

CAALA **20** VEGAS **19**

37TH ANNUAL CONVENTION

SECTION 20

LEGAL STAFF TRACK

SECTION 20 – LEGAL STAFF TRACK

EVERYTHING YOU'VE ALWAYS WANTED TO KNOW (BUT DIDN'T WANT TO ASK) ABOUT DISCOVERY AND TRIAL

By Hon. Samantha Jessner; Geoff Wells; Ricardo Echeverria; Rahul Ravipudi; and Gretchen Nelson

TRIAL PREP TO THE MAX

By Armen Akaragian, Esq., of Mardrossian & Associates, Inc., Alan Van Gelder, Esq., of Greene Broillett & Wheeler, LLP, and Lourdes Malam, Paralegal, of Mardrossian & Associates, Inc.

DISCOVERY ARTICLE AND TRIAL CHECKLIST

By Danica Crittenden

DISCOVERY: PRACTICAL TIPS ON HOW TO COLLECT, INVESTIGATE AND PREPARE THE INFORMATION AND EVIDENCE TO PROVE YOUR CLIENT'S DAMAGES AND INJURIES IN A PERSONAL INJURY OR MEDICAL MALPRACTICE ACTION

By Jin N. Lew

**EVERYTHING YOU'VE ALWAYS WANTED TO KNOW
(BUT DIDN'T WANT TO ASK)
ABOUT DISCOVERY AND TRIAL**

By Hon. Samantha Jessner; Geoff Wells; Ricardo Echeverria; Rahul Ravipudi; and Gretchen Nelson

- I. REQUIRED TRIAL DOCUMENTS
 - A. California Rules of Court
 - B. LASC Local Rules 3.48 - 3.193 tons of rules in here
 - C. Federal Court Rules - Federal Rules of Civil Procedure; District Court Rules
 - D. Trial preparation checklist | trial calendaring
 - E. Exhibit list
 - 1. Required contents: each exhibit separately listed, identification of objections vs. stipulations as to authenticity or admission; column for court for record tracking
 - 2. Exhibit binders
 - a. Internal pagination within each exhibit Ex., Exh. 1-1, Exh. 1-2, etc.
 - 3. Placeholder Exhibits for graphics and items that may be created during trial
 - 4. Colored Binders
 - F. Witness list
 - 1. Identify each witness including experts, non-retained experts
 - 2. Time estimates
 - 3. Impeachment witnesses?
 - G. Jury instructions
 - H. Verdict form: General or Special
 - I. Motions in Limine
 - J. Statement of case vs. mini-opening
 - K. Trial brief: optional - what to include if you do one
 - L. Bench briefs for key anticipated evidentiary or other issues
 - M. Video designations/Deposition Transcript Designations
 - 1. Synced

2. Designations
 3. Counter-Designations
 4. Rebuttal/Responsive Designations
- N. Jury Questionnaires
- II. FINAL STATUS CONFERENCE PREPARATIONS
- A. FSC requirements and process for PI Hub cases
1. Standing Order Re: Personal Injury Procedures, Central District (effective April 16, 2018)
 2. First Amended Standing Order Re: Final Status Conference Personal Injury ("PI") Courts (04/16/2018)
 3. FSC:
 - a. 8 days before trial at 10:00 a.m.
 - b. Trial docs to be filed 5 days before FSC
 - (1) Optional trial brief
 - (2) MILs
 - (3) Joint statement of case
 - (4) Joint witness list
 - (5) Joint jury instructions (list and full text)
 - (6) Joint verdict forms
 - (7) Joint exhibit list identifying all objections vs. admissibility stip
 - (8) Exhibits: 3 sets of tabbed, internally paginated and properly-marked exhibits in three ring binders
 - (9) Trial binders:
 - (a) Tab A Trial Briefs
 - (b) Tab B: MIL
 - (c) Tab C: Joint statement of case
 - (d) Tab D: Joint witness list
 - (e) Tab E: Joint list of jury instructions
 - (f) Tab F: Joint and contested jury instructions
 - (g) Tab G: Joint and contested verdict forms
 - c. Purpose is just to make sure ready and all docs in order
 - (1) Exhibit binders

- (2) Trial binders
- (3) Met and conferred re: stipulations, MILs, authenticity

B. FSC requirements and process for IC cases depend on particular judge. Can be like PI Hub FSC and can have full- fledged hearings on MILs, etc.

C. Federal Court: Final Pre-Trial Conference

III. EXHIBITS

- A. Physical versus digital
- B. Exhibit binders

IV. WITNESSES

A. Getting the Witnesses to Trial: CCP 1987 and Trial Subpoenas

1. CCP 1987: Compel certain party-affiliated witnesses to appear at trial and produce documents

a. Only requires individual defendants or officers, directors or managing agents of a corporate defendant; rank and file employees of corporate defendant are NOT subject to notice to appear

b. Service timing from trial

(1) Testimony only: 10 days if personally served

(2) Testimony and documents: 20 days if personally served

c. Objections to 1987 demand due 5 days from service of notice

2. Trial subpoenas: Third-party witnesses and other categories of a party's employees

a. No fixed deadline: The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. (CCP 1987(a))

b. Serve in conjunction with on-call agreements (CCP 1985.1)

c. Practical use of trial subpoenas

(1) Serve even friendly witnesses with subpoenas and on-call agreements to ensure appearance at trial.

Otherwise there is no obligation for witness to appear.

(2) Serve at all depositions

(3) Do not rely solely on promise to produce by opposing counsel. Instead, have them accept service of the subpoena by email and to have the witness execute an on-call agreement.

B. Scheduling the Witnesses

1. Ensure that witnesses have no scheduling conflicts, particularly experts.
2. Create trial contact list containing names and contact information for all witnesses.
3. **MUST** have witnesses ready to testify to avoid delay in trial.

C. Using Depositions at Trial

1. Logistics: Lodging the Transcript

- a. Lodge original deposition transcripts in your possession or control on first day of trial. Ensure that other parties with original transcripts have done the same, and determine whether you must lodge a certified copy (if stipulation permits).
- b. Create binder of all deposition transcripts for judge's use so that witness can use the original and judge can read along.

2. Using deposition testimony

- a. May use deposition of party-affiliated witness for any purpose
- b. Designating the transcript
 - (1) Ensure that all portions of transcript you wish to use have been designated. If in doubt, over-designate rather than under-designate.
 - (2) Objections to designation must be in writing.
- c. Playing video of deposition at trial is permitted, but notice must have contained requisite language to permit use of video.

D. Preparing for Witness Testimony

1. Direct exam preparations
2. Cross or 776 exam preparations

V. TECHNOLOGY USE AT TRIAL

- A. Methods
- B. Sharing of equipment | costs
- C. Handling on own vs. someone else
- D. i-Pads
- E. Technology applications and trial support programs

VI. TRIAL NOTEBOOKS AND OTHER ORGANIZATIONAL METHODS

- A. How are you going to organize and manage your trial materials?
 - 1. Witness information and depositions?
 - a. Binders with separate tabs for each witness?
 - b. Separate files for each witness stored in a larger accordion type file?
 - c. Other method?
 - 2. Trial documents (MILs, exhibit lists, witness lists, etc.):
 - a. Binder for all trial materials?
 - b. Separate files for each stored in a larger accordion type file?
 - c. Other method?

VII. PREPARING OPENING STATEMENT AND CLOSING ARGUMENT

- A. What need to prove?
 - 1. Consider both legal requirements and things that will move the jury apart from the legal elements of what you are trying to prove (e.g., credibility issues with respect to parties and witnesses)
 - 2. Review jury instructions and key case law for liability and damages
 - 3. What evidence (witnesses, documents, etc.) will prove each of the things you need to prove
- B. Theory: what is case really about at big picture level? What is the human story behind the case?
 - 1. Spending time with client
 - 2. Focus groups

TRIAL PREP TO THE MAX

By **Armen Akaragian, Esq., of Mardirossian & Associates, Inc., Alan Van Gelder, Esq., of Greene Broillett & Wheeler, LLP, and Lourdes Malam, Paralegal, of Mardirossian & Associates, Inc.**

I. Trial Preparation Timeline

Always take into consideration the California Rules of Court, Code of Civil Procedure, local rules, and courtroom/department rules. Prepare trial preparation timeline at least four months before trial.

A. Local Rules v. Courtroom Rules

Some courtrooms have specific trial preparation rules applicable to their department only. Others just follow the court's local rules. Always check with the department regarding which rules they follow for final trial preparation.

B. Los Angeles PI Hub Rules

Cases assigned to the PI Hub in downtown Los Angeles follow the PI Hub's Standing Order re: Final Status Conference. It is critical that you follow every aspect of the standing order. The judge will scrutinize your trial documents and binders to make sure that you complied with all the rules and requirements.

C. Forms/Samples

1. First Amended Standing Order – Re: Final Status Conference, Personal Injury (“PI”) Courts
2. Sample Trial Timeline

II. Pre-Trial Calendaring and Meeting

Calendar all deadlines with appropriate task reminders. Assign tasks to trial team members and have regular meetings to ensure adherence to the timeline and to address issues and concerns.

III. Non-Expert Discovery

This includes form and special interrogatories, inspection demands, requests for admission, depositions, physical and mental examinations, and subpoenas for production of business records.

A. Statutory Deadlines

“Except as otherwise provided in this chapter, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action.” C.C.P. § 2024.020(a).

“Except as provided in Section 2024.050, a continuance or postponement of the trial date does not operate to reopen discovery proceedings.” C.C.P. § 2024.020(b).

“As used in this chapter, discovery is considered completed on the day a response is due or on the day a deposition begins.” C.C.P. § 2024.010.

B. Supplemental Discovery

“In addition to the number of interrogatories permitted by Sections 2030.030 and 2030.040, a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories.” C.C.P. § 2030.070(a).

“A party may propound a supplemental interrogatory twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date.” C.C.P. § 2030.070(b).

There are similar provisions for inspection demands. *See* C.C.P. § 2031.050(a), (b). However, there is no such provision for requests for admission.

IV. Expert Discovery

A. Demand for Exchange of Expert Witness Information

“Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date.” C.C.P. § 2034.220.

“The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange.” C.C.P. § 2034.230(b).

B. Expert Designation

“(a) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by serving the information on the other party by any method specified in Section 1011 or 1013, on or before the date of exchange.

(b) The exchange of expert witness information shall include either of the following:

- (1) A list setting forth the name and address of a person whose expert opinion that party expects to offer in evidence at the trial.
- (2) A statement that the party does not presently intend to offer the testimony of an expert witness.

(c) If a witness on the list is an expert as described in subdivision (b) of Section 2034.210, the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain all of the following:

- (1) A brief narrative statement of the qualifications of each expert.
- (2) A brief narrative statement of the general substance of the testimony that the expert is expected to give.
- (3) A representation that the expert has agreed to testify at the trial.
- (4) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including an opinion and its basis, that the expert is expected to give at trial.
- (5) A statement of the expert’s hourly and daily fee for providing deposition testimony and for consulting with the retaining attorney.” C.C.P. § 2034.260.

C. Supplemental Expert Designation

“(a) Within 20 days after the exchange described in Section 2034.260, any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject.

(b) This supplemental list shall be accompanied by an expert witness declaration under subdivision (c) of Section 2034.260 concerning those additional experts, and by all discoverable reports and writings, if any, made by those additional experts.

(c) The party shall also make those experts available immediately for a deposition under Article 3 (commencing with Section 2034.410), which deposition may be taken even though the time limit for discovery under Chapter 8 (commencing with Section 2024.010) has expired.” C.C.P. § 2034.280.

D. Expert Witness Depositions

“Any party shall be entitled as a matter of right to complete discovery proceedings pertaining to a witness identified under Chapter 18 (commencing with Section 2034.010) on or before the 15th day, and to have motions concerning that discovery heard on or before the 10th day, before the date initially set for the trial of the action.” C.C.P. § 2024.030.

“An expert described in subdivision (b) of Section 2034.210 whose deposition is noticed pursuant to Section 2025.220 shall, no later than three business days before his or her deposition, produce any materials or category of materials, including any electronically stored information, called for by the deposition notice.” C.C.P. § 2034.415.

“The deposition of any expert described in subdivision (b) of Section 2034.210 shall be taken at a place that is within 75 miles of the courthouse where the action is pending. On motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.” C.C.P. § 2034.420.

E. Samples

1. Demand for Exchange of Expert Witness Information
2. Designation of Expert Witnesses; Expert Witness Declaration
3. Notice of Taking Deposition of Expert Witness and Request for Production of Documents

V. Civil Subpoenas and 1987s**A. Civil Subpoenas**

“The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring the person’s attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness’s control which the witness is bound by law to produce in evidence.” C.C.P. § 1985(a).

“A copy of an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.” C.C.P. § 1985(b).

“[T]he service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day’s attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.” C.C.P. § 1987(a).

B. 1987s

“In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time.” C.C.P. § 1987(b).

“If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within any shorter period of time as the court may order, it may include a request that the party or person bring with him or her books, documents, electronically stored information, or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or any other time period as the court may allow, the party or person of whom the request is made may serve written objections to the request or any part thereof, with a statement of grounds.” C.C.P. § 1987(c).

C. On-Call Agreements

“Any person who is subpoenaed to appear at a session of court, or at the trial of an issue therein, may, in lieu of appearance at the time specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon such notice as may be agreed upon. Any failure to appear pursuant to such agreement may be punished as a contempt by the court issuing the subpoena. The facts establishing or disproving such agreement and the failure to appear may be proved by an affidavit of any person having personal knowledge of the facts.” C.C.P. § 1985.1.

D. Samples

1. Civil Subpoena
2. Civil Subpoena Duces Tecum
3. Notice to Appear at Trial in Lieu of Subpoena
4. Notice to Appear at Trial in Lieu of Subpoena, and Notice to Produce Documents at Trial
5. On-Call Agreement

VI. Offers to Compromise

“Not less than 10 days prior to commencement of trial . . . , any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time.” C.C.P. § 998(b).

VII. Trial Documents (PI Hub)**A. Trial Briefs (Optional)**

Identify claims and defenses; major legal issues (with supporting points and authorities); relief claimed and calculation of damages sought; and any other information that may assist the court at trial.

B. Motions in Limine

Parties must meet and confer prior to filing motions in limine, and comply with the statutory notice provisions of the California Code of Civil Procedure Section 1005, and the requirements of Los Angeles County Rule 3.57(a). Motions in limine must be accompanied by a declaration that the parties have met and conferred. Captions shall identify the evidence that the moving party seeks to preclude, and shall be numbered consecutively.

C. Joint Statement to Be Read to the Jury

The parties shall work together to prepare and file a joint written statement of the case for the court to read to the jury. L.R. 3.25(g)(4).

D. Joint Witness List

All witnesses must be listed in alphabetical order by last name. Identify each witness by name, which witnesses are experts, estimate the length of the direct, cross examination, re-direct examination, and identify all potential witness scheduling issues and special requirements. L.R. 3.25(g)(5).

E. List of Proposed Jury Instructions (Joint and Contested)

List proposed jury instructions in numerical order, specifying the instructions upon which all sides agree and the contested instructions, if any. The list must include a space by each instruction for the judge to indicate whether the instruction was given.

F. Jury Instructions (Joint and Contested)

Prepare a complete set of full-text proposed jury instructions, editing all proposed CACI (insert party names and eliminate blanks and irrelevant material). Prepare special instructions in a format ready for submission to the jury with the instruction number, title, and text only (no boxes or other indication as to the requesting party).

G. Joint Verdict Form(s)

Prepare proposed general or special verdict form acceptable to all sides. L.R. 3.25(g)(8). If the parties cannot agree on a joint verdict form, each party must separate file a proposed verdict form.

H. Joint Exhibit List

Prepare joint exhibit list organized with columns identifying each exhibit, each party's evidentiary objections, if any, to admission of each exhibit. Parties shall meet and confer in an effort to resolve objections to the admissibility of each exhibit.

I. Page and Line Designation for Deposition and Former Testimony

If parties intend to use deposition testimony or former trial testimony in lieu of any witness's live testimony, the parties shall meet and confer and jointly prepare and file a chart with columns for the following: (1) line and page designations; (2) objections; (3) counter-designations; (4) any responses thereto; and (5) the court's ruling.

J. Forms/Samples

1. Trial Brief
2. Motions in Limine
3. Joint Statement of the Case
4. Joint Witness List
5. List of Proposed Jury Instructions
6. Jury Instructions
7. Joint Verdict Form
8. Joint Exhibit List

VIII. Evidentiary Exhibits

Parties shall jointly prepare (and be ready to temporarily lodge for inspection at the FSC) three sets of tabbed, internally paginated by document, and properly-marked exhibits, organized numerically in three-ring binders (for the court, the judicial assistant, and the witnesses). Non-documentary exhibits shall be marked, and insert a simple written description of the exhibit behind the corresponding numerical tab in the exhibit binder. If the parties have a joint signed exhibit list and electronic copies of their exhibits, the parties will not be required to produce exhibit binders at the FSC. However, exhibit binders may be required by the assigned trial judge when trial commences.

IX. Trial Binders

This is required in the PI Hub. Conformed copies of the trial documents must be included, tabbed and organized into three-ring binders with a table of contents as follows:

Tab A: Trial Briefs (Optional)

Tab B: Motions in Limine – oppositions and replies must be placed directly behind the moving papers.

Tab C: Joint Statement to Be Read to the Jury

Tab D: Joint Witness List

Tab E: Joint List of Jury Instructions

Tab F: Joint and Contested Jury Instructions – place agreed upon instructions first in order, followed by the contested instructions

Tab G: Joint and/or Contested Verdict Form(s)

Tab H: Joint Exhibit List

Tab I: Joint Chart of Page and Line Designation(s) for Deposition and Former Testimony

Tab J: Copies of the Current Operative Pleadings (complaint, answer, cross-complaint, answer to cross-complaint).

See Sample Table of Contents.

**DISCOVERY: PRACTICAL TIPS ON HOW TO COLLECT, INVESTIGATE AND PREPARE
THE INFORMATION AND EVIDENCE TO PROVE YOUR CLIENT'S DAMAGES AND
INJURIES IN A PERSONAL INJURY OR MEDICAL MALPRACTICE ACTION**

By Jin N. Lew

FUNDAMENTAL ELEMENTS OF A PERSONAL INJURY ACTION

1. Misfeasance/Negligence - "bad act(s)"
2. **Damages/Injuries**
3. **Causation/the Negligence as a substantial factor in causing the injury**

DAMAGES/INJURIES

1. Two kinds of injury: To the Person and to the Property

Definition: Civil Code section 25, 27 and 29

"Every other injury is an injury to the person"

- Focusing on the Injury to the Body

2. Two kinds of injury to the Person: Economic and Non-economic;

- Refer to Judicial Council of California Civil Jury Instructions CACI;
www.courts.ca.gov/partners/317.htm
- **ECONOMIC:**
 - Past and future medical expenses including loss of household services, cost of attendant care at home, and cost of adaptation to accommodate injury;
 - Past and future loss of earnings; loss of earning capacity;
- **NON-ECONOMIC:**
 - Past and future physical pain;
 - Past and future mental suffering/anxiety/emotional distress
 - Shock and fear
 - Loss of enjoyment of life
 - Disfigurement/physical impairment
 - Inconvenience/hardship
 - Grief (not recoverable in a wrongful death claim)
 - Loss of consortium
 - Loss of love, companionship, assistance, moral support, protection, comfort, society and affection (wrongful death)

3. Sources of information and evidence that define the damage or injury:

- **SOURCES:**
 - CLIENT, FAMILY, FRIEND
 - EMPLOYER
 - INSURANCE
 - SCHOOL
 - MEDICAL RECORDS

- **THE CLIENT(S):** The careful and detailed interview of the client, and documenting and garnering the evidence
 - Pre-incident condition of the client including activities, work history, family history, social history, physical condition, mental/emotional condition, and appearance;
 - Condition at the time or moment of the injury-producing incident including mechanics of injury producing event, suffering, shock, and fear;
 - Post-incident condition of the client including mental impairment, depression, thought processes, physical manifestations of injuries
 - Photos, videos, diaries, journals, awards, honors, trophies
 - Identifying and interviewing family, friends, neighbors and associates
 - **TECHNOLOGY: SOCIAL MEDIA, SMART PHONES, COMPUTERS**
 - Identification of all healthcare providers and work related entities pre-incident to present; Authorizations for release of records
 - Documenting the information: Audio and video recordings, summaries, notes, PLANS

- **THE MEDICAL RECORDS:**
 - Know how medical records are organized: HOSPITAL CHART and MEDICAL OFFICE CHART -
 - HOSPITAL CHART:
 - Admission Records-Intake, History and Physical Examination Report, Conditions of Admission
 - Physician Orders
 - Progress Notes
 - Consultation Reports
 - Radiology Reports
 - Radiology imaging studies *e.g.* MRIs, CT Scans, X-rays, Ultrasounds; look for the imaging menu
 - Laboratory Reports
 - Nurses Flowsheets
 - Medication Administration Records
 - Operative/Procedure Reports
 - Pathology Reports, Slides and Tissue Block
 - Discharge Summaries
 - Patient Instructions
 - Consent for Medical Care forms
 - Medical billing - a separate record that is not a part of the patient chart
 - Audit trail for electronic records - a separate record that is not a part of the patient chart

- Collateral Records [THE TREASURE HUNT]: emails, letters, records from other facilities, records specific to a specialized hospital unit e.g. Emergency Department, Labor and Delivery, ICU, Radiology, Pathology. . .
 - MEDICAL OFFICE CHART
 - Patient Intake Form
 - Medical Care Notes: CC, History/Subjective, Physical Exam/Objective, Assessment, Plan
 - Physician Orders
 - Laboratory Test Records
 - Prescriptions/Referrals
 - Appointment Records
 - Billing Records
- **HOW DO YOU GET MEDICAL RECORDS:**
 - **HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT 1996) Security Rule: 45 CFR Part 160 and Part 164**
 - Disclosure
 - Exit Strategy-Proper Disposal of Records
 - **THE PATIENT/ PATIENT ACCESS TO HEALTH RECORDS ACT (PAHRA) Health & Safety Code Section 123100, 123105, 123110**
 - Limitations: Incomplete and non-verifiable; provider refusal, *e.g.* flash drives
 - **EVIDENCE CODE Section 1158/ CODE OF CIVIL PROCEDURE Section 1985.7**
 - **SOURCES:**
 - (a) For purposes of this section, “medical provider” means physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bio-analyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital.
 - **WHO CAN AUTHORIZE RELEASE OF RECORDS:**
 - (b) Before the filing of any action or the appearance of a defendant in an action, **if an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient**, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, **to a medical provider, the medical provider shall promptly make all of the patient’s records under the medical provider’s custody or control available for inspection and copying by the attorney at law or his or her representative.**

- WHO CAN COLLECT:

(c) Copying of medical records shall not be performed by a medical provider, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in Section 22451 of the Business and Professions Code as his or her representative to obtain or review the records on his or her behalf. **The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.**

- WHEN MUST THE RECORDS BE PRODUCED AND THE CONSEQUENCES FOR FAILURE TO COMPLY:

(d) **Failure to make the records available during business hours, within five days after the presentation of the written authorization, may subject the medical provider having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.**

- COSTS FOR PRODUCING RECORDS

(e) (1) **All reasonable costs incurred by a medical provider in making patient records available pursuant to this section may be charged against the attorney** who requested the records.

(2) "Reasonable cost," as used in this section, shall include, but not be limited to, the following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a size 8¹/₂ by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents or the reproduction of documents requiring special processing which are made in response to an authorization; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars (\$16) per hour per person, computed on the basis of four dollars (\$4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person.

(f) If the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, the only fee for complying with the authorization shall not exceed fifteen dollars (\$15), plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person.

- ELECTRONIC RECORDS

(g) **If the records requested pursuant to subdivision (b) are maintained electronically and if the requesting party requests an electronic copy of such information, the medical provider shall provide the requested medical records in the electronic form and format requested by the requesting party, if it is readily producible in such form and format, or, if not, in a readable form and format as agreed to by the medical provider and the requesting party.**

- THE AUTHORIZATION FORM

(h) A medical provider shall accept a signed and completed authorization form for the disclosure of health information if both of the following conditions are satisfied:

(1) The medical provider determines that the form is valid.

- HOW TO ENFORCE PER CCP 1985.7

When a medical provider fails to comply with Section 1158 of the Evidence Code, in addition to any other available remedy, the **demanding party may apply to the court for an order to show cause why the records should not be produced.**

Any order to show cause issued pursuant to this section shall be served upon respondent in the same manner as a summons. It shall be returnable no sooner than 20 days after issuance unless ordered otherwise upon a showing of substantial hardship. The court shall impose monetary sanctions pursuant to Section 1158 of the Evidence Code unless it finds that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

- **SUBPOENA POWER per Code of Civil Procedure section 1985 et seq**

- Witness for deposition
- Subpoena duces tecum-Notice to Consumer
- Affidavit

- **REQUEST TO PRODUCE DOCUMENTS AND DEPOSITION NOTICES pursuant to the CIVIL DISCOVERY ACT; Code of Civil Procedure section 2031 et seq. and section 2025 et seq.**

- Suggested language for requesting the production of documents in a medical malpractice action pursuant to CCP sec 2031:

“Request No. __: Any and all DOCUMENTS pertaining to any and all medical care and treatment rendered to [patient/client] by [defendant] from first date of treatment to present including but not limited to electronically stored information, . . . correspondence and memoranda;”

“Request No. __: The audit trail for the electronic medical records of [patient/client] pertaining to the medical care and treatment rendered by [defendant] from the first date of treatment to the present including but not limited to print-outs and electronically stored information”

“Request No. __: “Any and all DOCUMENTS pertaining to the charges, costs, fees, and payment for any and medical care and treatment rendered to [patient/client] by [defendant] from first date of treatment to present including but not limited to electronically stored information, . . . correspondence and memoranda.”

“Request No. __: Any and all imaging studies performed on [patient/client] including but not limited to Magnetic Resonance Images, X-ray images, Computed Tomography Scan images, and Ultrasound Images”

“Request No. __: Any and all pathology specimens, slides and/or tissue blocks taken from [patient]”

- Deposition of the Person(s) Most Qualified pursuant to CCP section 2025.230 and/or Custodian of Records and Request to Produce- “Topic: Authentication of the medical records of [client] produced by [defendant] in response to Request No. ___ of Plaintiff’s Request to Produce, Set No. ___ as a complete and genuine copy of the entirety of all medical records of [client] when a patient at [defendant] from first date of treatment to the present.”
- **HOW TO PROCESS THE MEDICAL INFORMATION**
 - **THE ART OF READING MEDICAL RECORDS**
 - Patience and study
 - **BASIC MEDICAL TERMINOLOGY:**
 - Heiroglyphics: CC, HPI/Hx, PMH, ROS, Dx, NKA, BIB, WNL, AMA, DNR, VSS, HTN, ABG, . . .itis, . . .ectomy, ... pathy, idiopathic, FU
 - **ORGANIZATION OF RECORDS:**
 - Attorney preference
 - Reference indicators: Pagination and volume numbering
 - Medical chronology: Programs: Excel, On-line software/Date, Time, Event, Author, Reference, Source
 - Look for the story and the patterns; keep a file on the
 - **MEDICAL EXPERTS**
 - The nature of the injuries and damages determines the selection of experts

TRIAL CHECKLIST

75 days before trial

	Demand for Exchange of Experts
	Serve supplemental discovery, including final RFAs
	Contact client for pre-accident photos/videos to the extent not already gathered
	Contact your experts - check availability and send them additional documents (discovery, depositions, photos, evidence, medical records etc.)
	Serve final pre-trial subpoenas
	Send final deposition notices
	To the extent not already done, work on jury instructions (CACI and special)
	Review deadlines / checklist for trial, review courtroom rules, MIL deadlines etc
	Brainstorm re MILs/evidence issues

50 days before trial

	Serve expert designation
	CCP §1987 (b) and (c) to defendant(s) to appear and produce documents (including surveillance videos/photos and financial records if you have a claim for punitive damages)
	Meet and confer re MILs

40 days before trial

	Notice expert depositions and coordinate expert deposition schedule
	Talk to your experts about production of their file (CCP §2034.415)
	Confirm you have DME reports / record reviews if applicable
	Start research of defense experts (e.g. checking List Serve(s) and obtaining prior depositions etc.)
	Draft MILs
	Brainstorm re demonstrative exhibits
	To the extent not already done, begin your case chronology for purposes of putting together opening and witness outlines later

35 days before trial

	Contact lay witnesses, friends, family, coworkers, check availability, testimony
	Trial subpoenas / on call agreements for treating doctors, lay witnesses, police, trial subpoena to defense expert for file if necessary
	Serve 998 offers
	Digitize and OCR trial documents, including exhibits, depositions, and sometimes written discovery responses, pleadings and briefs
	Make sure your videotaped depositions have come in and are synced for clips
	Determine what trial software you will use and if you need a technician
	Consider/complete a focus group

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10 days before FSC

	Prepare trial docs and FSC notebook: witnesses, exhibits, jury instructions, special verdict form, statement of the case, objections
	Finalize exhibit notebooks
	Contact defense re stips if applicable (like past medical bills, certain records)
	Prep some exhibits like med bill summary, start on demonstrative exhibits
	Depo and medical record summaries
	Draft more MILs / oppose MILs if not already done
	Follow up with witnesses for on call agreements and scheduling

10 days before trial

	Contact court and presentation company re presentation equipment, including computers, screens, speakers, elmo, etc – check with defense if they will split cost
	Finalize demonstrative exhibits
	Meet with client, family, friends, lay witnesses, go over testimony and court rules (like where to park, how to handle themselves with the jurors around, what to wear, where to eat etc.)
	Prep outlines for cross and direct
	Digitize and OCR: exhibits, depositions, discovery, complaint, answer
	PowerPoints for opening, closing
	Prep attorney notebooks (contact info for pltf(s), witnesses, experts and any other consultants (e.g. tech or jury consultant); tabs for: voir dire, opening, each witness, closing and chronology. Per witness have outline, key docs, depo summary.

First Day of Trial

	Bring Judge's evaluation, 170.6, FSC/exhibit/attorney notebooks, laptop, power cord for phone
	Box with depositions & copies, discovery, complaint, answer (if general PI hub, leave in car until assigned courtroom)
	Items/people for jury selection, including post its and consultant(s)/employee(s) to assist you in analyzing the panel

Trial Days

	Bring non-legal items: Water, snack(s), suit jacket, sewing kit, Ziplocs
	Bring technology: laptop, PowerPoint clicker/laser pointer, power cord for computer and phone, potentially a printer and/or remote scanner
	Bring office equipment: notepad, extra pens, black marker, stapler, etc.
	Bring trial documents: FSC, exhibit and witness binders; copies of deposition transcripts and an objection cheat sheet
	Bring reference materials as necessary (5 in 1 with codes, CACI books, etc.)

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Discovery: The claims file in bad-faith cases

HOW TO GET ALL THE INSURANCE COMPANY DOCUMENTS YOU NEED TO BUILD A BAD-FAITH CASE

In an insurance bad-faith case, written discovery provides you with the insurance company's critical internal communications. The insurer's production, including claims and underwriting files, will be voluminous. If you spend time to review the documents, you will find the indispensable details for depositions.

There are some issues that will be present in every insurance case:

- Obtaining the claim file;
- Understanding the insurance company's coverage position (See 10 Cal.

Code Regs., § 2695.7, subd. (b) and *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 33);

- Determining who was involved in the claim-adjustment process and deposing them;
- Determining if the insurance company is asserting the advice-of-counsel defense;
- Serving Form Interrogatory No. 15.1 seeking information about denials and special or affirmative defenses and No. 50 seeking the insurance company's position about the policy (the contract);

and

- Special interrogatories specifically tailored to the issues in your case to understand the insurance company's contentions in your case.

When preparing the discovery plan in your case, be aware of whether you have a first- or third-party claim. In a third-party failure-to-settle case, you want to use discovery to determine whether the insurer denied the claim because it believed there was no coverage or because it felt that the settlement offer

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was too high. It would also be critical to understand what information and documents the insurer's decision-makers had before making the decision to reject the offer. Discovery can also assist you in trying to lay the foundation to avoid a genuine-dispute defense.

At the time of depositions, it is important to establish authorization or ratification by officers or managing agents. You can also seek, particularly with the assistance of internal claims and underwriting manuals, to get deponents to agree with generally applicable rules.

Insurance companies publicly broadcast considerable information that can assist you in preparing your discovery plans and proving your case, including standards they create or follow. Be creative in the way you gather information and know you can never over-prepare!

Pre-litigation

Before litigation begins, obtain a copy of the policy from your client and all communications that your client exchanged with the insurance company. In today's society, that includes emails, text messages, and videos. This will help you draft the complaint and guide you as you get into the initial round of discovery after you file the complaint.

Depending on the volume of materials your client provides, you may be able to begin the discovery plan. This is particularly helpful in federal cases where discovery is limited. Use the CACI instructions, as well the Rutter Group Practice Guide for Insurance Litigation. Don't be afraid to update your discovery plan as you conduct various rounds of discovery.

Trial preparation in an insurance bad-faith case can be daunting. Usually, by the time of trial, you have gathered a lot of information from your client, the insurance company, maybe brokers and agents, and third parties. It is helpful to maintain working copies of documents and chronologies as you gather information in discovery. It is never too early to start this process.

Claims files

Insurance companies maintain a claim file for each claim. (Cal. Code Regs., tit. 10, §§2695.3(b)(1), §§ 2695.3(b)(2), and 2695.3(b)(3).) This file includes a claims diary, also known as claim notes, that should document events in the claim from the initial reporting until the final disposition. This document is almost always maintained electronically and includes entries regarding internal and external communications from claims handlers, managers, and supervisors. It will also include information about payments to the insured and repair estimates. It should include examination under oath transcripts, audios and videos if they were conducted, as well as photographs, audio, and video relevant to the claim.

The claims file will assist you in learning when the insurance company knew what. Without the claim file, the jury would not be able to determine whether the insurance company acted fairly and in good faith in handling the claim: "How else could they have properly determined whether (Insurer) acted fairly and in good faith in its handling of the claim?" (2,022 Ranch, L.L.C. v. Superior Court (2003) 113 Cal.App.4th 1377, 1396 (quoting text) (disapproved on other grounds in Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725; see Amato v. Mercury Cas. Co. (1993) 18 Cal.App.4th 1784, 1788-1789 – insurer could not rely on belated investigation to justify denial of defense, even though it correctly determined claim was not covered.))

Advice of counsel defense waives privilege

The claim file may also include loss reserve set up by the insurer to cover the expected cost of defending and settling the claim. This information may be relevant in establishing the potential for coverage, thus triggering a duty to defend, or determining whether the insurer unreasonably refused to settle the case, thereby exposing the insured to an excess verdict. (Lipton v. Superior Court (1996) 48 Cal.App.4th 1599, 1614; see Samson v. Transamerica Ins. Co. (1981) 30 Cal.3d 220, 240.)

At times, the insurance company will redact portions of its claim file, particularly for attorney-client communication or attorney work-product privilege. If this occurs, request a privilege log and make sure you have determined whether the insurer is relying on the advice of counsel. Thereafter, determine if you feel you are entitled to see the redacted information. By relying on the advice-of-counsel defense, the insurer waives the attorney-client privilege regarding the advice received. (See Transamerica Title Ins. Co. v. Superior Court (1987) 188 Cal.App.3d 1047, 1053.)

Claims manuals

Insurance companies maintain guidelines for the prompt process of insurance claims, including processing and reporting the claim to regional or home office claims supervisors. (California Insurance Company § 790.03(h)(3); Cal. Code Regs., tit. 10, § 2695.6(b).)

California Courts have recognized for years that insurance claims manuals are discoverable and admissible at trial. (See, e.g., Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117-1119; Neal v. Farmers Ins. Exchange (1978) 21 Cal.3d 910, 923, fn. 8; Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co. (1987) 189 Cal.App.3d 1072, 1082, 1099; Moore v. American United Life Ins. Co. (1984) 150 Cal.App.3d 610, 620, fn. 3.)

In Glenfed Development, the insured served a request for production of documents in which it sought, among other things, the insurer's claims manual. The insurer refused to produce the claims manual, but the Court of Appeal issued a writ of mandate requiring the insurer to produce the claims manual.

[C]ourts have for years recognized that claims manuals are *admissible* in coverage dispute litigation. (See, e.g., Neal v. Farmers Ins. Exchange (1978) 21 Cal.3d 910, 923, fn. 8; Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co. (1987) 189 Cal.App.3d 1072, 1082,

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1099; *Moore v. American United Life Ins. Co.* (1984) 150 Cal.App.3d 610, 620, fn. 3.) *If claims manuals are admissible, it follows (as the courts of other states with similar discovery statutes have held) that they are discoverable.*

...

Moreover, even if it is inadmissible at trial, the claims manual may lead to the discovery of other, relevant evidence that is admissible, and no more is required to justify the demand for its production.

Glenfed Development Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1117-1119 (emphasis added).)

Claims manuals may also provide information to show how the insurance company understood and intended the standard policy language to be used: “[I]t makes no sense to suggest that the book designed to serve as the instruction manual for the carrier’s employees would be completely silent about policy terms.” (*Glenfed Development, supra*, 53 Cal.App.4th at 1118.) Claims manuals can provide information about the types of personnel involved in the claim process, such as supervisors and managers. (*Ibid.*) They may also be relevant to ambiguity arguments. (See *Andover Newton Theological School, Inc. v. Continental Cas. Co.* (1st Cir. 1991) 930 F.2d 89, 94, fn. 5 – claims manual indicated insurer was unsure of correct interpretation.)

Underwriting files and manuals

Insurers maintain an underwriting file, which customarily contains things like the application, notes from the underwriting regarding premiums, copies of documents pertinent to the insurer’s rating of the risk, all documents used in underwriting the risk and policy forms. The underwriting file becomes critical when it relates to cases involving alleged misrepresentations.

Like claims manuals, insurers also maintain underwriting manuals, which can be discoverable in your case. (See *Freeman v. Allstate Life Ins. Co.* (9th Cir. 2001) 253 F.3d 533, 537 (applying Calif. law) – evidence of underwriting criteria

admissible where insured misstated epileptic condition in application for policy.)

Attorney’s claim investigation files

There are times an insurance company hires an attorney or law firm to assist in the claim investigation and act as a “super adjuster.” For example, the attorney or firm communicates with and obtains documents from third parties. In those instances, you can try to seek the attorney’s and law firm’s file. Underwriting and claim files do not become privileged because they are later transmitted to the insurer’s attorneys. Similarly, the factual information obtained by the attorney or law firm during the claim investigation is not privileged and can be relevant in the analysis of the reasonableness of the insurer’s conduct and investigation.

In other words, an insurer cannot shield the discovery of its claims handling and investigation activities by hiring a law firm or a lawyer to perform a portion of these services. The attorney-client “privilege does not protect ‘independent facts related to a communication, that a communication took place, and the time, date and participants in the communication.’” (*2,022 Ranch, L.L.C. v. Superior Court (Chicago Title Ins. Co.)* (2003) 113 Cal.App.4th 137, 1397-1398 (citing *State Farm Fire & Cas. Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 640; *Aetna Cas & Sur. Co. v. Superior Court* (1984) 153 Cal.App.3d 467, 476; *Watt Industries, Inc. v. Superior Court* (1981) 115 Cal.App.3d 802, 805; *Evans v. United Services Auto Ass’n*, 142 N.C. App. 18, 32, 541 S.E.2d 782, 791 (“an insurance company and its counsel may not avail themselves of the protection afforded by the attorney-client privilege if the attorney was not acting as a legal adviser when the communication was made.”); *Arkwright Mut. Ins. Co., v. National Union Fire Ins. Co. of Pittsburgh*, 1994 WL 510043 at * 5 (S.D.N.Y. 1994); *Amerisure Ins. Co. v. Laserage Tech. Corp.*, 1998 WL 310750 at * 11 (W.D.N.Y. 1998); *Chicago Meat Processors, Inc. v. Mid-Century Ins. Co.*, 1996 WL 172148 at *3 (N.D. Ill. 1996)

“to the extent that an attorney acts as a claims adjuster, claims process supervisor, or claims investigation monitor, and not as a legal advisor, the attorney-client privilege does not apply.”); *Harper v. Auto-Owners Ins. Co.*, 138 F.R.D. 655, 662-63, 671 (S.D. Ind. 1991); *Mission National Ins. Co. v. Lilly*, 112 F.R.D. 160 (D. Minn. 1986) (“to the extent that [attorneys for carrier] acted as claims adjusters . . . , their work-product, communications to a client, and impressions about the facts will be treated herein as the ordinary business of [the carrier], outside the scope of the asserted privileges.”); *Boone v. Vanliner Ins. Co.*, 744 NE.2d 154 (Ohio 2001).)

Mere transmittal of documents to an attorney which are nonconfidential in character or which have an independent existence, such as photographs, insurance policies, and documents obtained from third parties, are not privileged. (See Wegner, et al., Cal. Practice Guide: Civil Trials and Evidence, (The Rutter Group, 2018) Attorney-Client Privilege: Para. 8:2042, p. 8E-58-58.1; *San Francisco Unified School Dist. v. Superior Court* (1961) 55 Cal.2d 451, 456; *Suezaki v. Superior Court* (1962) 58 Cal.2d 166, 176; *Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1522; *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 590 Cal.App.4th 110, 119; *Holm v. Superior Court* (1954) 42 Cal.2d 500, 507-508 (overruled on other grounds in *Suezaki v. Superior Court* (1962) 58 Cal.2d 166, 176 (mere transmission, even if the parties intended confidentiality, “cannot create the privilege if none, in fact, exists.”).)

Financial condition pre-trial

If punitive damages are at play, you will need to determine the insurer’s financial condition. This can be problematic in light of California Civil Code section 3295(c), which prevents pretrial discovery unless first obtaining a court order.

You can do a few things to address this issue. First, admitted carriers file annual financial statements with the Insurance Commission and non-admitted

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carriers file financial statements where they are admitted to do business. If the insurer or its parent or holding company are publicly traded, they are required to file financial statements with the Securities and Exchange Commission (SEC). Thus, you can find a lot of information online. Second, there are private services that provide information about insurer's financial condition for a fee, including A.M. Best Co.

Third, you can conduct discovery pretrial, without a court order, requesting the insurer identify the documents in its possession that are admissible on the issue of its financial condition and which of the insurer's employees are most competent to testify to its financial condition. (Civ. Code, § 3295(c).)

Sample special interrogatories

It is often helpful to prepare special interrogatories asking the insurance company to:

- Identify policy provision and related facts used to deny claim;
- Identify each person employed by the insurer in handling, investigating or reviewing the claim;
- Identify any outside investigator, adjuster or claims representative employed to investigate or evaluate the claim;
- Identify the supervisor or supervisors of the claims department at the times in question;
- Identify and describe what files exist with respect to the claim and state the location of each such file or files.

INTERROGATORY NO. 1:

List the names of all individuals acting on Your behalf, other than individuals performing merely clerical functions, who were involved in the underwriting of the policy issued to Plaintiffs, Policy No. XXXX ("Policy"), which is the subject matter of this litigation.

INTERROGATORY NO. 2:

For each of the individuals who were involved in the underwriting of the Policy, state the job title or classification held by that individual at the time that

individual was involved in the underwriting of the Policy.

INTERROGATORY NO. 3:

For each of the individuals who were involved in the underwriting of the Policy which is the subject matter of this litigation, state the current title or job classification held by that individual.

INTERROGATORY NO. 4:

For any individuals who were involved in the underwriting of the Policy who no longer works for your company, state his/her last known address.

INTERROGATORY NO. 5:

State the name of the person most knowledgeable from Company regarding Company's underwriting of the Policy.

INTERROGATORY NO. 6:

List the names of all individuals acting on your behalf, other than individuals performing merely clerical functions, who were involved in the Investigation (as used herein, the term "Investigation" is defined in 10 Cal. C. Regs § 2695.2 as: "all activities of an insurer or its claims agent related to the determination of coverage, liabilities or nature and extent of loss or damage for which benefits are afforded by an insurance policy . . . and other obligations or duties arising from an insurance policy . . .") and evaluation of plaintiffs' Claim (as used herein, the term "Claim" refers to the claim filed by plaintiffs under the Policy).

INTERROGATORY NO. 7:

For each of the individuals who were involved in the Investigation and evaluation of the Claim, state the job title or classification held by that individual at the time that individual investigated or evaluated the Claim.

INTERROGATORY NO. 8:

For each of the individuals who were involved in the Investigation and evaluation of the Claim, state the current title or job classification held by that individual.

INTERROGATORY NO. 9:

For any individuals who were involved in the Investigation and evaluation of the Claim who no longer works for your company, state his/her last known address.

INTERROGATORY NO. 10:

State the name of the person most knowledgeable from Company regarding Company's Investigation and evaluation of the Claim.

INTERROGATORY NO. 11:

State the name of the person most knowledgeable from Company regarding Company's denial of the Claim.

INTERROGATORY NO. 12:

If You (as used herein, the terms "You" and "Your" shall mean Company and any present and former agents, divisions, subsidiaries, successors and assigns, officers, directors, employees, investigators, consultants, advisors, accountants, attorneys, agents, adjusters, and any and all other persons or entities acting on behalf of Company) contend that it was reasonable not to accept the XXX offer to settle the Underlying Action (as used herein, the term Underlying Action shall mean the action entitled _____ v. _____, _____ County Superior Court Case No.: XXXXX) within policy limits, state all facts that support Your contention.

INTERROGATORY NO. 13:

Identify all individuals who were involved in Your decision not to accept the XXX offer to settle the Underlying Action within policy limits.

INTERROGATORY NO. 14:

State all facts that support Company's contention that it did not have a duty to indemnify Insured in the Underlying Action pursuant to the terms of the Policy.

INTERROGATORY NO. 15:

State all facts that support Company's contention that it did not

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have a duty to defend Insured in the Underlying Action pursuant to the terms of the Policy.

INTERROGATORY NO. 16:

State all facts that support Company's contention that the Policy did not provide coverage for Insured in the Underlying Action.

INTERROGATORY NO. 17:

Are you relying on the advice of counsel in this case?

Sample requests for production of documents

REQUEST NO. 1:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: _____ insurance Policy No. XXX issued by Defendant to Plaintiffs, including all attachments, endorsements, amendments, and/or riders from date of first issue to Plaintiffs until the present.

REQUEST NO. 2:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: Any and ALL DOCUMENTS or COMMUNICATIONS comprising the complete claim files (including, but not limited to, home office, regional office, local or other office) pertaining to the claims, including the following:

(a) All inter-office memoranda or other form of DOCUMENTS or COMMUNICATIONS of any employee of defendant relating to the initial processing of the claims listed above when defendant first received said claims;

(b) All inter-office memoranda or other form of DOCUMENTS or COMMUNICATIONS from any employee of defendant relating to the continued processing of plaintiffs' claims listed above;

(c) ALL DOCUMENTS or COMMUNICATIONS between plaintiffs and defendant, including all proof of loss forms and/or personal property lists;

(d) ALL DOCUMENTS or COMMUNICATIONS between defendant and any third party concerning the processing, acceptance, or denial of the claims listed above;

(e) All investigative reports concerning plaintiffs and the claims listed above, and ALL DOCUMENTS or COMMUNICATIONS between defendant and any third party concerning said report or reports;

(f) All inter-office memoranda or other form of DOCUMENTS or COMMUNICATIONS from any employee of defendant concerning denial of the claims listed above;

(g) ALL DOCUMENTS or COMMUNICATIONS between defendant and plaintiffs concerning denial of the claims listed above;

(h) ALL DOCUMENTS or COMMUNICATIONS between defendant and any third party or third party's attorney concerning denial of the claims listed above;

(i) All photographs, motion pictures, videotapes, tape recordings (or transcripts of tape recordings) or investigative reports of defendant concerning plaintiffs taken by or on behalf of defendant, relating to the processing or denial of the claims listed above;

(j) All other DOCUMENTS or COMMUNICATIONS including correspondence, telephone notes, Telex, and fax pertaining to the processing of the above claims in the possession of defendant not designated in requests numbered (a) through (i);

(k) All file folders or file jackets and adjacent or related exhibit folders in which any DOCUMENTS, COMMUNICATIONS or other materials or items described in requests numbered (a) through (i) above are filed or maintained.

REQUEST NO. 3:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: The complete and original underwriting file (including, but not limited to, home office, regional office, local or other office) pertaining to

the Policy from the time Plaintiffs' application was submitted up to and including the present, including, but not limited to, the file folder or file folders themselves; adjacent exhibit folders; ALL DOCUMENTS, COMMUNICATIONS and investigative reports regarding the Policy, including inter-office memoranda or notes pertaining to the issuance of the Policy; and any and ALL DOCUMENTS, COMMUNICATIONS or statements made between defendant and other parties, regarding the issuance of the Policy.

REQUEST NO. 4:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: The complete claims manuals and/or procedures manuals, policy statements, DOCUMENTS, bulletins, COMMUNICATIONS or memoranda which set forth company practices or policies regarding the handling, processing and/or investigation of claims submitted by Your insureds and which were in effect or which were utilized by You at the time the Claim was handled, processed and/or Investigated.

REQUEST NO. 5:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: All additions, revisions, deletions or other changes that have been made in the claims manuals and/or procedures manuals from the time the claim was submitted up to and including the present.

REQUEST NO. 6:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: Any other DOCUMENTS or COMMUNICATIONS including, but not limited to, inter-office memoranda, notes, files or reports outlining or describing procedures for claims handling, processing and investigation and which were in effect or which were utilized by you at the time the claim

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was handled, processed and/or Investigated.

REQUEST NO. 7:

Any and ALL DOCUMENTS or COMMUNICATIONS regarding written standards for the prompt investigation and processing of claims adopted by Company in compliance with 10 Cal C. Regs. § 2695.6(b) which were in effect since XXXX.

REQUEST NO. 8:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: The complete underwriting manual and/or procedures manuals, policy statements, bulletins, DOCUMENTS, COMMUNICATIONS or memoranda which set forth company practices or policies regarding the handling, processing and/or investigation of applications for insurance submitted to and which were in effect or which were utilized by you at the time Plaintiffs' applications were submitted, handled, processed and/or Investigated.

REQUEST NO. 9:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: All additions, revisions, deletions or other changes that have been made in the underwriting manual and/or procedures manuals from the time Plaintiffs' applications were submitted up to and including the present.

REQUEST NO. 10:

Pursuant to Evidence Code section 1550, a true and correct copy of the following item which has been kept in the regular course of business: Any other DOCUMENTS or COMMUNICATIONS including, but not limited to, inter-office memoranda, notes, files or reports outlining or describing procedures for underwriting handling, processing and investigation and which were in effect or which were utilized by you at the time Plaintiffs' applications were handled, processed and/or Investigated.

REQUEST NO. 11:

All DOCUMENTS that support Your decision not to accept the XXXX offer to settle the Underlying Action for \$XXXX.

REQUEST NO. 12:

All DOCUMENTS that support Your decision not to accept the XXXX offer to settle the Underlying Action within policy limits.

REQUEST NO. 13:

All COMMUNICATIONS between You and Defense Firm regarding all offers to settle the Underlying Action.

REQUEST NO. 14:

All COMMUNICATIONS between You and Defense Firm regarding the value of the Underlying Action.

REQUEST NO. 15:

All COMMUNICATIONS between You and Defense Firm regarding the

liability of Underlying Defendant in the Underlying Action.

REQUEST NO. 16:

If You are relying on advice of counsel as a defense in this case, produce all DOCUMENTS that demonstrate the advice upon which You relied.

REQUEST NO. 14:

If You are relying on advice of counsel as a defense in this case, produce all COMMUNICATIONS between You and the attorneys upon whose advice You relied.

Using these materials as a guide, you should be able to obtain the information you need to bring your bad-faith case to trial.

Danica Crittenden is a partner in the Claremont office of Shernoff Bidart Echeverria LLP. Crittenden's litigation practice includes insurance bad faith and personal injury cases. She serves on the Board of Governors for CAALA and is a member of the Consumer Attorneys of California and Consumer Attorneys of the Inland Empire (CAOIE). Mrs. Crittenden was honored as CAALA's Rising Star in 2015. She received her Juris Doctor, cum laude, from the University of La Verne College of Law in 2010 and her BA in Business Administration, magna cum laude, from Seattle University in 2007.

