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Inside

Carelessness: Optional?
Page 3

Meet & Confer:
New Requirements
Page 7

Statutory Toolkit
for Plaintiff Attorneys
Page 11

Two Crashes, One Injury
Page 17

SB 623's Off-Duty Problem
Page 21

437c: A Powerful Tool
for Plaintiff Attorneys
Page 27

Notable Cites.....2
Presiding Judge Advisory
Committee Minutes.....31-32
Verdicts/Settlements.....34-43
CCTLA Calendar 44

CCTLA EVENTS

Fall Mixer Recap 15
Annual Holiday Reception... 24-25

Inspired to Look Ahead



Amar Shergill
CCTLA President
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This space often holds an end-of-year message from the CCTLA president summarizing the events of the past 12 months and thanking those who helped along the way. However, the calendar is such that the deadline for submission for publishing is Nov. 4, 2026, the day after the election that shocked America and the world. With that in mind, I am inspired to share my thoughts about the path ahead for consumer attorneys.

If we are honest about the last political decade, beginning in 2015 with Bernie, Clinton, Trump, and MAGA, consumer attorneys have shared responsibility for the political dysfunction of this era. We had misplaced faith in our political leaders, we leaned too hard on conventional political thought, and we did not empower ourselves to advocate for representatives who reflected our passion for justice. But we are not alone in our shortcomings. Many of our allies were in lockstep alongside us, contributing to the same electoral disaster.

It may be tempting now to look at recent election results and believe that we have turned the corner, but the truth is more complicated. Democracy cannot be entrusted to a single candle lighting the room while we turn our attention elsewhere. Democracy demands that we build that flame and protect it so that it yields a fire which keeps the darkness away.

For consumer attorneys, tending the fire means changing our practices so that we do not allow ourselves to be distracted from the pursuit of justice on behalf of our clients. The same moneyed interests that ruthlessly subvert our democracy also fueled the Uber statewide initiative that attacked consumer attorneys and all those we represent. That attack was almost successful because our reputation has been damaged, not only by years of corporate propaganda, but also by billboards and ads that undermine trust. If we are to improve public perception, we must change our behavior and commit to reasonable legislative reforms.

Just as Americans across the country came together to vote and demand better representatives, consumer attorneys must come together and demand change that will restore trust with the community.

It has been my honor to lead CCTLA in 2026, and I am humbled by the support of our Board and members.





Marti Taylor, Wilcoxen Callaham, is a CCTLA Vice President

NOTABLE CITES

By: Marti Taylor

GOROBETS v. JAGUAR LAND ROVER NORTH AMERICA, LLC

2026 California Supreme Court, No. S287946 (Aug, 6, 2026)

A SECTION 998 OFFER MAY GIVE THE OFFEREE A CHOICE OF ALTERNATIVE TERMS IF AT LEAST ONE ALTERNATIVE CAN BE VALUED

FACTS: In a Song-Beverly lemon law case, Jaguar served one section 998 offer with two options: $85,000 for return of the vehicle, or reimbursement of listed damage categories Gorobets would have to prove. The offer lapsed, the jury awarded $76,155, and the trial court shifted costs. The Court of Appeal affirmed but held section 998 categorically bars such offers.
ISSUE: May a single 998 offer presenting alternative terms trigger cost-shifting?
RULING: Cost award affirmed.
REASONING: Section 998 is silent, and under contract law an offer giving a choice of terms is a single offer. It is valid if the mutually exclusive alternatives and the method of acceptance are clear, and at least one alternative can be valued when made. Cost-shifting applies if the offeree fails to beat the highest-valued valid alternative. Ambiguity is construed against the offeror.

FAMILY VIOLENCE APPELLATE PROJECT v. SUPERIOR COURT

2026 California Supreme Court, No. S288176 (Aug. 10, 2026)

COURTS MUST PROVIDE INDIGENT LITIGANTS A VERBATIM RECORD, INCLUDING BY ELECTRONIC RECORDING WHEN NO REPORTER IS AVAILABLE

FACTS: Legal aid groups sought a writ against four superior courts. Because of the reporter shortage, fee waiver litigants often had to choose between a continuance and a hearing with no record, despite *Jameson v. Desta* (2018) 5 Cal.5th 594. Government Code section 69957 bars electronic recording in most civil matters.
ISSUE: Must courts give indigent civil litigants a way to obtain a verbatim record notwithstanding section 69957?
RULING: Yes. Writ of mandate issued.
REASONING: Under the in forma pauperis doctrine and *Jameson*, courts have a ministerial duty to provide indigent litigants, on request, an official verbatim record in all cases, including electronic recording when no reporter is available. Any litigant who cannot afford a private reporter may qualify.

TANSAVATDI v. CITY OF RANCHO PALOS VERDES

2026 2DCA/4 California Court of Appeal, No. B343512 (September 24, 2026)

DESIGN IMMUNITY BARS A FAILURE TO WARN CLAIM ATTACKING ONLY THE ADEQUACY OF WARNINGS INCLUDED IN AN APPROVED DESIGN

FACTS: A cyclist was killed at an intersection where a downhill bike lane ended. After the Supreme Court held design immunity does not categorically bar failure-to-warn claims (*Tansavatdi I*), the city showed on remand that its approved 2009 plans included warnings for the conditions at issue. The trial court granted summary judgment and awarded expert fees under a rejected 998 offer.
ISSUE: Does design immunity (Gov. Code, § 830.6) bar a failure to warn claim when the warning was part of the approved design?
RULING: Affirmed.
REASONING: If no warning is given, a jury decides whether one was required. But where a warning was part of a reasonable approved design and plaintiff claims only that more or different warnings were needed, the claim attacks the design and immunity applies. The 998 offer's general release was limited to "this action" and therefore valid.

Continued on page 33

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Carelessness: Optional?

By: Kirill B. Tarasenko



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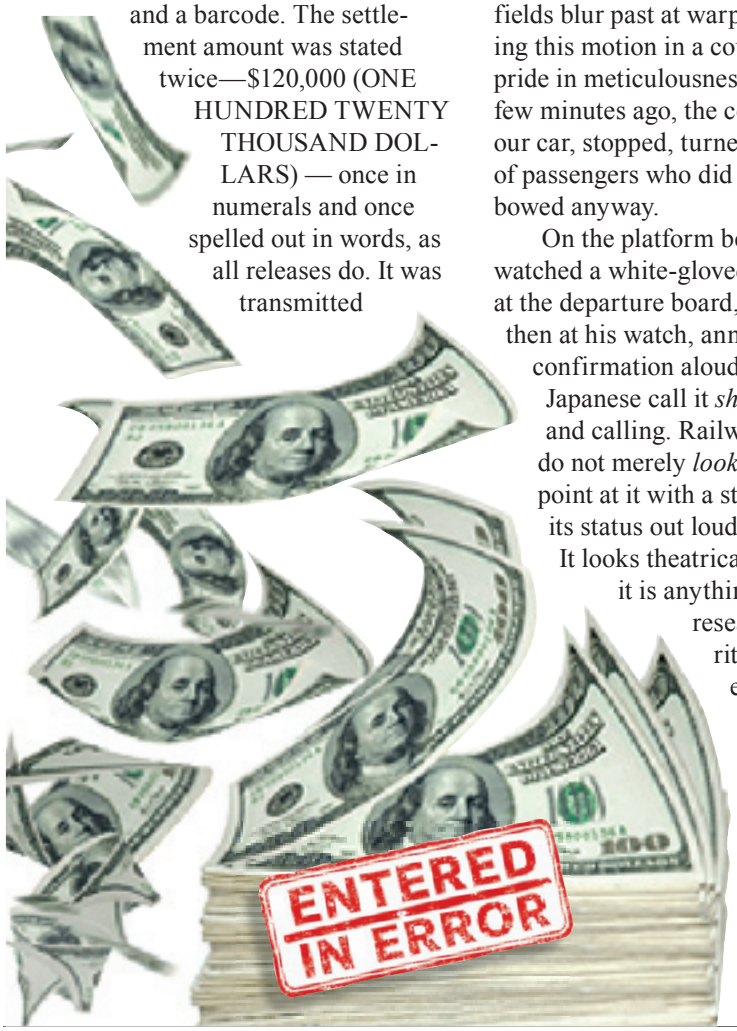
I am on a Shinkansen bullet train, hurtling along at 190 miles per hour, somewhere between Tokyo and Itoigawa, on the distant Japanese coastline. The ride is so smooth that my coffee has barely moved.

When the train is at top speed, objects close to the tracks blur past, but when the train slows down, like when we pass through densely populated areas or approach stations, everything comes into focus. But I can't stare at the countryside too long. I have a motion opposition due back home against an insurer that's doing its damnedest to rip off my client.

Details have been altered to protect the guilty, but the case goes like this: the insurer drafted a settlement release through its own automated document system, which stamps every page with a claim number, a control code, and a barcode. The settlement amount was stated twice—$120,000 (ONE HUNDRED TWENTY THOUSAND DOLLARS) — once in numerals and once spelled out in words, as all releases do. It was transmitted to my office twice, by email and by fax the morning after an insurance supervisor reviewed the file and gave the adjuster the blessing to resolve.



But when my client signed the release resolving the claim for $120,000 (ONE HUNDRED TWENTY THOUSAND DOLLARS), the carrier claimed it was an error caused by regular carelessness, but not by excessive carelessness, and that they had actually meant to submit a release for only *$12,000* (TWELVE THOUSAND DOLLARS). One-tenth as much. The motion asks a court to hold, as a matter of law, that its carelessness was forgivable and that my client should have known better than to believe the insurer's own release document. The carrier wants to enforce an executed $120,000 settlement for $12,000. I can't let that happen.

I sip my coffee and watch the rice fields blur past at warp speed. I am reading this motion in a country that takes pride in meticulousness and precision. A few minutes ago, the conductor entered our car, stopped, turned to face rows of passengers who did not look up, and bowed anyway.

On the platform before departure, I watched a white-gloved attendant point at the departure board, then at the track, then at his watch, announcing each confirmation aloud to no one. The Japanese call it *shisa kanko*, pointing and calling. Railway workers here do not merely *look* at a signal; they point at it with a straight arm, name its status out loud, and only then act. It looks theatrical, but in reality it is anything but. Railway researchers report the ritual cuts worker errors dramatically because it converts passive observation into active confirmation.

I don't mean to suggest that the people in Japan, as meticulous as they are, are incapable of error. Japan's worst modern rail disaster was caused by its punctuality culture itself. In 2005, at Amagasaki, a driver racing to make up 90 seconds took a curve too fast, and more than a hundred passengers died. The lesson the institutions drew was that everyone is capable of lapses of attention or judgment and that the only reliable defense is procedure: rituals of attention designed on the humble assumption that the person performing them will, someday, be careless.

I scroll the motion and the case file. The caption misspells the insured's name. My client, one man, is addressed throughout as "Plaintiffs." The carrier filed its motion but failed to file an answer to the complaint. I filed a default, but the court clerk erroneously rejected it. *Sigh.* In his supporting declaration, defense counsel swears he is licensed in the wrong state and twice attributes this case's discovery requests to a different insurance company altogether. A heading argues one evidence statute while citing a different code entirely. And in the reply, a quotation from a Supreme Court opinion has acquired, in brackets, words the Supreme Court never wrote. In fact, words that happen to supply exactly the proposition the opinion does not support, when defense counsel attempts to pull a fast one on the court by mischaracterizing unilateral mistake case law as applying to mutual mistake fact patterns.

Outside my window, the announcement says we are running on time. On this line, "on time" is measured against an average annual delay counted in seconds. Soon, a cleaning crew in uniform will board, rotate every seat and wipe every tray in seven minutes, then line up on the platform and bow. There is a management-school literature about that crew,

Continued on page 4

Continued from page 3

and the lesson is that no task is beneath craftsmanship.

Back to the insurer's predicament: they needed to argue rescission for unilateral mistake to undo the signed settlement. But in order to prevail, the mistaken party must prove, among other things, that its mistake was not the result of excessive carelessness, and that the other side knew of the error and exploited it. In essence, a plea about carelessness: *ours was forgivable; theirs was knowing.* You would think a carrier staking its entire case on the forgivability of its inattention would draft that plea with meticulous attention. Instead, counsel's declaration and the rest of the motion read like a text message sent from a moving escalator.

I write my opposition on a tray table on a bullet train where the minutiae are the point and the train window keeps offering me editorial advice.

I note that careful redundancy in writing only works if someone reads it. Stating sums in words and figures is our profession's original *poka-yoke*, the Japanese manufacturing term for mistake-proofing, for designing processes so that errors reveal themselves. It's found in the way Japanese swordsmiths forged katana hundreds of years ago and in the amazing kitchen knives made today. A slipped zero in numerals cannot survive contact with the written-out words, if someone, *anyone,* bothers to read both.

In the release at issue, the redundancy performed flawlessly: the document says the same amount twice. What failed was the reading and attention to detail. They loaded their release documents with safeguards consisting of recitals, integration clauses, dual statements in text and numerals, and then skimmed past all of them.

There are sake breweries in Miyagi Prefecture that mill sake rice until 94 percent (or even more) of every grain is gone. Imagine that, polishing off 94 percent of a single grain of rice, then repeating the process for every other grain of rice. What survives is the *shinpaku*, or the heart. Milled away are the fats, proteins and lipids that make rice good to eat but sake rough to drink. The result is absurd: nine-tenths of the raw material is sacrificed to purity.

Somewhere past Myoko, I start milling my own written opposition the same way. Everything that is not the center gets milled away. The offeror is the master of the offer, and the terms of the offer are contained within the four corners of the document. Everything outside the four corners is noise. I start drafting my own motion for summary adjudication, index finger on the screen, murmuring each figure: the amount in the release, the amount in their cover letter, the amount in my separate statement. Attention to detail is the point; it means attention is being paid.

The underlying principle the bowing conductor embodied to a car that never looked up is that craft is what you do when no one is watching. The adjuster's file was never supposed to be read by opposing counsel. The attorney's declaration was a formality. Except that in litigation, everything is eventually read by a judge, with a highlighter, deciding whose version of carefulness to believe. And when care is optional, mistakes are made.

A claims office somewhere is about to learn what Japan's railways and breweries have known for generations: precision is not a personality trait. It is a system of small rituals, performed with enough humility to assume that you, too, are capable of the slipped zero, thereby avoiding the catastrophic error, if it was an error at all.



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The Meet-and-Confer Declaration Just Got Two New Requirements

Here's How Not to Lose a Motion Over Them

By: Kellen Sinclair and James Schaefers



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James Schaefers is a Senior Associate at Stawicki Anderson & Sinclair

For 20 years, Code of Civil Procedure section 2016.040 asked one thing of a discovery motion: a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented. Most of us treated it as a formality. A meet-and-confer letter went out, the other side ignored it or sent a two-line response, and the declaration recited the exchange and attached the correspondence. Judges occasionally grumbled, and once in a while, one denied a motion for a thin effort, but a letter was generally enough.

As of Jan. 1, 2026, it isn't. Two separate amendments changed what the declaration must say, and discovery motions filed under the old template are at risk of being continued or denied without reaching the merits.

Change One:
The attempt has to be live

Subdivision (a) now requires the declaration to state facts showing a reasonable and good faith attempt, "either in person, by telephone, or by videoconference," to informally resolve each issue presented by the motion. The quoted phrase was added by AB 1521 (Stats. 2025, ch. 200, § 12).

The old statute said nothing about method. The new one names three, and email and letters are not among them. The most natural reading is that a declaration describing only an exchange of correspondence no longer describes the attempt the statute requires. Written communication still has a role: It frames the dispute, identifies the specific responses at issue, and proposes solutions. But the statute now contemplates that the letter is followed by a conversation, and the declaration has to show that you tried to have one.

Two points of caution. First, no appellate court has construed the new language yet, so how strictly trial courts will apply it is an open question. Some judges will treat a documented but unanswered request for a phone call as sufficient; others may want to see that the call actually happened. Until there is guidance, assume the stricter reading. Second, the statute requires an attempt, not an agreement. If opposing counsel refuses to get on the phone, say so in the declaration with dates and specifics. A declaration showing three documented requests for a call, each ignored, satisfies the statute. A declaration showing one letter does not.

The pre-amendment case law on what counts as good faith still applies and still matters. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431 held that the meet-and-confer requirement calls for a serious effort to resolve the dispute, not a perfunctory exchange, and that the level of effort required depends on the circumstances. *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424 confirmed that the trial court has discretion to deny a motion outright for an inadequate effort, or to order further conferring and continue the hearing. *Clement v. Alegre* (2009) 177 Cal.App.4th 1277 cuts the other way, cautioning that the obligation runs to both sides and that a responding party who stonewalls cannot then complain about the adequacy of the moving party's effort. Read together with the new text, these cases mean a court evaluating your declaration will ask not just whether you tried to talk, but whether the effort was proportionate to the dispute.

Change Two:
The court reporter sentence

AB 711 (Stats. 2025, ch. 64) added a new subdivision (b): the declaration "shall also include whether the moving party has met and conferred, including through an electronic communication, regarding the retention of a certified shorthand reporter to report the hearing on the motion." The subdivision closes by stating that it "does not prevent the retention of a certified shorthand reporter."

This one came from the court reporters' associations, and the legislative history frames it as a logistics fix. With official reporters scarce in civil departments, parties frequently either both hire a reporter for the same hearing or both assume the other side will. The statute's remedy is to make the parties talk about it, or at least to make the moving party say whether they did.

Three features of subdivision (b) are worth noting. First, it is a disclosure requirement, not a substantive one. The dec-

Continued on page 8

Continued from page 7

laration must say whether the conversation happened. It does not require that the parties agree to hire a reporter, that either party hire one, or that one party defer to the other. A truthful statement that no discussion occurred satisfies the text. Second, unlike subdivision (a), the reporter conversation can occur by email. A single sentence in your meet-and-confer letter asking whether opposing counsel intends to retain a reporter for the hearing is enough, so long as the declaration then reports the result. Third, because subdivision (b) lives inside the same declaration as subdivision (a), a court that is inclined to enforce section 2016.040 strictly can treat a declaration that is silent on the reporter question as facially incomplete. The Legislature plainly did not intend a missing sentence about reporters to sink a motion to compel, but nothing in the statute prevents a court from continuing or denying a motion for a deficient declaration, and that discretion now extends to subdivision (b). There is no published authority on the point. Don't be the test case.

What the declaration should look like

The statute requires facts, and the cases require a serious effort. The declaration that satisfies both is specific and chronological. It should cover the following.

- **The written outreach:** the date of the meet-and-confer letter, the responses it addressed, and the proposed resolution for each. Attach the letter. This is not the attempt the statute requires, but it is the record of what the attempt was about.
- **The live attempt:** the date and method of each request to confer by telephone, videoconference, or in person; whether the conference occurred; and if so, who participated and how long it lasted. If opposing counsel never responded, say so with dates. If the conference occurred, describe the issues discussed and the positions taken on each.
- **The outcome, issue by issue:** which disputes were resolved, which were narrowed, and which remain. For the ones that remain, state the other side's articulated position, even if it was simply a refusal. A court should be able to read this section and understand exactly what it is being asked to decide and why informal resolution failed.
- **The reporter sentence, in its own paragraph:** the date and method of the communication about retaining a certified shorthand reporter, and the result. If the conversation never happened, the declaration must say that. A workable template, adapted only to facts that actually occurred:

On [date], I sent a meet-and-confer letter to [counsel] identifying the deficiencies in [responding party]'s responses to [discovery set and numbers] and proposing [resolution]. A true copy is attached as Exhibit A.

On [date], I requested a telephone conference to discuss the letter. On [date], I conferred by [telephone/videoconference/in person] with [counsel] for approximately [duration]. We discussed [each disputed response and the parties' positions]. [Counsel] agreed to [items], and those are not presented by this motion. The parties were unable to resolve [items] because [stated reasons].

On [date], I also asked [counsel] by [email/telephone] whether the parties should retain a certified shorthand reporter to report the hearing on this motion. [Counsel responded that ___ / Counsel did not respond. / The parties have not met and conferred on this issue.]

Avoid the phrase "met and conferred in good faith" standing alone. It is a conclusion, and the statute asks for facts. A judge who sees that sentence without supporting dates and specifics will assume there aren't any.

A note on timing

The live-conference requirement interacts with the 45-day deadline to move to compel further responses under sections 2030.300, 2031.310, and 2033.290. Scheduling a call takes time, and opposing counsel who understands the new statute may run out the clock by agreeing to a conference and then becoming unavailable. Send the letter early, request the conference in the same letter, and propose specific dates. If the deadline is approaching and the call has not happened, document every attempt and file the motion anyway; a declaration showing diligent, specific efforts to arrange a conference that the other side would not schedule is a good-faith attempt within the meaning of the statute. If the court disagrees, the usual remedy is a continuance to confer further rather than a denial with prejudice, but you do not want to rely on that.

Update the templates

The practical work here is template maintenance. Every meet-and-confer letter in the office should close with a request for a telephone or video conference and a sentence asking about a court reporter for any resulting hearing. Every declaration template should have placeholders for the date and method of the live conference and a separate paragraph for the reporter disclosure. Done once, this adds 30 seconds to each motion. Not done, it hands the responding party a procedural objection that has nothing to do with whether their discovery responses were adequate, and it gives a busy judge an easy reason to send everyone home without ruling.



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When Criminal Conduct Creates Civil Remedies:

A California Plaintiff Lawyer's Statutory Toolkit

By: Alla Vorobets

California plaintiff lawyers regularly encounter conduct that appears criminal: money obtained by fraud, confidential communications recorded without consent, computer systems accessed without authorization, or constitutional rights violated through coercion. But alleging that a civil defendant violated a criminal statute does not necessarily create a civil claim.

A statutory violation supports a private cause of action only when the Legislature has manifested an intent to authorize private enforcement, ordinarily through clear statutory language creating liability or providing a civil remedy. (*Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 336; see also Code Civ. Proc., § 1859.) Courts generally will not infer a claim for damages merely because a statute prohibits conduct and imposes criminal penalties. (*Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 144; *Vikco Ins. Services, Inc. v. Ohio Indemnity Co.* (1999) 70 Cal.App.4th 55, 62.)



Alla Vorobets, Office of Alla V. Vorobets, is a CCTLA Board Member

That distinction should guide case screening and pleading. Some California statutes expressly authorize civil actions. Other criminal conduct corresponds to established torts such as fraud, conversion, assault, battery, or invasion of privacy. Still other statutory violations may inform the standard of care without creating an independent claim. The plaintiff lawyer's task is to identify the correct doctrinal route—and the remedies available through it.

In California, certain violations of the Penal Code allow victims to file civil lawsuits for damages, often enabling recovery of treble (triple) damages and attorney's fees.

Key examples include Penal Code section 496, subdivision (c), for theft/stolen property (including fraud), section 637.2 for privacy violations, and section 502 for unauthorized computer access.

Common Civil Causes of Action Stemming from Penal Code Violations

• *Penal Code Section 496: More Than a Receiving-Stolen-Property Statute*

Penal Code section 496 is among the most potent statutory remedies available in California business and fraud litigation. Subdivision (a) applies to a person who receives, conceals, sells, or withholds property from its owner, knowing the property was stolen or obtained through theft or extortion.

The California Supreme Court confirmed the statute's broad reach in *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361. The Court held that section 496 may apply when partnership funds are fraudulently diverted. Money qualifies as property, and property obtained through conduct constituting theft falls within the statute even when the dispute arises from a preexisting business relationship. (*Id.* at p. 361.) More recently, *Johnson v. Connie, LLC* (2025) 113 Cal.App.5th 850 reiterated that obtaining money by false pretenses with criminal intent may violate section 496, subdivision (a). (*Id.* at p. 853.)

At the same time, section 496 does not convert every breach of contract into civil theft. The plaintiff must prove more than nonperformance, an unpaid debt, or a broken promise.

Counsel should develop evidence showing that the defendant acted with the criminal intent necessary for theft and knew the property had been obtained by theft when receiving, concealing, or withholding it. (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 120.)

The property requirement also matters. A civil claim for violation of Penal Code section 496 based on allegedly stolen labor

Continued on page 12



Continued from page 11
was rejected in *Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 968, because labor is not within the scope of "property" as that term is used in the statute.

Penal Code section 496, subdivision (c), gives a person injured by a violation a civil action for three times actual damages, costs of suit, and reasonable attorney's fees. The remedy can apply to property obtained through false pretenses or fraud and is not confined to conventional trafficking in stolen goods.

• *Privacy Statutes with Express Remedies*

California's privacy statutes provide another important source of direct civil claims. Penal Code section 637.2 authorizes a person injured by specified unlawful interception or recording conduct to recover the greater of $5,000 per violation or three times actual damages. It also permits injunctive relief, and actual damages are not a prerequisite to suit. A plaintiff can plead both Penal Code section 637.2 statutory damages and punitive damages for common-law invasion of privacy, although, after a favorable verdict, the plaintiff would have to elect between statutory and punitive damages. (See, e.g., *Clauson v. Superior Court (*1998) 67 Cal.App.4th 1253.)

For plaintiffs, the statutory-damages option can be critical when the intrusion is serious but economic loss is difficult to quantify. Early investigation should establish each alleged interception or recording, the participants, the device or method used, when consent was or was not obtained, and the number of legally distinct violations.

The civil companion statute to Penal Code section 637.2 is provided by Civil Code section 1708.8. The latter imposes liability for a knowing physical invasion of land or airspace undertaken to capture an image, sound recording, or other physical impression of a person engaged in private, personal, or familial activity, when the intrusion would be offensive to a reasonable person. Civil Code section 1708.8, subdivision (d), provides for recovery of treble damages, special damages, punitive damages, a civil fine of not less than $5,000 but not to exceed $50,000, and equitable relief.

If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant is additionally subject to disgorgement of any proceeds or other consideration obtained from the violation of the statute. (*Id*.) Section 1708.8, subdivision (i), also states that its rights and remedies are cumulative and additional to other rights and remedies provided by law.

In the same vein, Civil Code section 1708.85 separately creates a private action for intentionally distributing intimate material without consent (also known as "revenge porn") when the statutory privacy, content, and damages requirements are satisfied.

Section 1708.85 allows victims to proceed using a pseudonym and provides for recovery of compensatory damages (including emotional distress and reputational harm), qualifying punitive damages, temporary and permanent injunctive relief, and a discretionary award of reasonable attorney's fees and costs.

These statutes address different conduct, so counsel should plead each theory according to its own elements rather than treating "invasion of privacy" as a single undifferentiated claim.

• *Computer Misuse*

Penal Code section 502 reflects a legislative purpose to protect individuals, businesses, and government entities against unauthorized access, interference, tampering, and damage involving computer systems and data. Civil remedies for violation of section 502 available to a prevailing plaintiff are compensatory damages (including qualifying verification costs), injunctive or other equitable relief, and a discretionary award of reasonable attorney's fees, in addition to any other civil remedy available to the prevailing plaintiff under California law.

In a potential Penal Code section 502 case, preservation should begin immediately. Access logs, credential histories, device records, system alerts, data-transfer evidence, and the chronology of authorization can determine whether the case concerns actionable unauthorized conduct or merely a dispute over permitted use.

• *Civil Rights and Commercial Identity*

The Tom Bane Civil Rights Act, set forth in Civil Code section 52.1, addresses interference or attempted interference with federal or state rights through threats, intimidation, or coercion. The remedies available under this statute include compensatory and actual damages (with a statutory minimum of $4,000 and treble damages available in specific contexts, even without proof of actual damages), punitive damages, a civil penalty of $25,000, injunctive or other equitable relief, attorney's fees, and costs. (Civ. Code, §§ 52, 52.1, subd. (c).)

A plaintiff must identify the underlying right and prove intentional interference or attempted interference accomplished through one of those prohibited means. (*A.B. v. County of San Diego (2025)* 112 Cal.App.5th 404, 417.) The statute should therefore be pleaded with factual specificity: what right was implicated, what the defendant intended, what threat or coercive act occurred, and how that act interfered with the plaintiff's exercise or enjoyment of the right.

Unauthorized commercial exploitation of identity presents another statutory avenue. Civil Code section 3344 imposes liability for knowingly using another person's name, voice, signature, photograph, or likeness in advertising, selling, or soliciting purchases without prior consent. Available relief includes the greater of $750 or actual damages, attributable profits not already included in actual damages, and potentially punitive damages. A plaintiff seeking profits must prove gross revenue attributable to the unauthorized use, after which the defendant bears the burden of proving deductible expenses. That allocation should shape written discovery and deposition planning.

A Practical Screening Framework

At intake, plaintiff's counsel should ask five questions:

1. **Does the statute expressly authorize a civil action?** Look for language identifying who may sue, the conduct creating liability, and the remedies available.
2. **What facts establish every statutory element?** Sepa-

Continued on page 13

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Continued from page 12

rate wrongful conduct from knowledge, intent, causation, injury, and damages.

3. **What is the protected interest?** Identify the specific property, communication, computer system, constitutional right, intimate material, or commercial identity involved.
4. Are enhanced remedies available? Treble damages, statutory damages, attorney's fees, profits, punitive damages, and injunctive relief may materially affect case value and litigation strategy.

5. **What parallel claims fit the same conduct?** Consider fraud, conversion, battery, negligence, privacy, and equitable relief—but avoid duplicative recovery and conclusory statutory labels.

California's statutory landscape offers powerful remedies for conduct that crosses the boundary between civil wrongdoing and crime. The strongest cases do not rely on the criminal character of the conduct alone. They identify an express civil remedy or a recognized tort, plead each element precisely, preserve the evidence needed to prove intent and causation, and build the damages theory from the governing statute forward.

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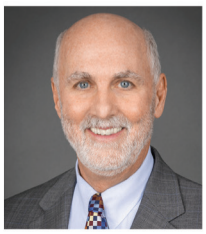
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CCTLA's First Fall Mixer Brings Members and Students Together to Celebrate 2026 Law School Scholarship Awards



Above, front: CCTLA Board Member Glenn Kenna; scholars Jaleel Baker, Mauressa Campbell, Deborah Ikenador and Violet Ruiz; and Board Member Kate Ebert; Back: Board Members Justin Gingery, Kellen Sinclair, Nolan Jones, Parliamentarian Robert Nelsen, Board Member Kelsey DePaoli and President Amar Shergill.



Right: CCTLA Board Member Kate Ebert

CCTLA and McGeorge School of Law hosted their first Fall Mixer on Sept. 28, welcoming 55 attendees for an evening of networking, mentorship, and refreshments. The program featured remarks from Professor Larry Levine, Amar Shergill, Kellen Sinclair, and Kate Ebert.

A highlight of the evening was the presentation of $7,000 in law school scholarships to five deserving students in recognition of their academic achievements, commitment to protecting the rights of California consumers, and interest in serving the greater Sacramento community as plaintiffs attorneys.

This year's scholarship recipients were:

- **First Place – $3,000:** Deborah Ikenador, Lincoln Law School. Deborah also was a CCTLA scholarship recipient in 2024 and 2025
- **Second Place – $2,000:** Dayonna Fulcher, Lincoln Law School
- **Third Place – $1,000:** Jaleel Baker, UC Davis School of Law
- **Fourth Place (Tie) – $500 each:** Mauressa Campbell and Violet Ruiz, McGeorge School of Law

CCTLA is proud to support these students as they pursue their legal education and future careers in the legal profession.

A special thank-you to our event sponsors—Creative Legal Funding, Brett Hansbery, Stawicki Anderson & Sinclair, and McGeorge School of Law—for their generous support in making our first Fall Mixer a success. Thank you to everyone who attended, adding to the success. We look forward to continuing this as a CCTLA tradition.



Above, CCTLA Board Member Kellen Sinclair





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Two Crashes, One Injury: When Medicine Cannot Neatly Divide the Harm



By: Ryan Dostart

Personal injury cases usually follow a familiar chronology: collision, injury, treatment, recovery. But what happens when a second collision occurs before the Plaintiff has even had an opportunity to fully recover from the first?

Consider this hypothetical:

A plaintiff is rear-ended on January 1 and develops cervical and lumbar pain. She goes to the emergency room and is advised to follow up with her primary care physician. Then, five days later, while still symptomatic, she is involved in another vehicle collision. The second collision affects the same body regions. Two years later, her doctors agree both collisions contributed to her condition.

What they cannot honestly say is that Crash One caused 70 percent of her lumbar injury and Crash Two caused 30 percent.

At trial, the second defendant argues: "Plaintiff has the burden of proving what injuries were caused in the second collision. If she cannot separate the two collisions, she cannot recover those damages from us."

That sounds intuitive. But it conflates two questions: Did the second collision cause harm? And, if so, can that harm reasonably be separated from the harm caused by the first collision?

Causation Comes First

Obviously, the plaintiff still must prove the second defendant's negligence was a substantial factor in causing harm. Nothing about an indivisible-injury theory eliminates that burden.

A physician may testify, to a reasonable degree of medical certainty, that the second collision aggravated the plaintiff's condition, increased symptoms, prolonged recovery, and contributed to the need for treatment—while also explaining that medicine provides no reliable basis for dividing the resulting condition into percentages.



Ryan Dostart, Dostart Law Group, is a CCTLA Board Member

California law has long recognized that comparative fault does not necessarily make an indivisible injury divisible. In *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, the Supreme Court discussed the liability of tortfeasors whose negligence contributes to an indivisible injury. While Proposition 51 changed how non-economic damages are apportioned among joint and several tortfeasors, *Leung v. Verdugo Hills Hospital* (2012) 55 Cal.4th 291 later reiterated the continuing application of joint liability for economic damages in appropriate cases.

Older successive-impact cases are even more instructive.

In *Eramdjian v. Interstate Bakery Corp.* (1957) 153 Cal.App.2d 590, the plaintiff was thrown from a motorcycle and then run over by another vehicle. The court rejected the premise that the plaintiff necessarily had to prove which specific injuries resulted from which event where the harm could not reasonably be separated.

Similarly, *Lareau v. Southern Pacific Transportation Co.* (1975) 44 Cal. App.3d 783 involved an automobile collision followed shortly by a train impact. The court recognized burden shifting where successive negligent actors contributed to damage that was incapable of apportionment.

Those cases involved closely connected impacts. Two accidents separated by five days present a more difficult question. The cases do not stand for the proposition that any two collisions involving the same body part automatically create an indivisible injury. The medical evidence remains critical.

But the underlying principle is important: When successive tortious events substantially contribute to the

Continued on page 18

Continued from page 17

same harm, the inability to manufacture a precise allocation does not necessarily defeat recovery.

What Makes an Injury Indivisible?

Some cases are easy. Crash One fractures the Plaintiff's wrist. Six months later, Crash Two tears her ACL. Different injuries, different treatment, different damages.

The more complex case involves overlapping harm.

Crash One produces cervical and lumbar symptoms. Before they resolve, Crash Two aggravates the same areas. Treatment after the second collision addresses the combined condition. Doctors can say both events contributed but cannot reliably identify which injection, therapy session, or month of pain should be attributed to which collision.

Henry v. Superior Court (2008) 160 Cal.App.4th 440 provides useful language. Although it involved an original tort followed by allegedly negligent medical treatment, the court explained that injuries may constitute the same harm where they are "causally interrelated," even if they are not literally physically inseparable.

That distinction impacts how we examine doctors in these types of cases.

Ask the Right Medical Questions

The wrong question to ask is:

"Doctor, what percentage of the plaintiff's back condition was caused by the second collision?"

That invites a number the doctor may have no scientific basis to give, and one a defense doctor will likely be eager to give.

Instead, start with causation. Had the condition resolved before the second collision? Did the second collision aggravate the condition? Did symptoms increase? Did it prolong recovery? Did it increase the need for treatment? Was it a substantial contributing cause of the condition that followed? Was it a substantial factor in the ongoing need for care?

Then address divisibility. Can the doctor identify which portion of the plaintiff's pain came from Crash One versus Crash Two? Can the doctor determine which procedures would have occurred absent the second collision? Is there an accepted methodology for assigning percentages? Would doing so require speculation?

The Same Issue Exists on Cross

Suppose the defense expert attempts to assign causation to only one of the collisions or provides some specific percentage apportionment between the two collisions.

Follow that absurd answer to its illogical conclusion.

Doctor, you cannot exclude either collision as being more than a trivial factor in causing Plaintiff's injuries? You cannot exclude either collision as contributing to Plaintiff's ongoing need for medical care? You agree additional trauma can aggravate an already symptomatic spine? You cannot say the plaintiff would have required the same treatment had Crash Two never occurred? And you have no reliable medical methodology for assigning percentages?

The defense expert will either tacitly concede that the harm cannot fairly be divided or find himself or herself out on a limb when none of the other medical providers can support such a position.

Fault Is Not the Same as Injury

Now assume the first driver settles.

The second defendant may seek to place that driver on the verdict form. A defendant seeking to allocate fault to a nonparty bears the burden of proving that the nonparty was at fault and that the fault was a substantial factor in causing the Plaintiff's harm. (CACI No. 406; *Phipps v. Copeland Corp. LLC* (2021) 64 Cal. App.5th 319, 332; *Scott v. C.R. Bard, Inc.* (2014) 231 Cal.App.4th 763, 785.)

But determining the percentage of fault is not the same as determining the percentage of **injury**.

The jury may assign comparative responsibility between two drivers while the medical evidence provides no reasonable basis to divide the plaintiff's economic harm into matching percentages.

That distinction matters under Proposition 51. Civil Code section 1431.2 generally makes non-economic damages several according to each tortfeasor's percentage of fault, while California continues to recognize joint liability for economic damages where multiple tortfeasors legally cause the same indivisible harm.[1]

Settlements and the Verdict Form

A settlement by the first tortfeasor does not mean the jury should discount its damages award. Code of Civil Procedure sections 877 and 877.6 govern settlement credits and contribution issues. CACI No. 3926 instructs jurors to determine damages without considering the settlement; the court makes the appropriate deduction afterward.

The verdict form is equally important. The defense may want to include a question on the special verdict form, such as: "What percentage of Plaintiff's lumbar injury was caused by Defendant Two?"

That wording assumes the injury is medically divisible.

Compare that with the ordinary causation question: Was Defendant Two's negligence a substantial factor in causing harm? A separate question can then address comparative responsibility.

CACI No. 3933 reflects this distinction where multiple defendants are responsible for the same harm: the jury determines total damages and does not divide those damages among defendants. The instruction makes clear that it does not apply where separate tortfeasors caused separate injuries.

The divisibility issue should therefore be addressed during discovery, expert depositions, and motions in limine—not for the first time while drafting the special verdict form.

In Conclusion

A plaintiff who enters Crash Two with an already injured neck cannot recover from Defendant Two for the condition exactly as it existed beforehand. But if the second collision makes that condition worse, California law permits

Continued on page 19

Continued from page 18

recovery for the aggravation. CACI No. 3927 recognizes that principle.

Of course, the plaintiff still must prove causation. The second crash cannot simply be blamed for every complaint that follows. And where competent evidence provides a reasonable basis to separate the harm, the injuries should be separated.

But trial lawyers should also be skeptical of false precision. Two crashes do not always produce two neatly divisible injuries. Sometimes they produce one causally interrelated condition to which both events materially contributed.

Recognizing that distinction early can shape the medical testimony, expert examinations, settlement strategy, jury instructions, verdict form—and ultimately the result.

Endnote

[1] Civil Code section 1431.2. Effective January 1, 2027, the statute contains a limited exception for public entities. In actions filed on or after that date, a public entity found 15 percent or less at fault is severally liable for economic damages in proportion to its percentage of fault. (Stats. 2026, ch. 971 [SB 577].)

Authorities

American Motorcycle Assn. v. Superior Court (1978) 20 Cal.3d 578; Leung v. Verdugo Hills Hospital (2012) 55 Cal.4th 291; Eramdjian v. Interstate Bakery Corp. (1957) 153 Cal.App.2d 590; Lareau v. Southern Pacific Transportation Co. (1975) 44 Cal.App.3d 783; Henry v. Superior Court (2008) 160 Cal.App.4th 440; Phipps v. Copeland Corp. LLC (2021) 64 Cal.App.5th 319; Scott v. C.R. Bard, Inc. (2014) 231 Cal.App.4th 763; Code Civ. Proc., §§ 877, 877.6; CACI Nos. 406, 3926, 3927, 3933.

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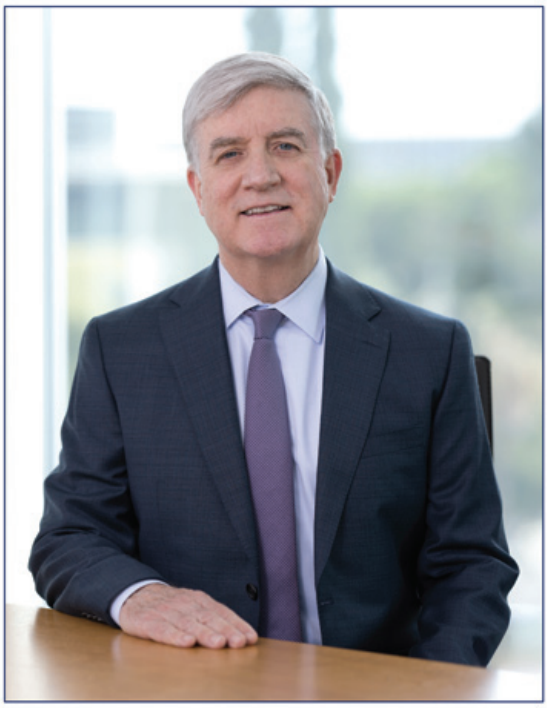

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When Does a Rideshare Driver Stop Being an "App-Based Driver"? SB 623's Off-Duty Problem

By: Glenn Kenna

Beginning on Jan. 1, 2027, Senate Bill 623 adds Civil Code section 3333.9, governing past medical expenses for treatment by lien-based providers in claims against a "network company," its subsidiaries, or "app-based drivers." While all attorneys with claims against any rideshare or app-based delivery company should read and understand Civil Code section 3333.9, the focus of this article is simple: does a driver have to be actively engaged with a delivery or rideshare app for Civil Code section 3333.9 to apply?

To evaluate the application of section 3333.9, it is important to understand the definitions involved. Civil Code section 3333.9 borrows its definitions from section 7463 of the Business and Professions Code: a "network company" under Civil Code section 3333.9 includes a delivery network company ("DNC") or a transportation network company ("TNC"). Section 3333.9 also applies to charter-party carriers of passengers ("TCP").[1] A DNC operates an on-demand delivery platform and records its couriers' engaged time and miles; a TNC connects passengers with personal-vehicle drivers for compensated, prearranged transportation through an application; and a TCP borrows its definition from Public Utilities Code section 5360 and is "every person [including any corporation or entity] engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state" when, for the purposes of Civil Code section 3333.9, such transportation is arranged through an app. An "app-based driver" is a DNC courier, TNC driver, or TCP driver or permit holder for whom all four conditions of Business and Professions Code section 7451 are satisfied.[2]



Glenn Kenna, Managing Attorney at Tiemann Law Firm, is a CCTLA Board Member

That is a considerable amount of statutory machinery to answer a question section 3333.9 never expressly asks: Must the driver actually be working through an app when the collision occurs?

Consider the following commonplace collision. A motorist runs a red light while driving to the grocery store on a Sunday. The motorist also drives for a rideshare company on Friday nights but was logged off when the collision occurred. The injured plaintiff treats on a lien, never considers rideshare coverage, and makes a claim against the motorist, which the motorist's personal auto insurer defends. Is the plaintiff now subject to Civil Code section 3333.9's new limitations on lien-based medical expenses merely because the defendant sometimes drives for an app? On the statute's present wording, that question is far more difficult than it should be.

Section 3333.9, subdivision (a)(1), applies to any civil case, claim, action, or arbitration against a network company, its subsidiary, or an app-based driver arising out of a qualifying automobile accident. It does not say that the driver must have been logged on, available for requests, en route to a pickup, transporting a passenger, or otherwise acting for a network company at the moment of impact. The statute defines an "automobile accident" broadly enough to encompass the owner-

Continued on page 22

Continued from page 21

ship, operation, use, parking, and even storage of a motor vehicle.[3]

A defendant in the hypothetical presented here, seeking the statute's benefit, will start with the text. Section 3333.9 focuses on the relationship between the driver and the application; it is not written with a trip-specific test or limitation. The Legislature could have specified an online status or trip phase, as it does elsewhere, but those words do not appear in section 3333.9. Reading the statute, one could argue that the defendant's continuing status as an app-based driver or permit holder generally, not what the defendant was doing that afternoon, triggers the statute. A lawyer remains a lawyer on Sunday. Why, the defense will ask, should an app-based driver cease to be an app-based driver upon logging off? What about a TCP permit holder? They continue to hold a permit even when not engaged on a ride.

The plaintiff will balk at this interpretation. They will argue that the statute is clearly directed at rideshare accidents and lien practices, not a general rewrite of medical damages for private motorists who happen to maintain a delivery or rideshare account. "TNC driver" incorporates Public Utilities Code section 5431, subdivision (a), which defines a driver by use of a vehicle in connection with a TNC platform to connect with passengers. A "DNC courier" provides delivery services through a platform.[4] These definitions supply a plausible basis for requiring a connection between the collision and app-based activity, even though section 3333.9 does not spell out that limitation.

California courts read statutory words in their context and avoid constructions that defeat the evident legislative purpose.[5] Yet courts cannot casually add words the Legislature did not use. That tension, not a settled rule, will govern the off-duty dispute. The Senate Judiciary Committee's June 23, 2026, background paper repeatedly characterizes SB 623 as targeted at the TNC industry, but legislative purpose alone may not resolve the breadth of the enacted text.

There is likely going to be litigation to resolve whether section 3333.9 reaches a collision caused by a driver who is entirely off the app on personal business. The defense has a serious textual argument; the plaintiff has a serious contextual one. What the statute conspicuously lacks is an explicit requirement that the accident occur during engaged time, while online, or in the course of a rideshare or delivery service.

The first contested motions will likely focus on the exact words of sections 3333.9, 7463, and 7451, the records establishing the defendant's actual status, and the relationship, if any, between the collision and platform activity. Until a court supplies the missing boundary, every motor vehicle intake presents a question we did not previously have to ask: Was the other driver an app-based driver, even if nobody was using an app?

Footnotes:

[1] (Bus. & Prof. Code, § 7463.)

[2] The four conditions are: (a) the company does not dictate shifts or minimum log-in hours; (b) it does not require acceptance of particular jobs; (c) it permits work through competing platforms, except during engaged time; and (d) it does not restrict other lawful occupations or businesses. (Bus. & Prof. Code, § 7463, subd. (a).)

[3] (Civ. Code, § 3333.9, subd. (f)(1).)

[4] (Bus. & Prof. Code, § 7463, subd. (g).)

[5] (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735.)

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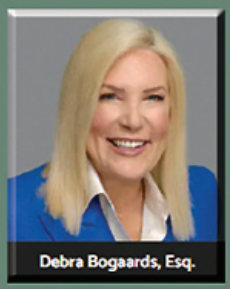
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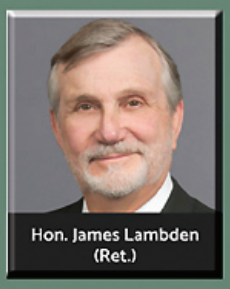
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Capitol City Trial Lawyers Association

Annual Meeting & Holiday Reception

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Sheraton Grand Sacramento Hotel , 1230 J Street

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Making Defendants Prove Their Affirmative Defenses

By: Nolan R. Jones

One of the more predictable aspects of personal injury litigation is the Answer filed by defense counsel. Regardless of whether the case involves a rear-end collision, a dangerous condition of property, or some other form of negligence, the Answer will contain a laundry list of affirmative defenses: comparative negligence, fault of others, failure to mitigate damages, assumption of risk, waiver, estoppel, unclean hands, laches, and whatever other defenses happened to be included in the template used by the attorney drafting the pleading.



Nolan R. Jones, Partner at Dreyer, Babich, Buccola, Wood Campora, is a CCTLA Board Member

Often these defenses have little to do with the actual facts of the case. They are pled to preserve every conceivable argument, regardless of the facts. For the most part, plaintiff attorneys accept this as part of litigation and wait until trial to challenge the defenses.

Over the past several years, I have had success eliminating defenses through motions for summary adjudication. In some cases, I have been able to eliminate every affirmative defense pled by the defendant, including comparative negligence, fault of others, failure to mitigate, and a variety of other defenses that never had any business being included in the Answer.

The strategy is not complicated, but it requires preparation that begins long before the motion is filed. More importantly, it can have a substantial effect on the outcome of the case.

The Law Already Allows It

Most plaintiff attorneys are familiar with motions for summary judgment and summary adjudication because we spend a considerable amount of time opposing them. Defense attorneys regularly use these motions to argue that plaintiffs cannot establish one or more elements of their claims. However, we can use the same procedure to challenge a defendant's affirmative defenses.

Code of Civil Procedure section 437c expressly provides for it.

Section 437c, subdivision (f)(1), permits a party to move for summary adjudication of an affirmative defense when there is no merit to that defense. The motion must completely dispose of the challenged defense, but it does not need to dispose of the underlying cause of action.

This is an important distinction. A plaintiff can move to eliminate a comparative negligence defense without asking the court to determine that the defendant was negligent. Similarly, a plaintiff can seek summary adjudication of a failure-to-mitigate defense without asking the court to decide the nature, extent, or value of the plaintiff's injuries.

Evidence Code section 500 places the burden of proving facts essential to a defense on the party asserting it. The defendant therefore bears the burden of proving its affirmative defenses at trial.

The Court of Appeal addressed this procedural situation in *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970. There, the plaintiff moved for summary adjudication of the defendant's unclean hands affirmative defense. The court confirmed that a plaintiff may seek summary adjudication by establishing the absence of evidence supporting the defense. Once that showing is made, the defendant must identify specific facts creating a triable issue. (*Id*. at p. 978.)

California courts have also recognized that factually devoid discovery responses can establish the absence of evidence necessary to shift the burden on summary judgment. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590; *Scheiding v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 80–83.) *Scheiding* demonstrates why the discovery must specifically seek the evidence allegedly missing.

Although these cases generally involve defendants moving against plaintiffs' causes of action, the same evidentiary principles can be applied when plaintiffs challenge affirmative defenses on which defendants bear the burden of proof.

The question then becomes how to establish that the defendant lacks the evidence necessary to support its defenses. That is where discovery comes in.

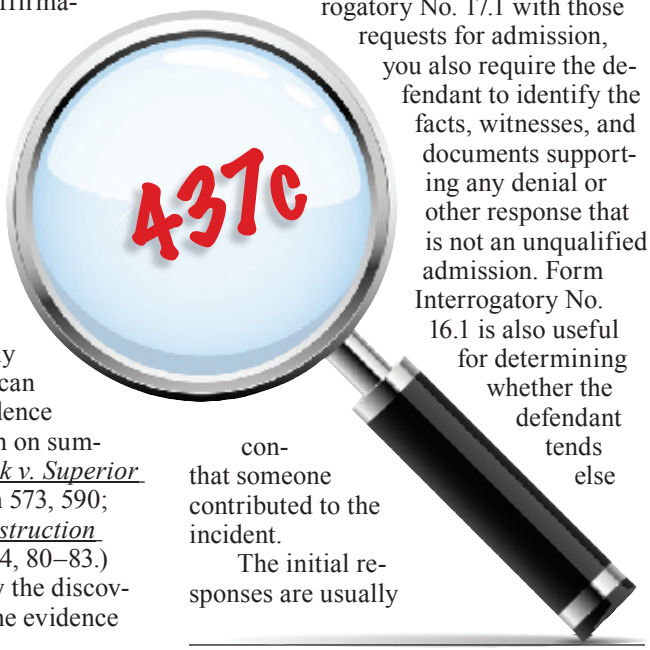
Setting Up the Motion

Through Discovery

The single most important discovery request for this strategy is Form Interrogatory No. 15.1.

This interrogatory requires the defendant to identify each denial of a material allegation and each special or affirmative defense in its pleadings, along with the facts, witnesses, and documents supporting them.

I serve Form Interrogatory No. 15.1 with my initial written discovery in every case. I also serve targeted requests for admission and contention interrogatories addressing the more significant affirmative defenses. For example, if the defendant alleges comparative negligence, ask it to admit that the plaintiff was not negligent. By serving Form Interrogatory No. 17.1 with those requests for admission, you also require the defendant to identify the facts, witnesses, and documents supporting any denial or other response that is not an unqualified admission. Form Interrogatory No. 16.1 is also useful for determining whether the defendant tends to contend that someone else contributed to the incident.



The initial responses are usually

Continued on page 28

Continued from page 27

improper.

A common response to Form Interrogatory No. 15.1 is that it is premature to identify the facts supporting the affirmative defenses because discovery has not been completed, and that the defenses were pled just to preserve them.

There is nothing inherently wrong with reserving the right to supplement discovery responses. The problem arises when the defendant uses that reservation as an excuse not to identify the information **presently available**.

Code of Civil Procedure section 2030.220 requires each interrogatory response to be as complete and straightforward as the information reasonably available permits. Section 2030.010, subdivision (b), expressly permits interrogatories directed to a party's contentions and the facts, witnesses, and writings supporting them. The California Supreme Court recognized this long ago in *Burke v. Superior Court* (1969) 71 Cal.2d 276, 281.

Accordingly, the fact that discovery remains open does not excuse a defendant from disclosing the facts it presently possesses.

When I receive responses stating that discovery is ongoing, I send a meet-and-confer letter asking defense counsel to identify the facts, witnesses, and documents currently supporting each affirmative defense. If the defendant has none, I ask for a verified response expressly stating that no supporting evidence is **presently known** after a reasonable inquiry.

I make clear that the defendant may reserve its right to supplement its responses if additional information is subsequently discovered. What it cannot do is refuse to disclose its present contentions simply because it hopes to discover something later.

If the defendant refuses to provide a compliant response, the next step is a motion to compel further responses under section 2030.300. Do not simply accept evasive responses with the expectation that they will necessarily support a future motion for summary adjudication (MSA). A verified response acknowledging the present absence of supporting evidence creates a much cleaner record.

The final step is serving supplemental interrogatories under section 2030.070 after discovery has substantially progressed. Ideally, the defendant has already deposed the plaintiff, investigated the incident, obtained relevant records, and completed the important witness depositions.

At that point, the defendant has had a meaningful opportunity to develop its defenses. If the supplemental responses still identify no supporting facts, witnesses, or documents, the groundwork has been laid for summary adjudication.

Filing the Motion for Summary Adjudication

By the time the motion is filed, the evidentiary record should be relatively straightforward.

The defendant pled a particular affirmative defense. The plaintiff served discovery specifically requiring disclosure of the facts, witnesses, and documents supporting that defense. The defendant identified none. The plaintiff challenged any inadequate responses and requested supplemental information after substantial discovery had been completed. The defendant still identified no evidence supporting the defense.

That is the foundation of the motion.

Each affirmative defense should be addressed separately, with the relevant pleadings, discovery responses, and supplemental responses incorporated into the separate statement of undisputed material facts.

The interesting part often comes when the defendant files its opposition. Having failed to identify supporting evidence during discovery, the defendant may suddenly attempt to amend its interrogatory responses or point to purported disputes concerning the underlying elements of the plaintiff's claim. Neither approach defeats the motion.

First, this is not a motion to compel further discovery. It is a motion for summary adjudication. The question is not whether the defendant has finally provided better discovery responses, but whether it possesses admissible evidence sufficient to establish a triable issue concerning the affirmative defense.

The appropriate time to disclose supporting facts, witnesses, and documents was during discovery, including in response to supplemental interrogatories. Although section 2030.310 permits amended interrogatory responses under appropriate circumstances, a defendant cannot defeat summary adjudication simply by serving new responses asserting that evidence exists. Code of Civil Procedure section 2030.410 generally prohibits a party from using its own interrogatory responses in its favor. In *Great American Insurance Companies v. Gordon Trucking, Inc.* (2008) 165 Cal.App.4th 445, 450, the Court of Appeal confirmed that a party cannot rely on its own interrogatory responses as evidence supporting its statement of undisputed facts.

This distinction is critical. A defendant cannot create a triable issue simply by alleging in its opposition that the plaintiff was comparatively negligent, or by serving an amended interrogatory response making that assertion for the first time. It must produce the actual evidence supporting the defense, whether through deposition testimony, a competent witness declaration, or properly authenticated documents. The allegations of defense counsel are not evidence.

If the defendant produces admissible evidence in opposition, that evidence may create a triable issue even if it was not previously disclosed. (*Biles v. Exxon Mobil Corp. (2004)* 124 Cal.App.4th 1315.) This is why the discovery process leading up to the motion is so important. When new evidence suddenly appears, carefully compare it against the defendant's earlier verified responses, examine whether it genuinely supports the affirmative defense, and raise appropriate objections to evidence that lacks foundation, contradicts prior sworn admissions without adequate explanation, or is subject to exclusion for discovery misconduct. The defendant's failure to disclose evidence earlier does not automatically make it inadmissible, but it should be scrutinized carefully.

Second, defense counsel will frequently attempt to dispute the plaintiff's separate statement by identifying purported deficiencies in the underlying negligence, causation, or damages claims. These arguments often have nothing to do with the affirmative defenses being challenged.

For example, a defendant may present evidence that it lacked notice of a dangerous condition in a premises liability case. That may be relevant to whether the plaintiff can establish liability, but it does not establish that the plaintiff was comparatively negligent. Similarly, disputing whether particular medical treatment was caused by an incident does not establish that the plaintiff unreasonably failed to mitigate damages.

This distinction is particularly important in the reply brief. Do not allow the opposition to turn into a debate over whether the plaintiff can prove the underlying case. Remind the court that the motion does not seek to establish liability, nor does it seek further discovery responses. It seeks to eliminate affirmative defenses for which the defendant has failed to produce admissible supporting evidence.

I have found that judges are not always familiar with this type of motion. At one hearing, the judge remarked that

Continued on page 29

Continued from page 28

they had never seen a plaintiff bring an MSA. That is a reminder that the moving papers, and particularly the reply, should explain the statutory framework and keep the court focused on the specific affirmative defenses being challenged.

Motions in Limine as an Alternative

Although I prefer summary adjudication when the case schedule permits it, I have also successfully challenged unsupported affirmative-defense theories through motions in limine.

The distinction between these procedures is important. Summary adjudication disposes of an affirmative defense. A motion in limine ordinarily concerns the admissibility of evidence and arguments that may properly be presented to the jury. It should not simply be a disguised motion for summary adjudication. (*R & B Auto Center, Inc. v. Farmers Group, Inc. (2006)* 140 Cal.App.4th 327.)

When using a motion in limine, the focus should be on the particular evidence or argument the defendant intends to introduce, its failure to disclose supporting evidence during discovery, and the resulting prejudice to the plaintiff. Where appropriate, the motion can invoke the discovery sanctions provisions of section 2023.030 and Evidence Code section 352.

Even without an evidentiary sanction, the defendant must still have sufficient evidence to justify the requested jury instructions and verdict form. For example, CACI No. 405 should not be given absent substantial evidence of comparative negligence. Likewise, a defendant seeking to allocate responsibility to a nonparty must establish that the nonparty was at fault and that its conduct was a substantial factor in causing the plaintiff's harm. (*Wilson v. Ritto (2003)* 105 Cal.App.4th 361, 369; *Scott v. C. R. Bard, Inc. (2014)* 231 Cal. App.4th 763, 785.)

The goal is to resolve these issues before opening statements so that the jury is not exposed to theories the defendant cannot actually support.

Why This Matters

The benefit of this strategy goes well beyond eliminating a few unnecessary paragraphs from the defendant's Answer. It can fundamentally change how a case is defended and ultimately tried.

In a premises liability case, comparative negligence is often a cornerstone of the defense. Defendants routinely argue that plaintiffs should have been watching where they were walking or should have noticed a dangerous condition. Eliminating that defense before trial can take away one of the defendant's strongest arguments, effectively neutering its trial strategy and putting defense counsel back on their heels.

Fault of others can be equally important, particularly when defendants intend to use Proposition 51 to reduce their responsibility for non-economic damages. Similarly, eliminating an unsupported failure-to-mitigate defense prevents the defendant from turning ordinary disputes over medical causation or treatment into allegations that the plaintiff failed to minimize their injuries.

These rulings also simplify trial. Fewer issues to litigate, fewer jury instructions to argue over, and fewer opportunities for the defense to invite speculation. More importantly, eliminating significant affirmative defenses allows the plaintiff to focus the jury on the actual issues in dispute, rather than spending valuable trial time responding to defenses that never had any evidentiary support.

None of this happens without laying the groundwork through discovery. But once that record is established, section 437c provides a powerful tool that plaintiff attorneys often overlook. Defense attorneys routinely use summary judgment and summary adjudication to narrow our claims. There is no reason we should not use those same statutes to narrow their defenses before we ever set foot in the courtroom.

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Presiding Judge Civil Law Advisory Committee
Notes from 9/3/2026 Meeting
Tani G. Cantil-Sakauye Sacramento County Courthouse, Room No. 485

Judicial Members Present: Presiding Judge Lawrence Brown; Assistant Presiding Judge Steven M. Gevercer; Hon. George Acero; Hon. Bunmi Awoniyi; Hon. Tami Bogert; Hon. Arlin Cintean; Hon. Curtis Fiorini; Hon. Jeff Galvin; Hon. Chris Krueger; Hon. Richard Miadich; Hon. Peter K. Southworth; Hon. Rick Sueyoshi; Hon. Jill Talley; Hon. Julie Yap.

Court Representatives Present: Amy Malone (Operations Manager – Civil) and Ellen Brown (Judicial Services Manager).

Attorney Members Present: Doug Adams; Louis Anapolsky; Ellen Arabian-Lee; Joe Babich; Bob Bale; Michael Cross; Karen Jacobsen; Bill Kershaw; Justin Rodriguez; Ronald Scholar; Jill Telfer; Bill Warne; and Bob Zimmerman.

1. Congratulations to Judge Fiorini on Retirement and Judge Damrell on Nomination to Third DCA.

Other Retirements and Appointments

Judge Fiorini's retirement will be on September 10, 2026, and we all wish him well!

Judge, now Justice, Lauri Damrell had an exceptional confirmation hearing which Judge Brown and many others were able to attend. Judge Talley was one of three speakers on behalf of Justice Damrell and spoke highly of her as both a friend and colleague. When Justice Damrell was asked by Attorney General Rob Bonta about her collegiate athletics and how it impacted her in her professional life, Justice Damrell's response was a perfect encapsulation of the remarkable person that she is. The Sacramento legal community is thrilled and very proud that Justice Damrell has been appointed to the Third District Court of Appeal and is confident that she will do an excellent job.

2. New Judicial Assignments Impacting Civil including Room 450 Settlement Conference Judge

Judge Peter K. Southworth will assume Justice Damrell's complex litigation duties in the Complex Litigation Department. Given Judge Southworth's background as a litigator at Downey Brand in the late 1990s, and then at the Attorney General's office handling complex civil matters including public finance, land use and environmental law, it is anticipated he will hit the ground running with Judge Talley and Complex will not miss a beat.

Judge Tami Rose Bogert will be taking over Judge Fiorini's settlement department duties in Room 450 starting next week. Judge Bogert has been with the Court since 2010 and brings a wealth of experience to the position. Having been on the bench for 16 years and having served in almost every subject matter area the Court handles, Judge Bogert is excited to assume the reins in Room 450 and everyone is confident that settlement negotiations and resolution will continue to be exceptionally effective under her tenure.

3. Update on New Courthouse Workings – Technology, Courtrooms, Feedback and Changes for the Future

The Court is in the 4th week of expanding E-Court to Criminal filings, which has been a challenge. The Court has had to scan over one million files in order to create and implement the electronic system. Because the conversion involves a plethora of moving pieces, transitioning the Criminal electronic system has been exceptionally challenging. The transition has involved multiple IT systems and multiple stakeholders, which has created significant compatibility issues and daily operational problems. That said, progress is being made and the multiple issues are lessening as time goes by. We will keep moving through the 6- to 8-week "stabilization period" which we are about halfway through.

There was then a general discussion about technology in the new courthouse. Attorneys and judges generally reported positive experiences. The Court encouraged all attorneys who planned to use electronics during trial to arrive early to test the technology. Trial technology has generally worked well. To the extent there have been technological problems, they often appear to originate from individual attorneys' devices rather than from the Court's system. Attorneys should still bring paper copies of important exhibits as a backup. The Court strongly recommended maintaining at least one paper binder containing key documents for the jury. Electronic exhibits are useful, but hard copies remain valuable for jurors who may need to review evidence independently. Otherwise, the judiciary and counsel seem to be settling well into the new courthouse.

4. Trials and Courtroom Availability

JANUARY - AUGUST 2026 (Year -to-Date)			
Total Scheduled Civil Trial Assignment Hearings - 2,933	**Civil Cases**	**Lemon Law Cases**	**YTD Totals**
Total Civil Trials Addressed by Dept. 17a (separated below by outcome at the trial assignment hearing)	**344**	**279**	**623**
Pre-Assigned to a Department	5	0	5
Assigned to a Department	113	7	120
Reset (lack of courtroom availability)	3	1	4
Continued (requested by a party w/in 4-6 weeks of trial date)	117	98	215
Settled (settlements that occurred in D.59 and Notices of Settlement reported by parties within 4-6 weeks of trial date)	14	6	20
Trailed	4	0	4
Dismissed	29	7	36
No Appearance	9	0	9
Dropped	24	2	26
TSP Referral	8	115	123
OSC Re: Dismissal	18	43	61

In terms of courtroom availability for civil, there have only been three times this calendar year when a case has been unable to be assigned out during the week it had been set for trial. Two occurred last April and one more last month on August 3rd. In the latter case, it happened to be an unlawful detainer matter and that was continued/trailed 2 weeks to August 17. Other than the foregoing, Master Calendar has been able to manage assigning out cases for trial very effectively.

Going forward, Judge James McFetridge will be retiring next month on October 15th and current resources will not allow the Court to put a judge into that department to take over civil trials on that date. There will be a gap, but the Court will be meeting to work through rotations for next year, which typically

Continued on page 32

Continued from page 31

occur in January but were delayed this year due to moving into the new courthouse. The Court plans to backfill the vacancies in several civil trial departments, and it is anticipated that Master Calendar will be able to manage the gaps that do appear in the scheduling of civil trials.

5. Update on 4 Civil Home Court Departments and Law & Motion Timelines – concerns on routine motions being set for hearing in April 2027 and ability to add a 5th Civil Home Court Judge or temporary additional Law & Motion Judge for clearing of backlog

Addressing 5 and 6:

On October 10, 2025, the Court established an additional Law & Motion Department to begin addressing the significant Law & Motion backlog of 4- to 5-year-old COVID-era cases, to try to re-establish regular case management conferences, to reduce wait time for hearings and to hopefully expand the number of judges addressing these issues. The Court has been able to meet most of its objectives: judges are busy and very productive with no decline in quality. One thing the Court didn't foresee is the jump in the number of filings. In 2025 alone, the Court experienced the most unlimited filings ever: 13,573. This increase in filings was fueled by AI and a significant increase in lemon law case filings. Indeed, 30% of demurrers are in lemon law cases, and overall we have had a 38.7% increase in filings since 2022.

The Court is considering how to effectively institute an Informal Discovery Conference (IDC) program, which in other counties has dramatically decreased discovery-related law and motion. The Court has reviewed the Orange County IDC pilot program, which pulls discovery disputes from law and motion. However, most counties that have an effective IDC program are direct-assignment courts that carry caseloads of between 1,000 and 3,000 cases. By contrast, our law and motion departments carry 19,000 cases. Such a caseload does not allow the L&M Judge to become sufficiently granular to force parties to engage in the IDC process. Rather, it requires the parties to request an IDC, which simply doesn't allow the Court to offensively use the IDC process to reduce discovery disputes. The IDC works great in complex departments where they only have 900 to 1,200 cases per judge vs. 19,000. It's apples and oranges. This is an issue the Court will continue to address. At the moment, more judges and legal research attorneys would help a great deal, but current budget limitations make immediate expansion difficult.

It was noted that Sacramento County is one of the last few master calendar department counties left in California.

6. Update on IDCs in non-complex departments – potential to help on agenda item 5 backlog

See above.

7. Other

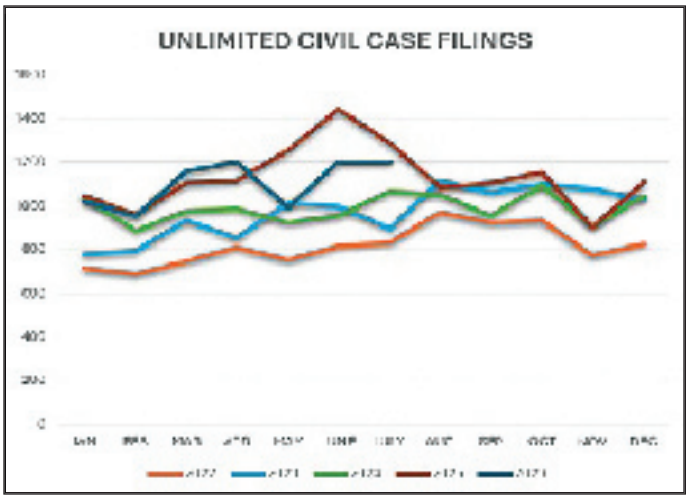
N/A

8. Future Meetings: December 9, 2026 (note: a Wednesday) at 12:10 p.m.

An updated meeting invitation will go out for the December date.

End 1:04 p.m.

Unlimited Civil Filings 2022-2026



Unlimited Civil Filings					
	2022	2023	2024	2025	2026
JAN	715	770	1,042	1,040	1,021
FEB	688	797	689	980	958
MAR	745	934	980	1,104	1,157
APR	613	853	989	1,118	(1,202)
MAY	751	1,014	925	1,255	993
JUNE	819	1,001	956	1,443	1,202
JULY	832	898	1,066	1,239	1,202
AUG	971	1,115	1,050	1,037	
SEP	924	1,064	954	1,105	
OCT	933	1,102	1,095	1,152	
NOV	772	1,079	909	904	
DEC	626	1,033	1,046	1,110	
TOTALS	9,769	11,669	11,903	13,573	7,735

Civil Home Court Caseload

	Limited Civil	Unlimited Civil	Grand Total
Dept. 8C	11,772	7,443	19,215
Dept. 8D	12,055	7,475	19,530
Dept. 16C	11,947	7,572	19,519
Dept. 16D	11,915	7,654	19,569
Grand Total	47,689	30,144	77,833

Complex Caseload

	Unlimited Civil – Designated Complex
Dept. 8A	924
Dept. 8B	930
Grand Total	1,854

 Continued from page 2

MARTINEZ v. CONTRERAS
2026 5DCA California Court of Appeal, No. F090026
(Oct. 5, 2026; Certified for Publication Oct. 9, 2026)

NEW TRIAL PROPERLY GRANTED WHERE JURORS DISCUSSED THE INDIVIDUAL DEFENDANT'S ABILITY TO PAY

FACTS: In an auto case with negligence stipulated, the jury awarded $55,000. Plaintiff moved for a new trial with two juror declarations stating jurors discussed whether defendant could afford a large judgment, asked why Plaintiff was not suing an insurer, and balked at a large award against an individual. The trial court granted a new trial.
ISSUE: Was the new trial order an abuse of discretion?
RULING: Affirmed.
REASONING: Under Evidence Code section 1150, declarations may recount statements made in deliberations, though not mental processes. Repeated discussion of defendant's finances while fixing damages violated the instruction that a party's wealth may not be considered. Misconduct raises a rebuttable presumption of prejudice that defendant did not rebut.

MEEHAN v. AGUIRRE
2026 2DCA/3 California Court of Appeal,
No. B343396 (Sept. 15, 2026)

UNDER THE "LAST OFFER RULE," A PLAINTIFF WHO FAILS TO BEAT HER FINAL 998 OFFER GETS NO EXPERT FEES OR PREJUDGMENT INTEREST

FACTS: An injured bicyclist served three $1,000,000 section 998 offers, then a final $2,000,000 offer before trial. After a bench trial, she recovered $1,062,500, about $1.4 million with costs. The trial court denied roughly $326,000 in expert fees and $313,000 in prejudgment interest running from her first offer.
ISSUE: May a plaintiff who beats earlier 998 offers, but not her last, recover expert fees and Civil Code section 3291 interest?
RULING: Affirmed.
REASONING: Contract principles fill gaps in section 998, and a later offer supersedes earlier ones. Following *Wilson v. Wal-Mart Stores, Inc.* (1999) 72 Cal.App.4th 382, the court held that when a plaintiff makes multiple valid, unrevoked offers and the award falls below the final one, the last offer controls, including for section 3291 interest.

WILSON v. JOHNSON
2026 2DCA/1 California Court of Appeal,
No. B329690 (Sept. 22, 2026)

AN ACTION IS "BROUGHT TO TRIAL" UNDER THE FIVE-YEAR RULE WHEN A JURY PANEL ASSEMBLES FOR VOIR DIRE AND IS SWORN

FACTS: Plaintiff's personal injury case had to be brought to trial by March 20, 2023. On March 16, a jury panel assembled in the courtroom, took the oath under former Code of Civil Procedure section 232(a), and underwent hardship screening. The remaining jurors were ordered back on March 22. The trial court dismissed, finding voir dire had not begun before the deadline.
ISSUE: Was the action brought to trial when the panel was sworn, before counsel questioned jurors?
RULING: Reversed.
REASONING: An action is brought to trial when the jury is impaneled and sworn. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717.) Following *Stueve v. Nemer* (2017) 7 Cal. App.5th 746, that occurs when a panel assembles in the courtroom for voir dire and takes the former section 232(a) oath. Hardship questioning is part of voir dire.

FARMERS INSURANCE EXCHANGE v. SUPERIOR COURT (WOOD)
2026 4DCA/2 California Court of Appeal,
No. E087128 (July 9, 2026;
(Certified for Publication Aug. 4, 2026)

INSURER'S TIMELY ACCEPTANCE OF A POLICY LIMITS DEMAND CREATED A BINDING SETTLEMENT

FACTS: After Farmers' insured rear-ended Kathleen Wood, Wood demanded the "total available policy limit of $100,000, or less," stating that if the demand exceeded the policy it was a policy limits demand, and required written acceptance and a declarations page. Farmers timely accepted its $15,000 limit and sent the page. Wood then refused to sign, citing assets missing from the insured's asset declaration, and sued. The trial court denied Farmers summary adjudication.
ISSUE: Did Farmers' acceptance create a binding settlement?
RULING: Writ granted; summary adjudication ordered for Farmers.
REASONING: The letter offered settlement for the available limits on two conditions, both met, so Farmers' acceptance formed a contract. The court rejected arguments that the demand was for $100,000, that Farmers counteroffered, and that the asset declaration permitted rescission, since the demand never conditioned settlement on one.

OSAZE v. GEE
2026 1DCA/2 California Court of Appeal,
No. A173403 (Sept. 29, 2026)

EXPERT OPINIONS MAY NOT BE EXCLUDED AS "SPECULATION" WITHOUT A SARGON ANALYSIS; AN UNWITNESSED FALL DOES NOT DEFEAT CAUSATION

FACTS: A 69-year-old woman chased a dog out of a veterinary grooming room, fell in the hallway, and died of a head injury. No one saw the fall, but an unmarked 1.25-inch rise separated the room from the hallway. Opposing summary judgment on

Continued on page 34

Member Verdicts & Settlements

CCTLA members are invited to share their verdicts and settlements: Contact Debbie Keller: debbie@cctla.com, for preferred sample format. The next issue of *The Litigator* will be the Spring 2027 issue, and submissions need to be sent to Debbie before January 27, 2027. Please try to keep word count below 2,000.

VERDICT

Name of Case: *Michael Flynn v. City of Sacramento*

Type of Case: Government Tort Claim: Dangerous Condition of Public Property

Total Verdict: $33,320,233.21: Past medical expenses (stipulated), $181,748.88; future medical expenses (stipulated), $200,000; past lost earnings, $277,083.33; future lost earning capacity, $7,661,401; past non-economic (6.5 years), $7,500,000; future non-economic (44 years), $17,500,000

Sacramento County Superior Court No. 34-2020-00285390

Counsel: Robert A. Buccola, Jason J. Sigel, James R. Donahue, and Marshall R. Way of Dreyer Babich Buccola Wood Campora, LLP, obtained a $33.3-million award against the City of Sacramento for a jogger struck by a falling tree limb. The parties stipulated to bifurcate liability and damages. A jury found the City of Sacramento liable 11-1 on May 29, 2024. The parties waived a jury on damages, and Judge Steven M. Gevercer issued a damages decision after court trial on October 9, 2026. Senior Deputy City Attorneys Katherine Underwood and Kristina Lambert represented the City of Sacramento.

Case Summary: On April 21, 2020, Michael Flynn, 27, was jogging on the path around McKinley Park when a 30-foot limb fell from a London plane tree and struck him in the head. He sustained a multitude of physical injuries including skull fractures and a severe brain injury. Flynn, an MIT physics graduate, was at the time a Ph.D. candidate in theoretical physics at UC Davis.





Liability: Flynn contended the dead limb had been a noticeable hazard for more than a year, and likely as long as three years, and that it should have been identified and removed. His experts conceded that limbs dead for less than six months likely would not have been noticed, as the incident occurred fairly early in the growing season, when many healthy limbs are still leafless during their deciduous time frame. This makes identifying dead limbs almost impossible. Arborist Kay Greeley offered circumstantial forensic evidence that the limb died at least a year before it fell, likely as long as three years, rebutting defense arborist Roy

Continued on page 35

CITES *Continued from page 33*

causation, plaintiffs offered engineering and veterinary expert declarations. The trial court excluded the key opinions as speculation and granted the motion.
ISSUE: Did the court err in excluding the experts and granting summary judgment?
RULING: Reversed, with directions to deny the motion.
REASONING: Under *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, the gatekeeping role is limited and the court may not weigh persuasiveness. Labeling an opinion speculative does not make it so. The experts relied on measurements, biomechanics, and elimination of other causes. The trial court also improperly credited a defendant's conflicting account.

WESTON v. DEPARTMENT OF TRANSPORTATION
2026 3DCA California Court of Appeal, No. C102683
(Aug. 31, 2026; Certified for Partial Publication Sept. 28, 2026)

CLAIMS UNDER VEHICLE CODE SECTION 17001 ARE SUBJECT TO GOVERNMENT CLAIM PRESENTATION REQUIREMENTS

FACTS: Weston was hurt passing a Caltrans truck as it turned left. Her government claim attached only the CHP report, which blamed her unsafe pass. Her suit alleged the driver negligently turned. The trial court sustained a demurrer without leave to amend for variance between her claim and the complaint, and rejected her argument that her Vehicle Code section 17001 claim was exempt from claim presentation.
ISSUE: Are section 17001 causes of action exempt from claim presentation?
RULING: Affirmed.
REASONING: Section 17001 is a source of liability separate from Government Code section 815.2, but that does not control claim presentation, which is broader than the Act's liability and immunity provisions. (*County of Santa Clara v. Superior Court* (2023) 14 Cal.5th 1034; *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730.) No exception to section 905.2 applied.

Continued from page 34

Leggitt's opinion that it died a few months before falling.

Accordingly, the city argued the limb fell too early in the growing season for park maintenance workers to be able to recognize it was dead. The city said that, for its 25,000 park trees in 240 parks, it lacked funds for systematic inspections, and that falling limbs are a natural, daily occurrence that cannot be prevented in most cases. The city employed six full-time arborists, one of whom was assigned to city parks, and argued that its four-to-seven-year contract inspection and trimming cycle exceeded what most California municipalities do. The subject limb, the city claimed, was a needle in a haystack. These arguments have historically won these cases for the city.

Park maintenance workers on site daily testified that they were not trained or expected to look for dangerous limb conditions and would report these hazards only if they happened to notice them. Flynn argued that training them to watch for dead and dying limbs, particularly in high-consequence areas, during the performance of their regular work would add no labor costs and would allow for eyes on as many as 80% of the trees in every park on a weekly basis. Plaintiff also argued that a basic-level park maintenance worker could inspect every McKinley Park tree at Level 1 twice a year, with each inspection taking not more than five hours, funded entirely by eliminating one week of lawn cutting. The inspections would be timed for when trees have begun to sprout their leaves in spring and before they begin to lose them in fall, during times when a dead limb stands out and is obvious to identify.

Flynn proved at trial that these inspections could be done without an additional dollar of maintenance funds, and demonstrated the same with a real-time video showing that roughly 20% of the park's trees can be inspected in only 45 minutes. (In five hours, the entire tree population of the park can be inspected.)

The jury found for Flynn, 11-1. Jurors said afterward that they found city employees and management witnesses neither reasonable nor credible, and that proper monitoring requiring no additional city resources was important to their decision.

Damages: Flynn suffered an open skull fracture in the incident and was hospitalized for nine days. He underwent an emergency craniectomy to relieve pressure on his brain and, a little more than four months later, had a cranioplasty procedure. Both Plaintiff's and Defendant's retained neuropsychologists documented a substantial difference between Flynn's post-morbid verbal (141) and nonverbal (110) IQ scores and agreed the difference was entirely attributable to his brain injury. However, both neuropsychological examiners also documented that Flynn scored above the 95th percentile in many other measures of his post-morbid function. The defense doctors emphasized that he made a remarkable recovery and that he was still a very productive professional.

In reality, Flynn struggled to finish his Ph.D. after the injury, performed poorly in his postdoctoral positions at Boston University and the University of Victoria, and now works doing only the most basic research at a start-up quantum computing company for a fraction of what he could be earning, had he not been injured.

Specifically, Flynn contended that, but for the injury, he would have been a researcher in AI and quantum computing at a top technology firm with a compensation package that included substantial stock grants and cash bonuses and would have earned multiples of his current salary. Conversely, the City argued he had no loss of earning capacity because he is working as a physicist in the private sector making $150,000 per year (the statewide average for physicists with three years of experience) and is also receiving stock options. It further argued that getting jobs with top high-tech employers was entirely speculative for one reason: Plaintiff had never expressed interest in such employment opportunities before the accident and was more interested in an academic career. Defense vocational expert Lisa Suhonos testified that because no doctor had ever imposed work restrictions on Flynn after the incident, and because of his successful employment in private industry, he suffered no quantifiable vocational losses.

Earning capacity. The court rejected Suhonos's opinion that Flynn had no vocational losses. Applying *Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881 and CACI No. 3903D, it held that neither proof of prior earnings nor a treating doctor's written work restriction is required to prove lost earning capacity. The court found Flynn reasonably certain to earn less than he otherwise could have.

The court found that top-tier AI and quantum jobs were likely available to Flynn, had he not been injured. Although he was not in the private workforce when injured, the court found it reasonably probable he would have taken a full-time private-sector position starting at $205,000, with reasonable annual advancements. It rejected Flynn's very substantial claims for equity and bonuses as too speculative, despite undisputed evidence that all the top high-tech employers (e.g., Amazon, Google, Meta, and Anthropic) pay their research Ph.D. professionals more in stock and bonuses than in base salary. Starting base salary ranges are generally publicized, but bonus and equity compensation is not.

Non-Economic Damages: The court found the injury to be a substantial factor in Flynn's current physical and emotional condition, one of significant loss and despair. It found credible and compelling the testimony of Flynn, his care providers, and others who knew him before and after the incident and who testified about his transformation into a person who now struggles intellectually and emotionally every day. As compensable losses, the court cited Flynn's lost creativity, the drop in his nonverbal IQ, his reduced ability to multitask and absorb new information, and his inability to engage socially with others. He has become reclusive and struggles to maintain the very few relationships that remain (*Damages detailed at top of this report*).

Expert Witnesses Testifying: Plaintiff's retained experts: Kay Greeley, arborist (liability); Sean Shimada, Ph.D., biomechanical engineering; James Silverthorne, M.D., neurosurgery; Ghiam Yamin, M.D., neuroradiology; Dean Delis, Ph.D., neuropsychology; Amy Magnusson, M.D., physical medicine and rehabilitation; Leonard Darrell Whitley, Ph.D., computer science/artificial intelligence; Leonard Matheson, Ph.D., vocational rehabilitation; John Hodge, technology executive search and compensation; Richard Barnes, forensic economics.

Plaintiff's non-retained non-medical experts: Dr. Rajeev Singh, UC Davis; Dr. Christopher Laumann, Boston University; Dr. Thomas Baker, University of Victoria, British Columbia; Dr. Xiaoliang Qi, Stanford University; Dr. Yuri Lensky, Google Quantum AI; Dr. Mikhael T. Semann, EnviTrace, LLC; Dr. Muhammad Zaki Jawaid, Epicrispr Biotechnologies, Inc.

Plaintiff's non-retained treating providers: Miles Cunningham, M.D. (psychiatry), Boston, MA; Julie Brody-Magid, Psy.D. (neuropsychology), Boston, MA; Mark Corey, Ph.D. (clinical psychology), Sacramento, CA.

Defendant's retained experts: Roy Leggitt, arborist (liability); Howard Friedman, Ph.D., neuropsychology; Richard Rubenstein, M.D., neurology; Lisa Suhonos, vocational rehabilitation.

Defendant's standard-of-care expert (liability): Kevin Hocker, City of Sacramento, Urban Forester.

Continued on page 36

Member Verdicts & Settlements

Continued from page 35

VERDICT

Name of Case: *Miranda Flores, individually and as Successor in Interest of Decedent, Patrick Seamus Mulderrig v. Philip David Oates*

Type of Case: Wrongful Death

Total Verdict: $15,861,487.31
Survival claim for Patrick Seamus Mulderrig: Medical expenses for care that Patrick Seamus Mulderrig received: $279,472.31; Pain, suffering, or disfigurement Patrick Seamus Mulderrig suffered before his death: $2,000,000. **Total for Survival Claim Damages: $2,279,472.31**
Wrongful death damages for Miranda Flores: Past financial support Patrick Seamus Mulderrig would have contributed: $256,000; future financial support Patrick Seamus Mulderrig would have contributed: $1,422,000; Patrick Seamus Mulderrig's funeral and burial expenses:$4,015; past household services Patrick Seamus Mulderrig would have provided: $130,000; future household services Patrick Seamus Mulderrig would have provided: $770,000. **Total Economic Damages: $2,582,015**
Miranda Flores' past non-economic damages: $1,000,000; Miranda Flores' future non-economic damages: $10,000,000. **Total Non-Economic Damages: $11,000,000.**

Plaintiff's Counsel: Roger A. Dreyer, Esq., Natalie M. Dreyer, Esq., Dreyer, Babich, Buccola, Wood Campora, LLP, 20 Bicentennial Circle, Sacramento, CA 95826; **Defendant's Counsel:** Christopher J. Hogan, Esq., Andrew J. Chan, Esq., Tressler, LLP, 1255 Treat Boulevard, Suite 300, Walnut Creek, CA 94597; **Superior Court of California, County of Placer – Hon. Michael W. Jones**

Trial Dates: Nine court days – Trial began Sept. 8, 2026, and the verdict was returned on Sept. 28, 2026

Case Summary: On May 14, 2024, at approximately 6:24 p.m., Patrick Seamus Mulderrig was riding his 2019 Harley-Davidson westbound on Douglas Boulevard in the number one lane, at or about the posted speed limit, in Placer County. At the same time, Defendant Philip David Oates was driving his 2022 Cadillac XTS eastbound on Douglas Boulevard and had entered the left-turn lane at the intersection with Kingsgate Drive, intending to turn left onto Kingsgate Drive. The weather was clear and warm, the roadway was dry and in good repair, and there were no traffic signs or signals regulating traffic on Douglas Boulevard at this intersection.

As Mulderrig approached, Defendant Oates entered the left-turn lane and, despite seeing Mulderrig approaching, did not stop and allow him to pass. Instead, Oates initiated his left turn directly into Patrick's path. Patrick was close enough to constitute an immediate hazard according to Officer Zerfas, who investigated the collision. Patrick, perceiving the unexpected and perilous hazard, desperately swerved to the right but had no time to stop or avoid the collision because Defendant Oates then suddenly accelerated his vehicle, taking away Mulderrig's escape route around the vehicle. Mulderrig tried to swerve left, but the front of his motorcycle struck the right rear of Defendant's Cadillac. This impact immediately stopped the motorcycle, Mulderrig's pelvis was shattered, and he was catapulted into the air before his body crashed down onto the roadway.

Mulderrig survived the two impacts—with Oates' vehicle and with the roadway—and was found alive and breathing, but non-responsive. He never regained consciousness and was assessed at a GCS of 3 from the scene through his hospitalization. Additionally, he suffered catastrophic blunt force injuries, including tearing and ripping of his groin area and testicles as well as a vertical shear pelvic fracture. He also suffered bilateral compound and open fractures to his upper extremities. He was transported to Sutter Roseville Medical Center within 20 minutes of the collision. Despite extraordinary efforts by his treating trauma surgeons and personnel during his trauma surgery, he did not survive. He was pronounced dead at the hospital that same night, approximately five hours after being struck by Defendant Oates.

Trial Summary: On the eve of trial, Defendant Oates' insurer CHUBB increased its previous $5 million offer to $10 million through a statutory offer under Code of Civil Procedure section 998 to attempt to push the widow to settle. That offer never increased, and the matter proceeded to trial on Sept. 8, 2026. During the nine-day trial, 28 witnesses were called, both expert and lay. Closing arguments were delivered on Sept. 22, 2026, and the matter was given to the jury on Sept. 24, 2026. The jury deliberated over two days and returned with a unanimous award totaling $15,861,487.31.

The topic of consciousness and the brain's ability to process pain and fear was hotly contested. Defendant carrier, through counsel, argued that, because Mulderrig was not able to speak after hitting the pavement and through his treatment at the hospital, the jury should consider him "brain dead." Defendant's carrier then called retained expert Gary Michael Vilke, M.D., to testify as to Mulderrig's pre-death pain and suffering; however, Dr. Vilke was unable to render an opinion concerning his level of fear or pain prior to striking the asphalt.

Plaintiff called Mulderrig's trauma surgeon, Dustin Zierold, M.D., of Sutter Roseville Medical Center, to the stand. Dr. Zierold performed extraordinary measures to try to save Mulderrig's life and detailed those measures during his testimony. He was a key witness, and his testimony was exceptionally impactful. He testified that, although Mulderrig was comatose, his brain was rapidly processing signals of pain and fear, and he was fighting desperately to live.

Ultimately, the jury rejected Dr. Vilke's assertions that Mulderrig was "brain dead" and came to appreciate the tremendous level of suffering he experienced from moments prior to his impact with Defendant Oates' vehicle through the time of his death.

Plaintiff Flores also presented evidence by way of family members and friends concerning the nature and extent of her losses. Plaintiff's mother, sister and brother-in-law, Mulderrig's sister, and the couple's neighbors and close friends all testified to the same fact – Mulderrig was an extraordinary support to all who knew him, and an even more remarkable husband. Plaintiff took the stand to testify about meeting Mulderrig in early 2003 at work, dating for years, living together beginning in 2008, and marrying on Oct. 6, 2014, in a simple and private civil ceremony.

Plaintiff also testified that, at the time of his death, the couple had been together for 21 years and were an example to all who knew them of kindred spirits who really only needed each other to be happy. Mulderrig was not only the love of Flores's life, but also her best friend, confidant, and cheerleader. The witnesses who testified at trial stitched together the tapestry that was Patrick Mulderrig. He was not merely an exceptional husband; he was a devoted, attentive, and loving partner who put Flores first and made her feel protected, secure, loved, supported, and, maybe most importantly, genuinely valued.

The defendant's carrier CHUBB, through counsel, always worked to minimize the decedent as a retired individual and denied that he suffered any "pain and suffering or disfigurement" caused by the defendant's conduct. The defense focused on the age difference and implied that the plaintiff was doing well. It was clear that the carrier viewed the venue as a factor in its evaluation, as there had never been

Continued on page 37

Member Verdicts & Settlements

Continued from page 36

an eight-figure wrongful death verdict in Placer County. They believed that the decedent being on a motorcycle would also help them keep the verdict down. They argued that their valuation in closing of $4 million was "a lot of money" for this 44-year-old widow. Their expert put the loss of household services at around $100,000. Defense counsel also emphasized that the plaintiff worked and that she would be fine with the verdict they recommended.

VERDICT

Name of Case: *Hobbs v. Le Marquand*

Type of Case: Auto v. Auto

Total Verdict: $300,000: $150,000 Past Non-Economic Damages; $150,000 Future Non-Economic Damages

Plaintiff's Counsel: Brian H. Turner, Law Office of Brian H. Turner, PC; **Defendant's Counsel:** Leonardo Sandoval and Channone Sheller with State Farm; **Sacramento Superior Court, Judge Kenneth Mennemeier**

Trial Dates: Sept. 15–Oct. 8, 2026

Case Summary: Plaintiff was 69 years old at the time of the collision and worked for a contractor that provided financial counseling services to military personnel. Approximately six months after the collision, he attempted to return to work. He remained employed for about three months but ultimately could not continue because the work exacerbated his symptoms. His complaints included dizziness, headaches, brain fog, word-finding difficulty, cognitive deficits, and post-traumatic amnesia. The defendant was a public school teacher in her 30s. There was a seven-vehicle chain-reaction collision. Plaintiff was the second vehicle in line and was stopped when his vehicle was struck from behind and pushed into the vehicle ahead. Defendant alleged she was pushed into Plaintiff by the vehicle behind her. Plaintiff was transported by ambulance to the emergency room. Although both EMS and ER records documented dizziness, no concussion was diagnosed at that time. A CT scan was performed and was normal. Three days later, his primary care physician diagnosed a concussion. He subsequently treated at Rincon for approximately four to six months before discontinuing treatment and returning in-network.

Trial Summary:

Pretrial Settlement History

1. Plaintiff demanded the $1.25 million policy limits in October 2024.

2. Defense maintained a $0 offer until approximately six weeks before trial, when it served a CCP §998 offer for $100,000.

3. At the mandatory settlement conference, plaintiff reduced the demand by $50,000. Defense did not increase its offer and instead requested an additional $500,000 reduction.

4. Two weeks before trial, defense served a second §998 offer for $200,000.

Imaging**:** Plaintiff elected not to pursue admission of the MRI with DTI imaging. An MRI performed by UMI showed white matter gliosis, but a later and higher-quality MRI did not. Plaintiff's expert neurologist considered the imaging essentially normal and was not a strong proponent of DTI.

Plaintiff's Experts:

1. Larry Neuman, P.E. (Accident Reconstruction): Neuman testified that the incident involved two distinct collisions rather than a single chain-reaction event. He was highly effective and successfully neutralized the defense reconstruction theory.

2. Michael Lobatz, M.D. (Neurology): Lobatz performed very well. He is an excellent teacher and received positive feedback from jurors. His conservative, straightforward approach enhanced his credibility. Using the ACRM criteria, he diagnosed a suspected traumatic brain injury.

3. Edgar Angelone, Ph.D. (Neuropsychology): Angelone is passionate about caring for these patients and generally presented well.

Defense Experts:

1. Laurel Pedersen (Accident Reconstruction): Pedersen testified either that the defendant struck the plaintiff directly, consistent with plaintiff's theory, or that the defendant was pushed into the plaintiff. She stated the objective evidence supported both scenarios and that the latter was consistent with the defendant's account.

2. Hanhtrinh Le, M.S. (Biomechanics): Le testified that the probability of a concussion from the forces involved was approximately 0.3%.

3. Charles Skomer, M.D. (Neurology): Skomer denied that the plaintiff sustained either a concussion or TBI. He relied on the absence of documented head trauma, a GCS score of 15, and a normal CT scan. He did concede that the plaintiff's dizziness was likely attributable to whiplash.

4. Elliot Henderson, Ph.D. (Neuropsychology): Henderson found no neurocognitive disorder related to TBI and reported excessive symptom magnification.

5. Christian Serdahl, M.D. (Ophthalmology): Serdahl reported a normal eye examination and found no objective evidence of ocular motor dysfunction associated with mild TBI. He characterized vision therapy and prism glasses as controversial and poorly supported in the literature, suggested the plaintiff's improvement was attributable to placebo effects, and attributed some visual complaints to age-related cataracts.

SETTLEMENT

Name of Case: *Generac Solar Power Systems Marketing, Sales Practices, and Products Liability Litigation,* MDL No. 3078 (E.D. Wis.)

Type of Case: Consumer Class Action

Total Settlement: $15 million

Co-Lead Plaintiffs' Counsel: Ian Barlow, Kershaw Talley Barlow PC; Mark Chalos, Lieff Cabraser Heimann & Bernstein LLP; Scott Harris, Bryson Harris Suciu & DeMay PLLC; James Rosemergy, Cary & Danis LLC; Harper Segui, Lee Segui PLLC; **Defendant's Counsel:** Michael Gill and Gina Aiello, Mayer Brown LLP; **Mediator:** Robert Meyer, JAMS

Case Summary: Kershaw Talley Barlow PC served as co-lead class counsel in multidistrict litigation against Generac Power Systems, Inc. over allegations that its SnapRS shutdown devices, used in Generac's PWRcell home solar energy systems, were defective and prone to overheating, melting, and failing. The case was brought by 31 named plaintiffs asserting 30 causes of action on behalf of a nationwide class and 16 state subclasses. Plaintiffs successfully opposed Generac's motion to dismiss, with all of Plaintiffs' claims surviving, engaged in extensive discovery – including inspections of 31 representative plaintiffs' systems across 16 different states – worked closely with mechanical and electrical engineering experts to investigate the alleged defect, conducted two Federal Rule of Civil Procedure 30(b)(6) depositions of

Continued on page 38

Member Verdicts & Settlements

Continued from page 37

company representatives regarding Generac's data collection, management, and retention policies, and, among other things, coordinated document and written discovery on behalf of each of the 31 named plaintiffs concerning their systems and class certification issues.

After over three years of litigation, Generac agreed to a $15 million settlement to resolve the case on a nationwide basis through mediation efforts guided by Robert Meyer of JAMS. Plaintiffs' Motion for Final Approval of Class Action Settlement was granted by the Honorable Lynn Adelman of the United States District Court for the Eastern District of Wisconsin on Oct. 22, 2026.

SETTLEMENT

Name of Case: Confidential
Type of Case: Wrongful Death-Negligent Construction/Property Management

Total Settlement: $11,000,000

Plaintiff's Counsel: Marshall R. Way, James R. Donahue, and Robert A. Buccola, Dreyer Babich Buccola Wood Campora, LLP

Case Resolution Date: Sept. 7, 2026

Case Summary: In the spring of 2024, while a houseguest in a mountain community, the decedent, a 46-year-old unmarried but very devoted daughter, died unexpectedly in her sleep. Decedent's sole heir, her elderly father, filed suit for wrongful death, ultimately proving that his daughter died due to carbon monoxide poisoning. In litigation, it was established that the carbon monoxide leak came from an interior heater that was improperly installed by an independent contractor who failed, per code, to properly provide venting that would have prevented the escape of this deadly gas. Additionally, Plaintiff was able to prove that, for years after performance of the incompetent construction work, the appliance was improperly serviced, and that the owner of this vacation home failed to install properly working CO detectors as required by code. All defendants denied liability, contesting even the cause of decedent's death while contending that the damages sought (which were all non-economic), even if provable, were insubstantial. On the courthouse steps, defendants collectively paid $11,000,000 to Plaintiff to resolve this matter.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiffs v. Roe Hospital, Roe Health Plan, and Roe Medical Group* (Confidential)

Type of Case: Medical Malpractice-Birth Injury (Hypoxic-Ischemic Encephalopathy)

Total Settlement: $9,400,000: $8,400,000 to the minor Doe Plaintiff and $1,000,000 to her mother. The court approved the minor's compromise, with the minor's net recovery directed into structured annuities and a special needs trust.

Plaintiff's Counsel: Benjamin T. Ikuta and Michelle B. Hemesath, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Jessica Muñoz, Kelly, Trotter & Franzen, San Diego, for Roe Hospital, Roe Health Plan, and Roe Medical Group; **Mediator:** Hon. Steven R. Denton (Ret.), Judicate West

Case Summary: A healthy 33-year-old first-time mother was admitted at 41 weeks for a post-term induction managed primarily by certified nurse-midwives. Oxytocin was increased as the tracing showed minimal variability and became Category II. During the second stage, the managing midwife was away from the bedside for about two hours while the tracing showed tachysystole and uterine hypertonus and became Category III, with fetal tachycardia of roughly 200 to 210 bpm. No obstetrician was called for an operative delivery. The baby was born with Apgars of 2 to 4, required intubation and cooling, and an MRI confirmed hypoxic-ischemic encephalopathy. She has spastic quadriparetic cerebral palsy, epilepsy, and global developmental delay, is nonverbal, cannot walk, and is fully dependent for care.

Plaintiffs contended the midwives escalated oxytocin despite tachysystole, failed to perform intrauterine resuscitation, left the bedside, and failed to call an obstetrician once the tracing became Category III. They claimed a life-care plan of about $22.9 million and lost earning capacity of about $3.1 million. The defense contended the care met the standard of care and that the injury occurred at least 72 hours before delivery, citing the relatively mild cord acidosis and liver-enzyme pattern; the health plan also asserted Knox-Keene Act immunity.

After the court ordered the case to arbitration, plaintiffs won a motion to vacate that order and return the case to court because the defendants paid the arbitration fees late (Code Civ. Proc., §§ 1281.97–1281.98), and later obtained trial preference.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiffs v. Roe Fertility Laboratory, et al.* (Confidential)

Type of Case: Medical Negligence and Concealment-IVF Laboratory Embryo Loss (Multi-Plaintiff)

Total Settlement: $8,775,000: Global settlement for 29 plaintiff households, allocated among the households by a retired judge, with a minimum of $150,000 per household.

Plaintiff's Counsel: Robert H. Marcereau, Marcereau Law Group, Dana Point; Michelle B. Hemesath and Benjamin T. Ikuta, Ikuta Hemesath Leonard LLP, Santa Ana. Other households in the related actions were represented by Girard Sharp LLP, Peiffer Wolf Carr Kane Conway & Wise, and Clarkson Law Firm; **Defendant's Counsel:** Shelby M. Jones, Kelly, Trotter & Franzen, Long Beach, for Roe Fertility Laboratory and affiliated Roe laboratory entities; Ari Swazer, McDermott Will & Schulte, Los Angeles, for Roe Parent Company; Shahla Couper, Schafer McMahon, Irvine, for Roe Laboratory Physician; **Mediator:** Settlement allocated among households by a retired judge

Case Summary: After a laboratory deep-cleaning with hydrogen peroxide, a bottle of peroxide was shelved alongside the laboratory's distilled water. In January 2024, a staff member used the peroxide to top off the humidification reservoir of an incubator used to culture thawed embryos, and the incubator stayed in use for about three weeks. Embryo transfers during that period had a near-zero pregnancy rate. Some households lost all of their remaining embryos; others underwent additional retrievals and IVF cycles, and some lost the chance to have genetically related children.

Plaintiffs contended that the peroxide destroyed viable embryos and that the defendants continued transferring embryos for several days after learning of the abnormal results, supporting concealment, battery, and misrepresentation claims outside MICRA's damages limits. The laboratory defendants acknowledged the incident but char-

Continued on page 39

Member Verdicts & Settlements

Continued from page 38

acterized it as an isolated human error subject to MICRA, argued that disclosure was the treating physicians' responsibility, and contended causation had to be assessed household by household based on age, embryo quality, and fertility history. Claims against certain physician defendants were dismissed without payment, and some plaintiffs' claims against one physician and practice remain pending.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiff v. Roe Hospital* (Confidential)

Type of Case: Medical Malpractice – Birth Injury (Hypoxic Brain Injury)

Total Settlement: $8,000,000, paid by Roe Hospital.

Plaintiff's Counsel: Benjamin T. Ikuta and Vanessa N. Raven, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** N. Ben Cramer, for Roe Hospital; **Mediator:** Hon. Steven R. Denton (Ret.), Judicate West

Case Summary: After an uncomplicated pregnancy, the mother presented at 41 weeks with ruptured membranes and contractions. The fetal heart rate tracing showed minimal variability from admission, and about an hour and 45 minutes later a prolonged deceleration dropped the fetal heart rate below 70 bpm for more than four minutes. Over the evening, the tracing deteriorated further, with the fetal heart rate falling into the 80s, 70s, and 60s before an emergency cesarean section was performed. The baby was born pale, limp, and unresponsive with very low Apgar scores. Because the birth hospital had no cooling capability, therapeutic hypothermia was delayed pending transfer. MRI showed widespread white-matter injury and global ischemia. The child has profound, permanent disabilities and will require 24-hour care for life.

Plaintiff contended that hospital staff ignored hours of concerning Category II tracings and the prolonged deceleration, mischarted the tracings as reassuring, confused maternal and fetal heart rates, failed to respond to tachysystole and meconium, delayed the cesarean section, and failed to start cooling within six hours. The hospital contended that the monitoring was appropriately interpreted and managed, that the timing of delivery was within the standard of care, that Category II tracings do not always require immediate delivery, and that the injury was not predictable. The case settled at mediation shortly before a preferential trial date.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiff, et al. v. Roe Hospital, Roe Medical Group, and Roe Surgeon* (Confidential)

Type of Case: Medical Malpractice-Delayed Surgery for Internal Hernia after Gastric Bypass

Total Settlement: $7,420,000: Roe Hospital, $4,500,000; Roe Medical Group, $2,000,000; Roe Surgeon, $920,000

Plaintiff's Counsel: Michelle B. Hemesath and Benjamin T. Ikuta, Ikuta Hemesath Leonard LLP, Santa Ana, for Doe Plaintiff; Seth Workman, Workman Law & Litigation, Woodland Hills, for her spouse; **Defendant's Counsel:** Brian Meadows, La Follette, Johnson, DeHaas, Fesler & Ames, Santa Ana, for Roe Hospital; Rachel Geagea, Buchholz, Harris, Levine & Brennan, San Diego, for Roe Medical Group; Colin M. Harrison, Wilson Getty LLP, San Diego, for Roe Surgeon

Case Summary: A woman with a prior Roux-en-Y gastric bypass presented with acute abdominal pain, nausea, and vomiting. An admission CT was read as a possible partial small bowel obstruction. Despite ongoing severe pain, distention, and abnormal vital signs, the surgical consultation did not occur for about 24 hours, and surgery was not performed for nearly three days, when the surgeon found an internal hernia with ischemic bowel requiring resection. She developed septic shock, and a second surgery the next day found a gastric perforation with bile throughout the abdomen. She went on to suffer respiratory failure requiring tracheostomy, encephalopathy, critical illness myopathy, a cerebellar stroke, and cardiomyopathy, and she is now functionally quadriplegic and dependent on others for daily care.

Plaintiff contended that the CT showed a closed-loop obstruction that the radiologist misread and failed to communicate, that the surgeon delayed both the initial operation and re-exploration, that the hospitalist failed to ensure ordered testing was completed, and that hospital nursing failed to escalate a deteriorating patient. The surgeon contended he reasonably relied on the radiology read; the medical group contended the CT findings were subtle and did not change the outcome; and the hospital contended staff followed orders and that the injuries resulted from her underlying surgical pathology and postoperative complications.

SETTLEMENT/MEDIATION

Name of Case: *Singh v. Renn Transportation Inc., et al.*

T**ype of Case:** Wrongful Death-Motor Vehicle (Oversize Load/Tractor-Trailer)

Total Settlement: $6,025,000: $6 million policy limits from Defendant Renn Transportation, $25,000 policy limits from Defendant Marwan Pilot Car Services

Plaintiff's Counsel: Roger A. Dreyer and Anthony J. Garilli of Dreyer Babich Buccola Wood Campora, LLP; **Defendant's Counsel:** Virginia Price and Jordan Teja of Price Pelletier for Defendants Renn Transportation, Inc., and Chad Foxworthy; Jeff Wilson of Patton Trial Group for Defendant Marwan Pilot Car Services

Case Summary: Plaintiffs' husband and father, Daljit Singh, was traveling home from a friend's house on West Riego Road in Sutter County when he was killed after his vehicle was struck by the wide-load heavy equipment that was on the flatbed of a tractor-trailer rig on a narrow bridge and sent into a steep ditch along the side of the roadway. Defendants maintained that the collision was the fault of the decedent because (1) he failed to keep a proper lookout for the oversized vehicle and load that was clearly marked with red flags, "OVERSIZE" signage, amber lights, and a pilot car that he had just passed with flashing amber lights, (2) he failed to successfully navigate to the right around the truck as other motorists had done, as confirmed by dashcam video, and (3) he was traveling at an unsafe speed insofar as he was approaching a narrow bridge with an oncoming wide-load truck.

Defendants' counsel took the depositions of the decedent's wife and four adult children while a Code of Civil Procedure section 998 demand was pending. The deposition of the defendant's employee and driver, who denied in written discovery that he did anything that contributed to the subject collision, was scheduled to be taken shortly after the demand was set to expire. Despite Defendants' claim of no

Continued on page 40

Member Verdicts & Settlements

Continued from page 39
responsibility for the crash, the insurers for the defendants accepted Plaintiffs' section 998 offer to compromise by tendering their respective policy limits rather than risk trial against Plaintiffs.

SETTLEMENT/MEDIATION

Name of Case: *Montes v. City of Santa Clara, et al*.

Type of Case: Wrongful Death-Dangerous Condition of Public Property

Total Settlement: $5,750,000: $5.5M from Defendant City of Santa Clara, $250,000 policy limits from Defendant Ragone

Plaintiff's Counsel: Roger A. Dreyer and Anthony J. Garilli of Dreyer Babich Buccola Wood Campora, LLP; **Defendant's Counsel:** Maria Lampasona and Bryce Gray of Rankin, Shuey, Mintz, Lampasona, & Harper for City of Santa Clara; Michael McCall of Walsworth for Defendant Martha Ragone; **Mediator:** Matthew Conant

Case Summary: Plaintiff Montes' 22-year-old son was killed while driving his motorcycle through an intersection in the City of Santa Clara when Defendant Ragone pulled out from a cross street, attempting to traverse the roadway and continue straight along her direction of travel. Plaintiff alleged that the roadway and intersection were a dangerous condition because its center lane was a reversible lane, one of only two in Northern California. This made it confusing for motorists to discern whether the center lane was being used as a through lane or a turn lane which depended on the time of day, especially given the lack of warning signs at the intersecting cross streets.

The city relied on evidence that the decedent was speeding and on Defendant Ragone's testimony that, despite looking before crossing, she never saw the motorcyclist, and argued that any confusion concerning the center lane's use at the time of the collision was not relevant. The city maintained that the entirety of fault for the collision rested on Defendant Ragone pulling into the intersection when it was unsafe to do so and the decedent traveling at an excessive speed above the speed limit and for the traffic conditions.

Plaintiff successfully defeated the city's motion for summary judgment by way of expert declarations which addressed the sight distance issues and by providing the substantial collision history that existed at the subject location before the subject crash which was obtained through extensive discovery efforts. Counsel also took depositions of everyone in the Traffic Engineering Department and demonstrated the lack of attention and failure to track the collision history, as well as the tremendous turnover in the department such that there was no institutional knowledge of the prior collision history.

Shortly before trial, Defendant city requested mediation with mediator Matthew Conant, who ultimately was able to successfully get the parties to agree to a resolution in this matter that reflected accountability for the city's role in failing to address the dangerous condition alleged by Plaintiff. There had not been any previous litigation involving this subject location.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiff v. Roe Hospital* (Confidential)
Type of Case: Medical Malpractice – Neurosurgical Injury During Elective Aneurysm Clipping

Total Settlement: $3,750,000: $2,750,000 to Doe Plaintiff and $1,000,000 to her spouse and adult children for the release of their claims, including any future wrongful-death claims. The court approved the compromise on behalf of Doe Plaintiff.

Plaintiff's Counsel: Benjamin T. Ikuta, Michelle B. Hemesath, and Janna M. Trolia, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Melissa E. Timoshchik, Fraser Watson & Croutch LLP, Glendale, for Roe Hospital; **Mediator:** Jay Cordell Horton, Esq., Judicate West

Case Summary: A woman in her mid-60s underwent elective craniotomy and clipping of an incidentally discovered 8-millimeter unruptured aneurysm at a teaching hospital. Plaintiff alleged that a neurosurgical resident performed the craniotomy without the attending surgeon in the room and tore the superior sagittal sinus, causing about a liter of blood loss, while the operative note stated that the attending was present for all critical portions. She developed hemorrhage, cerebral edema, and a later stroke, and was left with permanent aphasia, right-sided paralysis, seizures, and executive dysfunction requiring 24-hour care.

Plaintiff contended the hospital allowed an unsupervised resident to perform critical portions of an elective procedure and that the operative record concealed the attending's absence. The court granted leave to add a fraudulent-concealment claim, which plaintiff contended was not subject to MICRA's noneconomic damages cap. Plaintiff claimed a life-care plan of about $9 million plus lost business profits. The hospital contended that sinus bleeding, hemorrhage, and stroke are known risks of aneurysm surgery, that resident participation was properly supervised, and that the claims were time-barred, and it challenged the life-expectancy and damages assumptions. The individual physicians were dismissed before the settlement.

SETTLEMENT/MEDIATION

Name of Case: *Doe Plaintiffs v. Roe Neurosurgeon and Roe Neurosurgical Group* (Confidential)

Type of Case: Medical Malpractice – Spinal Cord Injury (Cervical Epidural Abscess)

Total Settlement: $1,900,000: $1,000,000 to Doe Plaintiff and $900,000 to her spouse for his loss-of-consortium claim and the waiver of any future wrongful-death claims by him and the couple's minor children.

Plaintiff's Counsel: Benjamin T. Ikuta and Michelle B. Hemesath, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Jo Lynn Valoff, Kelly, Trotter & Franzen, Long Beach, for Roe Neurosurgeon and Roe Neurosurgical Group; **Mediator:** Geoffrey Gray, Esq., Judicate West

Case Summary: A healthy 35-year-old mother developed worsening neck and upper-back pain and was twice sent home from urgent care and the emergency department without spinal imaging. She returned with numbness and weakness, and an MRI showed a cervical epidural abscess from C2 to C7 with spinal cord compression and staphylococcal bacteremia. The neurosurgeon referred her to interventional radiology, which could not drain the abscess, and continued antibiotics. Two days later, after new arm weakness, he performed a single-level C6–C7 anterior discectomy and fusion. Neuromonitoring signals were lost late in the decompression, and she awoke with an incomplete cervical spinal cord injury, quadriparesis, wheelchair dependence, and neurogenic bowel and bladder.

Plaintiffs contended that a multilevel abscess with cord compres-

Continued on page 41

Member Verdicts & Settlements

Continued from page 40

sion was a neurosurgical emergency requiring decompression on admission, that a single-level procedure could not treat an abscess spanning five levels, and that the cord was mechanically injured during surgery. The defense contended that a trial of antibiotics was reasonable, that surgery was performed promptly once new weakness appeared, and that the injury was an infection-related spinal cord infarction, and it asserted a reduced life expectancy. After this settlement, plaintiff tried the case against the hospital solely on an ostensible-agency theory, resulting in a 9–3 defense verdict.

SETTLEMENT

Name of Case: *Randolph v. Sacto Nails*

Type of Case: Personal Injury/Negligence

Total Settlement: $275,000

Plaintiff's Counsel: Hank Greenblatt, Catia Saraiva, and William Finkle, Dreyer Babich Buccola Wood Campora, LLP; **Defendant's Counsel:** Debra Fitzsimmons, Law Offices of Jill A. Wood; **Mediator:** Ken Harris

Case Summary: Plaintiff, a Black woman who had always taken pride in keeping her fingernails trimmed and polished, suffered a severe infection as a result of a negligent manicure. The infection caused her index finger to lose its natural pigmentation, leaving her permanently disfigured and causing significant pain and embarrassment.

ARBITRATION

Name of Case: *Doe Claimants v. Roe Medical Group and Roe Hospital (Confidential Arbitration)*

Type of Case: Medical Malpractice – Delayed Diagnosis of Spinal Epidural Abscess (Incomplete Paraplegia)

Total Settlement: $4,750,000

Plaintiff's Counsel: Heather Baker Dobbs and Benjamin T. Ikuta, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Confidential; **Mediator:** Hon. Steven R. Denton (Ret.)

Case Summary:

A 56-year-old engineer presented with severe, worsening neck pain, was diagnosed with a cervical muscle spasm, and was discharged. He returned the next day with persistent pain, slurred speech, and excessive sleepiness and was admitted. During the hospitalization he developed fever, persistent staphylococcal bacteremia, and progressive leg weakness. Several spinal MRIs were limited by motion and done without contrast because of kidney dysfunction, and providers treated him for presumed Guillain-Barré syndrome. About two weeks after admission, an MRI under sedation found an extensive thoracic epidural abscess compressing the spinal cord. Despite emergency laminectomies, he was left with an incomplete T3 spinal cord injury, wheelchair dependence, neurogenic bowel and bladder, and chronic neuropathic pain, and he cannot return to his engineering career. His wife asserted loss of consortium. Claimants contended the physicians repeatedly failed to recognize a spinal cord emergency despite bacteremia, neck pain, progressive weakness, and urinary dysfunction, and that motion-limited MRIs required diagnostic-quality repeat imaging under sedation if necessary. Respondents contended the workup was extensive and appropriate, that acute kidney injury and poor-quality imaging complicated the diagnosis, and that urgent decompression was performed once the abscess was identified.

ARBITRATION

Name of Case: *Gordon v. Tesla Insurance Service*

Type of Case: Underinsured Motorist Arbitration

Total Award: $2,684,000
Past Economic Damages: $164,000 Meds, $260,000 Wage Loss;
Future Economic Damages: $850,000 Meds, $360,000 Lost Earnings;
Non-Economic: $750,000; Loss of Consortium: $300,000

Plaintiff's Counsel: Jeffrey M. Schaff, Schaff Law Group, Inc.; **Defendant's Counsel:** Marissa Vandersluys, Bates, Winter Talmachoff & Vandersluys; **Arbitrator:** Craig Needham, San Jose

Trial Dates: Aug. 12 and 31, 2026
Closing briefs submitted Sept. 9, 2026

Case Summary: Claimant was involved in a rear-end collision on Aug. 8, 2024. He underwent ESIs and eventually a hemilaminectomy and microdiscectomy in December 2024. He continued treatment through 2025, culminating in a fusion in January 2026. A hip arthroplasty was also recommended, and he will likely need an adjacent fusion within his lifetime. Claimant was earning approximately $225,000/yr as a manager for Mattress Firm. He took a regional manager position in October 2025 because he could not tolerate being on his feet and his sales performance was suffering. While technically a promotion, his earnings dipped to approximately $100,000/yr. The third party tendered the $100,000 limits. Tesla did not make any offers until two weeks before the arbitration. Claimant made multiple demands for the balance of his UIM benefits, $900,000.

Trial Summary: Tesla retained many of the usual suspects to diminish Claimant's injuries: Dr. Jeffrey Yablon, Dr. Ronald Winter, and Dr. Dean Stolworthy (Bio-Mech). Tesla produced the policy language (not the declaration page) to the arbitrator one week before the arbitration. According to its policy, the insured is entitled to three arbitrators (one selected by each party and a third selected by the other two) and Tesla is required to pay the entire cost of the arbitration. Tesla disputed its own policy requirements, stating that the Insurance Code was controlling. We did not push this issue given the status of our case, but it will be an issue explored in the pending bad-faith action.

ARBITRATION

Name of Case: P*laintiff Husband, et al. v. Roe Urgent Care, et al.*
(Confidential Arbitration)

Type of Case: Wrongful Death-Medical Malpractice (Missed Sepsis at Urgent Care)

Total Settlement: $1,750,000

Plaintiff's Counsel: Michelle B. Hemesath, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Betsey Jeffery, Kelly, Trotter & Franzen, San Diego, for Roe Urgent Care, Roe Physician Assistant, and Roe Physician; **Mediator:** Hon. Steven R. Denton (Ret.)

Case Summary: A 34-year-old wife and mother of four young chil-

Continued on page 42

Member Verdicts & Settlements

Continued from page 41

dren went to an urgent care with abdominal pain, vomiting, shortness of breath, fever and chills, and a heart rate of 141. A physician assistant diagnosed gastroenteritis and sent her home with fluids and a bland diet. Four days later she returned with worsening shortness of breath, dizziness, and a heart rate of 136. Labs showed a white count of 2.7 with 57% bands, an ultrasound found a deep vein thrombosis, and she was told to go to the hospital. She was admitted that evening, developed hypoxia overnight, and suffered a respiratory arrest the next morning before ordered IV antibiotics were given. She died of sepsis.

Plaintiffs contended that her tachycardia, shortness of breath, leukopenia, and bandemia at both urgent care visits required a sepsis workup, IV antibiotics, and emergency transfer, and that earlier treatment would have saved her life. Defendants contended that her first presentation was consistent with a viral or gastrointestinal illness, that admission was arranged once abnormal labs returned, and that she may have had fulminant viral hepatitis for which earlier intervention would not have changed the outcome.

ARBITRATION

Name of Case: *Doe Plaintiffs v. Roe Hospital, Roe Health Plan, and Roe Medical Group (Confidential Arbitration)*

Type of Case: Medical Malpractice-Delayed Diagnosis of Lung Cancer

Total Settlement: $1,725,000

Plaintiff's Counsel: Benjamin T. Ikuta, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Myra A. Firth, La Follette, Johnson, DeHaas, Fesler & Ames, Santa Ana, for Roe Hospital, Roe Health Plan, and Roe Medical Group; **Mediator:** Hon. Steven R. Denton (Ret.), Judicate West

Case Summary: A lifelong non-smoker in her late 50s reported a persistent cough to her primary-care physician in 2019. For five years the cough was treated empirically as postnasal drip and reflux, with referrals to allergy, ENT, and pulmonology, sinus CTs, inhalers, and turbinate ablation, but no chest CT. A 2022 chest X-ray was read as normal; Plaintiffs contended it showed a right lower-lung opacity. A chest CT in late 2024 revealed a 5.1-centimeter subcarinal mass, and biopsy confirmed unresectable Stage III ALK-positive lung adenocarcinoma. Her spouse asserted loss of consortium.

Plaintiffs contended that a cough lasting years, the failure of empiric treatment, and the 2022 X-ray required a chest CT, and that the delay turned a resectable cancer into unresectable disease with a life expectancy of about five years. They claimed about $4.4 million in damages. Defendants contended the symptoms were nonspecific and reasonably attributed to common benign conditions, that the X-ray did not require further imaging, and that the cancer would not have been found at a curable stage given its biology and atypical presentation.

ARBITRATION

Name of Case: *Kimberly Tran v. Kaiser Foundation Hospitals and The Permanente Medical Group, Inc. (Kaiser Arbitration No. 18432)*

Type of Case: Medical malpractice: delayed diagnosis of kidney disease (IgA nephropathy) resulting in premature end-stage renal disease and dialysis.

Total Verdict: Arbitration award of $1,518,202: lost earnings, $1,048,202; noneconomic damages, $470,000 (the 2026 MICRA limit). Claimant's Code of Civil Procedure section 998 offer of $763,621 was not accepted. Her request for costs and prejudgment interest under section 998 and Civil Code section 3291 is pending.

Plaintiff's Counsel: Drew M. Widders and Gina M. Gestri, Wilcoxen Callaham, LLP, Sacramento; **Defendant's Counsel:** John C. Won, Craddick, Candland & Conti, San Ramon; Kaiser Permanente member arbitration administered by JAMS; Neutral **Arbitrator** Hon. David E. Hunter (Ret.)

Trial Dates: The hearing began Aug. 17, 2026, and ran six hearing days by Zoom. Closing briefs were filed Sept. 21, 2026, and the final award issued in November 2026.

Case Summary: Ms. Tran, a 42-year-old board-certified behavior analyst who worked with children with autism, was a Kaiser member with no diabetes, no smoking history, and years of normal kidney function. In November 2022, she reported two weeks of ankle swelling. At a video visit on Nov. 22, 2022, a Kaiser family medicine physician listed proteinuria in her differential diagnosis and ordered a urinalysis, but no one told Ms. Tran about the order. The test was never done, and the order expired. Her primary care physician did not follow up on it at later visits, where Ms. Tran was diagnosed with hypertension and continued to report swelling, and took more than two weeks to answer her June 2023 message asking for more testing. In July 2023, a new physician ordered the labs: creatinine 4.71, eGFR 11, and heavy proteinuria. She was sent to the emergency department, and a kidney biopsy showed IgA nephropathy with crescent formation. Despite high-dose steroids and cyclophosphamide, her kidneys did not recover. She began dialysis in October 2023, has been on in-center hemodialysis three times a week since May 2024, and is on the transplant list. Dialysis cut her work from full time across several agencies to per-diem hours.

Trial Summary: Claimant's experts were Varun Chawla, M.D., M.P.H. (nephrology), Alicia Appel, M.D. (primary care standard of care), Craig Enos, CPA (economics), and Michael Martinez, R.N. (life care plan). Kaiser called Benny Gavi, M.D. (standard of care), Mario Curzi, M.D. (nephrology), and economist Karl Erik Volk, along with the treating physicians.

Claimant alleged breaches beginning with a rising creatinine trend in 2021. The arbitrator found the earlier lab values were within normal limits and did not support a breach, but found that Kaiser's physicians breached the standard of care by failing to tell Ms. Tran about the November 2022 urinalysis and by failing to reorder it, and that the delay in answering her June 2023 message was a further breach.

On causation, Dr. Chawla testified to a reasonable medical probability that diagnosis and treatment in November 2022 would have delayed dialysis by five to 10 years. Dr. Curzi put the benefit at months to about two years, and Mr. Volk valued the lost earnings on that premise at $43,929 to $155,284. The arbitrator credited Dr. Chawla and awarded lost earnings from Mr. Enos's net lost earnings analysis for the November 2022 window, plus noneconomic damages at the MICRA limit. The parties had stipulated to a future medical figure that applied only to a 2021 diagnosis, so no future medical damages were awarded on the November 2022 finding.

One approach that worked: the closing brief priced each possible breach date against each nephrologist's delay opinion in a single grid, so the arbitrator could find causation at any date and have the corresponding award in front of him.

Continued on page 43

Member Verdicts & Settlements

Continued from page 42

ARBITRATION

Name of Case: *Doe Claimants v. Roe Medical Group* (Confidential Arbitration)

Type of Case: Wrongful Death – Fatal Pulmonary Embolism after Orthopedic Surgery

Total Settlement: $1,500,000: $1,200,000 to the surviving spouse and $300,000 to the minor child.

Plaintiff's Counsel: Heather Baker Dobbs and Benjamin T. Ikuta, Ikuta Hemesath Leonard LLP, Santa Ana; **Defendant's Counsel:** Confidential; **Mediator:** Hon. Steven R. Denton (Ret.)

Case Summary: A 38-year-old married father with a history of lymphoma and a prior deep vein thrombosis fractured his femur, patella, and elbow in a fall and underwent extensive orthopedic surgery. He received anticoagulant prophylaxis in the hospital but was discharged on low-dose aspirin alone. Several days later he returned with respiratory symptoms, was diagnosed with extensive pulmonary emboli, and died.

Claimants contended that his history of lymphoma and prior clots, his orthopedic trauma, prolonged immobility, and extensive surgery required full anticoagulation after discharge, and that the fatal embolism was preventable. Respondents contended that pulmonary embolism is a recognized complication of major orthopedic trauma and surgery and pointed to a recent large study finding aspirin as effective as heparin for clot prevention after orthopedic fractures. The case settled at mediation before the scheduled arbitration hearing.

ARBITRATION

Name of Case: *Hobbs, Claimant v. State Farm Insurance (UIM)*

Type of Case: Binding underinsured motorist (UIM) arbitration under Claimant's own policy. The policy had UIM limits of $250,000 per person.

Total Arbitration Award: The arbitrator valued Claimant's non-economic damages from the accident **at $525,000.**

P**laintiff's Counsel:** Hank Greenblat¡t, Esq., and Andriy Zhernovey, Esq., of Dreyer, Babich, Buccola, Wood Campora, LLP; **Defendant's Counsel:** Leila M. Mohseni, Tressler LLP, Walnut Creek, CA; **Arbitrator:** Hon. Richard L. Gilbert (Ret.)

Arbitration Date: July 21, 2026

Case Summary: On the morning of Dec. 6, 2024, Hobbs was driving south on State Route 99 near Garner Lane in Butte County. The underinsured driver wrongly believed her light was green, entered the intersection and struck the passenger side of Hobbs's car. The impact spun Hobbs's car into a vehicle stopped in the northbound left-turn lane. An ambulance took Hobbs to the Enloe Medical Center ER, where she complained of chest pain and of right shoulder and right knee pain. Following the collision, Hobbs continued to suffer from neck and knee pain, as well as PTSD.

Trial Summary: The case was tried on damages, mostly non-economic. Respondent argued that claimed injuries were primarily a result of pre-existing conditions and that Claimant did not suffer any "structural injury" to her spine. Per State Farm, ongoing episodes of neck pain were a result of Claimant's ongoing PTSD. The parties disputed the nature and extent of future medical and mental health treatment. The arbitrator criticized State Farm's reliance on Claimant's "substantial benefit" from counseling to suggest the PTSD was no longer serious. The arbitrator further agreed that regardless of "structural injury," Claimant continued to suffer from clear, objective neck pain, knee pain, and PTSD. Claimant made a 998 offer of $80,000 in "new money" in October 2025, which was rejected. Respondent's best offer before arbitration was for $53,636.02 in "new money." This offer was made in June 2026, after State Farm had already advanced $26,363.98. Following the arbitration award, Claimant successfully recovered $28,441.41 in costs.

ARBITRATION

Name of Case: *Zizzle v. State Farm (UIM)*

Type of Case: Binding underinsured motorist (UIM) arbitration under Claimant's own policy, arising from a rear-end auto collision. The policy had UIM limits of $250,000 per person.

Total Arbitration Award: $478,004.88; Medical Specials: $153,004.88 ($53,679.88 for past medical damages, $99,325.00 for future medical damages); General Damages: $325,000

Plaintiff's Counsel: Hank Greenblatt, Esq., and Andriy Zhernovey, Esq., of Dreyer, Babich, Buccola, Wood Campora, LLP; **Defendant's Counsel:** Gareth Umipeg, Esq., of Tiza Serrano Thompson & Associates; **Arbitrator:** Hon. Russell L. Hom, Judge of the Superior Court (Ret.), Judicate West.

Arbitration Dates: Aug. 13–14, 2026

Case Summary: On March 26, 2024, Claimant was stopped at an exit-ramp light in Butte County when an underinsured motorist rear-ended her. State Farm conceded liability but disputed causation and how much of her injury came from this accident. The other driver had $15,000/$30,000 in liability coverage, and that $15,000 limit was paid. Claimant had a complicated medical history that included a C5-6 anterior cervical fusion in 2021, functional neurological disorder (FND), and past opioid dependency with fibromyalgia. After the collision, Claimant received epidural steroid injections, medial branch blocks, and radiofrequency ablation, which were covered by her health insurance.

Trial Summary: Respondent's case revolved largely around biomechanics, given that the delta-V was approximately 7 mph. Respondent claimed Claimant could not have suffered the claimed injuries as a result of this "low-impact" collision, entirely ignoring Claimant's vulnerability because of her significant history. The arbitrator found the biomechanical testimony unhelpful and the clinical evidence more persuasive. Claimant was able to prove that her prior fusion surgery had resolved her radicular symptoms and that the radicular pain returned after the collision and has continued to the present. Respondent's six-month "cut-off" for collision-related symptoms was deemed "arbitrary." The arbitrator found that Claimant had a concussion and that the accident made her FND symptoms worse. Claimant served a 998 offer in the amount of $225,000 in "new money" in March 2025, which was rejected. Respondent's best offer before arbitration was in the amount of $116,804.28 in "new money" in July 2026. Claimant successfully recovered $53,919.64 in costs.

437c: A Powerful Tool for Plaintiff Attorneys

Page 27

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

DECEMBER 2026
Tuesday, Dec. 8
Noon: Q & A Problem Solving Lunch
CCTLA Members Only / Zoom

Wednesday, Dec. 9
5:30 pm: Holiday Reception
& Annual Meeting & Installation
of the 2027 Board
Sheraton Grand Sacramento Hotel,
1230 J Street. See pages 24 and 25.

JANUARY 2027
Tuesday, Jan. 12
Noon: Q & A Problem Solving Lunch
CCTLA Members Only / Zoom

FEBRUARY
Tuesday, Feb. 9
Noon: Q & A Problem Solving Lunch
CCTLA Members Only / Zoom

MARCH
Tuesday, Mar. 9
Noon: Q & A Problem Solving Lunch
CCTLA Members Only / Zoom

Thursday-Friday, Mar. 12-13
Donald L. Galine Napa/Sonoma at
The Lodge at Sonoma Resort

APRIL
Tuesday, Apr. 13
Noon: Q & A Problem Solving Lunch
CCTLA Members Only / Zoom



CCTLA Calendar of Events