



SAN DIEGO
DEFENSE LAWYERS

THE UPDATE

WINTER 2016

Cal Western Wins the 25th Annual SDDL National Mock Trial Competition

Congratulations to the California Western School of Law Mock Trial Competition team for winning the 25th Annual San Diego Defense Lawyer's National Mock Trial Competition, presented by Judicate West. Cal Western bested 19 other teams comprised of outstanding law school students from around the country, including local teams from the University of San Diego School of Law and Thomas Jefferson School of Law, to claim the top prize.

San Diego law schools traditionally perform strongly at the SDDL annual tournament, with USD School of Law taking top honors in 2013. But, in 2014, no San Diego law school made it past the opening rounds. Fortunately, this time, Cal Western brought the title back to San Diego.

The finals of the competition pitted Cal Western versus the Santa Clara University School of Law with the Honorable Kenneth J. Medel serving as presiding judge. The competition's fact pattern involved a texting while driving scenario where a driver distracted by typing hit a jogger who entered an intersection without looking. Both

teams performed exceptionally well, but Cal Western edged ahead.

SDDL's Annual Mock Trial Competition is only possible through the generous donation of time, money and facilities by the San Diego Legal Community. From Judicate West which has served as presenting sponsor of the event for two years running to the University of San Diego School of Law which has hosted the finals in their Grace Courtroom year end and year out, and the Judges of the Superior Court who have made their Courtrooms available for the competition's opening rounds every year, and the 100+ San Diego attorneys who



Superior Court Judge Kenneth J. Medel awards the first place trophies to Derek S. Reid, Felicia M. Loera, Charlotte S. Najar and Monty Randhawa of California Western School of Law.

show up without fail to judge the competition, the SDDL Annual Mock Trial Competition brings together the best of our colleagues and friends. The San Diego Defense Lawyers thanks you all. ♦

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President's Message

By Alexandra "Sasha" N. Selfridge
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Thank you to all who volunteered at our 25th Annual Mock Trial Competition, which was a huge success! This competition simply could not have happened without all of your time, effort, and support. Thank you to SDDL's mock trial committee - Gabriel Benrubi, Andy Kleiner, and Ken Purviance - for all of their hard work, pulling this meaningful event together.

Since SDDL's last edition of the Update, we have sponsored seminars by Judge Jeffrey Barton, Judge Keri Katz, and Judge Kenneth Medel, Jack Phillips, and Judge Cathy Bencivengo and Judge Randa Trapp.

I hope to see you all at our upcoming presentation by Dr. Andrew Robbins and Christopher Todd.

I was happy to learn that so many members of SDDL have shown support for our defense community by attending each other's trials. I encourage all of you to continue to send information about your upcoming trials to the LISTSERV, and to keep the momentum going.

Congratulations to newest members of the SDDL Board of Directors Janice Walshok and Vanessa Whirl. SDDL looks forward to your contributions in the coming year. ♦



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Membership is open to any attorney who is primarily engaged in the defense of civil litigants. Dues are \$160/year. The dues year runs from January 1 to December 31. Applications can be downloaded at: sddl.org

THE UPDATE

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The Update is published for the mutual benefit of the SDDL membership, a non-profit association composed of defense lawyers in the San Diego metropolitan area. All views, opinions, statements and conclusions expressed in this magazine are those of the authors, and they do not necessarily reflect the opinions or policies of the SDDL or its leadership. The SDDL welcomes the submission of articles by our members on topics of general interest to its membership.

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SDDL 2016 Calendar of Upcoming Events

March 15, 2016	SDDL Happy Hour at Half Door Brewery at 5:30 p.m. Sponsored by Rimkus
March 16, 2016	Lunch & Learn CLE: Dr. Andrew R. Robbins and Christopher W. Todd on "Effective Analysis of Radiology Studies"
July 2016	SDDL Golf Tournament
October 18-20	SDDL 26th Annual Mock Trial Competition Sponsored by Judicate West

LUNCH AND LEARN

The Courtroom as Theater: My Life in Trial

By Ben Cramer

LAFOLLETTE JOHNSON

On November 10, 2015, the San Diego Defense Lawyers were pleased to have Judge Kenneth J. Medel present "The Courtroom As Theater: My Life in Trial." Judge Medel was appointed to the San Diego Superior Court in October 2010. He completed year-long assignments in both Criminal and Civil trial departments in the South Bay Judicial District. He is now completing his third year in Juvenile Dependency in the South Bay Courthouse.

Judge Medel's presentation included many entertaining stories and some valuable advice on life in trial. His style of speaking allows you to never forget the stories, laugh a little, and most importantly, walk away learning something that will improve your own practice of law. Here are few of Judge Medel's key principles –

Jurors want to be entertained during a trial. If the jury appreciate you, there is a greater chance they will like you. If they like you, there is a better chance they will

listen to you and believe what you say.

Get your client, principal witness, or expert off of the witness stand and in front of the jury. Have them teach something to the jury face-to-face. It adds to the drama of the trial.

Watch other good attorneys in action. While maintaining your own identity, liberally adopt as your own those excellent techniques you observe good trial lawyers employ. But don't say or do things that are not within the four corners of your own personality. You still need to be yourself.

Most of the drama that occurs in the Courtroom is, and should be, carefully planned. Rehearsals and practice sessions with witnesses is absolutely critical.

As with all SDDL Lunch & Learn presentations, attendees were treated to a catered lunch at U.S. Legal and an hour of MCLE credit. Don't miss out on these excellent programs. ♦

Bottom Line

Case Title: Christopher Andrew Scott v. Sharp Memorial Hospital; Jose Uvaldo Zamora, II, M.D. and Does 1 to 100, inclusive

Case No: 37-2011-00100842-CU-MM-CTL

Judge: Hon. John S. Meyer; Dept. C-61

Type of Action: Medical Malpractice

Type of Trial: Court / Jury Trial

Trial Length: 8 Days

Verdict: Defense

Attorneys for Plaintiff: Steven R. Young, Esq. and William F. Zulch, Esq.

Attorneys for Defendant: Daniel S. Belsky, Esq. and Carolyn B. McCormick, Esq. for Neeraj J. Panchal, M.D., sued as Doe 2

Damages and/or Injuries: Alleged Negligent Failure to Diagnose Pseudoaneurysm

Settlement Offer: C.C.P. \$998 Offer for zero dollars and a waiver of costs was served on Plaintiff on January 22, 2014 by Dr. Panchal.

Title of Case: Adrienne Israel v. Cathleen A. Silliman, D.D.S.

Case No. : 37-2013-00073682-CU-MM-CTL

Judge: Hon. Joel S. Pressman; Dept. C-66

Type of Action: Dental Malpractice

Type of Trial: Court / Jury Trial

Trial Length: 6 Days

Verdict: Defense

Attorneys for Plaintiff: Dane Levy, Esq., of the Levy Law Firm

Attorneys for Defendant: Robert W. Harrison, Esq., of Wilson Elser

Damages and/or Injuries: Alleged Negligent Failure to Diagnose Carcinoma

Settlement Demand: \$1,480,000.00 by Plaintiff

Settlement Offer: Waiver of Costs by Defendant



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Legislation Update: New Limitations on Demurrers

By Christine Y. Dixon
NEIL DYMOTT

On January 1, 2016, California Senate Bill ("SB") 383 went into effect. SB 383 added section 430.41 to the Code of Civil Procedure that places procedural hurdles and limitations on the use of demurrers. Previously, the law allowed a party to a civil action to object to a complaint, cross-complaint, or answer by demur by alleging the pleading failed to state a cause of action or was otherwise procedurally defective. A party could also amend their pleading once without leave of the court at any time before a demurrer was filed or after a demurrer was filed and before the court ruled on the issue. The demurring party could also file demur to an amended pleading filed after an earlier demurrer was sustained. SB 383 changes that.

SB 383's intent is to alleviate excess motion work and reduce the number of demurrers filed. This will predominantly affect defendants as demurrers typically are not pleadings filed by plaintiffs; although, plaintiffs are beginning to demur to answers as a strategy to push defendants to provide more specific answers rather than simply providing a general denial along with affirmative

defenses. It is interesting to note that Senator Bob Wieckowski's (the sole sponsor of SB 383) sixth largest campaign contributor was Consumer Attorneys of California.

Below are the requirements that must be met to properly bring a demurrer or amend pleadings after a demurrer has been filed.

1. Meet and Confer

The demurring party must meet and confer, in person or by telephone, with the pleading party to determine whether the parties can resolve any of the issues to be raised in the demurrer. (Code Civ. Proc., § 430.41(a).) If the pleading party files an amended complaint, cross-complaint or answer, the demurring party must meet and confer once more with the pleading party before filing a demurrer to the amended pleading.

2. Substance of the Meet and Confer

Not only is it required to meet and confer, but the demurring party must identify all the causes of action subject to demurrer as

well as the legal authority supporting the contention the pleading is deficient when the parties meet and confer. (Code Civ. Proc., § 430.41(a)(1).) The pleading party must also provide legal authority showing their pleading is legally sufficient or how the pleading may be amended to cure any deficiencies.

3. Timing of the Meet and Confer

The parties must meet and confer at least five days before the responsive pleading is due. (Code Civ. Proc., § 430.41(a)(2).) If the parties are unable to meet and confer by that time, the demurring party can be granted a 30-day extension to file a responsive pleading, provided they can file and serve a declaration explaining a good faith attempt to meet and confer was made by the original due date. The 30-day extension begins to run on the date the responsive pleading was previously due.

4. Meet and Confer Declaration

Every demurrer must be filed and served with a declaration stating either: (1) the

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means by which the parties met and conferred and that the parties were unable to resolve the objections raised in the demurrer; or (2) the pleading party failed to respond to the meet and confer request of the demurring party or failed to meet and confer in good faith. (Code Civ. Proc., § 430.41(a)(3).) If the court determines the meet and confer process was insufficient, that determination is insufficient grounds for the court to overrule or sustain a demurrer and the court must still consider the merits of the demurrer. (Code Civ. Proc., § 430.41(a)(4).)

5. Subsequent Demurrers To Amended Pleadings May Be Barred

If an amended pleading was filed after a demurrer to the earlier version of the pleading was sustained, the demurring party may not demur to any portion of the amended pleading if the grounds of the new demurrer could have been raised in the prior demurrer. (Code Civ. Proc., § 430.41(b).)

This provision could allow the plaintiffs and cross-complainants the opportunity to argue the points in a demurrer to an amended pleading could have been raised in the prior demurrer. This could limit a defendant or cross-defendant's ability to demur to portions of a pleading that remained unchanged thus requiring the demurring party to be vigilant in asserting all possible grounds for their demurrer.

6. Potential Court-Ordered Conference

If a court sustains a demurrer and grants leave to amend, the court may order a conference of the parties before an amended pleading or a demurrer to an amended pleading, may be filed. (Code Civ. Proc., § 430.41(c).) If a conference is ordered, the court cannot prevent a party from filing a demurrer and the time to file such a demurrer does not begin to run until after the court-ordered conference has concluded. (Id.)

Seeing as how this bill was intended to lessen the court's burden, this provision will likely only be invoked in complicated or highly contentious cases.

7. Three Amendment Limitation

Code of Civil Procedure section 430.41(e) limits the number of times a complaint or cross-complaint may be amended in response to a demurrer and prior to the case being at issue to three times. This limitation does not

apply to an amendment made without leave of the court pursuant to Code of Civil Procedure section 472 so long as the amendment is made before a demurrer to the original complaint or cross-complaint is filed or if the introduction of additional facts could be pled to cure a defect.

8. Exceptions to Code of Civil Procedure Section 430.41

This code section does not apply in the following actions: (1) where a party not represented by counsel is incarcerated in a correctional institution; and (2) forcible

entry, forcible detainer, or unlawful detainer proceedings.

While demurrers have not been favored by the courts, the legislature has now made its opinion known. Code of Civil Procedure section 430.41 will limit abuse of demurrers; however, it may also limit legitimate demurrers that could terminate needless litigation at the pleading stage.

[NOTE: There is a sunset clause providing this code section will expire on January 21, 2021 unless the legislature decides otherwise but it is unlikely the legislature will allow these restrictions to lapse if they prove to alleviate some of the burden on the court system.]

SAN DIEGO DEFENSE LAWYERS Invite you to attend our 1st Happy Hour of 2016



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Is It Time to Get a Defense Life Care Planner?

By Dawn L. Cook, RN

If you are an attorney involved with defense in a personal injury or medical malpractice case, you often have the opportunity to evaluate a life care plan written by an expert for the plaintiff. Do you ever wonder if you should go to the expense of retaining a life care planner to create a rebuttal? This question can be tricky, as there are a lot of considerations.

Considerations:

1. Does the defense wish to address damages, at all?

You may be wondering if you want to discuss damages, when your main strategy could be defending the case based only on **liability**. If you call for a damage witness like a life care planner, the jury may wonder if you have somehow conceded on damages, even if this was not your intention. Conversely, there could be other issues at stake.

2. Is a defense life care plan even warranted?

If the case you are representing has a plaintiff with catastrophic or serious and permanent injuries, then it is probable that the plaintiff will need significant future medical care. A plaintiff life care plan that is reasonably thought out with usual and reasonable costs might only need a cross-examination by you that could confirm that there are no unnecessary or frivolous costs built into the plan.

3. Is the plaintiff life care plan unreasonable?

A more likely scenario is that the plaintiff life care plan is excessive, including treatment for other conditions. Perhaps there is excessive home care nursing and the costs are inappropriate for the care described, then you may want to retain a life care planning expert of your own. A reasonable life care plan from the defense's expert may sway the jury for your "more reasonable" life care plan.

4. What if the plaintiff has NOT retained a life care planner?

A plaintiff attorney might decide to not retain a life care planner and, therefore, allow the expert physician to describe the care that the plaintiff may need. In this case, the plaintiff may need several "physician witnesses" to establish the evidence in this

fashion. Perhaps, in this way, your life care plan may be more understandable to the jury. Likewise, the research and evidence of accurate prices should be better documented in your report, carrying more weight than physicians mentioning the costs only at their facility. Presenting the evidence through just one person, the defense life care planner could thereby make it easier for the jury to understand. The life care plan prepared by defense can provide the information in a more comprehensive form.

5. Is the defense life care plan or the rebuttal credible?

Be sure that the defense life care plan or rebuttal report is credible. If the plaintiff has substantial injuries, the evidence must lead to credible and realistic planning. Don't let this backfire at trial when you present with an unreasonable or miserly plan. Ultimately, credibility should win your case, and if the injuries are significant, then the damages are significant. Lack of credibility can even effect the jury's belief in your causation argument, especially if your other witnesses lack credibility.

6. What can a defense life care planner do for your case?

A rebuttal life care plan will assist you, the defense attorney, to identify the specific shortcomings of the plaintiff's life care plan. You may separate the actual issues of the personal injury or medical malpractice case from pre-existing conditions and subsequent illnesses or injuries. You can help the trier of fact to understand the impact or lack thereof of injury on the plaintiff's personal and professional life and you can help to give a reasonable estimate of the cost of all the future health and medical care related to the injury or injuries. If you need to challenge the validity and cost of future medical damages in the plaintiff's life care plan, a capable rebuttal plan should satisfy your needs.

a) What is a plaintiff Life Care Plan?

A plaintiff life care plan is developed as a personalized projection of the injured person's present and future medical expenses as a result of the injury or the defendant's negligence.

A certified nurse life care planner usually prepares the report, although others may also engage in life care planning. The plan is normally supplemented by an economist's report that identifies the "present day value" of the life care plan. Future medical expenses including home care are one of the largest categories of damages claimed by a disabled or injured plaintiff and they can significantly affect the damage reward as well.

b) How do you choose a defense life care planner?

How can you be sure that the life care planner you have retained can provide the best representation of the actual future needs of the plaintiff? The usual defense is to attack life care plans by arguing that the life care plan has no basis in the evidence and that the costs are purely speculative. A jury is then free to consider the plan much as it does any other type of evidence, that is, by interpreting the validity of the report as each juror sees fit.

c) Issues when choosing a defense life care planner:

We will discuss issues to be considered when considering a rebuttal life care plan, including the qualifications of the life care planner, methodology used, foundation and costing techniques. Each of these factors is important in determining the validity of plaintiff's life care plan and in fact, the success of your defense.

d) What is a Life Care Plan and how can you evaluate it?

In terms of litigation, a life care plan is an expert report that can be created by the plaintiff's counsel or by defense counsel. The goal is to have a well-supported list all of the required care and costs related to the injury directly or indirectly (for the rest of the person's life.)

e) Role of a Life Care Planner:

The American Association of Nurse Life Care Planners (AANLCP) defines nurse life care planning in this way: "The specialty practice in which the nurse life care planner utilizes the nursing process for the collection and analysis of comprehensive

client-specific data in the preparation of a dynamic document. This document provides an organized, concise plan that estimates for the reasonable and necessary (and reasonably certain to be necessary) current and future healthcare needs with the associated costs and frequencies of goods and services.” (AANCLP, 2014)

f) Elements of a Life Care Plan and a Rebuttal Life Care Plan:

The steps to develop a life care plan include reviewing the medical records, interviewing the injured client, communicating with care providers, developing a list of required or beneficial services, treatment and equipment and researching the costs. The steps to review or rebut a life care plan include reviewing the medical records, reviewing the documentation of the plaintiff interview, care provider input and the methodology of researching costs.

g) Common Errors and what to watch for:

1. Qualifications and the CV:

The qualifications of the plaintiff life care planner may be justification enough for having the life care plan report disqualified. Examine the life care planners CV for education, training, certification and participation in ongoing education in life care planning.

Life care planners must meet the Federal Rules of Evidence 702:

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- the testimony is based on sufficient facts or data;
- the testimony is the product of reliable principles and methods;
- the expert has reliably applied the principles and methods to the facts of the case.

2. Education:

Persons professionally involved in health care, including nurses, physicians, physical therapists, rehabilitation specialists and other allied health care workers could prepare life care plans. Generally most persons qualified to write a life care plan have significant experience in health care. Licensing for most health care professionals can be verified with

their professional licensing body.

3. Training:

There are several courses in life care planning and the length is generally 120 hours for the course including the development of a student “hypothetical” life care plan.

4. Certification:

There are currently three certifications in life care planning and I could find none have been challenged as to their validity. Registered Nurses are qualified to be certified as a Nurse Life Care Planner (CNLCP) or as a Lifetime Nurse Care Planner (LNCP-C) as well as a Certified Life Care Planner (CLCP). Certifications can be verified at <http://cnlcp.org/verification/> and at <http://lncp-c.weebly.com/certification.html>

Many nurses and non-nurses are certified from the International Commission for Health Care Certifications (ICHCC) as a CLCP and certifications can be verified at <http://www.ichcc.org/clcp.html>.

5. Associations and ongoing life care planning education:

There are three associations of life care planners and they all conduct annual conferences. Some have webinars on a regular basis and mentorship programs to foster new professionals to the field. American Association of Nurse Life Care Planners, <http://aanlcp.site-ym.com> Lifetime Nurse Care Planners, <http://lncp-c.weebly.com/index.html> International Academy of Life Care Planners, <http://www.rehabpro.org/sections/ialcp>

Watch for: lack of qualifications, lack of certification, lack of experience in hands on health care, lack of on-going education in life care planning.

6. Methodology of the life care planner:

Did the life care planner use a standard methodology? Is he or she able to explain the usual methodology of life care planners? Can they knowledgeably describe all of the activities they engaged in when developing their life care plan? Is there enough detail in their report so that your rebuttal life care planner could replicate the details and decisions made during the plan's development? Does the plan explain why standard methodology was not used; for example if the plaintiff was in a coma and there are no family members, perhaps it is justified that an interview was omitted.

Watch for: disorganized report, lack of methodology, unclear how information was obtained, dates of receiving materials, meeting with plaintiff and descriptions of meeting with physicians or other care providers is missing.

7. Is the Plan Comprehensive?

Perhaps the plaintiff decided to use a treating or Independent Medical Exam (IME) physician as a life care planner. It could be that they have taken a course in life care planning and it is unlikely that the plan is comprehensive enough. Often, the plan will only include medical care and it won't include home care, equipment or supplies needed for the injured condition. This is like having only half of a life care plan. Frequently the physician life care plan does not have detailed costing and this again opens the plan up to challenges as to their validity.

Watch for: the life care plan does not include all needs and the costs may be too high or too low.

8. Are the medical records up to date and include pre-existing conditions?

The plaintiff attorney is usually the one who supplies medical records to the life care planner. If medical records do not cover the time before the incident, pre-existing conditions may be wrongly included in the life care plan.

Watch for: the life care plan does not include any mention of pre-existing conditions.

9. Interviews of Plaintiff

The usual methodology that is used by a life care planner is to interview the plaintiff either via telephone or in their home. The ideal interview is in their home along with their family and any care providers. This is especially true for plaintiffs who need specialized equipment such as wheelchairs or who have cognitive issues. A face-to-face interview can reveal future needs and home care issues that may be missed by a telephone interview. If the client is brought to the life care planner and interviewed away from their home, it is difficult to evaluate the home for accessibility for equipment and supplies.

The record should document the date, times and location of the interview as well as the names of who was present. If equipment is used, descriptions of the shortcoming of the home are vital for developing a plan for home modifications.

Watch for: no mention of the date, time and location of plaintiff interview, who was present. No mention of equipment used. No photos of the plaintiff or equipment or the home, if appropriate.

10. Foundation for Opinions

There must be a documented reason or justification for every item listed in the tables or charts of future medical and non-medical needs. For physician care, there must be medical records, letters, expert reports, notes

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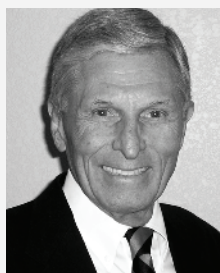
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The SDDL Update Thanks Monty McIntyre & Jim Roth

No two attorneys have contributed more content to the SDDL Update than Monty McIntyre and Jim Roth.

Through Monty's Civil Law Update and Jim's Insurance Law Update, each has helped keep the members of the San

Diego Defense Lawyers in touch with the current developments of the law most relevant to our practice.

Jim manages The Roth Law Firm and devotes his practice to corporate, real estate and business matters, including insurance law. He is a former Director for the Blue Sky Community Foundation, the Bernardo Town Center Property Owners' Association, the Rancho Bernardo Community Foundation, the Rancho Bernardo Chamber of Commerce and its successor, the North San Diego Business Chamber, having chaired the Board of both Chambers during his tenure. Jim is currently a Director and Governance Chair for the Poway Center for the Performing Arts Foundation.



In addition to being a trial attorney, Monty serves as a mediator, arbitrator, referee and special master. Monty has 35 years of extensive civil trial experience representing plaintiffs and defendants in a wide variety



of business, construction, insurance, real property and tort cases. In his own words, Monty is a Relentless Optimist. He is the past president of both the San Diego County Bar Association

and the San Diego Chapter of the American Board of Trial Advocates.

Both Monty and Jim are AV-Rated by Martindale-Hubbell signifying the highest level of professional excellence for their legal knowledge, communication skills and ethical standards.

Thank you Monty and Jim for your generous donation of time and work product to this publication. We look forward to many more years of your words and analysis appearing in the pages of the SDDL Update.



THANK YOU TO THE 2015 MCLE Presenters

The San Diego Defense Lawyers recognizes and thanks the following individuals for taking the time to give MCLE presentations in 2015 to SDDL members:

Hon. Cathy A. Bencivengo
Hon. Jeffrey B. Barton
Hon. Steven R. Denton (Ret.)
Hon. Herbert B. Hoffman (Ret.)
Hon. Keri G. Katz
Hon. Joan M. Lewis
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Jack Phillips
Brian Rawers
Johanna S. Schiavoni
Robert M. Shaughnessy
Manny Valdez

SDDL also thanks Peterson Reporting and US Legal for hosting SDDL's MCLE events in 2015. ♦

SAN DIEGO DEFENSE LAWYERS 26TH ANNUAL MOCK TRIAL TOURNAMENT

Presented by JUDICATE WEST

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California Civil Law Update

By Monty McIntyre
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U.S. SUPREME COURT

Class Actions

Campbell-Ewald v. Gomez _ U.S. _ (2016), 2016 WL 228345: The U.S. Supreme Court affirmed the judgment of the Ninth Circuit Court of Appeals. An unaccepted settlement offer to satisfy the named plaintiff's individual claim has no force and will not render a case moot when the complaint seeks relief on behalf of the plaintiff and a class of persons similarly situated. Defendant's status as a Government contractor did not entitle it to "derivative sovereign immunity." (January 20, 2016.)

ERISA

Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan _ U.S. _ (2016), 2016 WL 228344: The U.S. Supreme Court reversed and remanded the judgment of the Eleventh Circuit Court of Appeals. When a participant in an employee benefits plan under the Employee Retirement Income Security Act of 1974 (ERISA, 29 U.S.C. section 1001 et seq.) obtains a settlement fund from a third party, but spends the whole settlement on nontraceable items (for instance, on services or consumable items like food), the plan fiduciary cannot bring a suit to attach the participant's general assets under §502(a)(3) because the suit is not one for "appropriate equitable relief." (January 20, 2016.)

CALIFORNIA SUPREME COURT

Civil Procedure

Gaines v. Fidelity National Title Insurance Company (2016) _ Cal.4th _ , 2016 WL 737910: The California Supreme Court affirmed the Court of Appeal's ruling affirming the trial court's dismissal of the action regarding the sale of real property for failure to bring the matter to trial within five years as required by Code of Civil Procedure section 583.340(b). The statute was not tolled by an order that was entered pursuant to the parties' agreement that struck the trial date and "stayed" the proceedings while the parties engaged in mediation and completed all outstanding discovery. The

court's order was not a complete stay that would have automatically tolled the statute. And while the order was a partial stay, it did not toll the statute because it did not create a circumstance of impossibility, impracticability, or futility. Plaintiff agreed to the order, remained in control of the circumstances, and made meaningful progress towards resolving the case during the stay period. (February 25, 2016.)

Real Property

Coker v. JPMorgan Chase Bank, N.A. (2016) _ Cal.4th _ , 2016 WL 240901: The California Supreme Court affirmed the decision of the Court of Appeal that had reversed the trial court's order sustaining a demurrer without leave to amend. The antideficiency rule in California Code of Civil Procedure section 580b applies to short sales just as it does to foreclosure sales. (January 21, 2016.)

Gaines v. Fidelity National Title Insurance Company (2016) _ Cal.4th _ , 2016 WL 737910: See summary above under Civil Procedure.

Yvanova v. New Century Mortgage Corporation (2016) _ Cal.4th _ : The California Supreme Court reversed the Court of Appeal's ruling that plaintiff could not state a cause of action for wrongful foreclosure based on an allegedly void assignment because she lacked standing to assert defects in the assignment, to which she was not a party. The Supreme Court disagreed, finding that, because in a nonjudicial foreclosure only the original beneficiary of a deed of trust or its assignee or agent may direct the trustee to sell the property, an allegation that the assignment was void, and not merely voidable at the behest of the parties to the assignment, will support an action for wrongful foreclosure. The ruling was narrow, holding only that a borrower who had suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment. (February 18, 2016.)

CALIFORNIA COURTS OF APPEAL

Administrative Law

Hughes v. County of San Bernardino (2016) _ Cal.App.4th _ , 2016 WL 345603: The Court of Appeal reversed a judgment for defendant entered after the trial court sustained a demurrer without leave to amend to a petition for writ of mandate and administrative mandate. Petitioner sought to compel the County of San Bernardino (County) to complete the administrative appeal process from a disciplinary action. Petitioner missed a scheduled administrative appeal hearing after suffering a heart attack and retired for medical reasons before the hearing could be rescheduled. The County declined to reschedule after petitioner retired, arguing he was no longer an employee entitled to an administrative appeal. The San Bernardino Civil Service Commission (CSC) ruled that it had no jurisdiction to continue with the appeal. The Court of Appeal concluded that, given both the lack of any provision in the Personnel Rules that deprived the CSC of jurisdiction over the properly initiated administrative appeal of an employee who later resigned or retired before the appeal was concluded, and the unfairness of implying such a rule in the absence of a specific provision, the County was required to hold an administrative hearing on petitioner's appeal. (C.A. 4th, January 28, 2016.)

Arbitration

Epic Medical Management, LLC v. Paquette (2015) _ Cal.App.4th _ , 2015 WL 9920240: The Court of Appeal affirmed the trial court's order granting a petition to affirm an arbitration award arising from a contract dispute between a management services company and a doctor. The trial court denied the request to vacate and granted the management company's petition to confirm the award. The trial court properly concluded that the arbitrator did not exceed her powers by reasonably interpreting the contract, that any alleged contract illegality was technical only and did not constitute a sufficient basis to vacate the award, and that the doctor failed to establish that he was prejudiced by any limitation on his testimony. (C.A. 2nd, filed December 29, 2015, published January 28, 2016.)

Gastelum v. Remax International, Inc. (2016) _ Cal.App.4th _ , 2016 WL 542698: The Court of Appeal dismissed the appeal because it was an appeal from a nonappealable order. After plaintiff sued defendants regarding her employment, defendants moved to compel arbitration. The trial court granted the motion to compel arbitration and stayed the litigation. Plaintiff then initiated the arbitration proceeding and requested defendant to pay the arbitration filing fee. Defendants refused to pay the arbitration filing fee, and the arbitration provider dismissed the arbitral proceeding after no arbitration costs were paid. Plaintiff then requested the trial court to lift its prior order staying the litigation. Defendants filed no contemporary motion or petition seeking an order compelling resumption of the arbitration proceeding. The trial court granted plaintiff's motion and lifted the litigation stay. Defendants then appealed the order lifting the litigation stay, but an appeal from a litigation stay order, which is unaccompanied by a motion or petition to compel arbitration, is not appealable. (C.A. 2nd, February 11, 2016.)

Monschke v. Timber Ridge Assisted Living, LLC (2016) _ Cal.App.4th _ , 2016 WL 364167: The Court of Appeal affirmed the trial court's order denying a petition to compel arbitration in a case alleging wrongful death and elder abuse. The trial court properly denied the petition finding the wrongful death claim had been brought on behalf of decedent's surviving children, and the children were not parties to a residency agreement containing an arbitration clause that was signed when decedent was enrolled in defendant's facility. The trial court also properly declined to submit the elder abuse claim to arbitration because of the possibility of conflicting rulings. The Court of Appeal concluded that plaintiff, who signed the residency agreement for decedent, was not a party to the agreement because she did so as decedent's power of attorney, not in her personal capacity. The Court of Appeal also rejected defendant's argument that plaintiff, as personal representative of the estate, stepped in decedent's shoes. As personal representative of the estate, plaintiff was asserting the wrongful death claim on behalf of decedent's heirs, not the decedent. (C.A. 1st, January 29, 2016.)

Attorneys

Martin Potts and Associates, Inc. v. Corsair, LLC. (2016) _ Cal.App.4th _ , 2016 WL 337460: The Court of Appeal affirmed the trial court's order granting a motion to vacate a default and default judgment under Code

of Civil Procedure section 473(b). Section 473(b) does not require an attorney's affidavit to disclose the reasons for his or her mistake, inadvertence, surprise, or neglect. (C.A. 2nd, January 28, 2016.)

M'Guinness v. Johnson (2015) _ Cal.App.4th _ , 2015 WL 9583486: The Court of Appeal reversed the trial court's order denying a motion to disqualify a law firm. The motion arose in a lawsuit between shareholders over the operation of a small construction firm. One of the grounds argued by the moving parties was concurrent representation. In denying the motion, the trial court reasoned that the evidence was insufficient to warrant automatic disqualification based upon a concurrent representation conflict of interest. The Court of Appeal disagreed and held that the undisputed facts demonstrated that the law firm continued to represent the corporation through the time the lawsuit was instituted. If a party moving to disqualify an attorney establishes concurrent representation, the court is required, in all but a few instances, to automatically disqualify the attorney without regard to whether the subject matter of the representation of one client relates to the representation of a second client in the lawsuit. While disqualification is a drastic measure, and motions to disqualify are sometimes brought by litigants for improper tactical reasons, disqualification is not generally disfavored. When the circumstances of a disqualifying conflict exist, disqualification is required. (C.A. 6th, December 30, 2015.)

Sheppard, Mullin, Richter and Hampton, LLP v. J-M Manufacturing Co., Inc. (2016) _ Cal.App.4th _ : The Court of Appeal reversed the trial court's entry of judgment for plaintiff law firm (law firm) based upon an arbitration award finding the law firm was entitled to recover attorney fees from its former client after the law firm was disqualified from representing defendant in litigation where the law firm, without obtaining informed consent from either of its clients, had represented the defendant in the litigation while simultaneously representing a plaintiff in that case in unrelated matters. The Court of Appeal found that the trial court erred because the law firm violated the requirements of Rules of Professional Conduct Rule 3-310 by simultaneously representing two clients. The law firm failed to disclose the conflict to either client, and it failed to obtain the informed written consent of either client to the conflict. The representation of both parties without informed written consent was contrary to California law and contravened the public policy embodied in Rule 3-310.

The Court of Appeal ruled that the law firm was not entitled to fees for the work it did while violating Rule 3-310. Because the point at which the actual conflict arose was unclear from the record, the case was remanded for a factual finding on that issue. (C.A. 2nd, January 29, 2016.)

Younessi v. Woolf (2016) _ Cal.App.4th _ , 2016 WL 619018: The Court of Appeal affirmed, reluctantly, the trial court's order granting plaintiff's motion to set aside the dismissal of a legal malpractice action. The trial court had entered the dismissal after plaintiffs failed to timely file an amended complaint in response to an order sustaining demurrers to the original complaint with leave to amend. Although the Court of Appeal found that the evidence did not support granting relief for mistake, inadvertence, surprise, or excusable neglect, since the dismissal resulted from plaintiffs' newly retained attorney's failure to oppose the demurrers and timely file an amended complaint, plaintiffs were entitled to relief under section 473(b)'s attorney-fault provision. (C.A. 4th, February 16, 2016.)

Attorney Fees

San Diego Municipal Employees Association v. City of San Diego (2016) _ Cal.App.4th _ , 2016 WL 490175: The Court of Appeal affirmed the trial court's denial of attorney fees requested by four unions who had intervened in an action by the City of San Diego (City) against the San Diego City Employees Retirement System (SDCERS), where the City sought to compel SDCERS to increase City employees' contributions to their retirement fund to share in covering an \$800 million investment loss suffered by the fund. The unions intervened in the action. After the case settled, the unions moved to recover \$1,785,147 in attorney fees under Code of Civil Procedure section 1021.5. The trial court properly denied the motion for attorney fees. SDCERS was the public agency whose job and function was to ensure the soundness of the city retirement system, and it was not acting as a volunteer in responding to this litigation brought by the City. Because SDCERS was carrying out its required public function, the Unions were required to show their intervention was material to the ultimate result to recover public interest attorney fees, and the trial court properly determined that the union's services were not necessary. (C.A. 4th, February 9, 2016.)

CALIFORNIA CIVIL LAW UPDATE CONTINUED FROM PAGE 11:

USS-POSCO Industries v. Case (2016) _ Cal.App.4th _ , 2016 WL 308788: The Court of Appeal affirmed the trial court's summary judgment for plaintiff, but reversed and remanded the order granting plaintiff attorney fees. Plaintiff sued defendant, its former employee, for breach of contract and unjust enrichment after defendant refused to reimburse plaintiff a portion of the voluntary employer-sponsored educational program costs defendant had contractually agreed to pay if he left his job within 30 months of completing the program. Defendant started working with another employer two months after he completed the program. The Court of Appeal concluded that the trial court properly granted summary judgment for plaintiff. However, the trial court erred by applying the version of Labor Code section 218.5 in effect at the time of the summary judgment proceedings, rather than the version in effect at the time it awarded fees, which permits fees to a prevailing employer only when the employee's wage claims have been brought in "bad faith." Statutory provisions that alter the recovery of attorney fees are deemed procedural in nature and apply to pending litigation. (C.A. 1st, January 26, 2016.)

Civil Procedure

Austin v. Los Angeles Unified School District (2016) _ Cal.App.4th _ , 2016 WL 527175: The Court of Appeal reversed the trial court's denial of a postjudgment motion for relief after the trial court granted the unopposed motion for summary judgment filed by the Los Angeles Unified School District and two of its employees in plaintiff's lawsuit alleging wrongful discharge in violation of California's whistleblower statute, discrimination based on race, gender and age in violation of California's Fair Employment and Housing Act (FEHA), and unlawful

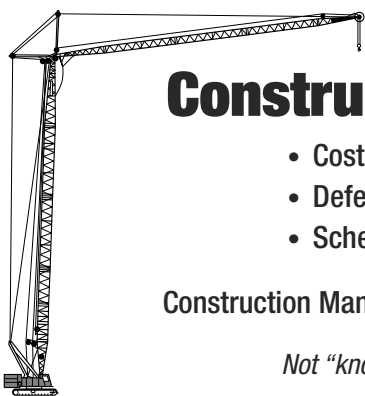
harassment in violation of FEHA. The trial court erred in refusing to consider the merits of plaintiff's motion under Code of Civil Procedure section 473(b) because it was not signed under penalty of perjury. The Court of Appeal remanded the case to the trial court to consider on its merits plaintiff's motion to vacate the judgment. (C.A. 2nd, filed January 25, 2016, published February 9, 2016.)

Bae v. T.D. Service Company (2016) _ Cal. App.4th _ , 2016 WL 742198: The Court of Appeal affirmed the trial court's order granting a motion for relief from a default and default judgment. Plaintiffs filed a complaint arising from a foreclosure sale against several defendants including defendant T.D. Service Company of Arizona (defendant). Defendant filed an unchallenged declaration of nonmonetary status under California Civil Code section 29411, asserting that it had been named as a defendant solely in its capacity as trustee under the pertinent deed of trust and not due to any wrongful conduct in its performance as trustee. Defendant filed no answer in the action, and the clerk later entered defendant's default, and the trial court issued a default judgment against defendant awarding plaintiffs \$3,000,000 in damages. Defendant filed a motion for relief from the default and default judgment, which the trial court properly granted. The declaration of nonmonetary status under Civil Code section 29241, coupled with the evidence supporting defendant's motion to set aside the default and default judgment, sufficed to show a meritorious defense regarding the alleged misconduct. Defendant's unchallenged declaration for nonmonetary interest shielded it from the default and default judgment, notwithstanding defendant's failure to file any pleading or motion ordinarily required to avoid the entry of default. Defendant was fully entitled to believe that no default could be entered against it, and its counsel lacked knowledge of the default proceedings. (C.A. 2nd, February 25, 2016.)

Bucur v. Ahmad (2016) _ Cal.App.4th _ , 2016 WL 304281: The Court of Appeal affirmed the trial court's order granting a motion for judgment on the pleadings, and also ordering sanctions under Code of Civil Procedure section 128.7 against plaintiffs and their counsel, in a case that represented plaintiffs' fifth unsuccessful attempt to obtain damages arising out of FedEx's termination of their linehaul contracts. The trial court properly granted judgment on the pleadings on the grounds of res judicata, judicial admissions and judicial estoppel based upon the claims plaintiffs had made in their first and second actions. The Court of Appeal concluded the sanctions under section 128.7 were properly awarded, and it also awarded sanctions of \$25,000 for the appeal. (C.A. 4th, January 26, 2016.)

Castillo v. DHL Express (USA) (2015) _ Cal.App.4th _ , 2015 WL 9703433: The Court of Appeal affirmed the trial court's dismissal of plaintiff's wage-and-hour class action and individual complaint defendants for failure to prosecute within the five-year period provided by Code of Civil Procedure section 583.310. The tolling provision regarding mediation in section 1775.7(b) applies only to mediation conducted in a court-annexed alternative dispute resolution program. The Court of Appeal also concluded that plaintiff failed to show it was impossible, impracticable or futile to bring his case to trial within five years. (C.A. 2nd, filed December 15, 2015, published January 14, 2016.)

City of San Diego v. Superior Court (Dines) (2015) _ Cal.App.4th _ : The Court of Appeal reversed the trial court's order granting a petition to permit petitioner relief from the claims presentation requirements of Government Code section 945.4. The Court of Appeal ruled that Government Code section 915.2(b)'s provision, that extends by five days the period for a recipient of a mailed



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notice to respond to the notice, does not apply to or extend Government Code section 946.6's six-month limitations period for filing a petition after an entity denies an application for leave to file a late claim. (C.A. 4th, filed December 29, 2015, published January 20, 2016.)

County of Santa Clara v. Escobar (2016) _ Cal.App.4th _, 2016 WL 364446: The Court of Appeal reversed the trial court's order sustaining a demurrer without leave to amend in favor of defendant Fresh Express, Inc. in an action by plaintiff County of Santa Clara (County) under Government Code section 23004.1 to collect on a statutory lien of over \$1 million for treatment of defendant Escobar at Santa Clara Valley Medical Center. Escobar had sued Fresh Express in an earlier personal injury action and obtained a judgment of over \$5 million. Fresh Express paid the judgment by sending a joint check payable to the County and Escobar's counsel, but Escobar's counsel refused to endorse the check over to the County. A satisfaction of judgment was filed in the personal injury action. The Court of Appeal concluded that the trial court erred in sustaining the demurrer. An adjudicated tortfeasor holding disputed funds it knows are encumbered by a public hospital lien cannot avoid liability by simply turning control of the funds over to the injured person. It must instead avail itself of the procedures provided for neutral stakeholders caught between rival claimants—most obviously the device of interpleader, under which it can deposit the disputed funds in court, requiring the contestants to appear and present their claims. It cannot turn disputed funds over to the injured person in a check payable to both contestants. By doing so, it satisfies neither the judgment nor the lien, and it remains subject to the statutory liability in favor of the county unless and until the county recovers the amount to which it is entitled under the statute. (C.A. 6th, January 29, 2016.)

Gilkysen v. Disney Enterprises, Inc. (2016) _ Cal.App.4th _, 2016 WL 695707: The Court of Appeal reversed in part the trial court's order sustaining a demurrer, without leave to amend, on the basis that the statute of limitations had expired. Plaintiffs filed a complaint alleging that defendant had breached its contractual obligation to pay royalties in connection with the licensing or other disposition of the mechanical reproduction rights to plaintiffs' deceased father's songs. The Court of Appeal concluded that the trial court erred because the continuous accrual doctrine applied to plaintiffs' contract and declaratory relief claims, but ruled that the order sustaining

the demurrer to the claim for breach of the implied covenant of good faith and fair dealing proper because plaintiffs had added that cause of action without the court's permission following the first demurrer ruling. (C.A. 2nd, filed January 27, 2016, published February 22, 2016.)

Highland Springs Conference and Training Center v. City of Banning (SCC Acquisitions, Inc.) (2016) _ Cal.App.4th _, 2016 WL 308841: The Court of Appeal reversed the trial court's order denying, on the basis that plaintiffs had failed to act with due diligence in bringing the motion, a motion to add a judgment debtor to a judgment in a CEQA action that had awarded plaintiffs over \$1 million in attorney fees. The trial court erroneously denied the motion because the opposing party made an insufficient evidentiary showing that it was prejudiced by the delay, and it failed to meet its burden of proving the motion was barred by laches. (C.A. 4th, January 26, 2016.)

Karnazes v. Ares (2016) _ Cal.App.4th _, 2016 WL 323719: The Court of Appeal affirmed the trial court's order granting defendant's anti-SLAPP motion to strike. The motion was timely filed after venue was changed from Santa Clara County to Los Angeles County. All of the communications between defendant (an attorney representing his client) and plaintiff arose from protected activity because they occurred within the context of anticipated litigation and settlement, and plaintiff failed to include with her response any evidence suggesting that she had a probability of prevailing on the merits of her claims. (C.A. 2nd, January 27, 2016.)

Lefebvre v. Southern California Edison (2016) _ Cal.App.4th _, 2016 WL 297533: The Court of Appeal affirmed, but for a different reason, the trial court's order sustaining a demurrer without leave to amend to a putative class action against Southern California Edison Company seeking damages for Edison's alleged practice of fraudulently enrolling ineligible customers in the California Alternate Rates for Energy program. The Court of Appeal concluded that the court lacked jurisdiction to hear the action under Public Utilities Code section 1759(a), because a judgment in plaintiff's favor would have the effect of undermining a general supervisory or regulatory policy of the California Public Utilities Commission. (C.A. 2nd, January 25, 2016.)

Lewis v. YouTube, LLC (2015) _ Cal. App.4th _, 2015 WL 9907662: The Court

of Appeal affirmed the trial court's order sustaining defendant's demurrer without leave to amend. The Court of Appeal ruled that plaintiff was not entitled to damages under the limitation of liability clause in the Terms of Service. The remedy of specific performance was not available because plaintiff failed to identify any provision of the Terms of Service that she was seeking to have a court enforce. (C.A. 6th, filed December 28, 2015, published January 25, 2016.)

Orcilla v. Big Sur, Inc. (2016) _ Cal.App.4th _, 2016 WL 542922: The Court of Appeal reversed the trial court's order sustaining a demurrer without leave to amend regarding two causes of action, but it affirmed the order regarding the other claims. After a nonjudicial foreclosure sale of their home, plaintiffs sued defendants alleging 13 causes of action. The trial court erred in sustaining the demurrer to the causes of action for wrongful foreclosure and violation of the unfair business competition law. The demurrers to the other causes of action were properly sustained. (C.A. 6th, February 11, 2016.)

People ex rel Government Employees Insurance Company v. Cruz (2016) _ Cal.App.4th _, 2016 WL 633340: The Court of Appeal reversed in part and affirmed in part the trial court's summary judgment for defendant. The trial court granted the summary judgment after it granted defendant's motion to bind plaintiff to certain initial interrogatory responses and refused to consider additional evidence offered by defendant in opposition to the motion. The Court of Appeal ruled that the trial court erred in binding plaintiff to the interrogatory responses because defendant failed to establish all three prerequisites of Code of Civil Procedure 2030.310(c). Even if plaintiff had failed to show substantial justification for the initial interrogatory responses, the record did not support a finding that defendant was substantially prejudiced by the later interrogatory responses or that any prejudice could not have been cured by a continuance or use of the initial interrogatory responses at trial. The trial court also erred in refusing to consider the additional evidence offered by plaintiff to oppose the summary judgment motion, and erred in granting summary judgment for defendant on the statutory claim under the Insurance Fraud Prevention Act (Insurance Code section 1871 et seq.; Penal Code, section 550). Plaintiff, however, failed to address the remaining common law causes of action on appeal, and therefore forfeited any challenges to the trial court's summary disposition of them.

CALIFORNIA CIVIL LAW UPDATE CONTINUED FROM PAGE 13

(C.A. 4th, filed January 22, 2016, published February 17, 2016.)

Sweetwater Union School District v. Gilbane Building Company (2016) _ Cal.App.4th _ , 2016 WL 741642: The Court of Appeal affirmed the trial court's ruling denying an anti-SLAPP motion, but for different reasons. Plaintiff sued seeking to void management contracts with all three defendants and to require them to disgorge all sums that plaintiff paid them under the contracts pursuant to Government Code section 1090. Plaintiff alleged that certain representatives of the defendant entities engaged in a "pay to play" scheme with several officials of plaintiff that involved paying for expensive dinners, tickets to entertainment and sporting events, travel expenses, and making contributions to political campaigns and charities, in an effort to influence the officials to award defendants certain construction contracts. The trial court did not abuse its discretion in considering plea forms, including the incorporated plea narratives, the grand jury testimony, and grand jury exhibits, in addressing defendants' anti-SLAPP motion. These documents provided information indistinguishable from evidence presented by way of a declaration. The Court of Appeal disagreed with the trial court finding that the anti-SLAPP statute did not apply because the conduct underlying the complaint was illegal as a matter of law, and therefore was not protected by the constitutional guarantees of free speech and petition. The Court of Appeal found instead that the conduct was protected activity. However, it affirmed the trial court ruling because plaintiff, through the admitted evidence, demonstrated a probability of prevailing on its Section 1090 claims against defendants, thereby defeating defendants' anti-SLAPP motion with respect to the second prong of the anti-SLAPP analysis. (C.A. 4th, filed February 24, 2016.)

Seacrist v. Southern California Edison Company (2016) _ Cal.App.4th _ , 2016 WL 323726: The Court of Appeal reversed a judgment entered after the trial court sustained a demurrer without leave to amend on the basis that the California Public Utilities Commission (PUC) had exclusive jurisdiction over claims for damages from stray electrical currents from a substation. Based upon the decision in *Wilson v. Southern California Edison Company* (2015) 234 Cal.App.4th 123, the Court of Appeal concluded that, because the PUC did not have exclusive jurisdiction, the trial court did have jurisdiction over plaintiffs' claims. (C.A. 4th, January 27, 2016.)

SCC Acquisitions, Inc. v. Superior Court (Western Albuquerque Land Holdings, LLC) (2015) _ Cal.App.4th _ , 2015 WL 9645826: The Court of Appeal upheld the post-judgment discovery ruling of the trial court by deciding to treat an appeal as a petition for writ of mandate and denying it. Judgment creditor sought discovery regarding third parties from the judgment debtor. The Court of Appeal found that the trial court had authority to order the judgment debtor to produce documents, the discovery requests did not violate the privacy rights of the third parties, and the requests were not overbroad. (C.A. 4th, filed December 11, 2015, published January 6, 2016.)

Civil Rights

Fetters v. County of Los Angeles (2016) _ Cal.App.4th _ , 2016 WL 98581: The Court of Appeal reversed a \$1.1 million compensatory damages jury verdict for plaintiff, and an attorney fee award of over \$2 million, following the trial court's ruling, in a bifurcated bench trial, denying defendant's argument that, under *Heck v. Humphrey* (1994) 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (*Heck*), plaintiff's 42 U.S. Code section 1983 claim was barred by his plea bargain in a juvenile court proceeding that admitted he had brandished an imitation firearm so as to cause the two deputies and a third party fear of bodily harm. The Court of Appeal concluded the trial court erred in denying the *Heck* defense because plaintiff was convicted and/or sentenced for brandishing an imitation firearm, a judgment for plaintiff in his section 1983 action would necessarily imply the invalidity of his conviction and sentence, and the dismissal of the criminal petition against plaintiff following his successful completion of probation was not a termination of the criminal proceeding in his favor. (C.A. 2nd, January 8, 2016.)

Construction

Construction Industry Force Account Council, Inc. v. Ross Valley Sanitary District (2016) _ Cal.App.4th _ , 2016 WL 685254: The Court of Appeal reversed and vacated the trial court's preemptory writ of mandate commanding the Ross Valley Sanitary District (District) to cease and desist from replacing 139 miles of small diameter sewer pipe with in-house employees and to instead conduct all future replacement of this pipe through competitive bid and contract. The Court of Appeal agreed with the District that Public Contract Code section 20803 permits a sanitary district to use in-house employees

to complete a project regardless of total cost, and to require a district's compliance with the competitive bidding procedures in the Public Contract Code only if it chooses to contract out to a third party a project meeting the \$15,000 cost threshold. (C.A. 1st, filed January 25, 2016, published February 18, 2016.)

Hub Construction Specialties, Inc. v. Esperanza Charities, Inc. (2016) _ Cal.App.4th _ , 2016 WL 489628: The Court of Appeal reversed the trial court's dismissal of plaintiff's action for failure to strictly comply with the mechanic's lien statutes. The defendant stipulated that the notice was served by certified mail, that the U.S. Postal Service website tracking certified mail items showed the notice was delivered, and that defendant actually received the notice. Despite these stipulations, the defendant contended, and the trial court agreed, the lien was invalid because plaintiff had no return receipt. The Court of Appeal reversed, holding that, while strict compliance with the notice provisions of the mechanic's lien law is required, the applicable precedents do not require or justify applying that rule to the statutory provisions governing proof that the required notice was properly given. A stipulation eliminated the need for proof. Where it is stipulated that notice was given in the statutorily prescribed manner, to require further proof would elevate form over substance to a degree that cannot be countenanced in light of the long-established principle that the mechanic's lien law is "remedial legislation, to be liberally construed for the protection of laborers and materialmen." (C.A. 2nd, February 8, 2016.)

Consumer Protection

State of California ex rel. Bartlett v. Miller (2016) _ Cal.App.4th _ , 2016 WL 229468: The Court of Appeal reversed the trial court's order granting defendants' motion to dismiss plaintiff's qui tam action on the basis that it was barred by the public disclosure bar in the California False Claims Act (see pre-2013 version of Government Code section 12652 (d)(3)(A)). The Court of Appeal concluded that an SEC filing was not one of the disclosures identified in former section 12652 (d)(3)(A) as barring a qui tam action. (C.A. 2nd, January 19, 2016.)

Contracts

Unilab Corporation v. Angeles-IPA (2016) _ Cal.App.4th _ , 2016 WL 374988: The Court of Appeal affirmed the trial court's summary judgment for defendant. Plaintiff sued defendant for \$174,134.28 for tests

mistakenly ordered by physician members of defendant after the contract between plaintiff and defendant had ended. The referral of specimens to plaintiff by physicians who either misidentified the patient's IPA/payor or failed to identify an IPA/payor at all did not create an implied-in-fact contract that defendant would pay for the tests. Plaintiff had no implied-in-fact contract claim because any benefit conferred upon defendant, which did not cause the misdirection of the specimens to plaintiff, was unintended. Because plaintiff had no understanding or expectation of payment of unauthorized post-contract tests, the summary adjudication of the quantum meruit claim was also proper. (C.A. 2nd, filed January 13, 2016, published February 1, 2016.)

Corporations

Speirs v. Bluefire Ethanol Fuels, Inc. (2015) _ Cal.App.4th _ : The Court of Appeal affirmed in part, and reversed in part, the trial court's rulings following a bench trial in a case where plaintiffs alleged breach of fiduciary duty and breach of warrant agreements after defendant refused to apply an anti-dilution provision in the warrants to an equity line of credit transaction entered into by defendant. The Court of Appeal agreed with the trial court's ruling that the breach of fiduciary duty cause of action was unmeritorious as a matter of law. A corporation's officers do not have a fiduciary duty to warrant holders. The Court of Appeal also agreed with the court's interpretation of plaintiffs' warrants. The anti-dilution provision applied to the equity credit line agreement and stock issuances to the finance company resulting from that agreement. However, the Court of Appeal found that the trial court erred in reducing plaintiffs' exercise price to \$0 because substantial evidence did not support that decision. The matter was reversed and remanded for retrial solely on the proper remedy for defendant's breach of contract. (C.A. 4th, filed December 15, 2015, published January 12, 2016.)

Employment

Alvarado v. Dart Container Corporation of California (2016) _ Cal.App.4th _ , 2016 WL 164636: The Court of Appeal affirmed the trial court's summary judgment for defendant. The sole question was whether defendant's formula for calculating overtime on flat sum bonuses paid in the same pay period in which they are earned was lawful. There is no California law specifying a method for computing overtime on flat sum bonuses. Because defendant's formula complied with federal law, which provides a formula for

calculating bonus overtime, defendant's formula was lawful. (C.A. 4th, filed January 14, 2016.)

Bains v. Department of Industrial Relations, Division of Labor Standards Enforcement (2016) _ Cal.App.4th _ , 2016 WL 621037: The Court of Appeal affirmed the trial court judgment. The trial court properly concluded that the harvest is over when the raw prune fruit is collected in the fields and then transported to a fixed structure for drying. Wage Order No. 13 applies while workers are operating in the drying sheds. (C.A. 3rd, February 16, 2016.)

Ellins v. City of Sierra Madre (2016) _ Cal. App.4th _ , 2016 WL 337383: The Court of Appeal affirmed the trial court's denial of a writ petition seeking to overturn petitioner's dismissal as a police officer due in part to his insubordination in refusing to submit to an interrogation. The issue was how much prior notice does Government Code section 3303(c) require a police officer be given before being interrogated. The Court of Appeal concluded that a police officer must be informed of the nature of the investigation reasonably prior to any interrogation. Notice is reasonably prior to an interrogation if it grants the officer sufficient time to meaningfully consult with any representative he or she elects to have present during the interview, although the employing department may postpone disclosure until the scheduled time of the interview—and briefly postpone the commencement of the interview to allow time for consultation—if it has reason to believe that earlier disclosure would jeopardize the safety of any interested parties or the integrity of evidence under the officer's control. The Court of Appeal affirmed the trial court's ruling because the undisputed facts indicated that the officer had sufficient time to meaningfully consult with his representative. (C.A. 2nd, January 28, 2016.)

Wallace v. County of Stanislaus (2016) _ Cal. App.4th _ : The Court of Appeal reversed the judgment for defendant in a disability discrimination case based upon the trial court's erroneous jury instruction and special verdict. The trial court erroneously believed that proof of animus or ill will was required and modified California Civil Jury Instruction (CACI) No. 2540 to include a requirement that plaintiff prove defendant regarded or treated him "as having a disability in order to discriminate." California law does not require an employee with an actual or perceived disability to prove that the employer's adverse employment action was motivated by animosity or ill will against the employee.

The financial consequences of an employer's mistaken belief that an employee is unable to safely perform a job's essential functions should be borne by the employer, not the employee, even if the employer's mistake was reasonable and made in good faith. The Court of Appeal found the instructional error was prejudicial and remanded the disability discrimination claim for a retrial, limited to determining the amount of damages resulting from defendant's decision to place plaintiff on an unpaid leave of absence for over two years. (C.A. 5th, February 25, 2016.)

Evidence

Kim v. Toyota Motor Corporation (2016) _ Cal.App.4th _ : The Court of Appeal affirmed the trial court's order denying plaintiffs' motion in limine seeking to exclude evidence that the custom of the automotive industry was not to include electronic stability control (ESC) as standard equipment in pickup trucks. Departing from one line of cases stating that evidence of industry custom and practice is always inadmissible in a strict products liability action, and with a recent case suggesting such evidence is always admissible, the Court of Appeal ruled that evidence of industry custom and practice may be admissible in a strict products liability action, depending on the nature of the evidence and the purpose for which the proponent seeks to introduce the evidence. Evidence of industry custom may be relevant to the risk-benefit analysis and admissible in a strict products liability action, depending on the nature of the evidence and the purpose for which it is offered. Either side may seek to introduce evidence of industry custom and practice, and the trial court has discretion to exclude it if it is not relevant to the issues in the case, if under Evidence Code section 352 its probative value is substantially outweighed by the risk of undue prejudice or confusion of the issues, or if the evidence is otherwise inadmissible. The Court of Appeal also rejected plaintiffs' other arguments including alleged error for failing to give requested instructions, excluding exhibits, and limiting plaintiffs' rebuttal argument. (C.A. 2nd, January 19, 2016.)

Government

Macy v. City of Fontana (Ten-Ninety, Ltd.) (2016) _ Cal.App.4th _ , 2016 WL 702297: The Court of Appeal affirmed the trial court's order sustaining a demurrer without leave to amend to a petition for writ of mandate. The petition initially named

CALIFORNIA CIVIL LAW UPDATE CONTINUED FROM PAGE 15

the Fontana Redevelopment Agency, which was dissolved by the California Legislature in 2011 as part of Assembly Bill 26 (AB 26). The petition later named the City of Fontana as the successor agency and also in its separate capacity as a municipal corporation. The City of Fontana demurred to the writ against it as a municipal corporation. The Court of Appeal ruled that, under the scheme adopted by the Legislature under AB 26, the liabilities of dissolved redevelopment agencies are limited to the assets transferred to successor agencies. There is nothing in AB 26, or later amendments to the dissolution legislation, that would extend that liability beyond an redevelopment agency's assets to municipalities and their general funds. (C.A. 4th, February 23, 2016.)

Pacific Shores Property Owners Association v. Department of Fish and Wildlife (2016) _ Cal. App.4th _ , 2016 WL 234482: This case was a unique situation where a state agency assumed control of a local flood control process and determined to provide less flood protection than historically provided by a local agency in order to protect environmental resources. The Court of Appeal affirmed the trial court's judgment finding the state Department of Fish and Wildlife (Department) liable for inverse condemnation for a physical taking of plaintiffs' properties due to flooding, but was not liable for a regulatory taking. The Court of Appeal reversed the trial court's judgment finding liability against the California Coastal Commission (Commission). Plaintiffs' cause of action for a physical taking against the Commission was not timely, but the cause against the Department was timely, as it did not accrue until the Department's actions against plaintiffs' properties stabilized in 2005 when the Department obtained a long-term development permit to breach the sandbar. Plaintiffs filed their action within the three-year limitation period after their cause accrued. The Department was strictly liable for the damages it caused because the Department intentionally designed the breaching to flood plaintiffs' properties by reducing the flood protection plaintiffs had historically enjoyed, and its primary purpose for doing so was not to provide flood protection, but to protect environmental resources. The Court of Appeal concluded that the trial court correctly ruled that plaintiffs' cause of action for regulatory taking was barred because they failed to comply with California law governing recovery for a regulatory taking. Plaintiffs were required to, but failed to, seek a development permit

and challenge the application of any permit restriction by petition for writ of mandate before bringing an action for inverse condemnation based on a regulatory taking. (C.A. 3rd, January 20, 2016.)

Insurance

AMCO Insurance Company v. All Solutions Insurance Agency, LLC (2016) _ Cal.App.4th _ , 2016 WL 490134: The Court of Appeal reversed the trial court's summary judgment for defendant, an insurance broker who allegedly failed to obtain coverage requested by his client, and who was sued by an insurance company and neighboring business owners who were assigned the rights to sue the broker by the broker's client as part of a settlement of a property damage claim. The Court of Appeal ruled that a client's causes of action against an insurance broker or agent are assignable. It concluded that, because the assignees (an insurance company and neighboring business owners) did not issue an insurance policy to the assignor (the insurance broker's client), they were never potential equitable subrogees of the assignor and their contractual assignments were not subject to the rule of superior equities. And, the Court of Appeal held that the client and the employees of the insurance broker disagreed over who said what to whom and when it was said, and there was a triable issue of material fact about whether the client requested the insurance broker to obtain insurance coverage before the fire. (C.A.5th, February 8, 2016.)

Vardanyan v. Amco Insurance Company (2015) _ Cal.App.4th _ , 2015 WL 9654037: The Court of Appeal reversed the trial court's directed verdict for defendant based upon a special jury instruction the trial court decided to give regarding coverage. The special instruction requested by defendant ran afoul of the efficient proximate cause rule in California. A policy cannot extend coverage for a specified peril, then exclude coverage for a loss caused by a combination of the covered peril and an excluded peril, without regard to whether the covered peril was the predominant or efficient proximate cause of the loss. The trial court erred in deciding to give the special instruction rather than CACI No. 2306. The Court of Appeal also concluded that the special instruction was improper because it placed on plaintiff the burden of proving his loss fell within the contested coverage provision, instead of requiring defendant to prove that the loss was excluded. (C.A. 5th, filed December 11, 2015, published January 7, 2016.)

Legal Malpractice

Kelly v. Orr (2016) _ Cal.App.4th _ , 2016 WL 107907: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, in a legal malpractice action. The Court of Appeal ruled that the continuous representation tolling provision in Code of Civil Procedure section 340.6(a)(2) applies to toll legal malpractice claims brought by successor trustees against attorneys who represented the predecessor trustee. Because the first amended complaint alleged the predecessor trustee resigned on March 22, 2013, ending defendants' representation of her as trustee, and because plaintiff's complaint was filed on February 27, 2014, the action was not time-barred as a matter of law. (C.A. 4th, January 11, 2016.)

Real Property

Boston LLC v. Juarez (2016) _ Cal. App.4th _ , 2016 WL 742231: The Court of Appeal overruled the superior court appellate department's affirmation of the trial court's unlawful detainer judgment for plaintiff landlord, arising from defendant tenant's failure to obtain insurance required by a lease that was subject to the Los Angeles Rent Stabilization Ordinance. The Court of Appeal concluded that a tenant's breach must be material to justify forfeiture. Because tenant's obligation to obtain and pay for insurance protected the tenant's interest, not the landlord's, the tenant's failure to obtain a policy could not harm the landlord and therefore was not a material breach of the lease justifying forfeiture. (C.A. 2nd, February 25, 2016.)

Majd v. Bank of America, N.A. (2015) _ Cal. App.4th _ , 2015 WL 9304536: The Court of Appeal overruled in part, and affirmed in part, the trial court's ruling sustaining a demurrer without leave to amend in a case alleging wrongful foreclosure. The Court of Appeal agreed with plaintiff's contention that the foreclosure was wrongful because it occurred while the loan servicer was reviewing plaintiff's loan for a modification under the Home Affordable Modification Program (HAMP), finding that plaintiff had stated a cause of action against the loan servicer for violation of Business and Professions Code section 17200 et seq. The Court of Appeal also reversed some of the orders denying leave to amend. It found that plaintiff had stated a cause of action for wrongful foreclosure, provided the party conducting the foreclosure sale was an agent of the loan servicer, and held

that plaintiff should be given leave to amend to allege the agency relationship, if true. The Court of Appeal also concluded that plaintiff had stated a cause of action for cancellation of the trustee's deed upon sale, but had failed to join the foreclosing trust deed beneficiary, an indispensable party, as a defendant. Provided the property was still owned of record by the foreclosing beneficiary, and not by a bona fide purchaser for value, the Court of Appeal ruled that plaintiff should be given leave to amend to add the foreclosing beneficiary as a party to the cause of action for cancellation of instruments. (C.A. 4th, filed December 21, 2015, published January 14, 2016.)

Picerne Construction Corp. v. Castellino Villas (2016) _ Cal.App.4th _, 2016 WL 653961: The Court of Appeal affirmed the trial court's judgment for plaintiff, but reduced the amount to reflect a setoff. The Court of Appeal concluded that (1) plaintiff timely recorded its mechanic's lien; (2) defendant failed to demonstrate the applicability of judicial estoppel; (3) the property constituted one residential unit; (4) the trial court overstated the principal sum due and failed to subtract a \$115,453.50 setoff from the principal sum, but the other claims of error with regard to the lien amount had no merit; and (5) the action against Bank of the West was not time-barred because plaintiff timely substituted Bank of the West in place of a Doe defendant when plaintiff learned of the bank's interest in the property. The judgment was affirmed but modified to provide that the mechanic's lien was in the amount of \$2,416,855.06. (C.A. 3rd, February 18, 2016.)

Rey Sanchez Investments v. Superior Court (PCH Enterprises, Inc.) (2016) _ Cal. App.4th _, 2016 WL 325473: The Court of Appeal granted a writ petition and overruled the trial court's order denying a motion to expunge a lis pendens. The Court of Appeal found the lis pendens was void and invalid as to petitioner under Code of Civil Procedure sections 405.22 and 405.23 because no proof of service was recorded with the lis pendens and, once petitioner became a party to the action, service was not made immediately on petitioner. (C.A. 4th, filed January 6, 2016, published January 26, 2016.)

Torts

Blackwell v. Vasilas (2016) _ Cal.App.4th _, 2016 WL 304125: The Court of Appeal reversed the trial court's order granting summary judgment for defendant in a case where plaintiff alleged that defendant was liable for the work performed by an

unlicensed contractor, allegedly the employee of defendant, who assembled scaffolding at a job site. The Court of Appeal concluded that the trial court erred by not applying Labor Code section 2750.5 properly. To establish that the contractor was an independent contractor — a necessary finding based on the issues related to the duty that defendant raised in his motion for summary judgment — section 2750.5 required defendant to present evidence either that the contractor had a license or that the contractor was not required to be licensed. Because defendant did not meet this initial evidentiary burden, the responsive burden did not shift to plaintiff to establish a triable issue of material fact. (C.A. 4th, January 26, 2016.)

Burgueno v. The Regents of the University of California (2015) _ Cal.App.4th _, 2015 WL 9700324: The Court of Appeal affirmed the trial court's order granting summary judgment to defendant, based upon the recreational trail immunity in Government Code section 831.4, in a wrongful death action arising from the death of a student riding a bike on Great Meadow Bikeway on the campus of the University of California, Santa Cruz. The trial court properly ruled that defendant had absolute immunity from claims arising from the accident on the Great Meadow Bikeway pursuant to the recreational trail immunity provided by section 831.4. (C.A. 6th, filed December 15, 2015, published January 13, 2016.)

King v. CompPartners, Inc. (2016) _ Cal. App.4th _, 2016 WL 55505: The Court of Appeal affirmed the trial court's order sustaining a demurrer, but reversed the denial of leave to amend. Because it was possible the complaint could have been amended to avoid the preemption of the Workers Compensation Act and to also allege a duty, leave to amend should have been granted. (C.A. 4th, January 5, 2016.)

Pipitone v. Williams (2016) _ Cal.App.4th _, 2016 WL 718475: The Court of Appeal affirmed the trial court's summary judgment for defendants. Plaintiff sued defendant doctors for the wrongful death of her daughter for allegedly failing to report suspected abuse to the authorities as required by Penal Code section 11160. Plaintiff's daughter was killed by her husband several months after defendants treated her after her husband ran over her foot with his truck. During the treatment, plaintiff's daughter did not reveal to the doctors the true origin of her injury. The trial court correctly found no triable issue of fact regarding the elements of duty and causation. (C.A. 6th, February 23, 2016.)

Trusts and Estates

Gray v. Jewish Federation of Palm Springs and Desert Area (2016) _ Cal.App.4th _, 2016 WL 104651: The Court of Appeal affirmed the trial court's judgment for defendant and against plaintiff (the sole net income beneficiary of the trust, and a former trustee). The Court of Appeal concluded that Probate Code section 16373 provides that, if an amount is to be distributed from income, such as a broker's commission on a new lease, but there is not enough income to pay for the item and maintain disbursements to the income beneficiary, the trustee can pay for the items out of the principal. However, the trustee must pay back the principal over time for the use of principal to pay income expenses if it did not set up a reserve to pay for the items. The trial court's judgment properly concluded that plaintiff was owed \$47,913.58 in underpaid income but the principal had been overcharged \$61,749.01, so plaintiff should pay the difference out of income. Plaintiff was also properly ordered to pay \$28,000 in attorney's fees to defendant for bad faith and unreasonable objections to accountings. Plaintiff was properly ordered to pay \$12,709.45 to defendant for the objections and her appeal regarding a petition she had filed, and was properly ordered to reimburse the trust \$12,608 for her trustee fees. (C.A. 4th, January 6, 2016.)

Hill v. Superior Court (Staggers) (2016) _ Cal.App.4th _, 2016 WL 659909: The Court of Appeal reversed the trial court's summary judgment for defendant on the basis that the double damages sought against defendant under Probate Code section 859 were precluded under Code of Civil Procedure section 377.42. The Court of Appeal disagreed, concluding that double damages under section 859 are not punitive damages recoverable under Civil Code section 3294. (C.A. 1st, February 18, 2016.)

Monty A. McIntyre is a full-time mediator, arbitrator, referee and special master at ADR Services, Inc., with 35 years of extensive civil trial experience representing both plaintiffs and defendants in a wide variety of business, insurance, real property and tort cases, and over 30 years of experience as an arbitrator and mediator. Mr. McIntyre handles cases in the following areas: business, commercial, construction, employment, insurance, professional liability, real property and torts. ♦

IS IT TIME TO GET A DEFENSE LIFE CARE PLANNER FROM PAGE 7:

of an interview or other evidence that an appropriate physician or health care provider is recommending the future medical care. Likewise, the plan must indicate support for every item in the plan, for example an explanation of the difficulties getting on and off of the toilet would accompany the recommendation for a bathroom grab bar. Nursing care in the home must have a detailed explanation of the methodology used to determine the levels and hours of care.

Watch for: unsupported recommendations in the report, lack of qualification of life care planner to make the recommendation, no evidence of collaboration with qualified providers, lack of letter or notes of physician input, lack of input from the plaintiff and his family.

11. Costing evidence

Each and every item in the tables or charts must indicate the item or service, the frequency and the cost. There should be evidence of how costs were obtained, for example, by using old bills, calling for two to three quotes or using standard national published databases. If calling offices or when

comparing prices on the Internet, the source of the cost and the date that the cost was quoted must be indicated. It is best to have two or three quotes written in the report and then use the average cost should be used. When using national databases, the source should be clearly indicated and evidence that the cost was adjusted for the geographic area the plaintiff will receive care.

Watch for: lack of description of the item or service, lack of the frequency of the item and lack of good research into the cost for the particular item.

Finally:

These are some of the most basic and important aspects to a life care plan. If the plaintiff has a qualified life care planner who interviews the plaintiff, reviews medical records from before the incident and close to the present time, collaborates with physicians and providers and who plans, justifies and researches the cost for every item on the life care plan, then they may have a good report.

If there is evidence that the plaintiff life care plan is inadequate, you may benefit by retaining a life care planner experienced in

Rebuttal Life Care Plan reports.

The rebuttal should examine each phase of the life care plan. Where the entire medical records available actually evaluated by the plaintiff life care planner? Were pre-existing conditions excluded as future costs? Was the interview well documented and does it support the recommendations for home care, housekeeping services, home modifications and equipment? Did physician and other health care providers or research support of the medical items? Were costs obtained in a manner that can be reproduced?

Your Rebuttal life care plan should also include summaries of any depositions and expert reports that have been put forth. Expect that a good plaintiff life care planner may provide a rebuttal to your rebuttal life care plan! It's all about examining the evidence and providing expert opinions!

Dawn L. Cook is a Registered Nurse with three certifications in Life Care Planning and as a Certified Forensic Litigation Consultant. She has prepared over 120 expert reports and has testified at deposition and in state and federal court. Dawn Cook lives in Las Vegas, Nevada. ♦

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SDDL Recognition of Law Firm Support

The *Update* traditionally included a list of current SDDL members at the end of each edition. As part of the SDDL Board's proactive efforts to protect the privacy of its members, the *Update* will no longer include a list of current members. We have observed over the course of the last year or so an increasing number of requests from vendors and other bar organizations to hand over the contact information of our members. In each case, we have rejected the request. The SDDL Board is concerned that third parties may use other means to identify our members to target them for the marketing purposes. Because the *Update* is published online and searchable through Google (and other search engines), the decision has been made to discontinue the identification of the entire membership in the *Update*.

In place of the membership list, the SDDL Board will instead recognize some of the outstanding law firms that contribute to SDDL's success. Each edition will feature two categories for recognition: 1) The 100% Club – this recognizes law firms with two or more attorneys where all attorneys in the firm are members of SDDL; and 2) The 10 Firms with the Most SDDL Members – this recognizes firms who have the most amount of attorneys as members of SDDL. If there are any errors in the information provided, please email rmardian@hcesq.com, so that corrections can be made for the next edition.

The 100% Club

- Belsky & Associates
- Butz Dunn & DeSantis
- Gentes & Associates
- Grimm Vranjes & Greer LLP
- Hughes & Nunn, LLP
- Law Offices of Kenneth N. Greenfield
- Letofsky McClain
- The Roth Law Firm
- White Oliver & Amundson APC

The 10 law firms with the highest SDDL membership

- #1 Lorber, Greenfield & Polito, LLP – 30 members
- #2 Tyson & Mendes LLP – 23 members
- #3T Neil, Dymott, Frank, McFall & Trexler, APLC – 16 members
- #4T Grimm Vranjes & Greer LLP – 16 members



Outgoing SDDL Board of Directors: (from left to right) Colin Harrison, Robert Mardian, Ben Cramer, Patrick Kearns, Dianna Bedri (Executive Director), Sasha Selfridge, Ken Purviance, Andrew Kleiner, Gabriel Benrubi, Eric Dietz and Stephen Sigler

#5T Balestreri Potocki & Holmes
– 12 members

#5T Wilson Elser Moskowitz Edelman & Dicker LLP – 12 members

#7 Butz Dunn & DeSantis – 11 members

#8T Farmer Case & Fedor – 9 members
#8T Dummit, Buchholz & Trapp

– 9 members

#10 The Law Offices of Lincoln, Gustafson & Cercos, LLP – 8 members ♦

On the Move

♦ Lincoln, Gustafson & Cercos Adds New Associate, Danica Brustkern

Lincoln, Gustafson, & Cercos recently welcomed Danica Brustkern as an associate attorney in its San Diego office. Ms. Brustkern was admitted to the California Bar last December and had previously clerked with the firm. Ms. Brustkern is a graduate of the University of San Diego School of Law. Her work with the firm focuses on personal injury and construction matters.

♦ Anastasia F. Osbrink Joins Klinedinst's San Diego Office

Anastasia F. Osbrink has relocated from Los Angeles to San Diego to join Klinedinst PC as an associate attorney. Her practice focuses on professional liability. Prior to joining Klinedinst, Ms. Osbrink had practiced insurance defense litigation and bankruptcy. Ms. Osbrink graduated from the University of California, Los Angeles, School of Law. ♦

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