as an additional insured on the DSPs liability policy

3. Amazon requires each DSP to register each delivery vehicle with Amazon,

4. Each delivery vehicle must be Amazon's requirements for size, space, cleanliness, etc.,

5. DSPs are encouraged to Amazon-branded DSPs by receiving a higher per package compensation at which point:

- **a.** the branded DSP must purchase Amazon-branded uniforms
- **b.** the branded DSP must lease Amazon-branded vehicles through the leasing company assigned to the DSP by Amazon

6. The DSP can only employee delivery drivers who are

Continued on page 23

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Continued from page 21

at least 21 years old and pass criminal and driving record background checks in accordance with Amazon standards, along with passing a drug test.

7. Each DSP delivery driver must undergo training by Amazon on safe-driving and delivery policies; each DSP must meet Amazon's minimum requirements for delivery driver pay and benefits

8. Each DSP is assigned a dedicated business coach who is an Amazon employee

9. Amazon has the right to inactivate/offboard any DSP delivery driver from Amazon's online DSP portal making them unable to login to the Amazon Flex App and ineligible to be assigned a route by the DSP,

10. Amazon arranges preferred vendor pricing for the DSP.

11. Amazon provides payroll services, background checks, fue l cards, insurance, accounting/tax services, driver hiring tools, etc.

All of this information is available through strategic depositions of the DSP owner, DSP managers, the delivery driver, and DSP persons most qualified along with Amazon's own documentation including the:

1. Contract between the DSP and Amazon
2. The US Program Policies
3. The Operations Manual
4. Amazon's policies and procedures for DSPs
5. Amazon's policies and procedures for delivery drivers (delivery associates)
6. Amazon's training materials for delivery associates
7. DSP and delivery associate weekly ratings/scores
8. Delivery associate weekly FICO safe driving scores
9. Amazon driver background checks
10. DSP owner training
11. DSP orientation materials
12. The Amazon driver and conduct safety team communication/report,
13. and any communication between Amazon and the DSP regarding the subject car crash.

Amazon is also notorious for requiring a protective order requiring that all information be used solely for the litigation and destroyed after the litigation before it will answer even the simplest of discovery, including basic form interrogatories.

After going through laundry list of Amazon's control over the DSPs and the delivery associates/drivers, it's fairly plain to see that the DSP is really just another disguised version of an employer where Amazon retains all the rights to approve DSPs and delivery associates/drivers, tells them specifically what to deliver, how to get to the delivery, time the each delivery should take, monitors breaks, monitors driving behavior, and encourages all of the DSP delivery associates and trucks to become Amazon-branded so that everything appears to be by Amazon.

With this level of control, we need to do the work to prove that it's not just the DSP that is responsible for the car crash but that it is really Amazon who has entirely created this system, provided all training, provided all routing decisions, and is therefore responsible for the car accidents of the delivery associates/drivers.

PREMISES LIABILITY

By: Robert Nelsen

Robert Nelsen, Tiemann Law Firm,
is a CCTLA Board Member

This article is intended to give a little primer on the three most prominent affirmative defenses in premises liability cases as well as provide some guidance on what approach you can take to get ahead of an MSJ.

As you will see here, there are broad immunities extended to public entities and property owners that the legislature has determined serve some public policy concerns. However, if you can develop evidence to distinguish or prove an exception to these immunities, then you should have a case that speaks to more than just your client's injuries.

Natural Condition of Unimproved Public Property (Govt. Code 831.2):

This defense applies only to public entities and provides immunity for injuries caused on unimproved public property. The public policy behind the statute was to encourage more recreational use of public lands. There are essentially two elements essential to this defense: (1) is the condition "natural", and (2) was that condition "unimproved." A native tree in the middle of the forest should fall under the immunity; a tree planted in the middle of a developed park should not. But the courts have broadened the interpretation over the years. Here are some of the more recent cases:

• *City of Chico v. Superior Court* (2021) 68 Cal.App.5th 352

This case involved a native 100+-year-old valley oak whose branch broke and landed on a jogger. Plaintiff alleged that the city had notice of the dangerous condition, but, moreover, that the area was in fact improved because there were paths and a picnic area in the vicinity. Despite this, the 3rd DCA reversed the trial court's denial of MSJ, essentially finding that there was no evidence that the improvements altered the tree's natural condition or contributed to the branch's failure.

• *County of San Mateo v. Superior Court* (2017) 13 Cal.App.5th 724

This case involved a diseased tree that fell on a young child while he was camping nearby. The campsite included amenities such as fire pits, restrooms, paved roads, a store, etc. A land surveyor identified 34 man-made structures within 126 feet of the fallen tree, and expert testimony correlated those improvements to the tree's disease and ultimate failure. As such, the 1st DCA refused to extend the immunity on MSJ.

• *Meddock v. County of Yolo* (2013) 220 Cal.App.4th 170

This case involves a cottonwood tree that was directly adjacent to a paved parking lot along the Sacramento River that fell onto a man sitting in that parking lot. While the tree was natural, the proximity to the parking lot – which was unquestionably "improved" – seemed to be the most important fact. Nevertheless, the 3rd DCA failed to find there was a sufficient connection between the improved area and whether that ultimately caused the tree to fall, finding that, while proximity may inform causation, it alone is not a substitute for it.

Trail Immunity (Govt. Code 831.4):

"Trail Immunity" immunizes public entities from liability for injuries caused on either unpaved roads or trails that lead to areas used for recreational purposes. It also provides immunity for paved trails giving access to unimproved property, so long as the public entity provides adequate warnings of any hazards. Historically speaking, the term "trail" has been interpreted broadly. These cases are all very fact-specific and generally all speak to whether or not the subject area constituted a "trail" within the definition of the statute. Here are some of the more recent examples:

• *Helm v. City of Los Angeles* (2024) 101 Cal.App.5th 1219

In this case, a plaintiff tripped on a wire installed by the defendant that stretched along a walking path that led down to a beach. Plaintiff argued that the wire was not part of the "trail." However, the court held that it was, in fact, an integral part of the design for the trail so the immunity applied.

• *Garcia v. American Golf Corp.* (2017) 11 Cal.App.5th 532

In this case, a young child was struck by an errant golf ball while her mother pushed her in a stroller on a trail that was

Continued of page 26

Continued from page 25

adjacent to the golf course. The 2nd DCA held that no trail immunity should apply because the real danger stemmed from the golf course, not the trail, and the golf course was commercially operated. Further, the danger presented to more than just those using the trail.

• *Leyva v. Crockett & Co., Inc*. (2017) 7 Cal.App.5th 1105

This is another golf course case, also out of the 2nd DCA in the same timeframe. This also involves a private company – the golf course. However, in this instance, the trail was so intertwined with the golf that the risk of getting hit by a ball was only to those on the trail. As such, the court extended immunity to the defendant.

Recreational Immunity (Cal. Civil Code 846):

The recreational immunity provides a blanket defense to the owners of property when it is found that the plaintiff entered the property for a recreational purpose. The statute was adopted to prevent property owners from closing their property off to others when there is a recreational benefit to its use. However, the legislature carved out three exceptions: (1) defendant willfully or maliciously failed to protect or warn others; (2) a fee was charged for permission to enter; or (3) defendant expressly invited the plaintiff onto the property.

It is important to note that public entities are not entitled to utilize this immunity (See *Pacific Gas and Electric Company v. San Mateo* (2017) 10 Cal.App.5th 563).

Discovery Approach to Affirmative Defenses:

So what should you do when you actually have a case with this issue(s)? Well, you first need to shape your claim form and Complaint to ensure that the issue won't be addressed by Demurrer. Then you actually need to read Defendant's Answer. These pleadings are rarely exciting, but it is important to know which affirmative defenses your defendant(s) raised. This should inform you on how to handle your discovery approach.

If you see an affirmative defense raised that may impact your case, you need to attack it immediately.

The first step is through written discovery. Form Interrogatory 15.1 is key here, but also feel free to include contention interrogatories. Go to the jury instructions for the defense you are worried about and have them identify all facts, witnesses and documents that support each element of the defense. And do the work to meet and confer when their responses are insufficient.

Remember, the existence of facts is not privileged (State Farm Fire & Cas. Co. v. Superior Court (1997) 54 Cal.App.4th 625, 639-640), the existence of documents is not privileged (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 293) and the identity of witnesses is not privileged (*Aerojet-General Corp. v Transp. Indem. Ins*. (1993) 18 Cal.App.4th 996, 1004).

Defendants are understandably reluctant to state that they don't have any facts or information to support an affirmative defense, and they will typically give evasive responses to avoid having to answer. Do not allow this. Defendants can plead general denials and affirmative defenses out of an abundance of caution, but that does not authorize them to refuse to partake in the discovery process (See, for example, *Singer v. Superior Court* (1960) 54 Cal.2d 318, 323-324). If they do not have any facts, witnesses or documents, they must so state.

Often times, the next step will be to depose any witnesses identified in the defendant's responses. Or, if you are dealing with a company or public entity, and you feel they've only cherrypicked the witnesses favorable to them, you can do a descriptive notice to take each employee who had any involvement in the trail, tree maintenance, subject event, or whichever issue you are dealing with.

A Person Most Knowledgeable ("PMQ") deposition is also a vital way to get testimony that can be imputed directly on the defendant. And these answers are typically given deference in a Motion for Summary Judgment, even if the defendant has declarations submitted to the contrary (See, for example *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1).

You will almost certainly need experts as well, and it would serve you well to get them involved as early as possible. They can help you with your deposition prep, document requests, etc. to ensure that they have what they need to support their opinions at the time of the MSJ.

Lastly, don't forget that a plaintiff is well within his/her rights to try tp eliminate an affirmative defense by filing a Motion for Summary Adjudication on the issue.

Or you can wait until trial and try to move *in limine* on the issue if they don't have the requisite expert or something along those lines. Otherwise, these issues are still at play at trial, and your jury may have to decide on an issue that can defeat your entire case. So make sure to factor them into your trial preparation.

PREMISES LIABILITY FOR THE NEW LAWYER

By: Jacquie Siemens

Jacqueline Siemens, Demas Law Group, a CCTLA Board Vice President

You have new clients who need your help. One was injured at her cousin's rental home. She broke her leg falling down stairs that seemed too far apart. The other client was beaten and robbed in the parking garage of the hotel as he was walking out to his car. How do you use all the resources at your disposal to give your clients the best chance at justice?

Premises cases, like any case, start with what you need to prove. The best way to find the required elements to prove a premises liability case is to go to the CACI 1000 series. Jury instructions provide the essential factual elements, including duty of care, what qualifies as an unsafe condition and what affirmative defenses are available to the defendants that may defeat your case.

Duty of Care

The law requires a person who owns/leases/occupies or controls a property to use reasonable care to keep the property in a reasonably safe condition. CACI 1001 provides factors in determining whether reasonable care was used including the likelihood someone would come on the property, the likelihood of harm, whether the defendant knew or should have known of the condition that created the risk of harm, and the difficulty of protecting against that risk.

Defendants will always argue the landowner is not the insurer of the visitor's safety. When they tell you they are code compliant, it is important to recognize that code compliance does not by itself establish due care. One factor to consider is whether the property owner acted as a reasonable person considering the probability of harm to others. Also, you will want to investigate the foreseeability of the harm and the steps taken to discover the harm.

Owners and Control of Premises

You must first identify anyone and everyone who owns or is in control over the premises. Be mindful when a public entity may have ownership, control or the right to control the property due to the limited time to file a claim against public entities. Many cases have multiple defendants due to ownership and control of the premises being shared between public and private entities.

• *Control of Non-Owned Property*

When considering control of the premises, review CACI 1002 to provide guidance for establishing control. For example, if a defendant exercises control over a non-owned premises, that control may be sufficient to raise a triable issue of fact as to duty of that defendant to warn others of any dangerous conditions existing on the property. (*Contreras v. Anderson* (1997) 59 Cal.App.4th, 188, 197-198.) If the owner of an adjacent property takes on efforts on a non-owned adjacent property beyond "minimally, neighborly maintenance" property owned by another person, you may be able to add that person as a defendant for exercising control over the property. See *Lopez v. City of Los Angeles* (2020) 55 Cal.App.5th 244, 258, for further discussion regarding extension of control principals to those who "dramatically insert" themselves into ownership roles on other's property.

If the incident occurred at a private residence, consider if the home is owned or rented. Identify who lives in the home, who is on the lease and who is the landlord and/or owner. Is there a property management agency involved. What are the responsibilities of the tenants for maintenance? Is the dangerous condition within those responsibilities? In condo or apartment situations, remember the landlords or HOAs are typically responsible for common areas and should be named as defendants as well. This may apply to offices rented in complexes as well.

Unsafe Conditions

Unsafe conditions as defined by CACI 1003 as a condition on the property that created an unreasonable risk of harm. To prevail, you will need to establish that the defendant knew or should have known the condition existed and failed to take steps to remedy the condition or give adequate warning about the condition.

Use Public Information Act ("PRA") requests to uncover code violations. You can do these at any time to uncover violations that lead directly to your client's injury. Make the request for any building code violations that may exist for the property as they can provide a wealth of information regarding uncorrected prior violations, detailed prior inspections of the home and confirmation the owner was put on notice of dangerous conditions of the property. Even if the violations do not relate to your specific issue, the inspection reports typically come with photos that may inadvertently support your case by showing an overall lack of due care in maintaining the property.

• *Businesses' or Property Owner's Liability for Criminal Acts of Others*

CACI 1005 states business and/or property owners must use reasonable care to protect patrons, guests, and even tenants from a third person's criminal conduct on his property or establishment if the business owner/landlord can reasonably anticipate that conduct. A jury will evaluate whether the landlord or business owner took reasonable and adequate steps

Continued on page 28

Continued from page 27

under the circumstances.

Consider if you can establish the defendant had an affirmative duty to protect your client by looking for a special relationship between plaintiff and defendant. These special relationships can exist between hotels and guests, minors and guardians at camps/schools/sports programs and through other fact-based inquiries.

Cases to review where the court found special relationships are *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213; *Doe v. United States Youth Soccer Assn., Inc.* (2017) Cal.App.5th 1118,1128; and *Carlsen v. Koivumaki* (2014) 227 Cal. App.4th 879,893.

When dealing with a case involving criminal acts of others, PRA Requests for 911 calls and requests for police department or EMS service to the property can establish the owner knew, or should have known, the high risk to your client at the hands of third-party criminals. This is a particularly helpful tool in inadequate security cases in high crime areas. Even when there were no prior criminal acts, the absence of prior acts has not been found to be a bar to liability.

Discovery

• *Experts*

If the basis of the premises case is outside your scope of expertise, hiring an expert specific to the type of establishment where the injury occurred is critical. Your expert will inform you of the standard of care for the industry and whether the defendant failed to meet that standard. Depending on what develops through discovery you may not need to disclose your expert, but they can assist you in preparing a roadmap for discovery. Do not solely rely on your expert. If you cannot educate yourself on your case, you may want to associate in counsel with experience to assist you.

• *Written Discovery*

During the discovery phase, request records from the defendants specific to their maintenance and inspections of the property. Does the defendant have a program in place sufficiently designed and followed to keep patrons safe? Is the defendant taking reasonable steps to keep the premises free of unreasonable risk of the harm associated with the particular type of establishment they operate?

Request for Production should include all policies and procedures that deal specifically with the type of condition you allege caused your client's injury. For example, a slip and fall would require sweep sheets that document when inspections were completed and by whom. Policies and procedures for inspections would show what was to be done during the inspection.

Photos, videos and witness statements are critical to establishing your case. It is nearly impossible to go anywhere without some sort of surveillance system in place. Hire an investigator to the scene and look for cameras at or near the premises. Request video from non-parties who may be willing to share and send preservation letters to the defendants with a request once discovery has begun if they will not provide it informally.

Use Requests for Admissions ("RFAs") to establish ownership and control of the premises. Once you have depositions and the first round of discovery completed, RFAs for liability are more useful.

• *Depositions*

Use the deposition to establish notice: that the defendants knew there was a problem or, if they performed reasonable

Continued on page 29

Continued from page 28

inspections, they would have uncovered the problem. Employees tend to be great witnesses on this point as they are the "boots on the ground." I have often had them testify that the same thing almost happened to them, or it happened to someone else but went unreported.

Depositions of the managers or Person Most Qualified/Person Most Knowledgeable ("PMQs/PMKs") will usually lead to testimony of how long an inspection should take and that the inspections are always completed as required.

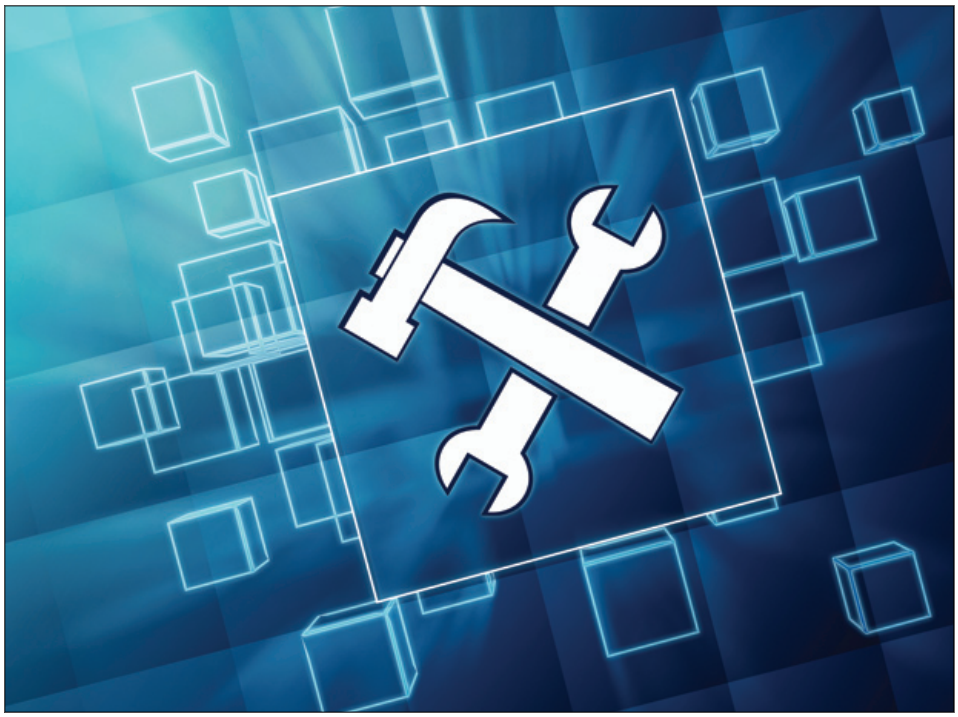
Depositions of employees will typically let you know the expectations outlined in the policies and procedures are rarely met. Do not be surprised if there was little to no training on the policies and procedures.

Consider the order of depositions when preparing your discovery plan. Employees tend to be more forthright with the extent and consistency of inspections than managers. Having their testimony on record that contradicts the policies and procedures can go a long way to prove failure to maintain a safe premises.

Conclusion

Premises cases can be challenging, but we need to lean into these cases. Consumers can be seriously injured but are too often intimidated to seek justice from a large corporation or the insurance policy of an acquaintance.

Comparative fault and affirmative defenses are also a significant impediment for these cases. Vetting your client and the case itself is critical to achieving a favorable outcome for your client.



Some Smart Time-Saving Tools for Plaintiffs' Trial Lawyers

By: John T. Stralen

Managing a plaintiffs' law practice means juggling a ton of moving parts. Between client calls, discovery deadlines, and settlement logistics, it's easy to get buried in busywork. There's also a lot of talk about software and AI these days, but getting started can feel overwhelming. In the past few months, I've tested — or plan to test — a bunch of tools and strategies to help streamline the admin side of running a law firm.

Here's a short list of things I'm currently using or excited to try out. They're practical, easy to implement, and can save a significant amount of time or provide other added benefits whether you're a solo attorney or part of a growing team.

RAMP (or a Similar Business Credit Card)

This one's simple: get a business credit card that does more than just handle purchases. RAMP gives you real-time spending control, smart expense tracking, automated receipt matching, and easy expense categorization. It also makes employee reimbursements painless. You can issue virtual cards to team members with preset limits and sync everything to your accounting software. I've been using RAMP's no-fee, cash-back card and love how hands-off it is — but there are other similar cards worth checking out too.

Automate Discovery Responses with Briefpoint (or similar software)

Still cutting and pasting objections into Word docs? Briefpoint is a game changer. It generates boilerplate responses to interrogatories and RFAs in seconds. You can fine-tune with case-specific facts and even save your go-to objections and responses for future use. Recently, I used Briefpoint to respond to 12 separate sets of discovery for three clients — and I got it done way faster and more thoroughly than I ever could have the old way. For years, my team used another program that has similar features, but we switched to Briefpoint for the lower cost and to try out its AI feature, and we have been happy with the results.

John Stralen, Stralen I Young LLP, is a CCTLA Board Member

Use a Qualified Settlement Fund (QSF)

A QSF takes the pressure off the post-settlement scramble. It gives your clients time to make smart financial decisions, including keeping the option for the client to structure settlement funds, without holding up the settlement with the defendant. It also opens the door to structured fees or tax-deferred income. Meanwhile, the money in the QSF earns interest for the client while liens or disputes are resolved. Bonus tip: in California, State Bar rules require attorneys to set up an interest-bearing account for client funds when it's likely that the interest will exceed the cost of administration. A properly established QSF can check that box and can be efficiently established. I will note that there are some people in the settlement planning industry who assert that there is controversy as to whether QSFs are proper for single-event or single plaintiff cases, and the scope of this article does not include that topic. But if you do your homework on this topic, you might come to the conclusion that a QSF can benefit your clients on more of the cases you are handling than you think. Some attorneys I know have described them as a game-changer for their law firms.

New to AI? Start Simple: Use Dictation + ChatGPT Together

Here's a great entry point for using AI: dictate your thoughts into the Notes app

Continued on page 31

Continued from page 30

(or a similar voice-to-text tool), then paste the rough draft into ChatGPT and ask it to clean it up. Prompts like "make this more formal" or "please clean up this draft" work great. You'll be surprised how quickly you can knock out client updates, demand letters, or internal memos. I often draft on the go this way — it's especially helpful when I'm away from my desk.

Let ChatGPT Proof Your Drafts

If you're staring at a rough email or letter and don't have time to polish it, send it through ChatGPT. Ask it to fix the grammar, clean up the tone, or make it more professional. Just a heads-up: this isn't recommended for legal content involving citations or substantive analysis — unless you're using it strictly for proofreading to correct grammar and remove typos and then doing a careful review of the legal content afterward.

AI Document Summary Tools

Some newer AI platforms can summarize long PDFs, medical records, or depo transcripts in minutes. The pricing has come down significantly for these products, making them affordable even for smaller firms.

Use Cloud Fax to Retire the Old Machine

Still standing over a temperamental Fax machine? It's time to switch to SRFax or eFax. They're HIPAA-compliant and integrate with your email and cloud storage. It's a much smoother, searchable, and more modern way to manage provider communication.

Use Raycast (or Wox) to Speed Up Your Daily Workflow

Raycast is like a supercharged spotlight search for Mac users — but instead of just finding files, it lets you launch apps, manage your calendar, search your clipboard history, create to-dos, send snippets, and run custom shortcuts, all from your keyboard.

Once it's installed, you hit a simple keyboard command (I use Option + Space) and a command bar pops up that lets you do just about anything without reaching for the mouse. You can even run custom scripts or access web apps without opening a browser. It's fast, customizable, and surprisingly fun to use. If you're just getting started, try using Raycast to launch apps, open files, or set calendar events. That one change alone can save you dozens of clicks every day. I have found that the clipboard history is extremely helpful when answering discovery and a huge time saver. Raycast is only available for Apple products. Wox is available for those using computers with Window operating systems.

These tools and products won't write your closing argument or draft your winning legal brief, but they'll give you back some time to focus on these things — which is what really matters. If you've got a favorite tool I didn't mention, I'd love to hear about it.

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John Stralen, of Stralen Young, LLP, in Sacramento, can be reached via john@stralenyoung.law.

From Evidence to Resolution:
How Private Investigators Influence Civil Cases

By: Lindon Lilly

In personal injury law, success often depends on the ability to uncover and present evidence that establishes liability, augments damages, and conveys the emotional toll on injured parties and their families. Private investigators assist attorneys in bringing the human element to the litigation process. Their ability to uncover nuanced details and connect them to the case not only strengthens legal strategy but also sheds light on the deeper truths behind every claim.

With the assistance of private investigators, attorneys are redefining how they approach civil cases to maximize damages by ensuring that their clients' narratives resonate in courtrooms and settlement negotiations. These efforts lead to better legal outcomes while delivering stories of justice and accountability that create a lasting impact.

Lack of Care Resulting in Gross Negligence: A Case Study

Consider a tragic case involving a commercial tractor-trailer driver navigating an unfamiliar winding road marked by a "No Outlet" sign. After realizing he couldn't proceed, the driver attempted to reverse, tragically striking and killing an elderly woman. On the surface, it appeared to be an unfortunate accident, but deeper investigation revealed a complex story of gross negligence.

"Every battle is won before it's ever fought."

– Sun Tzu

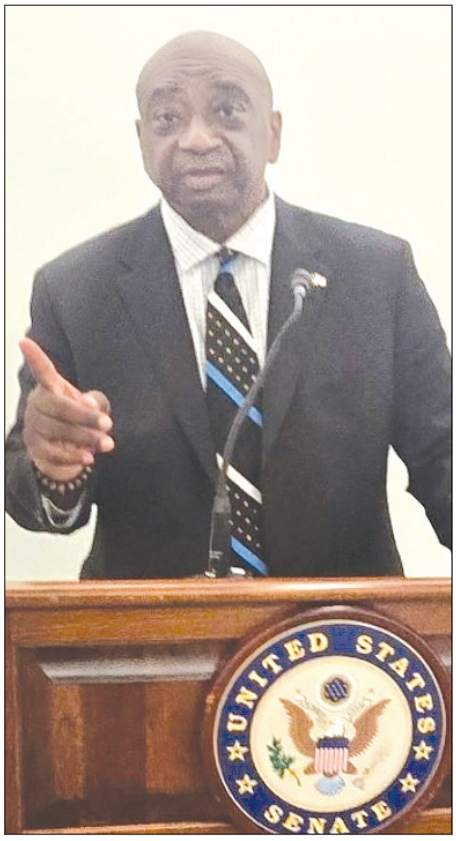
Upon arriving at the scene, a private investigator noticed a crucial detail: the street sign was turned sideways, reducing its visibility. He noticed that the surveillance footage of a nearby CCTV camera showed the driver stop and look at the caution sign before brushing his 28-foot trailer against it, bending it. Additionally, the investigator obtained recordings from the truck's cameras, which revealed that the driver was on his cellphone during the incident, violating company policy, California Vehicle Code (23123,5), and Federal Reg. (49 CFR 392 Subpart H).

Further investigation uncovered that the trucking company failed to enforce its cellphone usage policy, despite the driver's history of similar violations. The company also neglected to conduct federally mandated annual driving record checks, exposing systemic failures. This evidence not only strengthened the case but also exposed a lack of due diligence by the company while highlighting preventable factors that contributed to the tragedy.

For the attorney, this investigation transformed the case from a simple accident into a compelling narrative of a lack of care, resulting in gross negligence and a demand for accountability. It emphasized the emotional toll on the victim's family while strengthening the liability claim against the company and driver.

The Power of Spontaneous Statements

Evidence gathering in California liability cases often hinges on capturing spontaneous statements made during 911 calls. These statements, whether from the person responsible or from bystanders, can reveal critical insights into the moments surrounding an incident. While some may argue that such statements are hearsay, California Evidence (Evidence Code § 1280-1282) provides exceptions, allowing statements made under the stress of a startling event to be admissible. These statements often offer unfiltered



LINDON LILLY

accounts that reflect the state of mind of those involved and can be invaluable in establishing negligence or intent.

For example, a 911 call might capture a driver admitting, "I didn't see the stop sign," or a witness exclaiming, "The driver ran a red light." Such admissions and revelations can provide powerful evidence of liability. They recreate a timeline of events while recording multiple voices and sounds.

Additionally, the fear and distress in a litigant's voice can resonate with a judge or jury, making the emotional impact of the incident tangible.

Nevertheless, legal constraints must be navigated carefully. California Government Code 6256 subsection (c) authorizes this communication for purposes of civil litigation. Emergency 911 calls are public records and not considered private. Private investigators and attorneys must ensure that these recordings are lawfully obtained and used in compliance with California's evidence rules. When presented effectively, these recordings

Continued on page 34

Continued from page 33

can vividly convey the emotional weight of a case, helping to humanize the injured party's experiences.

Emotional Impact through Investigative Services

Private investigators provide more than just facts; they uncover the human stories behind each case. Their ability to reveal hidden truths and connect evidence to the emotional stakes of a claim can profoundly influence the outcome. Here's how their work impacts civil litigation:

1. Revealing Hidden Truths

Investigators support attorneys in personal injury cases by helping them build compelling narratives supported by facts and evidence. The hidden truth about gathering evidence is that, like everyday life, it can be subjective and influenced by factors like the time of day and lighting. Likewise, the interpretations and our individual summations of these events must be considered. The role of a private investigator is to provide attorneys with as much accurate and objective information as possible based on the facts, enabling them to craft honest and persuasive factual stories for their cases.

2. Humanizing the Evidence

Surveillance footage, public records, and internal documents in and of themselves can feel detached from the human suffering they represent. Investigators bridge this gap by connecting these pieces of evidence to the people affected by them, creating narratives that emphasize the preventable harm and emotional cost of negligence.

3. Empowering Attorneys

Armed with an investigator's findings, attorneys can confidently pursue larger settlements or more favorable verdicts. Knowing the full scope of a defendant's actions—and their consequences—enables attorneys to advocate more effectively, often leading to quicker resolutions and sparing their clients of prolonged distress.

Key Investigative Elements with Emotional and Legal Impact

1. Locating Witnesses and Evidence

Whether it's a bystander to an accident or an expert on industry standards, witnesses often hold the key to critical truths. Investigators excel at locating witnesses or evidence that might otherwise remain undetected. For instance, identifying a former employee who can testify about unsafe workplace practices of a company can add depth and credibility to a case. This not only strengthens legal arguments but also validates the experiences of victims seeking justice.

2. Uncovering Systemic Negligence

Many cases involve failures beyond individual actions. Thus, investigators delve into company policies, training programs, and enforcement records to uncover broader patterns of negligence. This not only bolsters liability claims but also highlights systemic is sues that demand accountability and settlement leverage.

3. Analyzing Behavioral Patterns

An investigator assists attorneys in personal injury cases by researching the opposing party's history, such as prior court cases or relevant behaviors and by identifying potential defense strategies. This service helps attorneys anticipate challenges and build stronger, more prepared cases.

4. Reconstructing the Past

From piecing together events leading to an accident or incident to tracing financial assets in high settlement wrongful death cases, reconstruction efforts add depth to claims. These investigations often provide clarity and closure for grieving families while strengthening the attorney's position.

The Private Investigator's Role in Focus Groups

1. Character and Background Analysis

Private Investigators provide insight into the stakeholders' background, credibility, and behavior, helping to identify potential risks or inconsistencies.

2. Evidence Discovery

Investigators can assess the quality of evidence presented, identify gaps, and suggest avenues for further investigation to strengthen a case.

3. Expertise in Behavioral Patterns

Their experience in understanding human behavior and motives can help refine strategies for addressing the case effectively.

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Lindon Lilly is a member of the California Association of License Investigators (CALI) and National Council of Investigation and Security Services (NCISS), advocating on behalf of its members in Sacramento CA and Washington D.C. He is also a board member of the California Association of Licensed Investigators (CALI). He previously served two terms as governor of CALI. By virtue of his 20 years of service in law enforcement, the California Assembly recognized him for his dedicated work with victim rights groups. As the founder and president of Rhino Investigation and Process Serving, Lilly brings over 30 years of experience in the attorney-support business. For questions in reference to this article, Lilly can be emailed at info@lllegalassistance.com.

Share your experiences, victories, lessons learned

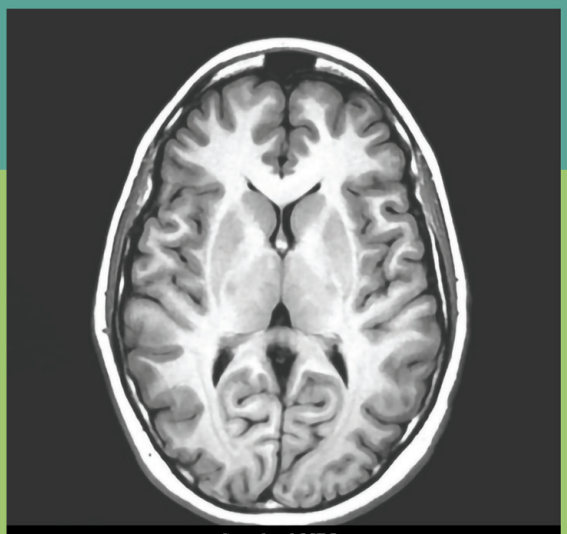
CCTLA is seeking legal-themed articles for publication in its quarterly publication, *The Litigator,* which presents articles on substantive law issues across all practice areas. No area of law is excluded. Practice tips, law-practice management, trial practice including opening and closing arguments,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

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

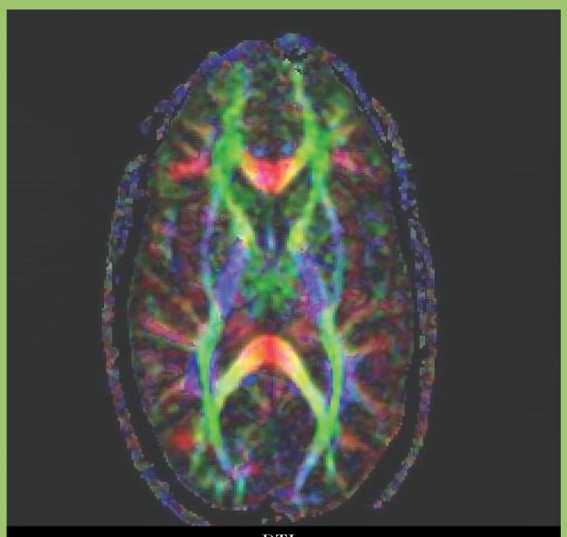
The author's name must be included in the format the author wishes it published on the article. Authors also are welcome to submit their photo and/or art to go with the article (a high-resolution jpg or pdf files; website art is too small).

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

For more information and deadlines, contact CCTLA Executive Director Debbie Keller at debbie@cctla.com.



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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Continued from page 2

MONTOYA v. SUPERIOR COURT (Fowler)
2025 4DCA/3 California Court of Appeal,
No. G064459 (March 21, 2025)

Burden of Proof in Medical Malpractice Case May Be Shifted When Defendant Doctor Fails to Perform Act that Would Prove Negligence

FACTS: Kimberly Montoya underwent heart surgery on Feb. 19, 2021. Following the surgery, Montoya suffered a stroke. Dr. Aaron Fowler treated Montoya and observed signs of potential stroke; however, he failed to call a "code stroke." As a result, a CT scan was not taken of her brain until several hours later, and she is severely disabled as a result of her stroke.

In January 2022, Montoya and her husband filed a lawsuit against numerous defendants, including Dr. Fowler. The complaint alleged two causes of action: medical negligence and loss of consortium. Montoya alleged she had retained defendants to perform heart surgery on her, which took place on Feb. 19, 2021. Following the surgery, Montoya suffered a stroke. Montoya alleged the defendants negligently treated her, resulting in them failing to diagnose and treat the stroke in a timely manner, resulting in damages.

At trial, Plaintiff requested a special jury instruction shifting the burden of proof on causation to Fowler. The court denied the instruction, and Montoya petitioned for writ relief.

ISSUE: Is the burden of proof shifted in a medical negligence case where the defendant fails to take an action that is crucial to establishing causation?
RULING: Yes.
REASONING: "Generally, the burden falls on the plaintiff to establish causation." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968 (Rutherford).) But not always.

"In negligence and products liability cases, the doctrine has evolved that the burden of proof on the issue of causation may be shifted to the defendant where demanded by public policy considerations." (*Thomas v. Lusk* (1994) 27 Cal.App.4th 1709, 1717.) "[T]he shift of the burden of proof . . . may be said to rest on a policy judgment that when there is [1] a substantial probability that a defendant's negligence was a cause of an accident, and [2] when the defendant's negligence makes it impossible, as a practical matter, for plaintiff to prove 'proximate causation' conclusively, it is more appropriate to hold the defendant liable than to deny an innocent plaintiff recovery, unless the defendant can prove that his negligence was *not* a cause of the injury." (*Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756, 774, fn. 19 (*Haft)*.)

In this case, Montoya's theory of the case was that Fowler was negligent in failing to order a CT scan, which would have revealed an ongoing stroke at a time when a thrombectomy was possible, and a thrombectomy would have substantially improved Montoya's outcome. To what extent it would have improved her outcome, however, is unknowable absent a CT scan.

Accordingly, the case was remanded with instructions allowing for shifting of the burden of proof to Fowler if Montoya demonstrates that Fowler's negligence in not ordering the CT scan; there is reason to believe the CT scan's absence damaged her; and the CT scan is critical to prove causation.

DIAMOND v. SCHWEITZER
2025 5DCA California Court of Appeal,
No. F086150 (April 21, 2025)

Was Third Party Fight Covered by General Release to Enter Pit Area Of Speedway?

FACTS: Plaintiff Zackary Diamond attended races at the raceway on June 9, 2018. Diamond was there with his mother, Linda Valdez, to watch his brother and his stepfather race Modlite cars. Plaintiff watched the races with his mother from the pit area.

After a race finished, Diamond was involved in an altercation with other guests in the pit area. He was punched in the face by another race attendee and fell to the ground, cracking his skull in three places upon impact and causing subdural and internal bleeding.

In March 2020, Plaintiff filed a complaint for damages against defendants, alleging causes of action for (1) negligence, (2) premises liability, (3) negligent hiring, selection, approval, retention, and supervision, and (4) negligent infliction of emotional distress.

Plaintiff alleged that defendants breached their duty of care by failing to take reasonable steps to ensure Plaintiff's safety from dangerous conditions while attending a June 9, 2018, racing event at defendants' raceway. Plaintiff alleged that defendants negligently failed to provide adequate security or supervision, including by failing to hire, train, and supervise adequate security staff where Plaintiff observed the events that day, respond to the ongoing fight that resulted in plaintiff's injury, and undertake appropriate rescue efforts.

Defendants answered the complaint with a general denial. Defendants' seventh affirmative defense alleged that Plaintiff "expressly in writing waived and released all liability" against them based on their alleged negligence, agreed to indemnify and hold them harmless, and assumed all risks and dangers "broadly associated" with attending the event. So, plaintiff "relieved … defendant[s] of a duty of care, and the claims of the plaintiff are barred as a matter of law."

In January 2022, Defendants filed and served a motion for summary judgment, or, alternatively, summary adjudication. After briefing and oral argument, the trial court granted Defendants' motion for summary judgment in December 2022. On Feb. 24, 2023, the trial court entered judgment in Defendants' favor. Plaintiff filed a timely notice of appeal.

ISSUE: Does a general release unequivocally release defendants from a third-party altercation?

Continued on page 39

Continued from page 37

NOTABLE CITES

RULING: Yes.

REASONING: "[F]or a release of liability to be held enforceable against a plaintiff, [1] it 'must be clear, unambiguous and explicit in expressing the intent of the parties' [citation]; [2] the act of negligence that results in injury to the release [or] must be reasonably related to the object or purpose for which the release is given [citation]; and [3] the release cannot contravene public policy [citation]." *(Sweat,* supra, 117 Cal.App.4th at pp. 1304–1305; accord, *Huverserian v. Catalina Scuba Luv, Inc. (2010) 184 Cal.App.4th 1462, 1469.)*

"A release need not be perfect to be enforceable." (*Sweat*, supra, 117 Cal.App.4th at p. 1305.) As explained post, we conclude the release meets the three requirements and, thus, is enforceable against plaintiff's negligence claims.

The general release in this case specifically read *"hereby releases, waives, discharges and covenants not to sue … 'releasees,' from all liability to the undersigned … for any and all loss or damage, and any claim or demands therefor on account of injury to the person or property or resulting in death of the undersigned arising out of or related to the event(s), whether caused by the negligence of the releasees or otherwise."*

The court found that as a matter of law that Plaintiff's injury was "related to" the races. In particular, the facts establish the "but for" test for a causal connection is satisfied. (See generally *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1239 [the "but for" test is subsumed in California's "substantial factor" causation standard].) But for the races, Plaintiff would not have been in the speedway's pit area on that date and, as a result, the altercations in the pit area that resulted in Plaintiff being punched would not have occurred.

As discussed earlier, a *direct* causal link to the racing activity is not required by the release's "related to" language. Thus, the indirect link between the races and the incident supplies the requisite connection.

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

California Labor Code Section 218.5 Supersedes 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 pursuant 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 and 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 the 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 section 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. It 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

Continued on page 40

Continued from page 37

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 dollars in damages.

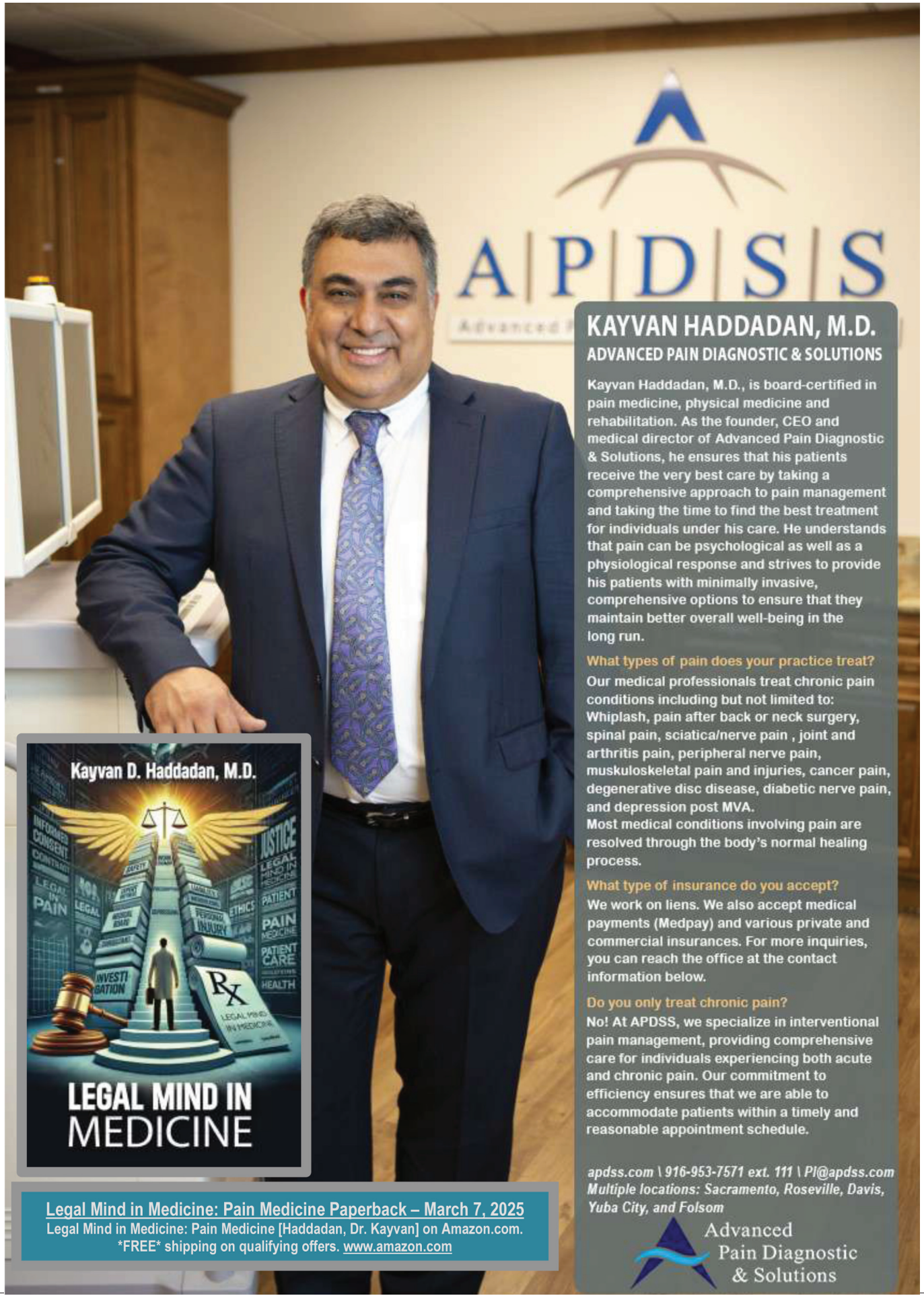
Defendants appealed on several issues, including that the trial court: (1) prejudicially erred by (a) instructing the jury on CACI No. 471, option 2, and (b) furnishing a verdict form based on option 2.

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.


APDSS
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.
Do you only treat chronic pain?
No! At APDSS, we specialize in interventional pain management, providing comprehensive care for individuals experiencing both acute and chronic pain. Our commitment to efficiency ensures that we are able to accommodate patients within a timely and reasonable appointment schedule.
apdss.com \ 916-953-7571 ext. 111 \ PI@apdss.com
Multiple locations: Sacramento, Roseville, Davis, Yuba City, and Folsom
Advanced Pain Diagnostic & Solutions
Kayvan D. Haddadan, M.D.
LEGAL MIND IN MEDICINE
Legal Mind in Medicine: Pain Medicine Paperback – March 7, 2025
Legal Mind in Medicine: Pain Medicine [Haddadan, Dr. Kayvan] on Amazon.com.
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Public Notice – Civil Division 2025 Law and Motion Calendars

Superior Court of California / County of Sacramento: As of March 3, 2025, Departments 53 and 54 will expand their law and motion calendars to include an additional day of hearings on Mondays. The first Monday hearing date was April 7, 2025.

Parties may reserve hearings through the Court Reservation System (CRS) on the Public Portal or by calling their assigned Law and Motion department.

Cases will remain assigned to Departments 53 or 54 for all Law and Motion purposes and the Monday and Wednesday calendars will be heard as follows:

Department 53: Judge Julie G. Yap, 916-874-7858, and Department 54: Judge Richard C. Miadich, 916-874-7848

Once moving papers have been submitted for filing with the court, the corresponding hearing reservation will become scheduled and can no longer be managed (canceled or rescheduled) online using CRS. Thus, if parties want to advance an already scheduled hearing date to a newly available date, they may use any of the following methods:

1) Letter by moving party consistent with Local Rule 2.30(c) along with the appropriate filing fee. If the reservation was made using CRS, a new reservation ID must be obtained on CRS prior to submitting the letter requesting the advancement of the hearing. If the reservation was made by calling the department, parties must call to obtain a new reservation date;

2) Stipulation and Proposed Order pursuant to CRC 3.734 along with the appropriate filing fee; or

3) Ex parte application along with the appropriate filing fee. A hearing on Ex Parte application may only be reserved if judicial approval is needed to advance the hearing date. (The Court disfavors ex parte application absent a showing of good cause).

Parties may manage hearing reservations where no moving papers have been filed through CRS or by calling their assigned department to obtain a new hearing date.

Also effective March 3, 2025, the court will no longer schedules matters for the limited Friday Demurrer and Motion for Judgment on the Pleadings calendar heard by Judge Steven M. Gevercer in Department 31 at 10am. Any hearing reserved or scheduled will remain on calendar.

All moving papers, oppositions, and replies can be filed in person at the Hall of Justice Building, 813 6th Street, Room 212, 2nd Floor Sacramento, CA 95814, sent by mail to 720 9th Street, Room 102, Sacramento, CA 95814, or e-filed.

Consistent with Local Rule 1.06, a tentative ruling will be published in each case at 2:00 pm the court day before the matter is scheduled to be heard. Log in to the Public Portal to access the case.

To request oral argument on a matter, parties must call the Law and Motion Oral Argument Request line at (916) 874-2615 by 4pm the court day before the hearing and leave a voice mail message with all of the information specified in the voice mail greeting. Parties are further required to notify all opposing parties of the oral argument request prior to contacting the request line.

Unless ordered to appear in person by the court, parties may appear remotely, either telephonically or by video conference via the Zoom video/audio conference platform, with notice to the court and all other parties in accordance with Code of Civil Procedure 367.75. Although remote participation is not required, the court will presume all parties are appearing remotely for non-evidentiary civil hearings.

The Zoom link and Meeting ID needed to appear remotely may be found in the tentative ruling published to the Court's website at 2pm on the court day before the matter is scheduled to be heard.

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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: dsglawyer@gmail.com
Rob Piering: rob@pieringlawfirm.com
Glenn Guenard:gguenard@gblegal.com
Alla Vorobets: allavorobets00@gmail.com

Tejada appointed to Sacramento Superior Court Bench

Gov. Gavin Newsom recently announced Martin Tejeda's appointment to the Sacramento Superior Court bench.

"Martin Tejeda's appointment to the bench is a testament to his commitment to justice and his exceptional skill in navigating the complexities of the legal system," Sacramento Superior Court Presiding Judge Bunmi O. Awoniyi, said.

Tejeda, of Yolo County, has served as a commissioner at the Sacramento Superior Court since November 2022.

"Throughout his time as commissioner, he has been an invaluable asset, expertly managing some of our most challenging calendars with grace and dedication," Awoniyi added. "His extensive experience in criminal law will undoubtedly continue to be a vital asset to our court, ensuring fairness and integrity in every decision he makes."

Prior to joining the bench, Tejeda worked as a defense attorney out of his own law practice from 2005 to 2022. He previously served as a deputy public defender at the Sacramento Public Defender's Office from 2001 to 2004 and as an attorney at the Law Office of James Kuppenbender from 2000 to 2001.

He received a Bachelor of Arts in English from the University of Nevada, Las Vegas, and his Juris Doctor from McGeorge School of Law. He was admitted to the state bar in 2000.

Tejeda took the judicial oath on May 8, 2025, filling the vacancy created by Judge Dena Coggins's appointment to the Federal Court.

Member Verdicts & Settlements

VERDICT: $2,455,000
Violation of California Family Rights Ac
and retaliation for taking CFRA leave
Daniel Ridge v. Alameda Health System
Case No. RG17847260

In March, **Lawrance A. Bohm**, lead trial counsel, and Kelsey K. Ciarimboli, Zane E. Hilton, Catharine P. McGlynn, Sara R. Benton and M. Noah Cowart, all of Bohm Law Group, Inc.; and Phil Horowitz and Christopher Banks of Law Offices of Phil Horowitz (Oakland), won a $2,455,000 verdict for their client in Alameda County Court in Oakland. The verdict included $455,000 in past economic damages, $1,000,000 in past non-economic damages, and $1,000,000 in future non-economic damages, plus attorney's fees, and costs. Trial dates were March 2-25.

Continued from page 38

Case Summary

In 2006, Daniel Ridge was hired to work at the Highland Hospital as a morgue attendant. Highland Hospital is part of the Alameda County Healthcare System (ACHS), a county-run healthcare system. Ridge had an extremely troubled history growing up. As a teen, six close friends were murdered in gang-related violence. His uncle was murdered in front of him by a co-worker when he was in his 20s. Two of his cousins committed suicide thereafter. Ridge was left with PTSD that went undiagnosed for decades because he lacked the resources to treat his condition.

In spite of his challenges, Ridge trained to be a certified nursing assistant and eventually landed a job working as a part-time morgue attendant in Oakland's Highland Hospital (As a part-time employee, he was not eligible for health benefits). He enjoyed being responsible for the morgue, processing the remains and doing what he could to help families going through the difficulties of loss. His evaluations consistently reflect only positive feedback for eight years.

During most of 2014, the fulltime morgue attendant was out on medical leave. All of the morgue work fell to Ridge, who began to work seven days per week to cover the vacant fulltime role. Eventually, the fulltime attendant retired, and Ridge was offered the position. This gave him health benefits that he used immediately. At age 40, he had his first medical appointment with a doctor since he was 16. This first appointment addressed concerns about high blood pressure for which Ridge was prescribed medication. The meds caused side effects, requiring him to go to the ER. He was required to miss work for a few days while his medications were adjusted.

For months after his promotion, working seven days a week, waiting for a new part-time attendant to be hired, he had trouble getting any support to assist him with the morgue responsibilities. Often, bodies arrived in the morgue without proper cleaning and/or removal of tubing. The morgue refrigerator was overwhelmed and lacked sufficient room such that remains began decomposing in bags. It was extremely stressful for Ridge, who became overwhelmed.

In February 2015, the hospital changed the way formaldehyde would be handled in the morgue. Ridge reported the new process made him feel dizzy and he had difficulty breathing. This triggered a Work Comp claim. The case was opened and deemed abandoned because Ridge never received notice his claim was opened. Nevertheless, Ridge became convinced that the repeated breathing of formaldehyde was triggering his macabre intrusive thoughts of death and dying (No evidence was offered to establish that formaldehyde exposure causes psychiatric illness). In reality, Ridge's problems were the predictable consequence of high work stress due to untreated PTSD, depression and anxiety.

To address problems with the morgue, new managers with no morgue experience were brought in to assist. These new managers added even more work to Ridge's duties by requiring his position to perform audits of all the patient rooms on a particular floor each day to check that various aspects of care were followed (patient care boards were updated, and correct dates written on IVs). This took him out of the morgue. As a result, frequently, when remains arrived at the morgue, nobody would be present to receive it. The hospital would then have to use the overhead announcement system to direct Ridge to go process the remains. This created complaints that Ridge was not where he was supposed to be. Within a month of new managers taking over, Ridge was given a step one warning for his attendance. This write-up included dates in February related to Ridge's medical leave for his blood pressure treatment.

The mounting stress caused by the increased workload, lack of support and mismanaged corpses began to trigger Ridge's undiagnosed PTSD. He missed some work in connection with medical appointments related to his work stress and blood pressure. He began experiencing increased thoughts of suicide he had not felt since he was a young man. In July 2015, a part-time morgue attendant was hired, but unfortunately, this initially meant more work for Ridge as he was responsible for training the new employee. He told his managers he was "overwhelmed" and "stressed" because of the increased demands. In response, his managers presented him an ultimatum: Take a different position in the hospital as a "sitter" for ill patients, or leave. Predictably, threatening a stressed-out employee in this manner did not have a good impact on Ridge's health.

Within two weeks, he was at Kaiser, regarding "work stress." Ridge called out of work from Sept. 1-5 for Kaiser mental health visits to assess and treat his mental health and was diagnosed with major depression, generalized anxiety and PTSD with a history of suicide. While he was off, leadership emailed each other, stating Ridge is "not dependable enough" to continue in his role. When Ridge returned the following week, he informed his managers that he would be returning to Kaiser the following week for more treatment and assessment and could be off for weeks after, depending on what the doctors tell him. He ended up going off work from Sept. 14-Oct. 4 so he could participate in Kaiser's daily mental health Intensive Outpatient Program (IOP) that included individual and group therapy.

During this time, managers were telling each other that Ridge was out on "FMLA." Meanwhile, as Ridge discussed

Continued on page 45

Continued from page 44

his mental health with Kaiser, he kept advancing the mistaken narrative that exposure to formaldehyde was the likely cause of his psychiatric problems. Kaiser recommended he be assessed by a work-comp doctor because his normal doctors do not get involved in treatment caused by work-place accidents.

Ridge returned to work Oct. 4 on the expiration of his leave. His bosses met with him upon his return to criticize his dependability and revisit the idea of him moving out of his position. On his last work day of that week, Ridge experienced a panic attack in the hospital, which resulted in him being seen in the hospital's emergency department for chest pain. Ridge specifically told his managers he was going to request a medical leave of absence. He later turned in a note taking him off from Oct. 12-19. At trial, Ridge's manager testified he had "no clue" why Ridge was missing work later that same month. However, an email from the manager written at the time explained to other hospital leaders that Ridge had informed him he was going to seek medical leave.

Immediately after this notice, email communication about replacing Ridge resumed. At the same time, the AHS Leave Department provided Ridge information advising of his eligibility to take a medical leave of absence under FMLA/CFRA. While Ridge was off work, he continued to participate in Kaiser's IOP program for his stress, depression, anxiety, PTSD and suicidal thoughts. While he spoke to his therapists about the problems caused by a "hostile work environment," his managers found a CNA who was willing to cross-train and work some time in the morgue to cover for Ridge while he was out. At trial, this CNA testified that she was given the job while Ridge was on his medical leave.

On the morning of Friday, Oct. 16, Ridge's doctor gave him another note, extending his leave to Oct. 30 so he could continue in the IOP program. His request was pending approval, which required that he provide the required forms by Nov. 4. On Oct.19, Ridge's managers were informed that he was on FMLA, pending approval.

On Oct. 20, Ridge had his work comp appointment to evaluate the formaldehyde exposure issue. The doctor informed him that the exposure would not be the cause of his depression, anxiety, PTSD and instructed him to continue his care with his doctor for his blood pressure and psychiatric illness. The work comp doctor cleared Ridge to return to work "full duty." Although his regular doctors were still treating his mental health, hospital leaders interpreted that note as requiring Ridge to return to work immediately, even though he was still off work the rest of the month for his IOP treatment. Managers began emailing each other that Ridge was a "no call/no show" for each day after his appointment with the work comp doctor who cleared him to return to work.

There are no records or notes of any kind showing any effort by managers to reach Ridge. When managers raised the issue to Human Resources, they were informed that "Mr. Ridge is currently out on an 'unauthorized leave' " and after three missed days they could fire him. Leadership decided to meet and devise the "best plan moving forward." Just prior to this meeting, managers were informed that his "current issues were not W/C related."

At the meeting, managers decided to send Ridge a letter advising him that his employment was over, due to his abandonment of the job by failing to report to work. The letter was mailed to him sometime on Friday, Oct. 30. The same day Ridge also mailed his completed leave paperwork to the employer's leave department in the postage-paid envelope they had provided him. Later that day, Ridge's manager specifically inquired about his "leave papers" and whether such papers would impact the termination plan.

On Sunday, Nov. 1, Ridge (not having received any letter yet) showed up at work for his regular shift. His discovered his office had been cleaned out, and all of his belongings were gone. Later, after doing some work, Ridge was approached by the nurse supervisor and two sheriff deputies. He was told he was "not supposed to be there." He asked, "Where am I supposed to be?" and was told, "Not here."

Ridge told the supervisor he had his doctor's note and leave documents, excusing his absence, but the supervisor refused to take the documents. The deputies advised Ridge to contact his union, and he was escorted by the deputies on a "walk of shame" through the hospital to his car.

Afterward, managers emailed HR, who advised: "The only possible way he can undo [his termination] is come up with a retroactively dated doctor's note that will grant him FMLA." But even this made no difference. After Ridge was escorted from the property, he explained to Human Resources that he was off work because of his participation in IOP at the time of his alleged "no call/no show." AHS emails reflect Ridge advised he had a note from his doctor. AHS made no effort to confirm the truth of his Ridge's claims, and the termination was upheld.

His termination led to severe mental illness, including acquired brain trauma, resulting in the severe loss of functioning. In the years following his termination, Ridge's condition continued to deteriorate, to the point of mimicking schizophrenia.

Unhoused, unemployed, isolated and angry, Ridge wanders the streets of Oakland in a state of delusion. Before trial, a Guardian ad Litem was appointed for him. Later, after hearings lasting almost two years, Ridge was declared incompetent to testify in his case and excused from participating in the trial for health and safety reasons. Before his mental condition had completely deteriorated, he was deposed on five different days and evaluated by psychological experts. Since he was not available to testify at trial, the case had to be proven using only testimony from Ridge's five days of deposition taken by the AHS attorney.

After eight years of litigation, including six writs of mandate, three motions for summary judgment, and a voluminous amount of procedural motions, recoverable attorney fees are estimated to be $5,000,000, or more. Recoverable costs are approximately $350,000.

Continued on page 46

Member Verdicts & Settlements

Continued from page 45

Pre-trial Settlement Offers To Compromise: Plaintiff's 998 Offer – May 18, 2018: $550,000 inclusive of attorney fees. Defendant's 998 Offer – Feb. 3, 2025: $300,000 inclusive of attorney fees

Plaintiff's Experts were Charles R. Mahla, Ph.D., Econ-One, Sacramento, specialty: economics; and Richard Perrillo, Ph.D., San Francisco, specialty: neuropsychology. Defendant's Opinion Givers were Randall Epperson, Ph.D., Pasadena, specialty: ssychology; andJonathan Mueller, MD, Walnut Creek, specialty: neuropsychiatrist

VERDICT
11-2 Liability Finding
Government Tort Claim: Dangerous Condition of Public Property

Michael Flynn v. City of Sacramento

Robert A. Buccola, Jason J. Sigel, and Marshall R. Way, Dreyer Babich Buccola Wood Campora, LLP, recently got an 11-1 liability finding against the City of Sacramento in a tree limb drop case in Sacramento County Superior Court. The damage phase is to be tried later in a different court.

On April 21, 2020, while jogging on the pedestrian path that encircles McKinley Park, Plaintiff Michael Flynn was critically injured when a 30-foot limb fell from a London Plane tree and struck him in the head. Plaintiff, who was 27 years old at the time of incident, sustained multiple skull fractures and a very severe brain injury. Plaintiff was a Ph.D. candidate in the Physics Department at UC Davis who had earned his undergraduate degree in physics at MIT.

Plaintiff's brain injury has caused profound and permanent neurocognitive deficits that will forever affect his personal and professional life.

The parties stipulated to a bifurcated trial of this action with the liability phase tried first and, if Plaintiff prevailed, a damages phase to follow before a different jury approximately six months after.

Plaintiff alleged that before it fell, the limb created a dangerous condition of public property, that it was a noticeable danger for than a year before the incident, and that it should have been recognized prior to the date of this occurrence and removed because of the risk it posed to park users.

Conversely, the city argued that because the limb fell early in the growing season, well before it and adjacent trees had fully sprouted all of their leaves, its appearance would not have alerted reasonable park inspectors that the limb was no longer viable, as it was too early in the growing season to reach that conclusion. Plaintiff's experts conceded that if the limb had died within the six-month period immediately preceding its failure, its condition would likely not have been noticed by park professionals before the date it fell.

The city argued that 25,000 of the 100,000 trees in the city's urban forest are situated in Sacramento's 240 city parks, and that financial resources were not available for conducting the systematic inspections as urged by Plaintiff in this case.

At the time of the incident, the city employed six full-time arborists, only one of whom was specifically assigned to the city's parks. The city argued that it did a good job of meeting its heavy burden and, in fact, had a more robust tree maintenance and inspection system in place than most other municipalities with similar sized urban forests and park environments.

However, the city's park maintenance workers on site at McKinley Park on a daily basis testified that they are not expected to affirmatively look for or otherwise assess limb conditions in park trees, and are only responsible for reporting a potentially dangerous condition of any kind involving a park tree or limb if they happen to see such a condition while conducting their other park maintenance work.

Plaintiff argued that not training park maintenance workers to actively look for dead or dying limbs on a daily basis as other maintenance work was being performed was irresponsible and allowed for limbs to die and remain in place over highly populated park areas, like picnic tables, playgrounds, and park benches, for protracted periods of time. The defense countered that given the many millions of tree limbs, and the inevitable and natural process of trees shedding limbs, it is not possible to spot and prevent most limb falling events. The city further urged that its routine interval inspection and trimming program conducted by contract arborists, which takes place every four to seven years, is a far more robust system of maintenance than is used in most California municipalities.

In response, Plaintiff argued that training the park maintenance personnel who are working in the park every day to keep a watchful eye on the condition of park trees incidental to their other daily maintenance obligations is simple to do and would not cost an additional nickel in labor cost. Doing so would allow the city to assess 80+% of the trees in every park on a regular basis. Given the ease with which dead limbs can be identified, Plaintiff urged that training park workers to recognize and report obviously dead and dying limbs would greatly reduce the potentially grave risk posed by falling limbs.

Plaintiff also argued that twice annually, a retained arborist could conduct a Level 1 inspection (a quick, cursory inspection that takes no more than 30 to 60 seconds per tree) of every tree in McKinley Park for a labor expenditure of about five hours per inspection. If somehow the budget would not allow for such a minimal additional expense, this cost could be met by eliminating one week of lawn cutting during the spring and summer seasons, thereby ensuring that funds were available for this important safety work.

Plaintiff's expert arborist, Kay Greeley, offered circumstantial forensic evidence refuting defense expert arborist Roy Leggitt's opinion that the subject limb had died within the six months preceding the incident. Plaintiff claimed the limb died at least a year before the date of the incident, and that given its conspicuous appearance over the jogging path, it was blatant negligence for park maintenance professionals to have failed to recognize and remedy this very clear hazard.

Historically, the city has been successful in defending these

Continued on page 47

Member Verdicts & Settlements

Continued from page 46

cases based upon arguments of practicality, budgetary concerns, and the mere fact that limbs falling in Sacramento's urban forest is a natural phenomenon that happens on a daily basis. The same arguments were made in this case, and the city urged that the problematic limb was essentially a needle in a haystack, and not reasonably discoverable by way of a conscientious maintenance practice.

After the verdict, the jury reported that it found the city employees and management witnesses to be neither reasonable nor credible. Jurors also noted that Plaintiff's evidence that proper monitoring of these dangerous conditions would not require the expenditure of additional city resources was instrumental in its decision to hold the city liable for its failure to reasonably maintain and inspect the subject tree. The vote was 11-1 in favor of Plaintiff on liability.

The damage phase will be tried to a different jury in July 2025.

Plaintiff's retained arborist: Kay Greeley

Defendant's retained arborist: Roy Leggitt

Kevin Hocker, City of Sacramento's Urban Forester, testified concerning standard of care.

SETTLEMENT — Confidential — $1,500,000

Motor Vehicle Collision-Personal Injury

Ember Oparowski and Seema Bhatt of Minami Tamaki, LLP ,obtained a $1,500,000 settlement in a motor vehicle collision personal injury case.

SETTLEMENT — $14,200,000

Negligence – Personal Injury

Robert A. Buccola, Jason J. Sigel and Marshall R. Way of Dreyer Babich Buccola Wood Campora, LLP, obtained a $14,200,000 settlement on behalf of a catastrophically brain-injured teenager.

After the court ruled on more than 40 motions in limine, immediately before the trial was set to begin after having been continued on four prior occasions, the defendant agreed to pay $14,200,000 to the minor Plaintiff, who claimed to have received untimely medical attention after becoming injured during a camp activity.

The defendant operated a youth retreat facility where traditional classroom learning was integrated with an outdoor, holistic, and environmentally conscious curriculum. During an outdoor activity, the 14-year-old plaintiff fell, struck his head, and became significantly disoriented, reporting dizziness and lightheadedness, and exhibited clear and classic neurological signs of a closed head injury that required immediate medical care.

The plaintiff alleged that the defendant failed to properly assess the teen's condition or summon paramedics during the critical window of time when his neurological function could have been restored.

As a result, Plaintiff has been left with severe neurological deficits, including the inability to sustain any meaningful employment in the future.

SETTLEMENT — $16,000,000

Motor Vehicle Wrongful Death

Robert A. Buccola and Craig C. Sheffer of Dreyer Babich Buccola Wood Campora, LLP, obtained a $16,000,000 policy-limits settlement on behalf of a father who lost his son and a child who lost her mother in a motor vehicle collision.

This case involved a freeway accident in which a 34-year-old mother of two and her 10-year-old son were killed when their vehicle was rear-ended by a box truck on Interstate 5, in clear weather conditions after their vehicle became disabled while traveling in the fast lane.

According to the defendant, instead of moving onto the center median infield, which was open and clear, Decedent's vehicle remained in the fast lane, slowing to a near stop before it was hit from behind.

The defendant argued that this unexpected stop made it nearly impossible for the truck driver to avoid the collision and that decedent's failure to use the wide-open median to move out of harm's way was the sole cause of the accident.

Plaintiffs were the father of the deceased 10-year-old boy and the Decedent's three-year-old daughter who suffered minor injuries in addition to losing her mother in the accident.

SETTLEMENT — $7,000,000

Premises Liability– Wrongful Death

Robert A. Buccola and Ryan L. Dostart of Dreyer Babich Buccola Wood Campora, LLP, obtained a $7,000,000policy limits settlement on behalf of Decedent's wife and father.

In this wrongful death case, the decedent was a 37-year-old, newly married gutter installation and repair employee who fell through the roof of an industrial building where he was performing gutter repairs in El Dorado County.

Plaintiffs argued that the building's owner and lessee failed to disclose the location of inconspicuous, unmarked, and unstable skylights on the roof that were not present in any area where Decedent had done work previously. Unaware of this condition, Decedent inadvertently stepped onto a panel that gave way under his weight, causing him to fall to his death.

The Decedent's foreman acknowledged having a general awareness that there were skylights on the roof, but had never done work before in those areas and did not discuss the existence of these skylights before Decedent began work in this area of the roof.

Defendants argued that the Decedent's employer was aware of the roof's characteristics, having previously performed gutter installation and repair work on the building multiple times. Defendants contended that the decedent and his employer were solely responsible for the accident for failing to take appropriate precautions to avoid these known and obvious hazards. Plaintiffs urged and proved just the opposite.

The defendants in this case were the building's lessee and owner. The plaintiffs, Decedent's wife and father, sought wrongful death and emotional distress damages. After extensive discovery, the case settled for the defendants' combined policy limits of $7,000,000.

Federal Court Rule Changes

Page 3

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

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

AUGUST
Tuesday, August 12
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

SEPTEMBER
Tuesday, September 9
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

OCTOBER
Tuesday, October 14
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

CCTLA Calendar of Events