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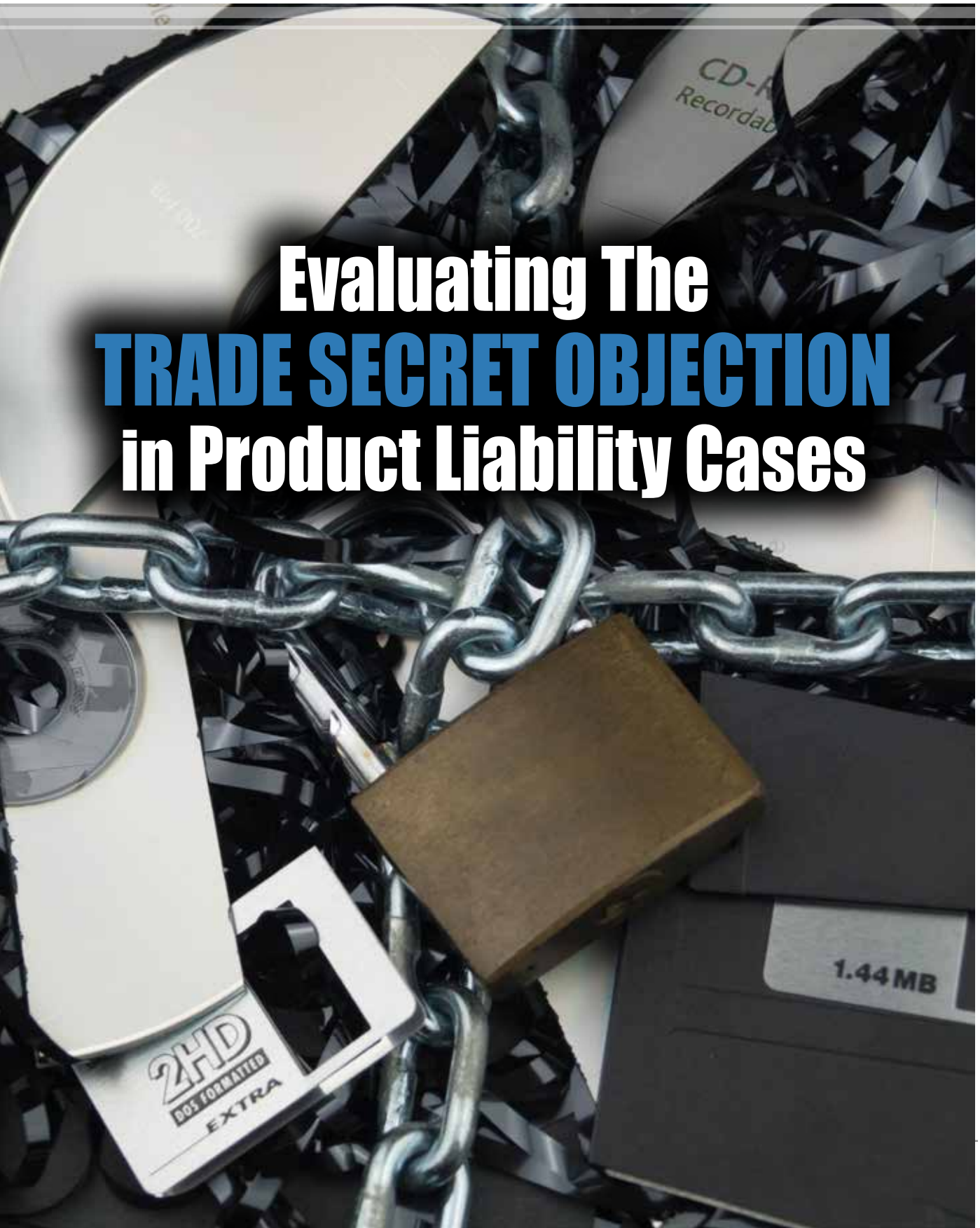

Evaluating The TRADE SECRET OBJECTION in Product Liability Cases

OCTLA
SUMMER 2022

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A Summer of Change

By **Edwin Hong, Esq.**
***Gavel* Editor**

I am so proud to be a part of a community that consistently comes together to learn and grow together, extending a helping hand, words of guidance, or even a last-minute special appearance when needed. In this issue, our wonderful members have reached out once more to share their knowledge, helping each of us better advocate for our clients.

First, Greg Dorst reminds us to take a breath as we reflect over the chaos that is the last two years, taking a moment to grieve, heal, and move forward with peace and acceptance.

Jason Argos breaks down the Court of Appeal's recent decision in *Kline v. Zimmer*, which will drastically change the way defense experts are used (and opposed).

With insurance defense firms utilizing more and more techniques to eschew responsibility, Erika Contreras dissects *Diaz v. Carcamo* to help us better understand the very specific holdings therein, and how to navigate those holdings in preparing personal injury cases for trial.

Lucas Whitehill shares valuable techniques on navigating the world of Products Liability, which are often inundated with questionable trade secret objections in an effort to stonewall discovery.

Finally, with technology evolving daily, Nicole Barnett provides tips and strategies for lawyers to leverage social media to grow their practices.

While seeing our colleagues share knowledge with one another through these articles brings me joy, the resolve of our fierce trial lawyers fighting for justice motivates me even more so. In a time where the Supreme Court issues hotly-contested rulings and states step in to try to regulate in between, it often falls on the tenacity and passion of trial lawyers and organizations such as OCTLA, CAOC, and CAOIE to promote change for the benefit of our society and challenge injustices. Your support of these (and similar) organizations is very much appreciated, and helps make our world a little bit better, one issue at a time.

Hope to see each and every one of you at our upcoming events! As always, if you are interested in writing for The Gavel, or have information to add to our regular columns, please reach out to me at Edwin@justiceteam.com

TIME FLIES

By **Douglas Vanderpool, Esq.**
OCTLA President

I have two huge four-month wall calendars on my wall right beside my desk, so I have eight months' worth of calendar up there. I started putting up big wall calendars in my office almost 30 years ago, and I always encourage my associates to do the same. The calendars are made of those dry erase boards, so I can write something down and then just wipe it off with a Kleenex or paper towel as matters get cleared or settled, or something changes. Those big wall calendars also give me a quick way to glance over and see how many trials I have double and triple stacked in any given month.

Every four months, I have to erase the past four months and add the next four. Last month I added September through December 2022. Which, of course, got me thinking, which, of course, gave me an idea for this monthly column. Ask any past President of the OCTLA . . . churning out a column each quarter is no easy task. It is even harder to try not to bore the hell out of your readers.

I cannot believe it's July. We are about halfway through 2022. Halfway through my Presidency in the OCTLA. They say time flies. No kidding. I joke to Lindsey Aitken Campbell, the OCTLA President elect, that its almost time for her to take over *The Gavel*.

Erasing the prior four months and putting up the next eight months in plain view also gives me a good look at what kind of free time I may have come up later in the year. I have been doing this for over twenty-five years, and those that know me, know I like to travel. A LOT.

When I can clearly see the next eight months stretched out before me in plain view, inevitably I always have at least a two-week block where there are no trials or significant court events. I get very happy when I see that free block of time. I then take a red or orange marker, and I mark right through those two weeks. I then write VACATION in bold letters, and this time period is known as the forbidden zone. Then I sit down at my computer, decide where I am going to go, and book it. Travel tip – booking that far in advance gets you GREAT deals on airfare and accommodations, and then you have months to dream about your upcoming adventures.

I have encouraged so many of my colleagues and even opposing counsel to get into this practice. For while this is certainly an honorable profession, are you living to work, or working to live? We all work so hard and so many hours, we really need at least two weeks to unplug, simmer down, relax, and decompress. It's good for you, your loved ones, your colleagues, and your employees.

Each year for the past 8 – 9 years I have donated a four-night stay at my Joshua Tree and Mexico properties as a Top Gun auction item. Every single penny from these auction item goes directly to the charity. So not only do you get a nice vacation, but you also get to feel pretty good about it from a charitable standpoint. Win-win!

Speaking of vacations and charities and events (*how do you like that segue*) the OCTLA Top Gun Awards Gala will be held on November 12, 2022, at the Westin South Coast Plaza. We are already preparing a "save the date" card to be delivered to the bench and bar, and I can guarantee you that every year it sells out quickly. It is never too early to start thinking about items that you can donate to our silent auction. Better yet, start thinking about how you can go over the top and donate one of those very special items that lands in the live auction.

Every year, Keith More, one of OCTLA's outstanding past presidents, acts as the auctioneer for the live auction. This year Keith promises that his tuxedo will exceed all expectations. That alone will be worth the price of admission. This year, all proceeds will benefit **Operation Helping Hands** which I highlighted in my prior column. So, **SAVE THE DATE – November 12, 2022** and bring your credit card - -bid until it hurts.

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Where will I sleep tonight?

At age 14, Kim Valentine, asked herself that very question and has never forgotten how it made her feel. So, in 2011, she founded

OPERATION HELPING HANDS

When it began, OHH had two main missions. First, as someone who understood the needs and struggles of the homeless, Ms. Valentine's mission was simply to help the homeless by providing essential hygiene and necessity items in backpacks to homeless individuals throughout Southern California. Second, as a mother of three children, Ms. Valentine wanted her children, and others like them, to appreciate the privileges and opportunities granted to them, and to instill within them a sense of social responsibility and understanding for those less fortunate.

Consistent with OHH's original twin mission to help the unhoused and bring awareness about homelessness to the local youth and community, OHH holds biannual projects where the community, including and especially local high school students, assemble backpacks full of necessities on Saturday and then on Sunday distribute the same directly into the hands of the homeless. OHH then rents passenger vans and takes the students to San Diego, Long Beach, Orange County or Los Angeles for distribution of the backpacks to those in need. Other backpacks are provided to local shelters and missions in the various areas as well as distributed to offices and local businesses to have available to give out whenever someone is in need.

OHH's motto is Think Big. Act Bigger. Accordingly, as OHH has grown over the past decade, it has thought big and acted bigger. OHH sets up Corporate Charity Enrichment Days. A corporation can sponsor a particular volume of backpack supplies. OHH will then either bring those supplies to the corporation or host an assembly day at OHH headquarters for the corporation's employees to participate in Charity Enrichment Day with their coworkers. After the backpacks are assembled, OHH staff transports the corporate employees to distribute the sponsored backpacks directly to the homeless or to a local shelter or mission.

OHH also works with Orange County Community Colleges to set up housing scholarships for students that are housing insecure or homeless. OHH's Board of Directors work with the Homeless Liaison at the community colleges to select needy applicants who meet the criteria of a 2.9 cumulative GPA and who must be enrolled in at least 9 units. OHH's Board of Directors interviews applicants and selects a recipient. OHH will then pay directly to the recipient's landlord $1000 per month for at least a semester and will continue to do so until the student has graduated so long as the student continues to meet the minimum requirements. Scholarships are currently set up at Santa Ana Community College and Golden West Community College. OHH has a goal of setting up similar scholarships in every community college in Orange County. The goal is to ensure everyone has the opportunity to gain an education for self-betterment.

OCTLA's theme this year is Generosity. One kind thing. One gesture. A helping hand. Can change a life. Can save a life. As everyone knows, sometimes homelessness is a result of poor life choices, but often times individuals are forced into homelessness due to circumstances beyond their control. OHH is there to help. Indeed, OHH embodies OCTLA's theme of Generosity. Ms. Valentine and her team change people's lives for the better every day.

Please join us in celebrating and raising funds for this magnificent organization by donating an item, vacation getaway, night out on the town, fine wine, etc. for our silent auction taking place at our annual **Top Gun Awards Program on November 12th.**

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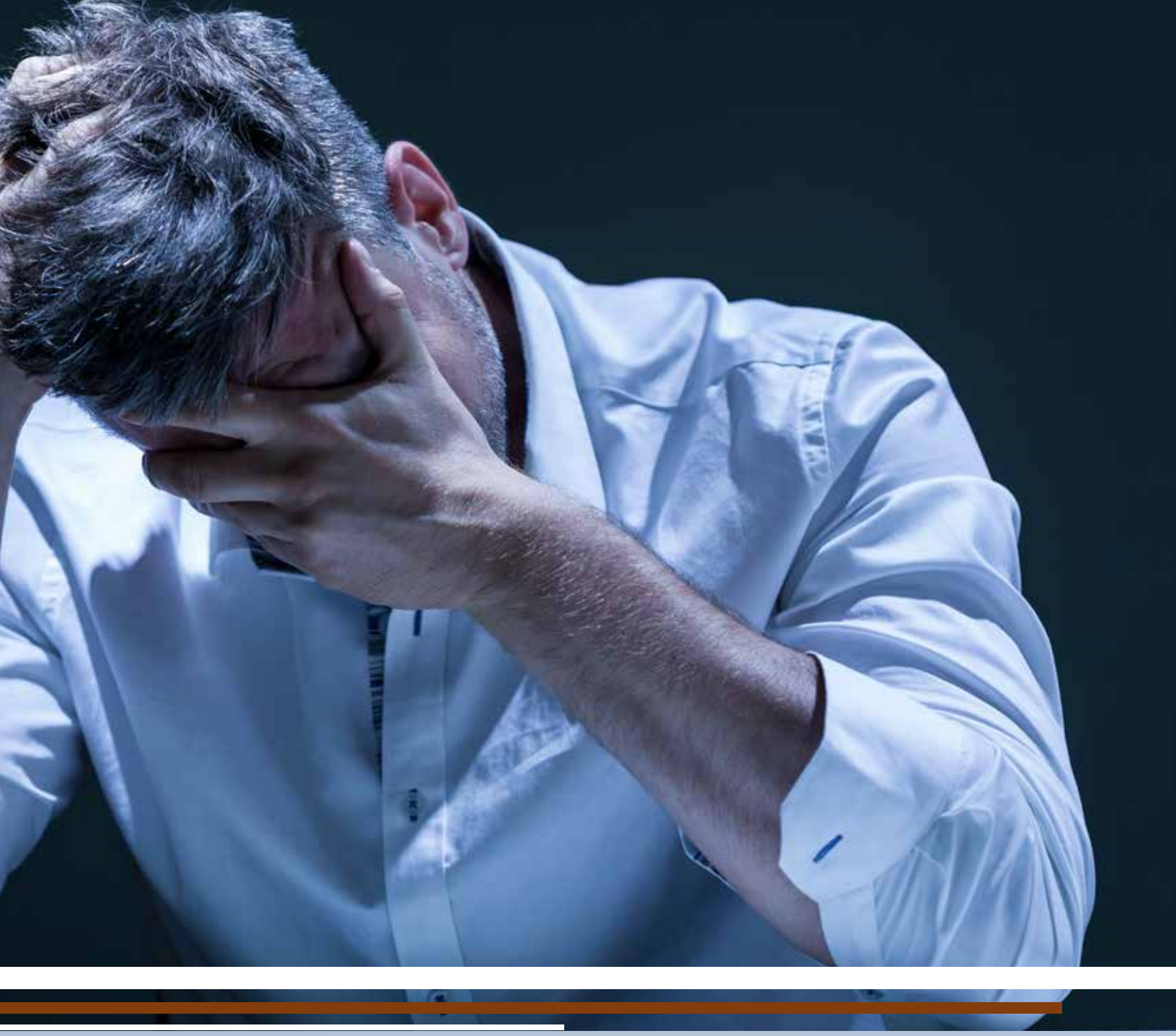
The Loss We Feel Is Real

Greg Dorst JD, CADC II January 21, 2022

With all that has gone on from February 2020 to the present moment, it is time that we take a fresh look at how we are feeling about the changes in our world and how we have responded to loss and uncertainty. All of us feel the stress and anxiety of loss, change and uncertainty and many of us need help to readjust, adapt or reset.

The size and scope of what we are collectively feeling is big and it feels different than anything that we have previously experienced. As an addiction and well-being professional, I help people to move toward a more physically, emotionally and spiritually healthy lifestyle. Now, more than ever, I am contacted by attorneys, judges and law students who have a diminished zest for life as a result of having to cope with significant loss and change in their professional and personal lives. They can't seem to pull themselves out of negative thinking, often using alcohol, food and sleep in ways that are unhealthy just to get through the day. It is great that these brave professionals are reaching out for help; something that most of them have never done before. Many of these legal professionals have tried to implement change on their own using techniques that are available on the internet or through self-help books and articles. With honest resolve, each made some progress and then slipped back into old behaviors. Most are aware that there are really great strategies for attorney well-being and healthy living at our finger tips through organizations like the California Lawyers Association (CLA) and local Bar Associations. On these critical issues of attorney health and well-being, the National Task Force on Lawyer Well-Being produced



a comprehensive report in August of 2017. As a result of this research and the publication of the report, strategies for attorneys to improve the functionality of body and mind are becoming mainstream in the legal community. All of this is in an attempt to raise awareness in the legal profession concerning physical, intellectual, social, emotional, financial, occupational, environmental and spiritual health. Resources are offered through these publications and organizations, which target healthy eating, anxiety and stress relief, meditation and yoga classes along with tips for reducing alcohol consumption during these stressful times. These strategies are scientifically proven to improve anyone's well-being.

There is no lack of access to excellent information concerning holistic health strategies in today's world. There is lots of theory available on health and well-being research and methods yet there is notably very little practice. We know what to do but we can't seem to do it. Moreover, as I work day to day with attorneys who are facing increased alcohol consumption and drug usage along with a seeming inability to accomplish the things that they have to do, I am convinced that in many cases there is an "elephant in the room" and we have to recognize it before we can move forward with a well-being plan. The complex emotion or "elephant in the room" that is getting in the way of practicing tried and true

methods of improving lawyer health and well-being is grief.

Most everyone associates grief with death. However, there is a broader view which encompasses not only death but the loss of something like a relationship, a job, a sacred trust, financial security, a routine, freedom, community and health security. What we have come to believe to be "our life" has been demolished, lost, taken away, restricted or changed with no certainty that anything will ever be the same again. People feel this way about their work, their families and relationships, their communities and even their country. Grief is a complex emotion that cannot be avoided or ignored. Physical symptoms might include fatigue, nausea, lowered immunity, weight loss or weight gain, aches and pains and insomnia. Emotional symptoms pinball from fear to anger to disbelief and include feeling like you're going crazy, feeling like you're in a bad dream, or questioning your religious or spiritual beliefs. There is a deep sense, underlying everything, that something is wrong. A timely article entitled *Coping With Grief and Loss* by Melinda Smith, M.A., Lawrence Robinson, and Jeanne Segal, Ph.D., provides ways to identify losses that are personal to you and the physical and emotional feelings that accompany such losses. Moreover, it describes a path forward with incremental steps designed to allow for healing in these difficult moments of loss and change. As with any good article, including this one, it must be recognized that there are times when mental health professionals are necessary and advisable. If you are suffering and/or feeling suicidal, contact 24-hour Suicide Prevention Lifeline: 800-273-8255 or text 838255.

With grief, below the surface there is a kind of depression, suffering and aloneness. It will keep us from moving forward on our well-being journey until it is recognized and addressed. Grief is natural; ways of working through loss or the feelings of loss are different than all of the attorney well-being strategies that we talk about day in and day out. The language used in working through grief is much different; it is the language of sharing and describing emotions on the road to acceptance. In the recovery field there is a saying, "First things first." Grief work must come first as it is the prerequisite to the change that we would like to see in other areas of our lives. Grief deals with deep causative feelings, beliefs and emotions. The first step is to identify what you are grieving and then recognize that healing through your grief is a journey of accepting current circumstances. Note that this is much different than embarking on a series of changes that will affect well-being.

As we work through our grief toward acceptance of our current circumstances brought on by emotional, social and financial loss, we can actually see the value of well-being strategies and access them. Before, these strategies were beyond our grasp.

Being at peace through acceptance of our current circumstances will help each of us to move forward with new, healthy choices. Just in time for 2022 and beyond.

Greg Dorst is the Southern California Consultant to the Other Bar, Inc., a private nonprofit that helps lawyers, judges and law students to make changes that can save lives and careers. Greg can be reached at gdorst2@gmail.com for confidential help or any questions or comments that you might have. Moreover, www.otherbar.org is a wealth of information for attorney wellness and change.

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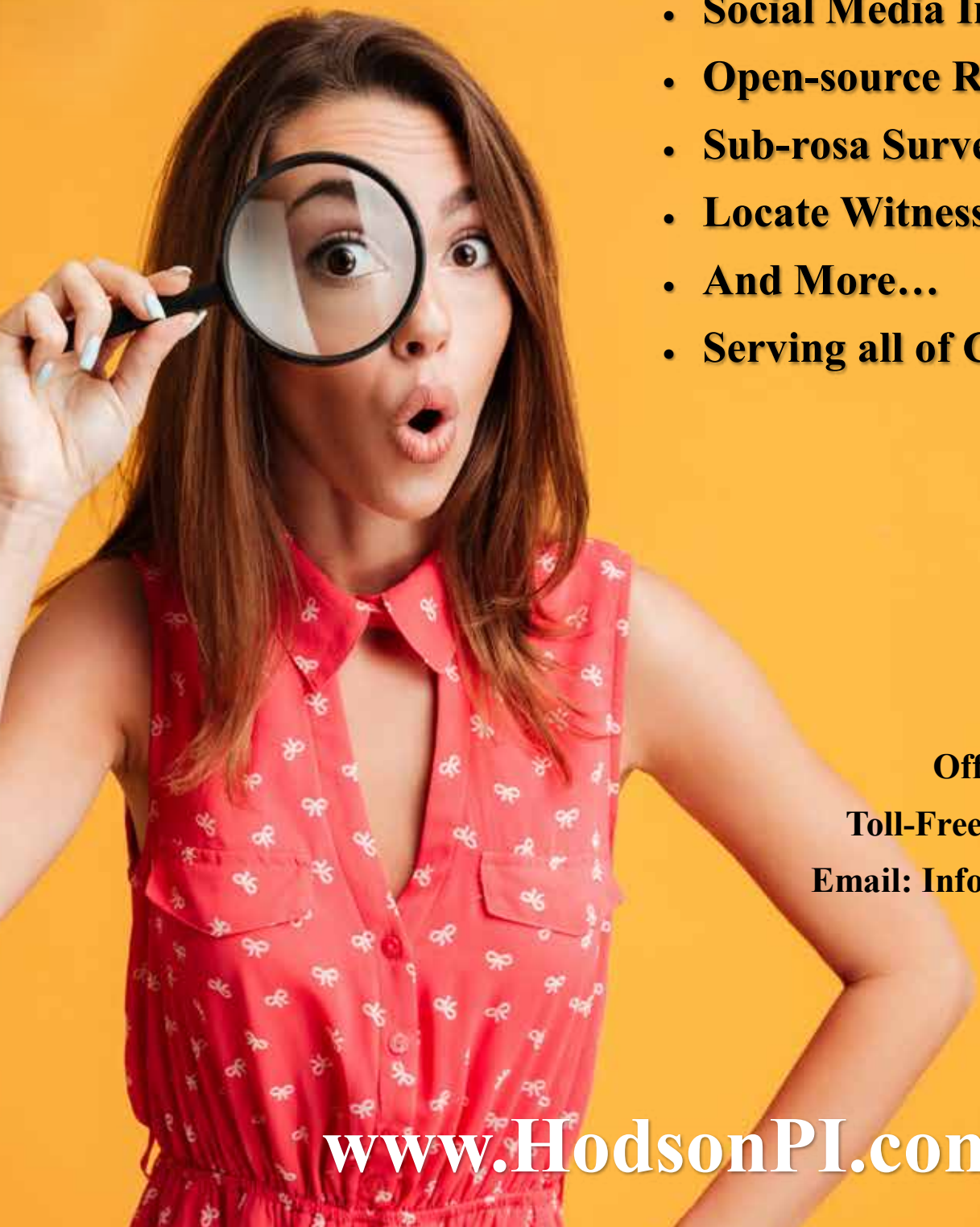

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An Interview with

Judge David A. Hoffer

By Michael Jeandron, Esq.

Q: What was your journey to becoming a judge?

A: From the time I was in law school, I thought about being a judge. For me, judges are kind of the heroes of law school. You read and discuss their opinions. It was natural for me to think that, when I developed expertise, I would make an application. And when the time came, I did.

Q: What type of law were you practicing primarily prior to joining the bench?

A: I worked at a big firm when I started, but my experience is primarily at the US Attorney's office. I was there for almost 12 years, so that's really where I came from. I did two stints, one of five years and the second six-and-a-half years. I loved that work; it was fascinating. As my family grew, I went to a private firm, but then decided to come back. The US Attorney at the time, Nora Manella, re-hired me. She said, we don't bring back everyone who applies, but we'll bring you back. That was great to hear. It was one of my best moments. I really enjoyed both stints, but especially the second one. By then, I had the experience to run my own investigations, and it was particularly interesting work. I also worked mainly with the FBI. They are just a great agency in terms of investigation, background, and grand jury work. One of the best parts of the job was working with excellent investigators.

Q: What have been your assignments as a judge since you have been appointed to the bench?

A: My main assignment was as a felony trial judge. I was on the felony panel for about 12 years of the 17.5 years that I have been on the bench. I handled 265 felony jury trials. Most people who have done that many trials on the felony panel stay there, so my colleagues were surprised when I applied for this assignment on the civil panel 2.5 years ago. I'm not the only one, there are a few other judges who have done it too. I'm so happy that I did.

Q: Why did you switch to the civil panel?

A: The interesting thing about civil is that all the cases are different. The Penal Code is kind of limited to a few books on the shelf; the civil law is everything else. I get so much variety in this assignment. The fact is, if you do criminal year after year, you are going to see the same crimes. Every case is different and requires individual consideration and every trial is especially different, but coming to civil has been a real breath of fresh air -- mainly because it's so unlike what I was used to. I have not looked back. I've talked to a number of judges

who have done the same switch, and I think they've enjoyed it too. For me, the change has been excellent. One of the best things about being a judge is that you can change assignments. You're not locked in.

I also did a stint for two years in juvenile court. This was mainly criminal work too because it was on the delinquency side, which means that I was handling cases involving juveniles who had committed crimes. Of course, the proceedings are altogether different when you're dealing with minors. It is an adjudication, not a trial, and it's a collaborative process. You're trying to develop the best plan for the minor even if they perpetrated a crime. I did that for two years; it was an interesting experience. I might have stayed and done the dependency side, which are the kids who are neglected or abused. That's a difficult assignment. I probably would have switched to that side of things to develop further experience in juvenile law, but the presiding judge at the time, Tom Borris, asked me if I wanted to come back to felony work. I had been in the felony assignment for a time before I did juvenile, so I took that opportunity and ended up here, in the tower, handling felony cases one after another. When you've seen that many criminal cases, you've got stories galore.

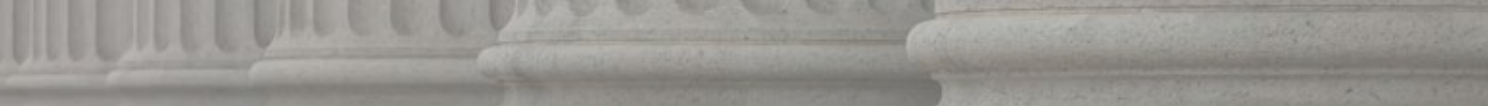
Q: If you were not a judge what would your profession be?

A: I had two choices in college based on my aptitude. One was to go into law and the other was to be a professor of English Literature. I did very well in my English classes, and I think I could have gone on and sought an advanced degree and written and taught literature. It's ironic because, although I chose law, my daughter chose to seek the advanced degree. She's in a Ph.D. program at UCI for English Literature. Everything comes full circle. For myself, I'm glad about the choice I made

Please join OCTLA in congratulating STEPHANIE HU of Tesoro High School as this year's recipient of the of the Constitutional Rights Foundation, Orange County (CRF-OC) Judge Henry Moore Award for Outstanding Orator.

The student recipient is chosen based on nomination from judges and attorney scorekeepers who participate in the Mock Trial Program. Stephanie was also awarded a $2,500 scholarship sponsored by OCTLA.

Congratulations once again to Stephanie Hu on your award, and we are expecting big things for you and your future legal career.



because I've had so many fascinating experiences in the law. There are some lawyers who don't like what they do. I've certainly met a lot of them, but I was never in that group. I have always counted myself fortunate. And then here on the bench, I have dealt with so many interesting situations in trial. It sometimes seems to me that everything that could happen, has. Of course, every time I think that I'm surprised when something new occurs.

Q: What do you like to do outside of the courtroom?

A: I'm a family person. My parents and in-laws are around. They live locally. My kids are grown up, but two of them still live in the house with us. My wife and I are very active. We are currently planning travel to make up for the lost time during the pandemic. At home, there's always something happening. I really enjoy spending time with my family.

For exercise, I like to swim. I think a lot of judges hit the gym. I see some running at lunch time, but I don't know anyone else who engages in swimming regularly. Before the pandemic, I would be at the aquatic center near where I live maybe five or six times a week swimming laps. I don't go fast or on the clock, but I do use all the competitive strokes and I just love it.

In my free time, I like to read. I mainly read history, but every once in a while I'll take a break and read a novel. I've read several interesting histories recently, and I think it's probably time that I go back to fiction again. I'm trying to think about what novels I should have read but have not, and I'll add those to the list.

Q: What is your favorite book?

A: Out of all the history books I have read recently, Barbara Tuchman's *"The Guns of August"* is the best. It talks about the first month of the First World War, but it's so well written and so informative about the world view of the parties before the Great War. It's my favorite of the books I've read recently.

Q: Can you share some of your stories from your criminal days?

A: One of the cases I handled was featured on "Dateline." It was a fascinating case involving the murder of a beloved young woman that was unsolved for many, many years. Her family had to wait all that time for justice to be served. Not only was there a conviction at trial, but, at sentencing, the defendant unexpectedly confessed to committing the crime. It was an immense relief to the heart-broken family to know what happened. It was extraordinary.

I also handled the trial of a man accused of shooting a police officer. In addition to the shooting itself, what is incredible about the case is that the man had been found "not guilty" of a completely separate crime in a previous trial I had handled. He was convicted of the attempted murder of the officer.

I've even had my Perry Mason moment where the complaining witness admitted in open court that it was someone else, not the defendant, who committed the crime.

Q: What is the best part of your job?

A: The best part of my job is getting to know the lawyers who appear before me and getting to see the jurors coming in. It's not the paperwork; it's the people. You go out into a courtroom and see all those bright shining faces. As an attorney, I was always trying to figure out who should be on my jury, but, as a judge, I don't need to do that. I can just go out and enjoy it.

Q: Do you feel like jurors struggle more when civil cases involve large damages?

A: I am pleased with jurors' willingness to serve in civil cases. I have not run into any hesitancy whatsoever on the damages amount. It does come up in my questions to jurors and in counsel's, but I have not seen jurors say that they would hesitate. I don't permit counsel to talk about the exact amount that they're going to be requesting during voir dire, but I do allow them to, at least, reference a large amount. I think the really important point is that, in all my trial experience, I have more faith in the jury system now than when I started out as a judge. I've seen so many jurors serve admirably in difficult cases. Orange County courts have responded well to the pandemic because of the people of Orange Country who lined up for jury duty throughout it. My hat is off to the court administration for the work they did. But none of it could have happened without the willingness of the people to serve and their commitment to justice. It's inspirational; it always has been. Working with juries is what keeps me going.

Q: What advice would you give a new lawyer?

A: The advice I'd give to a new lawyer would be to remind them that, in addition to being an advocate for their client, they're also an officer of the court. That's really important. They're not always going head to head. Very frequently they can work with the judge to allow the trial or hearing to proceed from stage to stage, and I

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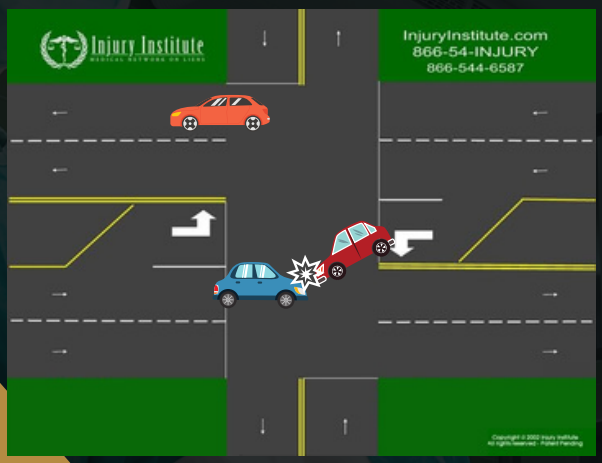

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think that's being an officer of the court. Advocacy is first and primary. I love it when counsel stand up for their client and their position, but it should not displace the honesty and integrity necessary for the court to provide a fair trial.

Q: What do attorneys do in your courtroom that drives you crazy?

A: When it comes to trials, what bothers me is that some attorneys don't show respect for the jury's time or don't remember who the audience is for their arguments or their statements. I think keeping in mind that there is a jury present and that they have a limited attention span would help a lot of attorneys to be more effective. Sometimes we'll be in a chamber's conference, and I'll look at counsel and realize that they're objecting to something that has nothing to do with their case one way or another. The jury is waiting, and I sometimes think that they do not place a high enough importance on that.

Q: What do you wish attorneys knew about the job of a judge that they don't appreciate fully?

A: I wish they knew that the court has a lot of law and motion work so the fact that my tentative ruling does not deal with every argument that they made doesn't mean that I didn't read and consider it. It's just that, in the time available, the court can't separately respond in writing to every argument. In my tentative rulings, which are very lengthy, I can't get to everything, but I have read and considered all the arguments. I think counsel should keep in mind that tentative rulings are not appellate opinions, and they're not intended to be. They're intended to set forth the court's ruling and the reasons for that ruling.

Q: What are some tips for effective opening statements and closing arguments?

A: The opening statement should be a narrative. It depends on what position you have at trial, but, if you can, make it a story. Just substitute "the evidence will show" for "once upon a time" and tell a story. I don't like to hear when counsel tell the jury what each and every witness will say one at a time. Let the jury discover it. There should be some drama. People think in terms of narratives and this is your one chance to frame your case in that way.

When it comes to the closing argument, which I call summation, you need to be analytical. At that point, you need to go count by count, element by element. I'm going to instruct the jury to do just that so the argument should be organized in this way. You can do the jury's work for them. You need to state what the cause of action is, state each element one at a time, and show the jury how that element has been established. Don't give them all the elements at once. They can't absorb all of that. Again, you need to think in terms of what the jury can follow and understand. This organization actually makes lawyers' lives easier because the structure for this important part of the trial is really provided to them by the pleadings. Rebuttals are a different story in which you should go immediately to what is at issue.

Q: Given that the pandemic has changed a lot about the practice of law, how do you feel about an in-person witness versus a video witness during a trial?

A: I think it's critical that the main witnesses be in person, but video appearance really works for a lot of the peripheral witnesses. I think that's one of the things that may stick around after COVID. If counsel is going to call a witness on video, they need to come into the courthouse in advance and make sure they set it up and organize it in a way where it works. We were able to do that with two witnesses in the last trial, and I thought it went very smoothly -- but again they did have technical people with them and they set it up in advance. We do have platforms available, and I think it works.

Q: How do you feel about mandatory settlement conferences?

A: We set them in practically every case and our temporary judges settle a lot of cases. There are some that have done mediation or their own settlement conference, so there's no point, but, other than that, we set them in every case. I do a lot of voluntary settlement conferences, and I've been very successful. There are times where I talk to counsel about a way to look at a case and maybe they haven't looked at it that way. When I become conversant with the case through law and motion work, I'll often invite counsel to come in for a VSC. If it's a jury trial, they can stipulate to permit the court to serve as a settlement judge.

Q: Do you feel like lawyers file too many discovery motions?

A: I wouldn't say that. When it comes to discovery motions, the really critical thing is to meet and confer. That requires more than just sending a letter. It requires a telephone call or an in-person meeting. If they've done that and they truly can't resolve the dispute, then they have to come to court -- what else are they going to do? I was a practicing lawyer, and I filed those motions where the other side was stonewalling. So I look at it from that point of view. As long as they've tried to resolve it informally, then they can come to court.

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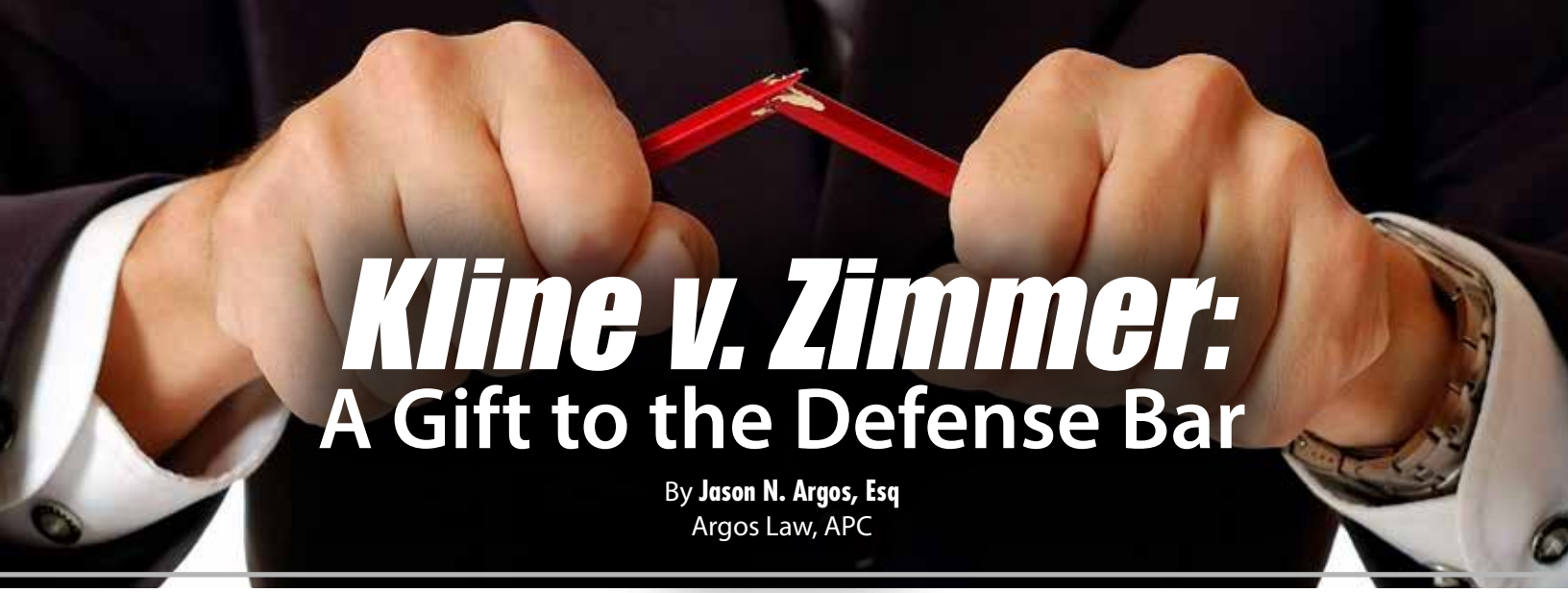

Kline v. Zimmer:
A Gift to the Defense Bar

By **Jason N. Argos, Esq**
Argos Law, APC

For any trial attorney who has read the Court of Appeal's recent decision in *Kline v Zimmer*, I suspect your initial reaction to this opinion had to be "what the f***ing f**k?" The reason being is that we have (for decades), operated under the belief that an expert's opinion on the issue of causation must be made to a *reasonable medical probability* (*Leyva v. Garcia* (2018) 20 Cal. App.5th 1095, 1104). We have used this language when cross-examining a defense expert in deposition, when defending our own experts during deposition, and again in trial. Most judges, even those new to the civil panel, seem to know to look out for the buzz words "reasonable medical probability," when ruling on objections during the testimony of a medical expert in a personal injury trial.

It has been this author's understanding that an expert's opinion on the cause of a plaintiff's injury must be made to a reasonable medical probability because: (1) it mirrors the plaintiff's burden of proof; i.e., the more-likely-true-than-not-true standard (or, as Bob Simon says, the "yeah, probably" standard); and (2) when the issue of causation is outside the experience of a lay jury—which is generally true in complicated medical and personal injury cases—the evidence must satisfy certain evidentiary thresholds that could be accepted by the jury as having satisfied the plaintiff's burden of proof.

This second prong is significant in every personal injury case; particularly, medical practice and products liability cases. This is true because in medicine, almost anything is *possible*. Just like it's possible that Jason Argos, rather than Ben Ikuta, can publish his analysis of a recent appellate court decision in a legitimate legal publication like *The Gavel*. It's also possible that a plaintiff who suffered two fractured ribs and a punctured lung during a motor vehicle accident might have also suffered those same injuries exchanging insurance information with the at-fault driver. However, these types of possibilities are not enough to satisfy the evidentiary thresholds we all face in litigation on this very tricky issue of causation. That was, until three justices from the Division 8 in the 2nd District published their opinion in *Kline v. Zimmer*.

Litigation History

To provide some context, here's the history of the *Kline* case:

- 2007: Gary Kline undergoes a total hip replacement during which a Durom Cup, manufactured by Zimmer, Inc., was implanted into the acetabulum.
- 2008: Kline undergoes a revision hip surgery because the first surgery failed.
- 2009: Kline was released from the care of his physical therapist and surgeon and was noted to be "back to normal."
- 2010: Kline starts treating with a rheumatologist for continued complaints of pain. This care goes on for eight years.
- At some point, Kline made the decision to sue Zimmer on the basis that the Durom Cup was defective and caused him 12+ years of pain and suffering, including a revision surgery and various forms of invasive and non-invasive treatment.
- In 2015, a jury awarded Kline $9,000,000 in non-economic damages and approximately $150,000 in economic damages. However, a motion for new trial was granted based on attorney misconduct and excessive damages.
- After two appeals, the second trial proceeded in 2019 and Kline was *again* awarded nearly $8,000,000 in non-economic damages.
- Zimmer again moved for a new trial. Its grounds this time, however, was that the trial court erred in precluding the testimony of the defense expert and plaintiff's treating physi-

cians on the issue of causation because the defense experts could not proffer their opinion on causation to a reasonable medical probability. Indeed, the jury heard no evidence from the defense on the issue of causation during the defendant's case-in-chief. The trial court denied Zimmer's motion for new trial and Zimmer appealed.

- Court of Appeal found that a new trial was warranted. Since Zimmer did not have the burden of proof, Zimmer should have been allowed to "challenge" the plaintiff's expert opinions.

Appellate Court's Findings

This author's understanding of the Court's decision is as follows:

(1) The "reasonable medical probability" standard lies only with the party who has the burden of proof, which, in our personal injury cases, is generally the plaintiff. In other words, it is perfectly acceptable for the defense to put on evidence of "possibilities," for the sole purpose of challenging the causation opinions of the plaintiff's expert rather than having to prove an actual alternative cause of the Plaintiff's injury. To hold otherwise would be, as the Court articulated on page 13 of its opinion, "manifestly unjust and unduly burdensome on defendants."

(2) If the defense intends to prove that a party other than themselves or the plaintiff is responsible for causing the plaintiff's injuries, then the defense—in this limited scenario—would need to provide expert testimony that met the "reasonable medical probability" standard.

(3) A trial court maintains its discretion to exclude expert opinions that are lacking in evidentiary support, or on speculative or conjectural factors.

To Challenge Is Not To Prove

As to point #1, the Court justified its conclusions in this case by arguing that the plaintiff's burden to prove their case continues throughout the presentation of the defendant's case in chief, during which time a defendant can most certainly challenge or undermine the plaintiff's prima facie case. In essence, because the defense has no obligation to prove anything, the evidentiary standards that apply to the plaintiff and his or her experts' opinions do not apply to the defense expert. That, "to challenge" is not the same as "to prove," and that it is entirely permissible for the defense and their experts to cast doubt on the accuracy and reliability of the plaintiff's experts' opinions with opinions that rise only to the level of a possibility, rather than a probability.

Anyone who has tried a medical malpractice or products liability case knows that the inherent prob-

lem with this opinion is that in medicine, almost anything is possible. Take for instance the case of a baby who suffered a brachial plexus injury during delivery because of an obstetrician's mishandling of a shoulder dystocia. In these cases, the most common cause of the damage to the baby's cervical nerve roots is traction, i.e., the pulling on the head or neck of the baby to get the shoulders released from the birth canal. Traction causing brachial plexus injuries is well documented in the literature and a conclusion that is widely accepted by obstetricians and pediatric neurologists. Nevertheless, we routinely encounter defense experts who (after having sold their soul to an insurance company) testify at deposition that the mom's maternal forces during the labor process could have also caused the injury to the child. More times than not, this same expert will concede that they cannot offer that opinion to a reasonable medical probability but will say… "*it's possible.*"

So here we are, at trial, with the defense expert on the stand telling the jury that it is most certainly *possible* that the child's permanent paralysis is the result of his mom pushing too hard during the labor process. On cross, I'm successful in getting the expert to concede that this opinion does not rise to the level of a medical probability, but only a possibility, and that aside from the Journal of Obstetrics for Hamsters, there is no other literature to support this opinion. Despite that, the jury is left with this opinion and will most certainly have to consider it during their deliberations.

One of the many issues with this awful outcome was even identified by the *Kline* Court on page 9 of its opinion where it stated, "[t]o allow a jury to consider a claim where the plaintiff's prima facie showing falls short of reasonable medical probability *would be to allow the jury to find the requisite degree of certainty where science cannot*: 'If the experts cannot predict probability in these situations, it is difficult to see how courts can expect a jury of laymen to be able to do so.'" [citations omitted; emphasis added].

That's exactly right! It's also why the Court's conclusion is flawed. Allowing a defense expert to offer opinions for the sole purpose of undercutting the reliability of the plaintiff's expert's opinion will lead to disastrous consequences. Defense experts can and will opine as to ten or more different causes of the plaintiff's injuries, indicate that each is *possible*, and then sit down. Juries are already tasked with the

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difficult job of having to assess the credibility of witnesses and weigh the evidence presented to them. They will now also be forced to grapple with multiple, if not a dozen, potential causes for the plaintiff's harm, most of which have zero evidentiary value.

Another disconcerting byproduct of this decision is that defense attorneys, with unlimited insurance company resources, will be incentivized to retain a cadre of experts all of whom have no intention of offering an opinion to reasonable medical probability. Rather, they will show up to their deposition with a case study from the Fujian Journal for Natural Health & Wellness, or the Annals of Veterinary Surgery in Eastern Europe, to support their opinions on causation. One key point missing from the *Kline* Court's opinion is the point that there is a reason for why it is supposed to be difficult to find an expert either supportive or not supportive on the issue of causation: to prevent frivolous lawsuits **and** frivolous defenses.

Recommendations Moving Forward

Like how some trial attorneys use *Sanchez* as a sword, it will be similarly critical to go on offense with the *Kline* opinion. For instance, requests for admission on the issue of causation might prove useful, i.e., getting the defense to admit that the defendant's conduct was a substantial factor in causing the plaintiff's harm might preclude the defense from offering any opinion(s) on causation at trial. However, if you are not confident that written discovery will be fruitful (because it rarely is), I suggest getting the defense expert to acknowledge which of their "possibility" opinions are either remote or trivial. Before trial, file a motion *in limine* using a 352 analysis, directing the Court's attention to the defense expert's deposition testimony and use the notes in CACI No. 430 wherein the Judicial Council talks about remote and trivial factors being misleading for a jury. As indicated above, the *Kline* Court did not deprive the trial court of its ability to exclude an expert's opinion if it feels the opinion is too speculative. I'm not entirely confident these motions will be successful. However, we must make the attempt for our clients.

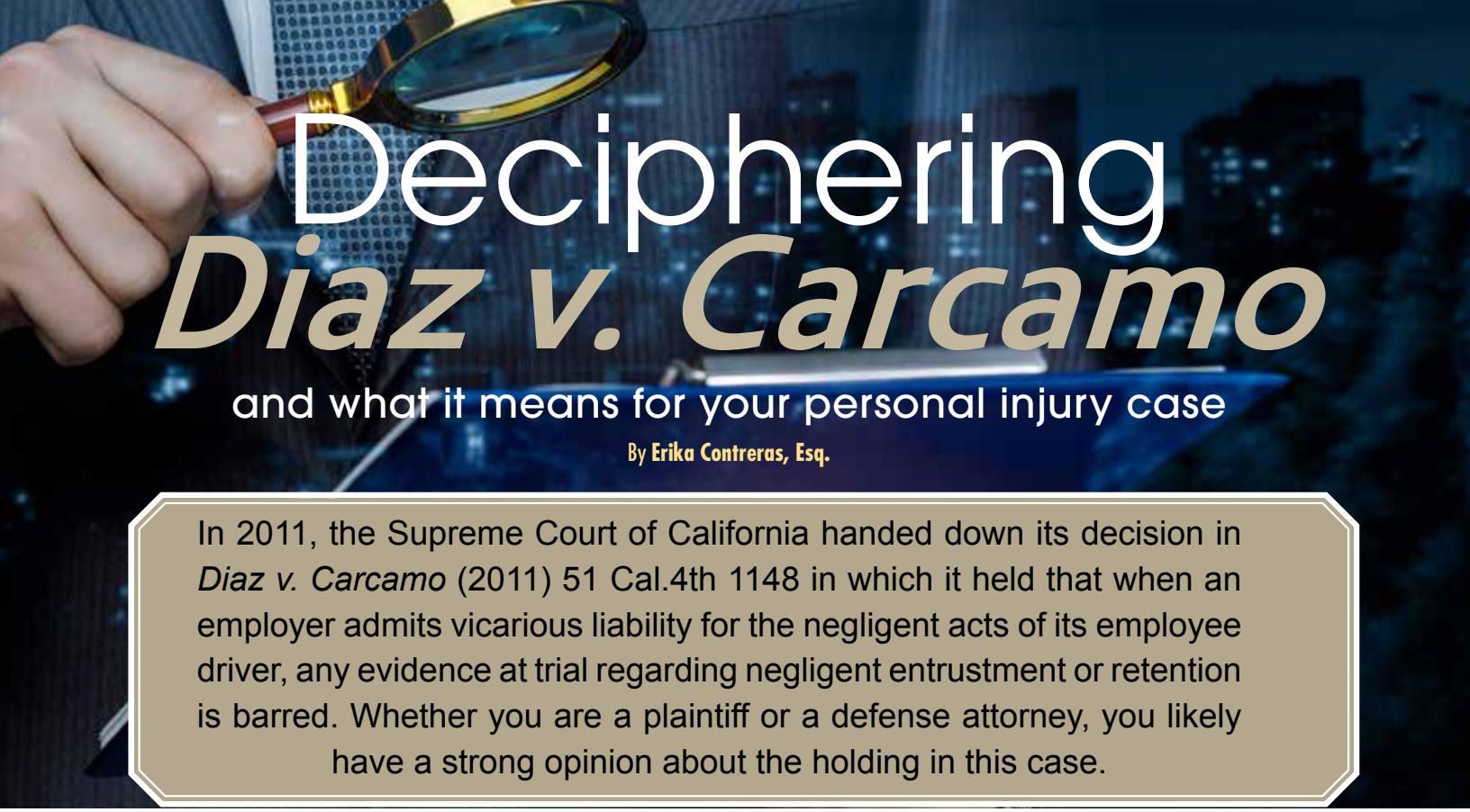
Conclusion

I'm not going to sugar coat it… this opinion is tortuous to our practice. It is remarkably prejudicial to plaintiffs, who already have a difficult road to hoe in contested liability cases. It will alter settlement discussions by driving down case value, while conspicuously encouraging the defense and their experts to throw as many wet noodles as possible on the wall to see what sticks.

For this author, the *Kline* Court's opinion in a way, speaks to the current state of American culture where doubt and skepticism is revered, and faith and trust in science and good medicine is no longer sacred.

Jason N. Argos, Esq.

Jason Argos is the Founding Attorney of Argos Law, which specializes in medical malpractice and catastrophic personal injury, including but not limited to birth injury and wrongful death. He can be contacted at **jason@argos-law.com**



Deciphering *Diaz v. Carcamo*

and what it means for your personal injury case

By **Erika Contreras, Esq.**

In 2011, the Supreme Court of California handed down its decision in *Diaz v. Carcamo* (2011) 51 Cal.4th 1148 in which it held that when an employer admits vicarious liability for the negligent acts of its employee driver, any evidence at trial regarding negligent entrustment or retention is barred. Whether you are a plaintiff or a defense attorney, you likely have a strong opinion about the holding in this case.

Since the 2011 Supreme Court decision, both sides have attempted to reconcile what exactly the *Diaz v. Carcamo* ruling means for their clients. The defense has attempted to broaden the ruling, arguing that any discovery regarding negligent entrustment, hiring, retention or supervision is barred when an employer admits vicarious liability. Some have even gone as far as to argue that the corporate defendant should be dismissed before trial or not appear on the verdict form.

The Plaintiff's side has fought to limit the ruling, arguing that the findings in *Diaz* only apply to the admission of evidence at trial and do not preclude a party from propounding discovery on the issues of hiring, retention, supervision and entrustment. Additionally, if the Plaintiff is alleging punitive damages against the corporate employer, discovery regarding acts that may constitute oppression, fraud or malice is permitted even under the *Diaz* holding.

In order to understand how the *Diaz* decision may affect your case, it's important to understand the facts that gave rise to the decision as well as the subsequent cases that have expanded or clarified the ruling.

The *Diaz* case involved a serious multiple vehicle accident in Ventura County, California. The plaintiff, Dawn Diaz, was driving an SUV southbound on the highway when her vehicle was struck by a northbound out of control vehicle driven by Karen Tagliaferri. Ms. Tagliaferri attempted to pass a northbound tractor trailer but, instead hit the tractor trailer causing her vehicle to lose control. The tractor-trailer was being driven by Jose Carcamo in the course and scope of his employment for Sugar Transport of the Northwest, LLC. Ms. Diaz subsequently sued the driver of the out of control vehicle (Tagliaferri), Carcamo (for negligent driving) and his employer, Sugar Transport (for vicarious liability for Carcamo as well as negligent hiring/retention).

In response to Diaz's claims, Carcamo and Sugar Transport both denied liability and argued that the third driver (Tagliaferri) was solely at fault. Diaz alleged that Carcamo sped up to keep the other driver from passing, and provided expert testimony suggesting that Carcamo should not have been traveling in the center lane.

During the trial, the Court admitted evidence of Carcamo's driving and employment history, as offered by Plaintiff in support of her negligent hiring claim. The evidence showed two prior accidents involving Carcamo: one in which he was at fault and was sued, and the other occurring only 16 days before the at-issue accident involving Ms. Diaz. Other evidence showed that Carcamo was in the country illegally and had used a "phony" Social Security number to obtain employment, that he had been fired from or quit without good reason three of his last four driving jobs, that he had lied in his application to work for Sugar Transport, and that,

when Sugar Transport had sought information from Carcamo's prior employers, the lone respondent gave him a very negative evaluation. *Diaz*, *supra*, 51 Cal.4th at p. 1148. Sugar Transport objected to the admission of Carcamo's driving and employment history as well as jury instructions on Plaintiff's negligent retention and hiring claims. Before closing arguments, Sugar Transport stipulated with Plaintiff that it was vicarious liable for Carcamo's negligence.

The jury found that (1) both defendants Tagliaferri and Carcamo had driven negligently, (2) Sugar Transport had been negligent in hiring and retaining Carcamo as a driver, and (3) Sugar Transport's negligent retention was a cause of Plaintiff's injuries. The jury allocated fault for the accident among all three defendants: 45 percent to Tagliaferri, 35 percent to Sugar Transport, and 20 percent to Carcamo. It awarded the Plaintiff over $17.5 million in economic damages and $5 million in noneconomic damages. Under the judgment, Tagliaferri and Sugar Transport were each jointly liable for all of the Plaintiff's economic damages but only severally liable for part of her noneconomic damages—Tagliaferri for 45 percent and Sugar Transport for 55 percent (its 35 percent plus its employee Carcamo's 20 percent). *Id* at p. 1153.

Although the Court of Appeal affirmed the Judgment, the Supreme Court granted review. The California Supreme Court held that when an employer admits vicarious liability for its employee's negligent driving, the damages attributable to both employer and employee are "coextensive." *Diaz*, 51 Cal.4th at p. 1159. The employer becomes liable for "whatever share of fault the jury assigns to the employee." *Id*. The Court reasoned that to then allow claims of negligent entrustment, hiring, or retention in situations where the employer has admitted vicarious liability would "subject the employer to a share of fault *in addition* to the share of fault assigned to the employee." *Id*. at p. 1160 (emphasis in original). The Court noted that claims of negligent entrustment, hiring, or retention in situations where the employer has admitted vicarious liability are "superfluous" and expose the employer to the possibility of being assigned an "inequitable apportionment of loss." *Ibid*. Therefore, the Court ruled that an employer's "admission of vicarious liability bars claims for negligent entrustment, hiring, or retention." *Ibid*.

So what does this mean for your case?

Does the *Diaz* ruling apply to my complaint? The *Diaz* ruling was

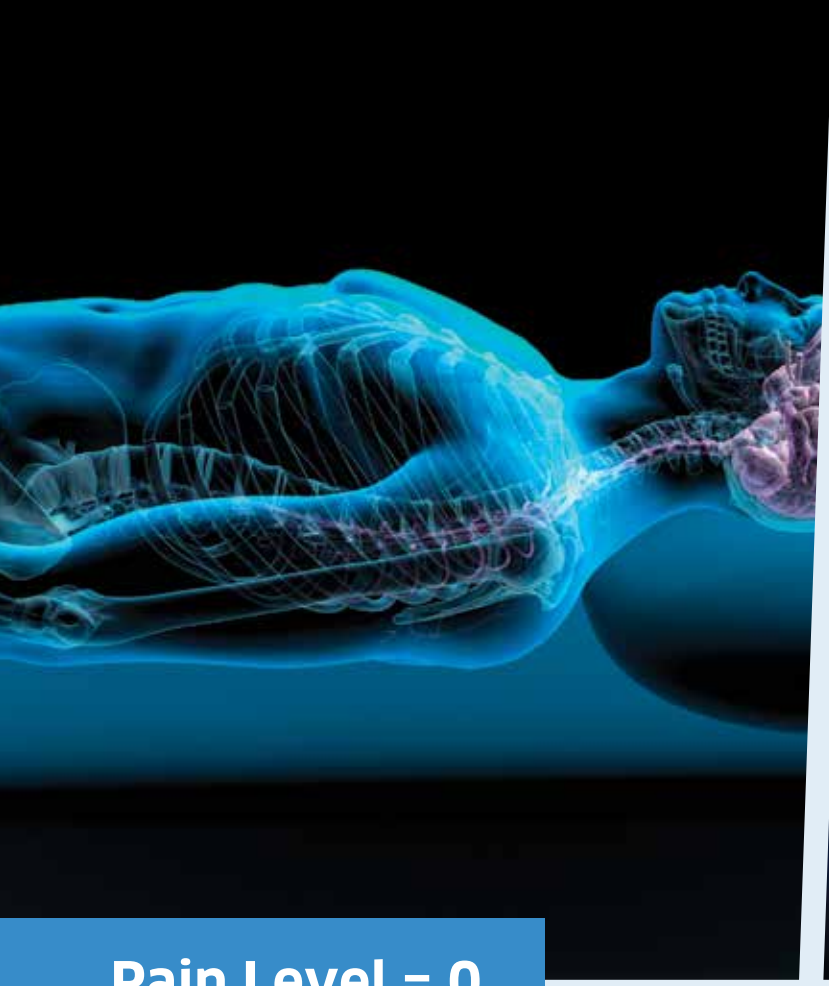
very specific as to what it did and did not encompass. For instance, the claims against the employer discussed by the Court in *Diaz* are specific to vicarious liability and negligent hiring/retention. If the complaint against an employer does not include a negligent hiring and retention cause of action, it would fall outside of the *Diaz* ruling. Similarly, if the complaint alleges a direct negligence claim against the employer rather than just vicarious liability, the cause of action would fall outside of the *Diaz* ruling. Although claims for negligent training and supervision were not specifically discussed in the *Diaz* decision, those claims may be thought of similarly to hiring and retention. These claims, like hiring/retention, focus more on the employer's negligence as it pertains to the driver instead of the employer's own negligent acts.

Any claims against the employer for negligent maintenance or repair of the vehicle involved in the collision would also fall outside of the *Diaz* ruling as they encompass claims of direct negligent acts by the employer.

If your complaint includes a claim for punitive damages against the employer, that too would fall outside of the *Diaz* holding. In *CRST Inc. v. Superior Court of Los Angeles County*, (2017) 11 Cal.App.5th 1255, the Court analyzed whether, under *Diaz*, admission of vicarious liability would bar the recovery of punitive damages. The Court concluded that it did not. *Id*. at p. 1264. *Diaz* did not include a claim for punitive damages. As a result, the employer's admission of vicarious liability in *Diaz* made any allegations or evidence bearing on the employer's own misconduct irrelevant. *Ibid*.

In contrast, when punitive damages are alleged, the employer's misconduct and/or fault are front and center of the claim. Since punitive damages are intended to deter general types of misconduct, they are recoverable for nondeliberate or unintentional torts including, but not limited to, vicarious liability. *Merlo v. Standard Life & Acc. Ins. Co.* (1976) 59 Cal.App.3d 5, at p. 18. For that reason, a vicariously liable employer may be subject to an award of punitive damages when an employee is negligent.

Under Civil Code section 3294, an employer cannot be found liable for punitive damages based upon acts of its employee unless "the employer had advance knowledge of the unfitness of the employee, and employed him or her with a conscious disregard of the rights or safety of others, or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression,



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fraud, or malice." Civil Code section 3294(b), as it relates to a claim for punitive damages, statutorily authorizes the use of previous acts of an employee in determining punitive damages against an employer. In other words, in order to claim punitive damages a Plaintiff must prove the employer's advanced knowledge of the unfitness of the employee and employer's willingness to continue the employment with a conscious disregard of the rights or safety of others. This cannot be done without admitting evidence of negligent hiring and retention.

In *CRST*, *supra*, the employer argued that barring the recovery of punitive damages from an employer who admits vicarious liability would promote beneficial public policies and encourage employers to admit vicarious liability. *Id*. at p. 1265. The Court disagreed and reasoned that "if the *Diaz* . . rule were extended in the manner *CRST* suggests, employers indifferent to public safety might find it more profitable to admit vicarious liability when sued, and treat any resulting compensatory damages as part of the cost of doing business, rather than remedy practices that enable them to employ unsafe drivers." *Id*. at p. 1265.

Does *Diaz* affect pre-trial discovery? In California, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Code of Civ. Proc., §2017.010. The requested information does not have to admissible at trial to be discoverable. *Greyhound Corp v. Superior Court* (1961) 56 Cal.2d 355, 391; *Volkswagen v. Superior Court* (2006) 139 Cal.App.4th 1481, 1490-91. Because of the broad scope, discovery statutes are interpreted liberally in favor of discovery. *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.

In *Diaz*, the Plaintiff had ample evidence of Carcamo's driving and employment history, which included two prior accidents, defendant's use of a false Social Security number as well as a very negative evaluation by a former employer. *Diaz* at p. 1153. This is consistent with the parties conducting discovery on the issues of negligent hiring and retention. It was this evidence that Defendant sought to exclude. The *Diaz* analysis dealt

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specifically with whether documents and information obtained in discovery were admissible at trial in order to prove negligent hiring and retention. The analysis does not touch upon whether or not discovery on these topics is permitted.

That being said, in order to determine whether punitive damages should be alleged in any case a certain amount of discovery is necessary. Since the admission of vicarious liability does not foreclose a party's ability to allege punitive damages, this is still a viable claim that needs to be explored. To preclude the plaintiff from conducting discovery into any potential claim would not be consistent with California's liberal discovery rules and may unfairly bind the hands of a claimant.

Finally, in order for the *Diaz* analysis to apply, the employer defendant has to actually admit vicarious liability. Citing *Diaz* as a boilerplate objection to discovery requests, without the admission of vicarious liability, would be meaningless.

Who should be named on the verdict form?

Once the defendant employer admits vicarious liability, that defendant remains a party in the lawsuit and must see the case through trial. Since the *Diaz* decision, counsel representing defendant employers have been trying to change that.

One argument is that once the employer admits vicarious liability, and that is the only claim against the employer, there is no longer a viable claim against the employer. Plaintiff should be prohibited from pursuing independent negligent claims against defendant employer because doing so would subject it to a share of fault in addition to the share of fault assigned to the defendant driver in violation of the *Diaz* holding. As a result, the Court should dismiss the claim which is barred as a matter of law.

Neither the *Diaz* or *CRST* analysis discuss the dismissal of the employer defendant once vicarious liability has been admitted. Frankly, on the plaintiff's side, there is no reason to dismiss a corporate defendant before trial simply because that employer defendant admitted vicarious liability. As the case progresses, having the employer defendant in the case facilitates the production of certain documents and witnesses, which may be difficult to obtain otherwise.

Another argument is that *Diaz* stands for the proposition that an employer should not be named on the verdict form after admitting vicarious liability. Specifically, ". . .when a plaintiff alleges a negligent entrustment or hiring cause of action against the employer and the employer admits vicarious liability for its employee's negligent driving, the universe of defendants who can be held responsible for plaintiff's damages is reduced by one—the employer—for purposes of apportioning fault under Proposition 51. Consequently, the employer would not be mentioned on the special verdict form. The jury must divide fault for the accident among the listed tortfeasors, and the employer is liable only for whatever share of fault the jury assigns to the employee". *Diaz v. Carcamo*, 51 Cal. 4th 1148, 1159.

When evaluating this argument, it is important to remember what the Court in *Diaz* was trying to address. In the initial trial, despite the admission of vicarious liability by Sugar Transport, the jury in *Diaz* allocated fault for the accident among all three defendants: 45 percent to Tagliaferri, 35 percent to Sugar Transport, and 20 percent to Carcamo. Because the verdict form had separate lines for Sugar Transport and its employee, Carcamo, Sugar Transport ended up with two shares of fault totaling 55 percent (its own 35 percent plus Carcamo's 20 percent).

In analyzing the apportionment of fault of the verdict, the Court looked to Proposition 51 which was enacted by California voters in 1986. Proposition 51 limits the scope of joint liability among defendants to ensure that they shall be held financially liable in closer proportion to their degree of fault. *Id*. at 1156. Because Proposition 51 applies only to "independently acting tortfeasors who have some fault to compare" the allocation of fault it mandates cannot encompass defendants "who are without fault and only have vicarious liability." *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851; *Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 728.

The *Diaz* trial verdict gave Sugar Transport its own apportionment of fault separate and apart from Carcamo's share of fault. Not having the employer on the verdict form would eliminate the risk of having the employer defendant apportioned an additional share of fault, separate and apart from the defendant driver's share of fault. That objective, however, can also

be reached by simply having the employer defendant share the line item with the defendant driver. In other words, the verdict form would give the opportunity for the jury to apportion fault to the plaintiff (if applicable), a third party (if applicable), and defendant driver/ defendant employer. In cases where the only claim against the defendant employer is vicarious liability, this would ensure that the defendant employer does not receive an apportionment of fault in addition to that of the defendant driver while also keeping the employer defendant on the verdict form.

Additionally, there are various practical issues with not naming the employer on the verdict form. If Plaintiff is successful in its claim against the employee, Plaintiff may have a difficult time collecting against the employer defendant who is not on the verdict form. This is especially true when you have an out of state defendant and you need to secure a judgment in another state.

In order to determine whether *Diaz v. Carcamo* affects your personal injury case, it is important to get familiar with the case and the facts surrounding the Court's decision. Fortunately or unfortunately, depending on which side of the bar you are on, the findings are not one size fits all. Certain nuances in your case's fact pattern or claims can take your case out of the *Diaz* case and permit the Plaintiff to conduct additional discovery.

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Evaluating The TRADE SECRET OBJECTION in Product Liability Cases

By **Lucas A. Whitehill, Esq.**

In product liability actions, a Plaintiff's well-designed document request is frequently met with a trade secret objection. Information necessary or helpful to prove a manufacturing or design defect theory often involves requests for design and manufacturing specifications, formulas, schematics, and testing protocols, as well as data summaries. Product-Defendants often claim this information is secret and proprietary and may only offer to produce the requested information under a protective order.

It is typically assumed that any details in the manufacturing process which are kept secret qualify as a "trade secret" and that trade secrets can only be lost through a lapse in secrecy protection or public disclosure. California law, however, that is modeled after the Uniform Trade Secrets Act and adopted in California in 1984 (see *DVD Copy Control Assn., Inc. v. Brunner* (2003) 31 Cal.4th 864, 874), is much narrower in recognizing what actually qualifies as a trade secret.

The purpose of this article is to (1) examine the criteria under California law for determining whether information qualifies as a trade secret, (2) demonstrate that a trade secret may lose its statutory protection through the passage of time, and (3) explain that a trade secret is still discoverable under a protective order where relevant and necessary to establish a cause of action.

The California Statutory Framework

Evidence Code section 1060 codifies the trade secret privilege in California. Specifically, the statute provides in part that "the owner of a trade secret has a privilege to refuse to disclose the secret...if the allowance of the privilege will not tend to conceal fraud or work an injustice." (See, e.g., *State Farm Fire & Cas. v. Superior Court* (1997) 54 Cal. App. 4th 625, 650-51 [a trade secret protected software program used by the insurer to locate documents

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held to be discoverable under the fraud or injustice exception found in Evidence Code section 1060.)

"Trade Secret" is defined under California Civil Code section 3426.1 as follows:

"(d) 'Trade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that;
(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Civil Code § 3426.1(d).)

Thus, California's trade secret definition contains three components: first, what items can potentially qualify as a trade secret; second, has the claimed trade secret retained secrecy; and third, whether the alleged trade secret derives independent economic value.

It is also very important to understand that the party asserting the trade secret objection bears the burden of proof on all three trade secret elements. (See, e.g., *Amgen Inc. v. Health Care Services* (2020) 47 CalApp.5th 716, 733; *Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 563.) The burden of proof requirement is significant in that it can only be met by the introduction of "factual data" as opposed to mere conclusory statements asserting the elements have been met. (*Agricultural Labor Relations Bd, v. Richard A. Glass Co.* (1985) 175 Cal.App.3d 703, 715.)

If proposed by a Defendant, it may be economical to agree to a protective order at the outset of the litigation rather than become embroiled in a protracted discovery dispute over what is and is not a trade secret. However, there are several provisions in frequently proposed protective orders which Plaintiff attorneys should avoid. First, the ultimate definition of what is a trade secret should be governed by Civil Code section 3426.1 (see above), and not by Defendant's initial definition. Second, the burden of proof to establish the elements of what is a trade secret should remain with the party asserting the privilege. Third, the obligation to bring a motion, if the parties do not agree that what Defendant has designated as a "trade secret" is in fact a trade secret, should fall upon the party asserting the privilege. Finally a "sharing" provision should be proposed by the Plaintiff. (See generally *Raymond Handling Concepts Corp. v. Superior Court* (1995) 39 Cal.App.4th 584, 588.)

What Does and Does Not Qualify As a Trade Secret

The definition of "trade secret" under Section 3426.1 is quite broad. However, a party alleging misappropriation of a trade secret "shall identify the trade secret with reasonable particularity...." (Code Civ. Proc., § 2019.210.) Alleged trade secrets that are not sufficiently identified to be included within either category cannot be the basis of a claim of misappropriation. (See *Solutions Com. L.L.C. v. The Trizetto Group Inc*. (E.D. Cal 2011) 819 F.Supp.2d 1001, 1017.) Additionally, the cases make clear that unlike a patent, which protects ideas, trade secrets protect facts or empirical data. Case law applying California's trade secret law has described the distinction in various ways.

"Trade secret law does not protect ideas as such...but more a fact...information tending to communicate (disclose) the idea or fact to another." (*Silvaco Data Systems v. Intel Co.* (2010) 184 Cal. App.4th 210, 220-221 (disapproved on other grounds in *Kwikset v. Superior Court* (2011) 51 Cal.4th 310).) General knowledge in the trade or special knowledge of those persons who are skilled in the trade are not trade secrets on their own. (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 253.) "If the subject matter of the claimed trade secret is a manufacturing process, the Plaintiff must not only identify the end product manufactured, but also supply sufficient data concerning the process...." (*Id*.)

The limits of what can be considered a trade secret is illustrated in *Agency Solutions Com. L.L.C. v. The Trizetto Group Inc*. (E.D. Cal 2011) 819 F.Supp.2d 1001. In *Agency*, the Plaintiff sued Trizetto claiming its marketing of a healthcare software program constituted a misappropriation of a trade secret under Civil Code section 3426.1. The evidence showed, however, that Agency had never developed an actual software program but rather only held conversations and exchanged documents with Trizetto regarding a concept that Trizetto eventually developed. (*Id.* at p. 1016.) The court held that "the idea of an interface between the front and back ends of healthcare insurance programs is not a trade secret. *Id.* Neither are conceptual notions that determine how the interface or its related programs will work." (*Id.*)

The Secrecy Requirement

Section 3426.1(d) requires only "reasonable" efforts to maintain secrecy. In the absence of secrecy, however, the claimed trade secret disappears. Public disclosure of trade secrets "extinguishes" the owner's

property right in the information. (*Ruckleshaus v. Monsanto Co*. (1984) 467 U.S. 986, 1002.) "[T]he right to exclude others is central to the very definition of the property interest. Once the data that constitute a trade secret are disclosed to others, or others are allowed to use those data, the holder of the trade secret has lost his property interest in the data." (*DVD Copy Control Assn., Inc. v. Brunner* (2003) 31 Cal.4th 864, 881.) "If an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished." (*In re Providian Credit Card Cases* (2002) 96 Cal. App.4th 292, 304-305 (holding a telemarketers' script loses any trade secret protection once it is read to potential customers).)

For example, in *Amgen Inc. v. Health Care Services* (2020) 47 Cal.App.5th 716, Amgen wished to keep secret from a public records request a price increase notice Amgen was required by law to provide the California Correctional Health Care Service. Fatal to Amgen's effort was the fact that Amgen had also disclosed the price increases to over 170 registered purchasers (pharmacy benefit managers) who were under no contractual or statutory obligation to maintain the confidentiality of the information. In rejecting Amgen's request, the court stated that "public disclosure, that is the absence of secrecy, is fatal to the existence of a trade secret." (*Id*. at pp. 734-735.)

What Constitutes Independent Economic Value

The leading trade secret case in California discussing the independent economic value element is *Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal. App. 4th 547. *Yield Dynamics* acknowledges that Civil Code section 3426.1(d) does not speak of "value" in the abstract but rather "value derived from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use." (*Id.* at p. 568.) The advantage "need not be great but must be more than trivial." (*Id*. at p. 564.) Declarations merely stating information is "helpful" or "useful" to someone is not "sufficiently valuable to afford an economic advantage over others," and thus does not qualify as a trade secret. (*Id*.) The *Yield Dynamics* court summarized the key question as follows: "The core inquiry is the value to the owner in keeping the information secret from persons *who could exploit it to the relative disadvantage of the original owner*." (*Id.* at p. 568 (original emphasis).)

Along similar lines, the court in *Morlife Inc. v. Perry* (1997) 56 Cal. App.4th 1514, 1522, used the phrase "substantial business advantage" in describing what must be proven to establish "independent economic value." See also *Altavion, Inc. v. Konica Minolta Systems* (2014) 226 Cal. App. 4th 26, 62 n.26 ("independent economic advantage element is a codification of the common law requirement that a trade secret reflect a competitive advantage").

Yield Dynamics also discusses the evidentiary showing necessary to establish independent economic value. In the case, software developer Yield Dynamics claimed that a former employee misappropriated trade secrets related to a metrology software program that Yield Dynamics had developed. In finding that the source code – which Yield Dynamics claimed was protected – did not qualify as a trade secret, the appellate court noted in part that "no evidence was admitted relating to their value to a competitor, nor was there any evidence that these functions, in and of themselves, would provide a competitive advantage to a competitor." (*Yield Dynamics*, *supra*, at p. 561, n.13; see also *GAB Business Services v. Lindsey & Newsome Claim Services* (2000) 83 Cal.App.4th 409, 428 (disapproved on other grounds in *Reeves v. Hanlon* (2004) 33 Cal. 4th 1140) (finding that salary information maintained in confidence did not qualify as a trade secret since the jury found it "lacked the necessary element of independent economic value.").)

Trade Secrets Can Lose Their Independent Economic Value

Even where a product was once a trade secret, it may lose its independent economic value over time and thus its trade secret protection. Several examples will illustrate. Note that case law from other jurisdictions interpreting provisions of the Uniform Trade Secret Act worded identically to those used in California, such as the phrase "independent economic value," have been held to be relevant in California. (*Altavion, at* p. 41; *K.C. Multimedia, Inc. v. Bank of America Technology & Operations* (2009) 171 Cal.App.4th 939, 955.)

Where the Trade Secret Information Becomes Obsolete

Trade secrets can lose their independent economic value through the passage of time. "The information Brantjes obtained during his employment with Aimcor, which ended in 1990, is so outdated that it lacks current economic value." (*Applied Indus. Materials Corp. v. Brantjes* (N.D. Ill 1994) 891 F.Supp. 432, 438.) "Information that has or will quickly become obsolete does not have the independent

economic value to be considered a trade secret." (*Katch, LLC v. Sweetser* (D. Minn 2015) 143 F.Supp. 854, 868.)

The Eighth Circuit addressed the issue of a trade secret's obsolescence in *Fox Sports Net North, LLC v. Minnesota Twins Partnership* (8th Cir. 2003) 319 F.3d 329. Fox sued the Twins and its Chief Operating Officer, claiming they had misappropriated trade secrets which they then used to the detriment of Fox in negotiating telecast rights. Fox claimed the Twins' Chief Operating Officer, who had previously worked for Midwest Sports Channel (Fox's predecessor) was privy to financial information protected as a trade secret. The Eighth Circuit affirmed the lower court's summary judgment on the trade secret claim, noting that the Chief Operating Officer had left Midwest Sports Channel several years earlier and finding that Fox had not met its initial burden of proof to establish a trade secret. (*Id.* at pp. 335-336.) Specifically, the court held that "obsolete information cannot form the basis for a trade secret claim because the information has no economic value." (*Id.* at p. 336.)

Where the Manufacturer Leaves the Market

"The value of a trade secret lies in the competitive advantage it gives its owner over competitors." *Ruckelshaus v. Monsanto Co*. (1984) 467 U.S. 986, 1011 n.15. See also Yield Dynamics, Inc. v. TEA Systems Corp., (2007) 154 Cal. App. 4th 547, 565. When the manufacturer leaves the market, however, it has no competitors and therefore its manufactured products lose their trade secret protection. The case of *Taylor v. Babbitt* (D.D.C. 2011) 760 F.Supp.2d 80 demonstrates this point.

In *Taylor*, an aircraft enthusiast submitted a Freedom of Information Act (FOIA) request to the Federal Aviation Administration (FAA) seeking "plans, blueprints, specifications, engineering drawings and data" for a 1930's-era aircraft, the Fairchild F-45. The FAA denied the request on the basis the information was a trade secret and thus exempt from production under the terms of the FOIA. Although it was undisputed the requested material was a trade secret when initially submitted in 1935 to the FAA, Plaintiff contended they were no longer commercially valuable. The FAA countered by arguing the materials remained commercially valuable in the antique aircraft market.

In finding the requested material had lost its trade secret protection, the court agreed the materials may be commercially valuable in the antique aircraft market but pointed out that Fairchild does not compete in the antique aircraft market:

"Because trade secret protection is ultimately grounded to '"economic value... [from] the competitive advantage over others that [the owner] enjoys by virtue of its exclusive access to the data,' *Ruckelshaus*, 467 U.S. at 1012...the F-45 type certification materials are not commercially valuable because their economic value does not derive from the competitive advantage they confer upon Fairchild within the antique aircraft market." (*Taylor*, *supra*, at p. 89.)

Multigenerational Products

A slightly different approach is necessary when analyzing the alleged trade secrets of multigenerational products. Although obsolete information has no economic value, and therefore does not qualify for trade secret protection, "subsequent generations of technology do not necessarily render the prior generations obsolete." (*Dow Corning Corp.v. Jie Xiao* (E.D. Mich. 2012) 283 F.R.D. 353, 354. The example given in *Dow* was the following: "Apple, for example, simultaneously sells several generations of the iPhone. The availability of the iPhone 4S does not render the trade secrets associated with the iPhone 4 of 'no reasonable value' (*Id.* at p. 354.) Rather "the only thing that will necessarily determine obsolescence is whether some firm [is] willing to pay for the first generation technology." (*Id.* at p. 355.)

In *Dow*, Plaintiff was a manufacturer of multiple generations of fluid bed reactor technology. Plaintiff alleged that Defendants had stolen first generation trade secret technology to make sales to foreign firms. Defendants sought to discover later generations of Plaintiff's technology, arguing that such information was relevant to determine whether the subsequent generations had rendered Dow's first technology obsolete. The court denied the request, stating Defendants did not need the information since obsolescence would be determined by "whether someone was willing to pay for the product at issue (first generation technology)." (*Dow*, *supra*, at p. 362.) See also *Microstrategy Inc. v. Business Objects, S.A., et al.* (E.D. Va. 2009) 661 F.Supp.2d 548, where a business strategy ("Competitive Recipe") to protect earlier versions of a product from a competitor was held to have lost its trade secret protection. "Competitive Recipe is approximately nine years old, and outlines a competitive strategy to deal with Business Objects' products that have not been on the market for at least seven years...this document no longer has any value, economic or otherwise, because the product it references are obsolete, and have

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been obsolete for several years now." (*Id*. at p. 554.)

Even Trade Secret Documents Are Discoverable Under a Protective Order If Relevant and Necessary to the Proof of a Cause of Action

In the final analysis, even if a document qualifies as a trade secret, it still must be produced if both "relevant and necessary" to the Plaintiff's case. Once the party claiming the trade secret privilege has established that the document meets the three trade secret elements, its discoverability is governed by the following test:
"The party seeking discovery must make a prima facie, particularized showing that the information sought is relevant and necessary to the proof of, or defense against, a material element of one or more causes of action presented in the case, and that it is reasonable to conclude that the information sought is essential to a fair resolution of the lawsuit. It is then up to the holder of the privilege to demonstrate any claimed disadvantages of a protective order." (*Raymond Handling Concepts Corp. v. Superior Court* (1995) 39 Cal. App. 4th 584. 590 (citing *Bridgestone/ Firestone, Inc. v. Superior Court* (1992) 7 Cal. App. 4th 1384, 1393).)

Where the alleged trade secret is "directly relevant to a material element of a cause of action" and the party seeking production of the trade secret would be "unfairly disadvantaged" if it is not produced, California courts have ordered trade secrets produced under a protective order. (*Bridgestone/Firestone*, *supra*, 7 Cal. App. 4th at p. 1392; see also *Davis v. Leal* (E.D. Cal 1999) 43 F.Supp. 1102, 1110.

For example, in *Willson v. Superior Court* (1924) 66 Cal. App. 275, Plaintiff was injured when an actinic flare he was using exploded. He sought the flare's "chemical or substances or drugs" or proportions thereof, and his request was met with a trade secret objection. Although recognizing the validity of the trade secret objection, the court ordered production, holding that "the explosiveness of the flare is a material element of the action, and the offered evidence is unquestionably relevant thereto." (*Id*. at p. 279.) Courts have also acknowledged that it is rare where a trade secret claimant can prove that a protective order is inadequate to protect its interests. (See *Agricultural Labor Relations Board v. Richard A. Glass Co*. (1985) 175 Cal. App. 3d 703, 715.)

The one case which stands as an exception is *Bridgestone/Firestone, Inc. v. Superior Court*, *supra*. In *Bridgestone*, the lower court held that a rubber compound formula in a Firestone 721 tire constituted a trade secret, a finding which Plaintiffs did not contest on appeal. Moreover, Plaintiffs' expert conceded that the formula was not material to Plaintiffs' claim that the tire was defective but rather only helpful in explaining why the tire failed. (Bridgestone, supra at 1396-1397.) Accordingly, the court found that even though the formula was relevant, it was not material or necessary to Plaintiffs in proving their cause of action and reversed the trial court's decision which had ordered production under a protective order.

It's important to consider several potential flaws in *Bridgestone/ Firestone*. First, it is questionable without knowing the age of the tire whether the rubber compound formula even constituted a trade secret. (See, e.g., *Mann v. Cooper Tire* (N.Y. 2006) 33 A.D. 3d 24, 31-32 (holding that maintaining the secrecy of a rubber compound

formula in an 11-year-old tire did not provide Cooper "an advantage over competitors").) Also, contrast the *Bridgestone/Firestone* case with *Urbina v. Goodyear Tire & Rubber Co*. (C.D. Cal. Feb. 23, 2009) 2009 WL 481655, where the district court found that "Plaintiffs met their burden of showing that the percentages of halogenated butyl used in Goodyear's compound formula are relevant and necessary" to "determine whether there were feasible alternative designs... information necessary to plaintiffs' design defect claims." (*Id*. at p. *5.) Finally, had the plaintiff in *Bridgestone/Firestone* asked whether a particular ingredient was present in the tire compound formula rather than requested the precise compound formula, it would have been difficult, if not impossible, for the tire manufacturer to prove that a competitor's knowledge of an ingredient's mere existence in a formula derives independent economic value. (See, e.g., *Mann v. Cooper Tire* (N.Y. 2006) 33 A.D. 3d 24, 30-31.)

Handling Trade Secret Objections Going Forward

In conclusion, counselors faced with trade secret objections should consider the following questions. Does the claimed trade secret meet the criteria of all three elements of Civil Code section 3426.1? Has the passage of time rendered obsolete what once may have been a trade secret? If the requested information does qualify as a trade secret, is the information relevant, material, and necessary to the successful prosecution of a cause of action?

Counselors must be wary of Product-Defendants attempting to suppress relevant documents under the trade secret objection without providing much, if any, specificity. However, by understanding section 3426.1 and relevant case law, you should have the requisite knowledge to properly evaluate a Product-Defendant's trade secret objection, determine its merit, and, if necessary, compel production of the documents the Product-Defendant is withholding.

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How Lawyers Can Leverage SOCIAL MEDIA to Generate More Revenue

By Nicole Barnett

I am writing this article for you, the lawyer in private practice. But I suggest you tear it out of your magazine and entrust it to a part-time assistant to handle. These things are so easy even your teenager could tackle them. And the even better news? When outsourced properly, your social media marketing can take less than 30 minutes of your time each month.

Let's dive into the basics of setting you up for success with your social media marketing.

No More Wasted Time and Money on Marketing

You can easily leverage Instagram to generate more revenue. Especially with the introduction of video, your law firm can garner more business by having an Instagram presence. Utilizing social media marketing and content strategy to promote your brand's profile on Instagram will help you build trust and authority among prospective clients.

It's time to stop paying thousands of dollars each month to "legal marketing companies" who bring you a high volume of low-quality leads. By setting up your Instagram page the right way you will be forced to figure out who you are, both as a lawyer and as a brand.

It's time to start leveraging your existing network to bring in more cases.

Craft an Instagram Bio that Converts Followers to Paid Clients and Encourages Attorney Referrals

Your social media marketing follows the same rules as any other marketing content that you would create for your firm. People make decisions in seconds so your Instagram bio should make the following immediately clear:

Who you are and how you can help your ideal client.

What area of law you specialize in (remember, the riches are in the niches!). What's your niche? Be clear and concise.

What sets you apart from every other lawyer in your practice area? Provide social proof, establish authority, and demonstrate your expertise.

Why are you the person they should follow and do business with? How will you improve their lives?

Frequently Update Your Call to Action

Every piece of marketing you create must include a call to action. It needs to be clear and simple. Do not leave room for confusion and don't be afraid to tell people what you want them to do. Your CTA is critical. Do not set your page up without one.

Some examples of a CTA are:

Click Below to Contact Us
Call 123.456.7890 for a free consult
Sign Up for Our Newsletter Here
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The CTA you choose should align with your goals. Are you trying to drive more traffic to your website (ask readers to click to read your blog post), build your email list (have them enter their email in exchange for a free PDF), or sign-up new clients (Click Here for a Free 20 min. Consultation)?

Use a Service Like LinkTree to Add Links to Your Bio

Linktree is one link, placed in your bio, that allows you to share MANY links with your followers. You can share links to your website homepage, internal landing pages from your website, blog, or published articles. Essentially, anything that has a URL, can be shared via Linktree. It's easy to use and offers analytics and the potential to customize the look and feel of your brand's link page.

Our @casebarnettlaw page has links to recent news stories about our firm, articles published in magazines about the firm, and of course the following: Contact Us, Client Reviews, About Us, Recent Verdicts, and Settlements, Free Resources, and FAQs.

Make sure you clear out old links when you add new ones. Less is more and you don't want your followers getting lost in all the options. Direct

them to where you want them to go and make it clear and easy.

The Importance of Stories and Highlights

Highlights allow potential followers and potential clients to see what type of information you share on your page. Your Highlights show people who you are, what you do, and how you can help them. When used correctly, your Highlights can help you get more leads, traffic, sales, and followers.

Just like the Instagram feed, saved Highlights tell people what you're all about in seconds. Your highlight covers should be visually interesting and on-brand.

Think of your Instagram page as a website that gets seen. People need to know how to contact you, they want their questions answered, they want to see that you're the best attorney for their legal matters, and they want to know who you are and what you're all about.

When you create Highlights figure out what these "buckets" are and then filter every Reel, Story, etc. through these buckets to keep your content organized. If you're utilizing Highlights to showcase your firm, these are the categories you should consider including:

About: Who are you and what is it like to work with you? Why do you do what you do? What makes you different than every other lawyer? Whom do you help? Have employees? Showcase them in your Highlights.
Reviews: If you do one thing, do this. Share what others have to say about your work. It's one thing to hear an attorney tell us they're great at what they do, it's another to hear an actual client tell us how that attorney helped them.
FAQs: Start small and film one FAQ each week. Post to your stories and then save them to the FAQ highlight. This highlight is extremely helpful for your ideal client who is looking for legal help.
Press: Social proof is great for building trust and positioning yourself as an expert and, just like client reviews, it's always better to have an outsider telling potential clients how great you are. Any news coverage, articles you've published, etc. should be shared here.
Results: Share how you've helped other people. Share your verdicts and settlements and discuss what challenges you helped your clients overcome.
Contact: Make sure people can easily call, text, or email you and provide your office address. You also need to share your website address and any other sites that are important for your practice.

Craft Your Content Creation Plan

It's not an option for your firm to sit on the sidelines when it comes to social media marketing. To stay competitive, you must show up and you've got to show up consistently. Your Instagram page should educate, inspire, entertain, engage, and sell. But, before you sell your services, you need your followers to know, like, and trust you. You do this by creating valuable and helpful content that solves your ideal client's problems.

Educate

Using your platform to help people will build trust with your followers and you will position yourself as the expert they call when they need legal help. Try to address things like FAQs clients have.

Inspire

People want to feel things. Help them to do that. Create content that will inspire your ideal client. A great way to inspire your followers is through the words of your past clients. Hearing how others have overcome a struggle they're facing will help your followers trust you and feel connected to your brand.

Entertain

This may be an unpopular opinion, but I think there are better ways for you to spend your time than creating Reels. TikTok and Reels can be a massive time suck, and they're pointless unless they're done with a strategy that fits your bigger marketing plan. You're in the business of making money, not gaining followers who will never translate into paying clients. Keep your focus on creating videos that serve a purpose and are backed by strategy or you will quickly burn out.

Engage

Get people thinking and talking. Create content that allows your followers to share their own experiences, questions, and thoughts with you. Just remember to do this with a strategy in place. Creating a buzz that doesn't lead to more money in your bank account is a waste of time. Don't be fooled by people who tell you it's enough to entertain people and get them to like your posts. Likes and comments do not lead to landing more clients. But, when done right, they can create a strong connection with our audience who will then be more likely to refer cases your way.

Sell

Once you have built a connection with your followers, they will be comfortable referring people your way. Everything you do on social media is selling in some way or another. You're selling your values, your unique way of doing things, and

OCTLA Welcomes these NEW Affiliate Members

As highly trained Personal Injury specialists, We at **Agape Wellness Center** understand how serious and permanent injuries can be. We work as a team with the medical community to provide a comprehensive approach in caring for our injured patients. Contact us at 714-957-2685. www.agapewellnesscenter.com.

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For over 20 years, **Cartiga** has provided non-recourse plaintiff fundings to help clients meet their essential needs in trying times, including support for living, medical, and transportation expenses. Law firm financing is another product to help attorneys smooth out cash flow, grow their businesses, and improve profitability. Mike Jones Mjones@cartiga.com

Legal Document Server (LDS) is a full-service litigation support provider. From case initiation to settlement/trial, our all-in-one system allows legal practitioners to streamline their cases on one simple system. Contact Nick Marcisz at nick@legaldocumentserver.com

QAS provides managed IT and Cybersecurity Service for attorneys and firms in OC, LA, SD and Inland Empire. From help desk to server and cloud migrations to cyber strategy and compliance, QAS handles IT and Cybersecurity, so you can focus on your business. Aaron Coco, 714-231-7916. aaron@qualityautomation.com

Synergex Med is a leading pain management and neurology clinic with locations in Fountain Valley, Riverside, Westlake Village, Long Beach, and the Bay Area. Our physicians are board-certified and fellowship-trained and are eager to provide top-quality, evidence-based, and compassionate care. Visit us at www.synergexmed.com or contact us at (562) 414-4452 and admin@synergexmed.com

your expertise. Don't be afraid to sell but don't do it all the time. You need to balance offering value and selling. Your followers want to know how you can help them, they don't want to hear you talk about yourself and how great you are.

The Importance of Video Content

Instagram heavily favors video, and you'll gain followers faster if you're consistently creating Reels, Stories, and IGTV videos. But lots of followers does not equal lots of revenue. Being a lawyer in California, you need to focus on serving potential clients and referral sources in your jurisdiction. Random followers from other states or countries serve no purpose other than draining you and your firm of time and money.

Your feed needs to fill the content buckets previously discussed: educating, inspiring, entertaining, engaging, and selling. Figure out a way to quickly and easily get your feed posts done so you can focus on a clear plan for your video content.

An example of a strong social media marketing plan could look something like this:

Feed Content: My firm will post to the feed five times each week and I will accomplish this by hiring a part-time marketing assistant, doing it myself, using pre-made templates, or working with a social media management company, etc. My feed will be "outsourced" and only require 15-30 minutes from me each month.

Video Content: I will set aside one half-day dedicated to "media" each month. On media day I will film 4 Reels and 4 Stories, which will allow me to post videos 2x per week each month. My assistant will turn these videos into multiple pieces of content for me. My video content will require one half-day each month plus occasional Stories if I have the time.

Posting: My marketing assistant will use Plann or Later to auto-schedule my content for me. I will block out 15-30 minutes per month to review the content and make any edits to the captions.

Total time spent monthly on social media marketing: Without video about 15-30 minutes with an assistant who works approximately 2-4 hours per month. With video about 6-8 hours with an assistant or video editor who works approximately 15-25 hours per month.

There are two ways you can approach video. The first way is to shoot video on your phone and have your assistant edit it for you. This is my preferred way because it's quick, easy, and cheap. Using the right apps and tools helps you save thousands of dollars on video. My favorite app for editing Reels is InShot.

The second way is to hire a company that specializes in video. Create a plan for how often you will film and be clear on what deliverables you will walk away with. This is my preferred method for when you're shooting videos for your website or YouTube. Find a company or videographer that can provide you with "About the Firm" videos and also produce client testimonials and niche content videos. These highly produced videos should be considered as a one-time financial investment so you want to be very clear on your goals before shooting a bunch of random content.

Who's Your Villain?

Every good marketer knows that every business needs a villain. It helps craft a better sales story. Everyone wants to fight for a good cause, and you need to craft your brand's story in a way that encourages your followers to join the fight with you.

The most obvious villain for personal injury attorneys is the insurance company. It's the David and Goliath story that smart lawyers use in their marketing. I challenge you to get more creative and take it a step beyond the insurance companies. What other villains play a part in your ideal client's journey? This will vary based on your niche.

An example for a business lawyer would be their big law competitors like Legal Zoom and Legal Shield. I would do a deep dive into what services these companies provide and then use their processes and way of doing business against them. Then, I would position myself as the much better choice and they would play the villain in all my marketing, allowing me to create powerful marketing that attracts clients who want only what I'm selling.

How to Generate Attorney Referrals

Many other lawyers will follow your Instagram page. Just like potential clients, they need to understand exactly the types of cases they can send your way. Do other lawyers know what niche you serve or are you presenting yourself as a generalist? Do they feel that they can trust you with their network and clients?

Because people see thousands of advertisements a day, you need to show up regularly on their feed. People won't automatically think of you when they have a case to refer your way unless you're consistently showing up in their life. Because you have built a relationship, demonstrated expertise, and

established trust they will feel safe and comfortable sending clients your way. When they see the results you obtain for clients or the referral fees you payout, they will send clients your way.

Make it easy for other lawyers to refer cases to you by adding a link to a landing page for referring attorneys on your website.

Why Keeping it "In-House" is Always Better

Even though I believe every lawyer should have a basic understanding of marketing, I do not think they should spend hours creating content on their own.

If I had one message to all lawyers, it would be this: hire a part-time marketing assistant. If you don't want to train your assistant yourself, make sure you find tools and support for your assistant. A marketing assistant who is not properly trained will fail.

I don't recommend hiring a social media marketing company for your law firm. They're expensive and they will create content that does nothing for your bottom line. Sadly, most legal marketing companies have no clue about the intricacies of legal practice. You can't create content for a business you don't understand.

If you've ever worked with a social media marketing company, you know what I'm talking about. I advise lawyers to find a company that can provide them with actual products and tools to get their marketing done but then outsource that task to someone they directly oversee. It's much more effective and costs a fraction of the price. Additionally, your assistant will get to know you, your brand, and your practice and can create genuine and authentic content for you.

If you hire a legal marketing company, they should provide solutions that simplify your life and help you accomplish your goals. Action, not marketing theory! Results, not fluff!

It's much easier to outsource your feed content creation to an assistant than your video content creation. A strong marketing plan would ensure your feed is consistently providing value to your followers and reminding them what you do and how you can help them. With someone creating your feed content for you, you're freed up to create videos as needed.

It's also a relief to know that if things

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THANK YOU!

We acknowledge the following OCTLA Members who have referred one or more New Members this past quarter:

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get busy, you're in trial, or slammed with work, you'll still be showing up consistently. Social media feels a lot less burdensome when you realize you don't need to do much to create an effective plan.

Be Patient and Trust the Process

Sometimes it feels like we're operating in a vacuum when we post on social media. Don't be afraid if tons of people aren't liking, commenting, or sharing your content. Many people will feel touched, inspired, and empowered by you, yet they never hit "like" or comment. You will be surprised at who comes forward to thank you for helping them if you stay consistent and trust in the process.

Lawyer profiles and law practice brand pages get less engagement than typical Instagram accounts. This is due to the nature of what your page is about. It's not a page for entertainment or showcasing fun products and a lower engagement rate is just the nature of a service-based business.

Additionally, with all that is currently going on in the world, Instagram engagement is at a low. This is not just impacting the legal industry; it's impacting all users. This doesn't mean you shouldn't care about marketing on social media. In fact, it's even more reason for you to show up consistently in front of your followers. Instagram is still one of the most powerful marketing tools you have at your disposal. It requires consistency and patience. It's a long-term marketing strategy and, when done right, it can bring thousands of dollars into your practice.

The content you create will probably only be interesting to other lawyers and people who need your help right at that moment (there won't be many of those). That's ok. Just because people aren't commenting or sharing your posts, doesn't mean they aren't seeing them. You've got to trust me on this one. Sometimes it may feel like you're posting, and no one sees it or cares. They do, and I call these people "lurkers".

We are all guilty of being lurkers. Think about how much content you enjoy without ever hitting that like button or leaving a comment. Know that lurkers can often be extremely valuable referral sources for your firm. I know this from direct experience. People call and refer us a case and reference something they saw on our Instagram page. If not for their referral I would assume they never even see my content. But they do. And it's the same for your followers.

Once you land that first case through social media you will trust in the power of showing up consistently in front of your followers.

Where to Next?

Remember, the number of followers you have is not important. What's important is to have a page that is followed by your ideal referral sources and potential clients. You're better off having 100 followers who like, know, and trust you and will send you business than 60,000 followers who are there to watch your Reels but will never send a case your way. Don't fall victim to shiny object syndrome.

Don't overcomplicate social media and don't dedicate so much of your time and budget to it that you can't invest in other forms of marketing. Just like we are taught to diversify when we're planning for retirement, you must diversify your marketing efforts. Social media is just one (very important) piece of your law firm's marketing.

Start by getting a part-time assistant to help you set up your Instagram page and have them start creating content for you (only with a plan and strategy of course!). Once your Instagram page is running like a well-oiled machine you can branch out into all the other exciting marketing avenues. Focus on one thing at a time. Do it well and make sure it's bringing in revenue before jumping to the next thing.

Remember, social media marketing is just one piece of the marketing pie. You should not be spending your entire budget on it or dedicating all your marketing hours to it.

Nicole Barnett

Nicole Barnett is the co-founder of Case Barnett Law, a personal injury law firm in Orange County. She is also the founder of Law Prophet, a company that helps lawyers build, grow and manage their law firms. She can be reached at:
nicole@casebarnettlaw.com

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LEGISLATIVE UPDATES

MICRA Revised

April 27, 2022 was a day for the history books. It is on that day that a historic agreement to amend the MICRA caps was finally reached ***after 50 years of relentless fighting for justice!*** The MICRA amendments will begin taking effect on January 1, 2023, and are summarized here:

I. For a ***non-death case***, the cap on non-economic damages increases from $250,000.00 to $350,000.00 on January 1, 2023, and continues to increase each year through 2033 until the cap reaches $750,000.00.

II. For a ***death case***, the cap on non-economic damages increased from $250,000.00 to $500,000.00 on January 1, 2023, and continues to increase each year through 2033 until the cap reaches $1,000,000.00.

III. After the caps increase to $750,000.00/$1,000,000.00 in 2033, a ***2% cost of living adjustment attaches starting January 1, 2034***, thereby adjusting the caps annually.

IV. Current law limits a plaintiff's recovery on non-economic damages to $250,000.00 regardless of the number of defendants. This proposal creates three separate categories of defendants for a ***total of three possible caps***: i. One cap for health care providers (regardless of the number of providers or causes of action), ii. One cap for health care institutions (regardless of the number of institutions or causes of action), and iii. One cap for an unaffiliated health care provider or health care institution that commits a separate negligent act.

V. At the request of either party, periodic payments can be utilized for future economic damages starting at $250,000.00 (presently at $50,000.00).

VI. ***Modifies the contingency fee caps*** to 25% if the action is settled prior to the filing of an action and 33% if the recovery occurs thereafter. If an action goes to trial the Court has discretion to alter the fee based on good cause.

VII. Protections for providers who make statements about fault prior to litigation.

Thank you to everyone who has had a hand in this fight – it took us all working together to make this happen!

Auto Insurance Reform

SB 1107 would increase the mandatory automobile minimum financial responsibility limits, beginning January 1, 2025, to $30,000.00 per person, $60,000.00 per accident, and $15,000.00 property damage. Thereafter, on January 1, 2035, and January 1, 2045, the bill would increase the minimum limits of liability insurance coverage by $10,000.00 and $20,000.00 for bodily injury or death of one person and all persons, respectively, and by $5,000.00 for property damage.

SB 1107 passed the Senate on May 25, 2022! On June 2, 2022, the Assembly referred SB 1107 to the Committee on Insurance chaired by Assembly Member Tom Daly and vice-chaired by Assembly Member Chad Mayes.

Courts/Remote Appearances

CAOC is co-sponsoring ***SB 848*** authored by Senator Tom Umberg, along with the California Judges Association and the California Defense Counsel. CAOC is actively lobbying to educate legislators on the success of remote proceedings. The Judicial Council reports that in less than half of the counties more than 1.2 million remote proceedings have been conducted over just the past 18 months. The bill is opposed by the same entities that opposed SB 241 last year, the Service Employees International Union, the California Court Reporters Association, and the California Federation of Interpreters.

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OUR PRACTICES IS PERSONAL

Together, we're making a personal commitment to building a stronger initiative defense so we are ready for any fee cap fight. Protecting our clients access to California's civil justice system is as easy as $83/month, and when we all stand together, we create a defense that stands for years to come.

Take a minute to join our effort and make a personal commitment to defending our civil justice system, we'll be thanking all of our supporters in the next edition!

WWW.CAOC.ORG/1000CHALLENGE

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VERDICTS & SETTLEMENTS

DO YOU KNOW OF AN EXCEPTIONAL VERDICT WORTHY OF A **TOP GUN AWARD**?

If so, please send your nomination along with the case information to:
info@OCTLA.org for consideration in this year's Top Gun Awards.

Greg Bentley and **Clare Lucich** of **Bentley & More** secured a $16.5 million settlement against a Southern California city in a dangerous road design case. Plaintiff was involved in a devastating T-bone collision because of insufficient corner sight distance. Defendant city disputed liability and filed a motion for summary judgment, which was denied. The matter finally settled after completing 18 depositions and the workups from ten expert witnesses, including a traffic engineer and accident reconstruction expert.

Daniel Hodes of **Hodes Milman** obtained a policy limits settlement of $1,000,000 in a medical malpractice case. Plaintiff, a 60-year-old male, developed a headache and visual disturbance in his left eye while on a cycling training run. He presented to an urgent care clinic that afternoon, was evaluated by Defendant nurse practitioner, and released. Two days later, his daughter found Plaintiff unresponsive. A subsequent workup at a local hospital revealed a left middle cerebral artery stroke, leaving him neurologically impaired.

Arash Homampour and **Scott Boyer** of **The Homampour Law Firm** secured a $15.92 million settlement in a disputed construction negligence/dangerous condition case. Plaintiff motorcyclist was struck by a left-turning motorist. At the time, Defendant construction company was repairing a manhole frame and cover on the opposite side of the intersection. The motorist was determined by law enforcement to have violated Vehicle Code § 21801 and to be the sole cause of the collision. Defendant construction company and city denied liability and contended that the motorist was the primary cause of the incident; they also claimed that Plaintiff was speeding. Defendants also contended that Plaintiff's claim for future medical care and lost wages was grossly inflated and not reasonably related to the incident.

Greg Jackson, **Jenny Anglin Simon**, and **Kieran Doherty** of **The Simon Law Group** obtained a $2,250,000 settlement following a PIT (pursuit intervention technique) maneuver with a big rig in central California. Plaintiff sustained injuries to her spine and ultimately required SCS implants in both her lumbar and cervical spine. Defendant admitted liability but heavily disputed causation, with retained experts disputing both the need for and cost of the SCS implants where other measures had been recommended.

Rob Marcereau of **Marcereau & Nazif** obtained a $4 million jury verdict in a motorcycle vs. auto case. Plaintiff, a 33-year-old man, suffered a pelvic facture and ruptured testicle when Defendant turned left in front of him. Four months after the collision, Plaintiff returned to work and was regularly exercising at the gym, but still had residual pain. Defendant stipulated to liability, but disputed damages. Defendant argued there was no proof of ongoing pain and suffering, and Defendant's medical experts testified that Plaintiff's symptoms didn't match up with his injuries. Nevertheless, the jury awarded $2 million in past general damages, and $2 million in future general damages; special damages were waived before trial.

Greg Bentley and **Clare Lucich** of **Bentley & More** settled a personal injury case for a confidential 8-figure amount. Plaintiff, an independent contractor, was paralyzed when he fell 22 feet onto a stairwell of the three-story building where

he was working on the roof. Defendants disputed liability and claimed immunity from liability under the *Privette* doctrine, which governs the extent of liability that general contractors and property owners have for worksite injuries.

Daniel Hodes and **Jacob Brender** of **Hodes Milman** settled a medical malpractice matter for $750,000. Plaintiff, a 64-year-old unmarried male, underwent a CT scan in 2018 to rule out neurofibromatous neoplasm. Incidentally present on the CT but unappreciated by the radiologist was an 8 mm cancer in the right lower lobe of his lung. A follow-up CT scan in 2021 revealed a cancer measuring 2.5 cm in the same location of his right lung. Workup revealed stage IV disease. As a result of the three year delay, Plaintiff went from likely curable to terminal.

Eric Bell and **Jason Sanchez** of **The Simon Law Group** secured a $935,000 jury verdict in a disputed liability vehicle collision matter. Plaintiff crashed into the rear of Defendant's semi-trailer, suffering an aggravation to his pre-existing cervical disc condition which resulted in a cervical disc replacement. Defendant argued that its truck was experiencing an emergency failure and was attempting to pull into a dirt median. Plaintiff presented evidence that Defendant previously admitted to attempting a U-turn because he missed a prior exit. The jury apportioned 85% fault to Defendant, resulting in a net verdict of $794,750.

Brian K. Brandt of the **Law Offices of Brian Brandt** obtained a $10 million settlement in a wrongful death action. Plaintiffs were the wife and four adult children of the decedent, a 49-year-old construction worker who was killed when his car was rear-ended in a multi-vehicle freeway crash. Plaintiffs asserted that Defendant fell asleep behind the wheel and was solely responsible for the crash resulting in the death of the decedent. Defendants countered that the decedent first crashed into the vehicle ahead of his car before being struck from behind by Defendant.

Greg Bentley and **Clare Lucich** of **Bentley & More** and co-counsel secured a $5 million settlement in a job site injury matter. Plaintiff was injured when Defendants contractor and subcontractor failed for weeks to cover a roof-top opening at a construction site, violating Cal-OSHA regulations. Plaintiff sustained multiple fractures requiring spinal fusion surgery.

Greg Jackson, **Jenny Anglin Simon**, and **Kieran Doherty** of **The Simon Law Group** obtained a $1,900,000 settlement in a DUI injury case. Plaintiff was completely stopped at a red light when Defendant rear-ended her at more than 40 miles per hour. Defendant driver was DUI and driving a company-provided vehicle early in the morning. Although Defendant driver admitted liability, Defendant company disputed whether the driver was in course and scope of his employment as his vehicle

was not provided nor required as a condition of employment, and the driver was on his way to work. Defendants further disputed Plaintiff's loss of earnings claims, arguing she had suffered no loss of earnings since she had planned to change careers anyway.

Michelle Hunter of the **Law Offices of Samer Habbas & Associates** obtained a mediated settlement of $340,000 in a disputed liability work-related injury case. Plaintiff, an oil well service operator, was conducting a pressure test when a valve burst, striking them in the head and knocking them unconscious. Plaintiff suffered a Traumatic Brain Injury (TBI), leg laceration, and lumbosacral radiculopathy. Defendant disputed both liability and injuries, submitting an opening offer of $75,000 at mediation. Extensive discovery—including depositions and a thorough mediation brief—put all arguments to rest, and the matter ultimately settled.

Daniel Hodes of **Hodes Milman** obtained a $500,000 settlement in a medical malpractice case. Plaintiff, a 48-year-old woman, underwent a hysteroscopic resection of a uterine polyp. Defendant gynecologist inadvertently took the scope through the uterine wall and perforated the bowel without appreciating same. Three days later, Plaintiff was found to have feculent peritonitis and perforation of her terminal ileum. She underwent a diverting ileostomy, which was taken down 5 weeks later. Plaintiff was left with a significant abdominal scar and runs a significant risk of future bowel obstruction.

Robbie Munoz, **Jenny Anglin Simon**, and **Edwin Hong** of **The Simon Law Group** secured a $1,000,000 policy limits settlement in an auto collision matter. Plaintiff sustained injuries to his neck when Defendant rear-ended him on a highway. Liability and causation were both disputed, and Plaintiff had years of prior injuries to the same area. Plaintiff underwent a series of epidural injections, then cervical discectomy. Following Defendant driver's deposition, the policy limits demand was accepted and paid.

Greg Bentley and **Clare Lucich** of **Bentley & More** obtained a confidential 8-figure settlement in a bicycle vs. vehicle crash. Plaintiff bicyclist sustained catastrophic crush injuries after being struck by a vehicle, including a massive degloving injury necessitating multiple surgeries, extended hospitalization, and inpatient rehabilitation.

To have your recent verdicts and settlements published in the next issue of The GAVEL *Magazine, send your case summary to* info@OCTLA.org *or* stevebell.jd@gmail.com.

TIDBITS & ANNOUNCEMENTS

The California Court of Appeals in Santa Ana has a new Justice! The Commission on Judicial Appointments held a public hearing on June 16 to consider Governor Gavin Newsom's appointment of Judge Joanne Motoike as Associate Justice of the Fourth District Court of Appeal, Division Three (Santa Ana). After this hearing, the appointment was confirmed by a unanimous vote of the three-member commission, which includes Chief Justice Cantil-Sakauye (Chair); Attorney General Rob Bonta; and Presiding Justice Manuel A. Ramirez.

Judge Joanne Motoike will fill the vacancy created by the retirement of Justice Richard M. Aronson. Judge Motoike has served as an Orange County Superior Court judge since 2013, where she served as presiding judge of the juvenile court from 2018 to 2022. Judge Motoike served as a senior deputy public defender at the Orange County Public Defender's Office from 2008 to 2013. She was a trial attorney at the United Nations Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia from 2006 to 2008 and a deputy public defender at the Orange County Public Defender's Office from 1994 to 2006. Judge Motoike earned a Juris Doctor degree from Loyola Law School, in Los Angeles.

And speaking of how things are going in California Courts of Appeal …

An Appellate Caseflow Workgroup has been created and staffed by the California Courts of Appeal. The Workgroup's goal is to review and make suggestions for improving the appellate court workflow, polices, procedures, and case management processes. California Chief Justice Tani G. Cantil-Sakauye created the workgroup to promote transparency, accountability, and efficiency in rendering timely judgments.

Specifically, the workgroup will consider, among other things, measures designed to:

- Prevent decisional delay in the appellate courts that may cause prejudice or harm to litigants by identifying practices and guidelines concerning case processing techniques, calendar management, and the administrative duties required to reduce delays; and

- Provide transparency by requiring appellate courts to report age of case metrics.

The workgroup will solicit input from appellate justices and their staffs, appellate attorneys, and review any other available resources and information concerning best practices for determining calendar management and ensuring the timely disposition of appellate cases.

"I would like a final report no later than early next year," said the Chief Justice, "but I have asked Justice Humes to report back as soon as practical and to make interim recommendations as necessary."

Did you know that Orange County Superior Court is a Courthouse Technology Trendsetter?

A recent gathering of nearly 200 California court leaders and research staff focused on how data can help shed light on operational challenges and solutions, and ultimately improve court services for the public.

The May 26 event, hosted both in-person and virtually by the Judicial Council, was the next step in the judicial branch's efforts to build a statewide court community around data management and analytics.

Attendees heard directly from three superior courts using data to improve their operations and efficiency:

- Alameda County reported that it collects data on multiple items related to jury service, including how many jurors are called each week, juror zip codes, and who reports and is able to serve. The court found differences in reporting rates among jurors who were summonsed for the first time, who voluntarily deferred service, and who previously failed to appear, and used that information to adjust its summonsing practices.
- Placer County reported that

though it is not one of the larger courts in the state, it is not short on data. For example, the court uses the latest web apps and tools to track, present, and act on data related to new case filing trends, use of e-filing and related processing times, remote appearances, and its self-help and online chatbox services.

• San Bernardino County is the largest in the state by geography (20,000 square miles). The court reported that they are enhancing their data analytics tools to better gauge resource and staffing needs. By looking at the current number of judicial officers, filings, and which courthouses hear certain case types, the court is working to refine the system developed by the Judicial Council to maximize their existing resources countywide.

All of this is an apparent attempt to catch up with Orange County Superior Court, which was among the first courts to build a cloud-based data warehouse, using funds from the Judicial Council's Court Innovations Grant Program instituted in 2016.

Fifty other projects across 30 trial and appellate courts statewide received innovation grants to create new tools and programs that could be replicated statewide. The early success of the Orange court's data project inspired a branch-wide framework focused on data governance.

Building on that momentum, the council recently established a Data Analytics Advisory Committee to make recommendations to the council on judicial branch data and information strategy. The workgroup will analyze and share data to better inform judicial branch decision making and enhance public access to court data and information.

EVENTS CALENDAR

FOR MORE DETAILED INFORMATION, CHECK OUT THE EVENT CALENDAR ON OUR WEBSITE:

OCTLA.ORG

JULY 9, 2022
9:00am - 11:00am
Huntington State Beach
Beach Clean Up

JULY 20, 2022
Mimi's Cafe
7:30am - 8:30am
Breakfast Club - Writing an Effective Demand Letter

JULY 28, 2022
6:00pm - 8:00pm
Tustin Ranch Golf Club
Mini Opening / Voir Dire

AUGUST 11, 2022
6:00pm - 8:00pm
Tavern Bowl
OCTLA Bowling Night

SEPTEMBER 22, 2022
6:00pm - 8:00pm
Tustin Ranch Golf Club
Opening/Direct/ Cross-Examination

OCTOBER 10, 2022
9:30am - 6:00pm
Strawberry Farms Golf Club
Columbus Day Golf Tournament

OCTOBER 27, 2022
6:00pm - 8:00pm
Tustin Ranch Golf Club
Closing / The Big Ask

NOVEMBER 12, 2022
5:30pm - 9:00pm
Westin South Coast Plaza
Top Gun Awards Gala & Silent Auction

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2022 TOP GUN
TRIAL LAWYER OF THE YEAR
Nomination Form

Each year the Orange County Trial Lawyers Association recognizes and honors local trial attorneys for their exceptional trial skills over the past 12 months. These attorneys not only show courage and commitment to their clients, but also demonstrate truly exceptional skill, ability, preparation, and professionalism to obtain outstanding results on behalf of their clients. Outstanding results are not limited to the size of a verdict, but may include additional factors such as length of trial, complexity of liability or damages, the impact of the result beyond the case itself and any other unique identifying characteristics. Results can include jury verdicts, arbitration awards and bench trial awards. Current OCTLA Attorney Members are eligible to submit a nomination.

I hereby nominate the following individual for Trial Lawyer of the Year:

_____
Personal Injury

_____
Business Litigation

_____
Medical Malpractice

_____
Employment Litigation

_____
Other Area (specify)

In selecting the Trial Lawyer of the Year, the nomination committee may consider the following criteria:

1. *That the individual be an excellent advocate;*
2. *The individual's reputation of civility, ethics and fair play in and out of the courtroom;*
3. *The individual's reputation and standing in the community;*
4. *The individual has meaningfully participated in an outstanding recent verdict as lead trial attorney.*

Nominations are also being accepted for the following categories:

_____
Young Gun. *The individual meets criteria 1-3 above, has been practicing law for 10 years or less and displays a consistent desire to try cases to conclusion, regardless of outcome.*

_____
Distinguished Achievement. *The individual meets criteria 1-3 above and has achieved an outstanding result through settlement, appeal or litigation that has significant impact for a consumer, the community or the civil justice system.*

Please include supporting material such as verdict reports, articles and/or a resume or biography that includes work history with dates. Whether an award winner is selected in any given category is at the sole discretion of the nomination committee and the Board of Directors.

_____ _____
OCTLA Member Signature OCTLA Member Name (print clearly)

All nominations must be received by July 31, 2022 to be considered

Email your nomination and supporting documents to info@OCTLA.org or FAX to (949) 215-2222
or Mail to: OCTLA Nomination Committee, 23412 Moulton Pkwy, #135, Laguna Hills, CA 92653

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Employment	**Personal Injury**	**Personal Injury**
Class Action vs. OC Register $38,000,000 Largest Class Action Settlement in OC History	Dean vs. Allied Trucking $28,000,000 Truck Accident	Vincent vs. Public Entity $17,000,000 Bus Accident

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Trial Lawyer of the Year OCTLA - 2014

Trial Lawyer of the Year CAOC - 2012

Trial Lawyer of the Year Nominee CAALA - 2012

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8 - FIGURES
Caustic Ingestion - Premises Liability

8 - FIGURES
15-Passenger Van - Auto Defect

8 - FIGURES
Rollover/Roofcrush - Auto Defect

MULTIPLE 7 - FIGURES
Airbag/Restraints - Auto Defect

MULTIPLE 7 - FIGURES
Door Latch Failure - Auto Defect

MULTIPLE 7 - FIGURES
Seat Belt Failure - Auto Defect

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