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# The LITIGATOR

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## Inside



# UBER Going for the 'Kill Shot'

Glenn Guenard
CCTLA President
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Uber has ramped up its assault on motor vehicle accident victims in 2025, executing a coordinated campaign to weaken both victims and the attorneys who fight for them. At the Capitol, Uber first pushed legislation slashing mandatory uninsured and underinsured motorist coverage for rideshare companies, gutting protections for victims while cutting a political deal to advance its broader agenda. Then, in July, it filed a federal racketeering lawsuit against two Los Angeles law firms, a calculated move to brand the plaintiffs' bar as corrupt and flood headlines with sensational allegations of fraud.

If the allegations against those firms prove true, such conduct deserves condemnation, but Uber's strategy is far stealthier. By spotlighting a potential bad apple to taint the entire profession, Uber has weaponized public perception to justify its ultimate "kill shot"— a deceptively titled constitutional initiative that, under the guise of protecting consumers, would dismantle California's contingency fee system and effectively deny accident victims' ability to obtain legal representation.


Earlier this year, Uber pushed legislation to reduce California's mandated rideshare companies' responsibility to maintain UM/UIM coverage from $1 million to $50,000 per person and $100,000 per incident. Uber claimed the $1 million mandated coverage drives up prices and lowers driver pay, claiming that nearly 45% of fares in LA County and 32% in California go toward mandated insurance costs.

SB 371 was approved by Governor Newsom on Oct. 3, 2025, lowering UM/UIM limits to $60,000 per person and $300,000 per incident. CAOC opposed SB 371, but a legislative deal was made with Democratic leadership whereby, in exchange for lowering the rideshare companies' UM/UIM limit, Uber would agree to SEIU's bill to organize Uber drivers (AB 1340). Uber drivers would remain independent contractors, but there would be more transparency between Uber and its drivers, who would have more rights with the ability to seek more benefits. Governor Newsom approved AB 1340, also on Oct. 3, 2025.

On July 20, 2025, Uber filed a federal racketeering lawsuit against two Los Angeles law firms and their associated medical providers. *Uber Technologies, Inc. v Downtown LA Downtown Law Group, et al* alleges violations under the RICO Act, including mail and wire fraud, conspiracy, unjust enrichment, and violations of California's Business

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Marti Taylor, Wilcoxen Callaham is the CCTLA Board Secretary

# NOTABLE CITES

By: Marti Taylor

***HOLLAND v. SILVERSCREEN HEALTHCARE, INC.***
2025 California Supreme Court, No. S285429,
(August 14, 2025)

**Wrongful Death Claims Based on Custodial Neglect in Nursing Facilities Are Not Subject to Mandatory Arbitration Under MICRA**

**FACTS:** Skyler A. Womack was a dependent adult with physical and developmental disabilities who was admitted to Asistencia Villa Rehabilitation and Care Center, a 24-hour skilled nursing facility operated by Silverscreen Healthcare, Inc., in January 2020. Skyler died on Oct. 29, 2020, while residing at the facility. Upon admission, Skyler had signed a "Resident-Facility Arbitration Agreement" providing for arbitration of medical malpractice claims. The agreement stated it was binding on the resident's representatives, executors, family members and heirs.

Following Skyler's death, his parents and heirs, Jonie A. Holland and Wayne D. Womack, filed suit against Silverscreen, asserting four causes of action: (1) dependent adult abuse under the Elder Abuse Act; (2) negligence; (3) violation of residents' rights; and (4) wrongful death. Plaintiffs alleged that Silverscreen failed to protect Skyler from multiple falls with injury and infections, failed to employ adequate qualified personnel, failed to keep the facility in good repair, failed to correct state-issued deficiencies, and failed to provide good nutrition and necessary fluids for hydration. The wrongful death claim alleged that Skyler died as a proximate result of this negligence and "neglect" as defined in the Elder Abuse Act.

The trial court granted Silverscreen's motion to compel arbitration of the three survivor claims but denied the motion as to the wrongful death claim, following the approach in *Avila v. Southern California Specialty Care, Inc*. The Court of Appeal reversed, holding that the wrongful death claim necessarily sounded in professional negligence and was therefore subject to arbitration under *Ruiz v. Podolsky*.

**ISSUE:** Does the *Ruiz* exception—which allows a patient's arbitration agreement to bind heirs in wrongful death actions for medical malpractice—apply to wrongful death claims against skilled nursing facilities based on custodial neglect rather than professional negligence in rendering medical services?

**RULING:** No. Reversed and remanded.

**REASONING:** The court held that *Ruiz v. Podolsky* does not extend to every type of wrongful death claim against a health care provider. Under *Ruiz*, plaintiffs' claims must be submitted to arbitration only if they raise a dispute about medical malpractice as defined in MICRA's arbitration provision—that is, disputes "as to whether any medical services . . . were improperly, negligently or incompetently rendered" (Code Civ. Proc., § 1295, subd. (a)).

The court emphasized that not every claim against a health care provider qualifies as professional negligence under MICRA. Section 1295 applies only to claims based on negligence in the provision of medical services. The court drew a critical distinction between: (1) acts or omissions by skilled nursing facilities in their capacity as health care providers (which fall under professional negligence), and (2) failures to fulfill custodial duties owed by custodians who happen also to be health care providers (which do not).

Custodial neglect includes failures to provide basic necessities such as assistance with personal hygiene, food, hydration, clothing, adequate living space, protection from routine safety hazards, and monitoring to ensure residents receive appropriate medical care. These duties are owed regardless of professional standing, and are judged against general duty of care standards, not medical treatment standards.

The court rejected Silverscreen's argument that all claims involving falls and infections necessarily constitute professional negligence. While some such claims may involve negligence in prescribing or executing medical care plans, others may involve failures to adequately supervise residents during daily activities or to recognize obvious signs of illness requiring medical atten-

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# *WARNING!*

# Uber Going for the Kill Shot

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and Professions Code. Uber claims defendants engaged in a scheme to inflate personal injury claims following minor accidents involving Uber drivers. The allegations include aggressive client solicitation, referrals to preselected medical providers on a lien basis, inflated medical billing, unnecessary treatments, and exaggerated demand letters.

**Now for the Kill Shot . . .**

On Oct. 3, 2025, Uber filed an attorney fee cap initiative (deceptively titled "Protecting Automobile Accident Victims From Attorney Self-Dealing Act" ). The initiative is crafted as a constitutional amendment rather than a statutory initiative. The primary components include:

- $ **Fee contracts:** Automobile accident victims shall retain no less than 75% of the total amount recovered after subtracting the contingency fee.
- $ **Medical expenses severely limited:** First, how medical expenses are measured. Throw collateral source out the window. Unpaid past and also future medical expenses are tied to Medicare or Medi-Cal rates. Second, a new burden of proof whereby past and future unpaid medical expenses must be proven by clear and convincing evidence.
- $ **Referrals to medical providers:** Unlawful to refer auto accident victims to a medical provider if the attorney or a member of the attorney's family has a financial interest with the provider.
- $ **Whistleblowers' protections**: Lawyers prohibited from taking any adverse employment action against an employee who provides information about a suspected violation of financial arrangements with medical providers.

The bad news is that this initiative is not a 25% fee cap. It's much lower and much worse. The injured automobile accident victim retains 75% of the total amount recovered after deducting the reasonable and necessary disbursements and costs incurred in connection with the prosecution and settlement of the claim. Everything else comes out of the remaining 25%, including attorneys' fees, office overhead costs or charges, attorneys' liens, referral fees, medical expenses, and medical liens incurred by the accident victim.

As drafted, fees could be in the range of lower than 10%, and in some cases there will be no fee. A contract made in violation of an amount leaving the victim less than 75% would be void and unenforceable, would be a misdemeanor, and subject to discipline by the State Bar. The initiative applies to all motor vehicle cases, including auto, motorcycle, trucking, as well as auto product liability and dangerous roadway cases.

**Why is this initiative the "Kill Shot"?**

Uber's personal injury fee cap initiative seeks to limit access to justice for consumers involved in automobile accidents across the state of California. The title of the initiative, "Protecting Automobile Accident Victims from Attorney Self-Dealing Act," is deceptive and misleading.

Uber's initiative is framed as a consumer-friendly proposal. It is written to make it sound like consumers will put more money in their pockets. However, it is simply a bait-and-switch attempt to protect corporate interests while limiting access to justice for consumers. Law firms would be forced to radically rethink their business models, including more selective case acceptance.

It will be difficult for victims of motor vehicle accidents to hire attorneys and would be left with dealing with insurance companies themselves. It will be financially impracticable for lawyers to take on complex cases that require substantial upfront investment. If lawyers are not willing to assume the risks of contingency representation, then consumers lose because they will either have to settle their cases for pennies on the dollar or be blocked from going to court.

Car accident victims may like the sound of receiving 75% of what is recovered but on the other hand, 75% of zero is zero!

**How Can You Help?**

- $ **Contribute to CAOC's Initiative Defense Fund** to ensure CAOC has the resources for the digital campaigns and attacks to come. CAOC needs ALL the support it can get to continue fighting back.
- $ **Join CAOC if you are not already a member**.
- $ **If you are already a member of CAOC, please recruit CAOC members.** The more members CAOC has, the more power we all have, and the easier it will be for CAOC to communicate urgent updates and calls to action.
- $ **Share and repost content from CAOC on social media (caoc.org).** Download the campaign video to post on social media, include the copy below. **IMPORTANT:** Do not edit

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# Uber and the Kill Shot

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the video in any way if you are sharing on your own platform. This includes stitching with other videos, adding text overtop, adding your own commentary, etc. Messaging is critical at this stage. **DO NOT** put any money behind boosting or promoting the campaign video (this has reporting implications).

- $ **Mobilize your circle:** Call your colleagues, mentors, mentees, and partners—make sure they understand what is at stake and that we are counting on them.
- $ **Speak up:** Use your voice and your platform. Talk about why this matters. Educate your clients, communities, and your networks.

## Why is the money needed?

Uber is a multi-billion-dollar company with massive resources. It spent over $200 million on its last California initiative involving its drivers. Since Uber is going for the kill shot here, it will have no problem forking out that kind of money.

The initiative would go to a vote on the November 2026 California ballot if Uber obtains enough valid signatures and timely submits the signatures. Under California Constitution Art. II § 8(b), valid signatures must equal 8% of the total votes cast for all candidates for governor in the most recent gubernatorial election.

Since the last gubernatorial election in 2022 had almost 11 million votes cast, Uber would need to obtain almost 900,000 signatures. Uber must obtain enough signatures on the initiative at least 131 days before the election. So Uber has until June 25, 2026, to obtain and submit those signatures.

The good news is that CAOC has a plan. But it costs a lot of money. It costs millions of dollars to run ad campaigns, file counter initiatives, and gather the signatures needed to go to a vote on the November 2026 ballot for each initiative. You have to trust this organization to protect our interests. CAOC raised more than $25 million by early November and really needs $50 million by the end of this year to be able to get our message out there. We need to have a massive response, and that is what CAOC is putting together.

We need to do this, but it takes everybody.

## CAOC will have a multi-prong response to the Uber initiative, including the following:

First, an aggressive ad campaign to force transparency, strengthen safety standards, and stop silencing of sexual assault survivors. "*Every 8 Minutes*" was broadcast during major sporting events, including the World Series. The video was also displayed on trucks circling major events around California near popular rideshare pickup zones. It reached more than 100,000 organic views on CAOC's Instagram Platform. Almost every eight minutes, a sexual crime was reported to Uber, but despite more than 400,000 sex crimes, Uber dragged its feet and refused safety improvements, the ad warns, supported by a New York Times report headlined: "*Uber's Festering Sexual Assault Problem*."

Second, on Oct. 28, 2025, CAOC filed three counter initiatives to force transparency, strengthen safety standards, and stop the silencing of sexual assault survivors (It costs millions of dollars just to gather signatures needed to go to a vote on the November 2026 ballot for each initiative). The initiatives that were filed include:

- $ Sexual Assault Against Rideshare Passengers and Drivers Prevention and Accountability Act
- $ Rideshare Company Public Accountability Act
- $ The People's Right to Contract with Counsel of Choice Act

When CAOC President Geoff Wells was asked about CAOC's initiatives to counteract Uber's attacks on consumer rights, he said, "As Uber attacks crash victims' rights to justice, voters need to know just how far Uber goes to avoid accountability, even shaming rape victims and covering up sexual assault. Now Uber is trying to silence car crash victims, making it harder for victims to hold Uber accountable. Their ballot measure is designed to do what large, profit-obsessed corporations always do: silence victims, prevent ordinary citizens from holding them accountable in court, and protect profits, not people."

## Now is the Time for Everyone to Step Up!

Our practices and the rights of consumers in California are facing an existential crisis with this Uber initiative. If we lose this fight, the plaintiff bar as we know it—and the ability of everyday people to get justice—will be forever changed.

If the initiative is successful, law firms who represent victims in automobile cases will either be put out of business or will have to downsize or change their business model.

The reality is that if we do not get together on this, it will be pretty much a nuclear winter for us. Everybody needs to step up, not just the handful of firms in the Sacramento area.

We've faced big fights before—but nothing like this. The Uber initiative is the most dangerous threat our profession and our clients have ever faced. It's not just another corporate attempt to limit damages or tweak procedure.

This is a full-scale assault on the right to justice. It's an attempted kill shot to destroy the

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CCTLA President Glenn Guenard with CAOC President Geoff Wells, who are working together to fight Uber's efforts to weaken motor vehicle accident victims and the attorneys who fight for them.

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# Uber and the Kill Shot

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contingency fee system and cripple the ability of Californians to hold powerful corporations accountable.

This fight will not be easy. Back in the 1980s, the enemy was the insurance industry, and the insurance industry was not a popular entity. Uber is viewed, generally speaking, in a very positive light. So we're attacking a company that is putting the initiative on television ads and billboards, telling people they'll get a 75% result.

Just put yourself in the minds of a consumer who has been in a motor vehicle collision and sees billboards with lawyers who brag about huge settlements, and the consumer is thinking, "I'll get 75% of that number. That sounds pretty good to me." The consumer is not going to listen to lawyers about how much time, effort, and money we have to spend while we work for free until the case resolves. This has all been tested. You can't throw up your hands and say it's over (*it will be if we don't fight*). We have to fight this because Uber is trying to wipe us out. They are coming after us, big time.

## The big ask for money

The CCTLA Board of Directors is looking for 100% participation from CCTLA members. There is NO limit to how much you can contribute. We encourage you to contribute as much as you can, as soon as you can, to Initiative Defense Fund ahead of the fundraising reporting deadline of Dec. 31.

Every member's involvement is crucial. Our goal is 100% participation because every voice matters. We need every CCTLA member from every firm, young and old lawyers alike, to step up. Not later, but now! Give what you can, big or small. Every contribution matters. When considering the size of your contribution, consider that this Uber initiative is a do-or-die situation for your ability to represent auto accident victims.

You can find lots of reasons not to give, and that's on you. It's a hard ask. Let your conscience be your guide. But remember, Uber is trying to wipe us out! There is no time to delay. We can't panic, but we all need to get engaged and motivated now. It's time to think about the long game. This is an extraordinary moment in our careers, and we will be defined individually and as a group by how we handle this crisis.

CCTLA members will be getting phone calls for contributions to the Initiative Defense Fund from past CCTLA President John Demas, board member Chris Wood, current President Glenn Guenard and President-elect Amar Shergill. Please take our calls. We have a list of all contributors. That is a list we all want to be on! It's a list that says, "I stood up when it mattered." Sacramento traditionally has not been a hotbed of political fundraising by any stretch of the imagination. Let's show the rest of the state and TLAs that CCTLA's members are making more than our fair share of contributions.

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# Visit It Yourself

By: Kirill Tarasenko

The case itself was a doozy – a golfer felt a sharp pain to the ankle while searching for his ball in rough grass. He didn't see the culprit, nor did he hear it rattle. About 36 months later, the golfer was dead, leaving behind a devastated family searching for answers and a panel of liver pathologists, hepatologists, and hematopathologists studying his liver samples as a matter of medical interest.

The golf course blamed the golfer, arguing that he had trekked out of bounds, which meant that he was no longer on its manicured grass course. They said he was bushwacking in the woods while searching for his ball. They alleged that the fanged perpetrator was a member of Northern California's natural habitat and therefore not their duty to eradicate. The golfer assumed the risk of injury, they postulated, when he searched for his ball out of bounds, despite the rules of golf specifically contemplating golfers doing just that, by giving them three minutes to look for errant tee shots.

The golf course denied responsibility for what happened, despite the course having previously set up warning signs which they admitted to having previously rotated around the course but had now inexplicably taken down. No one at the course seemed to have any idea or explanation for why the warning sign, previously ubiquitous to the course, had disappeared. Perhaps kids had stolen the warning signage and thrown it in the lake, a course employee postured.

Thirty depositions in, and I wasn't entirely sure that the golf course's liability for a wild animal bite in rough grass would be provable to a jury. If they were right, that the golfer was out of bounds at the time of the bite, then why were we still correct in our belief that the course was liable? If they were right that golfers should just take a drop and hit a new ball without looking for their tee shot, then why were we still right that our client had not assumed the risk of such an injury? If the biter didn't rattle, and the golfer never saw it, then how could Plaintiff prove exactly what kind of animal it was that bit him, and after his passing, how could the golfer's estate prove that it was the venom that destroyed his liver?

The case was shaping up to be complex, and still, even with competing summary judgment motions pending, no lawyer from either side had visited the course. It was time to get out there and do some investigating. *Not the OJ-on-the-golf-course-looking-for-his-wife's-killers* kind of investigating, but some real investigate work. On the golf course. My drone operator was a big golfer and was quite excited to spend a day out on the course, flying a drone around. We had obtained some deposition testimony from the decedent's golfing group generally explaining where the incident had occurred, with a particular line of trees circled by the golfers as where they believe he was hunting for his ball when bitten.

With a 10 AM inspection start time on a hot September day, I met our expert in the parking lot. Mr. Cardwell had flown in from Tucson and was dressed like he was ready for a safari adventure. Cardwell, myself, and our drone operator were about to hike up a steep, wooded hill, on a blazing hot day, searching for what exactly, I am not sure, in what we now knew was the habitat of an animal whose venom could kill a grown man. *I don't remember ever taking this class in law school.*

Kirill Tarasenko, Tarasenko Law Firm, is a CCTLA Board Member

Cardwell's words brought my attention sharply back to the matter at hand:

"They don't always rattle, did you know that?" the expert asked me. I was about to learn something new, of that much I was certain.

"Why not?" I asked. "Is it because the little ones don't have rattles yet?"

"Perhaps, but I was referring to the adults. They are adapting, *evolving* to not rattle. We are seeing evolution occurring in real time with these remarkable animals."

"Evolving …. *to not rattle?*" It was like we had stepped into the Jurassic Park, with reptiles evolving around us in real time.

"Yeah, as much as humans are afraid when they hear the rattle, believe it or not, most animal encounters prove fatal to the rattler because as soon as it rattles, it exposes its location. Most predators,

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like cats, dogs, raccoons, even birds, will end up killing it. So, they are evolving to not rattle, because the silent ones are the ones that tend to survive and pass on their genes."

His explanation made a lot of sense. "And it also contradicts the defense's argument that if the victim did not hear a rattle, then we can't prove what it was that bit him!" I exclaimed.

He nodded with conviction. "Look around this hillside; there are ground squirrels everywhere. Ideal habitat. The ground squirrels make up 70% of a rattler's diet."

With Cardwell's chilling words in mind, we proceeded with the inspection, carefully hiking around the hillside, drone buzzing overhead, with defense counsel and a representative of the golf course closely watching our inspection with interest. We found dozens of golf balls all over the hillside. Ground squirrels scurried about, popping in and out of holes scattered through the brush. Looking up the hillside, I saw a row of wooden stakes sticking out of the ground, all painted white, spaced about 15 feet apart. Some were fading, others had toppled over. But the line of white stakes was unmistakable, and we measured them to be about 60 feet away from the cart path running alongside the green down below.

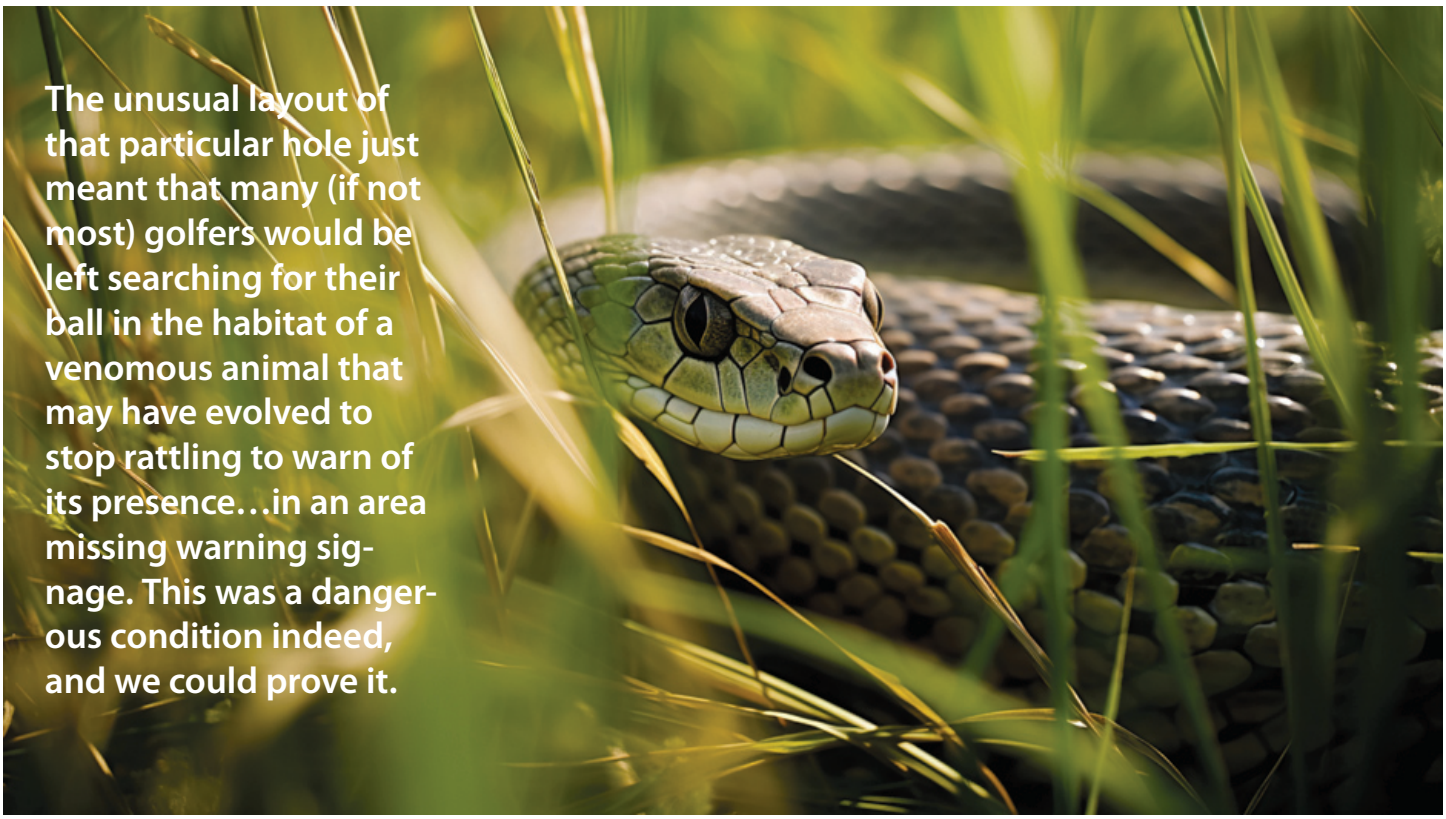
The white stakes, which each witness testified to not having seen at the time of the incident in May, were now visible in September, after the dry grass had been cut down to reduce fire risk. *The golfers wouldn't have been able to see the white stakes in May,* I thought, when the grass was still tall and lush. And white golf stakes are the universal demarcation line between in bounds and out of bounds!

The white stakes were also several yards up the hillside, higher than the line of trees where witnesses testified the decedent had been bit – which meant that our client had been searching for his ball inbounds, not out of bounds as the golf course had claimed! This was a significant finding, and I knew that defense counsel had seen what I saw.

Neither of us had known for sure where the bite had occurred, whether it was inbounds, or out of bounds. Everyone had just generally assumed that it may have been out of bounds, since witnesses had described the incident as having occurred in taller grass, which on most golf holes means off of the fairway. But on this hole, golfers hit their tee shots from an elevated position on top of the hill and can't see where their ball lands due to the steep hillside covered with trees. They then take their carts down a zig-zag path to the fairway below to start searching for their ball.

The inspection had answered all of our doubts and had put erroneous assumptions to rest – our golfer had been searching for his ball while in bounds, which meant that he was not trekking in the woods or off on some nature hike, but rather, playing the course the way it was designed to be played. The unusual layout of that particular hole just meant that many (if not most) golfers would be left searching for their ball in the habitat of a venomous animal that may have evolved to stop rattling to warn of its presence…in an area missing warning signage. This was a dangerous condition indeed, and we could prove it.

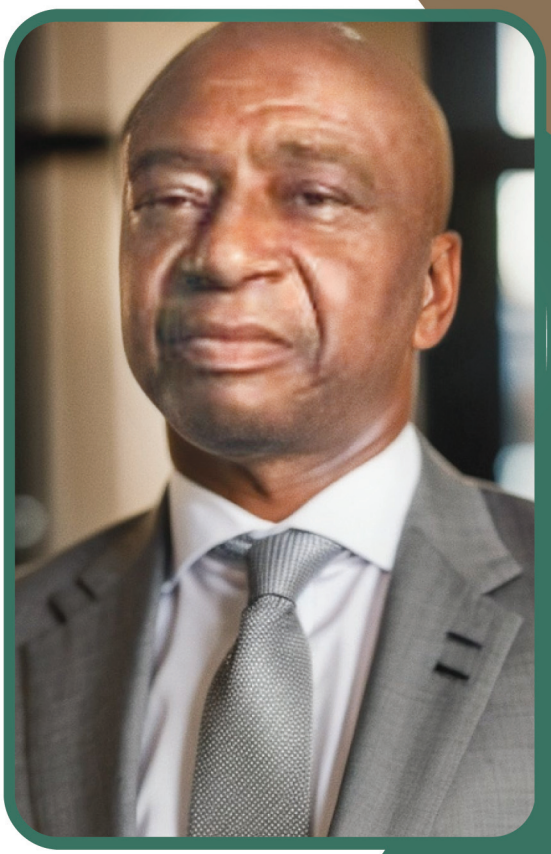
The evidentiary proof that we needed might well have remained elusive and out of our reach without that site visit. It only took hours of driving and shlepping around a dangerous animal habitat in the hot sun to get it, but there was no better way. So get out there, visit the scene and see it for yourself, you might be surprised at what you find.



# Sacramento Investigator Receives Top State Honor

## *California's Investigator of the Year 2025*

Lindon Lilly, founder of Rhino Investigation & Process Serving, has been honored as the 2025 Investigator of the Year by the California Association of Licensed Investigators (CALI). As a proud Northern California investigator, Lilly has built one of the region's most respected firms, known for excellence in personal injury investigations and complex process serving.This recognition from CALI celebrates a career defined by professionalism, integrity, and dedication to the legal community. Lilly's success reflects the vital role investigators play in advancing justice and strengthening the legal system throughout California.A special thanks goes to the Capital Trial Lawyers Association for their continued partnership and support.



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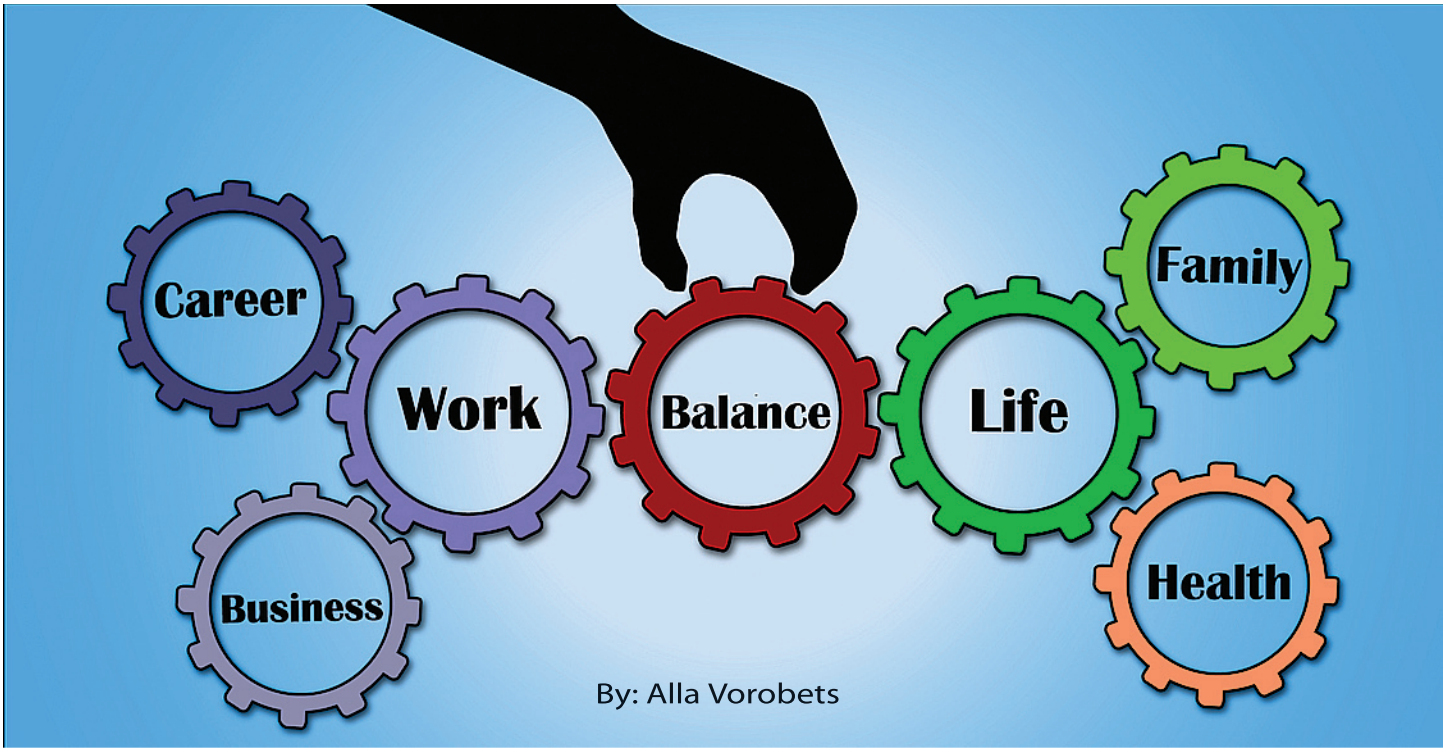


# ABCs of Finding Success After Hanging Your Own Shingle

We had ordered coffee and looked for a table at a café located almost exactly at a midpoint between her office and mine. She seemed worn down, yet still characteristically organized. As we started chatting about stipulated judgments, government tort claims, and the law clinic she wanted to open at her church, I was reminded of the early years of my own legal career.

I have been mentoring a young attorney for a few years – through her transition from a mid-size firm to solo practitioner firm of her own. Mentoring someone with a young family and a young firm has been rewarding. But, as I listened to her frazzled voice go over carefully curated questions, this particular meeting brought to the surface the subject I believe is not addressed enough in the legal profession: self-care. I would posit that self-care is the single most important indicator of whether an attorney who decides to hang their own shingle will be successful.

The practice of law is a demanding mistress – it requires complete devotion mentally, physically, and emotionally. As law firm proprietors, solos wear many hats and are expected to have skills attributed to those hats: attorney, business owner, marketer, accountant, HR, operations. As proprietors of legal service, lawyers are expected to have sharp cognitive skills, digital literacy, polished advocacy skills, and superb organizational and interpersonal abilities. This translates to long hours at the office, high levels of stress, difficult decisions, and isolation in an industry known for its combative and highly competitive nature.

The latter leads to lack of self-care. Lack of self-care leads to burnout, and sometimes addiction for coping. And burnout leads to failure with negative consequences to attorney's clients, family and self

Alla Vorobets, Law Office of Alla Vorobets, is a CCTLA Board Member

A 2021 study by PLOS ONE, joined by the California Lawyers Association, found appoximately 50% of practicing attorneys as experiencing symptoms of depression and anxiety and more than 50% of the attorneys as exhibiting risky or dependent drinking habits.

The study also found that women are experiencing meaningfully worse mental health than men, are drinking more hazardously, have higher rates of burnout: one in four women is contemplating leaving the legal profession due to mental health problems, burnout, or stress as opposed to 17% of male attorneys reporting the same thoughts. (Anker J, Krill PR (2021), Stress, drink, leave: An examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys. PLOS ONE, https://doi.org/10.1371/journal.pone.0250563

When starting a firm, the multi-layered demands of lawyering get amplified and become more pronounced. Soon, the boundaries between professional and personal life get eroded by the growing client list, increasing complexity of the caseload, and expanding overhead cost that inevitably follows growth.

Self-care isn't just about taking breaks; it's about intentionally managing your mental, emotional, and physical well-being to prevent burnout and maintain a high level of performance. I was lucky for my mentor to impart this to me when I

*Continued on page 12*

*Continued from page 11*

was starting out.

As she looked up from her list to take a look at her watch and then at me for answers, she had not expected the response that followed: "Check in with and take care of yourself before you try to get all of this done." It seems basic, but we don't talk about this enough. The simple rules that follow should be non-negotiable and make us better lawyers and more effective advocates:

**Boundaries:**
Establish clear boundaries between work and personal time. Don't let your firm consume every waking hour. Set specific hours for client meetings, phone calls and casework, and ensure you have time for yourself outside of those hours.

**Light/Outside:**
Spend time outside of the office when working. Take 5-10 minutes to go outside. Breathe in fresh air, soak up sunlight, touch the grass, walk around.

**Nutrition/Hydration:**
Even mild dehydration can impair brain function and increase feelings of anxiety and fatigue. Same is true for food; chose nutrient-dense foods throughout the day that will fuel your physical and mental energy.

**Sleep/Rest:**
Sleep repairs our brain. Lack of sleep equals diminished brain capacity and slower brain processing. Sleep deprivation can lead to stress, sadness and irritability.

**Exercise/Movement:**
Moving your body is known to reduce stress hormones, ease anxiety and depression, and increase release of feel-good neurotransmitters (like serotonin, dopamine and norepinephrine).

**Reflection/Gratitude:**
People who count their blessings tend to be healthier and more content. Each day, write down 3-5 things you're grateful for. Yes, even being grateful for an abrasive opposing counsel who refuses to deal with you civilly.

**Connection:**
Don't neglect your relationships – with your loved ones, your colleagues and your friends. No brief, client meeting, or research project is worth losing a relationship you failed to nurture. Take time to call a friend, write a letter or join someone for a walk or a meal.

**Mentorship:**
Support is crucial in the beginning. It is an antithesis to isolation, which is an inevitable companion of every solo practitioner. Don't be afraid to ask for support. Even as a solo practitioner, you don't have to do everything alone. CCTLA is an excellent network of lawyers to turn to for advice, whether it's about legal questions or business decisions. CCTLA also provides excellent resources, including Q&A lunches, Trial Assistance Program, and invaluable MCLEs.

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# Navigating an Admiralty Case

By: Anthony Garilli

Anthony Garili, Dreyer Babich Buccola Wood Campora, LLC, is a CCTLA Board Member

I have lectured on this topic a few times when we used to have the CAOC/CCTLA Lake Tahoe Conference and again at the CAOC/CCTLA Sonoma Conference. Despite being a fantastic speaker on this riveting topic, the attendance was oddly sparse so I thought I would put it into an article.

Every so often, many of us have seen an injury case that comes to us having occurred on a lake, a river, out on a bay, or along the coastline. The next time you get one of those intakes, consider whether Federal Maritime Law and Admiralty jurisdiction may apply. It might shock you how good those cases can be for plaintiffs.

So, what makes a case subject to the General Maritime Law and Admiralty Jurisdiction? First, it has to occur on a navigable waterway. Think bays, inlets, major rivers, oceans, and high seas. But, also lakes that border more than one state, i.e., for us Capital City Trial Lawyers: Lake Tahoe.

Secondly, the case must arise from circumstances that bear a significant relationship to traditional maritime activity. Under the General Maritime Law, this is just about everything – wakeboarding, boating, jet skiing, parasailing, fishing, etc.

If your case meets the two-threshold requirements of a navigable waterway and bears a significant relationship to traditional maritime activity, then you can take advantage of Admiralty Jurisdiction. The jurisdictional statute is 28 U.S. Code § 1333 and provides that "The district courts shall have original jurisdiction, exclusive of the courts of the States of: (1) Any civil case of admiralty or maritime jurisdiction, savings to suitors in all cases all other remedies to which they are otherwise entitled."

What does this mean? Well, it means that you can file in federal court if you wish. But also, the "savings to suitors" clause means you can still file in state court, and your state court judge must apply the federal General Maritime Law. Therefore, for those of us who prefer state court, along with its procedural and evidentiary rules, as well as the 12-person jury with 75% agreement amongst them, you can still prosecute your maritime case there and take advantage of the General Maritime Law.

I did this not too long ago in a case that occurred just outside of Berkeley Marina. I filed and prosecuted the case in Alameda County, setting forth the jurisdictional allegations of 28 U.S. Code § 1333(1) and our state court judge had to apply the General Maritime Law.

What's so great about the General Maritime Law then? Well, there are two really great features.

First, as you can imagine, many of these cases arise from activities such as wakeboarding, jet skiing, fishing, scuba diving, etc. Under California law, we all know the seminal case of *Knight v. Jewitt* and its progeny that sets forth the California Assumption of Risk rules, which include both a primary and secondary Assumption of Risk defense.

Under California State law rules, the Assumption of Risk defense would obviously loom large over your case and would likely be a dispositive factor in your evaluation at the intake stage. Under the General Maritime Law, however, Assumption of Risk is simply not available as a defense. Which, again, given the nature of the kind of activities and injuries that arise from these waterborne cases, the Assumption of Risk defense would be a huge hurtle to overcome.

Secondly, Proposition 51 does not apply in cases prosecuted under Admiralty Jurisdiction and subject to the General Maritime Law. That's correct, defendants are joint and severally liable. Obviously, that benefit cannot be gainsaid.

Several years ago, I had a tragic case where my client lost her leg in the propeller of a boat while engaged in the recreational activity of tubing on Lake Tahoe. Being a navigable waterway between two states, Lake Tahoe allowed me to file the case under Admiralty Jurisdiction, and I did file in the Eastern District rather than state court in El Dorado County.

The defendants were the boat rental company and my client's friend that was operating the boat at the time of her in-

*Continued to page 16*

*Continued from page 15*

jury. You can imagine the disparity in the ability to pay any eventual judgment.

Roger Dreyer and I tried the case before the Hon. Judge Mendez in the Eastern District and obtained a $23.2-million verdict, with 80% apportioned to the 22-year-old driver and 20% apportioned to the boat rental company. The non-economic damages portion of the verdict was $20 million. Because Proposition 51 did not apply, both defendants were joint and severally liable, and we were able to recover for our client.

While these are clearly two great reasons to consider filing your maritime injury case in either Federal or State court invoking Admiralty Jurisdiction and the General Maritime Law, there are, however, some pitfalls of which you need to be aware.

The first applies to the joint and several liability rule. What you must know going into the case from the outset in a multiple defendant case is that you cannot settle with any defendant or you will lose joint and several liability. The rationale behind the rule is for another article, but just be mindful that you cannot settle with a particular defendant or you lose the benefit of joint and several liability under *McDermott, Inc. v. Amclyde* (1994) 511 U.S. 202; *Edmonds v. Compagnie Generale Transatlantique* (1979) 443 U.S. 256; and, *United States v. Reliable Transfer Co.* (1975) 421 U.S. 397.

The second pitfall is what is known in Admiralty cases as LOLA, or the Limitation of Liability Act. LOLA is a draconian statute from 1851 that was designed to encourage merchant marine shipping at the time. Yet, it is still alive and well today, and will likely apply to your wakeboarding, jet skiing, or tubing case in 2025 and beyond.

What LOLA provides to the owner of the vessel is the ability to limit their liability to "the value of the vessel and its pending freight." LOLA also has shorter filing deadlines akin to our state public entity claims that can bar your client's claim after six months if not followed. Finally, there is also no jury trial right for LOLA claims.

Under LOLA, a vessel owner that is sued or anticipates that claims are forthcoming can do one of two things. They can simply raise the LOLA defenses as affirmative defenses in your case. Or, they can file their own Limitation action in federal court as a plaintiff. If they elect the latter, then the federal court will issue an injunction on all other cases (including your federal- or state-filed Admiralty case) and order that all claims be brought in the Limitation Action filed by the vessel owner.

The vessel owner (Plaintiff) is required to notice all known potential claimants and publish notice of the action in a local newspaper of general circulation. With your case now stayed, you must file an Answer to their complaint and file a claim (and any third-party complaint) in the Limitation action before the specified deadline.

As for the substantive defense offered to the vessel owner under LOLA of limiting their liability to the value of the vessel and its pending freight (e.g., in our Tahoe case, it was the value of a used 1994 Four Winns boat, or about $10k), there is a two-step process. First, your client (now the "Claimant"), must prove negligence by a preponderance of the evidence. Nothing new or different about that for us.

If negligence is found, then the burden shifts to the vessel owner to prove "a lack of privity or knowledge" of the negligence by a preponderance of the evidence. Generally, this is not easy for the vessel owner. Privity or knowledge includes anyone to whom the corporation has committed the general management of superintendence of the whole or a particular part of its business.

Additionally, "[t]he privity or knowledge of the master or owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner." 46 U.S.C. § 30506. Besides actual knowledge, LOLA's "knowledge" requirement also includes, "the means of knowledge – of which the owner . . . is bound to avail himself – of contemplated loss or condition likely to produce or contribute to loss[.]" *Wash. State Dep't of Transp. V. Sea Coast Towing, Inc.* 148 Fed.Appx.612, 614 (9th Cir. 2005). Also, the owner's knowledge is measured not only by actual knowledge, but also by "what [it] is charged with finding out." In re *Sause Bros. Ocean Towing,* 769 F.Supp. 1147, 1155 (D. Or. 1991).

Consequently, in recognition of the draconian nature of this antiquated statute, the courts often look disfavorably on the LOLA defenses in personal injury cases. Case law supports making the vessel owner's ability to demonstrate a lack of privity or knowledge of the negligent conduct that caused your client's injuries a difficult proposition.

So, the next time a case comes to you having taken place on a body of water, give some thought to whether Admiralty Jurisdiction and the General Maritime Law may apply. They make for fun and rewarding cases. And, as with all of our members, feel free to reach out if you need any guidance or assistance.

The next time a case comes to you having taken place on a body of water, give some thought to whether Admiralty Jurisdiction and the General Maritime Law may apply. They make for fun and rewarding cases.

# Hot Coffee: Legal Perspectives on Tort Reform and Consumer Justice

By: Ian Barlow

CCTLA had a great turnout for its Oct. 29 program—Hot Coffee: Legal Perspectives on Tort Reform and Consumer Justice—at McGeorge School of Law, drawing roughly 80 registrants consisting of practitioners and law students.

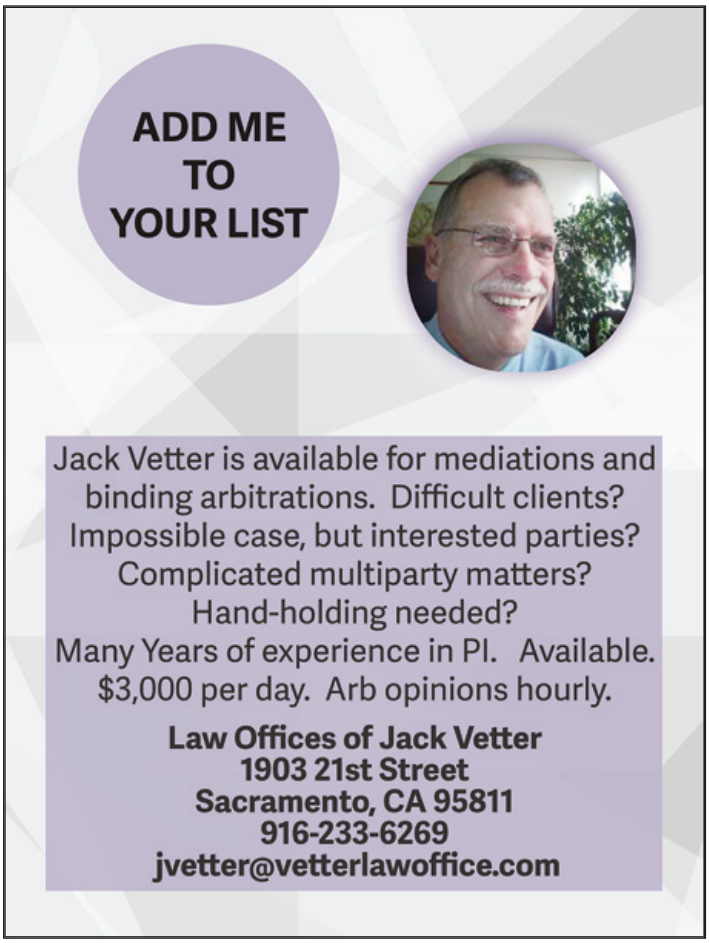
Thank you to Justice Art Scotland for facilitating such a robust discussion and to all the speakers: Susan Saladoff, director of the film, "Hot Coffee"; Professor Larry Levine, McGeorge School of Law; Anne Bloom, UC Berkeley Law, Civil Justice Research Initiative; and Sam Guthrie, Resnick & Louis, P.C., for their thoughtful contributions and compelling perspectives on tort reform, how media has been used to shape the public's perspectives of plaintiffs' attorneys and personal injury cases, and the impact of damages caps on the civil justice system.

Thank you also to our sponsor, Alcaine Halterbeck Investment Group, for generously supporting this event.

***

*Ian Barlow, Kershaw Talley Barlow, PC, is a CCTLA Board Member*

Above, attendees at the Hot Coffee event at the McGeorge School of Law on Oct. 29. Right, event facilitator Justice Art Scotland (Ret.)



Ian Barlow, Susan Saladoff, Glenn Guenard and Professor Harry Levine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For the last 23 years, CCTLA has donated to Mustard Seed School at its Annual Meeting and Holiday Reception and will do so again at this year's reception scheduled for Thursday, December 4, 2025 at the Sheraton Grand Sacramento Hotel. The CCTLA Board is asking members and guests to join in this year's fundraising event.

CCTLA Board Members and friends have committed to donate to Mustard Seed School prior to the reception and invite members to join in helping Mustard Seed School provide unhoused children with a safe place for education. The following CCTLA Board Members and friends have graciously committed to donate to Mustard Seed School:

Rick & Cynthia Crow - $100
Kelsey DePaoli - $500
Guenard & Bozarth - $1,000
Debbie Frayne Keller - $100
Jacquie Siemens - $250
Tiemann Law Firm - $1,000
Wilcoxen Callaham - $2500

Your donation will make a significant impact on the lives of Mustard Seed School students. Any donation, no matter the size, will be greatly appreciated.

Donations can be made on-line at https://secure.sacloaves.org/forms/cctla or by mailing a check (payable to Mustard Seed School) to CCTLA, Post Office Box 22403, Sac, CA 95822. (Sacramento Loaves and Fishes Tax ID Number: 68-0189897.)

Thank you in advance for your consideration in donating to Mustard Seed School.

If you have any questions, please contact Debbie Keller at debbie@cctla.com.

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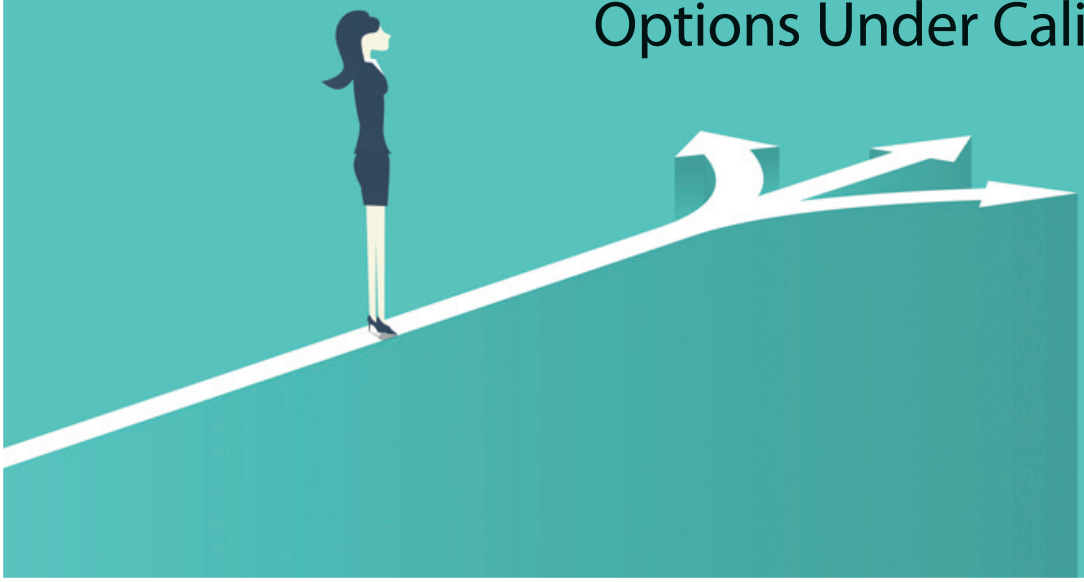
# Civil Claims Against a Deceased Defendant: Pre-Litigation, Statutory Deadlines and Litigation Options Under California Law



By: Kellen Sinclair

Kellen Sinclair, Stawicki Anderson and Sinclair, is a CCTLA Board Member

If you're dealing with a lawsuit where the defendant passes away, things get a lot more complicated for the plaintiff. Suddenly, you're not just focused on the facts of your case—you have to decide whether to chase the insurance money or go after estate assets, and each route comes with its own set of hoops to jump through. California law lays out specific rules and deadlines, so knowing your options and the steps ahead is crucial for keeping your case alive and making sure you get paid. This article breaks down what happens, why it matters, and how to navigate the twists when the person you're suing is no longer around.

**1.Death of Defendant Pre-Lawsuit – Statute of Limitations**

Plaintiffs must be mindful of the special limitations period that applies when a defendant dies. Under Code of Civil Procedure section 366.2, an action against a decedent must be filed within one year of the decedent's death, even if the ordinary statute of limitations would otherwise be longer. The statute provides:

*"(a) Subject to Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims, if a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.*

*(b) Subject to Chapter 8 (commencing with Section 9350) of Part 4 of Division 7 of the Probate Code, the limitations period provided in this section for commencement of an action is not tolled or extended for any reason."*

**Practical Application**

***Scenario 1 – Defendant dies well within two-year statute of limitations***

Imagine your adult client gets into an auto crash on Jan.1, 2025. The defendant dies Mar. 1, 2025. While the usual statute of limitations for an auto injury claim would be Jan. 1, 2027, because the defendant died on Mar. 1, 2025, California law requires the lawsuit to be filed by Mar. 1, 2026—one year from the date of death, under Code of Civil Procedure section 366.2.

***Scenario 2 – Defendant dies close to two-year of statute of limitations***

Your adult client gets into an auto crash on Jan. 1, 2025. The usual statute of limitations would be Jan. 1, 2027. However, if the defendant dies on Dec. 25, 2026, California Code of Civil Procedure section 366.2 extends the deadline to Dec. 25, 2027—one year from the date of death—regardless of how much time would have otherwise remained under the standard two-year limitation.

**2.Death of Defendant During Lawsuit**

To continue your case, you will need to file an amendment to the complaint. Or make a claim against the decedent's estate. Plaintiff has one year from the date of death to either file the amendment or make a claim against the decedent's estate.

**Limiting Plaintiff to the Applicable Policy Limits**

When a plaintiff seeks only damages within the decedent's insurance policy limits, California law provides a streamlined

*Continued on page 22*

*Continued from page 21*
procedure under Probate Code section 550. This approach allows you to pursue claims covered by insurance without opening a probate estate or appointing a personal representative.

**Key Limitations**

Under this procedure, any recovery is capped at the insurance policy limits—the plaintiff automatically waives any right to damages exceeding those limits. See Probate Code Section 554(a). Any judgment can only be enforced against the insurance coverage, not against assets of the decedent's estate.

**When to Use This Approach**

This streamlined process is particularly useful when:

• *The case value is well below the policy limits*

• *The decedent had no significant assets beyond insurance*

• *You want to avoid the time and expense of probate proceedings*

Instead of initiating probate, the plaintiff can simply file an amendment to the complaint substituting the decedent's estate as a Doe defendant, making this a more economical option.

**Sample Pleading Language**

"Defendant the Estate of [Name of Decedent], Deceased, is identified here and sued pursuant to Probate Code section 550 et seq. All references to [Name of Decedent] herein are attributed to and directed at, and shall be considered the actions and omissions of the Estate of [Name of Decedent], Deceased. [Decedent] died on [Date of Death]."

**Not Limiting Yourself to the Policy Limits**

Probate Code section 9370 sets out the strict procedural requirements for continuing litigation against a decedent's estate if the lawsuit was pending before the defendant died. This section replaces the general creditor claims rules, and failing any requirement will bar recovery against estate assets.

**Not Limiting Yourself to the Policy Limits – When Estate Open and a Personal Representative Appointed**

Practical Application Steps:

• *File a Timely Creditor Claim:*
As soon as you learn of the defendant's death, you must properly file a creditor claim in the probate estate—even if your lawsuit is already pending. This puts the estate and personal representative on notice of the claim.

• *Get a Rejection of the Claim:*
The estate's personal representative must formally reject your claim, wholly or partially. This usually happens in the ordinary probate claims process. If no timely rejection, you may deem the claim rejected after 30 days, but you must observe wherever formal rejection is issued.

• *Seek Court Substitution Within Three Months:*
Once you receive notice of claim rejection, you must act fast: you have only three months to apply to the court for an order substituting the personal representative as defendant in your pending action. This step is required only if the rejection notice clearly states you have three months for substitution. Probate Code section 9370(a)(3)

• *Proof of Compliance Required*:
No judgment or recovery can be enforced against estate property unless you demonstrate full compliance with these steps. Even a successfully prosecuted lawsuit will not result in recovery unless you meet the claim, rejection, and substitution procedure laid out in section 9370.
See Probate Code section 9370.

**Not Limiting Yourself to the Policy Limits – When NO Estate Has Been Opened**

If there isn't an estate open and no heirs who are willing or available to start probate, a plaintiff can take the initiative and open an estate in California. This is no simple or cheap process—you'll need a probate attorney, and if there are no family members to serve, you may end up needing to hire a professional fiduciary to act as Personal Representative, which could run up to $20,000 or more. Once the estate is open and a personal representative has been appointed, the plaintiff must follow the formal claim procedure under Probate Code section 9370—just like any other case with an estate and representative in place. This process lets the lawsuit continue, but only after jumping through all the required legal hoops.

**Defendant Has Out of State Assets**

There is a well-established legal principle that a state's probate court only has jurisdiction over assets located within that state, and not over property situated in a different state. This rule is commonly applied in probate and estate administration across the U.S., including California.

**Probate Court Jurisdiction**

• The probate court in the decedent's state of domicile (residence) administers the estate assets located in that state.

• If the decedent owned assets in another state (such as real estate or tangible property), those assets generally cannot be administered by the probate court of the domicile state. Instead, an ancillary probate proceeding must be opened in the state where those assets are located to transfer or distribute them.

• For example, if a California resident dies with property in Texas, California probate will only administer California assets, and a Texas ancillary probate must be initiated for the Texas property.

**Conclusion**

Successfully pursuing a civil claim when the defendant dies isn't easy, but it's definitely possible with a clear plan and some persistence. The key is knowing which path fits your situation: sticking with the insurance or going after estate assets. California law sets specific deadlines and technical steps—miss one, and your recovery could be blocked. in the end, with attention to the rules, plaintiffs can keep their cases on track and maximize their chances for a fair outcome.

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# Uniting to Fight for the Future of Personal Injury Law

Peter Tiemann, Tiemann Law Firm, is the CCTLA Board Treasurer

The practice of representing injured Californians has evolved with each generation—shaped by reform, resistance, and renewal. Today, we stand at another defining moment.

The deceptively titled "Attorney Self-Dealing Initiative" is not a reform; it is an ambush.

Initiative 25-0022, officially titled the "Protecting Automobile Accident Victims from Attorney Self-Dealing Act," is a proposed amendment to the California Constitution spearheaded by Uber.

Despite its misleading name, this initiative is not about attorney self-dealing. Its true purpose is to exploit public misunderstanding of the legal and insurance systems to reduce the number of attorneys and medical professionals available to help injured Californians. If left unchallenged, it will reshape personal-injury practice in ways that benefit corporate defendants at the expense of ordinary citizens.

In practical terms, it would wipe out the financial foundation of contingency-fee representation — driving many firms out of business and silencing the voices of the people they serve.

The measure hides behind the language of "consumer fairness," but its effect is devastating.

Under this proposal, just 25 percent of every recovery would have to cover all medical liens, litigation costs, and attorney fees combined — a structure that would make it impossible for most firms to exist. The only winners would be negligent companies and insurers who would face no meaningful accountability.

Unless we act collectively, this measure will deprive future injury victims of access to justice.

## Leaders Have Stepped Up — Now the Rest of Us Must Unite With Them

Statewide leaders have already mobilized. The top trial lawyers in California — people who have already built their practices, made their livings, and could easily sit this one out — are stepping up to fight. Many top trial lawyers and their firms have already contributed millions of dollars. They're investing their time, their reputations, and their money to defeat this effort.

'If this initiative passes, the contingency-fee system that sustains consumer justice in California will be fundamentally altered. Complex injury cases — those requiring experts, discovery and years of litigation—will vanish. The economics are unworkable.'

But leadership cannot do it alone. There's a psychological cost when a handful of leaders fight while the rest of us watch. The fewer who step forward, the harder it becomes to sustain the fight. This battle will not be won by a few loud voices—it will take every one of us. And that means 100% participation. Capital City Trial Lawyers Association has 400 members, and we need all 400 to step up. Contribute money now, and be ready to lend your time and your voice—on social media, in your networks, and in your communities—when the campaign begins. Together, we can show that California's trial lawyers are united, organized, and unwavering in our defense of the injured and in protecting the integrity of our profession.

This work has never been just a job — it's a calling. Representing the injured, the voiceless, and the forgotten is not something done between nine and five; it's a mission that defines who we are. Every one of us has felt that moment when a verdict or a settlement has changed a client's life — when you knew you had made a real difference. That feeling is why we do what we do. It remains one of the most fulfilling professions there is — one that I still love after nearly thirty years of practice.

If this initiative passes, the contingency-fee system that sustains consumer justice in California will be fundamentally altered. Complex injury cases — those requiring experts, discovery, and years of litigation—will vanish. The economics are unworkable — requiring medical expenses, case costs, and attorney fees to be paid from the same 25 percent portion of a recovery makes the personal injury practice model unsustainable. As a result, clients with legitimate cases will be left to accept undervalued settlements or face insurers alone.

The cost of modern litigation tells the story: just last night we deposed an expert for two hours—$4,000 for the expert's time, with another $3,000 for the transcript and exhibits. Few widows or families can fund even one expert, much less the six or eight often required in a contested case. That is the reality this initiative ignores.

This fight demands participation, not applause. Every lawyer who earns a living representing people on contingency has an obligation to help stop this attack.

### How You Can Help Right Now

1. Contribute $500, $5,000, $50,000 or what you can. The funds are needed for media outreach, signature gathering, poll-

*Continued of page 26*

*Continued from page 25*

ing, research, and grassroots outreach efforts all of which cost money. Information can be found on the CAOC website (caoc.org).

Make checks payable to: CAOC Initiative Defense PAC
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2. Participate in meetings, stay engaged with the process, and read the initiative 25-0022 for yourself to understand it true impact.

3. Speak with one voice. Share the facts, correct misinformation, and remind your community what's truly at stake—access to justice for everyone.

It is our turn to take up the fight. This is not about ego or politics — it is about defending the very system that makes civil justice possible. Every dollar raised, every conversation had, every meeting attended, and every effort shared is an act of protection — for society's most vulnerable and for the profession we've devoted our lives to.

Our opponents are well-funded and relentless. But so are we — because fighting for what's right is what we do. It's our trade. We know how to stand up for the underdog, how to champion causes others are too afraid to take on.

Now, it is *us* — and the system of justice that protects our families, our friends, and our neighbors — who stand as the underdog. This is our time to fight, and it will take each and every one of us to win. Together, we can protect the future of justice in California.


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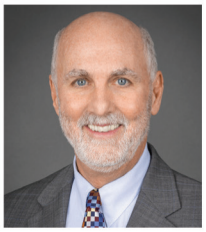
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# Tesla: The Myth of Autonomy and the Legal Realities

By: Lindon Lilly

In the public's mind, Tesla vehicles are often assumed to be "self-driving." That perception, however, is misleading. Tesla's Autopilot and Full Self-Driving (FSD) systems are driver-assist features, not autonomous driving systems. A licensed human must remain in control at all times.

For attorneys in California, that distinction is essential. When a collision involves a Tesla under Autopilot or FSD, liability begins with the driver and extends to potential system misrepresentation.

**TESLA: What It Does—and Doesn't**

Tesla's systems operate at SAE Level 2 automation: The vehicle can steer, accelerate, and brake under certain conditions, but it cannot operate without human oversight. Tesla's manuals warn that drivers must keep their hands on the wheel, stay alert, and be ready to override the system at any moment. The terms autopilot and full self-driving are powerful marketing tools—but don't reflect full autonomy.

**WAYMO**

Unlike Tesla's system, which still depends on a driver's supervision, Waymo's technology is fully autonomous, operating without any human input once the trip begins. Using a combination of sensors, cameras, radar, and detailed mapping, Waymo vehicles are able to recognize traffic patterns, interpret surroundings, and make decisions on their own in real time. This approach allows the car to navigate safely through city streets and highways without a person behind the wheel, setting it apart from Tesla, whose vehicles still require the driver to remain alert and ready to take control.

Lindon Lilly is founder of Rhino Investigation & Process Serving

**Emerging Full-Autonomy in Commercial Trucks**

While headlines often focus on driverless cars, some of the most meaningful progress toward true autonomy is happening in the freight world. Companies like Aurora Innovation have quietly logged thousands of miles between Dallas and Houston using heavy Class 8 trucks that no longer need a driver in the cab. In Sweden, Einride has taken a bold leap with an all-electric, cabless hauler now making short deliveries on public roads under limited supervision. Others, including Torc Robotics and Kodiak, are testing similar long-haul systems across the American South. These aren't just experiments—they're early steps toward a future where cargo moves itself. The lessons learned from these programs are shaping how regulators, attorneys, and investigators alike will view the next generation of "autonomous" claims, including those tied to passenger vehicles such as Tesla.

**Liability Issues from the Attorney's Perspective**

Because Tesla's system is not autonomous, liability in most crash cases begins with the driver. Attorneys must evaluate supervision, proper usage conditions, and possible distraction. Even when autopilot

*Continued on page 30*

*Continued from page 29*
was engaged, courts often treat it as an enhancement—not a replacement—for human judgment.

**On Aug. 1, 2025, Jury Orders Tesla to Pay Multi-Millions in Autopilot Crash**

In a landmark Florida case, a federal jury awarded $243 million in damages after determining that Tesla's autopilot system played a role in a 2019 fatal crash. The jury found the driver partly at fault but also held Tesla responsible for promoting technology that could mislead users into over-relying on it. The verdict included $129 million in compensatory and $200 million in punitive damages, signaling growing legal scrutiny over the company's claims of "self-driving" capability.

This case highlights the widening gap between public perception and the legal reality of autonomous technology. Tesla's system still requires active human control, yet its marketing has often blurred that distinction. The ruling serves as a warning to both drivers and automakers: automation does not erase responsibility, and overstating a vehicle's autonomy can carry severe financial and legal consequences. https://www.npr.org/2025/08/02/nx-s1-54909...

**California DMV Complaint Against Tesla**

In July 2022, the California DMV filed formal accusations alleging Tesla misled consumers about its autopilot and FSD systems. These filings claim Tesla suggested the cars could operate autonomously when they cannot.

**Relevant links**

• California DMV Accusation (Scribd): https://www.scribd.com/document/585743312/...
• Tesla Autopilot Complaint Summary (CPM Legal): https://www.cpmlegal.com/media/news/15117_...
• Law Commentary Article: https://www.lawcommentary.com/articles/tes...
• Wards Auto Report: https://www.wardsauto.com/industry/tesla-f...

**Strategic Takeaways for California Practitioners**

1. Don't assume autonomy; analyze driver behavior first.
2. Preserve Tesla's onboard data early.
3. Examine Tesla's marketing materials and disclaimers.
4. Monitor ongoing DMV proceedings and federal updates.
5. Engage both accident reconstructionists and software experts in litigation—but also remember the importance of involving a qualified California private investigator.

**The Hidden Linchpin: Skilled Investigators in Tech-Driven Cases**

An experienced investigator can often uncover details that technology alone might miss—interviewing witnesses, locating surveillance footage, documenting site conditions, and verifying real-world factors that may not appear in data logs or reports. Their fieldwork can help connect the technical findings to what actually happened, giving attorneys a stronger, more complete understanding of the case.

**Conclusion**

Tesla has redefined how we think about driving—but not who's responsible for it. Until true autonomy is realized, the driver remains the operator and, in most cases, the liable party. California attorneys should approach Tesla-related cases with both legal precision and technical insight, recognizing the critical role of experienced investigators.

**Resources**

Links for the California DMV, CPM Legal, Law Commentary, and Wards Auto sources, and *Benavides v. Tesla, Inc.*, Case No. 21-cv-21940-BLOOM/Torres (S.D. Fla. Aug. 1, 2025)

***

*Lindon Lilly was recently recognized as the 2025 Investigator of the Year for the California Association of Licensed Investigators (CALI). He frequently travels to Sacramento and Washington, D.C., lobbying on behalf of investigators through his leadership roles with CALI and the National Council of Investigation and Security Services (NCISS), where he also serves on the Board of Directors. He is an active member of several professional associations, including the World Association of Detectives (WAD) and the IntelliNet Investigators Network. For questions or comments regarding this article, contact: Rhino Investigation – Attn: Lindon Lilly: info@lllegalassistance.com*

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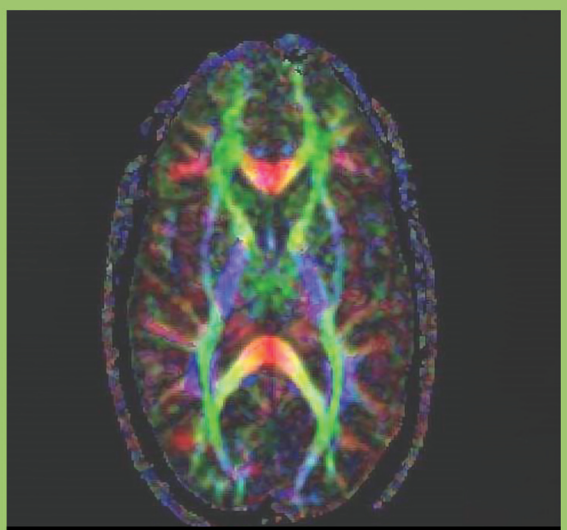

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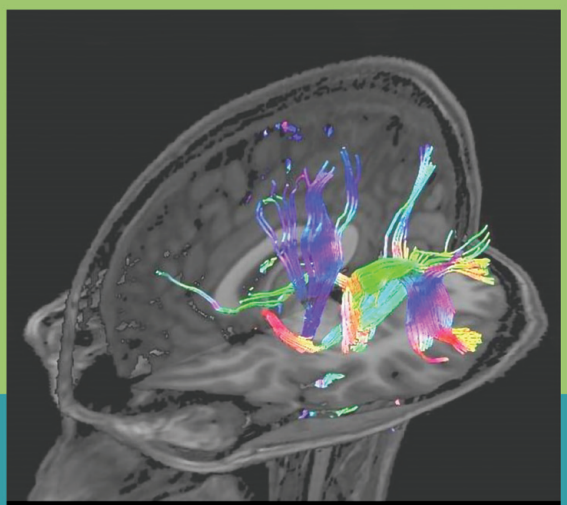

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# *Public Justice's New Lawsuit Challenges Federal Government's Unconstitutional Scheme that Fines Immigrant Families Millions*

*From PublicJustice.net*

On Nov. 20, Public Justice, The Legal Aid Society, the Refugee and Immigrant Center for Education and Legal Services (RAICES), the NYU Immigrant Rights Clinic, Free Migration Project, and Covington & Burling, LLP, filed a federal class-action lawsuit on behalf of two immigrants facing ruinous civil fines of up to $1.8 million, and on behalf of the Immigrant Legal Resource Center (ILRC).

The case seeks to represent a nationwide class of more than 21,500 people who have been issued these fines since January 2025, for a total amount in excess of $6 billion.

Earlier this year, the Trump Administration revived a long-dormant provision of immigration law to issue fines of up to $998 per day, resulting in penalty notices that often exceed $1.8 million per person. These fines have been imposed on individuals who are lawfully applying for immigration relief, such as adjustment of status, complying with ICE under orders of supervision, or unable to safely return to their home country.

Individual plaintiffs — Maria L. of Massachusetts and Nancy M. of Florida — both face enormous penalties despite following the law, maintaining contact with immigration officials, and actively pursuing formal relief that would allow them to remain in the United States.

Organizational plaintiff ILRC, a national nonprofit that educates communities and legal advocates on immigration law, joined the lawsuit because the government enacted the new penalty system without public notice or the opportunity for organizations like ILRC to meaningfully participate in the required rulemaking process

The lawsuit was filed in the United States District Court for the District of Massachusetts against the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and the Department of Justice for imposing unprecedented civil penalties on immigrants who remain in the U.S. while seeking lawful ways to stay with their families.

"This is just another example of the Administration weaponizing the law to intimidate and harass immigrant communities," said Charles Moore, senior attorney from Public Justice. "If the Administration is going to impose these fines that no other President has ever pursued, it at least has to follow the law and respect the Constitution. That isn't happening, and that is why we brought this lawsuit."

"These fines are designed to terrorize families," said Hasan Shafiqullah, supervising attorney in the Civil Law Reform Unit at The Legal Aid Society. "The people we serve are doing exactly what the law requires — pursuing legal relief through immigration courts and immigration agencies. In return, the government is threatening to seize their wages, cars, even their homes."

"Let's be abundantly clear about the purpose of these fines: it's about punishing people and families who are exercising their legal and human right to seek protection from harm in this country," said Javier Hidalgo, legal director at RAICES. "This administration is finding every which way to dehumanize, criminalize, and harm those that it has deemed "less than" to coerce them into giving up the legal protections afforded to them by our Constitution. RAICES will hold this administration accountable for its unlawful actions because an infringement on the rights of others threatens our own."

"We are proud to fight alongside the immigrants who have received these fines to end this unprecedented policy and ensure that all communities can live without the fear of intimidation," said Ximena Valdarrago, student in the New York University School of Law Immigrant Rights Clinic. "The Trump Administration has once again chosen to waste government resources in pursuit of cruelty, imposing and enforcing cartoonishly large fines on people who are simply trying to build a better life in this country—this cannot stand," said Ajay A.V. Singh, another law student at the New York University School of Law Immigrant Rights Clinic.

"This abusive collection scheme is part of the Trump Administration's racist project to ethnically cleanse this country," said David Bennion, executive director of Free Migration Project. "Working people already under daily threat from ICE are getting collection bills for millions of dollars intended to push them out of the country. This must stop."

The lawsuit seeks to vacate the rule that authorizes the mass issuance of civil fines, declare the penalties unlawful and unconstitutional, and permanently enjoin the government from assessing or collecting them.

The complaint argues that the government's civil penalty scheme violates multiple constitutional and statutory protections: the Fifth Amendment's Due Process Clause, because the government issues fines without fair notice, without evidence, and without any meaningful opportunity to challenge them; the Eighth Amendment's Excessive Fines Clause, because penalties reaching nearly $2 million are grossly disproportionate and financially ruinous; and the Seventh Amendment right to a jury trial, because the government imposes monetary penalties through internal agency proceedings instead of a court.

The lawsuit further asserts that the rule violates the Administrative Procedure Act, because it was issued without the required notice-and-comment process and is arbitrary and capricious.

***

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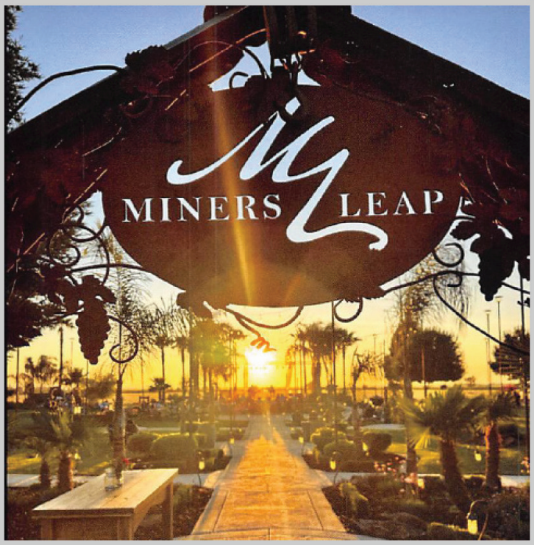


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# Member Verdicts & Settlements

CCTLA members are invited to share their verdicts and settlements: Contact Jill Telfer, editor of *The Litigator*, jtelfer@telferlaw.com, for preferred sample format. The next issue of *The Litigator* will be the Spring 2026 issue, and submissions need to be sent to Jill before Feb. 1, 2026. Please try to keep word count below 2,000.

**VERDICT: $16,883,723**

***Beth Fischgrund v. California Department of Corrections and Rehabilitation***

Case No. 34·2020-00281411

**Whistleblower Retaliation, FEHA Retaliation, Bane Act and Defamation**

**Successful Claims**

Whistleblower Retaliation: Government Code section 8547; Whistleblower Retaliation: Labor Code section 1102.5; FEHA Retaliation; Bane Act: Civil Code section 52.1; and defamation

**Verdict (P) $16,883,723**

$503.376 in past economic damages, $2,304,422 in future economic damages, $4,095,300 in past non-economic damages, $6,980.625 in future non-economic damages, $3,000,000 for defamation, plus attorney's fees (estimate $5 million) and costs.

**Pre-trial Settlement Offers**

Plaintiff's 998 Offer to Compromise: Sept. 4, 2025: $2,999,999, inclusive of attorney fees and costs; Defendant's Pre-Trial Offer: Aug. 13, 2025: $25,000

**Plaintiffs Counsel**

Lawrance A. Bohm, Lead Trial Counsel; Kelsey K. Ciarimboli, Second Chair; Zane E. Hilton, Appellate Counsel; Sara R. Benton; Laura D. Evans / Bohm Law Group, Inc., Sacramento; and Robert L. Boucher, Co-Counsel / Boucher Law, Sacramento

**Defendant's Counsel**

William McMahon, San Diego, and Michael Purcell, San Jose / Office of the Attorney General, California Department of Justice

**Court and Trial Dates**

Honorable Jill H.Talley, Dept. 23, Sacramento County Superior Court, Sept. 29, 2025 to Oct. 31, 2025

**Case Summary**

Dr. Beth Fischgrund is a highly educated and trained psychologist who decided to work at Salinas Valley State Prison (SVSP), providing mental health care to patients housed in one of the most dangerous maximum-security prisons in California. Fischgrund was recognized for her excellent clinical skills, tireless dedication to her patients, and extremely friendly disposition. She chose to work for the California Department of Corrections and Rehabilitation (CDCR) because of her belief that mentally ill inmates are a critically underserved population in dire need of mental health care and treatment.

As a contractor working in a chronically understaffed CDCR prison, Fischgrund was paid a very high wage to work in this challenging and dangerous environment. After nearly two years working at the prison, Fischgrund was recognized as a mentor and resource to the mental health team—until she reported the institution's repeated failure to follow safety policies to CDCR headquarters in July 2019. The report concerned a credible threat on her life, made by a convicted spousal abusing child molester who told another psychologist that he wanted to cut off her head.

Fischgrund, now 45, earned a B.A. in psychology with honors from New York University in 2002. She completed her Ph.D. in clinical psychology at Northwestern University's Feinberg School of Medicine in 2010. Northwestern awarded her a doctoral tuition scholarship and a doctoral grant scholarship in support of her doctoral work.

Fischgrund completed an APA-accredited internship at the Veterans Affairs Pacific Islands Health Care System as a VA psychology intern (2009-2010). The VA later appointed her as the women veterans program manager and psychologist, where she developed women's health protocols, trained primary care and mental health providers on military sexual trauma, and served on a leadership team for system redesign to improve patient outcomes.

In 2013, Fischgrund served as a civilian clinical psychologist for the United States Air Force at Joint Base Pearl Harbor-Hickam. She went on to earn a Master's of Public Health from the Harvard T.H. Chan School of Public Health in 2014. She was elected president of the Harvard Chan Class of 2014. She holds active psychology licenses in California, Hawaii and Alabama. She began working in working for CDCR in the SVSP in Soledad beginning in 2017.

SVSP is organized into facilities or "yards." Facility A, where Fischgrund worked, housed the Enhanced Outpatient Program (EOP). The EOP is designed for inmates who needed structured mental health treatment while also being classified as Level III or IV protective-custody inmates. These prisoners often included individuals who could not be housed in general population because of safety concerns but still presented a high risk of violence.

Medical and mental health care at SVSP operates under California Correctional Health Care Services (CCHCS). CCHCS was created after federal court orders placed prison health care under receivership. CCHCS is not a separate legal entity; it functions as part of the State of California inside CDCR prisons. CCHCS provides clinicians and sets medical policy, but custody and day-to-day control remain under CDCR.

This dual structure creates overlapping authority. In 2019, Dr. Muriel Yanez served as chief of mental health at SVSP and was supervised by Dr. Santiago Rivera, chief executive officer for health care administration. Their duties included ensuring clinicians could deliver care while coordinating with custody staff who controlled inmate movement and discipline. Both reported into the regional CCHCS chain of command, but they worked daily with the warden and custody leadership.

In 2019, psychologist Dr. Jeremy Price supervised mental health staff assigned to the A-Yard, which was designated as a Level III/IV protective custody yard. The facility housed inmates with a history of child molestation and/or violence

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against women, as such inmates are frequently targeted for attack by other inmates who condemn such crimes. The A-Yard included several inmate housing units, a large fenced in outdoor area, and one EOP building where treatment sessions occur in small offices on the secured first floor. Health care staff and administration for they and are provided with office space on the second level, which cannot be accessed by inmates.

Fischgrund's job description as a clinical psychologist on Facility A included providing direct mental health services to EOP inmates. Her duties involved performing diagnostic assessments, preparing individualized treatment plans, and conducting individual and group therapy. She was responsible for suicide risk evaluations, crisis interventions, and documentation of patient progress in accordance with CCHCS policies. She was also expected to collaborate with custody staff to ensure inmate safety during clinical encounters, including when threats or security issues arose. Her work required navigating the overlap of security-driven custody priorities and evidence-based clinical care.

Before trial, CDCR claimed Fischgrund was an independent contractor and not an employee of the department; however, CDCR controlled nearly every aspect of her employment. Significantly, staff psychologists directly employed by CDCR as state Civil Service workers perform the exact same work as "independent" contractors, including setting work hours, duties and caseload. Before the verdict, the court decided Fischgrund was an employee of CDCR for the purposes of her asserted claims in response to a Motion for Directed Verdict on the issue. This result may have far-reaching implications for CDCR going forward.

Fischgrund thrived in her role, and her co-workers lauded her professionalism and skill in treating some of the most difficult patients in the system. When news spread that Fischgrund was being forced to leave, colleagues expressed dismay and pleaded for her to stay because they valued her contributions and needed her on the team. This outpouring of support underscored the respect she had earned from peers who worked with her daily.

The record shows that Fischgrund's performance earned respect and trust from those who observed her work. The later defamatory characterizations were false, contradicted by the testimony of colleagues and supervisors alike, and directly at odds with her consistent history of professional excellence.

While working on A-Yard, Fischgrund occasionally encountered inmate Juan Negrete, CDCR #P70947. Negrete was not a patient assigned to Fischgrund. He was a convicted child molester, serving time for inflicting corporal injury on a spouse or cohabitant. In 2019, Negrete was 40 years old, stood six-feet, one-inch tall and weighed 256 pounds. In April 2019, Negrete told Fischgrund that she was "very hot" and that he wanted to date her after his scheduled parole in October 2019. Fischgrund immediately corrected Negrete and warned that such contact is not permitted and would result in a rule violation if repeated. Prison rules strictly prohibit "over familiarity" between inmates and staff. Fischgrund reported the situation and avoided any further contact with Negrete.

On July 2, 2019, Negrete entered the EOP office space with his psychologist, Dr. Art Khachikyan. At around 9:30 a.m. on July 2, 2019, Fischgrund stood outside of her office in the EOP building waiting for her next patient. The EOP hallway was narrow, with multiple offices along its length, where clinicians met with inmates. As she waited, Negrete approached with Khachikyan, who was escorting him for a therapy session.

Negrete noticed Fischgrund in the hallway, and said to her, "Hi, Ms. Fish." Fischgrund replied, "It's Dr. Fish." After this encounter, Khachikyan led Negrete into the session room, closed the door, and commenced the session. In the session, Negrete was agitated after the encounter with Fischgrund, and said, "She just ruined my mood. I was in a good mood but not anymore because of her. Who the fuck she thinks she is? She is ugly, and I wasn't hitting on her."

Khachikyan attempted to calm Negrete, saying such comments were inappropriate and informing him a serious threat must be reported. In response, Negrete threatened, "I would cut her head off if we were not here but in my world." Khachikyan told Negrete he was obligated to report the threat. Negrete became more agitated and tried to storm out of the office. After attempting to calm Negrete down, he was released back to the A-Yard and allowed to walk right past Fischgrund's open door while she sat with her back to the door, waiting for her next patient.

Negrete's words carried a particularly menacing weight given his background. Negrete was not an idle talker and had a documented history of assaultive misconduct behind bars. His threats were violent, graphic, and tailored to terrorize. When Negrete said he would cut off Fischgrund's head, he invoked the reality that inmates often had access to makeshift weapons. Psychological ethics allow a clinician to break confidentiality for the purpose of warning a specific identifiable victim of a credible imminent threat to safety by a patient—often referred to as a Tarasoff warning, named for a famous wrongful death case against UC Berkeley where a therapist failed to warn Tatiana Tarasoff that a patient expressed a desire to kill Tarasoff, who was later murdered.

While in consultation, Fischgrund received an urgent request to meet from Katchikyan. Upon receiving the Tarasoff warning, Fischgrund also learned that custody was not yet informed, and the patient was somewhere on the A-Yard. This is also when she learned the patient had walked past her open door. Thereafter, custody was immediately informed, and Negrete was placed in solitary confinement and informed it was due to his threat about killing Fischgrund.

Fischgrund immediately left the prison in a state of terror and anxiety. She was particularly troubled by the sequence of events and suspected policy may not have been followed. Later, when she asked for information about threat policies, her supervisor, Dr. Price, claimed there was "no policy" for a specific threat in the EOP building; however, he assured Fischgrund that her safety would be protected by the entry of a 'staff separation alert."

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With these assurances, Fischgrund returned to work on A-Yard, unaware that Price had provided false information about the implementation of a staff separation alert. On July 10, 2019, the prison evaluated Negrete's placement in solitary without any conversation or information from Fischgrund about Negrete and his history of infatuation. Since there was no staff separation alert or information from Fischgrund, Negrete was released from solitary, back to the A-Yard, without notifying anyone from mental health, including Fischgrund.

Later in the evening of July 12, 2019, Fischgrund was performing cell-front appointments for inmates who could not make it to the EOP building for whatever reason. A voice called out, "Fish! Fish! Come to 123." Fischgrund was greeted by Negrete, smiling menacingly, as he said, "I am happy to be back. I am sorry for saying I wanted to cut off your head." Fischgrund panicked and immediately went to custody to find out why Negrete was out of solitary. This is when she learned no staff separation alert had been requested or implemented, contrary to Price's statement.

On Monday, July 15, 2019, Fischgrund returned to work before any inmates were released to the yard and learned Negrete's situation had not changed. She immediately reported the entire history of the situation to a regional custody officer, identified by a work colleague who was a reliable advocate for mental health safety concerns. Fischgrund also followed up with her chain of command to report her safety concerns, telling them about the specific EOM policies that were not followed requiring a threat assessment "shall be completed before the final determination is made concerning staff inmate program and assignment of the affected staff." In response, custody requested Fischgrund prepare a memorandum supporting her request for a staff separation alert. She immediately complied.

On July 16, 2019, Fischgrund complained to Dr. Yanez that she continued to feel unsafe on A-Yard since Negrete was still housed on A-Yard, and there was no separation alert in place. In response, the warden and Yanez imposed a dilemma on Fischgrund to sign a form containing two alternatives: 1) agree to remain on the yard with Negrete and accept the risk, OR, 2) agree to abandon her critically ill patients for a different yard. Fischgrund refused to sign either option and instead wrote, "I request to have the inmate moved to another facility."

Fischgrund sent a detailed email to her treatment team members advising them of her departure and ongoing availability as a resource for questions or concerns related to her sudden unexpected exit. At end of her email, Fischgrund cut and pasted her email to headquarters so her colleagues would be aware of the safety issues she elevated to headquarters and the need for increased safety awareness.

On the morning of July 17, 2019, Fischgrund received an email from Yanez, inviting her to participate in a threat assessment meeting. The warden also reached out and invited Fischgrund to meet with her to discuss the Negrete situation. An hour later, Yanez was informed about Fischgrund's email to the treatment team. Yanez and Rivera were upset because they thought the situation should have been handled at the local level. Sixty-one minutes later, Fischgrund was fired for sending an "inappropriate" and "disruptive" email. No one from CDCR spoke to her before making the termination decision. Instead, at trial, CDCR attorneys argued that she was fired without any notice or opportunity to be heard "because we could" since she was not a civil service employee.

Fischgrund received word from her contracting agency that she had been fired for "misconduct," but no details were given. That agency asked if it was possible there was another Fischgrund working at SVSP since the news was shocking given her excellent performance and impeccable credentials. Fischgrund was told to return to the prison so her ID badge could be collected. Since she was already planning that day to meet with the warden per the invitation received earlier in the day, she immediately returned to SVSP in hopes of seeing the warden, who claimed to have an open-door policy.

On arrival, a friendly custody officer advised Fischgrund her photo and physical details were posted on the "banned board" as well as every facility entrance (This treatment is normally reserved for individuals who have committed egregious misconduct such as providing contraband to prisoners).

When Fischgrund arrived at the warden's office ,the administrative assistant stated the warden was unavailable and in meetings. Fischgrund asked if she could sit in the waiting area in hopes of catching the warden between meetings. After about an hour, custody officers came to the office and informed her she needed to leave. She complied without any incident. Later, the warden informed Yanez that Fischgrund showed up to her office drunk, yelling, out of control, and that she was almost arrested. All of this is false as evidenced by the lack of any paperwork or recollection by anyone.

Within a week, Price was overheard repeating this information to other staff, adding that Fischgrund "is the kind of person who would sleep with the custody personnel." When Fischgrund reached out to Price for a post-termination reference, he informed her that she had been placed on a statewide do not rehire(DNR) list, effectively blacklisting her from working at any CDCR facility in the state. Nobody from the state investigated the reasons for the blacklisting. It was not until litigation that Fischgrund learned the falsehoods attributed to her short visit to the warden's office.

Vocational Expert Rick Sarkisian explained that the CDCR and lack of references from CDCR make her un-hirable by any reputable institution. Her only option was to go into private practice, which she pursued three months after her termination. Economic expert Dr. Charles Mahla analyzed her wage-loss to be approximately $3,000,000 over the course of her life, including tax neutralization for the payment of a lump sum.

Fischgrund's termination, banning and blacklisting had far-reaching effect on her mental health, reputation and career. Even with a Harvard degree, two job opportunities that sent offer letters fell through at the background check stage. She could not compete for any job requiring a background check or credentials.

In October 2019, Fischgrund was informed by a past colleague that Negrete had been released on parole. Realizing he

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was now in her world, Fischgrund's mental state began to crater. Expert forensic psychologist Dr. Jessica Rowe attested to her severe mental health condition including treatment resistant depression with anxiety and post-traumatic stress disorder, all traceable to CDCR's conduct.

The harm to Fischgrund was exacerbated by a terrible reaction to prescribed anti-depression medication that left her hospitalized. Fischgrund called her father to ask for permission to take her own life. After years of therapy and advanced treatment for depression, Fischgrund remains afflicted. Rowe's opinion is that Fischgrund will require lifelong care for her condition.

**Defense Contentions**

The government claimed that the termination for sending the email was justified because it caused division and undermined the effectiveness of the mental health program. However, all witnesses confirmed no actual disruption occurred. The government further argued that Fischgrund had a borderline personality and would manipulate and lie to get her way. His narrative was completely unsupported by every witness except Yanez, Price and the warden's administrative assistant. CDCR hired an economic expert who opined that only three months of wage loss should be considered.

This expansion effectively blacklisted Fischgrund from every CDCR facility, eliminating her ability to work anywhere in the state system, It was a career-ending sanction imposed without due process, based entirely on unsubstantiated claims and office gossip, and cemented through a chain of deference rather than evidence.

**The Result** :The jury found for Fischgrund on her Whistleblower Retaliation (Gov. Code. § 8547 & Lab. Code, § 1102.5), FEHA Retaliation, Bane Act (Civ. Code, §52.1), and defamation claims. After five years of litigation, recoverable attorney's fees are estimated to be $5,000,000 or more. Recoverable costs are approximately $250,000 or more. Plaintiff will also be making a motion for the court to award pre-judgment interest on her past economic losses.

**Plaintiffs Experts:** Dr. Jessica Rowe, Dr. Jess' Mind Care Center, Folsom, Specialty: forensic psychology; Charles R. Mahla, Ph.D., EconOne, Sacramento, Specialty: economics; Rick Sarkisian, Ph.D., Valley Rehab, Fresno, Specialty: vocational rehabilitation; Ramona Powell, exPRt HR, LLC, San Diego, Specialty: human resources; Michael Popovich, Sacramento, Specialty: CDCR procedures. **Defendant's Opinion Givers:** Richard Ruiz, JS Held, Los Angeles, Specialty: economics.

**SETTLEMENT: $34,500,000**
**Bicyclist Struck by Commercial Vehicle**

**Plaintiff's Attorneys:** Robert A. Buccola, Craig C. Sheffer & Jason J. Sigel

In a rural California county, a delivery van turned across a travel lane where 31-year-old Plaintiff was riding, causing her to suffer a permanent neurological injury, requiring at least part-time permanent life-care assistance. Plaintiff's past medical billings totaled approximately $450,000 and Plaintiff alleged that her life care costs would be in excess of $8,000,000. Defendant alleged that Plaintiff was inattentive and ignored the turn signal on the delivery van which had committed to the turn at a point when Plaintiff could have stopped before the area of the accident.

**SETTLEMENT: $19,000,000**
**Construction Site Accident**

**Plaintiff's Attorneys:** Robert A. Buccola & Ryan L. Dostart

A 33-year-old construction worker was severely injured after being struck by a backing commercial vehicle while delivering construction materials on site. Plaintiff and his employer were alleged by Defendant to have violated established construction site warning practices, causing this accident. Plaintiff's forensic workup disproved that the accident was caused in whole or part by Plaintiff or his employer. The case settled on the eve of trial.

**SETTLEMENT: $10,000,000**
***Yasay v. The Regents of California, et al.***
**Turning Sanitation Truck Kills College Standout**

**Plaintiff's Attorneys:** Robert A. Buccola & Jason J. Sigel

At approximately 8 a.m. in the morning, while 19-year-old Tris Yasay was riding her electric bicycle on her way to class, she was struck and killed when a turning sanitation truck operator failed to see her. Defendants alleged that Yasay negligently positioned herself in the right-side blind spot of the truck and was responsible for the accident. Plaintiff's re-creation of the accident disproved Defendants' theories, resulting in a settlement that her parents (the Plaintiffs) demanded include non-monetary terms that might help prevent the occurrence of a future similar accident. Specifically, the settlement terms included the requirement that all sanitation truck drivers employed by The Regents at UC Davis receive specific right-hand turn blind-spot clearance refresher training on an annual basis, and that they attain written compliance of this retraining on an annual basis. Additionally, a roadside shrine is to be maintained on campus near the location of the accident, as a reminder to all drivers of the dangers of right-hand turns and will as a remembrance of what a beautiful person, daughter, student, and friend Yasay was to everyone she knew and touched.

**SETTLEMENT: $8,750,0000**
**Injury from Deck Collapse (Nevada County)**

**Plaintiff's Attorneys:** Robert A. Buccola, Catia G. Saraiva & Jason J. Sigel

Plaintiff, a 59-year-old woman, suffered a severe neurological injury when an unpermitted deck built more than a decade before by her neighbor collapsed as she was standing on it, enjoying the view. Defendant denied liability and refused to pay out the primary policy limits after having repeated opportunities to do so. As the case was nearing trial in this rural county, Defendant settled for an amount that was approximately six

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times the available insurance limits.

**SETTLEMENT: $4,000,000**
**Golf Cart Accident**

**Plaintiff's Attorneys:** Robert A. Buccola & Craig C. Sheffer

Two 15-year-old girls were allowed by the parent and owner of the golf cart to take the cart on a rural trail adjacent to Defendant's residence, and excessive speed combined with oversteering caused the young plaintiff golf cart passenger to be ejected from the cart. The father alleged that this teenage golf cart usage was safe and that he had no active fault in allowing his daughter to drive the cart, even though she was inexperienced in the operation of golf carts and took the cart to a prohibited area. Plaintiff, a young teenage girl, suffered a very significant wrist injury and underwent a multitude of medical procedures.

**SETTLEMENT: $3,700,000**
***Umdo v. Delivery Systems, Inc*.**
**Forklift Accident**

**Plaintiff's Attorneys:** Craig C. Sheffer & Robert A. Buccola

Plaintiff, a delivery truck driver, suffered a hand injury in Sacramento County when a forklift operator lost control of a load while entering the rear of a box truck to load a sheet of granite. Defendant alleged that Plaintiff was negligent and careless for positioning himself inside the truck – an area where delivery drivers know they are required to keep clear. Plaintiff proved the load was known by the operator to have been unstable.

**SETTLEMENT: $1,100,000**
**Stray Bullet Injury**

Adams Sorrells obtained a policy-limits settlement for a senior cititcen who was injured by a stray bullet in a rural area.

The senior citizen was at home. She heard a loud pop outside. She stepped on to her porch. A bullet whizzed by, striking her in the lower leg. As she fell, her shoulder hit the wall, causing a fracture. She was taken to the ER. The bullet wound was cleaned and the arm placed in a sling. No surgery was performed, no follow-up treatment recommended, and she was released the next day. About a year later, she was seen by an orthopedic surgeon who diagnosed a non-union and recommended surgery. Client elected not to have surgery, and the bullet wound healed without difficulty.

*Challenge 1: Finding the Source of the Gunfire*

The shooting occurred in a rural area with 10-acre lots. While that may seem like plenty of space, such areas are not safe for target practice. For perspective: a 5.56 rifle bullet can travel 2–2.5 miles under certain conditions. After investigation and coordination with authorities, we traced the gunfire to a nearby family gathering. Multiple people had been shooting without any safe backstop, in direct violation of the universal firearm safety rule to know your target and what lies beyond it.

*Challenge 2: Determining Who Fired the Shot*

With eight family members shooting, the question became: Who fired the dangerous round? Using *Summers v. Tice* (33 Cal.2d 80), we were able to shift the burden to the eight shooters.

*Challenge 3: Proving the Full Extent of Injuries*

Figuring out the extent of the shoulder injury and the effect of being shot, despite the successful healing. Among the eight family members, there were three policies ($500k, $500k and $100k).

Moved for a preferential trial setting based on client's age, which was granted. Case settled for policy limits of $1,100,000.

**SETTLEMENT: $1,750,000**
***Doe Plaintiff v. Roe Hospital***
Confidential Case No. 23CV-0203215
**Medical malpractice – delayed spinal surgery, failure to monitor, and catastrophic spinal cord injury**

**Date Case Resolved**: June 5, 2025
**Total Amount of Settlement**: $1,750,000 paid by Roe Hospital
**County and Judge:** Judge Benjamin L. Hanna, Shasta County Superior Court
**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath LLP
**Defendant Attorneys:** Joseph E. Finkel, Esq., Reuben B. Jacobson, Esq., Mark L. Hirschberg, Esq. / Lewis Brisbois Bisgaard & Smith LLP

**Case Summary**

Doe Plaintiff, then 75 yearsold, was taken to Roe Hospital after a motor vehicle crash. Imaging revealed unstable chance fractures at C7–T1 and T10–11, along with additional spinal injuries and a scalp laceration. On arrival, he had 5/5 strength in all extremities.

Despite the presence of unstable spinal fractures, surgery was delayed for three days. The treating neurosurgeon opted to wait for an MRI, but repeated attempts failed due to the patient's agitation. In the meantime, nursing staff documented a dramatic neurological decline, showing that lower extremity strength had dropped from full strength to trace movement. Despite this, the findings were not timely reported to a physician. By the following day, Doe Plaintiff had complete paralysis below the nipple line. He underwent two staged surgeries on February 17 and 18, but by then the spinal cord injury was permanent.

As a result, Doe Plaintiff remains paraplegic, wheelchair-dependent, and reliant on his wife for all activities of daily living. He developed bedsores, bladder and bowel dysfunction, and requires extensive ongoing care.

**Plaintiff's Contentions**

Plaintiffs argued that Roe Hospital's nursing staff failed to meet the standard of care by ignoring a clear neurological decline and failing to notify physicians, allowing the patient to deteriorate overnight without intervention.

The damages claim included a $5.1 million life-care plan. Plaintiffs also asserted loss of consortium on behalf of the spouse.

**Defendant's Contentions**

Defendants contended that the paralysis was caused by

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ischemia of the spinal cord, which would not have been reversible even with earlier surgery. The defense further challenged the plaintiffs' life care plan as grossly inflated, arguing the patient's life expectancy was closer to five years and that he required far fewer caregiving hours than claimed.

**Disposition**

On Dec. 23, 2024, Plaintiffs made a CCP §998 offer of $4 million to Roe Hospital, which was rejected. The parties settled at mediation with Jay Horton, Esq., for $1,750,000, paid by Roe Hospital.

**SETTLEMENT: $1,000,000**

***Doe Plaintiff v. Roe OBGYN 1, Roe OBGYN 2 and Roe Medical Group***

*Confidential Case No. 23STCV0361*4

**Medical Malpractice – Failure to timely recognize and treat sepsis following labor and delivery**

**Date Case Resolved:** March 20, 2025
**Total Amount of Settlement:** $1,000,000 paid on behalf of Roe OBGYN 1, Roe OBGYN 2, and Roe Medical Group
**County and Judge:** Hon. Bruce G. Iwasaki, Dept. 58, Los Angeles County Superior Court
**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath, Santa Ana, CA 92706
**Defendant Attorneys:** Mitzie L. Dobson, Esq., Michael K. Liu, Esq. / Bonne, Bridges, Mueller, O'Keefe Nichols, Los Angeles

**Case Summary**

Doe Plaintiff, then 34 years old, presented to the hospital for an elective induction of labor at 40 weeks and two days gestation. Roe OBGYN 1 managed the induction using Pitocin and placed an intrauterine pressure catheter (IUPC). Despite non-reassuring fetal tracings with late and variable decelerations and minimal progress, the Pitocin infusion was continued in violation of obstetric protocols requiring cessation and consideration of cesarean delivery.

By the afternoon of November 23, Doe Plaintiff developed fever, shivering, and tachycardia—classic signs of developing chorioamnionitis and sepsis. Her baby was ultimately delivered vaginally at 3:45 p.m. with evidence of fetal metabolic acidosis (cord pH <7.0). Following delivery, Doe Plaintiff's blood pressure dropped to 81/42, and her pulse climbed above 140. Although antibiotics were eventually started, the regimen was insufficient for pseudomonas coverage, and the initiation of effective therapy was delayed by over four hours.

Later that evening, responsibility for Doe Plaintiff's care was transferred to Roe OBGYN 2, who was on call. Nursing staff documented that Doe Plaintiff had no urine output for several hours and a white blood cell count that spiked from 4.2 to 30.0. Despite these findings—evidence of septic shock—Roe OBGYN 2 failed to call for a rapid response or request ICU or infectious disease consultation. Roe OBGYN 2 left the hospital shortly after 4 a.m., with the patient still hypotensive and tachycardic.

By the time Roe Physician 1 returned the next morning, Doe Plaintiff was in multi-organ failure and was emergently transferred to the ICU. She later required transfer to UCLA Medical Center for advanced management of sepsis, renal failure and disseminated intravascular coagulation. She underwent 14 months of dialysis, followed by a kidney and stem cell transplant in early 2023.

**Plaintiff's Contentions:**

Plaintiffs contended Roe OBGYN 1 and Roe OBGYN 2 failed to meet the standard of care by:

- Continuing Pitocin despite nonreassuring fetal heart rate patterns.
- Failing to recognize and treat chorioamnionitis and early sepsis.
- Prescribing the wrong antibiotics and delaying effective treatment for over four hours.
- Failing to order a rapid response, consult an ICU physician, or escalate care when Doe Plaintiff's urine output ceased and her white blood cell count spiked.
- Allowing a postpartum patient in septic shock to remain on a general floor without critical care intervention.

Plaintiffs contended that timely recognition and appropriate treatment of sepsis would have prevented Doe Plaintiff's permanent kidney failure. A certified life-care planner estimated future medical needs between $4.7 and $5.9 million, including two future kidney transplants.

**Defendant's Contentions:**

Defendants denied negligence and argued that:

- The patient's infection was an unpredictable and aggressive form of Pseudomonas fluorescens chorioamnionitis, resistant to most antibiotics.
- Both OBGYNs followed reasonable obstetric practices under rapidly evolving conditions.
- The onset of renal failure and shock was a known but rare complication, unrelated to any delay in care.

Defendants also asserted that Doe Plaintiff's long-term prognosis improved substantially after her transplant.

**Disposition:**

The matter was litigated for two years and was heavily contested with numerous depositions. Plaintiffs successfully defeated two defense summary judgment motions, strengthening their negotiation position. The matter settled at mediation with mediator Jay Horton, Esq., of Judicate West for $1,000,000, paid by Roe OBGYN 1, Roe OBGYN 2, and Roe Medical Group. Dismissal was entered on March 24, 2025.

**SETTLEMENT/MEDIATION: $875,000**
**Confidential / Medical Malpractice**

**Plaintiff's Counsel:** Marti Taylor, Wilcoxen Callaham, LLP
**Defendant's Counsel: Confidential**

**Case Summary**

This was a medical negligence case against a local pediatrician and their medical group. Eight-year-old boy presented to

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their pediatrician with complaints of headaches with included visual disturbances and nausea. Child was diagnosed with migraines and treated conservatively, even as symptoms worsened over time. Pediatrician never conducted a full neurological work-up or referred child for imaging. Pediatrician also failed to refer child to a specialist, just continued to treat for "migraine" symptoms.

At age 12 ,the headaches were so severe that the mother took the child to a local urgent care where a CT scan was done, revealing a large tumor. Thereafter, the child was immediately transferred to a children's specialty hospital and underwent several surgeries, including placement of a shunt. Although the tumor was found to be slow growing, all the experts agreed that the tumor should have been diagnosed sooner, and earlier treatment would have improved the child's outcome.

The case resolved by way of informal settlement negotiations for a total of $875,000.

**SETTLEMENT: $800,000**
**Medical Malpractice/Wrongful Birth**
*Confidential: $800,000*

**Plaintiff's Counsel:** Michelle Jenni, Wilcoxen Callaham, LLP
**Defendant's Counsel:** Confidential

**Case Summary**

Plaintiffs were in a long-term, committed relationship and had decided they did not want children. Female Plaintiff had a contraceptive implant placed by Planned Parenthood, with no complications. The device has a 99% effectiveness rate for up to three to five years. At approximately year four, Plaintiff sought to have the device removed and replaced at a local medical facility. The medical practitioner had a difficult time removing the original device but was able to do so and replaced it with a new device. Plaintiff questioned the placement of the new device as she could not feel it under her skin as she had been able to do with the original device. The physician assured her that the implant had been successfully placed and it was only because of swelling caused by the difficult removal that was preventing her from feeling the implant.

Two weeks later, Plaintiff contacted the medical provider stating that she still could not feel the implant. An ultrasound was ordered, and the Plaintiff was assured the implant was present. Some weeks later, Plaintiff discovered she was pregnant. It was determined by another physician that the device had, in fact, never been placed and the ultrasound had been read incorrectly.

Plaintiff kept the pregnancy as she did not believe in termination. She underwent an emergency C-section at the time of the birth of the baby. Plaintiffs claimed both economic and non-economic damages as a result of the medical negligence.

The case resolved by way of informal settlement negotiations for a total of $800,000.

**SETTLEMENT: $750,000**
***Doe Plaintiffs v. Roe Medical Group***
Confidential Case No. 30-2022-01272799-CU-MM-CJC
**Medical Malpractice – delayed diagnosis of metastatic melanoma resulting in wrongful death**

**Date Case Resolved:** September 9, 2025
**Total Amount of Settlement**: $750,000 total: $450,000 to surviving spouse and $150,000 each to two minor children
**County and Judge:** Judge Richard Lee / Orange County Superior Court
**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath LLP
**Defendant Attorneys:** Brian M. Meadows, Esq., Myra Firth, Esq. La Folette, Johnson, Dehass, Fesler & Ames

**Case Summary**

The decedent, a 40-year-old man, presented to Roe Physician, a family practice doctor employed by Roe Medical Group, in August 2016 with a lesion on his scalp. Roe Physician diagnosed the lesion as a benign epidermal inclusion cyst, reassuring the patient that no biopsy was necessary. In December 2016, Decedent requested the lesion be removed. It was excised in January 2017 and found to be metastatic melanoma.

By then, the cancer had already spread to regional lymph nodes, placing him at Stage III melanoma. Over the next five years, despite multiple surgeries, radiation, and immunotherapy (including Keytruda), the cancer metastasized to the lungs, liver, bone, and brain. Decedent passed away on May 2, 2021, leaving behind his wife and two children, then ages 7 and 4.

**Plaintiff's Contentions**

Plaintiffs contended that Roe Physician failed to meet the standard of care by misdiagnosing the scalp lesion as benign and failing to biopsy it in 2016. Plaintiffs asserted that had the lesion been promptly biopsied, the melanoma would have been identified while still confined to the skin, and curative excision could have prevented metastasis.

**Disposition**

The case was consolidated with the children's wrongful death action. After multiple depositions, including testimony from Decedent's primary care physician and the decedent's employer confirming significant lost earning potential, the matter proceeded towards binding arbitration.

Following extensive discovery, the case settled for a total of $750,000. The settlement was approved by the court under a Minor's Compromise Order allocating $450,000 to the surviving spouse and $150,000 to each child, with annuities established for the minors.

**SETTLEMENT: $500,000**
***Doe Plaintiffs v. Roe Pathologist 1, Roe Pathologist 2, Roe Medical Group, and Roe Oncologist***
Confidential Case No. 23CV02737

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**Medical Malpractice – cancer misdiagnosis and misread pathology**

**Date Case Resolved:** August 27, 2025
**Total Amount of Settlement:** $500,000—$400,000 paid collectively on behalf of Roe Pathologist 1, Roe Pathologist 2, and Roe Medical Group; $100,000 paid on behalf of Roe Oncologist.
**County and Judge:** Judge Stephen E. Benson, Butte County Superior Court
**Plaintiff Attorneys**: Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath LLP
**Defendant Attorneys:** For Roe Pathologist 1, Roe Pathologist 2, and Roe Medical Group: Marc Lyde, Esq. and Michael Gallert, Esq. / Leonard & Lyde; For Roe Oncologist: Sarah C. Gosling, Esq. / Pollara Law Group

**Case Summary**

Doe Plaintiff, a 47-year-old woman, was diagnosed in April 2022 with breast cancer. On April 15, 2022, Roe Pathologist, employed by Roe Medical Group, issued a surgical pathology report misdiagnosing the cancer as triple negative—meaning the tumor lacked estrogen, progesterone and HER2 receptors. However, the internal pathology notes recorded by Roe Pathologist correctly described the tumor as HER2-positive, indicating a form of cancer treatable by targeted immunotherapies such as Herceptin.

Based on the misdiagnosis, Doe Plaintiff's treating oncologist, Roe Oncologist, began an aggressive chemotherapy regimen for triple-negative disease, omitting HER2-targeted drugs. On May 8, 2022, FoundationOne CDx testing revealed "ERBB2 amplification," a genetic marker confirming HER2-positive cancer, yet Roe Oncologist failed to review or act upon the test results.

Roe Pathologist 1's partner, Roe Pathologist 2, added an addendum report on May 9, 2022, referencing the FoundationOne findings but also failed to correct the HER2-negative designation. A multidisciplinary tumor board presentation on May 10, 2022, attended by the pathology team and oncologist, likewise overlooked the error.

The misdiagnosis persisted for nearly six months until November 4, 2022, when Stanford University physicians performed an outside pathology review, confirming that the tumor was HER2-positive, not triple-negative. By then, the patient had endured multiple rounds of unnecessary chemotherapy, missed the window for curative HER2-directed therapy, and suffered significant avoidable toxicity and emotional trauma.

According to plaintiffs' oncology expert, the six-month delay in receiving correct treatment reduced the plaintiff's 10-year survival probability from over 80 percent to below 50 percent.

**Plaintiff's Contentions**

Plaintiffs contended that the misclassification of HER2 status by Roe Pathologist 1 and the subsequent failures by Roe Oncologist 2 and Roe Medical Group to identify the error fell far below the standard of care. The initial pathology report directly contradicted the internal quality control sheet, which correctly documented HER2 positivity. Plaintiffs asserted that the failure to verify and reconcile these conflicting records constituted gross negligence.

They also argued that Roe Oncologist's inaction in ignoring the FoundationOne CDx report—despite being the ordering physician—violated basic professional obligations. The test's front page clearly identified HER2 (ERBB2) amplification and listed several HER2-specific medications, yet no corrective steps were taken.

Plaintiffs' retained expert testified that the defendants' failures caused irreversible harm by depriving the plaintiff of early, effective treatment and the opportunity to achieve pathologic complete remission. The case emphasized a systemic lapse in communication between pathology and oncology departments.

**Defendant's Contentions**

Defendants contend that the misdiagnosis did not have a significant negative affect on Plaintiff's overall prognosis. Roe Oncologist claimed that he reasonably relied on multiple pathologists' interpretation of the pathology.

**Disposition**

The litigation was aggressively pursued for nearly two years, involving depositions of multiple physicians, including pathologists and oncologists. Following two mediation sessions with Robert Hamilton, Esq., the matter was resolved shortly before trial for $500,000 total.

**SETTLEMENT: $450,000**

***Doe Plaintiff v. Roe Neurosurgeon, Roe Neurotologist, and Roe Medical Group***

Confidential Case No. 23STCV25472

**Medical Malpractice – Negligent Performance of Vestibular Nerve Neurectomy Resulting in Permanent Neurological Injury**

**Date Case Resolved:**: September 22, 2025
**Total Amount of Settlement:** $450,000
**County and Judge:** Hon. Armen Tamzarian, Dept. 52, Los Angeles County Superior Court
**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath, LLP
**Defendant Attorneys:** Mitzie L. Dobson, Esq. / Bonne, Bridges, Mueller, O'Keefe & Nichols

**Case Summary**

Doe Plaintiff, a 59-year-old woman, presented to Roe Medical Group in early 2022 with complaints of dizziness and imbalance following a fall at home. Despite relatively benign test results—including a prior normal VNG study—Roe Neurosurgeon and Roe Neurotologist recommended an irreversible vestibular neurectomy. The operation, performed on March 23, 2022, was intended to treat what defendants later described as "uncompensated vestibular weakness."

However, the preoperative records did not document a symptoms indicative for this procedure, nor did the patient complete non-surgical therapy such as vestibular therapy. Defendants performed the surgery after a February 2022 VNG showed only a mild 38% unilateral weakness—while the same test also documented findings consistent with benign positional vertigo (BPPV), a non-surgical condition. Following the opera-

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tion, Doe Plaintiff experienced severe and permanent balance and vision disturbances. She was later evaluated at UCSF, where the otolaryngologist questioned why the surgery had ever been performed, noting that it resulted in loss of residual vestibular function. The injury left Plaintiff with oscillopsia (perceiving the world as constantly moving), left-ear deafness, and an inability to drive or ambulate independently. Her husband, Co-Plaintiff Doe Spouse, also brought a derivative claim for loss of consortium. The complaint alleged medical negligence, lack of informed consent, and loss of consortium. Plaintiffs contended that the surgery was unnecessary, violated the standard of care, and permanently disabled the patient.

**Plaintiff's Contentions**

Plaintiffs argued that the defendants failed to:

- Confirm an appropriate diagnosis before performing irreversible surgery;
- Ensure that conservative therapy was completed;
- Inform the patient of the permanent consequences and alternative treatments;
- Recognize that mild unilateral weakness on VNG, particularly with concurrent BPPV findings, does not justify neurectomy.

Plaintiffs sought damages for permanent disability, loss of independence, emotional suffering, loss of earnings, loss of household services, and loss of consortium.

**Defendant's Contentions**

Defendants denied negligence, asserting that the surgery was properly indicated for refractory dizziness and that the patient had "uncompensated vestibulopathy." Plaintiff had suffered from intractable vestibulopathy and vertigo for more than a year prior to the surgery. She told all of her treaters that her symptoms were completely debilitating and she was miserable. She failed vestibular PT and other treatment provided by her treaters. Defendants contend she was pushing her previous treaters for a vestibular neurectomy well before she was seen by Defendants.

**Disposition**

The case was heavily litigated with multiple depositions, including both physicians, and extensive expert discovery. Mediation was held with mediator Jay Horton, Esq., of Judicate West, in which the matter settled for $450,000.

**SETTLEMENT: $200,000**
***Ingrid Sandstrom v. Whitney Pope, M.D., et al.***
Case No. 23SMCV00438
**Medical Malpractice – failure to diagnose brain tumor (meningioma).**

**Date Case Resolved:** July 1, 2025
**Total Amount of Settlement:** $200,000 paid by the Regents of the University of California and Whitney Pope, M.D..
**County and Judge:** Judge H. Jay Ford III, Los Angeles County Superior Court – West District
**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath LLP
**Defendant Attorneys:** Janee M. Tomlinson, Esq., La Follette, Johnson, DeHaas, Fesler & Ames

**Case Summary**

In October 2016, Plaintiff Ingrid Sandstrom, age 35 at the time, had severe headaches and migraines. An MRI of her brain was ordered and interpreted by Defendant Whitney Pope, M.D. as "unremarkable." Subsequent review of the MRI showed a 20mm left frontal meningioma. Because the tumor was missed, Sandstrom went nearly five years without the proper diagnosis. During this period, she continued to suffer disabling headaches and migraines that interfered with her work as a programmer at NBCUniversal Media; supervisors reported stalled promotions, lost raises and stock options, and performance impacts. In August 2021, an outside radiologist identified the tumor. On April 18, 2022, she underwent surgical resection at Cedars-Sinai and reported immediate improvement in headache frequency and severity

**Plaintiff's Contentions**

Plaintiffs contended that Pope's failure to detect the meningioma on the 2016 MRI was a breach of the standard of care. Plaintiffs further argued that the delay caused nearly five unnecessary years of severe headaches and migraines, limiting work performance and derailing career progression at NBCUniversal.

**Defendant's Contentions**

Defendants denied liability. Pope testified at deposition that he found no abnormalities on the 2016 scan and that his impression of an "unremarkable appearance of the brain" was appropriate; he further stated that, when he later re-reviewed the study after notice of the lawsuit, he "didn't see anything that was missed." The defense emphasized that MRI interpretation can be subjective, the tumor was indolent, and Plaintiff's long-standing migraine history could not be separated from the tumor's impact.

**Disposition**

Plaintiff served a CCP §998 offer of $389,999.99 on Oct. 13, 2023. After depositions and further litigation, the matter resolved on July 1, 2025 for $200,000 on behalf of the Regents and Dr. Pope.

**SETTLEMENT: $180,000**
***Doe Plaintiffs v. Roe Hospital***
*Confidential Case Nos. CIVSB2225411 and CIVSB2303832, consolidated*
**Medical Malpractice and wrongful death – failure to monitor cardiac telemetry and delayed response to cardiac arrest**

**Date Case Resolved:** September 2, 2025
**Total Amount of Settlement:** $1,800,000 paid by Roe Hospital.
**County and Judge:** Judge Gilbert Ochoa, San Bernardino County Superior Court

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# CITES

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tion—the latter constituting custodial rather than professional negligence. Because Plaintiffs' complaint lacked sufficient specificity to determine whether their claims were based on negligent rendering of medical services or custodial neglect, the court concluded Plaintiffs should be permitted to amend their complaint to specify the basis of their claims before any determination about arbitration is made.

***HU v. CITY OF SAN JOSÉ***

2025 California Court of Appeal, Sixth Appellate District, No. H051724, Filed September 8, 2025)

**Government Code Section 831.4, "Trail Immunity," Does Not Apply to Bike Lanes on City Streets**

**FACTS:** Plaintiff Qinglong Hu crashed his bicycle on Bailey Avenue while moving into the roadway to avoid debris and gravel obscuring the bike lane.

Hu sued the City of San José, alleging a dangerous condition of public property caused his accident. The city moved for summary judgment on three grounds: (1) the condition was trivial and obvious; (2) Hu had no evidence of causation; and (3) the city had "trail immunity" under Government Code section 831.4(b) because the accident occurred on a trail. The trial court granted summary judgment, finding a triable issue existed as to whether a dangerous condition existed, but ruling that Hu's claim failed because he entered the vehicle lane before falling and could not say precisely why he fell. The court also ruled that section 831.4(b) immunized the city because its trail immunity applies to Bailey Avenue's bike lane.

**ISSUE:** Does Government Code section 831.4(b), "Trail Immunity," apply to a Class II bikeway (bike lane) on a city street or highway?

**RULING:** No. Reversed and remanded.

**REASONING:** Government Code section 831.4(b) does not apply to a bike lane (Class II bikeway under Streets & Highways Code § 890.4(b)) on a city street or highway. The statute's plain terms exclude city streets and highways from trail immunity. Section 831.4(a) expressly provides that immunity for unpaved roads does not extend to city streets, and subdivision (b) extends immunity to trails "used for the above purposes."

Because Bailey Avenue is a city street excluded from the definition of a "trail," the bike lane within it is not a trail. Given the exclusion of city streets from the statutory conception of an unpaved road, it would be incongruous to read the statute to shield the city from liability for dangerous conditions on a paved city street like Bailey Avenue merely because it has a designated bike lane.

This exclusion is consonant with section 831.4's purpose: to encourage public entities to open public property for recreational use by relieving them of the burden of keeping such property in safe condition. City streets and highways are already open to the public subject to statutory regulation. Segregating a bike lane on a city street regulates traffic and purports to do so in furtherance of user safety. A city street cannot be a trail, or else the exclusion of

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**Plaintiff Attorneys:** Nicholas J. Leonard, Esq., Benjamin T. Ikuta, Esq. / Ikuta Hemesath LLP

**Defendant Attorneys:** Jeffery W. Grass, Esq., Evelin Duenas, Esq / Davis, Grass, Goldstein & Finlay

**Case Summary**

On August 12, 2021, Decedent, age 54, presented to Roe Hospital's Emergency Department with chest pain, left arm numbness, and elevated troponins consistent with a heart attack. She was admitted for telemetry-level care, but due to a lack of telemetry beds, she was held in the Emergency Department. Although the department had cardiac monitoring capability, the hospital failed to staff anyone to continuously monitor telemetry alarms. At 9:06 p.m., Decedent's monitor documented ventricular tachycardia, followed by ventricular fibrillation. The alarm continued for approximately twenty minutes before any nurse responded. When the nurse entered her room at 9:26 p.m., she was pulseless and unresponsive. Cardiopulmonary resuscitation was initiated, and she was defibrillated and intubated. Despite resuscitation, Decedent suffered a catastrophic anoxic brain injury and died ten days later, on Aug. 22, 2021.

Subsequent investigation revealed that the hospital did not assign a clerk or staff member to continuously monitor cardiac alarms in the Emergency Department, even though telemetry patients like Decedent were being housed there. Her cardiologist testified that he had ordered continuous telemetry monitoring and was never informed that such monitoring was not in place.

**Plaintiff's Contentions**

Plaintiffs contended that Roe Hospital's failure to monitor telemetry alarms and to respond to Decedent's ventricular tachycardia for over 20 minutes constituted gross negligence and systemic administrative failure. Plaintiffs' hospital administration expert opined that the hospital violated multiple Joint Commission standards by failing to provide uniform patient care and by neglecting to staff its telemetry system.

Plaintiffs further alleged that hospital leadership concealed the nature of the event from the family and that the delay in care caused Decedent's death. The surviving husband filed both survival and wrongful death actions, later joined by Decedent's two adult children.

The court permitted Plaintiffs to pursue punitive damages against the hospital, finding evidence that its conduct may have been oppressive or malicious.

**Disposition**

The case proceeded through extensive discovery, depositions, and motion practice. The court granted Plaintiffs' motion to amend to add punitive damages.

The matter settled at mediation with Jay Horton, Esq., for $1,800,000, paid by Roe Hospital. The settlement included both survival and wrongful death claims for the decedent's husband and two adult children.

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city streets from unpaved roads would be futile.

Nothing in the statute permits the city to limit its liability for dangerous conditions on its streets by painting a lane marker and deeming one lane a trail. The court discerned no statutory purpose that would justify dividing a roadway into a legally divisible "street" and "trail," with the city's obligation to keep property safe ending at the white stripe on the asphalt. Such a result would defeat the fundamental purpose of a bike lane—to protect cyclists who are entitled to use city streets even without a bike lane.

***BEAN v. CITY OF THOUSAND OAKS***

2025 California Court of Appeal, Second Appellate District, Division Six, No. B338497 (Filed September 29, 2025)

**Co-defendant with Adverse Interest Has Standing to Oppose Summary Judgment Without Filing Cross-complaint**

**FACTS:** Bonnie Bean tripped and fell on a raised portion of sidewalk in front of a residence owned by Gerardo and Carie Rodriguez. Bean sued the Rodriguez family and the City of Thousand Oaks for negligence, premises liability, and dangerous condition of public property. The city's answer included an affirmative defense alleging "sole or partial negligence of third parties." Bean then amended her complaint to add Gina L. Goode, who owned the house next door.

Bean's claim against Goode was based on the theory that damage to the sidewalk was caused by a tree in the parkway (the landscaped area between the curb and sidewalk) located in front of Goode's house, whose roots extended below the sidewalk in front of the Rodriguez property. According to a city public works memorandum, the parkway contained "a privately-owned, city-maintained White Mulberry street tree" whose roots "may have caused or contributed to the sidewalk damage." The tree appeared to be an original street tree planted by the developer in the late 1960s. The memorandum stated the city inspects, maintains, and repairs the sidewalks.

Goode filed a motion for summary judgment, contending she did not create the dangerous condition nor own or control the sidewalk. Bean did not oppose the motion. The city filed an opposition, a request for judicial notice, evidentiary objections, and a statement of undisputed material facts. Goode replied, contending the city lacked standing to oppose her motion because it had not filed a cross-complaint.

Three weeks later, when the motion was heard, the city advised the court it had filed a cross-complaint that same morning. But the court clerk issued a notice rejecting the cross-complaint filing. The trial court ruled the city lacked standing to oppose the motion and declined to consider the city's opposition documents. The court granted summary judgment against Bean in favor of Goode. The city appealed.

**ISSUE**: (1) Must a co-defendant file a cross-complaint to obtain standing to oppose another defendant's motion for summary judgment under Code of Civil Procedure section 437c(p)(2)?

**RULING:** (1) No. A co-defendant with an adverse interest has standing to oppose a motion for summary judgment whether it has filed a cross-complaint or not.

**REASONING:** The reference to "the plaintiff or cross-complainant" in Code of Civil Procedure section 437c(p)(2) is ambiguous. It either limits the parties who may oppose a defendant's motion for summary judgment, or merely codifies the burden of proof in such a motion. The court concluded the latter interpretation is appropriate based on the statute's legislative history and purpose.

The language regarding parties' respective burdens of production was first added to section 437c in 1992. The purpose was to move California summary judgment law closer to federal practice and to liberalize granting such motions. Federal Rule 56(d) allows a "nonmovant" to oppose a motion for summary judgment. A Senate committee report described the 1992 amendment's purpose as specifying the burden of proof without limiting who may oppose. Nothing in the legislative history suggests an intent to limit who may oppose a motion for summary judgment.

The purpose of summary judgment law is to determine whether trial is necessary to resolve disputes, not to dispose of cases on procedural deficiencies. The term "cross-complainant" appears only in subdivision (p) of section 437c. Neither the 1992 amendment nor any other legislation limits the right to oppose summary judgment to a "plaintiff or cross-complainant." The statute's language allowing "the opposing party" to file opposition (§ 437c(b)(3)) was unchanged by the amendment.

Allowing parties with an adverse interest to oppose summary judgment furthers the purpose of determining what issues must be resolved at trial and serves the strong public policy favoring disposition on the merits. In this personal injury action, liability can be apportioned in the main action, and the city was not required to file a cross-complaint. Because the city's answer raised an affirmative defense of "sole or partial negligence of third parties," the city and Goode were trying to escape liability by blaming someone else for plaintiff's damages.

The city and Goode were adverse parties even without cross-claims between them. The city had "a dog in this fight," even though the parties were not on opposite sides of the "v." Granting summary judgment in favor of one alleged tortfeasor would preclude the city, as another alleged tortfeasor with adverse interest, from seeking to attribute fault to Goode. Prohibiting a defendant with an interest adverse to another defendant from opposing summary judgment would run afoul of the guiding principle of deciding cases on their merits rather than on procedural deficiencies.

In *Aguilar v. Atlantic Richfield Co.*, the California Supreme Court explained that "any adverse party may oppose the motion" for summary judgment. Though dictum, this statement is highly persuasive and consistent with legislative history and goals.

**NOTE: Case was dismissed on the merits.** Reviewing the motion and opposition de novo, the court concluded no cause of action against Goode could be established as a matter of law. Under common law, a landowner has no duty to repair abutting sidewalks along public streets and owes no duty to injured pedestrians. Streets and Highways Code section 5610 imposes a duty of repair on abutting property owners but does not create

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tort liability to injured pedestrians except where a property owner created the defect or exercised dominion or control over the sidewalk—the "Sidewalk Accident Decisions Doctrine."

Section 5610 did not create liability for Goode because her property was not "fronting on" the portion of sidewalk where Bean fell, she did not exercise "dominion or control" over that portion, and there was no evidence she had seen or noticed the defect before the incident. There was no evidence Goode "created the defect" by merely owning the adjacent home. Control dominates over title in determining potential liability for dangerous property conditions.

Undisputed evidence established the city had trimmed and inspected the tree. There was no evidence Goode maintained or controlled the tree. Though Goode admitted mowing the parkway grass, she did not admit maintaining the tree. The city's public works memorandum acknowledged the city maintained the tree and sidewalk. The city stated it "regulates, controls, and maintains the public right-of-way easement adjacent to the tree located in the parkway," inspected and trimmed trees, and could remove trees causing damage. The city trimmed the tree less than three years before the incident and inspected it less than two months before.

City policies and ordinances showed the city had authority over the right-of-way and all approved street trees, prohibited removal or pruning without City approval, and required the city to remove trees damaging sidewalks. These established that the city rather than Goode had control and responsibility for maintaining the tree. The facts were similar to *Jones v. Deeter,* where summary judgment was properly granted in favor of a property owner because the city bore the duty to keep trees in reasonably safe condition toward pedestrians.

***CASAREZ v. IRIGOYEN FARMS, INC.***

*2025 California Court of Appeal, Fifth Appellate District, No. F086901 (Filed September 10, 2025; Certified for Publication September 30, 2025)*

**FAAAA Preempts Negligence Claims Against Produce Shipper and Receiver; Safety Exception Requires Direct Connection to Motor Vehicle**

**FACTS:** On Sept. 27, 2019, Olivia Mendoza was killed when a tractor trailer heading northbound ran a stop sign and collided with her vehicle. Before the accident, Andre Hill—the driver of the tractor trailer—picked up a load of produce from Irigoyen Farms for delivery to Walmart's distribution center in McCarran, NV. Hill's "extreme fatigue" was deemed by law enforcement to have been a factor in the crash. Hill was subsequently charged with vehicular manslaughter.

Irigoyen Farms, a family farm based in Selma, produces more than 30 varieties of fresh vegetables and supplies fresh produce to customers, including Walmart. Irigoyen Farms typically contracts with a freight broker to ship its produce. Prior to the accident: (1) Irigoyen Farms contracted with Royal Violet Logistics, LLC, to arrange for delivery; (2) Royal Violet contracted with SIO Logistics, LLC, to hire a motor carrier; (3) SIO contracted with Gold Coast Logistics Group to act as the motor carrier; and (4) Gold Coast hired Hill as an independent contractor and provided him with the tractor trailer involved in the collision.

Christina Casarez—individually and on behalf of her daughter Olivia's estate—filed a lawsuit against Irigoyen Farms and Walmart, alleging motor vehicle negligence, general negligence, and wrongful death. Casarez alleged Defendants owned or controlled the tractor trailer, employed and entrusted the tractor trailer to Hill, negligently failed to train and supervise Hill, and negligently failed to maintain and repair the tractor trailer.

Later, in her opening brief, Casarez clarified she was suing Defendants "for their actions and their failures to comply with the industry standards applicable specifically to them, not vicariously for the acts of the motor carrier or broker." Specifically, she "sued Walmart because its onerous contractual requirements incentivized reckless conduct by motor carriers" and "sued Irigoyen Farms because, through its employees, it loaded its product on the truck driven by Hill and sent him on his way despite actual, contemporaneous knowledge he had a long distance to travel, had to be there within just a few hours, yet was obviously already exhausted."

In May 2023, Irigoyen Farms and Walmart each filed motions for summary judgment, arguing that the Federal Aviation Administration Authorization Act of 1994 (FAAAA) preempted Casarez's claims. Casarez opposed, asserting the FAAAA only preempts state laws relating to motor carriers, brokers, and freight forwarders (and neither defendant fit those categories), and the FAAAA does not preempt state law personal injury claims under its "safety regulation exception," citing *Miller v. C.H. Robinson Worldwide, Inc.* (9th Cir. 2020) 976 F.3d 1016.

**ISSUE:** (1) Does the FAAAA preempt negligence claims against a produce shipper and receiver? (2) Does the FAAAA's safety exception under 49 U.S.C. § 14501(c)(2)(A) save such claims from preemption?

**RULING:** (1) Yes. (2) No. Affirmed.

**REASONING:** FAAAA Preemption: Under the FAAAA, a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier..., broker, or freight forwarder with respect to the transportation of property." (49 U.S.C. § 14501(c)(1).) The phrase "law, regulation, or other provision having the force and effect of law" includes state common-law rules. The phrase "related to" embraces state laws "having a connection with or reference to" carrier "rates, routes, or services," whether directly or indirectly—expressing a broad preemptive purpose.

The express language of the FAAAA is unequivocal. Nothing in the language suggests a beneficiary of the preemption clause must itself be a motor carrier, broker, or freight forwarder. Nothing suggests preemption is limited to claims of vicarious liability. The FAAAA applies so long as the claim: (1) derives from the enactment or enforcement of state law and (2) relates to prices, routes, or services of a motor carrier, broker, or freight forwarder with respect to the transportation of property.

Undisputed facts demonstrate Casarez's negligence claims are derived from laws having the force and effect of law (com-

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mon-law rules are routinely called "provisions") and ultimately deal with Hill's driving while in route to Walmart's distribution center to deliver Irigoyen's produce. Therefore, the FAAAA preempts these claims.

The court ruled that the Safety Exception did not apply. Here, Casarez's claims do not allege the tractor trailer itself was defective or otherwise unsafe. She sued Walmart because its contractual requirements allegedly incentivized reckless conduct, and sued Irigoyen Farms because it allegedly sent Hill on his way despite knowledge he was exhausted and had a long distance to travel in a short time. These claims lack a direct connection to the motor vehicle itself. Therefore, the FAAAA's safety exception does not apply.

This decision addresses an important split in authority regarding the scope of the FAAAA's safety exception. Unlike the Ninth Circuit's decision in *Miller* (and the Sixth Circuit's similar decision in *Cox v. Total Quality Logistics, Inc.* (2025) 142 F.4th 847), this California Court of Appeal opinion holds that the safety exception requires a direct—not merely indirect—connection between the state law claim and motor vehicles. This narrower interpretation of the safety exception results in broader federal preemption of state-law negligence claims against parties in the shipping and logistics chain beyond just motor carriers and brokers.

***NOLAND v. LAND OF THE FREE, L.P.***

*2025 California Court of Appeal, Second Appellate District, (Filed September 12, 2025)*

**Attorney Sanctioned $10,000 for Filing Appellate Briefs Containing AI-generated Fabricated Legal Citations and Quotations**

**FACTS:** Sylvia Noland filed an employment lawsuit in August 2018 against Jose Luis Nazar and Land of the Free, L.P., alleging defendants failed to pay her agreed commissions, minimum wage, overtime, and constructively terminated her employment. Defendants filed a motion for summary judgment, and the court thereafter granted summary judgment for Defendants.

Noland appealed. This court found that the appeal was unremarkable. What sets the appeal apart—and the reason the court elected to publish this opinion—was that nearly all of the legal quotations in plaintiff's opening brief, and many of the quotations in plaintiff's reply brief, were fabricated by AI. Plaintiff's appellate briefs contained pervasive fabricated legal citations and quotations generated by artificial intelligence.

The quotes Plaintiff attributed to published cases do not appear in those cases or anywhere else. Further, many of the cases Plaintiff cited did not discuss the topics for which they were cited, and a few of the cases do not exist at all. These fabricated legal authorities were created by generative artificial intelligence (AI) tools that Plaintiff's counsel used to draft his appellate briefs.

The AI tools created fake legal authority—sometimes referred to as AI "hallucinations"—that were undetected by Plaintiff's counsel because he did not read the cases the AI tools cited. In total, appellant's opening brief contained 23 case quotations, 21 of which were fabrications. The reply brief contained many more fabricated quotations. Both briefs were peppered with inaccurate citations. The court decided to therefore publish this opinion as a warning.

**PROCEDURAL HISTORY:** Prior to oral argument, the Court of Appeal issued an order to show cause why Noland's counsel, Attorney Amir Mostafavi, should not be sanctioned for filing briefs replete with fabricated quotes and citations. The OSC warned sanctions might include attorney fees/costs to defendants and sanctions payable to the court.

Attorney Mostafavi filed a written response, acknowledging he relied on AI "to support citation of legal issues" and that the fabricated quotes were AI-generated. He asserted he had not been aware that generative AI frequently fabricates or hallucinates legal sources and thus did not "manually verify [the quotations] against more reliable sources." He accepted responsibility but argued the appeal was not frivolous because "the majority of citations are accurate" and the brief "stands on meritorious arguments."

At oral argument, Mostafavi explained he wrote initial drafts, "enhanced" the briefs with ChatGPT, then ran the briefs through other AI platforms to check for errors. Counsel admitted he did not read the "enhanced" briefs before filing them.

**RULING:** The judgment was affirmed. Attorney Amir Mostafavi was sanctioned $10,000, payable to the clerk of the court, ordered to serve a copy of the opinion on his client, and the clerk was directed to serve a copy on the State Bar.

**REASONING:** Code of Civil Procedure sections 907 and 128.7 and California Rules of Court, rule 8.276(a)(4) permit sanctions for frivolous appeals or unreasonable violations of court rules. An appeal is frivolous if prosecuted for improper motive or indisputably has no merit (subjective and objective standards). Even if not frivolous, courts have authority to sanction parties who unreasonably violate the Rules of Court, which require supporting each point "if possible, by citation of authority." (Rule 8.204(a)(1)(B).)

The court noted that in the last two years, many courts have confronted briefs populated with fraudulent citations from generative AI. Courts have observed that:

- AI hallucinations are "becoming far too common"
- The problem is getting worse—Open AI's newest models hallucinated "30-50% of the time"
- AI is "designed to maximize the chance of giving an answer, meaning the bot will be more likely to give an incorrect response than admit it doesn't know something"
- Hallucinations are "more likely to occur when there are little to no existing authorities available"
- AI responses are "grammatically correct and presented as fact," making fabrications not readily apparent

The court found that a fundamental duty was violated. It is a fundamental duty of attorneys to read the legal authorities they cite to determine they stand for the propositions cited. Counsel plainly did not read the cases—had he read them, he would have discovered they didn't contain the quoted language, didn't support the propositions, or didn't exist. Counsel "fundamentally abdicated his responsibility to the court and to his

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client."

Although the court accepted counsel's claim he didn't intend to deceive, there is nothing inherently wrong with appropriately using AI in law practice, but before filing any document, an attorney must "carefully check every case citation, fact, and argument." Attorneys cannot delegate this role to AI or any technology. Just as a competent attorney would carefully check work prepared by a law clerk or intern, the same holds true for AI-generated content.

The court concluded: "'Hallucination' is a particularly apt word to describe the darker consequences of AI. AI hallucinates facts and law to an attorney, who takes them as real and repeats them to a court. This court detected (and rejected) these particular hallucinations. But there are many instances—hopefully not in a judicial setting—where hallucinations are circulated, believed, and become 'fact' and 'law' in some minds. We all must guard against those instances.... There is no room in our court system for the submission of fake, hallucinated case citations, facts, or law. And it is entirely preventable by competent counsel who do their jobs properly and competently."

**PEOPLE v. ALVAREZ**

*2025 California Court of Appeal, Fourth Appellate District, Division One, No. D084581 (Filed October 2, 2025)*

**Attorney Sanctioned $1,500 for Citing AI-hallucinated Cases and Misquoting Authority in Criminal Appeal**

**FACTS:** On July 9, 2025, Attorney LeRoy George Siddell, State Bar No. 48670, filed an opposition to a motion to dismiss on behalf of defendant and appellant Raziel Ruiz Alvarez in a criminal appeal. The opposition included several serious misrepresentations of legal authority including the following:

1. **Fabricated quote:** The opposition included a quotation attributed to In re *Benoit* (1973) 10 Cal.3d 72, 87–88, but the purported quote did not exist in the case. Attorney Siddell later clarified it was not a direct quotation because he modified it "to incorporate broader principles."
2. **Non-existent case:** The opposition cited *People v. Robinson* (2009) 172 Cal.App.4th 452, which does not exist.
3. **Irrelevant cases:** Counsel cited two cases that do not address the issues for which they were cited: *People v. Jones* (2001) 25 Cal.4th 98 and *People v. Williams* (1999) 77 Cal.App.4th 436.

On July 30, 2025, the Court of Appeal issued an order to show cause why sanctions, including monetary sanctions, should not be imposed for violations of Business & Professions Code section 6068(d); Rule 3.3(a)(1) and (2) of the State Bar Rules of Professional Conduct; and California Rules of Court, rule 8.1115(a).

On August 11, 2025, Attorney Siddell filed a statement admitting his "lack of professionalism" for "failing to verify cases provided to [him] by artificial intelligence." The court accepted his subsequent motion to withdraw as counsel after receiving confirmation he informed his client of the request, and directed Appellate Defenders, Inc., to appoint new counsel to restart the briefing sequence.

A hearing on the order to show cause was held Sept. 15, 2025. At the hearing, Attorney Siddell apologized for failing to verify the legal citations and sources, explaining the failure resulted


from feeling rushed. He reported he had taken courses regarding AI and was aware that AI could hallucinate cases, but he did not verify the accuracy of any citations. He explained he relies on staff to help draft motions and briefs but recognized it is his responsibility to check case law before submitting documents to the court. He said in the future he would "trust, but verify" research provided through AI.

**RULING:** The court imposed a $1,500 monetary sanction against Attorney Siddell individually, to be paid to the Fourth District Court of Appeal, Division One. The court also published the order and directed the clerk to notify the State Bar of the sanctions.

**REASONING:** All California attorneys, are bound by the Business and Professions Code, the State Bar Rules of Professional Conduct, and the California Rules of Court. Business and Professions Code section 6068(d) states it is the duty of an attorney "to employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

The Rules of Professional Conduct prohibit an attorney from: (1) "knowingly mak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer" (rule 3.3(a)(1)); and (2) "knowingly misquot[ing] to a tribunal the language of a book, statute, decision, or other authority" (rule 3.3(a)(2)).

The court agreed with the Second Appellate District's recent decision in *Noland v. Land of the Free, L.P.* (Sept. 12, 2025) ___ Cal.App.5th ___ [2025 WL 2629868] that "there is nothing inherently wrong with an attorney appropriately using AI in a law practice," but attorneys must check every citation to make sure the case exists and the citations are correct. Attorneys should not cite cases for legal propositions different from those contained in the cases cited. And attorneys cannot delegate this responsibility to any form of technology; this is the responsibility of a competent attorney. "'Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense.'" (*Paine v. State Bar of California* (1939) 14 Cal.2d 150, 154).

# Your Own Site Visit Might Just Win Your Case

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

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

## DECEMBER 2025

**Thur., December 4**
**Holiday Reception & Annual Meeting & Installation of the 2026 Board**
5:30 to 7:30 p.m., Sheraton Grand Sacramento Hotel, 1230 J Street, 95814

**Tues., December 9**
**Q & A Problem Solving Lunch**
Noon, CCTLA Members Only / Zoom

## JANUARY 2026

**Tues., January 13**
**Q & A Problem Solving Lunch**
Noon, CCTLA Members Only / Zoom

**January TBA**
**Practical AI Considerations for Litigators**
Noon to 1 p.m. / Zoom

**January 28**
**43rd Annual What's New in Tort & Trial: 2025 In Review / A Virtual TLA Program**
2:45-6 p.m. / Zoom

## FEBRUARY 2026

**Tues., February 10**
**Q & A Problem Solving Lunch**
Noon, CCTLA Members Only / Zoom

## MARCH 2026

**Tues., March 10**
**Q & A Problem Solving Lunch**
Noon, CCTLA Members Only / Zoom

**March 13-14**
**CAOC & CCTLA Napa/Sonoma Trial Seminar**
The Meritage Resort & Spa

## APRIL 2026

**Fri., April 10**
**The Daniel Wilcoxen Liens Program: A Complete Guide to Liens**
10 a.m. to 2 p.m. – Location: TBA

**Tues., April 14**
**Q & A Problem Solving Lunch**
Noon, CCTLA Members Only / Zoom


# CCTLA Calendar of Events