THE UPDATE

SAN DIEGO
DEFENSE LAWYERS

WINTER 2009

In this Issue

President's Message	2
The Bottom Line	2
Tools for Successful Trial Preparation	4
Brown Bag Programs	6
The Mock Trial Competition was a Huge Success	8
An Effective Tool Against Out-of-State plaintiffs	9
Insurance Law Update	10
Legally Nanny	13
Member News	14
Restaurant Recommendation	14
Meet the 2009 Board of Directors	15

THE BOTTOM LINE

Case Title: Gautier v. Ponce, et al.

Case Number: 37-2007-00069075-CU-PA-CTL

Judge: Hon. Ronald L. Styn

Counsel for Plaintiff(s): Christopher W. Todd, Wingert Grebing Brubaker & Goodwin LLP

Counsel for Defendant(s): Christopher W. Olmstead, Barker Olmsted & Barnier,

APLC for defendant Ponce; John T. Farmer, Farmer Case & Fedor for defendant American Asphalt South, Inc.

Type of Incident/Causes of Action: Motor vehicle accident/negligence

Facts: Plaintiff's vehicle was struck head on by a driver, Ponce (who was under the influence) who had crossed the center line of the roadway. The week before, American Asphalt had slurried the roadway, covering up the existing lane lines and double yellow line defining the center of the roadway. The City of San Diego assumed the responsibility for placing temporary reflective tabs on the roadway after the slurry had been applied to replace the lane markings, pending the repainting of the lines several days later. The yellow tabs placed in the center of the roadway were alleged to have been single as opposed to double tabs and were claimed to have been spaced too far apart. Plaintiff claimed the temporary markings were inadequate, confusing to drivers and contributed to the accident. Plaintiff claimed that American Asphalt was responsible because it had not completed its work at the site.

Plaintiff sustained injuries, including two shattered kneecaps with 4 open reduction surgeries, a broken rib, pneumothorax, deep venous thrombosis with insertion of a vena cava filter and a comminuted fracture of the right fourth metacarpal with surgery. Agreed past medical expenses were $240,000. The defense contended plaintiff's loss of earnings was $21,000; plaintiff claimed past and future lost earnings/earning capacity of $192,000.

Settlement Demand/Offer: Initial demand of $1,000,000 to American Asphalt, reduced to $850,000 per CCP 998 and further reduced to $700,000 while the jury was out. Ponce offered his $15,000 policy. American Asphalt offered $147,875 per CCP 998, increased before trial to $200,000. Plaintiff's counsel asked the jury for $1,432,000.

Trial Type: Jury

Trial Length: 9 days

Verdict: $511,653.61, with fault allocated 85% to Ponce, 15% to non-party City of San Diego and 0% to American Asphalt (found not negligent)

PRESIDENT'S MESSAGE

What a treat! On January 24, 2009, we had a chance to celebrate the 25th anniversary of the San Diego Defense Lawyers with the six original founding members. They have all gone on to distinguished careers as trial lawyers or members of the bench. These special guests shared memories from the past and thoughts from the heart about how the bar functioned during the early days of SDDL. Defense and plaintiff lawyers would casually get together to resolve issues. Seasoned defense lawyers would step up and assist newer members of the defense bar without hesitation. The camaraderie amongst the members of the entire bar was palpable.

As we venture into 2009, let's hold onto those thoughts and consider how we can reinvigorate those ideals to make this year something special. If a defense colleague needs assistance, see if you can help them out. They may be facing other challenges of which you are unaware, but your presence could be a difference maker for them.

We may be adversaries with our counterparts in the plaintiff bar but we are still all members of the same state and local bar. The Padres and Dodgers may be rivals, but at the end of the day, they are still members of the same division and league. Our Local Superior Court Rules and the San Diego County Bar Code of Conduct embody this more reasoned and civil approach to addressing conflict. Let's keep that in mind the next time we interact with a plaintiff attorney and just maybe, we can dust off that camaraderie idea and elevate it to action in 2009.

UPCOMING BROWN BAG SEMINARS

Peterson Reporting
530 "B" Street, Suite 350, San Diego, CA 92101
with lunch included

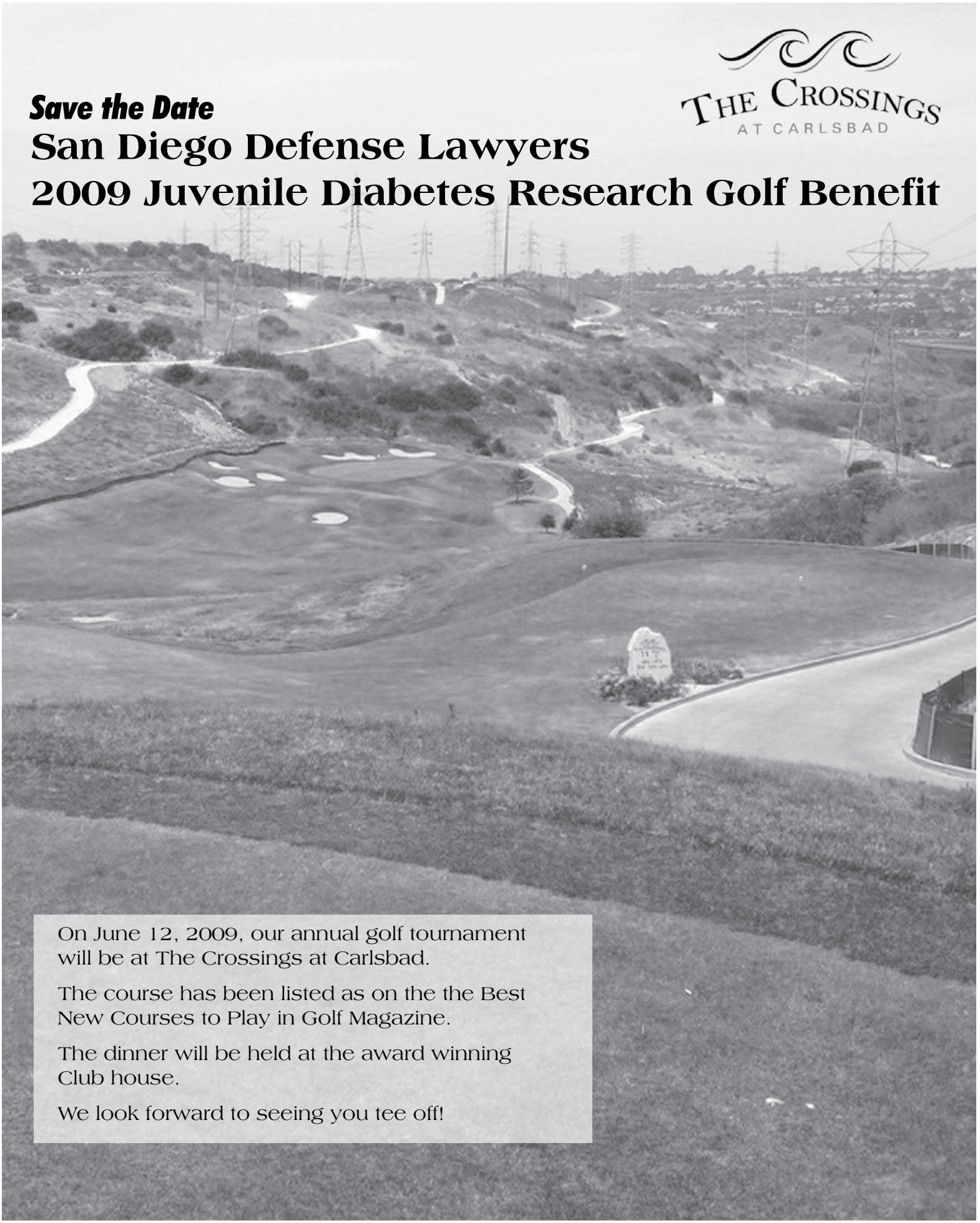
March 10, 2009 - Here comes Hanif

April 14, 2009 - Bias - Get rid of it

May 12, 2009 - The road to the bench

June 9, 2009 - Selecting experts and how to use them

July 14, 2009 - Are you crazy?



Save the Date

San Diego Defense Lawyers 2009 Juvenile Diabetes Research Golf Benefit

On June 12, 2009, our annual golf tournament will be at The Crossings at Carlsbad.

The course has been listed as on the the Best New Courses to Play in Golf Magazine.

The dinner will be held at the award winning Club house.

We look forward to seeing you tee off!

It's Not What You Say, But How You Say It — Tools For Successful Trial Presentation

By Timothy J. Gardner
Carlock, Copeland & Stair, LLP, Atlanta, Georgia

When I was a child, my mother often said to me "It's not what you said, but how you said it." This statement typically followed my reasonable explanation for something I said to one of my siblings that on its face was innocent, but could be misconstrued through delivery. Successful trial attorneys master presenting evidence to ensure that their message is delivered effectively and as intended. Trial czars are deliberate in the order in which trial evidence is presented and how to present evidence, so that the appropriate response is received from the jury. Although I am not a trial czar yet, this article highlights some practices that I have learned and developed to present at trial successfully.

Preparation for trial begins when you first get the case. As a new associate, I thought that the partner for whom I worked was being dramatic when he first told me this. The reality is that one must develop a theme, strategy and plan when the case is assigned. These strategies and themes are not set in stone and may be modified as the case develops, but planning is necessary throughout the litigation process. It is important to visualize how the case will be presented, what evidence you will need at trial, how you will gather the evidence, how the evidence will be admitted, and how evidence will be excluded. I have seen some good cases become average because the attorney did not plan how to obtain good evidence and/or plan how to get the evidence admitted at trial. This planning must start from day one.

Case files must be organized and have a purpose. Trials have too many complications, surprises and fireworks to allow an unorganized file to add to the excitement. Disorganization is ineffective and will be exposed at trial. Disorganized attorneys are not being honest when they say "I know where everything is - it's organized in my mind." Organization must be apparent to all. Throughout litigation and the trial, there are several people who may come in contact with a case file and it is important that a system is in place to make sure that documents and evidence are preserved and easily obtainable. Also, during trial the judge may ask for a particular document on a moment's notice, and it will be necessary for the attorney to find the document quickly. If he/she is unable to locate it, not only will the judge be perturbed, but the jury will also notice the attorney's lack of preparation.

Trial presentations should be informative, logical and well planned. Effective trial attorneys understand that evidence must be presented in a way that someone actually wants to hear it. Witness testimony should be presented in a clear and precise manner with a purpose. Every witness called should offer value to the case and that witness' order should have been predetermined for some reason that assists in trial presentation. The witness is there to educate the jury on the circumstances surrounding the case. In a good trial, the jurors leave feeling that they have developed somewhat of an expertise in the subjects at issue. Not all jurors are waiting a lifetime to be called to jury duty. A good trial attorney does not waste jurors' time.

Demonstrative evidence must also be planned well before the actual trial of the case. An effective trial attorney considers what evidence will paint the picture for the jury and drive the point home. Evidence is presented effectively sometimes through a simple blow-up of a

photograph and other times through animation. Regardless, both of these presentation methods require advance planning and likely the assistance of an outside source that may not be available on the eve on trial. Despite our egos, attorneys may also need to practice with the demonstrative evidence to make sure that they know how to use it so that the intended purpose of the evidence is not lost through the attorney's fumbling. Trial presentations that are polished and presented well are usually memorable for the right reasons.

Trial attorneys should attempt to understand every aspect of their case. An attorney who does not fully understand his/her case is at a disadvantage. The attorney will not only lack the confidence necessary for an effective trial presentation, the attorney risks being surprised by opposing counsel at trial. It is best to strive to know more about the case than anyone else. It is also wise to try to understand your opponent's case so that you can effectively challenge it. It is good practice to visualize the entire case before you present your case and be prepared for potential pitfalls well before they surface.

Throughout the trial, the attorney should always respect the court and the trial process. Jurors make a sacrifice so that our judicial system can work. Some trials require jurors to be away from work, family, friends and many other things for extended periods of time. Be mindful that jurors have better stuff to do. It is disrespectful to be cavalier to the court or the trial process regardless of how one feels about the current circumstances of the trial. Maintain professionalism at all costs and be civil to all with whom you come in contact. Jurors will appreciate your professionalism, and you will likely earn favor with the jurors as well.

The above practices are just a few that I have implemented in preparing and presenting for trial. Following these practices will not guarantee a win at every trial, but will make the case a lot easier to try and allow the attorney to walk away proudly, regardless of the outcome. The message delivered at trial will have its intended effect and, at the end of the day, the jurors should understand what you have said and appreciate how you said it.

This article has been republished with permission by the author and DRI - The Voice of the Defense Bar

Save the Date!

25th Annual RED BOUDREAU TRIAL LAWYERS DINNER

Please join us for this silver anniversary tribute, an occasion to remember and celebrate the many ways our legal community improves San Diego's quality of life through philanthropy.

Saturday
March 28, 2009

HILTON SAN DIEGO
Resort and Spa
1775 Mission Bay Drive
San Diego, CA

Cocktails 5:30 P.M. South Pool Side
Dinner 7:00 P.M. International Ballroom
Performance by Little & Turek Comedy Duo
Music by The Siers Bros. Band

Daniel T. Broderick III Award presented to
Robert S. Brewer, Jr.

JONES DAY | One Firm Worldwide℠

SPONSORING ORGANIZATIONS:
- Association of Business Trial Lawyers
- American Board of Trial Advocates
- San Diego Defense Lawyers
- Consumer Attorneys of San Diego

ST. VINCENT DE PAUL VILLAGE
A PARTNER OF FATHER JOE'S VILLAGES®

Over 10,000 homeless children at St. Vincent de Paul Village have been helped by this dinner in the past 25 years.

Father Joe,
Here is my/our commitment for the 25th Annual Red Boudreau Trial Lawyers Dinner honoring Robert S. Brewer, Jr. with the 2009 Daniel T. Broderick III Award and benefiting children at St. Vincent de Paul Village.

TABLES/TICKETS:

❑ **Gold Table, $5,000**
10 Seats, Full-page B&W ad
or _____ *Seat(s) x $500*
= _____

❑ **Silver Table, $3,000**
10 Seats, Half-page B&W ad
or _____ *Seat(s) x $300*
= _____

❑ **Bronze Table, $2,000**
10 Seats
or _____ *Seat(s) x $200*
= _____

CONTRIBUTION:
I can't be there, but I want to participate in supporting Children's Services at St. Vincent de Paul Village.

Platinum ❑ $10,000
Gold ❑ $5,000
Silver ❑ $3,000
Bronze ❑ $2,000

OTHER CONTRIBUTION OPPORTUNITIES:
❑ $1,000
❑ $500
❑ $250
❑ $100
❑ $50
❑ $ _____

CONGRATULATORY B&W AD:
❑ *Full page $1,000 (Live area 5" wide by 8" tall)*
❑ *1/2 page $500 (Live area 5" wide by 4" tall)*
❑ *1/4 page $300 (Live area 2.5" wide by 4" tall)*

Deadline for ad submissions: March 6, 2009

Please provide written copy and logos for ads or ad art files as PDF, JPG, TIFF or EPS. Include contact person, phone and fax numbers. Email information to Blair Amidei at blair.amidei@neighbor.org or call 619.446.2134.

Special over night room rate available at the Hilton. For more information, contact Blair Amidei at 619.446.2134 or blair.amidei@neighbor.org

For information regarding ads or program, call 619.446.2134

RSVP BY MARCH 6, 2009

❑ Check enclosed with my payment of $ _____
❑ Credit card payment: ❑ VISA ❑ MasterCard ❑ American Express ❑ Discover
Credit card payments may be faxed to 619.446.2129.

Name (please print) _____
Card Number _____
3-4 Security Digit Code (on card) _____ Exp. Date ____/____/____
Signature _____
(Required for credit card)
Phone (____) _____ Please email me at _____
Firm _____
Address _____
City _____ State _____ Zip _____

Make checks payable to: ***St. Vincent de Paul Village***
Mail this RSVP card and checks to: *St. Vincent de Paul Village, Attn: Blair Amidei 3350 E Street, San Diego, CA 92102-3332*

BROWN BAG PROGRAMS

Brown Bag Series Summary – October 2, 2008

Evidence 201 for the trial lawyer Making and overcoming objections

By Bethsaida C. Obra-White, Esq.
Law Offices of Kenneth N. Greenfield

Before you head to court, turn off your cell phone, and walk into whatever department you are appearing in that morning, there is one thing you should know: Your Trial Judge.

How long has the judge been on the bench? Does the judge allow side bars? How does he or she handle objections?

At the October Evening Seminar, we were fortunate to have Hon. Richard Haden (Ret.) and Hon. Frederic Link as our distinguished speakers. Judge Richard Haden served on the San Diego Superior Court bench from 1990 through 2004 where he handled about 600 civil cases concurrently. Judge Haden was also a featured speaker before numerous professional organizations including the American Inns of Court, Association of Business Trial Lawyers, and The Litigation Section of the California State Bar. Judge Frederic Link has served on the San Diego Superior Court bench since 1990. He has presided over hundreds of homicide cases, including the Richard Tuite/Stephanie Crow murder case, as well as several civil trials.

In their discussions of trial strategy, Judges Haden and Link provided valuable insight into the art of making and meeting objections. Although knowledge of evidentiary rules is key; it is as equally important to know how your judge handles objections. For example, the Judges indicated that one of their pet peeves is "speaking objections." Although speaking objections are sometimes necessary, Judges Haden and Link suggest that they be used sparingly and not in front of the jury. As far as "continuing objections" are concerned, such objections are generally looked down upon by judges unless the objection is very specific.

Judges Haden and Link also explained the consequences of "too much objecting." They stated that the attorney who objects too much is often viewed as an obstructionist. When this occurs, Judge Link finds that jurors tend to hold this against the attorney because they believe that the attorney is hiding something. Judge Haden added that if you use objections sparingly, the judge and jury are more likely to listen to you when an objection is asserted.

If you are attempting to admit evidence that involves an objection to the hearsay rule, Judges Haden and Link suggest that you provide the judge with a short brief on the matter. They also recommend making a list of hearsay objections and exceptions in your trial book in order to effectively meet any evidentiary hurdles you may encounter.

In the event that a judge overrules your objection or sustains your opponent's objection, all is not lost. Judges Haden and Link stated that you should quickly find authority supporting your position, ask to discuss it with the judge during a break or out of the presence of the jury, and then revisit the issue on the record.

One last piece of advice: If you don't know your trial judge or evidentiary objections, do your homework! [1]Otherwise, you may be in for an embarrassing experience.

[1] Judge Link and Judge Haden suggest California Courtroom Evidence as well as California Courts & Judges as references.

Brown Bag Series Summary –December 9, 2008

How Not to Lose Your Appeal Before it Begins

By Sondra R. Levine, Esq.
Lewis Brisbois Bisgaard & Smith LLP

As we enter a new year and are busy formulating our 'new years resolutions' we often forget to stop to think about the here and now. In the same way, many lawyers often forget to think about the appeal process until trial is wrapping up and an appeal is immanent. However, if you're not careful, you can lose your appeal before it begins.

We were honored to have Jeffry Miller speak at the December Brown Bag Luncheon. Jeffry Miller is a Certified Specialist in Appellate Law and serves as chair of Lewis Brisbios Bisgaard & Smith LLP's Appellate Department. Mr. Miller also serves on the San Diego County Appellate Court Committee, and is a contributing author and editor of the California Appellate Practice Handbook published by the Appellate Court Committee of the San Diego County Bar Association.

Mr. Miller's presentation focused on the many ways an attorney can lose his/her appeal at the various stages of litigation (pleading, discovery, motions, trial and post-trial) and offered some very practical advice for both seasoned lawyers and newly minted lawyers alike. Mr. Miller discussed the role of an appellate lawyer and the cold, hard, fact that appellate lawyers must "play the hand their dealt."

Jeffry Miller peppered his presentation with practical advice such as whether to file a writ or an appeal, discussed the differences between a judgment and an order and the effect each has on an appeal, and gave some tips and strategies for avoiding the most common waiver situations. Mr. Miller also shared a few stories about well-intentioned lawyers who lost their appeal when they mistakenly overlooked a seemingly unimportant detail, failed to make a timely objection, or forgot to obtain a ruling.

Mr. Miller further warned that sometimes simply making an objection is not sufficient to preserve your client's right to an appeal. To demonstrate this point, Mr. Miller told a cautionary tale about a lawyer who let a juror sleep through the trial then tried to raise jury misconduct as a viable ground for appeal. Although the lawyer had raised the issue at various points during the trial, he never asked to have the juror removed. As a result, the lawyer could not show a substantial injury or prejudice sufficient to warrant appellate review. Mr. Miller pointed out that sometimes a trial attorney is required to do more than simply object in order to demonstrate an injury sufficient to warrant appellate

review. Thankfully, neither this story nor any of the other stories Mr. Miller told were about any of the lawyers who attended this Brown Bag Luncheon. Those lawyers in attendance breathed a huge sigh of relief.

Many of us also breathed a sigh of relief when Mr. Miller announced that he consults with trial attorneys on the appellate effect of jury instructions, in limine motions, expert voir dire, and preservation of the record. When there is an adverse judgment, we immediately start thinking about the possibility of an appeal, but how many of us are thinking about the possibility of waiving our client's right to appeal at voir dire, or at the pleading stage?

Let's face it; trial work and appellate work are two entirely different animals. The fact that you are a good trial lawyer does not necessarily ensure that your trial skills will effectively transition into the appellate courtroom. Trial work is messy and unpredictable; it's what many of us thrive on. In contrast, appellate work is neat, self-contained, and follows a predictable structure. Trial and appellate work involve different skills and attract a different group of people. As Board Member, Brian Rawers, who introduced Mr. Miller pointed out; this distinction is why we trial lawyers are thankful to have appellate departments and/or appellate lawyers to turn to.

As you think about your next case, from pleadings to post-trial motions, let Mr. Miller's words reverberate in your ears: "object early and often…and don't forget to get a ruling" or you may lose your appeal before it begins.

Brown Bag Series Summary – December 10, 2008

ANATOMY OF A DUI MCLE

By Darin J. Boles
Aiken & Boles

In December, the San Diego Defense Lawyers hosted its annual evening substance abuse MCLE program, Anatomy of a DUI. Attorney Jack Phillips, who has 40 years of experience defending individuals, including many attorneys, in DUI and other criminal matters. Mr. Phillips related what could be expected with a first offense. This included an anticipated 10 to 15 hours in jail, summary probation, months of driving restrictions, attendance at a first conviction program and fines in the $2,000 to $2,500 range.

Further, the overall financial impact of a first offense is in the range of $8,000 to $25,000. This includes increased insurance costs and the loss of any umbrella policy. As of the first of this year, if you are on probation and get stopped with as little as a .01 blood alcohol level, your license will be suspended for one year. If you refuse the PAS test in this instance, the suspension can increase to 3 years. Mr. Phillips advised that the passive device test is optional unless you are on probation.

Mr. Phillips warned that an attorney does not even want to consider getting a second offense. These offenses are reportable to the bar and the adverse publicity can decimate a clientele. Instead, he recommended that everyone have a Plan B by taking a cab or using a designated driver. While it is beneficial to keep some cash on hand for a cab, most cabs take credit cards now so all that is needed is a call for the cab.

From left to right: Darin Boles, Esq., Officer Blake Cheary, and Jack Phillips, Esq.

Officer Blake Cheary, an 11 year veteran of the San Diego Police Department, who is a member of the DUI Enforcement Team and an instructor at the police academy, discussed the roadside process and the staggering statistics from DUI. The death toll from DUI drivers in 2007 was 12,998, which far exceeds the toll in Iraq times by two or three times.

He encouraged people to take the PAS at the scene since it is usually offered only after the officer has decided someone may be impaired and the PAS may be the last chance to avoid being arrested. If you are arrested, you are required to give a chemical sample. He cautioned against using the "anti-Police breath mint" that is being marketed as it cannot fool the PAS, the chemical test or a seasoned officer.

Officer Cheary demonstrated what a field sobriety stop would look like by having two of our attendees, Mark and Sasha, go through a series of tests. Besides looking a little silly at times, they each did well on some and not so well on other tests. One was under .08 but still appeared impaired when performing the field tests at times. So even if a person has not reached the .08 level, Officer Cheary warned that you can still be arrested even with a BAL under .08 if the officer detemines you are impaired.

Sasha Selfridge, Esq. and Officer Blake Cheary

The 18th Annual SDDL Mock Trial Competition Was a Huge Success

California Western School of Law: Jana Jorgenson, Dante Lomelo, Rachel Kuschner, and Rosie Stolow. (In no particular order)

U.C. Berkeley: Warren Ko, Valerie Rose, Samad Pardesi, and Meghan Bordonaro. (In no particular order)

American University - Washington College of Law: Aliza Pescovitz, Greg Eichelman, Justin Teres, and Elicia Ford. (In no particular order)

By Eric J. Miersma (2008 SDDL Board of Directors, Secretary and Mock Trial Chair)
BALESTRERI, PENDLETON & POTOCKI

On October 16, 17, and 18, 2008, the San Diego Superior Court and University of San Diego hosted the San Diego Defense Lawyers 18th Annual Mock Trial Competition. What began as grudge match between California Western School of Law and the University of San Diego has evolved into a nationally recognized event on the must attend list for the nation's top law school trial advocacy programs.

This year eighteen teams of four students each participated from the following law schools: Duke University, University of Richmond, UCLA, Brooklyn Law School, American University, California Western, Emory University, University of San Diego, Southern Methodist University, University of the Pacific – McGeorge School of Law, University of Connecticut, U.C. Hastings and U.C. Berkeley. The case file for the competition, Cranbrooke v. Intellex, involved a licensing agreement dispute between a video game console manufacturer and its distributor. By all accounts, the judges and students enjoyed the fact pattern and intense competition.

The preliminary rounds took place Thursday and Friday evening at the San Diego Courthouse with each team alternating between plaintiff and defendant. The semi-finalists were announced at a reception held Friday evening at the Westin Hotel adjacent to the courthouse. The scores were extremely close, but in the end the following teams prevailed and advanced to the semi-finals: U.C. Berkeley, California Western, American University, and the University of Richmond.

The final rounds took place Saturday morning at the

University of Richmond: Dave McGill, Jaime Wisgarver, Erica Giovanni, and Stephen E. Taylor. (In no particular order)

University of San Diego School of Law. In the semi-finals, the University of Richmond defeated U.C. Berkeley, and California Western lost to American University. The final, presided over by Judge David Gill of the San Diego Superior Court, pitted the University of Richmond against American University. For the first time ever, the final involved two out-of-state law schools, with the trophy going to American University – Washington College of Law in Washington D.C.

The competitors universally praised the quality of the judging and were profuse in their gratitude. If you were one of the fortunate and dedicated judges this year, please accept the Board's sincere appreciation for your efforts. The strength and primary draw of this competition is the experience and depth of the SDDL members who lend their time and skill. Thank you all for making this a successful event.

An Effective Tool Against Out-of-State Plaintiffs

By Arthur R. Botham, Jr.
*The **Law Offices of Arthur R. Botham Jr.***

Undertaking To Post Costs Pursuant To Code Of Civil Procedure Section 1030

A Motion for Undertaking to Post Costs can be a powerful defense tool, and should be a part of any intake checklist for new cases. Many attorneys are not aware of this Code section. When a Plaintiff resides out-of-state, the court may require that Plaintiff post defense costs and fees or face dismissal. A discovery stay is also available.

The Required Two Elements

A motion brought under California Code of Civil Procedure 1030 must establish two elements: 1. The plaintiff resides out-of-state or is a foreign corporation and 2. the defendant has a 'reasonable possibility' of obtaining judgment.

First Element - Resides Out of State:

Code of Civil Procedure section 1030 does not define 'resides out of state.' Two California cases are instructive, but not dispositive on the issue of 'residency': Myers v. Carter(1960) 178 Cal.App.2d 622 and Briggs v. Sup.Ct (1947) 81 CA.2d 240, 250. *Briggs* is most instructive and says it best:

> **"Actions speak louder than words in determining where a person is domiciled. Thus, for example, one who filed documents stating that he was a Nevada resident (e.g. for tax reasons), could still be found to be a California domiciliary if he spends most of his time here, has most of his property here, etc."**

There are two simple ways of determining where Plaintiff resides: First, plaintiffs plead their residency within their complaint to establish jurisdiction pursuant to Code of Civil Procedure 410.40 (b). Second, Form Interrogatories 2.5 (a)-(c) ask where Plaintiff resides now, and for the last five years.

Second Element - 'Reasonable Possibility' of Obtaining Judgment:

Again, the Code does not define 'reasonable possibility', nor is there definitive case law. In short, Code of Civil Procedure 1030 is largely discretionary. One case reasons: "[Code of Civil Procedure 1030] protects California residents by requiring the out of state plaintiff to post security [with the court] to ensure payment of costs and attorney's fees (if recoverable) in the likely event the Plaintiffs' action is defeated." Yao v. Sup.Ct ,(2002) 104 Cal. App. 4th 327, 333; Shannon v. Sims Service Center, Inc. 164 Cal.App.3d 907, 913. In fact, little case law follows CCP 1030 in the annotated versions of the California Code by West, Deerings, and by Witkin California Civil Procedure. This is probably because CCP 1030 (g) makes any order under the section 'non-appealable'.

A Discovery Stay Is Available:

If the motion is filed within 30 days of receipt of the summons, the court may also stay 'further proceedings.' Presumably this includes discovery under CCP 1030 (e).

Costs/Attorneys' Fees Available:

Code of Civil Procedure 1030 (a) specifically requires Plaintiff post costs *and attorneys' fees* authorized by statute or by contract. As part of the motion, defense counsel must estimate both costs and attorneys fees he or she "...has incurred and expects to incur..." in his or her supporting affidavit. Additionally, Code of Civil Procedure sections 1032 and 1033.5 enumerate those costs recoverable by a prevailing party. Code of Civil Procedure 1033.5 (a)(8) authorizes recovery of expert witness fees. Therefore, defense counsel should include a declaration by an expert (if appropriate) estimating his or her typical costs for the type of claim at issue.

Conclusion

Most attorneys not familiar with Code of Civil Procedure Section 1030. This is probably because claims by out-of-state plaintiffs seldom arise. The intention of this article is to spread the word among my fellow defense lawyers to add Code of Civil Procedure 1030 to their intake checklist. This checklist should also include items such as statutes of limitations, retainers, tenders and the like.

Mr. Botham looks forward to reading responses to this article in the next edition of The Update. Please feel free to reply at artbotham@hotmail.com

Insurance Law

By Jim Roth, Esq.
The Roth Law Firm

As the conclusion of 2008 approached, the Appellate Courts were of a collective view that statutes must be strictly and unconditionally applied. To the extent that insurers sought to create a less than level playing field with its insureds, the courts were firm in dispensing relief to the aggrieved insureds.

An Insurer Which Undertakes a Biased Claims Investigation May Not Shield Itself from "Bad Faith" Exposure Behind the "The Genuine Dispute" Doctrine Does Not Apply.

In Brehm v. 21st Century Insurance Company (2008) 166 Cal.App.4th 1225, the Court of Appeal, Second District, held that an underinsured motorist (UIM) insurer's contractual right to arbitrate UIM claims did not relieve it from its obligation to deal with its insured in good faith by honestly assessing the insured's claim and making a reasonable effort to resolve any dispute as to the amount of the insured's damages before invoking the right to arbitration.

Factually, Brehm and his parents were all seriously injured in a traffic accident caused by Natalie Aguirre, who struck the rear of the Brehm automobile while it was stopped at a red light. Brehm and his parents settled with Aguirre's insurer for $30,000, her full policy limits; Brehm received $10,000; each of his parents also received $10,000. Thereafter, Brehm made a UIM claim as an additional insured to his parents' insurer, 21st Century. That policy provided UIM benefits of $100,000 for one person and an additional $5,000 in medical benefits. Brehm submitted medical reports and assessments, bills and diagnostic test results to 21st Century that showed, as a result of the accident with Aguirre, he had suffered among other injuries, "a severe shoulder injury that would require costly surgery and related costs and expenses."

After the parties failed to reach an agreement on Brehm's claim, the issue apparently only being the extent of his injuries and thus the amount to which he was entitled, an arbitration was scheduled. Before the scheduled arbitration, Brehm made a demand for $85,000 plus medical payments pursuant to CCP §998. 21st Century rejected the demand and made a counteroffer of $5,000 plus previously paid medical benefits. In rejecting Brehm's demand, 21st Century stated its position, based on an evaluation conducted by its retained medical expert, that Brehm's injuries were limited to soft tissue and the surgeries recommended by Brehm's medical provider "are not necessary." To persuade 21st Century to pay a reasonable settlement, Brehm submitted to a medical examination by a highly credentialed board-certified orthopedic surgeon, whose resulting report stated Brehm had suffered a cervical strain, lumbar strain and right shoulder rotator cuff strain. That report presented to 21st Century opined Brehm needed further treatment and concluded it was "more likely than not" that surgery would be required on his right shoulder, which would cost approximately $15,575 and post-surgical physiotherapy approximately $3,600.

Following a continuance of the arbitration date to allow 21st Century to subpoena and review those medical records, Brehm made a $90,000 policy limit demand ($100,000 less the $10,000 Brehm had recovered from Aguirre), plus $5,000 in medical payments. In response, 21st Century offered $5,000 plus the balance of the full policy maximum of $5,000 in medical payments. Brehm rejected the counteroffer. Brehm received an arbitration award of $91,186; the award was reduced by stipulation to the $90,000 policy limit. 21st Century paid Brehm the $90,000 shortly after the award was made. Brehm filed a complaint against 21st Century and, after the court sustained a demurrer, a first amended complaint asserting causes of action for breach of the implied covenant of good faith and fair dealing and breach of contract, alleging 21st Century had unreasonably failed to make a good faith effort to resolve Brehm's UIM claim after its liability for payment of benefits was clear.

The appellate court began its analysis by landscaping the playing field: California law recognizes in every contract, including insurance policies, an implied covenant of good faith and fair dealing. In the insurance context the implied covenant of good faith and fair dealing requires the insurer to refrain from injuring its insured's right to receive the benefits of the insurance agreement. The failure to accept a reasonable offer to settle a claim against its insured exposes an insurer to liability in both contract and tort, regardless of its fulfillment of the express terms of the insurance policy. An insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the amount of the claim cannot be liable in bad faith. However, the genuine dispute doctrine does not relieve an insurer from its obligation to thoroughly and fairly investigate, process and evaluate the insured's claim. A genuine dispute exists only when the insurer's position is maintained in good faith and on reasonable grounds. In reversing the trial court's demurrer without leave to amend, the court concluded that Brehm's allegations of 21st Century's bias in the investigation of Brehm's claim would support Brehm's claim of "bad faith," precluding the trial court from sustaining 21st Century's demurrer, where 21st Century allegedly retained a biased medical expert to examine Brehm, where that expert allegedly ignored the medical symptoms and in opining that Brehm suffered no significant injury and would not require future surgery, and Brehm's offer totaling less than $10,000 allegedly was unreasonably low in light of the medical evidence in Brehm's possession.

It cannot ever be overly stressed that every claim must be subjected to a stand alone analysis.

The concept of an "independent medical examination" is more frequently being abandoned for a variety of business reasons. This decision is a vivid and graphic lesson of bad decision making when the results of a medical examination are seemingly ignored because of the potential loss amount.

The Trial Court Lacked Subject Matter Jurisdiction to Review a Private Arbitrator's Stay of Uninsured Motorist Insurance Arbitration Pending a Determination of the Insured's Entitlement to Workers' Compensation.

In Briggs v. Resolution Remedies (2008) 168 Cal.App.4th 1395, the Court of Appeal, First District, held that the trial court lacked subject matter jurisdiction to review a private arbitrator's stay of uninsured motorist insurance arbitration pending a determination of the insured's entitlement to workers' compensation.

Factually, Ms. Briggs suffered injuries when an uninsured motorist rear ended her while she was driving on work-related business in

a company car provided to her by her employer. Although the accident took place while Ms. Briggs was acting in the scope of her employment, she declined to file a workers' compensation claim. The parties were not able to agree on whether her insurer, GEICO, had a duty to pay Ms. Briggs before there was a determination of her entitlement to workers' compensation benefits. Ms. Briggs demanded arbitration with GEICO, which filed a motion to stay the arbitration, arguing that it was entitled to a stay until after Ms. Briggs pursued workers' compensation benefits. The arbitrator ruled that in light of the language of Ms. Briggs insurance policy and Insurance Code section 11580.2, GEICO was entitled to a stay of the arbitration until Ms. Briggs filed a workers' compensation claim. The arbitrator's order stated: "If a court of competent jurisdiction orders me to vacate this Order, I will, of course, do so upon being so advised by both counsel." Ms. Briggs thereafter filed a petition to stay the arbitration ruling, alleging that she would be "severely prejudiced" if the court did not "immediately review" the decision to stay the arbitration proceedings. The trial court's tentative ruling stated that the petition was denied because the arbitrator properly stayed arbitration pursuant to Insurance Code section 11580.2 and the parties' insurance policy.

In seeking to untangle the rulings of the arbitrator and trial court, the appellate court began by stating that uninsured motorist arbitration is a form of contractual arbitration governed by the California Arbitration Act, and that all disputes arising under the uninsured motorist coverage should be subject to the decision by the arbitrator. Once a dispute is submitted to arbitration, the California Arbitration Act contemplates only limited judicial involvement (i.e., such as the capacity to resolve discovery disputes or enforcement of the award). Under the California Arbitration Act, it is the job of the arbitrator, not the court, to resolve all questions needed to determine the controversy. Consequently, the trial court lacked subject matter jurisdiction to review the private arbitrator's stay of uninsured motorist insurance arbitration pending a determination of insured's entitlement to workers' compensation.

A Service Charge Imposed for the Payment in Full of the Stated Premium for an Automobile Insurance Policy's One-Month Term Was Part of That Policy's "Premium," and Thus the Insurer's Failure to Disclose the Service Charge in That Policy Violated Insurance Code Requiring Insurance Policies to State the Premium for Insurance Coverage.

In Troyk v. Farmers Group, Inc. (2008) 168 Cal.App.4th 1337, the Court of Appeal, Fourth District, Division 1, held that a service charge imposed for the payment in full of the stated premium for an automobile insurance policy's one-month term was part of that policy's "premium," and thus insurer's failure to disclose the service charge in that policy violated insurance code requiring insurance policies to state the premium for insurance coverage.

Factually, Thomas E. Troyk filed a class action against Farmers Group, Inc., doing business as Farmers Underwriters Association (FGI), and Farmers Insurance Exchange (FIE) (together Farmers) alleging causes of action for breach of contract and violation of Business and Professions Code section 17200 (Unfair Competition Law). He alleged FIE required him to pay a service charge for the payment of the premium for his automobile insurance policy's one-month term and, because the service charge was not stated in his policy, FIE violated the requirement of Insurance Code section 381, that a "premium" shall be stated in an insurance policy. Troyk's complaint sought injunctive relief against Farmers and full restitution from Farmers of the service charges paid by members of the class and the general public. The trial court granted Troyk's motion for class certification. It was apparently determined there were about 975,000 members in the certified class.

Stated Justice McDonald for the appellate court in San Diego: "Based on our independent interpretation of the relevant statutory language, we conclude the clear and unambiguous meaning of the term 'premium,' as used in section 381, subdivision (f), includes a service charge imposed for payment in full of the stated insurance premium for a one-month term policy" and "none of the cases or other authorities cited by Farmers persuade us the term 'premium,' as used in section 381, subdivision (f), does not include a service charge imposed for payment in full of the stated premium for a period of coverage (e.g., a one-month term)."

A Coverage Action Need Not Be Stayed until the Third Party Action Is Resolved If it Does Not Require Factual Determinations That Would Prejudice the Insured in the Third Party Action.

In GGIS Insurance Services, Inc. v. The Superior Court of Los Angeles County (2008) 168 Cal.App.4th 1493, the Court of Appeal, Second District, held that a coverage action need not be stayed until the third party action is resolved if it does not require factual determinations that would prejudice the insured in the third party action.

Factually, GGIS was a California corporation that acted as a general agent in California for various insurers. In March 2002, the Commonwealth Court of Pennsylvania issued orders of rehabilitation, appointing the Pennsylvania insurance commissioner as rehabilitator of certain insurers to which GGIS was a general agent. The court ordered all persons in possession of those insurers' assets not to dispose of the assets without the prior written consent of the commissioner. It also ordered all persons who had collected premiums on behalf of the insurers to "account for all earned premiums and commissions" and "account for and pay all premiums and commissions unearned due to policies canceled in the normal course of business, directly to the Rehabilitator." After it became aware of the rehabilitation orders, GGIS ceased retaining "commissions" from the premiums collected and instead retained "administrative fees" in the amount of $180,000 per week. An attorney representing the Pennsylvania insurance commissioner sent a letter to GGIS demanding remittance of over $6 million in premiums collected by them and purportedly retained improperly as administrative fees. The letter also stated that GGIS had improperly paid to or for the benefit of reinsurers over $3.5 million of premiums collected. The letter demanded repayment of over $9.5 million to the commissioner and an accounting of all premium amounts for the canceled policies. Refusing to return any amounts, suit was filed against GGIS, which then notified its insurer, Capitol, of the action and requested a defense. Capitol responded with a reservation of rights. Capitol later agreed to pay GGIS's defense costs while reserving its rights to deny any right to coverage or a defense under the policy. Capitol thereafter terminated its payment of defense costs

Cont'd on page 12

Cont'd from page 11
after paying a total of $25,000 in defense costs. GGIS filed suit against Capitol and others alleging a broad variety of clauses of action and then sought to stay its action against its insurer until the underlying action was resolved. The trial court denied GGIS's motion to continue or stay.

Teeing up its holding, the appellate court first noted that an insurer or its insured may sue to determine whether the insurer has a duty to defend or indemnify its insured in an action by a third party. A coverage action by an insurer or its insured, to determine whether the insurer has a duty to defend or indemnify its insured in an action by a third party, should not proceed if it may result in factual determinations that would prejudice the insured in the third party action. Conversely, a coverage action to determine whether an insurer has a duty to defend or indemnify its insured in an action by a third party may proceed only if the coverage question is logically unrelated to the issues of consequence in the underlying case. Threading those two rules together, if the trial court may resolve the question of whether the insurer has a duty to defend or indemnify its insured in an action by a third party as a matter of law, without making any factual determinations that would prejudice the insured in the third party action, the coverage action need not be stayed until the third party action is resolved.

All Independent Cumis Counsel Fee Disputes Raised By an Insured Against its Insurer Are Subject to Mandatory Statutory Arbitration Unless the Parties' Insurance Policy Provides for an Alternative Dispute Resolution Procedure, Even If Other Claims or Issues Are Also Alleged.

In Compulink Management Center, Inc. v. St. Paul Fire and Marine Insurance Company (2008) 169 Cal.App.4th 289, the Court of Appeal, Second District, held that any and all independent Cumis counsel fee disputes are subject to mandatory statutory arbitration unless the parties' insurance policy provides for an alternative dispute resolution procedure, even if other claims or issues are also alleged.

Factually, Compulink was insured under a general liability policy issued by St. Paul. The policy included a provision styled "Expenses incurred by protected persons." That provision stated that St. Paul will "pay all reasonable expenses that any protected person incurs at [its] request while helping [it] investigate or settle, or defend a protected person against, a claim or suit." During the policy period, Compulink filed suit against a former distributor of Compulink and a new vendor of that former distributor. In turn, both defendants then cross-complained against Compulink, which then tendered the defense of the cross-complaints to St. Paul. Subject to a reservation of rights, St. Paul agreed to defend Compulink. Because St. Paul believed the reservation of rights created a conflict of interest with Compulink, St. Paul agreed to allow Compulink to select independent counsel to defend it in the third party suit. After the case settled, Compulink filed suit against St. Paul, asserting a variety of claims including "bad faith" and St. Paul's failure to fully pay Cumis counsel selected by Compulink. The trial court denied St. Paul's efforts to compel arbitration, finding that Compulink's complaint included allegations beyond a mere attorney's fees dispute.

After dispensing with the factual background, the appellate court began its analysis by stating that generally, an insurer owes a duty to defend its insured against third party claims covered under an indemnity policy. An insurer's duty to defend its insured includes the duty to provide competent defense counsel and to pay all reasonable legal fees and costs. Pursuant to Cal. Civ.Code § 2860, where a conflict of interest arises between an insurer and its insured because the carrier provides a defense under a reservation of rights, the carrier has a duty to provide its insured with independent counsel of the insured's choosing – "Cumis counsel." In this context, the court held that the plain language of § 2860 contains no limitation that the arbitration provision only applies when the sole issue in dispute is the amount or rate of Cumis counsel's fees. Rather, Cumis fees questions must be arbitrated. Notwithstanding the inclusion of other issues that could not be arbitrated in Compulink's complaint, any contested issues concerning the amount of attorney's fees allegedly owed by St. Paul for Compulink's independent counsel are subject to mandatory arbitration under § 2860. While Compulink's complaint alleged wrongful conduct beyond the mere failure to pay attorney's fees, the parties did not dispute that the amount of attorney's fees owed by St. Paul was a contested issue in that action. Pursuant to § 2860, that issue must be resolved by an arbitrator, not by any other trier of fact. As such' all other issues fell outside the scope of § 2860's arbitration provision and are to be adjudicated in the trial court.

A Subrogation Waiver in a Commercial Real Property Lease Between a Landlord and Tenant-insured Is Imputed Against the Tenant-insured's General Liability Carrier.

In Fireman's Fund Insurance Company v. Sizzler USA Real Property, Inc. (2008) 169 Cal.App.4th 415, the Court of Appeal, Second District, held that a commercial lease's subrogation waiver remained enforceable against a party's carrier notwithstanding the other party's failure to obtain insurance coverage required by the commercial lease.

Factually, a commercial lease agreement provided in pertinent part that: "The parties release each other and their respective authorized representatives from any claims for damage to any person or property of either Landlord or Tenant ... about the Premises that are caused by or result from risks insured against under any insurance policies carried by the parties...." The lease further provided that "The parties further agree that neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy and each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any covered damage."

At the commencement of its legal analysis, the appellate court noted that subrogation waivers often appear together with or on account of waivers or releases of rights between contracting parties, with respect to claims covered by insurance. Waiver of subrogation provisions exist explained the court, as part and parcel of a risk allocation agreement whereby liability is shifted to the insurance carriers of the parties to the agreement. Importantly, a party's failure to obtain the contractually required insurance coverage does not invalidate or otherwise void the lease's subrogation waiver which, in this case, unambiguously provided that liability and subrogation will be waived as to all risks covered by "any insurance policies carried by the parties."

"Legally Nanny": How to Legally Hire a Household Employee

By Deborah Cumba, Esq.
Wilson Elser Moskowitz Edelman & Dicker

With all of the controversy surrounding the "nanny tax" problem that keeps haunting politicians, the fact remains that the task of legally hiring a household employee is quite daunting. Paying a household employee and the associated taxes is expensive. After hiring a nanny to care for my child, I navigated the complicated rules and came up with the following tips on how to make hiring a household employee legally easier.

Who is a Household Employee?

If you hire someone to do household work and you can control what work is done and how it is done, that person is a household employee. IRS Publication 926. Some examples of household employees include nannies, caretakers, babysitters, cleaning people, maids, housekeepers, drivers, private nurses, health aids and yard workers.

In California, a household occupation refers to "all services related to the care of persons or maintenance of a private household or its premises by an employee of a private householder." California Code of Regulations, Title 18 §11150(2)(I).

Many people try to circumvent the requirements by calling a nanny an "independent contractor;" however, the IRS has strict guidelines defining independent contractors, and nannies are generally considered employees.

Surprise! There are Some Benefits to Paying Your Nanny Legally

Although many people choose to pay their household employee "under the table" to avoid tax and paperwork hassles, there are actually some benefits to paying your caregiver legally. First, you can claim childcare-related expenses on your taxes and you can take advantage of your employer's flexible spending plan to pay for caregiver expenses. In addition, your nanny will have a record of his/her earnings so he/she can apply for a credit card or loan. Also, your nanny will be able to file for unemployment insurance if he/she is fired or laid off and may be eligible to collect Social Security.

Forms

Congratulations, you have hired a household employee and have officially become an employer!

First, you need to apply for a federal employer identification number, which you can get within minutes on the IRS website. In California, after you've paid your household employee $750 in one calendar quarter, you will also need to register as an employer of a household worker with the California Employment Development Department (Form DE 1HW).

Secondly, when your employee begins work, he/she will need to complete the two forms that all employees complete: an I-9 (Department of Homeland Security's Employment Eligibility Verification Form) and a W-4 (IRS Employee's Withholding Allowance Certificate). If you choose to offer your employee the option of direct deposit for their paychecks, you need to have your employee sign an authorization form for direct deposit.

Third, you will need to obtain worker's compensation insurance. This is much easier than it sounds; just call your homeowner's insurance agent and they can take care of it for you.

Paying Your Household Employee and Your Employer Taxes

Payroll tax withholdings are complicated. If you are brave and want to do your own accounting, consult IRS Publication 926, Household Employer's Tax Guide and California's Publication DE 8829, Household Employer's Guide. You may want to consult an accountant or lawyer specializing in labor law to help you with the process, or even handle the paperwork altogether.

Or, for caregivers, you may choose to use a payroll service which specializes in caregiver taxes and works closely with the International Caregiver Association to help walk you through the steps, such as the following:

www.breedlove-online.com

www.gtmassoc.com

www.4nannytaxes.com

www.paycycle.com

These payroll services will figure out the applicable taxes, withholdings and payroll for you for a small fee. In my view, this is well-worth it! You simply enter in your employee's time records online. Most payroll services also allow direct deposit from your bank account into your household employee's bank account.

Labor laws governing household workers are complicated, so for purposes of this article, I will hit the highlights. You must comply with minimum wage, which is currently $8.00/hour in California. In addition, you must pay your household employee overtime (time and a half) if they work more than eight hours on any workday, more than forty hours in any work week, or work on the seventh day of the workweek. The rules for live-in household employees are different. For wage, hour, and working conditions laws for household employees in California, please refer to California Code of Regulations, Title 18 §11150.

Now you can breathe a sigh of relief that you will not be caught up in the "nanny tax" controversy.

Member News

Lane Webb

Alan Greenberg

Lane E. Webb and **Alan E. Greenberg** were awarded by Farmers Insurance Group their coveted Gladiator Award for Outstanding Trial Results for 2008. The award recognizes the trial attorney or appellate attorney of the year nationwide for environmental and toxic tort claims. Mr. Webb is a partner in the San Diego office of Wood Smith Henning & Berman LLP and Mr. Greenberg is a Senior Counsel in that office.

Michelle Morelli

Fredrickson, Mazeika & Grant, LLP has promoted **Michelle I. Morelli** to partnership January 1, 2009.

"Michelle has done her utmost to get the best result possible for the clients she represents, to advance the interests and reputation of the firm, and to devote herself to becoming a better lawyer" said Tim Grant, Fredrickson's managing partner. She focuses her practice on products liability, personal injury, and professional liability matters. She also has been tasked with heading up the firm's Mortgage Mitigation unit, which seeks to negotiate loan modifications for mortgagees located in California, Nevada, and other states.

Thanks for the Restaurant Recommendation.....

Lupi Vino Cucina Bar

By Deborah Cumba, Esq.
Wilson Elser Moskowitz Edelman & Dicker

Lupi is located in the quaint Bird Rock area of La Jolla. This Italian restaurant features Roman-style cuisine with a seasonal menu. From the chandeliers and canopy ceilings to the candlelit tables, the décor of this small two room restaurant is simple but warm. The menu is constantly changing and I was disappointed to find that my favorite ravioli (Panzerotti) is currently out of season. Start with the Funghi Ripieni, mushrooms stuffed with veal, prosciutto and a white wine sauce. The Rustica pizza with sliced potatoes, prosciutto and arugula is an unusually good combination. I highly recommend the Ravioli Di Rucola (my second favorite), ravioli stuffed with ricotta, arugula, sautéed rock shrimp, lentils with a tomato cream sauce. The Ossobuco is also delicious. If you are in the mood to splurge, try the Scampi Luigi, Lupi's signature dish of colossal prawns sautéed with wild mushrooms and a champagne based sauce. The wine list features selections from Italy and California. The owner, Raffo De La Barrera, is exactly what the host of a small Italian restaurant should be and the servers are attentive. Raffo greets all diners as if they are old friends coming over to his home for dinner. Despite the quaint space, Lupi will accomodate you and offer you a special family style menu for your private party.

Lupi Vino Cucina Bar
5518 La Jolla Boulevard
La Jolla, CA 92037
858-454-6421
www.lupivinocucina.com

Please send a review of your favorite restaurant to tracey.vansteenhouse@wilsonelser.com to be published in the next edition of The Update.

Membership Information:

Membership is open to any attorney who is primarily engaged in the defense of civil litigants. Dues are $145/year. The dues year runs from January to December. Applications can be downloaded at: www.sddl.org

THE UPDATE is published for the mutual benefit of the SDDL membership, a non-profit association composed of defense lawyers.

All views, opinions, statements and conclusions expressed in this magazine are those of the authors and do not necessarily reflect the opinion and/or policy of San Diego Defense Lawyers and its leadership.

We welcome the submission of articles by our members on topics of general interest to our membership. Please submit material to:

Tracey Moss VanSteenhouse, Editor
Wilson Elser Moskowitz Edelman & Dicker LLP
655 West Broadway - Suite 900
San Diego, CA 92101-8484
p 619-321-6200 x3184
f 619-321-6201
tracey.vansteenhouse@wilsonelser.com

Meet the 2009 SDDL Board of Directors

Darin Boles

Darin Boles is President of the organization. He is the founding member of Aiken & Boles. He attended law school at the University of Denver, College of Law.

James D. Boley

James D. Boley is president-elect/Vice President. He will assume the helm of SDDL in 2010.

Jim is a trial lawyer with Neil, Dymott, Frank, McFall & Trexler. He specializes in medical malpractice, professional liability and transportation law. Jim was recently admitted as a fellow in the Litigation Counsel of America, an honorary society of trial lawyers.

Brian Rawers

Brian Rawers is the treasurer and membership chairman. He is a partner Lewis Brisbois Bisgaard & Smith. Brian is a member of ABOTA. Brian's wife, Kim Rawers is partner at Lotz, Doggett & Rawers. In his "spare time", he spends time with his 5 kids-ages 22 to 4! Goal this year: Swim 100 yards freestyle under a minute!

Randy Nunn

Randy Nunn is a founding member of Hughes & Nunn LLP. He has created a niche in southern California defending insurance companies in bad faith actions. When Randy is not in the office, or writing checks for college tuition, you will find him hitting the waves, snow or gym with his 4 grown boys. Randy has thoroughly enjoyed the last 2 years of service on SDDL's board, chairing and assisting with the Mock Trial program.

James J. Wallace

James J. Wallace is the secretary. He is a partner Lewis Brisbois Bisgaard & Smith. Jim is a Delegate of the State Bar of California and Superior Court Pro Tem Judge and Superior Court Arbitrator. Jim is a San Diego Super Lawyer.

Tracey VanSteenhouse

Tracey VanSteenhouse is the editor. She is an associate at Wilson Elser Moskowitz Edelman & Dicker. Tracey's practice includes medical, dental, chiropractic and legal malpractice and employment law. Tracey volunteers at Rady Children's Hospital. Ms. VanSteenhouse enjoys spending time with her husband-Harper, cooking and running marathons.

Victoria G. Stairs

Victoria G. Stairs (formerly Victoria Puruganan) is a healthcare attorney with the law firm of Lotz Doggett & Rawers. Having practiced in insurance defense for almost four years, Victoria is excited to lend her perspective and experiences as young new attorney to the SDDL Board. When she is not valiantly defending our healthcare system, she enjoys going to the beach with her husband, Kelly and her dog, Chompers Frankenstein.

Dennis O'Neill

Dennis O'Neill specializes in defending subcontractors in construction defect lawsuits. Mr. O'Neill enjoys playing golf, racing cars, and hanging out at the beach.

Pat Mendes

Pat Mendes is a native San Diegan and have practiced here since graduating from USD Law School in 1995. Mr. Mendes has been with Tyson & Mendes since 2002. His practice areas include construction defect litigation, personal injury and professional liability defense. He spends his free time with his wife Lori and three children, Matthew (10), Grace (8) and Kayla (3). He is a frequent spectator of youth soccer, Little League and Junior Golf tournaments. Occasionally, he can also be found working on his own golf game. He is looking forward to his rookie year on the Board.

J.D. Turner

J.D. Turner joined Lorber Greenfield, & Polito in 1996. She practices in the area of civil litigation with an emphasis in construction litigation, managed care, and personal injury. Her prior career in managed healthcare gives her special expertise in this field. Ms. Turner is also admitted to practice in Arizona and Nevada. Ms. Turner was born in Oak Park, Illinois. Her interests include social anthropology, travel, and theatre. She also enjoys horseback riding, street and off-road motorcycling, camping, reading, and quilting.

Scott Schabacker is the founder of his insurance defense firm, the Law Offices of Scott D. Schabacker, that specializes in defending personal injury cases and also provides insurance coverage and bad faith defense services. In rare time away from the office, he enjoys skiing and manages a competitive girls' soccer team (his daughter is a team member) that is actually, quite time intensive!

San Diego Defense Lawyers
P.O. Box 927062
San Diego, CA 92192