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Busy, but rewarding, start

Amar Shergill
CCTLA President
Shergill Law Firm

The first few months as president of the Capitol City Trial Lawyers Association have been busy. Between the fight against attacks on our civil justice system and the roller coaster that has been the statewide primary election, I have had a full plate. However, this leadership role has also compelled me to be in spaces that recharge the soul and provide inspiration to keep up the fight.

In April, it was my honor to attend the UC Davis Law School's Middle Eastern, North African and South Asian (MENASA) Students Association banquet. This is a relatively new organization hosting its second annual banquet celebrating graduates. It was truly amazing to see such a diverse group coming together to celebrate each other. From the diversity of traditional clothing from across the various diasporas to the musical performance, I found the mutual support inspiring. There was even a touching moment when a Latina graduate, unable to attend a banquet hosted by her own people, was welcomed and included along with her family so that they would still have a special day to celebrate. And, of course, because no MENASA event is complete without dancing, I had a blast dancing to all sorts of music with students, their families and my own family. I look forward to joining Sikh students on campus later this month for a career panel. I cannot overstate how truly inspiring these future lawyers are and how blessed I felt to be included in their celebrations.

Also in April was the first-ever event in Sacramento by the recently formed Sikh National Bar Association. As an "old-timer" in the Sikh attorney community, I was pleased to help host this event. Back in 2008, when I was founding President of the South Asian Bar Association of Sacramento, we had a hard time getting two dozen attorneys in a room; now we exceed that number with Sikhs alone — a massive sea change in representation. It was touching to see Sikh judges together with Sikh law students and practicing attorneys in a space where they could just be themselves, be heard, and be lifted up. May there be many more such days ahead.

Recently, I joined the Alliance Against Corporate Abuse, Consumer Attorneys of California and many allies at the State Capitol as we submitted over one million signatures in support of a statewide initiative to hold Uber and other rideshare companies accountable for an epidemic of sexual assaults committed by their drivers. As a survivor recounted when reporting an incident to law enforcement, "they let me know that there was an entire division that was only focused on Uber-related crimes and injuries. And that my experience was extremely common, just another day in the office. This was extremely alarming to me, and still is." Although there are many fronts in the war against corporate abuse, I am proud to be in this fight.

In May, I attended the annual dinner for Operation Protect and Defend, where

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Marti Taylor, Wilcoxen Callaham, is a CCTLA Vice President

NOTABLE CITES

By: Marti Taylor

IN RE THE DOMESTIC PARTNERSHIP OF TORRES CAMPOS AND MUNOZ
2026 4DCA/1 California Court of Appeal, No. D085584 (March 5, 2026)

Family court abused discretion by relying on fictional case; however, appellant forfeited claim of error by drafting order containing fake citations without objection

FACTS: Following the 2022 dissolution of their domestic partnership, Joan Pablo Torres Campos filed a request for shared custody and visitation of a dog named Kyra under Family Code section 2605. Leslie Ann Munoz was represented pro bono by her cousin, attorney Roxanne Chung Bonar. In opposing the request, Bonar cited two cases — *Marriage of Twigg* (1984) 34 Cal.3d 926 and *Marriage of Teegarden* (1995) 33 Cal.App.4th 1572 — for the proposition that courts must consider the parties' emotional well-being and stability in custody determinations.

Neither case existed.

The family court commissioner, after an unreported hearing, directed Torres's counsel to prepare the order. Torres's counsel drafted and submitted a proposed Findings and Order After Hearing that incorporated both fictitious citations, and the court signed it. Torres did not object to or alert the court about the fake authorities.

After the appeal was initially dismissed for failure to file an opening brief, Torres moved twice to reinstate. In opposing the second motion, Bonar doubled down — insisting *Twigg* was "a legitimate California Supreme Court case" with new (also fabricated) parallel citations to "195 Cal.Rptr. 718, 670 P.2d 340" and a fake decision date of "July 5, 1984," and accusing opposing counsel of "incompetence" and "inadequate database searches." At oral argument, Bonar conceded these additional fake citations "may have" come from her use of AI tools.

ISSUES: (1) Whether the family court abused its discretion by relying on fictitious case authorities in its order; (2) whether Torres forfeited that claim by drafting the order himself; (3) whether sanctions should be imposed against Bonar.

RULING: Affirmed. The Court of Appeal affirmed the family court's order denying pet custody and visitation. The court sanctioned Bonar $5,000 and directed the clerk to report the sanctions to the State Bar of California.

REASONING: The court held it is "an abuse of discretion for a court to rely in material part on fictional case authorities in rendering a decision or making an order," reasoning that reliance on fake cases is fundamentally incompatible with the informed exercise of discretion controlled by genuine principles of law, undermines the integrity of the outcome, and erodes public confidence in the judicial system.

The court emphasized that this concern is heightened "with the increasing incidence of hallucinated case citations generated by AI tools."

However, the court held Torres forfeited the claim through both affirmative conduct and inaction. Torres's own counsel drafted and submitted the proposed order containing the fabricated citations, and Torres failed to object or alert the court before it was signed. The forfeiture rule applies to a party's failure to object to the language of a proposed order when given the opportunity. The court emphasized that an attorney submitting any document to the court has an independent obligation to verify cited authority — "no brief, pleading, motion, or any other paper filed in any court should contain any citations . . . that the attorney responsible for submitting the pleading has not personally read and verified."

Although the court had discretion to overlook the forfeiture, it declined because doing so would excuse Torres's counsel's own breach of duty in submitting the unverified proposed order.

On sanctions, the court held that citing fictitious authority is sanctionable as an unreasonable violation of California Rules of Court 8.204(a)(1) and 8.1115(a), and constitutes a breach of an attorney's duty of candor under Business and Professions

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Parties can download the Event Data Recorder (EDR) of a vehicle involved in a collision either by agreement or by court order

By: Shahid Manzoor

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

In most automotive collision cases, Defendants routinely demand inspection of the Plaintiff's vehicle involved in the collision and demand that the Plaintiff allow Defendants to download the Event Data Recorder (EDR) of the vehicle. In most cases, the court will allow discovery of the Plaintiff's vehicle, since the vehicle involved in the collision is at issue. But this discovery is not akin to written discovery or depositions, where no agreement between the parties or court order is required.

Rather, demanding to download the Plaintiff's vehicle's EDR is more akin to a psychological or medical examination of the Plaintiff, for which the parties need an agreement or a court order. So, both Plaintiff and Defendants would need an agreement or a court order to download the other party's vehicle's EDR.

Furthermore, if the Plaintiff agrees to allow Defendants to download the EDR, the Plaintiff can also ask that the downloaded EDR data be provided to the Plaintiff (outside of a formal expert discovery request). The courts have held that EDR data is factual information and may not be protected by attorney work product. This way, Plaintiff's counsel can have access to the Plaintiff's vehicle's EDR data ahead of time without waiting for formal expert discovery (if needed).

A party may demand that another party "produce and permit the party making the demand to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made." (Code Civ. Proc. § 2031.010(c).) The Plaintiff's vehicle clearly falls within this section.

Under California law, access to Event Data Recorder (EDR) data is governed by specific statutory provisions and is subject to limitations. Cal Veh Code § 9951 establishes that data recorded on an EDR may not be downloaded or retrieved by anyone other than the registered owner of the vehicle, except under certain circumstances. These include: (1) the registered owner's consent; (2) a court order; (3) retrieval for the purpose of improving motor vehicle safety or medical research, without disclosing the identity of the registered owner or driver; or (4) retrieval by a licensed dealer or automotive technician for diagnostic or repair purposes. (Cal Veh Code § 9951.)

Case law further clarifies these principles. In *People v. Ferguson*, 194 Cal. App. 4th 1070, the court emphasized that Cal Veh Code § 9951 does not restrict the admissibility of EDR data when it is lawfully obtained under a court order. The court also noted that the statute's restrictions on the release of EDR data apply only when the data is retrieved for purposes of improving vehicle safety or medical research. (Cal Veh Code § 9951; Cal Code Civ Proc § 2017.020.) Thus, when EDR data is sought in litigation, its use is not inherently prohibited, but its retrieval must comply with the statutory framework.

In another case, the court held that a criminal defendant has no reasonable expectation of privacy in EDR data such as the vehicle's speed and braking immediately before a collision, since such information is observable to the public. (*People v. Diaz* (2013) 213 Cal.App.4th 743, 757–758.) Thus, EDR data does not invoke Fourth Amendment concerns, and it follows that it is not subject to privacy protections in civil discovery.

This applies equally to EDR data of other events in addition to the subject collision in this case. The Plaintiff's braking and vehicle speed are projected to the public every time the Plaintiff drives, both at the time of the collision and during other collisions. So, the parties will need an agreement to allow the download of each other's EDR data, or seek judicial

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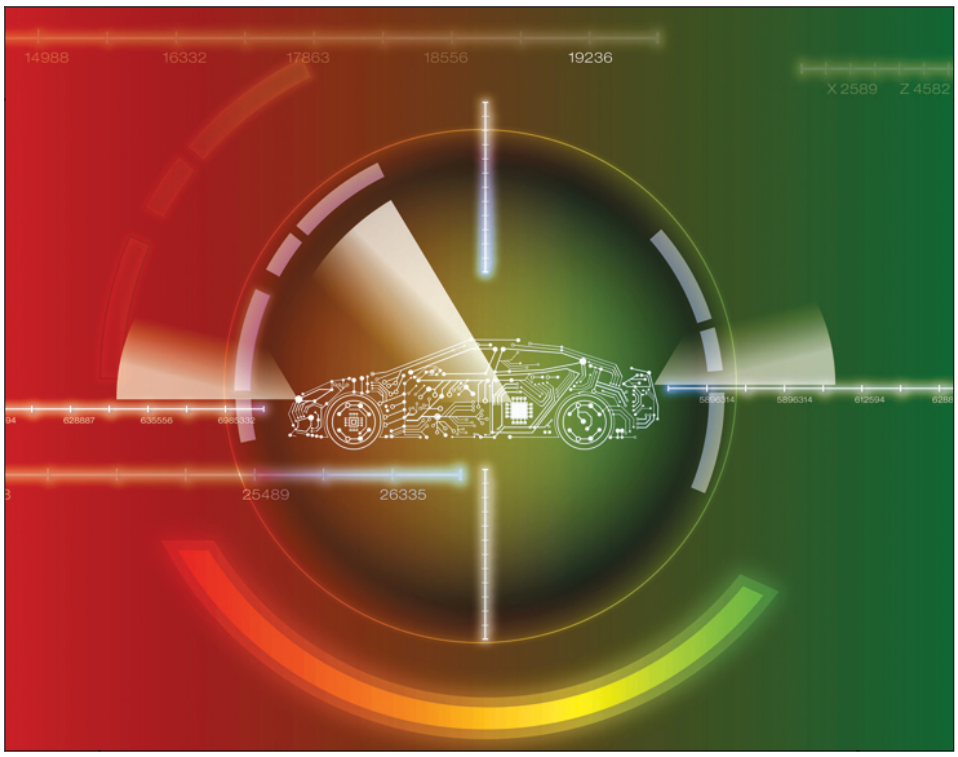

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intervention for a court order allowing the download.

"It has long been recognized that the work of an expert-consultant is protected by the attorney's work product privilege." (*County of Los Angeles v. Superior Court* (1990) 222 Cal.App.3d 647, 654.) An expert's work becomes discoverable once it is reasonably certain that the expert will provide opinion testimony in the case. (*Id.* at pp. 654–655.)

Discovery of expert materials occurs with the simultaneous exchange of expert witness information, which occurs either 50 days before trial or 20 days after service of an expert disclosure demand, whichever is later. (Code Civ. Proc. § 2034.230(b).)

"In California, an attorney's work product is protected by statute. (Code Civ. Proc., § 2018.010 et seq.)" (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 485.) Any writing "that reflects an attorney's impressions, conclusions, opinions, or legal research" is subject to absolute work product protection and is not discoverable. (Code Civ. Proc. § 2018.030(a).) Other forms of attorney work product are subject to qualified protection and become discoverable if "the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code Civ. Proc. § 2018.030(b).)

Purely factual material is not work product. (*Mack v. Superior Court* (1968) 259 Cal.App.2d 7, 10.) Here, the EDR data is purely factual. There is nothing within the data itself or in its retrieval that could reveal the impressions, conclusions, or opinions of an attorney. Thus, the EDR data is not protected work product. Since the data is not protected attorney work product, the Plaintiff's counsel can demand that the data be given to the Plaintiff within a reasonable time frame after the inspection.

President's Message

Continued from page one

students from across California are awarded scholarships for achievements in legal writing and art. The event is especially meaningful because we get to sit down over dinner and chat with high school students and their parents about their experience in the program. Operation Protect and Defend was established in 2001 through the efforts of the Honorable Frank C. Damrell, Jr. (Ret.) in concert with members of the local bench and bar, and Sacramento-area teachers. Judges, lawyers, and teachers — believing strongly in their obligation to serve our nation by actively fostering important democratic principles — have worked each year to design a curriculum, including selected readings and court opinions, to educate high school students on critical constitutional topics. The essays by the students and their amazing works of art are a true highlight of my time so far as President of CCTLA.

I am looking forward to the second half of my term as CCTLA president. We have a lot of work ahead, particularly with a looming election that will determine whether Californians continue to have access to justice in our courts and whether the federal government will protect fundamental rights under the Constitution. It is my honor to be leading this organization into battle, and I know I will see many of you on the ramparts.

In solidarity,
Amar Shergill
President, Capitol City Trial Lawyers Association

The 'Risk of the Procedure' defense in medical malpractice trials

By: Margot Cutter

Defendants in medical negligence actions frequently characterize an adverse outcome as a "known complication" or a "risk of the procedure." When left unexamined, this characterization can blur the governing legal questions (standard of care and causation) and encourage jurors to treat the complication as outcome-determinative rather than conduct-determinative.

The occurrence of a recognized complication does not resolve whether the doctor complied with the applicable standard of care or whether negligence was a substantial factor in causing injury. Complications may occur in the absence of negligence, and the same complications may occur because of substandard technique, judgment, monitoring, or response. Accordingly, the goal at trial is to keep the evidence focused on the defendant's conduct and to ensure that any expert testimony linking "risk" to "negligence" satisfies California's admissibility requirements.

This article addresses three recurring points of leverage at trial: (1) evidentiary gatekeeping and motions in limine directed at outcome-driven expert reasoning (Evid. Code, §§ 720, 801–803; *Sargon Enterprises, Inc. v. Univ. of Southern California* (2012) 55 Cal.4th 747; DeLisi v. Lam (2019) 39 Cal.App.5th 663); (2) targeted use of Evidence Code section 801.1 to narrow speculative alternative-causation testimony; and (3) voir dire and expert presentation strategies that distinguish inherent procedural risk from negligent causation.

Margot Cutter, Cutter Law PC, is the CCTLA Board Treasurer

1. Reframe the Defense Theme: "Risk" Is Not Dispositive

The defense formulation is rhetorically effective because it presents a medical generalization as if it were a legal conclusion. A recognized complication may be relevant to differential diagnosis and causation analysis, but it does not establish compliance with the standard of care.

For purposes of trial and evidentiary motions, it is helpful to distinguish (a) the general proposition that a complication can occur in non-negligent circumstances from (b) the case-specific question whether the defendant's conduct more probably than not caused the complication in this patient. The plaintiff's theory should be presented as a conduct-based account (what was required, what occurred, and how the deviation caused harm), rather than as a categorical dispute over whether the complication is "known."

This framing also assists in addressing themes sometimes associated with informed consent. A patient's consent to a procedure does not constitute consent to negligent performance of the procedure, and the listing of potential complications does not resolve breach or causation. At least one California trial court has treated "risk of the procedure" rhetoric as non-dispositive where the issues are standard of care and causation. (*Sabin v. Ghalili*, 2024

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Cal. Super. LEXIS 56691.) Counsel should be prepared to redirect the case from labels to the operative conduct, and to the expert reasoning that connects that conduct to the elements of the claim.

Keep the difference straight: you are not asking the court to decide whether your expert is "more believable." You are asking the court to prevent the jury from being misled by an opinion that is not a reliable application of expertise to the facts of the case.

2. Expert Admissibility: Use the Court's Gatekeeping Role to Your Advantage

Many "risk of the procedure" cases are won or lost on expert testimony. The defense theme often arrives through an expert who appears to be offering a technical, medical conclusion but is actually offering flawed logic: because the outcome is a known complication, the care must have been appropriate. California Evidence Code sections 720, 801, 802, and 803 provide the framework to challenge that flawed reasoning before the jury ever hears it.

Section 720 addresses qualification. Sections 801 and 802 address the substance and basis of expert opinion: the opinion must assist the trier of fact and be based on matter reasonably relied upon by experts. Section 803 authorizes exclusion where an opinion is based in whole or in significant part on matter that is not a proper basis for such an opinion. Together, these sections provide a framework to attack opinions that are untethered to the case facts or that substitute labels ("complication," "risk") for analysis.

The California Supreme Court's decision in Sargon Enterprises, Inc. v. University of Southern California, 55 Cal.4th 747, reinforces the trial court's role as gatekeeper. Courts must exclude expert opinions that are (1) based on matter on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative. Appellate courts have emphasized the same boundaries while cautioning that gatekeeping is not an invitation for the judge to pick the winner between two competing, admissible schools of thought. (*DeLisi v. Lam*, 39 Cal.App.5th 663.)

Keep the difference straight: you are not asking the court to decide whether your expert is "more believable." You are asking the court to prevent the jury from being misled by an opinion that is not a reliable application of expertise to the facts of the case.

Causation disputes offer an additional tool. In cases where medical causation must be proven to a reasonable medical probability, Evidence Code section 801.1 limits "alternative cause" opinions from the party without the burden of proof: a contrary expert may offer an affirmative alternative only if the expert can opine that the alternative cause exists to a reasonable medical probability (subject to statutory exceptions). Section 801.1 also clarifies that an expert may testify that the proponent's causation theory cannot meet the probability standard and explain why. Used correctly, section 801.1 can narrow—or exclude—defense "maybe it was something else" narratives that never rise above mere possibility.

What section 801.1 does (and does not) do:

- It can bar affirmative "alternative cause" opinions framed only as possibilities.
- It still allows a defense expert to testify that your causation theory cannot meet the reasonable-probability standard and to explain why.

Use section 801.1 to eliminate speculative alternative pathways while preparing your own expert to meet the predictable defense critique: "You can't say how it happened to a reasonable medical probability." Your expert should be ready to point to operative findings, timing, anatomy, imaging, and accepted mechanisms—whatever the record provides—and explain why, more likely than not, the negligent act caused the injury.

3. Motions in Limine: Exclude the "Known Risk Equals No Breach" Expert Leap

In practice, the most consequential defense testimony is not the observation that an injury is a recognized complication; it is the inferential step that treats recognition of the complication as proof that the standard of care was met. Plaintiffs should evalu-

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ate whether that inferential step is supported by case-specific facts and reliable expert reasoning.

Under *Sargon* and Evidence Code section 801, courts may exclude expert opinions where the reasoning is unsupported by the matters relied upon or rests on speculation, and where the opinion does not assist the trier of fact.

Drafting note: motions that seek to exclude any mention of a complication being "known" are often overbroad and may be denied. A more defensible approach is to target the specific opinion or argument that equates the existence of a known complication (or procedural risk) with compliance with the standard of care, unless the proponent supplies a case-specific analysis of what the defendant did and why it satisfied the standard under the circumstances.

Motion Components:

- Identify the opinion to be excluded (quoting deposition testimony where available) and describe the inferential chain (e.g., "known complication" ? "no breach").
- Develop record support showing the opinion is not tied to the operative facts (e.g., concessions that the same complication occurs both with and without negligence; failure to analyze technique, timing, or response).
- Frame the admissibility defect under Sargon and Evidence Code sections 801/803.

Counsel's objective is to distinguish between jurors who cannot separate informed consent from negligence and those who can evaluate the evidence under the correct legal standards. The recurring corrective principle for trial is that informed consent addresses authorization to proceed, not authorization to depart from the standard of care.

- Explain why the testimony will not assist the trier of fact and instead risks confusion by presenting a simplified binary (risk/no liability) that does not correspond to the elements the jury must decide.

4. Voir Dire:
Find Out What Jurors Hear When They Hear "Risk"

Voir dire serves two functions in these cases: (1) to identify jurors who would treat a "known risk" as an immunity principle, and (2) to establish, through neutral questioning, that jurors can follow the instruction that liability turns on breach and causation rather than the mere fact that a complication was possible.

Common juror translations of "risk of the procedure" include:

- "If you consented, you accepted whatever happened."
- "Medicine is uncertain; bad outcomes happen; lawsuits are unfair."
- "If it's a known complication, nobody is at fault."

Counsel's objective is to distinguish between jurors who cannot separate informed consent from negligence and those who can evaluate the evidence under the correct legal standards. The recurring corrective principle for trial is that informed consent addresses authorization to proceed, not authorization to depart from the standard of care.

5. Expert Testimony:
Teach "Inherent Risk" Versus Negligent Causation

Expert preparation is central to addressing "risk" defenses. Effective testimony typically (1)concedes the medically accurate proposition that certain complications can occur absent negligence, then (2) explains, based on the record, why the complication in the case at issue is more consistent with a deviation from the standard of care and identifies the specific conduct constituting that deviation.

Conclusion: Take the Case Back From the Logical Fallacy

"Risk of the procedure" themes are most effectively addressed by maintaining a consistent focus on the legally material issues (breach and causation) and by ensuring that expert testimony offered to negate liability meets California's admissibility standards. Where appropriate, counsel can seek to preclude opinions that convert a general medical possibility into a case-dispositive conclusion. *Sabin v. Ghalili*, 2024 Cal. Super. LEXIS 56691.

Voir Dire - An Interactive Approach | May 8, 2026

CCTLA members recently participated in a hands-on voir dire workshop led by Chris Wood, John Demas, and Dr. Judy Rothschild.

The event began with a panel discussion regarding effective techniques and common pitfalls. The speakers emphasized that instead of focusing on convincing jurors of specific case details, it is more important to listen to their responses.

The panel stressed the importance of directly address any concerning aspects of the case with the jury and ask for their opinions. This approach provides genuine insight into their perspectives on both the profession and the case.

Following the discussion, volunteers practiced their examination skills with potential "jurors" composed of members of the public and fellow attorneys. This provided a valuable opportunity to test strategies for addressing the challenging subjects often encountered when selecting the jury that will determine a client's case outcome.

SPECIAL THANKS TO OUR PROGRAM SPONSOR!

SAVE THE DATE!

CCTLA & McGeorge School of Law

Fall MIXER

Capitol City Trial Lawyers Association (CCTLA) invites college/law students, faculty, and practicing attorneys to a Fall Mixer in late September to "rock the vote" ahead of the 2026 general election. Enjoy an evening of networking, mentorship, and an accessible overview of key California ballot initiatives shaping our state's legal landscape. Appetizers and beverages will be served and CCTLA will present scholarships to the winners of the 2026 CCTLA law school scholarships.

Monday, September 28, 2026

McGeorge School of Law, 3200 Fifth Avenue, Sacramento, CA 95817

Sponsors: Creative Legal Funding & Stawicki Anderson & Sinclair

RSVP: Debbie Keller at debbie@cctla.com

Understanding the Overlap and Distinctions in 998 Offers and Insurer Bad Faith Liability

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

By: Anthony Garilli

The best way to get your case to trial is to get the carrier to ignore a low 998 offer within the limits. With the 998 blown, you can now go try your case and recover the costs and interest for your client when you beat the 998 at trial. Remember, though, that if your judgment exceeds the policy limits, it does not necessarily mean the carrier is exposed to bad-faith liability just because they ignored your 998 and you beat it. There is some overlap, but there are also important distinctions to keep in mind.

998s

First, let's review the factors considered by the courts concerning whether your 998 was valid. There is a wide body of case law on this issue, but the most recent case that sets forth the factors and considerations you must weigh when serving your 998 is *Licudine v. Cedars-Sinai Medical Center* (2019) 30 Cal.App.5th 918.

A 998 must be valid. To be valid, the 998 must be made in "good faith." (Licudine at 924.) An offer is made in good faith if the offer is "realistically reasonable under the circumstances of the particular case." (*Id.*) An offer is "realistically reasonable" if it "carries with it some reasonable prospect of acceptance." (*Id.*)

Whether an offer has some reasonable prospect of acceptance is a function of two considerations, which are evaluated in light of the circumstances "at the time the offer was made" and "not by virtue of hindsight." (*Id.*) The two considerations are:

1. Was the 998 offer within the "range of reasonable possible results" at trial, considering all the information the offeror knew or reasonably should have known? and

2. Did the offeror know that the offeree had sufficient information, based on what the offeree knew or reasonably should have known, to assess whether the offer was a reasonable one — such that the offeree had a "fair opportunity to intelligently evaluate the offer"? This means the offeree needs information on both liability and damages. (*Id.* at 924–925.)

These two considerations require the offeror (you) to assess whether the offer is reasonable from both the offeror's and offeree's perspective. To help yourself down the road, I suggest you include a cover letter with your 998 offer setting forth your research on trial results through verdict searches or based on your own results or your firm's results, and explaining why your offer falls within that range of reasonable "possible" results. Second, list out the information you know the carrier already has from what you have already given them through prelitigation exchange of information, as well as discovery in your case thus far.

As to the second and all-important consideration — whether the offeree had a "fair opportunity to intelligently evaluate the offer" — Licudine gives us three pertinent factors to consider. First, how far into the litigation was the 998 made? (*Id.*) Second, what information was available to the offeree prior to the expiration? (*Id.*) And third, did the party receiving the 998 offer alert the offeror that it lacked sufficient information to evaluate the offer, and if so, how did the offeror respond? (*Id.*)

On the first consideration, an offer made at the same time the complaint is filed or soon after is less likely to be found valid because, as a general matter, the party is less likely to have sufficient information to evaluate the offer. (Id. at 925.) However, an offer made two months after the complaint was served can be valid when a Plaintiff provides considerable documents on income loss and financial impacts of the decedent's death. (*Whatley-Miller v. Cooper* (2013) 212 Cal. App.4th 1103, 1113.)

With respect to the information available to the offeree prior to the expiration, the courts look to whether there has been any prior litigation between the parties (civil lawsuit following the criminal prosecution of a plaintiff that resulted in acquittal), prelitigation exchanges of information between the parties, post-complaint discovery, and/or any pre-existing relationship between the parties that

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allowed for a free flow of information. (*Id.* at 926.)

Obviously, we will mostly encounter the second and third circumstances. So, when you send your initial letter of representation and the adjusters reach out to you early, before the complaint has been filed, asking for information about your client and the claim, do not make the mistake of ignoring them. Provide them what you have — particularly if it's a case that you already know you like and that you want to try. You will be able to reference that exchange of information later in your 998 cover letter and specifically cite how long the carrier has been in possession of that information.

Once the complaint is filed, get your written discovery out right away to force the other side to further investigate and gather the information you need. While you certainly will want the discovery responses for your trial preparation, it cuts both ways and brings to light information that allows the opposing party (and their carrier) to "intelligently evaluate the offer" that you will be serving shortly.

The *Licudine* court lastly addressed whether the party receiving the offer alerted the offeror that it lacked sufficient information to make its evaluation. We often see boilerplate objection letters to our 998 offers just before or on the last day to accept. It is very important that you do not ignore those letters. You must respond. Remember, the court followed that consideration with, ". . . and, if so, how did the offeror respond?" (*Id.* at 926.)

Oftentimes, the boilerplate letters (because they are boilerplate) ignore all of the information that is within the possession of the party that received the 998. You must write a letter back exposing the boilerplate language and pointing out all of the information they have. If the opposing party's letter is more pointed, write back and address the concern. If they haven't taken your client's deposition yet, invite them to get it on calendar in the next 45–60 days and tell them you'll keep the 998 open until two weeks after. If it's additional information they are requesting, try to get it for them.

The bottom line is that it's a judgment call on your part on what additional information you are willing to provide and how much additional time to give them. Remember, when you are hitting them with a 998 early in the case, you are catching them sleeping — where the overworked defense lawyer hasn't paid enough attention to the case or hasn't billed the file enough yet. They are looking to stall so they can finally start working the case up or get their billables going on the file.

Your goal is to make sure that when they do eventually let the deadline pass, you can make your record that there was plenty of information available from both your prelitigation exchanges and post-complaint discovery to allow them to make a fair and intelligent evaluation of your offer. So, be sure to respond, give them more information if needed, and grant a short extension of time to process and evaluate the information. If you follow these steps, you have an excellent shot at the court finding that your 998 was made in good faith and valid at the time of

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the offer.

Bad Faith Liability of the Carrier

A valid 998 simply gets you certain recoverable costs and interest on the ultimate judgment you obtain. While there is substantial overlap with the 998 validity analysis, beating your 998 that was made within policy limits does not, ipso facto, mean that the carrier committed bad faith against its insured by rejecting the 998. The law of bad faith has a different focus. Fortunately, the two interests of serving a valid 998 and getting the lid off the policy are substantially aligned. But it's still important to understand the distinctions so you cover both bases as you proceed through your case.

California law requires insurance companies to effectuate prompt, fair settlements of claims in which liability has become reasonably clear. (Cal. Ins. Code § 790.03(h)(5).) Further, "The insurer *must settle* within policy limits where there is a substantial likelihood of recovery in excess of those limits." (*Murphy v. Allstate Ins. Co.* (1976) 17 Cal.3d 937, 941.) Additionally, "[W]henever it is likely that the judgment against the insured will exceed policy limits "so that the most reasonable manner of disposing of the claim is a settlement which can be made within those limits, a consideration in good faith of the insured's interest *requires the insurer to settle the claim*." (*Johansen v. California State Auto. Assn.Inter-Ins. Bureau* (1975) 15 Cal.3d 9, 16, italics added.) Also, "The fact an excess judgment is ultimately returned against the insured is evidence of the likelihood of such result: "The size of the judgment recovered in the personal injury action . . .although not conclusive, furnishes an *inference* that the value of the claim is the equivalent of the amount of the judgment and that acceptance of an offer within those limits was the most reasonable method of dealing with the claim." (*Croskey, Heeseman, Erlich & Klee, California Practice Guide – Insurance Litigation* (Rutter 2020) para. 12:391.3, quoting *Crisci v. Security Ins. Co. of New Haven* (1967) 66 Cal.2d 425, 431.)

Note the distinction: liability must be reasonably clear at the time the offer was made for consideration of bad faith against the insured in a later action. So, be sure to spend some time on this in your 998 offer cover letter — more than just evaluating what information was known to the carrier under the valid-998 analysis. Set forth your liability argument and rebut any defenses, such as comparative fault, immunities, other-party liability, etc.

Also, note that there's no similar inference afforded to the validity of a 998 offer at the time it was made if you beat the 998 at trial, as there is with obtaining a later verdict in excess of the policy limits concerning bad-faith considerations.

The takeaway is to think this through carefully. Calculate and be methodical. Pay attention to the lawyer on the other side, the attitude of the adjuster that you dealt with before litigation, and set your case up to go to trial by carefully timing your 998 Offer of Compromise at a time when liability is reasonably clear, the offer was within the range of reasonable trial results, and there was a substantial likelihood of recovery in excess of the limits, and the carrier had enough information at the time the offer was made to fairly and intelligently evaluate the offer. Cover those bases, and you will have a valid 998 with the lid off the policy. Go get your verdict, and you will be collecting your costs, interest, and the judgment in excess of the policy from the carrier.

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Protecting Your Clients' Privacy While Proving Their Cases

By: Jacqueline Siemens

Jacqueline Siemens, Demas Law Group, is CCTLA's President-Elect

We all know the defense attorney who approaches the discovery process as though your client has opened the books to their personal life, medical records, relationships, and employment history. An all-access ticket has been granted simply because your client had the audacity to seek justice for the damage caused by the defendant. Your responsibility is to provide the information necessary to prove your client's damages while diligently guarding your client's privacy. This task is becoming increasingly difficult as more personal information becomes available online, often without your or the client's knowledge.

Client privacy is essential, but records like medical files, social media, and personnel records can link injuries to loss of enjoyment of life and missed job opportunities. These documents offer valuable evidence, yet if privacy lapses, they can damage the case. Evidence revealed during discovery might not be admissible at trial; however, failing to protect it could result in defense counsel attacking your client's credibility and character and causing embarrassment to your client.

Protecting Privacy and Using Social Media

It is critical that you address social media privacy during your initial client meeting. Clients must understand that photos or videos of them taking part in activities — such as music festivals, wakeboarding, or running marathons — can compromise their claims if those activities contradict their alleged limitations. Video evidence is particularly compelling in litigation and can be taken out of context to undermine credibility, even when a brief or isolated activity does not reflect the client's day-to-day reality. A single video showing strenuous, recreational, or celebratory behavior may be used to suggest exaggeration or misrepresentation of injuries, opening the door to broader discovery and invasive scrutiny.

Notably, many young people have public pages. Most likely there are posts we wouldn't want defense counsel to access. These posts can shape the perception of our clients based on moments of poor judgment or humor that may not translate. Keeping these aspects out of the case helps prevent client embarrassment. These posts are generally not discoverable and can remain protected by setting the page to "private." Clients need to avoid being "tagged" on other accounts, as defense counsel and adjusters know to review friends' and family's accounts as well.

Monitor your client's social media content. Discovery typically includes social media. You need to identify what may be discoverable and what is protected. The privacy argument is much more difficult to make with a public social media presence.

Social media can be valuable for demonstrative evidence of damages. Pre-incident videos and photos can show an active lifestyle in comparison to post-incident limitations. Showing the jury videos of your client skiing, photos of them hiking, coaching their daughter's soccer team, or volunteering at an animal shelter helps portray your client as a genuine, valuable individual, even if they never take the stand. This evidence allows adjusters or juries to directly see the contrast, particularly if the client has limited their post-incident social media presence as you recommended. What was lost is shown to the jury rather than told to them. They can see it for themselves and are not distracted with negative videos or photos that damage your client's image.

Limiting Witnesses to Only Those Who Establish Damages

Depending on your client's age and personality, it may be difficult to convey how crucial it is to avoid oversharing details about the incident. While clients naturally want to discuss their experienc-

Continued on page 18

Continued from page 17

es with others, they must understand the legal risks of doing so. During the initial consultation, emphasize that any person the client speaks with about the incident or injuries could be deposed. Establishing this boundary immediately helps prevent casual conversations that might complicate future litigation.

Quality-of-life witnesses are typically the most persuasive means of proving our clients' suffering. You want to avoid a parade of witnesses the client has spoken to about every aspect of the case. Discovery always contains an interrogatory requesting the names of anyone with whom the client has spoken about the incident and their injuries. This list should be short and limited to the people who are helpful in describing the "before and after" to the jury.

Protecting and Using Your Client's Medical Information

Careful Disclosure of Medical Records

When providing medical records in response to demands, be deliberate about the information disclosed. Only details directly related to the injuries claimed should be included. Past medical records showing no prior history of the same complaints are crucial — especially when imaging shows findings that could be interpreted as pre-existing.

Unrelated information (lab results, weight, or other personal data) should be redacted. Protect your client from unnecessary embarrassment or unwarranted scrutiny that falls outside the scope of the claim. Defense counsel will use this unrelated medical information to blame the fall on your client's blood pressure or blame the back pain on a history of kidney stones.

Carefully limiting disclosure to relevant medical facts will narrow the focus on the issues and safeguard your client's privacy.

Addressing Overbroad Subpoenas

Defense counsel will use the subpoena process to learn everything possible

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about your client. Vigilantly protect your client's privacy regarding unrelated or otherwise private aspects of their medical history, employment history, and personal affairs.

CCP § 1985.3 governs subpoenas for "personal records" of a consumer, including medical records. It requires consumer notification of the request and sets the clock ticking for the motion to quash. A subpoena should be limited to records ten years before the incident and body parts claimed in the lawsuit. (*Hale v. Superior Court* (1994) 28 Cal.App.4th 1421, 1424.)

Recognize that overly broad subpoenas are sometimes issued with the hope that you may overlook their excessive scope, thereby granting overbroad access to all of your client's medical records. Carefully review the subpoena and respond timely to safeguard your client's privacy and to ensure that only relevant records are disclosed.

If the scope of the subpoena is overbroad as to time and/or body parts, the first step is to initiate a meet-and-confer process with defense counsel. Clarify the scope and attempt to resolve issues without the court's involvement. Often, these subpoenas are standard, boilerplate documents, and minor modifications can address the problem without the need for a motion. Be mindful of your communications, as though they will be submitted to support your motion.

If you are unable to reach an agreement through the meet-and-confer process, file your motion to quash at least five days before the production date. The court can use its discretion to quash the subpoena entirely or modify it to protect against "unreasonable or oppressive demands" or violations of privacy.

Protecting Psychiatric Medical Records in Personal Injury Actions

A plaintiff's claim for "emotional distress" does not automatically place the plaintiff's mental condition at issue or waive privacy regarding psychiatric medical records. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1116–17.) The plaintiff retains those privacy rights unless he or she alleges an emotional injury that exceeds the ordinary distress associated with a personal injury case. Defense counsel bears the burden of establishing that private psychiatric records are directly relevant to the litigation.

Protective Orders

Protective orders (CCP § 20131.060) protect against discovery that causes unwarranted annoyance, embarrassment, or undue burden or expense. Your client's privacy is always at risk during a deposition, especially if you have seen a pattern of conduct that seeks information beyond the scope of relevant discovery.

If at any time during the deposition it becomes evident that the approach is to embarrass, harass, or improperly invade your client's privacy, instruct your client not to answer the question. Go on the record to meet and confer with defense counsel regarding the scope of the questioning that you believe violates plaintiff's right to privacy, and the grounds for that belief. If an agreement cannot be reached, evaluate whether to suspend the deposition and move for a protective order.

The moving party bears the burden of showing that the questioning was improper. If the protective order is denied, the moving party may face monetary sanctions. This step should be taken only when a reasonable compromise cannot be reached. If the protective order is granted, the court can issue an order that limits the scope of examination to narrow matters, exclude certain people from the deposition, and order the deposition transcript sealed.

Establishing Wage Loss Claims with Special Privacy Concerns

Motions to quash and protective orders are effective tools when defense counsel has issued overbroad, harassing, and/or oppressive requests for production of documents. Typically, this arises when your client has a wage loss claim and is self-employed. These are sensitive claims where the line between privacy and establishing damages is difficult, especially considering the proprietary concerns and tax implications for the self-employed.

If your client is making a wage loss claim, payroll records or attendance records are discoverable; however, documents prepared for tax purposes are privileged. Familiarize yourself with the tax return privilege. (See *Webb v. Standard Oil* (1957) 49 Cal.2d 509, 513.) Be prepared to use all tools at your disposal in deposition and written discovery to protect your client's privacy and be certain they do not create problems with the IRS.

Loss of earnings and earning capacity can be substantial losses in a significant injury case. Your burden is to provide the documentation to defense counsel or the jury to show the extent of the loss and what was taken from your client.

Plaintiff's lost wages or loss of earning capacity can be established through payroll or check stubs. Managers, coworkers, and partners are useful sources for these damages. Be certain to screen the witnesses to be sure they are not privy to information that can also be damaging or expose too much of the plaintiff's private life that you have protected from disclosure.

Conclusion

Successfully navigating the tension between proving damages and protecting privacy requires both vigilance and a proactive strategy. By setting boundaries early — from social media audits to timely meet-and-confers regarding overbroad subpoenas — you do more than just shield your client from embarrassment. You ensure that the litigation remains focused on the defendant's liability and the true extent of the harm caused, rather than allowing the defense to turn the discovery process into a fishing expedition and a trial of your client's character.

Annual Spring Reception Recognizes Outstanding Attorneys and Supports Sacramento Food Bank & Family Services

Above: Chris Wood, Dan Kohls, Angela Kohls, CCTLA Past Pres. John Demas, CCTLA Pres. Amar Shergill and the Hon. Judge Michael Jones. Below: Amar Shergill and the Hon. Judge Michael Jones with Dan Kohls, center, winner of the Joe Ramsey Professionalism Award.

CCTLA Past Pres. Bob Bale and CCTLA Pres. Amar Shergill with Hank Greenblatt, center, with his Morton L. Friedman Humanitarian Award. Ed Dudensing also was a winner of the Morton L. Friedman Humanitarian Award.

Photos by Joe Potch, Ana Maria Photography

More on pages 23-24

Reception Recognition, page 25

CCTLA's 2026 Spring Reception, held on April 30, honored three distinguished attorneys with its annual awards and raised $88,715 for Sacramento Food Bank & Family Services.

Ed Dudensing of Dudensing Law and **Hank Greenblatt** of Dreyer Babich Buccola Wood Campora were honored with the Morton L. Friedman Humanitarian Award, while **Dan Kohls**, formerly with Hansen, Kohls, Sommer & Jacob and now with Signature Resolution, received the Joe Ramsey Professionalism Award. Each year, the CCTLA Board invites nominations from members for these awards.

The reception welcomed more than 100 guests and was hosted at the home of Amy and Chris Wood. CCTLA extends a special thank you to them for their hospitality and generosity. Special appreciation also goes to Miner's Leap Winery for donating the wine for the event—a tradition it has generously upheld for the past five years.

Finally, to all of our sponsors, donors, and those who contributed auction items: Your generosity and support made the event an incredible success, and the CCTLA Board extends its sincere gratitude.

CCTLA Spring Reception . . .

CCTLA Past Pres. Justin Ward, District Attorney Thien Ho, the Hon. Judge David Abbott (Ret.) and Matt Chisholm

Left: Natalie Dreyer, Dylan Dreyer, Margot Cutter and Kelsey Fischer

Jonathan Sanz, Kate Ebert, Kellen Sinclair, Morgan Albanese and Ignacio Solario

Kirill Tarasenko

CCTLA Spring Reception . . .

CCTLA Executive Director Debbie Keller, Ian Barlow and the Hon. Judge David DeAlba (Ret.)

Justice Art Scotland (Ret.) and Bill Kershaw

Above: CCTLA Past Pres. John Demas, the Hon. Judge David DeAlba (Ret.), Tim Spangler and Brad Schultz

Michael Murphy, Adrian and Teruko Williams

Below: CCTLA Past Presidents Margaret Doyle and Dan Glass, and the Hon. Cecily Bond (Ret.)

Rene Rojo and Linda Acker

Above: Blake Young and Amy Wood

thank you

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CCTLA's Spring Reception held on April 30, 2026 raised $88,715 for the Sacramento Food Bank and Family Services!

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Medi-Cal Liens, *Ahlborn* and the trap of 'At This Time'

First in a Series in Memory of Daniel E. Wilcoxen

By: Drew M. Widders

Drew Widders,
Wilcoxen Callaham LLP, is
a CCTLA Vice President

A Note on This Series

This is the first installment in what I intend to be a regular series for The Litigator on medical lien law — the area Dan Wilcoxen taught California trial lawyers for more than 40 years. The recent post?death lien seminar at McGeorge School of Law drew 66 attendees and made clear that the appetite for written, practical lien materials is undiminished.

Each installment will tackle a discrete area — Medi?Cal, Medicare, ERISA, hospital liens, balance billing, Kaiser, FEHBA, and so on — combining the analytical framework Dan built with current developments and practical tips. We start with Medi?Cal because that is where I have been spending most of my time, and because a recent adverse ruling against my own office contains a lesson worth sharing before another attorney makes the same mistake.

Why Medi?Cal Liens Deserve Real Attention

Of all the liens we encounter, Medi-Cal liens are the ones that often offer the best ability to save our clients serious money. They are not "small" liens — the Department of Health Care Services regularly asserts six-figure recoveries — but they are heavily reducible by statute, and Medi-Cal clients are often the clients least able to absorb a dollar that did not need to leave the trust account to pay Medi-Cal.

The combination of the U.S. Supreme Court's decision in A*rkansas Dep't of Health & Human Servs. v. Ahlborn (2006)* 547 U.S. 268, and California's codification of the *Ahlborn* framework (W&I §§ 14124.70 et seq.) gives us multiple, stackable tools to drive Medi-Cal recoveries to a small fraction of the asserted lien.

The Reduction Framework: Three Stackable Statutes

Three statutes drive the reduction analysis:

1. W&I § 14124.72(d) — the fees-and-costs reduction. DHCS must absorb a 25% share of attorney fees and a pro?rata share of litigation costs. This applies regardless of whether you also obtain an Ahlborn reduction.

2. W&I § 14124.76 — the *Ahlborn* proportional reduction. Limits DHCS

Continued on page 30

In Memoriam: Daniel E. Wilcoxen

October 3, 1939 – September 14, 2025

Members of CCTLA need no introduction to Dan. He was twice our Advocate of the Year (1996 and 2002), our past president, and — up until the day of his stroke on Feb. 13, 2025 — our longest sitting board member. He was a fixture at our continuing education events for as long as most of us have practiced. He took his J.D., *cum laude*, from McGeorge in 1972, founded Wilcoxen Callaham, LLP, and over the next five decades built a career of extraordinary distinction in catastrophic injury, medical malpractice, product liability, and wrongful death.

Although our firm's practice is focused on medical malpractice, Dan himself loved lien law, and worked tirelessly to help other attorneys navigate this complicated area. It is where he left his most enduring mark. He successfully argued an ERISA lien case before the United States Supreme Court, handled three lien cases before the Ninth Circuit, and three before our own Third District. *Lopez v. DaimlerChrysler Corp.* (2009) 179 Cal. App.4th 1373 — the case discussed on the next page as the worked example of the *Ahlborn* formula in California — was Dan's case, worked alongside our partner Martha Taylor.

His other honors are too many to list here in full, but include the 2010 ABOTA Trial Lawyer of the Year award, the 2014 Joe Ramsey Civility Award, the 2023 Morton L. Friedman Humanitarian Award and McGeorge's 2024 Alumnus of Honor.

On the morning of Feb. 13, 2025, Dan suffered a stroke while getting ready for work. He passed away several months later, on Sept. 14, 2025. He left behind a comprehensive lien article that I have been updating, and a practice that continues to handle the kinds of cases he built our firm around. This series is offered in his memory and in the spirit he always brought to teaching: cut through the confusion, protect injured clients, and give attorneys the knowledge and confidence to stand up to lien claims.

Continued from page 29

to the portion of the settlement allocable to past medical expenses, computed by the Ahlborn ratio.

3. W&I § 14124.78 — the 50-of-net cap. The plaintiff is never required to pay DHCS more than 50% of the net to the client after attorney fees and costs.

W&I § 14124.785 directs courts to apply whichever formula produces the lowest amount. Always run all three. The right answer is whichever is smallest. In many cases, § 14124.76 will almost always govern.

The *Ahlborn* Formula

The formula codified in W&I § 14124.76 is straightforward:

Recovery = (Settlement ÷ True Case Value) x Lien, then reduced by 25% for fees and a pro?rata share of costs under § 14124.72(d).

A simple worked example:

Settlement	$1,000,000
Asserted Medi-Cal lien	$250,000
Estimated Case Value	$5,750,000
Ratio	$1,000,000 ÷ $5,750,000 = 17.4%
Ahlborn-reduced lien	**$250,000 × 0.174 = $43,500**
Less 25% attorney-fee share	– $10,875
Less pro-rata costs	further reduction

This is the *Lopez* methodology in miniature.

The Cases You Need to Know

- *Bolanos v. Superior Court (2008)* 169 Cal.App.4th 744 — First post-amendment appellate decision. Held *Ahlborn* allocation is mandatory; refusal is reversible error.
- *Lima v. Vouis (2009)* 174 Cal.App.4th 242 — Case valued at $14 million, settled for $950,000. Plaintiff's 6.75% ratio approved.
- *Lopez v. DaimlerChrysler (2009)* 179 Cal.App.4th 1373 — Dan's case, with our partner Martha Taylor as co-counsel. The Third District affirmed reduction of a $547,680 lien to $63,216, including stacking the § 14124.72(d) fee/cost reductions on top of the *Ahlborn* reduction. *Lopez* remains the essential worked example in California, and the case that the trial bench will look to first.
- *Branson v. Sharp Healthcare (2011)* 193 Cal.App.4th 1467 — Confirms the court can order DHCS to refund overpayments.
- *Aguilera v. Loma Linda Univ. Med. Ctr. (2015)* 235 Cal. App.4th 821 — Agreed in theory with DHCS that future medicals it will pay should be excluded from the calculation, but only if DHCS proves "reasonable probability" of future payment with declarations from competent witnesses addressing eligibility, coverage, and funding.
- *Martinez v. State DHCS (2017)* 19 Cal.App.5th 370 — Second District authority. In MICRA cases the non-economic damages component is capped; you cannot inflate it to manipulate the ratio.
- *Daniel C. v. White Memorial Medical Center (2022)* 83 Cal. App.5th 789 — Post-Gallardo decision confirming California's framework excludes future medicals if DHCS meets the *Aguilera* evidentiary burden.

For practitioners who want to see how the analysis runs in the trial courts, I have collected several tentative and final rulings — including from our office's own *Ahlborn* motions — that apply the *Lopez* + § 14124.72(d) stacked reduction and address DHCS's recurring future?medicals argument. I am happy to share them with anyone who is working on a Medi-Cal reduction motion; please reach out.

The Notice Trap: W&I § 14124.73

Every time we file a third-party action on behalf of a Medi-Cal beneficiary, **we are required to notify DHCS within 30 days of filing.** W&I § 14124.73(a) provides:

> *"If either the beneficiary or the director brings an action or claim against such third person or carrier, the beneficiary or the director shall within 30 days of filing the action give to the other written notice by personal service or registered mail of the action or claim,* ***and of the name of the court or state or local agency in which the action or claim is brought.*** *Proof of such notice shall be filed in such action or claim…" (emphasis added)*

The statute also specifies what "notice" must contain. Under § 14124.73(c), the notification must include, at a *minimum*:

1. The date of the injury;
2. The beneficiary's Medi-Cal identification number;
3. The name and contact information of the liable third party against whom the action has been filed; and
4. The name of the third party's insurance carrier and the carrier's claim number.

This is a minimum obligation — and, as I am about to explain, can be a substantive one. A notice that omits these elements may not be treated as legally sufficient for purposes of triggering downstream obligations.

The Cautionary Tale: A Recent Reversal in Our Office

In a recent Sacramento Superior Court case our office handled, we obtained the kind of letter that, on its face, would arguably end the Medi-Cal lien analysis. DHCS wrote to our office in response to a notice of injury and stated:

> *"After reviewing the known facts and circumstances surrounding this case, it has been determined that the Department of Health Care Services (Department) will not assert a lien in this matter,* ***at this time****.*
>
> *If the Department discovers new facts or circumstances, the decision to not assert a lien may change…"*

Reading the letter, this was arguably a waiver of Medi-Cal's lien— at least absent some genuinely new fact or circumstance, such as the emergence of an additional source of recovery beyond the third?party tortfeasor or a material change in the underlying claim.

The department had reviewed the known facts and circumstances and reached its determination. We negotiated and finalized the case in reliance on that letter, including securing our client's guardian ad litem's agreement to a projected net settlement on that basis.

We filed a Probate Code § 3604 petition to fund a Special

Continued on page 31

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Needs Trust for our adult client, who depends on public benefits. We served the § 3604 petition on DHCS — and that is when DHCS reversed course. The department emailed our office stating that the prior no-lien letter was "sent erroneously" because the case had been "referred to the Personal Injury Program instead of Medical Malpractice." On the same date, DHCS sent a formal notice asserting a lien against our client's recovery.

We moved to enforce the prior letter as a waiver. The trial court denied the motion. The court's reasoning was the lesson, and it is worth quoting in summary:

- **The "at this time" language is not a waiver.** The Department's letter "contains qualifying language that the Department is not seeking a lien 'at this time,' and that the Department's determination is subject to change should additional information be obtained. It is not reasonable to interpret the letter as a definitive statement that the Department has waived its lien right."

- **Equitable estoppel against a public entity requires more.** The court applied *City of Long Beach v. Mansell (1970)* 3 Cal.3d 462, 496–497, and *Schafer v. City of Los Angeles (2015)* 237 Cal.App.4th 1250, 1261, and held that equitable estoppel "may be applied against a public entity only in 'exceptional cases." Where DHCS reserves the right to revisit a no-lien determination on its face, the threshold for an "exceptional case" could not be cleared on the facts presented.

The silver lining was the framework the court expressly endorsed for what comes next. In the same ruling, the court confirmed that the *Ahlborn* proportional allocation methodology under § 14124.76 governs DHCS's recovery, and cited *Lopez v. DaimlerChrysler.* That left us in a position to reduce the lien substantially even after losing the waiver argument; an *Ahlborn* meet-and-confer letter and motion are now in process.

The Take Away — and a Pre-Settlement Confirmation Letter

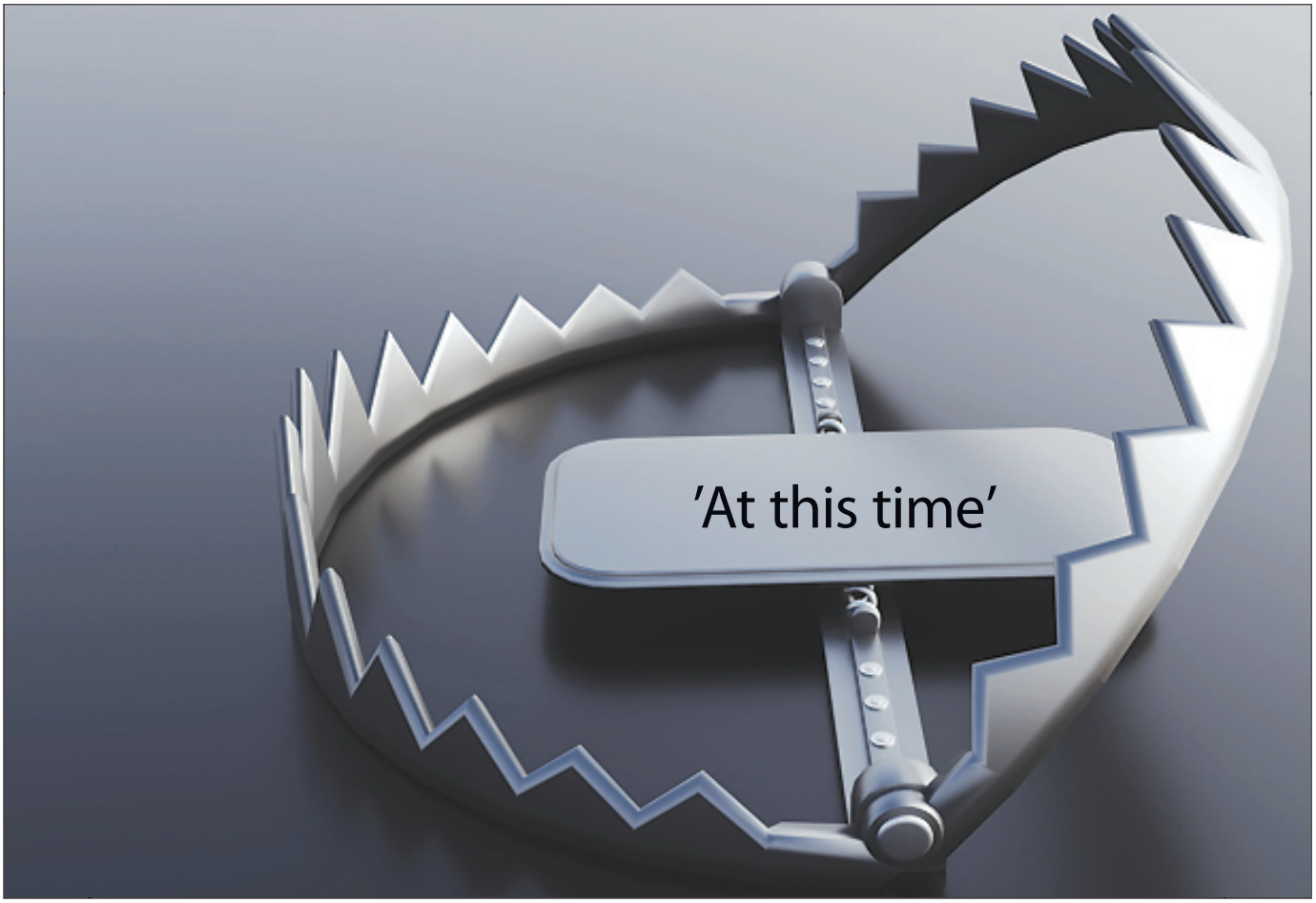
There are two takeaways from the ruling, and I have made the second one the standard in my practice. As of this writing, I have two additional active matters in which DHCS has issued the same "at this time" no-lien letter.

First, "at this time" should not be relied on as a clean waiver. Whatever DHCS form letter you receive— read its qualifiers carefully. Where the letter says "no lien at this time" and reserves the department's right to revisit upon "new facts or circumstances," you have at most a conditional waiver, not a final one. The court's reasoning now tells us the department will read its reserved revisitation right broadly enough to capture later developments that, in my opinion, are not new facts or circumstances at all — but ordinary case progression.

Second, re: notice DHCS before settlement, with a full § 14124.73(c) disclosure, and ask the department in writing to confirm that the no-lien determination remains in effect.

I use the following pre-settlement confirmation letter for these situations, which I am now sending before any settlement is finalized in a case where DHCS has issued a no-lien letter.

Continued on page 32



Continued from page 31

The structure is straightforward, and the letter is reproduced as a template, on page 33. The four moves are:

1. **Identify the beneficiary by all required identifiers** (name, Medi-Cal ID, DOB, date of loss).
2. **Reference the prior no-lien letter and quote the "at this time" qualifier.** This forecloses any later DHCS argument that you misled it about the case posture.
3. **Provide all § 14124.73(c) information** — caption, court, case number, filing date, third-party tortfeasor identity, defense carrier, claim number, defense counsel, and a statement that no other source of recovery exists or will be pursued.
4. **Expressly request that DHCS confirm the no-lien determination remains in effect and issue a final, unconditional no-lien letter.**

Why this works — and why I expect it to be enough to take this problem off the table going forward — comes directly from the court's analysis. The pre-settlement confirmation letter forecloses both grounds DHCS will try to use. By providing every element § 14124.73(c) requires (and more), it eliminates any technical sufficiency challenge.

By demanding an unconditional no-lien letter that responds to the full set of facts and circumstances, it strips out the "at this time" hedge that keeps the department's door open. If DHCS then issues an unconditional letter, you have the waiver in fact. If DHCS instead asserts a lien, you have it asserted before settlement, when you can still negotiate or run the *Ahlborn* analysis with full information while still arguing DHCS already waived its lien.

It also restores the equitable posture. With a complete pre-settlement confirmation letter on file — and an opportunity for DHCS to either confirm or revise its position before any funds are distributed — the department cannot credibly argue that the plaintiff withheld information or sandbagged the lien process. The equities tilt firmly back in the plaintiff's direction.

A few additional practice points have emerged from the experience:

- **Always include the full § 14124.73(c) information set with the initial notice.** Caption, court, case number, third-party tortfeasor identity, defense carrier, and claim number — provide all of them at the outset, even if some require minor follow?up to obtain. The "30 days from filing" deadline is the floor, not the ceiling.

- **In a case requiring court approval, use the Petition to Compromise itself to invoke the reduction.** The Judicial Council Petition to Approve Compromise form contains a checkbox specifically for asserting entitlement to reduction under W&I § 14124.76. Checking that box — and filing a concurrent motion to reduce — is the cleanest procedural path to bring the *Ahlborn* analysis before the court at the same time the settlement is being approved. Don't let the petition go through without invoking it.

One More Tip - When DHCS Stonewalls: The Subpoena Center

A persistent frustration in Medi-Cal practice is the department's tendency to withhold the asserted lien amount. There is a potential tool for this that our firm intends to use it going forward whenever DHCS is not timely producing lien information.

Effective June 1, 2022, DHCS receives service of process through an online Subpoena Center hosted on GovQA at subpoena?californiadhcs.govqa.us. Plaintiff's counsel can subpoena the department for Medi-Cal payment data and lien itemizations on a defined timetable — well before settlement — rather than waiting on the department's informal timeline.

The mechanics:

- **Submit the subpoena online** through the GovQA portal, which generates a tracking reference number.

- **State court subpoenas duces tecum** require a $15 check (made out to DHCS) mailed separately to the Office of Legal Services, Subpoena Desk, P.O. Box 997413, MS 0010, Sacramento, CA 95899-7413, with the GovQA reference number in the memo line. Service is rejected if the check is not received within five business days. Federal court subpoenas do not require a check.

- **Notice or Authorization.** Pair the subpoena with either a Notice to Consumer (with a date no sooner than 10 days from service) or — more efficient when you represent the beneficiary — an Authorization to Release Records signed by the client (DHCS Form 6236), accompanied by a copy of the client's photo ID.

- **Identifiers required:** the client's date of birth and complete Social Security Number or CIN (the 13- or 14-digit Medi-Cal client index number). Personal attendance of a custodian of records requires a $275 check.

Subpoena DHCS for what it has: the payment data and lien information. The leverage value is the point. When DHCS slow-walks, a properly served subpoena forces it either to produce the records or to move to quash. I anticipate either response generally yields the timing you need, and in our anticipated use, even a properly served subpoena should unlock information that informal letters and emails may not particularly in a time crunch.

Coming Next

In the next installment of this series, I will move from Medi-Cal to Medicare — Section 111 reporting traps, the conditional-payment process, the Medicare hardship waiver under 42 U.S.C. § 1395gg(c) (which produced a remarkable result in the same matter, that I will write about), Medicare Advantage post-Parra, and the procurement-cost reduction under 42 C.F.R. § 411.37. After that, ERISA — including a deep dive on plan-document acquisition, the Mull decisions, and the affirmative use of consumer-protection claims against aggressive plans.

Sample Template: page 33

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Drew Widders' Sample Template

Pre-Settlement DHCS No-Lien Confirmation Letter — Template

[Bracketed fields are fill-ins. Send before the settlement is finalized and before any funds are distributed, on firm letterhead, with a copy of the Department's prior no-lien letter enclosed. Delete or tailor the optional bracketed clauses (guardian ad litem; court approval) to fit the beneficiary — a competent adult, a minor, or a person with a disability.]

Via DHCS Portal and U.S. Mail
Department of Health Care Services
P.O. Box 997425, MS 4720
Sacramento, CA 95899-7425

Re: Beneficiary: [Beneficiary Name]
Medi-Cal ID: [Medi-Cal Identification No.]
Date of Birth: [DOB]
Date of Loss: [Date of Loss]

To Whom It May Concern:

This firm represents [Beneficiary Name][, a minor, by and through [his/her] Guardian ad Litem, [Guardian Name],] in connection with injuries [he/she] sustained on [Date of Loss]. By letter dated [Date] (DHCS Form CAS5015), the Department determined that, "[a]fter reviewing the known facts and circumstances surrounding this case, it has been determined that the Department of Health Care Services (Department) will not assert a lien in this matter, at this time." (Copy enclosed.)

This letter provides notice pursuant to Welfare and Institutions Code sections 14124.79 and 14124.76, and the information required by section 14124.73, subdivisions (a) and (c), against the responsible third party. The action is captioned [Case Caption], [Court], Case No. [Case No.] (complaint filed [Filing Date]). The beneficiary's date of injury was [Date of Loss]. [His/Her] Medi-Cal identification number is [Medi-Cal Identification No.]. The liable third party is [Name of Third Party], who may be contacted c/o defense counsel at the address below. The third party's liability carrier is [Carrier Name] (claim no. [Claim No.]). The claim is being adjudicated by [Claims Adjuster Name, address, telephone, email], through defense counsel [Defense Counsel Name, firm, address, email].

The parties have reached a settlement of the beneficiary's claims against the liable third party, and no settlement funds have been distributed. [The settlement remains subject to Court approval — a minor's compromise or a disposition of proceeds under Probate Code section 3604, as applicable — which has not yet occurred.] There are no new facts or circumstances, and no other settlement, judgment, award, or claim — including any underinsured motorist coverage — applicable to the beneficiary's claim, and no other source of recovery exists or will be pursued in connection with the [Date of Loss] incident.

Please confirm that the Department's no-lien determination remains in effect as to the full facts and circumstances set forth above, and issue a final, unconditional no-lien letter for this matter before the settlement is finalized and any funds are distributed. Thank you for your prompt attention.


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CAOC supports two bills to root out legal misconduct

From CAOCorg

Assemblymember Ash Kalra (D-San Jose) and Assemblymember Rick Zbur (D-Hollywood) on May 17 introduced a package of bills – backed by Consumer Attorneys of California – aimed at rooting out misconduct within the legal profession and safeguarding Californians' right to hold powerful institutions accountable in court.

The package includes AB 2305 (Kalra) and AB 2039 (Zbur), two measures designed to close enforcement gaps exposed by recent investigative reporting, maintain public confidence in the legal profession in California.

Recent reporting by the *Los Angeles Time*s shed light on a small number of bad actors engaged in illegal conduct that threatens to undermine public trust in the broader legal profession. CAOC, which represents California's trial attorneys, is responding by leading the effort to hold its own industry accountable.

"CAOC has always championed strong ethical standards for attorneys – it's core to who we are and what we fight for," said Doug Saeltzer, president, Consumer Attorneys of California. "When the *LA Times* published reports alleging misconduct in the legal profession, we immediately called for investigation and pushed for stronger enforcement tools to protect Californians from harm and provide a pathway to bring bad actors to justice. We sponsored and passed two strong ethics bills in 2025, and we're continuing the fight with two more ethics bills this year. If we are going to demand corporations, government, or any powerful institution be held accountable we must be – and we are – willing to hold ourselves to the same standard."

AB 2039 (Zbur) – Strengthening Attorney Accountability and Whistleblower Protections

Authored by Assemblymember Rick Chavez Zbur, AB 2039 closes key enforcement gaps in how attorney misconduct is identified, reported, and penalized. The bill directly addresses the misconduct outlined in the *L.A. Times* investigation, ensuring that attorneys convicted of the already-illegal practice of paying people to file claims – often referred to as "capping" – face consistent, mandatory consequences.

"Attorneys are fundamental players who protect consumers, safeguard our rights and seek justice in our legal system. Our system of justice depends on lawyers conducting themselves with integrity and in accordance with the rules. When that doesn't happen, achieving justice is threatened," said Assemblymember Zbur. "AB 2039 strengthens safeguards against misconduct, protects whistleblowers who report wrongdoing, and ensures Californians can trust that the attorneys representing them are acting ethically and in their best interest."

AB 2039 will:

- Require mandatory disbarment for attorneys convicted of illegal capping – ensuring consistent, automatic consequences for criminal misconduct
- Protect whistleblowers who report attorney misconduct from termination, harassment, blacklisting, or other retaliation
- Regulate attorney-client loans and

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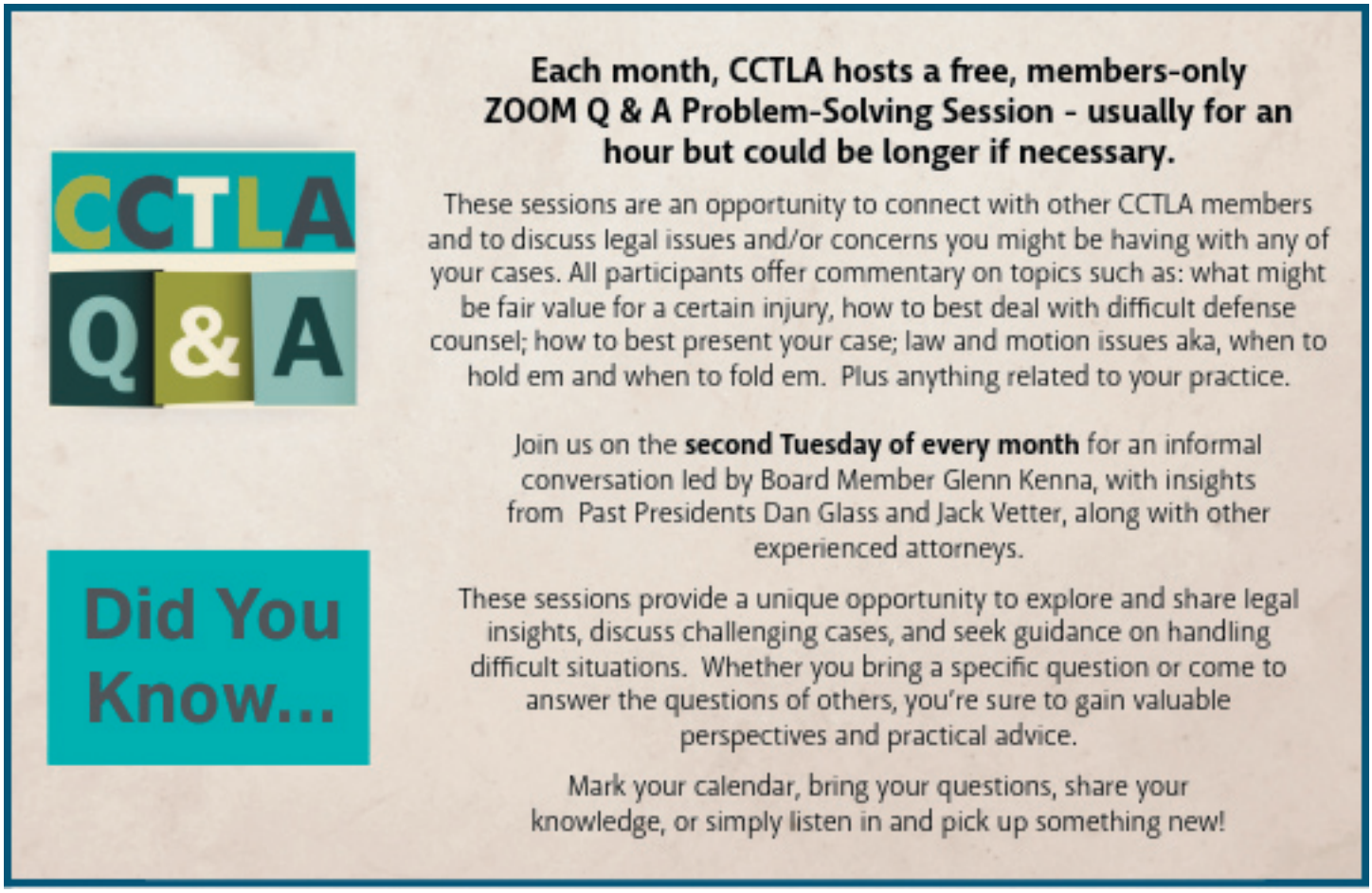

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financial advances, requiring clear agreements, informed consent, a cool-down period, and prohibits interest or fees from being charged to clients – with fines up to $15,000 per violation for attorneys who break the rules

AB 2305 (Kalra) – Prohibition Against Corporate Influence in the Practice of Law

Authored by Assemblymember Ash Kalra, AB 2305 addresses a growing and less visible threat to the integrity of the legal profession: the insidious influence of private equity firms, hedge funds, and other corporate investors over litigation decisions.

While existing ethics rules prohibit non-lawyer ownership of law firms, investors have developed alternative business structures (ABS) to gain financial leverage over firms. AB 2305 closes these loopholes and reaffirms a foundational principle: the integrity of the justice system depends on attorneys making decisions in the best interest of their clients – not an investor's bottom line.

"By prohibiting corporate investors from controlling or influencing litigation decisions, AB 2305 will close emerging loopholes, protect the independence of the legal profession, and ultimately, preserve the integrity of our justice system," said Assemblymember Kalra. "California will continue to lead the nation in safeguarding the legal industry against private equity investors whose main priority is a return on investment – not the interests of injured individuals or consumers."

AB 2305 will:

• Prohibit private equity firms, hedge funds, and other corporate investors from directing or influencing litigation decisions, including case strategy, client representation, and resolution

• Declare contracts that allow investor influence over legal representation void and unenforceable

• Provide enforcement through statutory damages, attorney's fees, injunctive relief, and State Bar discipline

According to CAOC, together, AB 2039 and AB 2305 represent a targeted, responsible approach to reform – one that protects consumers and the integrity of the justice system without restricting the rights of injured Californians to seek legal representation and hold wrongdoers accountable.

NOTABLE CITES

Continued from page 2

Code section 6068(d) and Rule of Professional Conduct 3.3(a). The court found Bonar's conduct significantly more serious than recent comparable cases (which had imposed $1,500 in *Alvarez* and $1,750 in *Schlichter*) for two reasons. First, Bonar persisted in and aggravated the misconduct by inventing additional fictitious citation details for *Twigg* and insisting it was a legitimate Supreme Court case even after opposing counsel exposed it as fake — and despite knowing the original citation came only from an unverified Reddit article.

Second, Bonar still had not fully explained the source of the additional fabricated parallel citations and decision date, conceding only at oral argument that AI tools "may have" been involved. The court imposed $5,000 in sanctions and ordered Bonar to personally report the sanctions to the State Bar.

In a notable footnote, the court recommended that the Judicial Council or other appropriate committees consider adopting guidelines or rules for judges and attorneys on verification of citations, particularly in orders drafted by the parties and submitted to the court for signature.

YAN v. CITY OF DIAMOND BAR
2026 2DCA/5 California Court of Appeal,
No. B339583 (March 11, 2026)
Evidence of prior branches falling from same species of tree in same vicinity is admissible to prove notice of dangerous condition under Government Code § 835

FACTS: On July 24, 2018, Lulin Yan was walking down a sidewalk on Montefino Avenue in the City of Diamond Bar when an eight-inch diameter limb detached from the upper canopy of a Bradford pear tree, snapped off two lower branches, and crashed onto him. He was hospitalized for three days and sustained a compression fracture to his spine.

The city owns the Bradford pear trees lining Montefino Avenue and contracted with a third-party arborist to trim trees on a five-year geographic grid schedule. The city's oversight was otherwise reactive—responding to resident complaints by alerting the arborist to remove fallen debris—and the city retained few records of complaints, did not organize them, and did not track patterns of tree failures.

Notably, the specific tree that injured Yan had not been trimmed from 2005 to 2015.

Robert Ludowitz, president of the local homeowners' association, had reported multiple prior branch failures from Bradford pear trees in the neighborhood. In the five years before Yan's accident, the city's records reflected (1) two prior branch failures from the very tree that injured Yan (one five years prior, one 10 months prior), and (2) nine separate branch failures from other Bradford pear trees in the same neighborhood, including a truck-bed-sized limb falling in April 2016, a branch falling near a school bus loading area in April 2017, and branches falling from two different trees on Montefino Avenue just two weeks before Yan's accident.

The city directed its arborist to remove the debris each time but never investigated the causes.

At trial, Yan's expert arborist testified that Bradford pear trees grow multiple "scaffold branches" from the same elevation on the trunk, creating weak connections that tend to break as the tree grows—leading the species to no longer be planted. Yan also introduced a 2008 risk assessment the city had commissioned, which noted Bradford pear trees as a species have a "tendency to split without warning." The city offered no contrary expert and did not assert the natural condition immunity defense under § 831.2.

The trial court instructed the jury it could consider prior branch failures from the same tree as evidence both of dangerous condition and notice, but could consider prior branch failures from other Bradford pear trees in the neighborhood solely as evidence of actual or constructive notice.

The jury returned a verdict for Yan, awarding $250,000 for past non-economic loss and $500,000 for future noneconomic

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loss. The city appealed.

ISSUE: Whether the trial court abused its discretion in admitting evidence of prior branch failures from other Bradford pear trees in the vicinity to prove the city had notice of the dangerous condition

RULING: Affirmed.

REASONING: On the admission of prior branch failures from other Bradford pear trees, the court explained that under Government Code section 835, a public entity is liable for injuries caused by a dangerous condition when the entity either created the condition or had actual or constructive notice and failed to take protective measures. Evidence of prior accidents may be admissible either to prove the dangerous condition itself or to prove notice of that condition, with different similarity standards applying to each purpose.

To prove a dangerous condition, prior accidents must have occurred under "the same or substantially similar" conditions. To prove notice, however, a more relaxed standard applies—prior accidents need only be "similar enough" to attract the entity's attention to the dangerous situation and thereby impart notice of a particular condition requiring correction.

The court held the relaxed notice standard was satisfied here. The trees in all incidents were Bradford pear trees, a species with an inherent latent structural weakness; they were in the same vicinity, on the same grid-based pruning schedule and exposed to the same environmental factors affecting tree health. The repeated recurrence of branch failures in a relatively brief period from the same species subject to identical maintenance and similar conditions strongly suggested a common problem that should have attracted the city's attention.

HARCOURT v. TESLA, INC.
2026 6DCA California Court of Appeal,
No. H052308 (April 1, 2026)
Consumer expectations test does not apply to strict liability claim where toddler started Tesla Model X after parent left key fob in vehicle

FACTS: On Dec. 27, 2018, Mallory Harcourt—then eight-and-a-half months pregnant and four days into ownership of a new Tesla Model X SUV—parked the vehicle in her driveway with her two-and-a-half-year-old son B.H. inside. After taking B.H. out of his car seat, Harcourt realized she did not have her house key, then realized B.H. needed a diaper change. She left both the driver's door and rear driver's-side door open, with her purse and key fob inside the car, and walked toward the garage with B.H.

As she set up the changing pad, she realized B.H. was no longer with her, and the Model X was moving toward her. The vehicle pinned her against the wall, fracturing her leg and pelvis and causing soft tissue injuries. Labor was induced approximately a week later; the daughter she delivered was uninjured.

The car's data logs showed B.H. had climbed into the car and pressed the brake pedal (closing the driver's door), shifted into drive by pressing the brake while moving the gear-selector stalk on the steering column, released the brake, and pressed the accelerator. The vehicle accelerated to roughly 8.5 mph at points and was traveling 6–7 mph at impact. Three seconds after impact, the car auto-shifted into park.

The Model X had unusual operating characteristics: it had no start/stop button—the door opened when a user with the key fob approached, and the vehicle could be driven by simply pressing the brake and shifting into gear so long as the fob was inside. The car was equipped with multiple safety features Harcourt was unaware of and had not activated, including PIN-to-Drive (a 4-digit PIN required to drive), obstacle-aware acceleration, a brake override system, and auto-shift-to-park—several of which engaged during the incident.

Harcourt sued Tesla, ultimately filing a second amended complaint asserting only one cause of action: strict product liability for design defect. At trial, she elected to proceed solely under the consumer expectations test, expressly abandoning and waiving any reliance on the risk-benefit test. The trial court accepted that waiver and limited the evidence accordingly. After Harcourt rested, Tesla moved for non-suit. The trial court granted the motion, observing that Harcourt "may be right" that the Model X was defective, but holding she had chosen the wrong test: she failed to identify objective features of the vehicle about which ordinary consumers could form minimum safety assumptions, and the Model X's safety system involved complex components and a "nuanced and unique set of circumstances outside the knowledge of the ordinary consumer."

ISSUE: Whether the consumer expectations test applies to a strict liability design defect claim arising from a toddler's misuse of a vehicle.

RULING: Affirmed. The Court of Appeal affirmed the judgment of non-suit in favor of Tesla.

REASONING: Reviewing the nonsuit ruling de novo, the court explained that California recognizes two tests for proving design defect under *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413: the consumer expectations test and the risk-benefit test. Under *Soule v. General Motors Co.* (1994) 8 Cal.4th 548, the consumer expectations test "is not suitable in all cases" because consumers do not have safety expectations about all products in all circumstances. The test is "reserved for cases in which the everyday experience of the product's users permits a conclusion that the product's design violated minimum safety assumptions." A plaintiff invoking the test bears a foundational burden to establish that the product is one about which the ordinary consumer can form reasonable minimum safety expectations in the context of the facts and circumstances of the particular case.

The court surveyed the two principal categories of cases in which the test has been held applicable: (1) common safety devices in common circumstances—as in *Campbell v. General*

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Motors Corp. (1982) 32 Cal.3d 112, where ordinary jurors could assess whether a city bus needed a grab bar near a passenger seat; and (2) extreme product malfunctions—the "res ipsa-like" examples *Soule* described, such as a car exploding while idling at a stoplight or rolling over and catching fire in a 2-mph collision.

Lower courts have extended the test to airbag deployment failures, the rearward collapse of a driver's seat in a collision, and asbestos exposure during normal use, but have declined to apply it to rare drug side effects, allergic reactions, tire tread separation, vehicle rollover roof performance, and unusual products like specialized bathtub coatings or multi-point lap belts.

The court held this case fit none of the categories. It did not involve an extreme malfunction like those identified in *Soule*, did not involve a safety device failing to operate when expected, and did not involve a missing common safety feature within lay jurors' common experience. Instead, it involved an unusual misuse: a key fob left in a car with an open door, a toddler entering, and the child performing the multi-step process needed to start, shift, and move the vehicle.

The court reasoned that ordinary consumers do not have minimum safety assumptions about how cars should protect against misuse by toddlers and other young children—indeed, Harcourt's counsel conceded at oral argument that the consumer expectations test would not have applied if a young teenager had managed to start the car under the same circumstances.

While children may be left unattended around vehicles and may cause inadvertent rollaways, a toddler climbing in and successfully starting and operating the vehicle is not a common situation that gives rise to commonly accepted minimum safety expectations.

The court further observed that even if ordinary consumers had such assumptions about ordinary cars, Harcourt acknowledged the Model X is "not a normal car"—it has many unusual features (such as PIN-to-Drive) that other cars do not, making it doubtful that any general consumer expectations would apply to this vehicle.

The court rejected Harcourt's argument that "American consumers have a reasonable expectation that two-year-old children will not be able to inadvertently operate ordinary passenger vehicles." Even if true, that did not show consumer expectations about objective vehicle features. Quoting *Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, the court emphasized that "the consumer expectations test does not apply merely because the consumer states that he or she did not expect to be injured by the product." If unexpected injury alone were sufficient, the test "always would apply and every product would be found to have a design defect."

Although Harcourt testified that, in her experience, starting a car normally requires pressing a button or inserting a key, she did not testify she understood that as a safety measure, and offered no explanation why ordinary consumers would. Because the consumer expectations test did not apply and Harcourt had affirmatively waived the risk-benefit test, no viable strict liability theory remained for the jury, and nonsuit was properly granted.

PAGAN v. CITY OF SAN RAFAEL
2026 1DCA/2 California Court of Appeal,
No. A171344 (April 1, 2026)
Summary judgment was properly granted on dangerous condition claim where wet roadway was open and obvious

FACTS: On the rainy afternoon of Jan. 4, 2018, 16-year-old Kaylin Pagan was a passenger in a car driven by her 16-year-old friend, Lesly Velasquez, traveling northbound on Lincoln Avenue in San Rafael near where it curves left into Los Ranchitos Road. Both girls knew the road was wet, and Velasquez—who held a provisional license and had driven the road three times before—knew she had to be more careful. Velasquez was driving 30–40 mph in a 30-mph zone when the car hydroplaned approaching the curve, the rear left crossed the double yellow line, and Velasquez oversteered while trying to avoid an oncoming car. The vehicle fishtailed, left the roadway, and tumbled down a hillside, injuring Pagan. The roadway was later described in the accident report as "a relatively smooth and flat asphalt paved roadway." Both girls had been expressly told by their parents not to drive together, and Velasquez was cited for violating provisional license restrictions and for making an unsafe turn. The collision report identified unsafe speed as an associated factor.

Pagan filed a second amended complaint. alleging the city maintained a dangerous condition based on three theories: (a) no warning signs of the upcoming sharp left curve, (b) no warning signs to slow down for the combination of the curve and slippery wet roadway, and (c) no barriers or guardrails preventing vehicles from going off the embankment. Critically, the SAC contained no allegation regarding the condition of the pavement itself.

The city moved for summary judgment, including on the ground that the alleged defects were open and obvious. In opposition, Pagan shifted focus, arguing—based principally on the declaration and expert report of Dr. Shakir Shatnawi—that the hydroplaning was caused by a "severely damaged and crumbled pavement surface" with "alligator cracking, delamination, potholes, settlement and depressions in the wheel path," conditions Dr. Shatnawi had observed during a site inspection in May 2022, more than four years after the accident. The trial court granted summary judgment, ruling that the wet/slippery condition was open and obvious as a matter of law, that Pagan's roadway-condition theory was outside the pleadings and could not defeat summary judgment, and declined to rule on the city's 45 evidentiary objections to Dr. Shatnawi's testimony as immaterial to the disposition.

ISSUES: (1) Whether the obviously wet roadway and unmarked curve constituted a dangerous condition under Government Code section 835 as a matter of law; (2) whether Pagan could rely on a new theory of defective pavement not pleaded in her SAC to defeat summary judgment.

RULING: Affirmed. The Court of Appeal affirmed summary judgment for the city.

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REASONING: The court reaffirmed the framework set out in its earlier decision in *Thimon v. City of Newark* (2020) 44 Cal.App.5th 745, governing dangerous-condition claims under Government Code sections 830 and 835. A public entity is liable only when its property is "physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself," and a public entity is required only to maintain its property so that it is safe for "careful use." If property is safe when used with due care and creates a risk of harm only when foreseeable users fail to exercise due care, it is not "dangerous" within the meaning of section 830. Although whether a dangerous condition exists is ordinarily a question of fact, courts may resolve the issue as a matter of law when reasonable minds can come to but one conclusion.

The court held that the trial court properly granted summary adjudication on the basis that the conditions alleged in the SAC were open and obvious. It was undisputed that it had been raining, that both Pagan and Velasquez observed the road was wet, and that Velasquez knew she had to be more careful in the rain. The court also took judicial notice of the fact that roadways may be slippery when wet. Where a condition is open and obvious, there is no duty to warn because the condition itself serves as the warning.

The court rejected Pagan's attempt to defeat summary judgment based on a defective-pavement theory not pleaded in the SAC. The court emphasized that "the pleadings serve as the outer measure of materiality in a summary judgment motion," and a moving defendant need only negate the theories of liability "as alleged in the complaint." Pagan did not meaningfully argue that the damaged-roadway theory was alleged in her SAC, and her own counsel admitted at the hearing that one of Dr. Shatnawi's defects "is not" in the amended complaint. A plaintiff cannot defeat summary judgment by relying on a new legal theory raised for the first time in opposition

WALTON v. VICTOR VALLEY COMMUNITY COLLEGE DISTRICT
2026 4DCA/3 California Court of Appeal,
No. G064668 (April 14, 2026)
Trial court abused discretion in refusing to allow cure of defective counsel declaration

FACTS: Jessie Walton enrolled as a post-secondary nursing student at Victor Valley Community College District in 2017. As part of her coursework, she was required to complete clinical rotations at two local hospitals where district faculty—not hospital staff—supervised her work and controlled the details of her training. The district's nursing program director, Diego Garcia, supervised Walton's spring 2018 clinical rotations.

According to Walton, Garcia subjected her to extensive verbal and physical sexual harassment during the rotations and tried to force her into a sexual relationship in exchange for better grades. When Walton rebuffed his advances, he allegedly retaliated by giving her a non-passing grade and refusing to meet to discuss it. In June 2018, Walton sent a letter to the district, detailing the harassment. The district placed Garcia on administrative leave and commissioned a third-party investigation. Despite Walton's request for a grade change, the district denied it in August 2018, and she withdrew from the program in September. She later obtained her nursing degree at an out-of-state program.

In November 2018, the third-party investigator issued a 79-page report finding Garcia had engaged in "highly inappropriate behavior" by sexually harassing Walton and another female student. Human resources noted Garcia had touched female students, asked about their romantic and sexual relationships, asked them out for drinks, shown gender-specific favoritism, and accessed sexually suggestive images at work—and recommended his removal. He did not return to teach.

Walton filed suit, asserting five FEHA claims (sex discrimination, sexual harassment, failure to prevent, retaliation, and injunctive relief), one cause of action under Civil Code sections 51, 51.5, 51.9, and 52, one under Education Code sections 220, 221.8, 231.5, and 66270, and a negligence cause of action.

The district moved for summary judgment. In opposition, Walton submitted a declaration from her counsel authenticating much of her opposition evidence. The declaration omitted the place of execution and was not subscribed under penalty of perjury. At the hearing, the trial court sustained the district's objection to the declaration. Within hours, counsel filed a notice of errata and a corrected declaration signed under penalty of perjury with the place of execution. The district objected to the notice of errata as untimely, and the trial court granted summary judgment without considering the corrected declaration.

ISSUE: Whether the trial court abused its discretion in excluding counsel's declaration for a curable procedural defect.

RULING: Reversed and remanded. The Court of Appeal reversed and remanded with instructions to vacate the summary judgment.

REASONING: The court held the trial court abused its discretion by excluding counsel's declaration for a curable procedural defect rather than allowing the cure. Reaffirming the principle in *Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal.App.4th 1197, the court emphasized that courts should be cautious about granting summary judgment based on curable procedural defaults that deprive the opposing party of a decision on the merits.

Technical oversights in counsel declarations—including missing Code of Civil Procedure section 2015.5 subscriptions—are precisely the kind of defects that should be permitted to be cured. Counsel was present in court, the defect was raised at the hearing, and counsel cured it the same afternoon by filing a corrected declaration under penalty of perjury with the place of execution. The district identified no prejudice, and refusing to permit the cure, hamstrung Walton's ability to oppose the motion because the declaration authenticated much of her opposition evidence.

Member Verdicts & Settlements

CCTLA members are invited to share their verdicts and settlements: Contact Marti Taylor, editor of *The Litigator*, mtaylor@wilcoxenlaw.com, for preferred sample format. The next issue of *The Litigator* will be the Fall 2026 issue, and submissions need to be sent to Marti before August 1, 2026. Please try to keep word count below 2,000.

VERDICTS

VERDICT: $110 Millon

Mildred Hernandez v. Colony Capital and Formation Capital

Elder abuse and wrongful death (assisted living facility)

$110 million

Breakdown:

- $7.5 million: pre-death pain and suffering to the decedent
- $2.7 million: wrongful death damages to four adult daughters
- $92 million: punitive damages against Colony Capital
- $8 million: punitive damages against Formation Capital

Plaintiff's Counsel:

Ed Dudensing, Jay Renneisen, and Rolando Hidalg

Court & Judge:

Sacramento County Superior Court — Hon. Jeffrey Galvin

Trial Dates:

Jury selection began Jan. 6, 2026; final (punitive damages) verdict returned Mar. 3, 2026.

Case Summary:

Mildred Hernandez, age 100, had been a resident on the assisted living side of Greenhaven Estates for more than five years. On the night of Feb. 12, 2019, she exited her apartment and likely went through an adjacent door that opened onto a steep set of stairs leading to an interior courtyard. She sustained injuries and appears to have crawled to a location within the courtyard, where she ultimately froze to death.

Trial Summary:

Greenhaven Estates' operations had been in disarray for at least three years prior to Hernandez's death, and the facility was the subject of a pending Accusation to revoke its license at the time. Frontier Management was the management company charged with day-to-day operations.

Above the management company, Formation Capital (based in Atlanta, GA) served as the "asset manager" with various oversight duties. Above Formation Capital was Colony Capital (based in Maryland), the beneficial owner of Greenhaven Estates, which was part of a large "Eclipse" portfolio. Colony Capital was a publicly traded REIT with a market value of $2.82 billion. Formation Capital had a valuation of $300–400 million at the time of the wrongdoing but had wound down its operations to essentially nothing (approximately $13 million in cash) by the time of trial. The court ruled that only present value could be considered.

Shortly before trial, Plaintiffs settled with nine of the 11 Defendants, including the two co-licensees of the facility and the management company.

The case proceeded against the remaining Defendants, Formation Capital and Colony Capital, and the jury made multiple findings that both Defendants had engaged in conduct constituting malice, oppression and/or fraud.

VERDICT: $6.97 Millon

Mahmood v. National Surgical Centers Stockton, et al.

Medical malpractice (outpatient angioplasty)

$6.97 million gross / $6.31 million net after MICRA reduction

Breakdown:

- $960,000: wage loss
- $2.71 million: medical (including $212,000 past paid medical)
- $1.7 million: attendant care
- $1 million: general damages (Plaintiff)
- $600,000: loss of consortium (wife)

Plaintiff's damages subtotal: $6.37M. Combined with $600,000 consortium award: $6.97M. MICRA reduced the noneconomic damages by $660,000, producing a net verdict of $6.31M.

Plaintiff's Counsel:

Shafeeq Sadiq, Esq. & Anis Guedoir, Esq., Sadiq Law Firm, P.C.

Defendant's Counsel:

Douglas S. deHeras, Esq., Prindle, Goetz, Barnes & Reinholtz LLP

Court & Judge:

San Joaquin County Superior Court — Hon. Jayne C. Lee

Trial Dates:

Apr. 9-25, 2026 (trial days: Apr. 9, 10, 14, 15, 17, 21, 22, 23 & 25)

Case Summary:

Asif Mahmood, age 56, immigrated from Pakistan in 1988 with his wife, Rubina. They have two adult sons, one of whom has a disability. Mahmood worked in sales and finance at Toyota of Stockton until October 2021, when he underwent a quadruple bypass for coronary heart disease. Persistent blockage in his lower leg limited him to walking less than a block, and he was scheduled for an outpatient angioplasty intended to clear the blockage and allow his return to work.

The procedure took place on Jan. 27, 2022, at National Surgical Centers Stockton, LLC. During the procedure, the treating cardiologist sought to raise Mahmood's blood pressure from approximately 90 mmHg and ordered the circulating nurse to administer "50 NEO" (neosynephrine, a vasopressor).

The intended dose was 50 micrograms diluted in saline. Instead, the nurse drew three milligrams, 60 times the intended dose, directly from the vial and administered it, undiluted. Mahmood's blood pressure spiked rapidly; Plaintiff contended the peak was 300 mmHg, the defense contended 240 mmHg. The cardiologist administered nitroglycerin to drop the pressure, which fell to roughly 70 mmHg. Mahmood was stabilized and transported to St. Joseph's Medical Center.

Within days, Mahmood developed balance problems. Within six months, he developed severe, lightning-fast myoclonus. He was diagnosed with Lance-Adams Syndrome, a rare condition typically following cardiac arrest, pulmonary arrest, or hypoxic coma. Mahmood is now wheelchair-bound and requires 24/7 as-

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sistance with daily living.

Trial Summary:

Plaintiff's theory was that the hypertensive spike caused cerebral vasoconstriction, and that the subsequent rapid pressure drop produced cerebral hypoxia, leading to Lance-Adams Syndrome. The defense contended that the blood pressure event was "transient," involved no loss of consciousness or cardiac or pulmonary arrest and could not have caused brain injury. The defense argued that Mahmood instead suffers from Functional Neurologic Disorder (FND)—formerly called "conversion disorder" or "psychosomatic movements"—a brain communication issue rather than brain damage. Defense expert Dr. Stephen Reich declined to tie any FND to the blood pressure incident.

Plaintiff's Experts:

- Dr. Dean Karnaze, treating neurologist
- Dr. Tamara Stiep, treating UCSF movement disorder specialist
- Dr. Christopher Stephenson, life care planner
- Diana Bubanja, life care plan pricing
- Craig Enos, economist

Defense Experts:

- Dr. Stephen Reich, movement disorders (Baltimore)
- Dr. Zachary Threlkeld, neurology (Stanford)

The Nurse's Prior Drug History

The circulating nurse had a long history of opioid addiction beginning in 2006 and was on Board probation at the time of the incident, though she tested negative for drugs on the day of the procedure.

Plaintiff's counsel elected not to raise the issue in case-in-chief, concerned it might backfire. Defense counsel raised it during the defense case (apparently to humanize the nurse), and the court allowed it over objection despite liability having been admitted. This opened the door to impeachment: The nurse was in sober living four years after the incident; she had previously testified before the nursing board that she "accidentally ingested" Ambien; she was paid less because she was on probation; pre-mixed neosynephrine must be discarded after 24 hours; and the surgical center had no policies and procedures in place to prevent this dosing error.

This evidence supported the closing theme that the facility was putting "profits over patients" — cutting costs by underpaying nurses, declining to pre-mix NEO, and failing to maintain adequate policies.

Settlement with the Cardiologist

The case against the cardiologist (premised on unclear dosing language and an arguably rapid pressure reduction) was the more difficult one; even the defense's nursing expert conceded that "50 NEO" should have been understood as 50 micrograms.

Because Plaintiff could not settle with the nurse and surgical center without first resolving the case against the cardiologist, settlement negotiations targeted the cardiologist first. He entered into a confidential settlement after the 2025 settlement conference.

The court signed an order for good-faith settlement; the nurse is entitled to a setoff for economic damages; and the cardiologist was not placed on the verdict form.

Pre-Trial Negotiations and the "Eroding" Policy

The nurse and National Surgical Centers carried a combined $2 million policy. No defense offers were made and no mediation was attempted before the settlement conference. At the 2025 conference, defense counsel disclosed for the first time that the policy was "eroding," claiming $200,000 had been spent on defense costs and that only $1.8 million was therefore available.

Plaintiff's counsel pressed for production of the actual policy; defense counsel then increased the offer to $1.9 million, asserting the additional sum was offered in exchange for not producing the policy. Plaintiff's counsel rejected $1.9 million, again asked for the policy, and the offer rose to $2 million. When Plaintiff's counsel then requested an updated declarations page, defense counsel inadvertently emailed the entire policy, which revealed that the policy was not eroding. Defense counsel then presented a release containing previously undisclosed confidentiality and nondisparagement clauses.

Plaintiff's counsel offered to sign the release without those clauses; defense counsel refused, taking the position that confidentiality was non-negotiable. Plaintiff's counsel placed on the record that the defense had unreasonably rejected a policy-limits offer.

Verdict and MICRA

The jury (10 women, two men) deliberated for three full days. Because the court did not permit counsel to inform the jury of the MICRA cap on non-economic damages, Plaintiff's counsel asked the jury to award $1 million each in non-economic damages—characterized as "the family's wishes"—to limit downside risk under the cap. The jury complied, awarding $1 million to Asif and $600,000 to Rubina. MICRA reduced the non-economic award by $660,000, producing a net verdict of $6.31 million. The jury also awarded $212,000 in past paid medical expenses. Plaintiff's counsel successfully argued against any collateral-source reduction.

Juror Dynamics

Two female jurors (ages 49 and 59) voted no on causation, evidently believing Mahmood had a pre-existing condition despite the absence of supporting evidence and the reading of the eggshell-plaintiff instruction. The two youngest jurors (ages 21 and 26, the latter serving as foreperson) were among Plaintiff's strongest advocates.

Strategy Notes

The defense strategy was to overwhelm the jury with complexity. Plaintiff's counsel responded by streamlining the case: 22 witnesses over four trial days, including nine short video depositions (5 to–10 minutes each), and minimal exhibits.

The case theme was: "He walked in by himself, and he never walked normally again." Plaintiff served a $4-million CCP § 998 offer on Jan. 30, 2025; beating that offer at trial supports recovery of costs and pre-judgment interest, likely adding approximately $1 million.

Several court rulings concerning past attendant care services remain appealable by both sides.

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Member Verdicts & Settlements

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VERDICT: $3.9 Million

Avery v. Woodmont Real Estate Services LP

Trip and fall (premises liability; wrongful death)

Verdict: $3.9 million gross verdict, with 20% comparative fault attributed to Decedent.

Breakdown:

- $1,857,446.91: Decedent's economic damages
- $1,120,500: Decedent's non-economic damages
- $750,000: Decedent's husband's past damages
- $250,000: Decedent's husband's future damages

Plaintiff's Counsel:

Hank Greenblatt and Andriy Zhernovey, DBBWC LLP

Defendant's Counsel:

Kristin Blocher and Manny Saldana, Gordon Rees Scully Mansukhani, LLP

Court & Judge: Sacramento County Superior Court
Hon. Judge Mennemeier

Trial Dates: Mar. 25, 2026 to Apr. 28, 2026

Case Summary:

This was a very peculiar trip and fall that occurred at an apartment complex where the Plaintiff lived. Plaintiff, a 58-year-old woman, tripped and fell in the garbage enclosure area due to a strange two-inch change in elevation, with no markings and no light present. Plaintiff had minimal injuries at the outset and thought it was just a hematoma to her thigh.

The hematoma subsequently became infected, and she finally sought medical care two weeks after the fall at UC Davis Medical Center. Physicians at UCD had to perform surgery for the massive infection. Thereafter, Plaintiff continued to have infection after infection, ultimately dying some two years after the fall.

The defense raised that Decedent was likely an untreated diabetic, which led to her decline and death from infection. Plaintiff had virtually no medical care for the five to 10 years before the fall, leading to significant hurdles regarding the lack of medical history to show how Plaintiff was doing before the fall. The defense experts opined that, at most, the original infection was cleared within 30 days. A claim was made for Plaintiff's pain and suffering as well as a wrongful death claim by her husband.

Defense counsel did not depose Plaintiff or do an IME prior to her death. Despite Defendant's discovery responses that there was no one else responsible for the condition, at the last minute, defense counsel tried to shift the blame to a different corporation that wasn't a party to the case. After making a CCP § 998 demand for the known available policy limits of $1,000,000, Defendant's only offer to settle this case before trial was $150,000.

Trial Summary:

Throughout trial, the defense kept insisting the garbage enclosure area was deliberately designed and built with an unmarked, unlit two-inch change in elevation but could provide no explanation for why it was done that way some 30 years ago when the building was originally constructed.

Despite the evidentiary hurdles and last-second attempt by defense counsel to shift blame to Decedent and other entities not named in the action, the jury clearly did not credit the testimony from the corporate representatives or the defense experts and awarded Plaintiff $3,900,000, attributing only 20% comparative fault to Decedent.

Plaintiff's Experts:

- Zachary Moore, Safety Engineer
- Robert Griswold, Rental Expert
- Richard Treger, M.D., Nephrology
- Adam Brady, M.D., nfectious Disease

Defendant's Experts:

- Brandon Fugger, Biomechanics
- Elizabeth Pettit, Ph.D., Human Factors
- Timur Durrani, M.D. , Emergency Medicine

VERDICT: $2.3 Million

Roosevelt Johnson, Jr. v. AutoZone Parts, Inc. and Alexander Soon

Personal injury (pedestrian struck by commercial vehicle)

Verdict: $2,366,531.72 gross verdict, reduced by 45% comparative fault to a net recovery of approximately $1,301,592.45.

Breakdown:

- $1,500,000: past noneconomic damages (pain and suffering)
- $750,000: future noneconomic damages (pain and suffering)
- $116,531.72: past medical expenses

(No future medical expenses awarded.)

Plaintiff's Counsel:

Lisa M. Fletcher (1st chair) and William S. Ginsburg (2nd chair), Berg Injury Lawyers (Sacramento Office)

Defendant's Counsel:

Steven Scordalakis (1st chair) and Kristine H. Du (2nd chair), Haight Brown & Bonesteel LLP (Sacramento Office)

Court & Judge:

Sacramento County Superior Court, Dep. 14B
Hon. James E. McFetridge

Trial Dates: Apr. 28, 2026 – May 8, 2026

Case Summary:

Plaintiff Roosevelt Johnson Jr., a disabled pedestrian, was operating a motorized mobility scooter on a parking-lot roadway within the Florin Mall shopping center in Sacramento when he was struck and run over by a vehicle driven by Defendant Alexander Soon, who was acting within the course and scope of his employment for AutoZone Parts, Inc. The evidence at trial showed that the driver failed to look to the right before initiating a turn, resulting in the collision. Plaintiff sustained fractures to his right femur and lower leg and underwent open reduction and internal fixation (ORIF) of the femur fracture.

Trial Summary:

Defendants admitted liability before trial but asserted comparative fault, contending that Plaintiff had improperly operated his mobility scooter within the roadway. At trial, the defense emphasized that Plaintiff's fractures had healed within approximately 120 days and presented expert testimony attributing Plaintiff's ongoing complaints largely to significant pre-existing medical conditions, including chronic neuropathy related to a prior cervical spinal injury and fusion. Despite those opinions,

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Plaintiff testified that the collision had left him with continuing pain and diminished function.

The jury returned a verdict totaling $2,366,531.72, comprising $1.5 million in past noneconomic damages, $750,000 in future noneconomic damages, and $116,531.72 in past medical expenses.

The jury did not award any future medical expenses. The jury assigned 45% comparative fault to Plaintiff, producing a reduced net recovery of approximately $1.3 million.

Even after the comparative-fault reduction, Plaintiff's recovery exceeded Defendants' CCP § 998 offer of $1.2 million. Plaintiff is therefore entitled to recoup costs as the prevailing

SETTLEMENTS

CONFIDENTIAL SETTLEMENT
$8.5 million
Personal injury / mass tort / class action
(underground gas explosion)

Plaintiff's Counsel:
Bill Kershaw, Ian Barlow, and Jack Davis
Kershaw Talley Barlow PC
Defendant's Counsel: Confidential
Case Summary:

This case involved an underground gas explosion that occurred in a small seaside community, resulting in the destruction of a multi-unit residential building and significant injuries to a tenant who was in the building at the time of the explosion. The explosion also caused severe damage to an adjacent building, which included residential units on the second floor and a popular, longstanding restaurant — a mainstay in the community — on the ground floor.

The tenant, who was asleep in her apartment at the time her building exploded and caught fire, alleged she suffered a traumatic brain injury, ongoing memory and neurological problems, permanent hearing loss, PTSD, and severe emotional distress. She was unable to return to work and lost all of her personal possessions in the fire. The adjacent restaurant had to be closed due to fire debris, water damage, and extensive remediation, and the building was essentially taken down to its studs and rebuilt from the inside.

Other properties surrounding the epicenter of the explosion were also physically damaged, and several businesses — including rental properties — allegedly suffered economic damages. Plaintiffs also asserted that members of the community experienced emotional distress as a result of the explosion and the existing gas and electrical conditions beneath the community.

Based on these underlying facts, Plaintiffs filed five separate actions:

(1) a personal injury case on behalf of the resident who was in the building at the time of the explosion;

(2) a case on behalf of the other residents who lived in the building but were not present at the time of the explosion;

(3) a case on behalf of the owner of the adjacent building, the owner of the restaurant, and the restaurant employees;

(4) a mass tort action on behalf of community members who allegedly suffered property damage, business loss, and emotional distress (Dillon v. Legg claims) as a result of the explosion; and

(5) a class action seeking injunctive relief requiring gas and electric line compliance and transparent communications with community members.

Altogether, Kershaw Talley Barlow represented more than 40 individual plaintiffs in the litigation.

The cases faced significant obstacles, including potential preemption issues, standing, and the scope of damages. They also required substantial expert work, including an industrial hygienist, structural engineer, cause-and-origin expert, neurologist, psychiatrist, neuropsychologist, life care planner, counselors, and an economist.

The symbiosis between the class claims and the individual claims was effective: the defendant undertook and confirmed the relief sought through the putative class action, and the parties were able to reach an agreement in principle within a year of the explosion.

CONFIDENTIAL SETTLEMENT
$2,250,000
Motor vehicle accident / personal injury

Plaintiff's Counsel:
Jacqueline Siemens, Of Counsel, Demas Law Group
Defendant's Counsel:
Kelly Dickson, Lafollette, Johnson, DeHass, Fesler & Ames
Court & Judge:
Los Angeles County Superior Court, Santa Monica Courthouse
Trial Dates: Trial was set for August 2027; case settled prior to trial.
Case Summary:

On May 24, 2024, the 72-year-old Plaintiff, his wife, and his adult daughter were visiting Plaintiff's sister (the Defendant) in Santa Monica. Plaintiff was riding as a passenger in Defendant's vehicle, with his wife and daughter following behind in a separate car.

When Defendant pulled into her driveway, she asked Plaintiff to step out so she could pull into the garage. As Plaintiff was exiting, Defendant stepped on the gas instead of the brake, driving the vehicle into the garage while Plaintiff's legs were still outside the car. Plaintiff did not suffer a head injury during the impact. As the garage filled with smoke, Plaintiff's wife and daughter pulled him from the vehicle and also assisted Defendant out.

Plaintiff was transported by ambulance to Kaiser, where he was diagnosed with a complex acetabular fracture and was then transferred to Cedars-Sinai for surgical repair. He underwent ORIF of the left acetabular fracture, total hip arthroplasty, and neuroplasty of the sciatic nerve and remained at Cedars-Sinai for over a week.

In addition to the orthopedic injuries, Plaintiff was diagnosed with systemic inflammatory response syndrome, and his

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hospital course was complicated by toxic metabolic encephalopathy and acute hypoxic respiratory failure. He could not recall why he was hospitalized and was unable to speak meaningfully with his physicians or family. He was then transferred to a skilled nursing facility near his home in Northern California.

After two months in skilled nursing, Plaintiff returned home. He could ambulate only with a walker, and only for short distances. On July 5, 2024, his orthopedic PA diagnosed him with left foot drop. In early July, while staying at a hotel in Reno with his wife, Plaintiff—still wheelchair-bound—attempted on his own to reach the hotel café. He fell from his wheelchair while reaching for the elevator button, sustaining a femur fracture and requiring revision of the acetabular repair. He was transferred from Reno to a skilled nursing facility closer to home, where he spent another month.

Plaintiff was a retired engineer who hiked and walked daily. Two months before the collision, he and his family had taken a Caribbean cruise, during which he snorkeled and walked the beach without difficulty. He did have a history of seizures: seven months before the subject collision, he had a seizure while driving and struck a tree, suffering a minor skull fracture and lumbar injuries.

Beginning during his inpatient stay at Cedars-Sinai, Plaintiff suffered from depression, memory loss and cognitive deficits. Over the following months, his family observed worsening outbursts, personality changes, difficulty concentrating and impaired decision-making. Although Plaintiff had minor memory problems before the collision, he experienced rapid deterioration in the months that followed and sustained multiple falls resulting in head injuries and skin tears.

Approximately 14 months post-collision, the Kaiser memory clinic diagnosed him with moderate dementia. Plaintiff's theory was post-operative cognitive decline: his rapid decline was evident and began after the surgery at Cedars-Sinai; he was at particularly elevated risk as a male over 60; and there is a recognized causal link between acetabular fractures (particularly with post-operative delirium) and an increased risk of dementia. Prior to the injury, he had been an active walker and hiker, regularly went on cruises with his family, and swam daily. The foot drop made ambulation very difficult, and he was never again able to walk more than a few yards without a walker.

Defense experts were doctors Winter and Skomer. Winter confirmed the foot drop and opined that no surgery would benefit Plaintiff. Skomer claimed the mental decline was pre-existing and concluded that the foot drop resulted from the Reno fall, although the medical records contradicted his findings.

Trial was set for August 2027. Plaintiff moved for trial preference under CCP § 36(b). The judge erroneously denied the motion, finding no "clear and convincing evidence Plaintiff would not survive the trial date."

Plaintiff filed a second motion under the same section, this time supported by declarations from a physician and from Defendant's own expert, opining that Plaintiff had dementia. The motion was granted.

Plaintiff declined Defendant's offer to mediate absent a seven-figure proposal. Defendant offered $750,000 and never moved off that figure. Plaintiff then served a CCP § 998 offer for the $2,250,000 policy limit.

Because the initial preference motion had been denied, Defendant had not ordered significant records, nor had Defendant deposed any treating physicians with fewer than 60 days remaining before trial. Two weeks before the 998 expired, Defendant agreed to pay the demand.

SETTLEMENT / MEDIATION
Mendoza v. City of Stockton
$690,000
Trip and fall on sidewalk
(premises liability against public entity)

Plaintiff's Counsel:
Shafeeq Sadiq, Esq., Sadiq Law Firm, P.C.
Defendant's Counsel:
John R. Mulroy, Esq., Deputy City Attorney, City of Stockton
Case Summary:

Case stemmed from a Dec. 21, 2023 early-morning trip and fall that occurred on a public sidewalk in front of John Marshall Elementary School in Stockton. Plaintiff, who worked at the school, was going for a walk in the pre-dawn morning hours. She tripped and fell on an elevated section of sidewalk. It was her first time walking that way, and it was dark. The nine-inch elevation was caused by city-owned tree roots pushing up the concrete, creating a dangerous condition and an unreasonable risk of harm to pedestrians.

Liability:

Plaintiffs alleged the city had actual knowledge of the dangerous condition created by tree-root uplift and failed to timely repair the sidewalk or provide adequate warning to the public.

Internal documents from the City of Stockton proved "Actual Knowledge" on the part of the city. There were complaints as old as 2018 that a city tree had lifted the sidewalk. In 2019, the city noted that the sidewalk needed to be replaced. In 2022, a project was opened for "tree removal and stump grind" at the location of the fall. Three months before the fall, a neighbor wrote an email to the city complaining about the dangerous condition.

Given the above, the city stipulated to liability prior to the trial date.

Damages:

The 70-year-old Plaintiff suffered facial bruising and a fractured left humerus. She had emergency ORIF surgical repair including hardware installation and six months of physical therapy. Her total medical expenses paid by Medicare totaled $22,123, and her wage loss claim was $16,684. Her husband brought a loss-of-consortium claim.

Settlement:

The case settled after a settlement conference for $690,000. Plaintiffs leaned heavily on Nick Anderson, James Schaefers and Kellen Sinclair's 2023 verdict against the City of Stockton involving a similar injury caused by a similar city-owned tree.

998s and Insurer Bad Faith Liability

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Capitol City Trial Lawyers Association
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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

JUNE
Tuesday, June 9, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

JULY
Tuesday, July 14, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

AUGUST
Tuesday, August 11, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

SEPTEMBER
Thursday, September 3, 2026 – 11:30 to 1:30 pm
Elder Abuse Program – Speakers: Ed Dudensing, Wendy York & Tom Reyda - Zoom

Tuesday, September 8, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

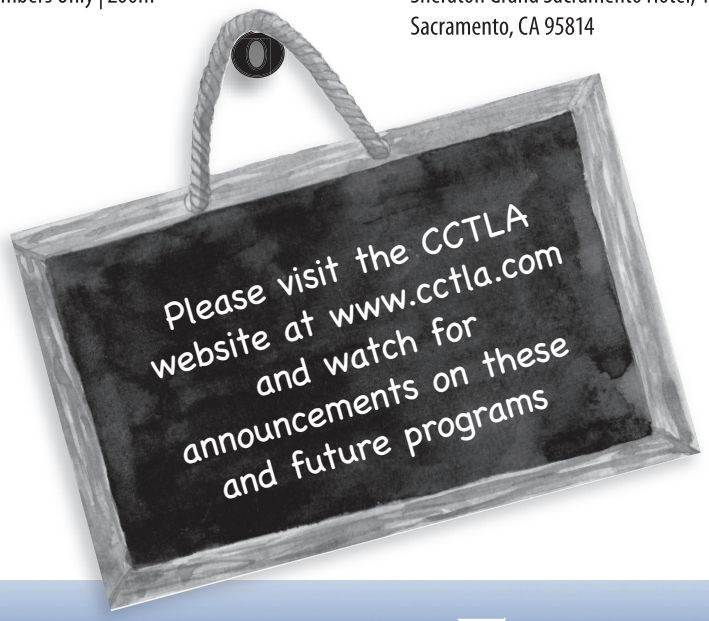
Monday, September 28, 2026
CCTLA Fall Mixer–McGeorge School of Law.

OCTOBER
Tuesday, October 13, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

NOVEMBEER
Tuesday, November 10, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

DECEMBER
Tuesday, December 8, 2026 – 12 pm
Q & A Problem Solving Lunch
CCTLA Members Only | Zoom

Thursday, December 10, 2026
Holiday Reception & Annual Meeting & Installation of the 2027 Board – 5:30 to 7:30 pm
Sheraton Grand Sacramento Hotel, 1230 J Street, Sacramento, CA 95814



CCTLA Calendar of Events