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WHAT IS UBER UP TO?

Glenn Guenard
CCTLA President
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On July 20, 2025, Uber filed a federal racketeering lawsuit against two Los Angeles law firms and their associated medical providers. The complaint, *Uber Technologies, Inc. v. Downtown LA Law Group, et al.*, alleges violations under the Racketeer Influenced and Corrupt Organizations (RICO) Act, including mail and wire fraud, conspiracy, unjust enrichment, and violations of California's Business & Professions Code.

Uber claims these parties engaged in a scheme to inflate personal injury claims following minor accidents involving Uber drivers. The allegations include aggressive client solicitation, referrals to pre-selected medical providers on a lien basis, inflated medical billing, unnecessary treatments, and exaggerated demand letters. Uber says this has cost them millions in settlements and legal fees.

But here's the question: **If Uber believed these claims were fraudulent, why settle them?** Why not litigate, present expert witnesses, and let a jury or arbitrator decide?

What's this really about?

Many of us handle low-speed collision cases involving medical treatment on liens with treatment for pain management and even surgeries. We know the playbook—so does the defense. Uber had every opportunity to challenge these claims in court. So why this lawsuit, and why now? Maybe this lawsuit by Uber is not really about winning the case. Consider these possibilities.

First, Distract everybody from all the sexual assault cases?

Uber is facing a major legal storm. Since 2015, thousands of victims of sexual assault claims have been filed nationwide against Uber. More than 1,400 plaintiffs across 29 states were recently consolidated in a federal MDL In re: *Uber Passenger Sexual Assault Litigation,* MDL No. 3084, N.D. Cal.), The plaintiffs in that MDL filed sexual assault claims against Uber drivers, alleging that Uber failed to properly screen its drivers. The first trial from the MDL is set for December 2025.

This RICO case could be an effort to shift focus, portraying Uber as the victim instead of the defendant in thousands of sexual assault claims. It's a bold move, but one

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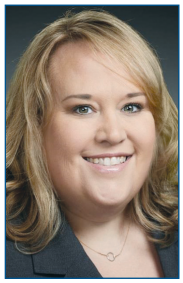

Marti Taylor
is a Member
of the CCTLA
Board of Directors

NOTABLE CITES

By: Marti Taylor

WHITEHEAD v. CITY OF OAKLAND
2025 California Supreme Court, No. S284303, (May 1, 2025)

RELEASE & WAIVER OF LIABILITY NOT VALID AS TO FUTURE VIOLATIONS OF STATUTES DESIGNED TO PROTECT PUBLIC SAFETY

FACTS: Plaintiff Ty Whitehead ("Whitehead") suffered a traumatic brain injury in March 2017 while participating in a group training ride in preparation for AIDS/LifeCycle, a weeklong fundraiser bike ride. At the time of the injury, Whitehead was riding downhill on Skyline Boulevard in Oakland with no other riders in the immediate vicinity. According to evidence offered by Whitehead, cyclists, even those not participating in the training ride, were "essentially required to ride in the center of the lane" when traversing the segment where the injury occurred. As his front tire went down sharply into a large, deep pothole near the center of the lane and came to a stop, Whitehead flipped forward over the front of the bike and hit the rear of his head on the pavement. He later explained that "it's amazing how just up on the hill a short distance you can look down the road, and the holes are very hard to see. The road looks complete just being a little bit up the hill."

Earlier that day, prior to the training ride, Whitehead and other participants signed a release form. Which included a **general information and release and waiver of liability, assumption of the risk, and indemnity agreement**.

One year after the accident, Whitehead sued the city under Government Code Section 835 et seq., alleging that the public roadway was in a dangerous condition. In December 2021, the trial court granted the city's motion for summary judgment on the ground that the release was valid and enforceable and barred Whitehead's claim against the city for liability arising from an allegedly dangerous condition of public property. The Court of Appeal affirmed.

ISSUE: Are agreements to exculpate a party for future violations of statutes designed to protect public safety enforceable?

RULING: No. Reversed and remanded.

REASONING: The case involves a negligent violation of the city's statutory duty (see Gov. Code, § 835 et seq.) to maintain its streets in a reasonably safe condition for travel by the public. The court concluded that an agreement to exculpate a party for future violations of a statutory duty designed to protect public safety is against the policy of the law under Civil Code Section 1668 and is not enforceable.

Case law in this state and in other states shows that agreements to exculpate a party for future violations of statutes designed to protect public safety are unenforceable. In this case, the city sought to enforce a release to preclude an action that allegedly arose from a violation of its statutory duty to maintain safe roadways for the public. The court determined that such a release violates Section 1668.

ORTIZ v. DAIMLER TRUCK NORTH AMERICA, LLC
2025 3DCA, No. C100034 (June 27, 2025)

PROXIMATE CAUSE FOR AN ACCIDENT IS A QUESITON OF FACT FOR THE JURY WHERE AT FAULT DRIVER AND TRUCK MANUFACTUERER CAN BOTH BE SHOWN TO HAVE CAUSED FATAL COLLISION

FACTS: Plaintiffs' mother was killed when a commercial truck traveling over 55 miles per hour rear-ended her car at a red light. Plaintiffs sued the truck manufacturer, Daimler Trucks North America LLC (Daimler Trucks). Raising design defect and negligent design claims, they alleged that Daimler Trucks should be held liable for their mother's death because it failed to equip the truck with a collision avoidance system, called Detroit Assurance 4.0, that would have prevented this fatal accident. That system warns drivers when it detects a collision risk with a stationary ob-

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Revolutionizing Document Discovery:

A New Approach

By: Stuart C. Talley

Stuart Talley, Kershaw Talley Barlow PC, and a CCTLA Member

Imagine you've just filed a lawsuit against a major auto manufacturer on behalf of a client who was severely injured because of a defective seatbelt. You're not just seeking compensation; you're aiming for punitive damages, convinced that this defect is a widespread issue the company has known about for years. As you begin to strategize your discovery plan, you realize the magnitude of the task ahead. To build a compelling case, you will need a vast array of documents from the manufacturer — internal emails, customer complaints, investigation reports, design documents, and repair records. These documents are crucial to proving the frequency of the defect and the company's awareness of the problem.

The Traditional Approach

Most attorneys faced with the above scenario will begin discovery by serving broad Requests for Production of Documents to prevent defendants from concealing important evidence. A typical request might seek "any and all documents" that "refer, pertain, or relate" to categories such as warranty claims, complaints, investigations, prior lawsuits, or similar matters. Typically, defendants will then respond with objections, claiming the requests are overly broad, vague, or burdensome.

The parties are now stuck in extensive meet-and-confer efforts lasting several months. The defendants claim it would cost "millions of dollars" to produce the requested documents, or that the requests are a "scattershot fishing expedition." Then, when the documents are finally produced and you have spent months going through them, it becomes clear that many important documents appear to be missing or were never the subject of a proper search. Further meet-and-confer efforts ensue, and eventually, motion practice may be required. Maybe a year or more into the process, you finally have the documents you need to begin taking substantive depositions.

This approach, while traditional, can be problematic for several reasons. First, even though the scope of discovery is broad, many courts may be sympathetic to the argument that a request seeking "any and all documents that refer, pertain, or relate" to a specific topic is overbroad, vague, and ambiguous.

Second, and most importantly, the traditional approach requires the propounding party and the court to operate in the dark. When a defendant argues, as they always do, that responding to a request would require enormous time and expense, there is often little plaintiffs can do to rebut these contentions.

Third, when you suspect that numerous substantive documents are likely missing from the production, it is often impossible for the plaintiff to determine if the defendant actually conducted a "diligent search" for responsive documents. Instead, the court and plaintiffs just have to trust that the defendant has really looked hard and in all the right places.

The New Approach – The Early Person Most Knowledgeable ("PMK") Deposition

Instead of immediately serving an extensive and broad document demand at the beginning of your case, a more effective approach may be to first serve a PMK or 30(b)(6) deposition notice that seeks a corporate representative to testify about the processes and procedures the company uses for maintaining and storing documents. Using the example above, instead of serving a document demand seeking "any and all" documents that "refer, pertain, or relate" to warranty claims, first serve a PMK deposition notice that seeks a witness to testify about the manufacturer's "policies and procedures for maintaining, storing, and searching for data or documents relating to warranty

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claims." The notice could also request the deponent to produce at the deposition all "policy and procedure manuals or other documents sufficient to identify any fields used in databases that store information about warranty claims."

In response to this notice, a defendant will typically produce an IT professional for deposition. During the deposition, the attorney should question the witness on topics such as:

* *The names of any databases used to track warranty claims*
* *How far the data goes back in time*
* *All of the fields that are used to keep track of warranty claims*
* *How the company uses the database to track and monitor warranty claims on a daily basis or as part of an investigation*

The attorney should also explore how the sought-after documents can be searched and produced. The examiner could also inquire as to how long such a search would take to complete and how much expense would be involved. For example, an effective line of questioning under the opening scenario might proceed as follows:

* *Q: If I were an engineer at your company and asked you how many warranty repairs were presented to the company involving the seatbelt we manufacture, could you find out?*
* *Q: Where would you look?*
* *Q: How would you conduct the search?*
* *Q: Could you export your search results into an Excel spreadsheet?*
* *Q: Could the exported data include the part number that failed, a narrative describing the repair, and the date that the company received the warranty claim?*
* *Q: How long would that process take?*

What most examiners will find is that IT professionals at large companies are happy to answer these questions and are eager to explain how well their databases operate and can be used to extract relevant data. Also, this same or a similar line of questioning can be used to obtain information about the company's policies for storing emails, customer complaints, investigations, reported injuries, etc.

The Benefits of The Early PMK Deposition

After taking a PMK deposition, attorneys will now be in a much better position to serve written discovery that is narrowly tailored to seek exactly what they are looking for. And, they will also be in a better position to evaluate whether the defendant has thoroughly searched for the documents they are seeking. By structuring discovery selectively, it will now be difficult for the defendant to argue that the request is vague, ambiguous, or overbroad. Also, assuming the PMK witness testified that searching the database by part number or keyword is routine and can be easily accomplished, it will be impossible for the defendant to argue that it will be unduly burdensome or expensive to produce the requested documents.

Conducting early depositions about the defendant's documents and their storage enables more focused written discovery. This approach helps the plaintiff assess document production and challenge claims of "undue expense" if disputes occur. It also speeds up discovery and reduces costs compared to the lengthy, traditional approach to discovery.

The Subscription of Self: *How Do We Protect Consumers When Life Becomes Pay-to-Live?*

By: Virginia Martucci

Virginia Martucci, Herman Law , is a member of the CCTLA Board of Directors

It's a Friday night. After a long week, I am ready to unplug and watch something to unwind. I sit down on the couch, turn on my TV, and Netflix suggests Black Mirror. I made the mistake of selecting Series 7, Episode 1: "Common People." The episode starts off benign, like many do: an elementary school teacher (Amanda) and her husband (Mike), a welder, take an annual anniversary trip to a kitschy vacation spot. We follow their ordinary life and see they have been trying for many years to conceive, with no luck.

Unexpectedly, Amanda suffers a medical emergency and goes into a coma. Her doctor discovers she has a tumor and inform Mike she may never regain consciousness. They have no money for expensive treatments and seemingly no options. The doctor suggests Mike talk to a medical saleswoman whose company, Rivermind, has an experimental option. The saleswoman tells Mike the company can make a digital copy of the part of the affected part of Amanda's brain, remove it and replace it with synthetic tissue, and upload a digital copy of her brain to a cloud where the contents of the copy is beamed back into her brain. The catch? She would need to stay within the range of Rivermind's servers, and would probably need more sleep than usual, but the surgery would be free except for a monthly $300 subscription.

Mike, having no other options, goes forward with the surgery. Miraculously, the surgery works. Amanda goes back to her normal life and her teaching job. Soon, Rivermind adds hidden fees for upgrades. The basic tier becomes the "plus" level. Amanda and Mike cannot go to their anniversary getaway without Amanda falling unconscious because it's outside the service area unless they upgrade. Rivermind inputs advertisements in Amanda's mind that she says randomly, without any control or memory. This makes her unemployable as a teacher. The only way to get rid of the ads? Upgrade to the next tier, which is far outside the budget of the common protagonists.

Amanda notices she wakes up totally exhausted. She finds out the company uses her brain to power its servers when she sleeps; so 10 hours of sleep feels like nothing. She can upgrade to better sleep for a fee that is again outside of the budget.

Mike turns to exploiting himself on a website where viewers pay people to humiliate themselves. He performs degrading acts, including pulling his own teeth, just to buy Amanda a few moments of peace. They both eventually lose their jobs and cannot afford the cost of removing the ads or pay for Amanda to live a normal life. The episode ends in a tragic way, which left me ugly crying on the couch on a Friday night.

In real life, Mike would have had read and signed a convoluted contract that contained hidden language that gave the company the right to increase the cost of basic services. He would have also theoretically had access to hospital staff in billing or social work, friends, and family who could have guided his decision to agree to the subscription plan. The facts also raise serious concerns about unconscionability, undue influence, and Mike's ability to bind Amanda to such an oppressive, life-long subscription contract.

The episode highlights the decision-making issues faced by "common" people, who may not be particularly sophisticated or able to absorb hundreds of additional dollars for what should be basic-level services like bodily autonomy.

It also sounds the alarm on a problem that's already here. For example, assisted-living facilities admit people at a base level rate. These facilities are exempt from rent control laws. (Health & Safety Code Section 1569.147(b).) Facilities may increase the base level and costs for added services so long as they give proper notice to the resident. They usually do increase costs, sometimes several times per year, as the resident's needs increase and as

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the cost-of-living increases. Residents can either pay or leave. While there are protections against evictions, these types of contracts leave people with little to no option when paying for services they need *to live*.

How do we protect consumers from subscription models that start free or low-cost, but coerce consumers to pay more as time goes on? And what are the legal and ethical implications when these models are employed for life-saving or life-extending services and devices?

There are many mechanisms in California that we can use to help consumers who have been harmed by hidden fees or unscrupulous subscription plans. This article explores some of those mechanisms and suggests potential legislation to address issues with subscription plans when dealing with life-saving devices or services.

Unfair Business Practices

California's Unfair Competition Law ("UCL"), contained in Business and Professions Code §§ 17200 et seq. creates a civil right of action against any "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising…" among other acts. Injunctive relief may be awarded against "Any person who engages, has engaged, or proposes to engage in unfair competition." (Business and Professions Code § 17203). The UCL is a sort of catch-all law that may be used to enjoin bad actors from unfairly or covertly raising subscription costs of life-saving or long-term contracts.

Consumer Legal Remedies Act ("CLRA)

The CLRA, Civil Code §§ 1750 to 1784, protects consumers from unfair or deceptive practices, which include:

- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- Advertising goods or services with intent not to sell them as advertised.
- Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law.
- Representing that a part, replacement, or repair service is needed when it is not.
- Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not, among many others.

In the example here, the saleswoman represented to Mike that there was a geographic limitation that would be increasing soon. Yet, when the new range opened up, the company only let them access it for a charge. The CLRA lets consumers obtain actual damages, restitution, punitive damages, injunctive relief, and fines for misleading advertisements and promises. This is another avenue through which we can protect consumer from pay-to-live subscriptions with hidden fees.

Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code §§15600 *et seq.*

California's Elder Abuse and Dependent Adult Civil Protection Act ("EADACPA") is one of the strongest mechanisms in the county to address unfair and unconscionable contracts like the one Mike entered into for Amanda's benefit. It prevents both physical abuse and neglect perpetrated on a dependent or elder, as well as financial abuse.

Amanda became a dependent adult after falling into a coma during a medical emergency. A dependent adult is any "person, regardless of whether the person lives independently, between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age." (Welfare and Institutions Code § 15610.23(a).) It also includes "any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code." (Welfare and Institutions Code § 15610.23(b).)

Abuse is defined by the Act as "physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" or "the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." (Welfare and Institutions Code § 15610.07).

In Amanda's case, depriving her of sleep (a basic life necessity) for the company's financial gain and co-opting her person to act as a walking zombie ad machine would no doubt rise to actional abuse and neglect under the Act. Monetary damages, general damages, punitive damages, and injunctive relief are all available remedies under the EADACPA. (See, e.g. Welfare and institutions Code § 15657.) Importantly, attorney's fees are also recoverable as an incentive for attorney's to take on the types of cases covered by the Act.

Had Mike and Amanda been in California and had access to an attorney familiar with the EADACPA, perhaps they would have been able to obtain injunctive relief to stop the ads, enforce the contract at the original subscription rate, or obtain damages for the commoditization of Amanda's mind and body.

Proposed Legislation

With Neuralink and similar medical implants already a reality, lawmakers need to address how for-profit companies are allowed to use customers' bodies. Lawmakers should make clear:

- Consumers must affirmatively and explicitly consent to the monetization of their person when using life-saving or life-extending devices or services.
- Consumers have a property right to their mind and body, and a company that provides them goods or services needed to live cannot monetize the byproducts of those goods and services or use someone's mind or body for their own purposes without consent and adequate compensation.
- Companies should never have the right to co-opt a customer's mind or body without consent (or perhaps ever).

Judge Kronlund receives national ABOTA award

By: Hank G. Greenblatt

Hank Greenblatt, Partner: Dreyer Babich Buccola Wood Campora, is a CCTLA Member

On July 31, I attended the American Board of Trial Advocates (ABOTA) celebration for the Honorable Barbara A. Kronlund at Humphrey's Law School in Stockton, along with many other ABOTA and CCTLA members. It was an honor (but not a surprise) to see Judge Kronlund honored again, with such a deserving award: the 2025 National ABOTA Champion of Justice Award.

Going back to our days together at McGeorge, Class of '89, we all knew Barbara would be a force for good in the legal community. Combining her brilliance and her compassion for helping others and serving the community, Barbara was always on a trajectory to be a star. It has been my privilege to be her friend going back to our law school days, watching her and Mike say their vows to each other in Fair Oaks, and now seeing her awarded this high honor from ABOTA.

From left: Letty Litchfield, Judge Barbara Kronlund, Justice William Murray (Ret.), Judge Connie Callahan and Jill Telfer, president of Sacramento Valley Chapter of ABOTA and a CCTLA past president

The Sacramento Valley Chapter of ABOTA nominated Judge Kronlund for this award because of her vast amount of work across all categories of the award criteria. She is known throughout California and across the country for her exceptional work as an ambassador for the preservation of an independent judiciary, preservation of the rule of law and the 7th Amendment right to a civil jury trial, access to justice, diversity, ethics and civility.

Judge Kronlund began her career as a deputy district attorney in Stockton for five years, where she was the head of the child abuse and sexual assault divisions. For the next 30 years, she was on the bench, mostly involving civil cases. She was the first female South Asian judge in California. She has way too many awards and accomplishments to list here.

Judge Kronlund is officially retiring from the bench this November. Judge Kronlund, we all know that you will continue with your passion of serving the community and helping others! Thank you for all you do!

CCTLA member Hank Greenblatt, CCTLA Board member Kellen Sinclair, Judge Barbara Kronlund, CCTLA President Glenn Guenard and CCTLA member Shafeeq Sadiq

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that potentially muddies the waters for public opinion.

Second, Good old tort reform propaganda?

Uber's message is clear: blame the plaintiff's bar. It paints personal injury lawyers as bad actors driving up costs, impacting ride fares, and burdening the system. It's the same tort reform propaganda we've seen for decades—this time repackaged through a high-profile lawsuit.

Uber wants the public to believe that attorneys, not Uber's practices, are the problem.

Third, Intimidation?

Perhaps this isn't about winning in court. Perhaps it's about sending a message: "We're billionaires. Think twice before suing us." If this lawsuit chills attorneys or medical providers from accepting valid claims, it undermines access to justice. Maybe it's an attack against the rule of law and the right to a jury trial for the little guy against the billion dollar companies.

It's a subtle threat; one aimed at discouraging legal action against a powerful company.

Fourth, Reduce Uber's state-mandated UM/UIM policy limit of $1 million

Uber has been pushing legislation to reduce California's insurance mandates for rideshare companies. Under current law, rideshare companies must carry $1 million in UM/UIM coverage. Uber argues this drives up prices and lowers driver pay, claiming nearly 45% of fares in LA County and 32% in California go toward mandated insurance costs. Uber also filed similar lawsuits in New York and Florida this year as part of a broader campaign to reduce insurance costs. Uber has poured millions of dollars into California and national ad campaigns to push for lower insurance policies.

Enter SB 371, a bill strongly supported by Uber to reduce the UM/UIM coverage to $100,000/$300,000. Though the bill retains some key protections (like maintaining the $1 million in bodily injury/property damage liability), it drastically slashes the coverage available to passengers.

This RICO lawsuit fits neatly into that strategy, portray injury claims as fraudulent to justify shrinking insurance requirements.

The bill is currently pending in the Assembly Appropriations Committee, with a vote expected soon.

What can we do about it?

First, we must hold ourselves and our profession to the highest ethical standards. Zealous advocacy is not a crime—but unethical conduct only strengthens the tort reform narrative. Let's stay honorable and avoid even the appearance of impropriety.

Second, get involved. The CAOC Advocates Club opposes SB 371 and works to protect consumers and the civil justice system. It supports lawmakers who fight for access to justice and funds political action committees that share our values. Please consider joining and donating. You can learn more at www.caoc.org/pac or reach out to Samantha Helton at samantha@caoc.org.

Final Thoughts

Uber's lawsuit isn't just about alleged fraud—it's about reshaping the legal and insurance landscape to favor corporations over individuals. It's a PR move, a political tool, and potentially a threat to the rights we fight for every day.

Let's stay sharp, ethical, and united.

Shahid Manzoor,
Manzoor Law Firm,
is a CCTLA
Board Member

Incident Reports *Are* Discoverable

By: Shahid Manzoor

In the majority of personal injury cases, Defendant has made an incident report at the time of the incident or may do one after the incident to document the events for their internal policy requirements or for their insurance carrier's requirements. These incident reports have material facts that are relevant to Plaintiff's case in chief and may also be relevant to Defendant's case in chief. These reports also may have third-party witnesses who may have witnessed the incident or may have personal knowledge of post-incident facts.

Once litigation begins and Plaintiff requests any incident reports in discovery, a majority of the time Defendant objects to this demand based on attorney-client privilege. The burden of proof is on the defendants to prove that the incident report was drafted by defendants for this attorney in order for defendants to maintain attorney-client privilege.

Plaintiff's attorney should also be ready to scrutinize Defendant's objection and to make sure that these incident reports were meant for Defendant's attorney (the dominant purpose) for attorney work product. Defense attorneys have to meet the dominant purpose standard in order to maintain privilege. Finally, Plaintiff should make sure that the attorney-client privilege was not already waived by the Defendant by communicating the content of the incident report with Plaintiff.

Our California courts have held the following legal standard in determining whether defendants have attorney-client privilege over the incident reports:

Unless otherwise limited by order of the court in accordance with [the discovery statutes], any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action...." (See *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1012-13.) "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement....' [Citation.] Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence. [Citation.] These rules are applied liberally in favor of discovery [citation], and (contrary to popular belief), fishing expeditions are permissible in some cases." (*Id*. at 1013.)

Under CCP § 2018.030 which states:

(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

It is not enough for a party to assert that something is protected as privileged, but rather the burden is on the party asserting the objection to prove the preliminary facts that show a privilege or protection applies. (See *Mize v. Atchison, T. & S. F. ry. Co*. (1975) 46 Cal.App.3d 436, 447.)

In *D. I. Chadbourne, Inc. v. Superior Court of San Francisco* (1964) 60 Cal.2d 723 our California Supreme Court held:

> It is well settled that a communication is not protected by the attorney-client privilege, even when made in the course of professional employment, unless the client intends that it be treated in confidence (*Solon v. Lichten-*

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stein, 39 Cal.2d 75, 79). (*Id*. at 732) For it is the client, and not the attorney, who may claim the privilege (§ 1881, subd. 2). (*ibid*.) And that which was not privileged in the first instance may not be made so merely by subsequent delivery to the attorney (*San Francisco Unified Sch. Dist. v. Superior Court* , 55 Cal.2d 451, 457; Holm v. Superior Court, supra, 42 Cal.2d 500, 507-508) (*ibid*.)

When these basic rules are applied to the usual corporate situation, a question arises as to whether the employee who was called upon to make a report or statement intended the same to be in confidence; or, if he had no specific intent, whether he was required by the corporation to make a statement, and (if so) whether the corporation's intent to transmit in confidence to its attorney is sufficient to supply the necessary element of original intent to communicate in confidence? (*Id*. at 733) At this point, the questions become embroiled in the concept of making privileged that which was not privileged in the first instance. (*ibid*.)

The attorney-client privilege protects the statement of a corporate employee obtained for the purpose of transmitting it to the employer's attorney, holds (insofar as this point is concerned) merely that a statement required of an employee for two or more purposes, one of which would bring it within the attorney-client privilege, will be protected as privileged if that is determined to be the dominant purpose of making the statement in the first instance. (*ibid*.)

. . .

Another principle that may affect this problem is the rule that even where a communication is privileged in the first instance, the privilege may be waived by failure to maintain confidentiality. (*id*. at 735) Thus, where the client communicates with his attorney in the presence of other persons who have no interest in the matter, or where he communicates in confidence but later breaches that confidence himself, he is held to have waived the privilege (M*cKnew v. Superior Court*, 23 Cal.2d 58; *Marshall v. Marshall*, 140 Cal.App.2d 475., (*ibid*.)

If, in the case of the employee last mentioned, the employer requires (by standing rule or otherwise) that the employee make a report, the privilege of that report is to be determined by the employer's purpose in requiring the same; that is to say, if the employer directs the making of the report for confidential transmittal to its attorney, the communication may be privileged. (*Id*. at 737) When the corporate employer has more than one purpose in directing such an employee to make such report or statement, the dominant purpose will control, unless the secondary use is such that confidentiality has been waived. *(ibid*.)

For such purpose an insurance company with which the employer carries indemnity insurance, and its duly appointed agents, are agents of the employer corporation; but the extent to which this doctrine may be carried, and the number of hands through which the communication may travel without losing confidentiality must always depend on reason and the particular facts of the case. (*ibid*.)

And in all corporate employer-employee situations it must be borne in mind that it is the intent of the person from whom the information emanates that originally governs its confidentiality (and hence its privilege); thus where the employee who has not been expressly directed by his employer to make a statement, does not know that his statement is sought on a confidential basis (or knowing that fact does not intend it to be confidential), the intent of the party receiving and transmitting that statement cannot control the question of privilege. (*Id*. at 738)

Where an employer requires employees to prepare a report with the dominant purpose of transmission to the employer's attorneys, the attorney-client privilege will protect the report from disclosure to opposing parties. (*Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 535-536.)

As a result, when Defendant objects to disclosing any incident report, Plaintiff's counsel should not be disheartened by the claim of attorney-client privilege, but should question Defendant's objection to make sure that Defendant has maintained confidentiality of the incident report, the confidentially has not already been waived and that the incident report's dominant purpose was to be transmitted to its attorney for litigation purposes.

CCTLA's Trial Assistance Program

By: Dan Glass

Did you know that, as part of your CCTLA membership, you can request, without charge, assistance from one or more experienced trial lawyers to help you get ready for trial?

Last year, the CCTLA board approved a program which would allow a CCTLA member to request a panel (approximately three, maybe more depending on availability) of lawyers to listen to your proposed Opening Statement and to receive an informal offer of proof regarding your case. The panel will then provide feedback, potential guidance and suggestions about your case, your trial theme, your legal theories and other matters to help you better focus on how you will try your case.

Dan Glass, Law Office of Daniel S. Glass, is a CCTLA Past President

This is not a "focus group" or some lengthy process. But, it is an opportunity to practice your Opening Statement, to (confidentially) show your evidence to experienced attorneys, to get some guidance about getting your evidence admitted and generally seeing if your case remains on a path to success.

One of the pitfalls of trial is that after years of work and advancement of costs, the lawyer is so invested in their case that they might not "see" the weak points and may not be sufficiently prepared at trial to deal with them when the defense lawyer raises them. While this is usually not an issue for an experienced attorney (i.e., those who may have had a trial and learned this lesson through a bad result), and it is not an issue for those lawyers working at, or partners in, larger firms because they have other lawyers to help work through the case and prepare for trial, it can be a problem for sole practitioners and those at smaller firms without ABOTA members, or without any lawyers who have actually tried at least a few cases to a jury verdict.

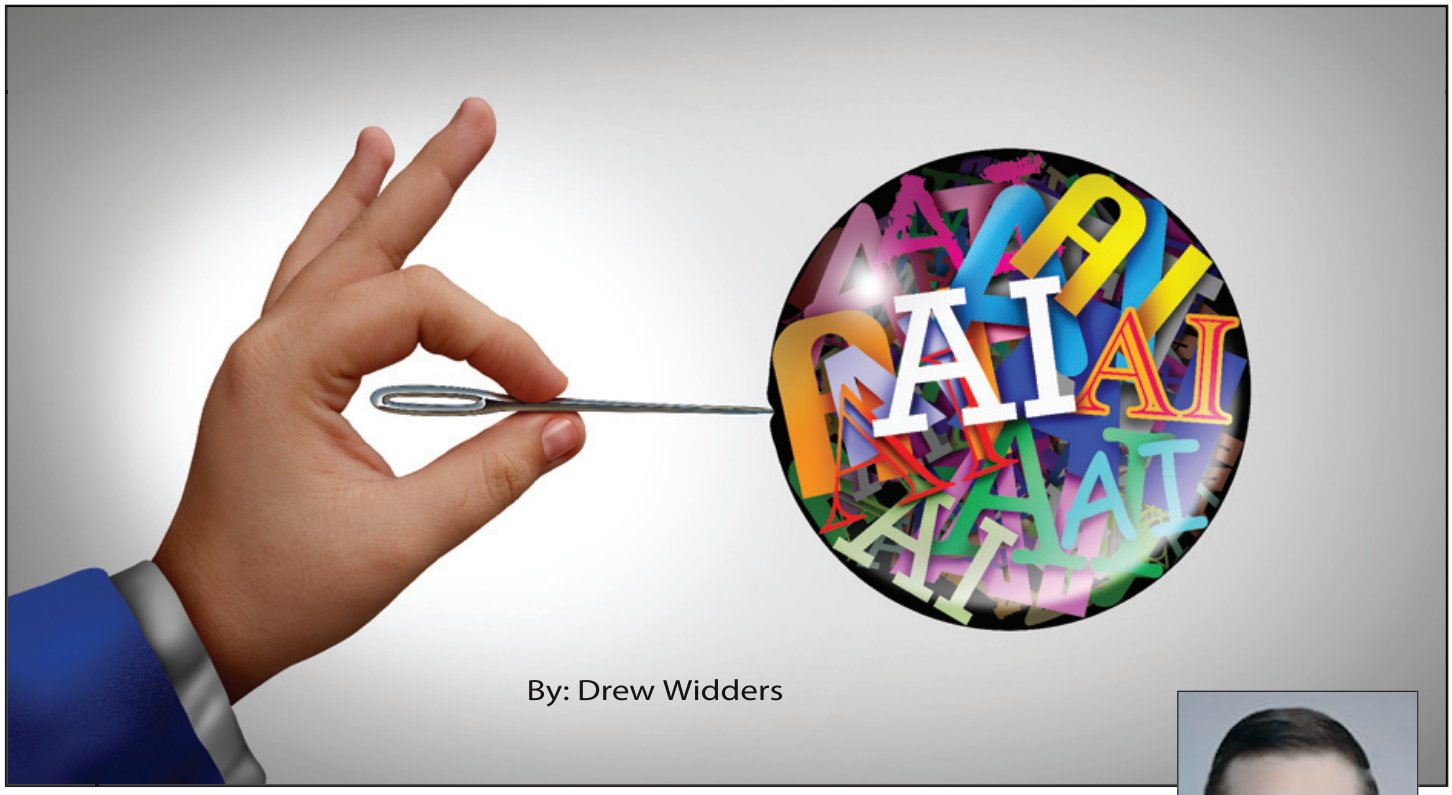
The CCTLA Trial Assistance Program operates as follows: A member who desires to participate in the program should contact me (Daniel S. Glass) at (916) 483-1971. We can discuss your case and your situation. Contact should be made about 100 days before the date set for trial, and we can find a date that is after the disclosure of experts and no closer than 30 days before trial for your presentation. I will then recruit volunteer experienced trial lawyers—either CCTLA board members or other CCTLA members with trial experience—to listen to your case. We will devote no more than four hours to listen to your Opening Statement, evidence and "offers of proof" for witness testimony and provide feedback.

With at least 30 days before trial, *IF* the panel has suggestions which you want to act on to alter your trial preparation and presentation, you have time to act. If not, you will at least have gained additional confidence in your plan for trial.

At all times, CCTLA's goal is to be there for its members. Through formal education seminars, through informal lunches, phone conversations, meetings and the most effective list service for plaintiff counsel.

This program has not been publicized very much and, because of that, it has not been utilized by the membership. Before it "goes away" for lack of use, think about it, and if your case is ready, feel free to use the program.

I look forward to hearing from anyone who is interested.



By: Drew Widders

Using AI for the First Time:

Time-saving tips and essential warnings for those who have yet to adopt this revolutionary technology

Drew Widders, Wilcoxen Callaham LLP is a CCTLA Vice President

Two years ago, I wrote an article about ChatGPT that urged caution. While those warnings remain valid, AI has evolved exponentially. There are now so many different versions and specialized AIs that they're too numerous to list. This article is for lawyers who haven't yet dipped their toes into the AI waters. If you're already using AI regularly, you likely know how transformative it can be.

Start Here: A Simple Test Drive

Before reading further, I challenge you to try this exercise. Go to chatgpt.com and have a conversation like you would with an associate in your office. Take your most recent case and describe it in two sentences without using names. End with "How would I prove negligence/malpractice/defamation/etc.?"

For example: *"I'm working on an automobile vs. pedestrian accident where my client was riding a bike across the street when struck, and the CHP found my client at fault. How would I prove the other driver was negligent in California?"*

Next, ask it to draft an investigation plan. Then request a complaint and discovery plan. Finally, ask it to draft the actual discovery requests. If the results don't surprise you, I'd be amazed. And this is just scratching the surface.

The Golden Rule: Verify Everything

As I discussed two years ago, both ChatGPT and my current favorite, Claude AI, continue to fabricate case law and statutes. AI apologizes when you call it out but keeps making the same mistakes, in my experience. A list of over 164 legal decisions where courts commented on AI fake citations and arguments can be found at damiencharlotin.com.

Our firm recently purchased a subscription to Lexis AI to limit these issues while using AI for legal research. Lexis AI is supposed to be limited to only real cases and statutes to avoid the fake citations and made-up cases that plague other AI platforms. While I don't find its responses in other areas as comprehensive as ChatGPT or my currently preferred AI, Claude, it's significantly better for legal research, returning relevant cases for simple inquiries. Recently, it replicated hours of regulatory research on a trucking case in seconds. However, it also has similar issues, claiming certain cases stand for positions that I

Continued on page 20

Continued from page 20

do not find supported. Its advantage, however, is that you can easily click on the pinpoint case cite to confirm.

Client Privacy and HIPAA: Proceed with Caution

Privacy concerns remain legitimate and require careful consideration. Some lawyers redact all identifying information before inputting data into AI, including medical records, while others fully inform the client that their information may be used in AI, including contract provisions allowing clients to opt into or out of AI use for their cases. Certain third-party vendor AIs have been designed to include extra protection for your client's private information.

The privacy implications are complex and beyond the scope of this short article, other than to advise proceeding with caution and consider ethical guidelines.

Practical Applications Throughout Litigation

Here are some uses for each stage of litigation:

• Case Intake and Investigation

AI can analyze initial case facts, helping you identify potential legal and factual issues and suggesting next steps to take. It can also draft relevant pre-filing documents such as spoliation letters and FOIA requests, even customizing them for your jurisdiction and specific case facts if you just ask.

• Pleading and Discovery

AI does a good job of drafting complaints, particularly when you upload a sample for it to use as a reference. For discovery, it can create interrogatories, requests for admission, and document requests based on your specific case facts, turning what used to take hours into a short verification task. Again, always verify your results.

• Depositions

AI can generate case-specific deposition questions and provide a checklist to be used with your client before their deposition.

• Trial Strategy

AI can generate case-specific sample opening scripts, direct examination outlines, and cross-examination questions.

Additional Tips for Success

• Utilize Projects: Create separate AI projects for each case, uploading relevant documents to build a knowledge base that improves responses with more case-specific details. Again, you will need to do what you think is best to protect your client's privacy.

• Use Deep Research Features: For complex issues, use "deep research" modes that spend 5-10 minutes gathering comprehensive information from multiple sources rather than providing quick responses.

The Bottom Line

This is just a tool that supplements your expertise, but you must review, verify, and adapt everything it produces to fit your specific needs and case requirements.

The learning curve is shorter than you think, but the potential time-saving advantage to your practice is significant.

You're Invited

"Don't sit, stay and lay down...
Come sip, swirl and swig
(even bad dogs get to have fun!)"

13th annual

From Wags to Riches

Reception & Silent Auction
to Benefit Abused & Neglected Pets
5:30-7:30 p.m., October 9, 2025

"From Wags to Riches" benefits Animal Rescues Scooter's Pals and Kimie's Kritters, honoring exceptional animal welfare advocates and guardians

Hosted by Jill P. Telfer
At 3071 E. Curtis Dr., Sacramento 95818
RSVP to Jill: jtelfer@telferlaw.com or (916) 446-1916

Tantalizing bites from Chef Zenti, plus libations from Alaro Craft Brewery

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** Complete as of press time*

First-Party Insurance Bad Faith in California: A UIM Case Perspective

By: Ognian Gavrilov

In California, insurance bad faith occurs when an insurer unreasonably withholds benefits owed to its insured. This obligation arises from the covenant of good faith and fair dealing implied in every insurance contract. In the realm of underinsured motorist (UIM) coverage—a form of first-party insurance—this duty takes on particular importance, yet it is frequently misunderstood or mishandled by insurance carriers.

Although UIM claims are clearly first-party in nature, many insurers continue to approach them procedurally and strategically as if they were third-party liability cases. This often-intentional mischaracterization enables carriers to delay evaluations, undervalue claims, and prolong settlement discussions under the pretext of "investigation"—mirroring tactics used against claimants who are strangers to the policy.

Ognian Gavrilov, Gavrilov and Brooks, is a CCTLA Board Memner

Why does this persist? A key reason is the lack of accountability. Few insureds file bad faith lawsuits, and even fewer claims survive motions to dismiss or summary judgment. Those that do are often removed to federal court, where stricter pleading standards and less sympathetic juries present additional hurdles. Federal judges may also be more inclined to grant summary judgment in borderline cases, further disincentivizing plaintiffs' attorneys from pursuing legitimate bad faith claims.

This lack of litigation pressure gives insurers little reason to change their behavior—which is why our office recently took one of these cases to trial in Sacramento County. The bad faith arose from the insurer's mishandling of a UIM claim stemming from a motor vehicle collision. The underlying arbitration resulted in the insurer successfully minimizing the value of the claim below the insured's best offer.

In the subsequent bad faith action, however, the jury found that the insurer not only breached the insurance contract but also acted with malice, oppression, or fraud. The jury found unreasonable delays, low-ball settlement offers, and a failure to conduct a timely and thorough investigation. The jury rejected the defense's attempt to justify these tactics as standard claims handling. Instead, they recognized a pattern of bad faith designed to delay, devalue, and force the insured to shoulder ongoing medical debt.

The result: a verdict including punitive damages and a total award of $1.14 million.

Spring Fling 2025

Honoring Excellence and Giving Back

Above: Tanya and Hank Greenblatt and Dawn McDermott

Above, honorees Joseph Babich and Chris Wood

Left: CCTLA President Glenn Guenard with reception hosts Amy and Chris Wood

CCTLA's 2025 Spring Reception was held May 29, honored two distinguished members with its annual awards and raised an impressive $106,731 for Sacramento Food Bank and Family Services.

Chris Wood, of Dreyer Babich Buccola Wood Campora, was honored with the Morton L. Friedman Humanitarian Award, while Joe Babich, also of Dreyer Babich Buccola Wood Campora, received the Joe Ramsey Professionalism Award. Each year, the CCTLA Board invites nominations from members for these awards.

The reception welcomed more than 150 guests and was graciously hosted at the home of Amy and Chris Woods. CCTLA extends a special thank you to them for their hospitality and generosity. Special appreciation also goes to Miner's Leap Winery for donating all the wine for the event—a tradition it has generously upheld for the past four years.

And, to all our sponsors, donors, and those who contributed auction items—your generosity and support made the event a great success, and the CCTLA Board extends its sincere gratitude. But of the most significance, a heartfelt thank you to our executive director, Debbie Frayne Keller, for her tireless and herculean efforts in organizing and running the Spring Reception and Auction each year. You are incredible!

Chelsea and Dominic Leber

Margaret Doyle, Rob Piering, Debbie Frayne Keller and Roger Dreyer

Alest Walker and Nina Luther-Phillips of Miner's Leap Winery

Spring Fling 2025

Lauri Greenberg, Jason Sigel, Darin Fain, Robert Buccola and Judge David Abbott (Ret.)

Above: Carlos Alcaine, Steve Halterbeck, Elisa Zitano, Blake Caughey, Rob Piering and Melissa Blair Aliotti

Above: Judge David Brown (Ret.), Judge Cecily Bond (Ret.) and Jack Vetter

Left: CCTLA Board Member Ognian Gavrilov, Judge Geoffrey Goodman (Ret.) and John Demas

Above: Judge George Acero and Judge Ken Brody

Left: Blake Young, president & CEO of Sacramento Food Bank and Family Services, and CCTLA President Glenn Guenard

CCTLA President-elect Amar Shergill with, from left: Goldy Shergill, Aariya Shergill and Sunsaara Shergill

Gabe Wackerman, Andrea Ramirez, Eliza Zitano and David Smith

Chris Jones, CCTLA Board member Kellen Sinclair, Noah Schwartz, Board Member Kirill Tarasenko and Hank Greenblatt

Spring Fling 2025

Joe Babich and Roger Dreyer

CCTLA Parliamentarian Margot Cutter, CCTLA Board Member Ian Barlow and Bill Kershaw

Marshall Way, Chris Wood and Neil Ferrera

Quentin Graeber, Sean Daly and Dr. Kim Hellgren

Rick and Cynthia Crow

Auctioneer for the evening was CCTLA Past President Justin Ward

Parker White and Natalie Robertson

Jeffrey and Daniela Levitt

Bettie and Ben de Bruyn

Thank you

Spring Reception Sponsors, Silent Auction Donors & Donors!

CCTLA's Spring Reception held on May 29, 2025 raised $106,731 for the Sacramento Food Bank and Family Services!

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CCTLA

SACRAMENTO Food Bank & Family SERVICES

The CCTLA Board extends a Special Thank You to our Spring Reception hosts, Chris + Amy Wood, for their wonderful hospitality and generosity in making this year's event such a success!

Ensuring Post Judgment Interest Pursuant to CCP Section 998 and Civil Code Section 3291

By: Kelsey J. Fischer, Esq.

Pursuant to California Code of Civil Procedure, Section 998, "The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted." (Cal Code Civ Proc § 998.)

In a multiple defendant case, plaintiff has the right to make an offer to one defendant and not the others. Section 998 does not require plaintiff to make a global settlement offer to all defendants in an action, or to make an offer that resolves all aspects of the case. (*Arno v. Helinet Corp.* (2005) 130 Cal. App. 4th 1019, 1026.) However, the offer does need to be clear and unambiguous if acceptance would resolve the claims between the parties.

Kelsey Fischer, Partner: Dreyer Babich Buccola Wood Campora, is a CCTLA Member

As an example, in a case involving respondent's superior, in order to be extremely clear that acceptance would dismiss the entire matter, the Offer to Compromise to the employer should dismiss the defendant's employee from the action. Further, the offer can state that Plaintiff will satisfy any all liens from the proceeds of the settlement. (*Toste v. CalPortland Construction* (2016) 245 Cal. App. 4th 362, 374.)

TO DEFENDANT [Defendant Employer] AND ITS ATTORNEYS OF RECORD:

Plaintiff, _____ offers to have judgment taken against Defendant, _[Defendant employer]_and for themselves in the above-entitled action pursuant to CCP section 998 for the sum of $_____, each party to bear its own costs.

Acceptance of this offer will result in a full and complete dismissal with prejudice of any and all of Plaintiff's claims against Defendant, _[Defendant's employee]_, arising out of the subject incident.

Acceptance of this offer will result in a full and complete dismissal of Plaintiff _[Plaintiff's spouse's]_loss of consortium claim.

Acceptance of this Offer to Compromise will obligate Plaintiff to satisfy any and all liens from the proceeds of the settlement.

Acceptance of this offer is conditioned upon signing the accompanying notice of acceptance within 30 days after the offer is made, or prior to trial, whichever is earliest, or else it will be deemed withdrawn.

If the award is more favorable than the Offer to Compromise, file a Motion for Prejudgment Interest

Following an award more favorable than the CCP 998 Offer, plaintiff should make a Motion for Prejudgment interest pursuant to California Code of Civil Procedure, Section 998, and California Civil Code, Section 3291. This asks the Court to order:

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"That Plaintiff is to recovery from Defendant prejudgment interest pursuant to CCP Section 998 and Civil Coe Section 3291 of $_____ per day from _____[date offer was made]___ until the satisfaction of judgment."

This Order is helpful as it establishes the daily rate of interest and the date the CCP 998 was served early for other post-trial motions, should they be necessary.

Defendant may argue that your 998 offer was not reasonable because it was premature

A 998 offer is valid only if it carries "some reasonable prospect of acceptance." (*Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692, 698.) "Whether a section 998 offer is reasonable must be determined by looking at circumstances when the offer was made." (*Id.* at p. 699.) The reasonableness of an offer is first determined based on the information known to the offeror. (See *ibid.*) "If an experienced attorney or judge, standing in [the offeror's] shoes, would place the prediction within a range of reasonably possible results, the prediction is reasonable." (*Ibid.*)

"If the offer is found reasonable by the first test, it must then satisfy a second test: whether [the offeror's] information was known or reasonably should have been known to [the offeree]. This second test is necessary because the section 998 mechanism works only where the offeree has reason to know the offer is a reasonable one. If the offeree has no reason to know the offer is reasonable, then the offeree cannot be expected to accept the offer." (*Ibid.*) "The latter standard is an objective one: would a reasonable person have discovered the information?" (*Ibid.*)

When a more favorable judgment is obtained, the burden falls on the offeree to show the 998 offer was not reasonable. (*Id.* at p. 700.) Thus, whether the 998 offer was valid depends on the outcome of the second test, whether Defendant knew or should have known the offer was reasonable.

A court must evaluate the totality of the circumstances in determining whether the offeree had sufficient information; however, "three factors are especially pertinent: (1) how far into the litigation the 998 offer was made; (2) the information available to the offeree prior to the 998 offer's expiration; and (3) whether the offeree let the offeror know it lacked sufficient information to evaluate the offer, and how the offeror responded." (*Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal. App.5th 918, 921.)

Was the Offer to Compromise unreasonable because it was premature?

(1) The court will look to when in the litigation the offer was made. Generally, offers made close in time to the filing of the complaint or to Defendant's answer and prior to discovery, either formally or informally, being exchanged will be suspect.

"A litigant receiving a 998 offer at the time a lawsuit is filed or soon thereafter is, as a general matter, less likely to have sufficient information upon which to evaluate that offer." (*Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal.App.5th 918, 921, finding the offer premature as it was made just 19 days after the

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complaint was served and five days after the defendant filed its answer; *Najera v. Huerta* (2011) 191 Cal.App.4th 872, 875, offer at same time complaint is served was premature; and *Whatley-Miller v. Cooper* (2013) 212 Cal.App.4th 1103, 1113, offer made two months after complaint was served found to be premature.)

However, remember it is the offeree's burden to show that the offer was not made in good faith, and that the discovery responses were in fact necessary to evaluate the offer. (*Smalley v. Subaru of America, Inc.* (2022) 87 Cal. App. 5th 450, Although the offeree argued that discovery responses produced after the offer expired clarified the case's value, the court determined that the offeree failed to show that these responses were necessary to evaluate the offer.)

(2) Then the Court will investigate what information was available to the offeree prior to the 998 offer's expiration. The offeree needs information regarding the issue of liability as well as on the amount of damages. (*Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal.App.5th 918, 925.) But this information can be made available to the offeree in many different ways, such as prior litigation between the two parties, prelitigation exchange between the parties, formal discovery, or a preexisting relationship that has a free flow of information between the parties. (*Id*.)

It is essential to know what information the offeree has available to them. What did you (or anyone else) provide them in terms of medical records and bills prior to the offer? Did they obtain records on their own via subpoena? Did they take the plaintiff's deposition? In the reply to your Motion for Prejudgment Interest, show the court what the other side actually had in their possession in terms of information about the case during the time they had to evaluate the offer.

(3) Finally, the Court will look to see if the offeree let the offeror know it lacked sufficient information to evaluate the offer, and how the offeror responded. (*Id*. at 921.)

An offeree may alert the offeror by (1) requesting discovery, either formally or informally (*Barba v. Perez* (2008) 166 Cal.App.4th 444, 450–451); (2) asking for an extension of the 998 offer's deadline (*Whatley-Miller*, supra, 212 Cal.App.4th at pp. 1107, 1114); or (3) otherwise objecting to the offer (*Najera*, supra, 191 Cal.App.4th at p. 875). If, after hearing the offeree's concerns, the offeror's response is less than forthcoming, "such obstinacy" is "potent evidence that [the] offer was neither reasonable nor made in good faith." (*Barba*, supra, 166 Cal.App.4th at p. 451.)

However, "[n]othing in California law requires a response by an offering party when the offeree raises objections or questions regarding the offer." (*Smalley*, supra 87 Cal. App. 5th at 461.) An objection stating, "Plaintiff objects to Defendant's 998 Offer as it is not reasonable." is a rejection of the section 998 offer." (*Id*.)

If an extension is requested, it should be considered, and most likely provided. "An open extension of time" is not necessary, but some extension should be provided to allow Defendant to gather the information they claim they need. Some options are: An additional set time such as 30 days or 90 days; or until the discovery or information they are seeking is obtained. (i.e. 10 days after the plaintiff's deposition, 30 days after the medical

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records are received via subpoena, etc.)

The Motion for Prejudgment Interest is under Civil Code Section 3291, not 3288, therefore interest on non-economic damages is permitted

California Civil Code Section 3291 provides that if a plaintiff makes a §?998 offer to settle, the defendant does not accept the offer, and the plaintiff subsequently obtains a more favorable judgment, the plaintiff is entitled to prejudgment interest on the damages attributable to personal injury, including non-economic damages. (See Cal Civ Code § 3291 and *Steinfeld v. Foote-Goldman Proctologic Medical Group, Inc.* (1997) 60 Cal. App. 4th 13, 21," prejudgment interest under Civil Code section 3291 may be awarded on personal injury awards that include emotional distress damages, citing *Lakin v. Watkins Associated Industries* (1993) 6 Cal. 4th 644, 656-657 & fn. 8.)

The purpose of prejudgment interest is to compensate the injured party for loss of use of the award during the prejudgment period; in other words, to make the plaintiff whole as of the date of the injury.

In enacting section 3291, the Legislature provided a means of compensating personal injury plaintiffs for loss of the use of money during the prejudgment period. (See *Lakin* supra 6 Cal.4th at 664-5.) This includes emotional distress damages in personal injury matters. (See *Steinfeld* supra 60 Cal. App. 4th at 15-16.) Hence, such interest may be awarded on personal injury damages that are not computable or subject to precise calculation, and which are determined by the subjected discretion of the trier of fact. (*Id*.)

The Impact of AB 747: What California Attorneys Should Know

By: Lindon Lilly

Lindon Lilly

As attorneys, you know how critical proper service of process is to the success of a case. It's not just about following procedural rules—it's about ensuring that your client's legal rights are protected from the outset. With Assembly Bill 747, also known as the Service and Process Accountability Reform and Equity (SPARE) Act, California is poised to introduce significant changes that could affect how your cases move forward, particularly in matters involving substituted or contested service.

What AB 747 Means for Attorneys

AB 747 introduces a new set of requirements and expectations aimed at improving accountability and transparency in service of process. Among the key provisions:

* Mandatory real-time tracking: Service attempts may need to be documented with GPS-tagged data, providing real-time evidence of location and time.
* Enhanced affidavit requirements: Process servers will be required to provide more detailed logs, including precise timeframes, methods, and descriptions of the individuals or properties encountered.
* Penalties for insufficient diligence: Courts will gain broader discretion to reject service attempts they deem "unreasonable" or lacking sufficient effort.

AB 747 is being actively amended, with its original language evolving as it moves through the process.

Why This Matters to Your Practice

The strength of a case often hinges on whether service was completed properly. Under AB 747, the burden of proof for demonstrating diligence will increase. Under AB-747, law firms, process servers, and investigators may experience increased operational costs and heightened scrutiny as compliance requirements tighten. Another concern is the lack of a standardized definition for "due diligence." Without uniform criteria, interpretations may vary across courts and counties, leading to inconsistent rulings on service validity. This creates uncertainty that could result in delays or additional litigation costs for your clients.

What Attorneys Can Do Now

1. Review your current service vendors: Ensure your process servers are capable of producing detailed, GPS-verified documentation of all attempts.

2. Update internal protocols: Consider implementing stricter record-keeping and oversight on service attempts to protect against challenges.

3. Stay engaged with legislative updates: Organizations such as the State Bar of California, California Association of Legal Support Professionals (CALSPro) and California Association of Licensed Investigators (CALI). You should actively track the bill's progress and implications.

Final Thoughts

AB 747 is not just an process server or investigators issue—it's a legal strategy issue. If passed, it will require a higher level of collaboration between attorneys and service providers to ensure that every attempt to serve is both documented and defensible.

For over three decades, I've worked with attorneys across California, handling the most challenging serves and investigative tasks. While I support reforms that promote transparency, I believe it is equally important that new regulations reflect the real-world challenges faced in the field. My advice: prepare early, adjust your expectations for service documentation, and maintain open lines of communication with your process servers and investigators.

***

This article was submitted by Lindon Lilly, founder and president of Rhino Investigation & Process Serving, with more than 30 years of experience in attorney support services. He is a member of the California Association of Licensed Investigators (CALI) and the National Council of Investigation and Security Services (NCISS), and he actively advocates for industry standards at both the state and national levels. The California Assembly has formally recognized Lilly for his work with victims' rights organizations. He can be reached at info@Illegalassistance.con

Status of the Civil Justice System at Sacramento Superior Court from the Presiding Judge's Civil Advisory Committee

1. Judicial Retirements, Appointments and Vacancies
• Hon. Maryanne Gilliard is retiring.

• Hon. Martin Tejeda, previously a commissioner, was appointed in May 2025. He will continue to work in the criminal collaborative court.

• One judicial vacancy still exists on the Sacramento County Superior Court .

2. Trials and Courtroom Availability

• Dept. 47 is getting cases out to trial as scheduled due predominatly to the increased cap set last August when additional judges became available to hear trials. No trailing or resetting of trials has been necessary due to lack of courtroom availability.

• The following is an updated summary for January – May 2025:

2025 Jan - May

Total Scheduled Civil Trial Assignment Hearings	**1273**
Total Civil Trials addressed by Dept. 47	**222**
Assigned to a Department	**71**
Pre-Assigned to a Department	**12**
Reset *(lack of courtroom availability)*	**0**
Continued *(requested by party within 4-6 weeks of trial date)*	**70**
Settled *(Settlements that occurred in D.59 and Notices of Settlement reported by parties within 4-*	**32**
Trailed	**0**
Dismissed	**21**
No Appearance	**9**
Dropped	**7**

3. Law and Motion Department Update on Hearings and Availability of Hearings and Impact of Judge Yap and Judge Miadich's Wednesday calendar (implemented 1-22-25)

• Law and Motion now has four total judges instead of only two – Judges Sueyoshi, Krueger, Yap and Miadich. As a result, there are more available Law and Motion dates, which caused the number of ex-parte applications for orders shortening time to decrease.

• The Court is working on a long-term goal of creating a civil "home court" by dividing civil cases among the four judges, so that each judge will have their own caseload, including case management which will result in continuity of decision making until the case is assigned for trial.

4. Update/Discussion of Court's Implementation of PAGA Early Evaluation Conference ("EEC") Procedures Outlined in paragraph 13 of the General Complex Case Standing Order and Any Best Practices

• Judge Damrell explained that new PAGA legislation created the opportunity for parties to request an EEC to attempt early case resolution. However, the Court has had only a few requests for EECs, and none have actually occurred in either complex court. Many PAGA attorneys already attempt early resolution of these cases, so perhaps parties are finding EECs unnecessary.

An EEC must be requested upon filing the Answer in a PAGA case. Upon request, the Court can accelerate a case management conference (CMC) to be held in two weeks of the request, so that the parties can discuss logistics with the Court. An EEC must be held within 70 days of the Court's order setting the conference. The Court can table the scheduling of the EEC at the early CMC to allow parties more time to decide whether to participate in an EEC.

If the judge is the evaluator, then the two complex court judges, Judges Tally and Damrell, have agreed to exchange cases so that the judge assigned for all purposes does not handle the EEC. The parties also can request a different judge.

Judge Damrell addressed the following submitted questions:

Q: If the parties are using a private evaluator (instead of a judge), how do they demonstrate that the evaluator is qualified?

A: The statute requires that the evaluator (mediator) have experience in employment law. It will be sufficient to state in your declaration or submission to the Court that the evaluator is qualified.

Q: Will the Court be issuing a further general standing order pertaining to EECs?

A: Not right now. Because the Court does not yet have

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experience with an EEC, they want to wait before issuing a standing order as to the process so they can take into account real issues and not address things in the abstract.

Q: Would data still need to be exchanged at an EEC in order to get a settlement approved by the Court after an EEC?

A: Yes, the Court still will need adequate support in the form of shared data in order to approve a PAGA settlement after an EEC (e.g., statistically significant sampling, wage and hour policies, employee handbook, etc.).

5. Procedure for requesting pre-assignment to a trial judge prior to scheduled trial date

A pre-assignment to a trial judge, prior to the scheduled date for trial, may be appropriate in certain cases. Parties may, 10 to 15 court days prior to the assigned trial date, submit an ex parte stipulation of all parties to Department 47 requesting pre-assignment to a trial judge. Information about this pilot project can be found on the court's website at https://sac-court.ca.gov/civil/presiding-judge-info.aspx. Due to the success of this pilot project, and interest expressed by counsel, the Court is planning to streamline the process, and provide the public with greater clarity regarding the criteria and procedure for requesting pre-assignment.

Judge Damrell also reminded everyone that the "complex case" designation is available for any type of case that meets the "complex" criteria – not just class actions and PAGA cases. And if you intend to designate your case complex, do so as early as possible in the process, in order to take advantage of the "all-purposes" assignment.

6. Update on Courthouse Opening

Another minor delay was reported in the completion of the new courthouse. The certificate of occupancy is expected by the end of the summer. After that, the technical upgrades should be completed in a few months. The move-in date is expected to be in January or February 2026.

7. Miscellaneous

Court administration requested that when attorneys communicate with the court, please be sure to include the case number and/or reference number in the subject line of the email for ease of reference.

 Continued from page 2

ject, including stopped traffic, and can stop the truck on its own when the driver fails to act. Daimler Trucks included Detroit Assurance 4.0 in some, but not all, of its trucks when it built the truck here.

They alleged that Daimler Trucks was liable for Ortiz's death under a strict products liability theory, in part because it sold the Cascadia here without Detroit Assurance 4.0. They also alleged that Daimler Trucks was liable for Ortiz's death under a negligence theory for similar reasons, asserting that it negligently designed the Cascadia. Daimler Trucks moved for summary judgment or, alternatively, summary adjudication on these two claims. It argued that both claims failed because it did not cause the collision; the truck's driver instead caused the collision. It also asserted that these claims failed because the Cascadia was not defective but because it did not cause the accident. Lastly, it argued that plaintiffs' claims failed because it had no duty to prevent or mitigate the collision.

The trial court granted Daimler Truck's motion. It said that an attentive driver could have driven the truck safely and avoided the accident even without Detroit Assurance 4.0. It then found, as a matter of law, that plaintiffs could neither establish that the allegedly defective design proximately caused the fatal accident nor that Daimler Trucks owed any applicable duty of care. Plaintiffs timely appealed.

ISSUE: Can truck manufacturer be held liable for defective design in causing collision along with driver?

RULING: Reversed and remanded.

REASONING: Starting with proximate cause, the trial court alluded to two potential causes of the accident: the truck's allegedly defective design in omitting Detroit Assurance 4.0, and the truck driver's failure to brake to avoid stopped traffic. The court then indicated that it found the driver, and not the allegedly defective design, to be the proximate cause of the mother's death. But a single injury can have multiple proximate causes. And deciding who should be found a proximate cause of an injury is typically a question of fact for the jury, not a question of law to be resolved on summary judgment.

TAYLOR v. LOS ANGELES UNIFIED SCHOOL DISTRICT
2025 2DCA/3, No. B333718 (July 2, 2025)

SCHOOL DISTRICTS ARE IMMUNE FROM LIABILITY FOR ACTIONS OF EMPLOYEES THAT OCCUR OFF CAMPUS

FACTS: Plaintiff Kenya Taylor hired Los Angeles Unified School District (LAUSD) employee Tyler Martin-Brand ("Martin-Brand") to babysit her six-year-old son, Dayvon, at Martin-Brand's home during the winter break in 2019. Tragically, Martin-Brand killed Dayvon.

Taylor sued LAUSD on the theory that it negligently hired and supervised Martin-Brand. A jury agreed and awarded Taylor $30 million in damages.

LAUSD appealed from the trial court order denying its motion for judgment notwithstanding the verdict (JNOV) and from the judgment.

ISSUE: Does Education Code § 44808, which limits school district liability for off-campus student injuries, immunize LAUSD from liability for Dayvon's death?

RULING: Reversed.

REASONING: The court concluded LAUSD was immune from liability for Dayvon's off-campus death pursuant to Education Code section 44808.1.

Public entities such as LAUSD are generally immune from liability. (Gov. Code, § 815.) However, "a public school district may be vicariously liable under [Government Code] Section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee" who harms a student. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879.) This potential liability "arises from the special relationship" between schools and students, "which relationship entail[s] the duty to take reasonable measures to protect [students] from injuries at the hands of others in the school environment." (*Id*. at p. 877.)

Yet, a school district may be vicariously liable for negligent hiring only when "no immunity provision applies." (*Id*. at p. 866.) LAUSD contended it was immune from liability for Dayvon's death pursuant to Section 44808, and the court agreed.

Section 44808 provides: "Notwithstanding any other provision of [the Education Code], no school district . . . or any officer or employee of such district . . . shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district . . . or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such 5 responsibility or liability or has failed to exercise reasonable care under the circumstances."

Section 44808 makes clear that "school districts are not responsible for the safety of students outside school property absent a specific undertaking by the school district and direct supervision by a district employee." Dayvon died off campus and not during any school undertaking. Under these circumstances, LAUSD is statutorily immune from liability.

GUTIERREZ v. TOSTADO
2025 California Supreme Court, No. S283128 (July 31, 2025)

MICRA DOES NOT APPLY IN ACCIDENT INVOLVING AMBULANCE DRIVER

FACTS: Plaintiff Francisco Gutierrez was rear-ended by an ambulance while driving on a highway in 2018. The ambulance was driven by EMT Uriel Tostado and operated by ProTransport-1, LLC, while transporting a patient.

Gutierrez filed a general negligence lawsuit in 2020, within two years of the accident. Defendants argued the case was time-barred under the Medical Injury Compensation Reform Act (MICRA), which has a one-year statute of limitations for medical

Continued on page 39

NOTABLE CITES

Continued from page 38

negligence.

Trial court and Court of Appeal (majority) sided with defendants, applying MICRA's shorter limitations period. The California Supreme Court granted review.

ISSUE: Whether MICRA's statute of limitations applies to a negligence claim brought by a driver injured in a traffic accident with an ambulance providing medical transport services.

RULING: Reversed and remanded with instructions.

REASONING: MICRA does not apply. The general two-year statute of limitations for personal injury claims (Code Civ. Proc. § 335.1) governs because the claim arises from a general duty to the public, not a professional medical duty owed to a patient. MICRA's one-year limitations period (§ 340.5) applies to "professional negligence" — i.e., negligent acts in the rendering of medical services.

The court reaffirmed its decision in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal. 4th 75 , holding that MICRA applies only when the injury stems from negligence in providing medical care to a patient.

In the present case, Gutierrez was not a patient, and his injuries stemmed from alleged negligent driving, not the provision of medical services. Driving an ambulance is a general public activity governed by ordinary care, not a specialized medical service.

Share your experiences, verdicts, lessons learned

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

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

The author's name must be included in the format the author wishes it published on the article. Authors also are welcome to submit their photo and/or art to go with the article (a high-resolution jpg or pdf files; no website art, which is too small).

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

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

California's Bane Act no longer serves as an effective check against police brutality

Reprinted from the Consumer Attorneys of California website: www.caoc.org

We are experiencing an unprecedented and dangerous tipping point in the relationship between police and the communities they are sworn to protect. Community trust is undermined when corrupt officers act with impunity and mistreat our citizens. California must act now to hold bad cops accountable for illegal use of force and to ensure our civil rights laws work in the pursuit of justice when legal rights are violated.

Restoring our California civil rights law is a necessary step towards restoring trust in government and our police.

THE PROBLEM

In California, law enforcement officers operate without accountability. Most cases of police brutality can be traced to a small cadre of violence-prone officers that create an unsafe culture for their fellow officers and the citizens they protect. In California and beyond, law enforcement agencies have proven ineffective at policing their own sworn officers.

Meanwhile, the primary civil rights law that protects Californians against police abuse – called the Tom Bane Civil Rights Act or the Bane Act – has been undercut by bad court decisions. We must act now to restore these protections to keep our communities safe.

The Bane Act was enacted by AB 63 in 1987 as part of a renewed effort to combat the disturbing rise in civil rights violations motivated by hatred and discrimination. The Bane Act was once among the most robust laws protecting civil rights in the nation, but it no longer serves as an effective check against police brutality, having been weakened in the following ways:

* It no longer alerts municipalities of harmful policing practices so corrective action can be taken.
* It no longer gives innocent victims of police brutality an effective civil recourse for justice and accountability.
* It no longer acts to hold police accountable to do the right thing.

California is considered a beacon of progressive democracy, but it has fallen behind other states that have adopted forceful civil rights protections against police abuse. We can restore public trust in law enforcement and give victims of police brutality the ability to seek justice.

THE ANSWER

We need to enact three major changes to the Bane Act to restore proper civil rights protections:

* Intent: A 2017 appellate court ruling tossed aside three decades of precedent and weakened our California civil rights by now requiring a showing of specific intent for a civil rights violation. This nearly impossible threshold requires that a victim of police brutality get inside the mind of an officer to prove he or she specifically intended to violate the civil rights of a victim. California needs to restore the original standard of the act, which required general intent to prove a civil rights violation.

* Accountability: Another 2017 court ruling granted officers sweeping immunity, even for violating one's fundamental Constitutional rights. For example, officers who plant evidence, fabricate police reports, or lie under oath are immune from a malicious prosecution claim – no matter how egregious the conduct. Law enforcement officers should not be immune – as they are now, due to this court ruling – to accountability for any excessive force injuries (or deaths) to "prisoners," a broad term that can include anyone from an inmate to someone being held under arrest. As a result, our jails have become Constitution-free zones even for totally innocent people, due to these cases applying any and all immunities to our civil rights.

* Wrongful death: California must close the loophole, created by one aberrant case, that restricts the ability of families of those killed by law enforcement to successfully sue for wrongful death. Currently, the only redress that families can seek for illegal death is funeral costs.

Note: None of these changes would lead to increased personal liability for police officers, nor would they act to discourage police recruitment. Why? California law already requires that public entities indemnify employees, including peace officers, for damages awards that result from conduct taken in the course and scope of their employment. One study of 81 jurisdictions over a six-year period found that no California law officer paid a single penny in a civil rights settlement or judgment.

California must act now to stop the illegal use of force by bad cops and ensure our civil rights law works for those who seek justice when the law is violated.

SB 29 (Laird) - Ensuring Justice for all Californians in Survival Actions: Sunset Extension

Reprinted from the Consumer Attorneys of California website: www.caoc.org

SB 29 (Laird) extends the sunset on SB 447 (Laird-2021) to ensure California families continue to have accountability for human suffering when their loved ones die while seeking justice in court. Current law, CCP § 377.34 enacted by SB 447 allows the family of injured individuals to recover for pain and suffering when their loved one dies. This law will sunset on January 1, 2026, meaning the previous restrictions would return unless SB 29 is passed.

BACKGROUND

CCP § 377.34 is a California law that governs damages recoverable in "survival actions," which are civil actions brought on behalf of deceased individuals for injuries they suffered before their death.

Historically, damages for pain, suffering, or disfigurement died with the victim, making it impossible to hold wrongdoers accountable after they passed. However, SB 447 (Laird-2021) corrected this injustice by allowing these damages to pass on to the family through a survival action.

Only three other states still allow pain and suffering damages to be extinguished upon a victim's death. California should not be one of them.

PROBLEM

Before SB 447, these damages – and justice for the harm done – died with the victim. The result was more than sixty years of injustice, as wrongdoers had an enormous financial incentive to delay case resolution by any means possible – knowing that a plaintiff's death would bring them financial gain by wiping out any potential pain and suffering damages.

This was especially true for elders, children, stay-at-home mothers, and low-income workers, as their pain and suffering damages could make up their most losses.

While legislation generally is not retroactive, SB 447 specifically applied not only to newly filed cases but also a small category of cases that had been granted preference given the impact of COVID-19 and the hardships suffered by elderly and terminally ill plaintiffs.

Additionally, the bill was bracketed with a "sunset clause" and Judicial Council reporting requirements. The Judicial Council report was submitted to the Legislature in January 2025.[1]

SB 29

SB 29 will extend the sunset on CCP § 377.34 until 2030 with additional reporting and data gathering by the Judicial Councill of California. That data will inform future legislative action on whether these changes should be made permanent.

MICRA Caps Continue to Apply

The bill leaves in place the medical malpractice caps (Medical Injury Compensation Act, or "MICRA") for all medical malpractice cases brought under Section 3333.2 of the Civil Code.

Further, claims brought under the California Elder Abuse Act (WIC §15630) also permit the recovery of financial damages for pain and suffering endured before death. In cases involving skilled nursing facilities (SNFs) that commit elder abuse and neglect, pain and suffering damages are available but only up to the MICRA limits. Nothing in SB 29 changes this.

EXAMPLES

Richard, San Francisco, CA

Richard and Jerry became partners in 1973 and got married when it became legal to do so in 2008. They were on vacation when a poorly secured Murphy bed frame fell on Jerry, injuring his shoulder and knee. Six months later, he died from an unrelated stroke. Jerry's claim against the faulty bedmaker continued on and because of SB 447 his spouse Richard was able to recover for Jerry's pre-death pain and suffering and hold the wrongdoer accountable.

Stevie, Vallejo, CA

Stevie was in his mid 40s when he suffered horrific tibial shaft fractures in an auto versus e-bike collision. Due to causes unrelated to the incident, he died just 6 months before his trial. He underwent 4 surgeries and was destined for many more had he lived to normal life expectancy. Thanks to SB 447, his medical debt was paid, and his 8-year-old daughter received the proceeds that will fund her college someday.

SOLUTION:

SB 29 extends the important changes enacted by 2021's SB 447 through 2030, preserving accountability for a victim's pain and suffering even if they pass away before trial or resolution of their case.

CO-SPONSORS:
Consumer Attorneys of California
Consumer Federation of California

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[1] https://courts.ca.gov/system/files/file/lr-2025-recovery-damages-decendents-estate-ccp37734d.pdf

Member Verdicts & Settlements

VERDICT
$18,512,253.94
Auto accident

Velazquez Guzman v. Wigle

Total Verdict: $18,512,253.94 (Past medical expenses $256,762.00, past lost earnings $356,301.47, future medical expenses $1,115,001, future lost earnings $2,284,189.47, past non-economic damages $4.5 million, future non-economic damages $10 million.

Plaintiff's Counsel: CCTLA Board Member Ognian Gavrilovand CCTLA Member Priscilla M. Parker, Gavrilov & Brooks

Defendant's Counsel: Wilma Gray, McNamara, Ambacher, Wheeler, Hirsig & Gray

Court & Judge: Sacramento, Dept 31, Judge Gevercer
Trial Dates: June 2, 2025 to June 11, 2025

Case Summary:

Facts: On Jan. 18, 2022, Velazquez Guzman and his coworker arrived at the Defendant's home to install custom cabinets. Guzman reversed and parked their box truck in the Defendant's driveway. At the request of Guzman and his coworker, Defendant went to obtain matching paint to allow for post-installation wall touch-ups.

While Guzman stood behind the box truck reviewing installation plans, Defendant entered his garage and proceeded to back his vehicle out. Defendant admitted—both in deposition and at trial—that he only checked his left rear-view mirror to avoid scraping his car against shelving inside the garage. He did not check his other mirrors or look directly behind him.

As Defendant reversed, Guzman's left leg became pinned between the rear of the Defendant's vehicle and the footrail of the box truck. Defendant heard Guzman banging on the trunk, exited the vehicle, saw what had occurred, and—panicking—returned to the car. After pulling forward, Defendant failed to properly put it in park, allowing the vehicle to roll backward, pinning Guzman's leg a second time.

Plaintiff's Background: At the time of the incident, Guzman was 45 years old. He had immigrated to the United States from Mexico 20 years prior. A lifelong carpenter, he had been employed with the closet company hired by Defendant for 16 years. Plaintiff spoke no English and had to testify through an interpreter.

Injuries: Guzman sustained a catastrophic crush injury to his lower left leg. The impact shattered the bones into many fragments. In addition to the extensive bone damage, the primary artery behind his left knee was severed, resulting in more than seven hours without blood flow to the leg.

Medical Treatment: Guzman underwent numerous complex surgeries at Kaiser as follows:

* Initial stabilization with external fixation hardware
* Vascular repair, using a vein harvested from his right thigh to construct a bypass artery
* Fasciotomies, with both calves surgically opened to relieve pressure from swelling
* Definitive repair, involving many screws and plates to reconstruct the leg
* Plastic surgery, to address massive tissue and muscle necrosis due to ischemia; involved muscle rearrangement and skin grafts

He remained hospitalized for one month, followed by another month in a rehabilitation facility. Soon after discharge, he developed sepsis and arthrofibrosis of the left knee due to excessive scar tissue. He underwent an additional surgery to release adhesions and restore mobility.

Approximately one-year post-injury, his wife brought him to Kaiser with a high fever. Surgeons determined that his hardware had become infected. The removal surgery was especially complex due to surrounding dead tissue and again required the involvement of a plastic surgeon to preserve remaining viable muscle.

Current Condition:

Today, Guzman's lower left leg is severely scarred, and he remains unable to walk unaided—still relying on crutches more than three years later. He cannot return to carpentry, and due to limited English proficiency and lack of transferable skills, retraining options are virtually nonexistent. Multiple experts, including the QME doctor, opined that he "might" be capable of sedentary work, if at all. Dr. Meredith opined that when Guzman undergoes knee replacement, he should be able to ambulate without crutches but with limitations.

Plaintiff Experts:

* Dennis Meredith, M.D. – Orthopedic Surgery
* Douglas Schuch, M.D. – Vascular Surgery
* Ricky Sarkisian, Ph.D. – Vocational Rehabilitation
* April Stallings – Lifecare Planning
* Cary Caulfield, P.T. – Functional Capacity Evaluation
* Craig Enos, C.P.A. – Economics

Defense Experts:

* Devon Zarkowsky, M.D. – Vascular Surgery
* Miranda Van Horn – Lifecare Planning
* Maria Brady – Vocational Rehabilitation
* Timothy Gillihan – Economics

Trial Summary:

Defense Counsel Wilma Gray aggressively disputed the nature and extent of Guzman's injuries, his lost wages, and the necessity of future medical care.

Despite admitting negligence and claiming to have accepted responsibility, Defense repeatedly shifted blame to the Plaintiff. Gray asked numerous questions about the box truck's parking location and whether Defendant knew it was in the driveway. Defendant, on the stand, concluded that the accident would not have occurred had Guzman not parked in the driveway.

Defense also attempted to minimize Plaintiff's future damages. Gray argued that Guzman could learn English, take computer classes, and pursue work in customer service or drafting. She challenged future medical costs, particularly the spinal cord stimulator recommended by Dr. Meredith, the only orthopedic

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expert in the case.

Fortunately, the jury was attentive and discerning, and Judge Gevercer provided excellent guidance. The jury accepted most of Plaintiff's future economic damages, and awarded $600K in past economic damages, $3.4 million in future economic damages, $4.5 million for past pain and suffering, and $10 million for future pain and suffering.

The total verdict of slightly over $18.5 million is the largest ever non-amputation shin/knee injury verdict in the U.S.

Offers and C.C.P. 998: This is an open policy case because Farmers failed to timely offer its insurance policy, failed to investigate ways to pay, and instructed its in-house counsel to take a position against the Defendant. We served a C.C.P. 998 for $2.5 million. Defense's best offer was $1.25 million.

VERDICT
$8.7 million

CCTLA members Ryan Sawyer & Robin Smith, Law Office of Ryan K. Sawyer, obtained an $8.7-million dollar jury verdict in Department 23 of Sacramento County in front of the Hon. Jill Talley.

This was a very challenging case due to the fact the Plaintiff had been involved in several motor vehicle collusions. In 2020, Plaintiff (31) was injured by a moving truck pulling into her lane. Her fiancé took her to the hospital later that day, where she was diagnosed with a concussion. The CT scan of her brain was negative, and a subsequent MRI of her brain was relatively normal. She suffered injury to her neck and low back as well, but these injuries were treated primarily by chiropractic care and physical therapy. Surgical invention was not required.

Plaintiff was subsequently involved in another crash in 2021, and a third in 2022.

Plaintiff, a financial coordinator for an orthodontics office, worked reduced hours for about 10 months after the subject crash but then quit because she was having cognitive issues that affected her ability to do the work. She split up with her fiancé, who testified that for years he held out hope she would get back to normal. This ex-fiancé actually married another woman just days after testifying in the case.

Plaintiff then attempted to start an energy healing business in an effort to earn income, and advertised by posting many videos online—in which she looked and sounded extremely normal compared to how she presented in her deposition and at trial. This was the defense's area of focus.

Plaintiff's retained experts were:

- Dr. Topher Stephenson (PM&R)
- Dr. Edgar Angelone (Neuropsychologist)
- Craig Enos (Economics)

Treating experts, including Dr. Jack Kraft (PCP) and Dr. Phillip Orisek (Orthopedic Surgeon), provided valuable testimony as well.

The Defense's retained experts were:

- Dr. David O'Grady (Neuropsychologist)
- Dr. Michael Klein (Orthopedic Surgeon)
- Dr. William Hoddick (Radiologist)
- Dr. Michael Millar (Chiro)

Dr. O'Grady testified that plaintiff failed the neuropsychological validity tests he conducted. Dr. Klein claimed the plaintiff was "faking" and being "purposefully deceptive" as well as presenting with a "foul" body odor at her examination. The body odor statement was rather odd and refuted by the nurse consultant who attended the exam. Dr. Hoddick claimed that the MRIs of the plaintiff's spine did not reveal anything unusual for a woman her age.

The jury thought that the graphical results of the two neuropsychological examinations Dr. Angelone conducted were helpful, and that the EEGs performed by Dr. Stephenson were persuasive.

The jury deliberated for a day and returned with a verdict of $8.7 million. Plaintiff had served a CCP 998 offer for the $1 million insurance policy limit in September 2022. Defendants served a CCP 998 offer for $400,000 a month before trial. Since Plaintiff beat her demand, another $2.6 million in interest should be recovered as well—causing the total judgment to exceed 11 million.

The case was originally defended by Mark Hazelwood with Allen, Glaessner, Hazelwood and Werth, LLP in San Francisco. For trial purposes it was transferred to Craig Humphrey with Messner Reeves LLP in Costa Mesa.

VERDICT
$2,156,635
Medical Negligence

Julie Swingle vs. Kaiser Foundation Health Plan, Inc.; Kaiser Permanente Insurance Corporation; Kaiser Foundation Hospitals; and The Permanente Medical Group, Inc.

Total Verdict: Past and future income loss $ 497,635, future medical expenses $ 1,229,000, non-economic damages $ 430,000. Total damages $2,156,635

Plaintiff's Counsel: CCTLA Members William C. Callaham and Christopher G. Romero, Wilcoxen Callaham,

Defendant's Counsel: Ann H. Larson of Craddick, Candland, Conti

Court & Judge: Kaiser Permanente Arbitration / Hon. David W. Abbott

Trial Dates: March 17, 2025 to March 25, 2025

Case Summary:

Claimant was permanently injured by the negligence of respondent in failing to timely diagnose and treat an injury to her lumbar spine that included spinal cord and nerve root compression and the development of cauda equina syndrome, causing her to suffer permanent paralysis in her lower extremities below her knees and urinary and fecal incontinence.

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Member Verdicts & Settlements

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VERDICT
$1.14 Million
Failure to Pay Timely Benefits Under Policy

Jeremy Philips v. Financial Pacific Insurance Co.
Case No. 34-2022-00329639

Judge: Jeffrey Galvin / Date: July 18, 2025
Plaintiff Attorneys: CCTLA Board Member Ognian Gavrilov, and Matthew Richards, Gavrilov & Brooks; and Robert Sweetin, Matheny Sears Linkert & Jaime
Defendant Attorney: Richard Bertolino, Dillon Fleming, Salcino Bertolino & Hallissy

Facts & Allegations: In September 2015, Plaintiff 48-year-old Jeremy Philips was t-boned at a high rate of speed by a vehicle that failed to stop at a stop sign. He suffered injuries to his abdomen and lumbar spine. At the time of the accident, he was in the course and scope of employment with a garage door installation and repair company. He settled both the third-party and the work comp cases, then pursued a UIM action against his employer's carrier for the remaining policy limits after applicable offsets. Philips demanded formal UIM arbitration in September 2017.

In October 2018, Philips' carrier, Financial Pacific Insurance Co., reserved his UIM case at $475,000 but did not make any offers. Philips underwent a lumbar fusion procedure in January 2019, and in March 2019 demanded the policy limits. FPIC responded with an offer of $275,412. After mediation on the UIM case, FPIC offered $350,000 to resolve Philips' claim. Philips then demanded $595,000 by way of a statutory offer to compromise (Code Civ. Proc., §998). The case proceeded to formal arbitrationm and Philips received an arbitration award of $585,000 in December 2020. The first-party bad-faith case followed.

Injuries/Damages: Plaintiff sought recovery of about $240,000 in attorney fees from the underlying UIM arbitration case, along with $60,000 in expert costs from arbitration. Plaintiff also sought recovery of pre-litigation interest, general damages and punitive damages.

Result: The jury returned a verdict of approximately $1.14 million, including pre-judgment interest and punitive damages. Trial lasted seven days, and the jury deliberated for a day and a half.

Plaintiff's Final Demand: $125,000 (Plaintiff accepted a mediator's proposal)

Last Offer: $75,000 (informal settlement offer)

Plaintiff Experts: None.

Defendant Experts: JoAnna Moore (insurance claims handling practices)

Post Trial: Plaintiff filed a cost memo and will move for attorney fees; Defendant will move for a motion for new trial.

CONFIDENTIAL
SETTLEMENT / MEDIATION
$20,000,000
Auto v. Motorcycle

Plaintiff's Counsel: CCTLA Member Hank G. Greenblatt, Esq., Dreyer Babich Buccola Wood Campora, LLP
Defendant's Counsel: Confidential
Mediator: Kenneth D. Gack, JAMS
Case Summary:

Plaintiff was traveling on his motorcycle when Defendant entered the intersection on a red light. Plaintiff broadsided the vehicle, sustaining massive head and chest injuries.

SETTLEMENT / MEDIATION
$18,500,000
Trip & Fall on a Sidewalk

Yu v City of Davis, et al

Court: Yolo County Superior Court

Total Settlement: $18,500,000 (City of Davis, $18,300,000; Brightview Landscape, $200,000)

Plaintiff's Counsel: Michael A. Schaps, The Schaps Law Office, APC, and CCTLA President Glenn Guenard and CCTLA Member Anthony Wallen, Guenard & Bozarth, LLP

Defendant's Counsel: City of Davis: Adam M. Ambrozy, Lenahan, Slater, Pearse & Majernik; Brightview Landscape: Mitchell C. Motu, Trachtman & Motu

Mediator: Howard Herman, Esq. JAMS
Case Summary:

While walking in a residential neighborhood in Davis, CA, the plaintiff, then a 62-year-old woman born in China who worked full time for U.C. Davis, tripped over a 1.5-inch sidewalk defect caused by tree root uplift. The defect was somewhat obscured by overgrown city-owned bushes and located near irregular shadows. Plaintiff, who had a pre-existing spinal condition (OPLL), suffered a catastrophic spinal cord injury that rendered her an incomplete quadriplegic.
Liability:

The City of Davis denied actual notice and argued it lacked constructive notice because its complaint-based inspection system was reasonable. Plaintiff's counsel were confident they could demonstrate constructive notice. The city lacked a proactive sidewalk-inspection program, even though it had received more than 40 sidewalk claims in the previous two decades. Moreover, the city maintained that its landscaping contractor, Brightview—which admittedly worked in the immediate vicinity of the defect many times in the months and years before Plaintiff's fall—was contractually obligated to report hazardous sidewalk defects. Yet the city admitted that over years, Bright-

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Member Verdicts & Settlements

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view had never reported a single sidewalk defect, and the city had never asked Brightview why it wasn't fulfilling its obligation to do so. According to the city itself, then, all it had to do was tell Brightview to do what it already was being paid to do and the defect could have been reported and fixed long before our client tripped. This put the city in an untenable position with respect to constructive notice, which turns on the reasonableness of its efforts to identify and fix dangerous conditions. To its credit, the city never seriously argued trivial defect. Nor did it file a motion for summary judgment.

Plaintiff retained human factors expert Bong Walsh to establish that overgrown vegetation contributed to the accident by interfering with hazard perception, creating triable issues regarding the landscaping contractor's liability. The case settled while Brightview's motion for summary judgment on causation was pending.

Damages:

Plaintiff's economic damages exceeded $10 million, including $8.6 million in future medical care costs. The life-care plan (Drs. Spaulding-Diaz and Bubanja) credibly addressed her ongoing needs for assistive equipment, home modifications, and specialized rehabilitation. Despite our client's remarkable recovery efforts—she regained limited mobility and even returned to work part time—she remains partially paralyzed, continues to experience chronic neuropathic pain, and still requires extensive daily care assistance.

Her husband's loss of consortium claim reflected his transition from spouse to full-time caregiver, including his early retirement from state employment to provide round-the-clock care.

Defense Arguments:

Defendants argued comparative fault, claiming the defect was visible and Plaintiff should have seen it. This was the only defense argument that had a reasonable chance of reducing a verdict, although it also might backfire on the city. Defendants also attempted to minimize damages by arguing Plaintiff's pre-existing OPLL condition contributed to the severity of her injuries and that she should have undergone prophylactic surgery before she fell. This argument was legally misconceived, and the Plaintiff's team was optimistic it could bar it through a motion in limine.

Resolution:

After extensive discovery and expert witness development, and two months before trial, the case settled at mediation for $18.5 million—$18.3 million from the City of Davis and $200,000 from the landscaping contractor. The settlement reflects the catastrophic nature of the injuries and the strength of the liability case against the city.

SETTLEMENT / MEDIATION
$2,850,000
Personal Injury

Jeraldine Medina v. Department of Forestry and Fire Protection (CALFIRE)

Plaintiff's Counsel: CCTLA Member Erika B. Garcia of Law Office of Michael R. Loewen and Noah Schwinghamer of Schwinghamer Law

Defendant's Counsel: Jason Cale and Jessica R. Doker, Deputy Attorney Generals with the Office of Attorney General

Mediator: Hon. Judge Kevin R. Culhane (Ret.)

Case Summary: On Sept. 10, 2019 around 9 p.m., Plaintiff Jeraldine Medina was riding as a backseat passenger in a 2012 Honda Odyssey when an uninsured driver driving a GMC Yukon SUV clipped the left rear bumper of Plaintiff's vehicle. Plaintiff's vehicle became disabled in lane three on the highway. A few minutes later, Defendant Westbrook, a fire chief with CalFire, crashed into the rear of Plaintiff's vehicle at approximately 65 mph. Defense argued that Defendant was less than 50% at fault and that the driver of Plaintiff's vehicle was comparatively negligent.

Plaintiff suffered a cervical disc herniation at C5-6, requiring a discectomy and decompression at C5-6, lumbar disc herniations requiring a fusion at L3-4 and L4-5 with subsequent hardware removal, and bilateral sacroiliac joint injuries requiring bilateral sacroiliac joint fusion. Plaintiff also suffered a traumatic brain injury that prevented her from returning to work as an insurance producer.

This case went to trial on Feb. 3, 2025 with the Hon. Judge Jill Talley in Sacramento Superior Court. The case was submitted to the jury on Feb. 19, 2025. Plaintiff presented 17 witnesses (three of whom were defense-retained experts). After two and a half days of deliberation, the jury announced they were deadlocked on the issue of whether Defendant was negligent by a preponderance of evidence. The judge declared a mistrial.

Thereafter, the parties agreed to go to mediation on April 22, 2025, with the Hon. Judge Kevin R. Culhane. The case settled for $2,850,000.

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CONFIDENTIAL
SETTLEMENT / MEDIATION
$2,600,000
Medical Malpractice

Total Settlement: $2,600,000 — Confidential
Plaintiff's Counsel: CCTLA Board Secretary Marti Taylor of Wilcoxen Callaham, LLP
Case Summary:
The case was a medical malpractice and wrongful death case against a local surgeon and medical group. A 47-year-old mother of two was not timely and properly diagnosed and treated for appendicitis ,which ultimately resulted in her death. Due to the failure of the medical providers, she died suddenly and unexpectedly at her home in front of her two children. Further, prior to her death, the decedent had prolonged pain and suffering from her untreated condition.

CONFIDENTIAL
SETTLEMENT / MEDIATION
$1,375,000
Medical Malpractice

Plaintiff's Counsel: CCTLA Board Secretary Marti Taylor of Wilcoxen Callaham, LLP
Case Summary: The case involved a medical malpractice claim arising out of care and treatment rendered to a 55-year-old woman by a local podiatrist and medical group. The physician negligently performed an ankle replacement surgery and was further negligent during her aftercare that resulted in permanent nerve damage and disability to her left foot and leg. Plaintiff was left permanently limited in her ability to walk and with significant pain.

Landmark Tesla Jury Verdict: $243,000,000

Fatal Tesla Autopilot Crash

Singleton Schreiber founding partner Brett Schreiber secured a federal jury verdict of $243 million for the family of Naibel Benavides and Dillon Angulo against Tesla, Inc., following a 2019 crash involving its Autopilot driver-assistance system. The crash resulted in the death of 22-year-old Naibel Benavides and serious injuries to her boyfriend, Dillon Angulo. This landmark verdict marks the first time Tesla has ever been held accountable in a jury trial.

On April 25, 2019, the Tesla, traveling nearly 70 mph with Autopilot engaged, failed to detect multiple stop signs and flashing red lights at a T-intersection, drove off the roadway and violently collided with Benavides and Angulo, who were sitting near the roadway.

At trial, evidence showed that Tesla designed Autopilot for use on controlled-access highways but did not restrict its use to such roads. Despite these known limitations, the company allowed drivers to activate the system in local residential areas and marketed it with statements suggesting the technology performed better than a human driver.

"Tesla designed Autopilot only for controlled access highways yet deliberately chose not to restrict drivers from using it elsewhere, alongside Elon Musk telling the world Autopilot drove better than humans," said Brett Schreiber, lead trial counsel for the plaintiffs. "Tesla's lies turned our roads into test tracks for their fundamentally flawed technology, putting everyday Americans like Naibel Benavides and Dillon Angulo in harm's way. Today's verdict represents justice for Naibel's tragic death and Dillon's lifelong injuries and holds Tesla and Musk accountable for propping up the company's trillion-dollar valuation with self-driving hype at the expense of human lives."

This case represents one of the largest verdicts ever against Tesla in a civil jury trial related to Autopilot and could have wide-ranging implications for how driver-assist technologies are marketed and deployed going forward.

Incident Reports *Are* Discoverable

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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

Tuesday, Sept. 9
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

Tuesday, Oct. 14
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

Tuesday, Nov. 4
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

Thursday, Dec. 4
5:30-7:30 p.m. – Holiday Reception & Annual Meeting & Installation of the 2026 CCTLA Board
Sheraton Grand Sacramento Hotel
1230 J Street, Sacramento, CA 95814

Tuesday, Dec. 9
Q & A Problem Solving Lunch
Noon - CCTLA Members Only - Zoom

CCTLA Calendar of Events