

2007 TRIAL BAR NEWS

CUMULATIVE INDEX

Compiled by Kerry Hoxie, Editor-in-Chief

Includes all articles published in Volume 30 (2007).
Citations shown as Month, Issue Number: Page Number.

APPEAL

Judgment for Attorney's Fees Which Leaves Amount of Fees Blank to be Determined Later is Sufficient to Start Time Running During Which an Appeal Can be Filed; Subsequent Order Specifying Amount of Fees Does Not Modify or Alter Underlying Judgment Sufficient to Start Time for Appeal Running Again, by Williams, Oct. 8:11

ARBITRATION and MEDIATION

Arbitration Clause in Medical Provider Agreement Applies to Any Future Treatment, Despite Lapse of Time, Unless Terminated Clearly by Patient, by Williams, Apr. 4:15

Confidentiality, Written and Oral Communications Made in Connection With Mediation are Confidential and Not Subject to Discovery, Conversations re Same May be Discoverable Depending on the Circumstances, by Temple, Aug./Sep. 7:11

Mandatory Arbitration Agreement in Employment is Unconscionable and Unenforceable When It Limits Statute of Limitations for Actions, Imposes Confidentiality Requirements, Preserved Certain Employer Disputes for Judicial Forum, Was Not Mutual for Employee, and Included Other Inequities, by Plato, Oct. 8:25

Mediation, Procedures to Maximize Results at Mediation, by Albert, Apr. 4:19

Trial Court Does Not Have Authority to Order Parties to Attend and Pay For Private Mediation, Although Ordering a Mandatory Settlement Conference Pursuant to C.C.P. §639 is Authorized, by Williams, Mar. 3:23

ATTORNEYS

Attorney's Fees Available for Actions by Employees for Wage Violations, Compensation for Rest and Meal Time Violations Deemed Wages, Not Penalties, Three-Year Statute of Limitations Applies, by Morris, Aug./Sep. 7:21

Attorney's Fees, Insurer is Not Liable for Prevailing Party's Costs and Attorney's Fees Awarded as Part of Damages for Intentional Tort of Its Insured, Such Amounts are Part of the Award for the Intentional Tort Which the Insurer is Prohibited From Paying, by Huver, Apr. 4:7

Conflicts of Interest, Proper Procedure When Attorney Joins Firm and His Prior Firm Had

Represented Party Adverse to One of New Firm's Clients? When is Motion to Disqualify Required? by Temple, Apr. 4:11

Consumer Attorneys Share Knowledge and Experience With Other CASD Members as Part of Mission to Protect Consumer Rights and Access to Courts, CASD Members Never Stand Alone, by Blatt, Jun./Jul. 6:3

Duty to Opposing Party, Insurance Coverage Attorneys Who Fraudulently Misrepresent Existence or Amount of Coverage Are Liable for Fraud to Insured Even if Insured is Opposing Party in Suit, by Steinberg, Dec. 10:11

CASES

Alvarez v. May Department Stores, Collateral Estoppel May be Used to Deny Class Certification to Second Group of Plaintiffs if Their Interests Were Virtually Represented in a Prior Lawsuit Against the Same Defendant and Class Certification Was Denied in the Prior Lawsuit, by Williams, Jan. 1:13

Bafus v. Aspen Realty, Inc., Federal Court Certifies Class of Real Estate Purchasers Who Claimed Real Estate Brokers Violated the Sherman Antitrust Act, by Brehl, Feb. 2:5

Barrett v. Rosenthal, Defamation, Publishers, Distributors, and Individual Users are Immune From Liability for Republishing Potentially Offensive Content on the Internet or Interactive Computer Services, by Ryan, Feb. 2:9

Bell Atlantic Corporation v. Twombly, Federal Notice Pleading Requirements, Complaint Must State Enough Facts to State a Claim to Relief That is Plausible on Its Face, More Than Labels and Conclusions, by Robinson, Oct. 8:9

Biljac Associates v. First Interstate Bank, Repudiated by Same Court in *Demps v. San Francisco Housing Authority*, Court Must Rule on Evidentiary Objections Raised in Connection with Motions for Summary Judgment; by Williams, Jun./Jul. 6:19

Brendlin v. California, Passenger in Vehicle Unlawfully Stopped May Challenge Evidence Seized Pursuant to the Unlawful Search, Passenger is Seized When Driver is Seized, by Tee, Aug./Sep. 7:13

Capri v. L.A. Fitness International, Inc., Assumption of the Risk Defense Does Not Bar Plaintiff's Action Against Defendant Who Violated Statutes or Regulations at Health Club, Nor Does Waiver and Release Agreement, by Robinson, May 5:7

Carey v. Musladin, Private Spectator Conduct Wearing Buttons With Picture of Murder Victim at Trial May Amount to Denial of Due Process, by Brav, Mar. 3:11

Castillo v. Express Escrow Co., Escrow Company Closing Escrow on Sale of Mobile Home Despite Notice of Dispute from Buyer Liable to Buyer for Damages, by Brehl, Mar. 3:9

Chong v. State Farm Mutual Auto Ins. Co., Make Whole Doctrine Applies to Maximize Client's Recovery in Personal Injury Cases, Attorney's Fees and Litigation Costs Must be Included Before Reimbursement Right of Insurer is Considered, by de Camara, Jun./Jul. 6:5

Combs v. State Farm Fire & Cas. Co., Insurer is Not Liable for Prevailing Party's Costs and Attorney's Fees Awarded as Part of Damages for Intentional Tort of Its Insured, Such Amounts are Part of the Award for the Intentional Tort for Which the Insurer is Prohibited From Paying, by Huver, Apr. 4:7

Corder v. Corder, Apportionment of Award in Wrongful Death Action May be Done by Court, Including Allocation of Settlement Proceeds, by Robinson, Dec. 10:7

Davis v. O'Melveny & Meyers, Mandatory Arbitration Agreement in Employment is Unconscionable and Unenforceable When It Limits Statute of Limitations for Actions, Imposes Confidentiality Requirements, Preserved Certain Employer Disputes for Judicial Forum, Was Not Mutual for Employee, and Included Other Inequities, by Plato, Oct. 8:25

Delfino v. Agilent Technologies, Inc., Employer Not Liable for Employee's Threats Communicated on Employer's Computer System, 47 U.S.C. §230 Immunity for Interactive Computer Service Provider Applies, by Cadena, Mar. 3:7

Delgado v. Interinsurance Exchange of the Auto Club of Southern California, Duty to Defend Under Homeowner's Policy Includes Defending Against Acts When There is a Potential for Coverage Even if Complaint Alleges Intentional Act But Facts May Show Negligent Act, by Barry, Nov. 9:19

Demps v. San Francisco Housing Authority, Court Must Rule on Evidentiary Objections Raised in Connection with Motions for Summary Judgment; *Biljac Associates v. First Interstate Bank* Decision by Same Court is Repudiated, by Williams, Jun./Jul. 6:19

Foothill Federal Credit Union v. Superior Court, Financial Institution Producing Records Pursuant to a Subpoena is Not Liable for Privacy Violations as Litigation Privilege is Bar to Suit, Consumer's Sole Remedy is to Fight the Subpoena After Notice, by Temple, Dec. 10:21

Ford v. Polaris Industries, Assumption of Risk Defense Does Not Bar Strict Products Liability Claim for Recreational Vehicle Design Defect, by Robinson, May 5:7

Franklin Capital Corp. v. Wilson, Court-Ordered Dismissal With Prejudice Does Not Eliminate Plaintiff's Right to Voluntarily Dismiss Case, Review of Case Law re Same, by Williams, May 5:19

Freitag v. Ayers, Ninth Circuit Rules Prison is Liable for Title VII Sexual Harassment and Retaliation Claim by Guard for Third-Party Conduct by Prisoners Which Administrators Failed to Correct, by Cadena, Jan. 1:11

Gentry v. Superior Court, Employment Arbitration Agreements Which Waive Right to Bring or Participate in Class Action of Similar Claims Unenforceable as Unconscionable Unless Court Finds Class Action Would Not be More Effective in Resolving Dispute, by Morris, Nov. 9:11

Green v. State of California, Employee Bringing Disability Discrimination Claim Under Fair Employment and Housing Act Must Prove Capability to Perform the Job, by Morris, Dec. 10:23

Hemady v. Long Beach Unified School District, Assumption of the Risk Defense Does Not Bar Action for Injury in Golfing Class, Plaintiff Hit by Golf Ball, by Robinson, May 5:7

Huff v. Wilkins, Assumption of the Risk Defense Does Not Bar Plaintiff's Action Against Defendant Who Violated Statutes or Regulations, ATV Collision Involving Underage ATV Operator, by Robinson, May 5:7

Interinsurance Exchange of the Automobile Club v. Sup. Ct., Fees Charged for Insurance Premiums Paid in Installments are Actually Interest Paid for Time Value of Money, Not Subject to Premium Rules, Department of Insurance Opinion re Same Not Entitled to Deference, by Barry, Aug./Sep. 7:23

Jeld-Wen, Inc. v. Superior Court, Trial Court Does Not Have Authority to Order Parties to Attend and Pay For Private Mediation, Although Ordering a Mandatory Settlement Conference Pursuant to C.C.P. §639 is Authorized, by Williams, Mar. 3:23

Jesse v. Farmers Insurance Exchange, Colorado Supreme Court Rules Documents Produced in Bad Faith Claim Against Insurance Carrier Should Not Be Sealed From Public Scrutiny, by Temple, Jan. 1:25

Konig v. U-Haul Company of California, Employee Challenging Class Action Waiver as Unconscionable Must Establish That Only Small Amounts of Individual Damages are Involved, by Cadena, Feb. 2:17

Lloyd v. General Motors Corp., Maryland's Highest Court Rules Products Liability Claim Sounding in Tort, Contract and Consumer Protection Can be Pursued for Repair of Unmanifested Defects to Front Car Seats Which are Likely to Collapse, by Roberts, Nov. 9:21

London Market Insurers v. Superior Court, Occurrence Under Commercial General Liability Policy for Concrete Manufacturer Means Injuries Sustained by Defective Product, Not Decision to Manufacture Defective Product, by Steinberg, Jun./Jul. 6:13

Manderville v. PCG&S Group, Inc., Neither Exculpatory Language in Purchase Contract Nor Buyer's Lack of Due Diligence Shield Broker From Liability for Intentional Misrepresentation in Real Property Sale, by Brehl, Jun./Jul. 6:11

Mann v. Cooper Tire Co., Tire Manufacturing Materials Are Not Trade Secrets, Subject to

Discovery, Court May Issue Protective Order Limiting Disclosure, by Butz, Mar. 3:21

McCloud v. Goodyear Dunlop Tires North America, Ltd., Court Has Broad Latitude to Determine Whether Expert Qualifies to Testify in Particular Case, *Daubert* Factors Govern, by Kirby, Dec. 10:15

McConnell v. United States, Exception to Federal Tort Claims Act Bars Military Service Member's Heirs From Asserting a Claim Against the Government for Wrongful Death Caused by Defective Military Equipment, by Butz, Aug./Sep. 7:9

Murphy v. Kenneth Cole Productions, Inc., Compensation for Rest and Meal Time Violations Deemed Wages, Not Penalties, Three-Year Statute of Limitations Applies, Attorney's Fees Available, by Morris, Aug./Sep. 7:21

Nelson v. Superior Court (Exxon Mobil Corp.), Strict Products Liability Does Not Require That Injury Occur During Use of Product by End User; Bystander Can Recover for Injuries Caused by Foreseeable Use of Product by Anyone, by Robinson, Jan. 1:7

Parker v. Wolters Kluwer U.S., Inc., Terminating Sanctions for Failure to Respond to Discovery Upheld Against Propounding Party But Reversed as to Non-Propounding Parties Unless Detriment Shown, by Evans, Jun./Jul. 6:25

People v. Black, If a Single Aggravating Circumstance is Determined by the Jury, Aggravated Upper Term of Sentence Becomes the Statutory Maximum Which Can Be Imposed by Judge, by Brav, Dec. 10:9

People v. Sandoval, Defendant's Right to Jury Trial Was Violated by Judge Sentencing Him to Upper Term Based on Facts Determined by Judge, Case Remanded for Re-Sentencing Under New Statute Which Permits Judges to Choose Any of Three Sentencing Terms, by Brav, Dec. 10:9

Perry v. Novartis Pharmaceuticals Corp., Drug Manufacturer Liability, FDA Approval of Drug Does Not Pre-Empt State Law Claims for Failure to Warn, by Hoxie, Jan. 1:18; by Butz, Feb. 2:21

Philip Morris v. Williams, United States Supreme Court Rules Due Process Clause Forbids a State From Using Punitive Damage Award to Punish Defendant for Injury Inflicted on Non-Parties, by Randall, May 5:13

Pioneer Electronics (USA), Inc. v. Olmstead, California Supreme Court Rules Customer Contact Information is Discoverable Unless Customer Affirmatively Objects Following Notice by Vendor, by Morris, Apr. 4:23

Plata v. Schwarzenegger, California Prison Medical Care System Placed Under Control of Court-Appointed Receiver, by Tee, Jan. 1:23

Poseidon Development, Inc. v. Woodland Lane Estates, LLC, Late Charge of 10% Specified in Promissory Note Applies Only to Installment Payments of Interest Only Under Note, Does Not Apply to Large Balloon Payment of Principal and Interest Due on Maturity, Requirements for Enforceability of Late Charges, by Slania Oct. 8:13

Reigelsperger v. Siller, Arbitration Clause in Medical Provider Agreement Applies to Any Future Treatment, Despite Lapse of Time, Unless Terminated Clearly by Patient, by Williams, Apr. 4:15

Reyes v. Van Elk, Ltd., Undocumented Workers May Sue Employers for Unpaid Compensation Owing Under Labor Statutes and Laws Despite Illegal Worker Status If Work Has Already Been Performed, by Morris, Jun./Jul. 6:23

Roddy v. Superior Court, Information Necessary to Challenge Constitutionality of Jury Selection Process Must be Provided by Jury Commissioner But Must be Balanced With Jurors' Right to Privacy and Limited to Extent Necessary to Assist in Proving the Factors in Selection Process, by Spitzer, Oct. 8:23

Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone, Insurance Coverage Attorneys Who Fraudulently Misrepresent Existence or Amount of Coverage Are Liable for Fraud to Insured, by Steinberg, Dec. 10:11

Shersher v. Superior Court, Plaintiff or Class of Plaintiffs Need Not Pay Funds Directly to Defendant in Order to Obtain Restitution Under the Unfair Competition Law, by Robinson, Nov. 9:7, 27

Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants, Court Has Discretion to Award Sanctions for Failure to Comply With Discovery, Procedures for Obtaining Sanctions Outlined, Award of Sanctions Upheld, by Temple, May 5:23

Torres v. City of San Diego, Judgment for Attorney's Fees Which Leaves Amount of Fees Blank to be Determined Later is Sufficient to Start Time Running During Which an Appeal Can be Filed; Subsequent Order Specifying Amount of Fees Does Not Modify or Alter Underlying Judgment Sufficient to Start Time for Appeal Running Again, by Williams, Oct. 8:11

TRB Investments, Inc. v. Fireman's Fund Ins. Co., California Supreme Court Rules "Under Construction" in Building Insurance Policy Included Renovations as Well as New Construction, by Huver, Feb. 2:15

Unzipped Apparel, LLC v. Bader, Timing for Filing Motion to Compel Discovery From Third Party is Triggered by Receipt of Objection From Third Party, by Williams, Dec. 10:13

U.S. v. Giffen, When Defendant Reasonably Relies on Inducements of Government Agents Appearing to Have Authority to Authorize Criminal Acts, Entrapment by Estoppel is a Defense,

by Tee, Apr. 4:17-18

U.S. v. Sandoval-Mendoza, Physical and Mental Condition of Defendant is Important in Entrapment Defense to Criminal Charge to Show Defendant was Susceptible to Entrapment, by Tee, Apr. 4:17

Wallace v. City of San Diego, Constructive Discharge Claim Under Uniformed Services Employment and Re-employment Rights Act Requires Proof of Intolerable and Discriminatory Working Conditions and is Question of Fact, by Morris, May 5:21

Wimsatt v. Superior Court, Written and Oral Communications Made in Connection With Mediation are Confidential and Not Subject to Discovery, Conversations re Same May be Discoverable Depending on the Circumstances, by Temple, Aug./Sep. 7:11

CIVIL PROCEDURE -- see also DISCOVERY, *infra*

Alternative Dispute Resolution -- see ARBITRATION, *supra*

Amended Complaint Cannot Relate Back to Original Complaint if It Did Not Satisfy the Fact Pleading Requirement, by Robinson, Apr. 4:5

Appeal, Judgment for Attorney's Fees Which Leaves Amount of Fees Blank to be Determined Later is Sufficient to Start Time Running During Which an Appeal Can be Filed; Subsequent Order Specifying Amount of Fees Does Not Modify or Alter Underlying Judgment Sufficient to Start Time for Appeal Running Again, by Williams, Oct. 8:11

Apportionment of Award in Wrongful Death Action May be Done by Court, Including Allocation of Settlement Proceeds, by Robinson, Dec. 10:7

Attachment, New Legislation Provides for Survival of Claim After Death of Elder Claimant and Permits Attachment in Cases of Financial Elder Abuse, by Sigelman, Dec. 10:5

Class Action Certification, Collateral Estoppel Can be Used to Deny Class Certification to Second Group of Plaintiffs if Their Interests Were Virtually Represented in a Prior Lawsuit Against the Same Defendant and Class Certification Was Denied in the Prior Lawsuit, by Williams, Jan. 1:13

Class Action Certification, Federal Court Certifies Class of Real Estate Purchasers Who Claimed Real Estate Brokers Violated the Sherman Antitrust Act, by Brehl, Feb. 2:5

Class Action Waiver, Employee Challenging as Unconscionable Must Establish That Only Small Amounts of Individual Damages are Involved, by Cadena, Feb. 2:17

Class Action Waiver in Employment Arbitration Agreements Unenforceable as Unconscionable Unless Court Finds Class Action Would Not be More Effective in Resolving Dispute, by Morris, Nov. 9:11

Collateral Estoppel Can be Used to Deny Class Certification to Second Group of Plaintiffs if Their Interests Were Virtually Represented in a Prior Lawsuit Against the Same Defendant and Class Certification Was Denied in the Prior Lawsuit, by Williams, Jan. 1:13

Complaint, Federal Notice Pleading Requirements, Complaint Must State Enough Facts to State a Claim to Relief That is Plausible on Its Face, More Than Labels and Conclusions, by Robinson, Oct. 8:9

Conflicts of Interest, Proper Procedure When Attorney Joins Firm and His Prior Firm Had Represented Party Adverse to One of New Firm's Clients? When is Motion to Disqualify Required? by Temple, Apr. 4:11

Customer Contact Information is Discoverable Unless Customer Affirmatively Objects Following Notice by Vendor, for Determining Potential Class Members, by Morris, Apr. 4:23

Depositions, When Witness Changes Deposition Testimony, Tactics for Use of Changes at Trial, by Lance, Jan. 1:9

Disability, Employee Bringing Disability Discrimination Claim Under Fair Employment and Housing Act Must Prove Capability to Perform the Job, by Morris, Dec. 10:23

Dismissal of Case, Court-Ordered Dismissal With Prejudice Does Not Eliminate Plaintiff's Right to Voluntarily Dismiss Case, Review of Case Law re Same, by Williams, May 5:19

DOE Defendants, New Legislation Codified at Government Code §68616 Prohibits Judicially Mandated Dismissal or Severance of DOE Defendants Before Conclusion of Introduction of Evidence at Trial, by Sigelman, Dec. 10:5

E-Discovery, New Federal Rules of Civil Procedure Address Electronic Discovery, Including Production, Form of Delivery, Sources of Material and Other Matters, by Evans, Mar. 3:13

Elder Abuse, New Legislation Provides for Survival of Claim After Death of Elder Claimant and Permits Attachment in Cases of Financial Elder Abuse, by Sigelman, Dec. 10:5

Expert Testimony, Court Has Broad Latitude to Determine Whether Expert Qualifies to Testify in Particular Case, *Daubert* Factors Govern, by Kirby, Dec. 10:15

Fifth Amendment Right Against Self-Incrimination May be Asserted in All Stages of Civil, Criminal, Administrative, Judicial, Investigatory or Adjudicatory Proceedings, Under State or Federal Law, Procedures for Same, by Tee, Jun./Jul. 6:21

Immunity, Ninth Circuit Rules Prison Not Immune from Title VII Sexual Harassment and Retaliation Claim by Guard for Third-Party Conduct by Prisoners Which Administrators Failed to Correct, by Cadena, Jan. 1:11

Immunity, Defamation, Publishers, Distributors, and Individual Users are Immune From Liability for Republishing Potentially Offensive Content on the Internet or Interactive Computer Services, by Ryan, Feb. 2:9

Immunity, Employer Not Liable for Employee's Threats Communicated on Employer's Computer System, 47 U.S.C. §230 Immunity for Interactive Computer Service Provider Applies, by Cadena, Mar. 3:7

Immunity, Governmental, Exception to Federal Tort Claims Act Bars Military Service Member's Heirs From Asserting a Claim Against the Government for Wrongful Death Caused by Defective Military Equipment, Injuries Occurred in Activities Incident to Service, by Butz, Aug./Sep. 7:9

Immunity, Governmental, Tort Claims Act, California Procedural and Filing Traps, Six-Month Limitation, Delayed Discovery, Leave to File Late Claim, by Robinson, Mar. 3:5

Jury Instructions, New CACI Judicial Council Civil Jury Instructions, Available on Court's Website, by Hoxie, May 5:6

Liens, Purchasing Hospital Lien at Discount and Claiming Full Amount from Patient's Injury Lawsuit, Remedies to Prevent Same, by de Camara, Jan. 1:5

Litigation Privilege Provides Absolute Protection to Any Communication Made in Judicial or Quasi-Judicial Proceeding to Achieve Objects of Litigation, May be Defense to Civil Action Based on Perjury, by Robinson, Aug./Sep. 7:7

Make Whole Doctrine Applies to Maximize Client's Recovery in Personal Injury Cases, Attorney's Fees and Litigation Costs Must be Included Before Reimbursement Right of Insurer is Considered, by de Camara, Jun./Jul. 6:5

Mediation -- see ARBITRATION, *supra*

Medical Injury Compensation Reform Act ("MICRA"), Enacted in 1975, Deprives Patients of Fair Compensation for Medical Provider Negligence, Has Not Been Adjusted Since Enactment, Project to Get California Legislature to Change MICRA, by Sigelman, Jun./Jul. 6:7

Motion to Compel, Timing for Filing Motion to Compel Discovery From Third Party is Triggered by Receipt of Objection From Third Party, by Williams, Dec. 10:13

Pleading, California Law Requires a Statement of Facts Constituting the Cause of Action, Amended Complaint Cannot Relate Back to Original Complaint if It Did Not Satisfy the Fact Pleading Requirement, by Robinson, Apr. 4:5

Pre-Emption, Drug Manufacturer Liability, FDA Approval of Drug Does Not Pre-Empt State Law Claims for Failure to Warn, by Hoxie, Jan. 1:18; by Butz, Feb. 2:21

Products Liability, Both Consumer Expectation and Risk/Benefit Theories Can be Used to Determine a Design Defect, Differences Between the Theories, Choice Can Make Big Difference in Case Outcome, by Robinson, Jun./Jul. 6:9

Protective Order, Colorado Supreme Court Rules Documents Produced in Bad Faith Claim Against Insurance Carrier Should Not Be Sealed From Public Scrutiny, by Temple, Jan. 1:25

Punitive Damages, United States Supreme Court Decisions Reviewed, by Randall, May 5:13

Rules of Court, New and Revised California Rules of Court, Effective January 1, 2007, by Hoxie, Feb. 2:4

Sanctions, Court Has Discretion to Award Sanctions for Failure to Comply With Discovery, Procedures for Obtaining Sanctions Outlined, Award of Sanctions Upheld, by Temple, May 5:23

Strict Products Liability Does Not Require That Injury Occur During Use of Product by End User; Bystander Can Recover for Injuries Caused by Foreseeable Use of Product by Anyone, by Robinson, Jan. 1:7

Subpoena, Financial Institution Producing Records Pursuant to a Subpoena is Not Liable for Privacy Violations as Litigation Privilege is Bar to Suit, Consumer's Sole Remedy is to Fight the Subpoena After Notice, by Temple, Dec. 10:21

Summary Judgment, Evidentiary Objections Raised in Connection with Motions for Summary Judgment Must be Ruled on by Trial Court Following Rule of Court 3.1354, *Biljac* Rule Repudiated, by Williams, Jun./Jul. 6:19

Terminating Sanctions for Failure to Respond to Discovery Upheld Against Propounding Party But Reversed as to Non-Propounding Parties Unless Detriment Shown, by Evans, Jun./Jul. 6:25

Tort Claims Act, California Procedural and Filing Traps, Six-Month Limitation, Delayed Discovery, Leave to File Late Claim, by Robinson, Mar. 3:5

Undocumented Workers May Sue Employers for Unpaid Compensation Owing Under Labor Statutes and Laws Despite Illegal Worker Status If Work Has Already Been Performed, by Morris, Jun./Jul. 6:23

Unfair Competition Law, Person Must Have Suffered Injury or Damages, Remedies Available, Disgorgement of Profits Not Available Unless Plaintiff Has Ownership Interest in Such Profits, by Robinson, Restitution is Available Even Though Plaintiff Made Payment Through Third Party Vendor, Nov. 9:7

Waiver and Release at Health Club Does Not Bar Claim for Injury Caused by Violation of Health and Safety Code, Nor Does Defense of Assumption of Risk, by Robinson, May 5:7

Words Used or Conclusory Terms in Testimony Prejudice an Accused, May Violate Right to Fair Trial, by Raskin, Oct. 8:21

CONSTITUTIONAL LAW

California Prison Medical Care System Placed Under Control of Court-Appointed Receiver by Federal District Court, Care Violates Constitutional Prohibition Against Cruel and Unusual Punishment, by Tee, Jan. 1:23

Capital Punishment, Federal Department of Justice Regulations for Allowing Attorney General Rather Than Judiciary to Certify States as Having Adequate Procedures for Fast Tracking Habeas Corpus Proceedings in Capital Cases, by Tee, Nov. 9:9

Fifth Amendment Right Against Self-Incrimination May be Asserted in All Stages of Civil, Criminal, Administrative, Judicial, Investigatory or Adjudicatory Proceedings, Under State or Federal Law, Procedures for Same, by Tee, Jun./Jul. 6:21

Fourth Amendment, Passenger in Vehicle Unlawfully Stopped May Challenge Evidence Seized Pursuant to the Unlawful Search, Passenger is Seized When Driver is Seized, by Tee, Aug./Sep. 7:13

Habeas Corpus, Capital Punishment, Federal Department of Justice Regulations for Allowing Attorney General Rather Than Judiciary to Certify States as Having Adequate Procedures for Fast Tracking Habeas Corpus Proceedings in Capital Cases, by Tee, Nov. 9:9

Jury Selection, Information Necessary to Challenge Constitutionality of Jury Selection Process Must be Provided by Jury Commissioner But Must be Balanced With Jurors' Right to Privacy and Limited to Extent Necessary to Assist in Proving the Factors in Selection Process, by Spitzer, Oct. 8:23

Private Spectator Conduct Wearing Buttons With Picture of Murder Victim at Trial May Amount to Denial of Due Process, by Brav, Mar. 3:11

Sentencing, Defendant's Right to Jury Trial Was Violated by Judge Sentencing Him to Upper Term Based on Facts Determined by Judge, Case Remanded for Re-Sentencing Under New Statute Which Permits Judges to Choose Any of Three Sentencing Terms, by Brav, Dec. 10:9

Sentencing, If a Single Aggravating Circumstance is Determined by the Jury, Aggravated Upper Term of Sentence Becomes the Statutory Maximum Which Can Be Imposed by Judge, by Brav, Dec. 10:9

CONSUMER ATTORNEYS OF SAN DIEGO ("CASD")

Anatomical Models Available for Rental, Discount Rates for CASD Members, Nov. 9:29

Annual Awards & Installation Photos, 2006 Awards Presented, Mar. 3:17-19

Annual Meeting, Notice of, Nov. 9:16

Benitez, Bonnie, New Executive Director for CASD, by Blatt, Feb. 2:3

Boudreau Trial Lawyers Dinner, Fundraiser for St. Vincent de Paul Village, Articles About, by Blatt, May 5:3; by Wick, May, 5:15; Photos from 23rd Annual Dinner, Oct. 8:16-17

Broderick Award for Civility, Integrity and Professionalism Presented to Cynthia R. Chihak at 2007 Boudreau Trial Lawyers Dinner, Notice, May 5:4; Article by Blatt, May 5:3

CASD Foundation Essay Contest Winners Announced, Essays Printed, Aug./Sep. 7:18-19

CASD Helps Members in Many Ways to Never Stand Alone, CASD Activities and History, by Blatt, Jan. 1:3; Member Benefits, by Blatt, Oct. 8:3

CASD's Mission, Right to Trial by Jury, Educating Our Members, Protecting Rights of Consumers, by Blatt, Oct. 8:3

Chihak, Cynthia, Honored at Boudreau Dinner With Broderick Award, A Tribute by CASD, by Blatt, May 5:3

Committees, CASD Has Active Committees Serving the Members and the Community, Committee Work Described, by Blatt, Mar. 3:3

Consumer Attorneys of California ("CAOC"), Works With CASD to Support Plaintiff Attorneys and Consumer Rights, Active With State Legislature, by Blatt, Feb. 2:3

Consumer Attorneys Share Knowledge and Experience With Other CASD Members as Part of Mission to Protect Consumer Rights and Access to Courts, CASD Members Never Stand Alone, by Blatt, Jun./Jul. 6:3

Consumer Support Members of CASD Thanked, Members Urged to Use Their Services, Aug./Sep. 7:30; by Blatt, Oct. 8:3, 30

County Bar Board of Directors, CASD Endorsements for Upcoming Election, Notice, Jun./Jul. 6:17; Aug./Sept. 7:17

Day at the Races in Del Mar, Membership Drive Winners and New CASD Members Celebrate, Hosted by Ringler Associates, Photos, Nov. 9:15

Election Notices, for CASD Director and Officer Positions, Jun./Jul. 6:17; Aug./Sep. 7:17; Oct. 8:19; Nov. 9:15

Golf Tournament Sponsors Listed and Thanked, Aug./Sep. 7:17

Heroes Among Us, Jim McElroy, Texas Jurors, Professor Librescu at Virginia Tech, Billy Ray Johnson and Southern Poverty Law Team, World Made Better for These Heroes, by Blatt, Aug./Sep. 7-3

Judge J. Michael Bollman, Tribute to, by Blatt, Apr. 4:3

Judge Joel R. Wohlfeil Appointed to Superior Court in May 2007, Formerly CASD Board Member and Recipient of Five CASD Outstanding Trial Lawyer Awards, by Hoxie, Jun/Jul. 6:15

Lifetime and Sustaining CASD Members Listed and Thanked, Jun./Jul. 6:17; Oct. 8:29; Nov. 9:30; Dec. 10:4

List Serve Party Photos, from Berman Home, April 2007 Party, Aug./Sep. 7:15; from Goldin Home, October 2007 Party, Dec. 10:18

Lobby Day, CAOC and CASD Visit California State Legislators in Sacramento, by Hoxie, Apr. 4:13

Member Achievement Information Sought for “Member Accomplishments” Section of ***Trial Bar News***, Jun./Jul. 6:30; Aug./Sep. 7:29; Oct. 8:19; Nov. 9:30

Members Helping Others, Attorney Members’ Good Works Helping Community Acknowledged, Halloween Read-In, Americans for Department of Peace, and Walk for Darfur, Jan. 1:15; Thanksgiving, Father Joe’s Villages, Childhelp, Feb. 2:13

Membership Meeting, 2007 Annual CASD Membership Meeting Notice, Nov. 9:16; Dec.10:19

Nominations for CASD Officers and Directors for 2008 Sought from Members, Jun./Jul. 6: 17; Aug./Sep. 7:4, 17; Oct. 8;19; Slate of Nominees Announced, Nov. 9:18

Officers and Directors for 2007 Announced, Jan. 1:18; Photos, Mar. 3:17

Outstanding Trial Lawyer and Outstanding Advocacy Awards Presented at Evening With Trial Stars Dinner, Photos From the Event, Jan. 1:16-17

President Gayle Blatt Thanks Board, Members and Others for Special Help During the Year, by Blatt, Dec. 10:3

Pursuit of Happiness in the Practice of Law, by Blatt, Nov. 9:3

Trial Bar News Column Editors Thanked for Tireless Dedication in 2007, by Hoxie, Dec. 10:17

Trial Bar News Welcomes Jacob Slania as Property Law Column Editor, by Hoxie, Oct. 8:19

CONTRACT LAW

Arbitration Agreements -- see ARBITRATION, *supra*

Exculpatory Clause, Neither Exculpatory Language in Purchase Contract Nor Buyer's Lack of Due Diligence Shield Broker From Liability for Intentional Misrepresentation in Real Property Sale, by Brehl, Jun./Jul. 6:11

Express and Implied Obligations in Insurance Contracts, Remedies for Breach of Same, by Miller, Oct. 8:7

Implied-in-fact employment contract -- see EMPLOYMENT LAW, *infra*

Late Charge of 10% Specified in Promissory Note Applies Only to Installment Payments of Interest Only Under Note, Does Not Apply to Large Balloon Payment of Principal and Interest Due on Maturity, Requirements for Enforceability of Late Charges, by Slania Oct. 8:13

Leases -- see PROPERTY LAW, *infra*

Liens, Purchasing Hospital Lien at Discount and Claiming Full Amount from Patient's Injury Lawsuit, Remedies to Prevent Same, by de Camara, Jan. 1:5; Jun./Jul. 6:5

Reimbursement, Make Whole Doctrine Applies to Maximize Client's Recovery in Personal Injury Cases, Attorney's Fees and Litigation Costs Must be Included Before Reimbursement Right of Insurer is Considered, by de Camara, Jun./Jul. 6:5

Waiver and Release at Health Club Does Not Bar Claim for Injury Caused by Violation of Health and Safety Code, Nor Does Defense of Assumption of Risk, by Robinson, May 5:7

Warranty, Maryland's Highest Court Rules Products Liability Claim Sounding in Tort, Contract and Consumer Protection Can be Pursued for Repair of Unmanifested Defects to Front Car Seats Which are Likely to Collapse, by Roberts, Nov. 9:21

CRIMINAL LAW

California Prison Medical Care System Placed Under Control of Court-Appointed Receiver by Federal District Court, Care Violates Constitutional Prohibition Against Cruel and Unusual Punishment, by Tee, Jan. 1:23

Entrapment, Physical and Mental Condition of Defendant is Important in Entrapment Defense to Criminal Charge to Show Defendant was Susceptible to Entrapment, by Tee, Apr. 4:17

Entrapment, When Defendant Reasonably Relies on Inducements of Government Agents Appearing to Have Authority to Authorize Criminal Acts, Entrapment by Estoppel is a Defense, by Tee, Apr. 4:17-18

Fifth Amendment Right Against Self-Incrimination May be Asserted in All Stages of Civil, Criminal, Administrative, Judicial, Investigatory or Adjudicatory Proceedings, Under State or Federal Law, Procedures for Same, by Tee, Jun./Jul. 6:21

Habeas Corpus, Federal Department of Justice Regulations for Allowing Attorney General Rather Than Judiciary to Certify States as Having Adequate Procedures for Fast Tracking Habeas Corpus Proceedings in Capital Cases, by Tee, Nov. 9:9

Jury Selection, Information Necessary to Challenge Constitutionality of Jury Selection Process Must be Provided by Jury Commissioner But Must be Balanced With Jurors' Right to Privacy and Limited to Extent Necessary to Assist in Proving the Factors in Selection Process, by Spitzer, Oct. 8:23

Passenger in Vehicle Unlawfully Stopped May Challenge Evidence Seized Pursuant to the Unlawful Search, Passenger is Seized When Driver is Seized, by Tee, Aug./Sep. 7:13

Private Spectator Conduct Wearing Buttons With Picture of Murder Victim at Trial May Amount to Denial of Due Process, by Brav, Mar. 3:11

Recording Statements or Conversations is Subject to Various State and Federal Rules, Differences Discussed, Uses of Recorded Statements, by Leavitt, Mar. 3:25

Sentencing, Defendant's Right to Jury Trial Was Violated by Judge Sentencing Him to Upper Term Based on Facts Determined by Judge, Case Remanded for Re-Sentencing Under New Statute Which Permits Judges to Choose Any of Three Sentencing Terms, by Brav, Dec. 10:9

Sentencing, If a Single Aggravating Circumstance is Determined by the Jury, Aggravated Upper Term of Sentence Becomes the Statutory Maximum Which Can Be Imposed by Judge, by Brav, Dec. 10:9

DAMAGES

Apportionment of Damages in Wrongful Death Action May be Done by Court, Including Allocation of Settlement Proceeds, by Robinson, Dec. 10:7

Attorney Fees as Element of Damages -- see **ATTORNEYS**, *supra*

Criminal Restitution, Determining Damages for a Restitution Order, Factors to Include as Compensable Losses, Insurance Issues, by Tee, Feb. 2:7

Insurer is Not Liable for Prevailing Party's Costs and Attorney's Fees Awarded as Part of Damages for Intentional Tort of Its Insured, Such Amounts are Part of the Award for the Intentional Tort for Which the Insurer is Prohibited From Paying, by Huver, Apr. 4:7

Make Whole Doctrine Applies to Maximize Client's Recovery in Personal Injury Cases, Attorney's Fees and Litigation Costs Must be Included Before Reimbursement Right of Insurer is Considered, by de Camara, Jun./Jul. 6:5

Medical Injury Compensation Reform Act ("MICRA"), Enacted in 1975, Deprives Patients of

Fair Compensation for Medical Provider Negligence, Has Not Been Adjusted Since Enactment, Project to Get California Legislature to Change MICRA, by Sigelman, Jun./Jul. 6:7

Punitive Damages, United States Supreme Court Rules Due Process Clause Forbids a State From Using Punitive Damage Award to Punish Defendant for Injury Inflicted on Non-Parties, by Randall, May 5:13

Unmanifested Defects, Maryland's Highest Court Rules Products Liability Claim Sounding in Tort, Contract and Consumer Protection Can be Pursued for Repair of Unmanifested Defects to Front Car Seats Which are Likely to Collapse, by Roberts, Nov. 9:21

DEPOSITIONS -- see DISCOVERY, *infra*

DISCOVERY

Customer Contact Information is Discoverable Unless Customer Affirmatively Objects Following Notice by Vendor, for Determining Potential Class Members, by Morris, Apr. 4:23

Depositions, When Witness Changes Deposition Testimony, Tactics for Use of Changes at Trial, by Lance, Jan. 1:9

E-Discovery, New Federal Rules of Civil Procedure Address Electronic Discovery, Including Production, Form of Delivery, Sources of Material and Other Matters, by Evans, Mar. 3:13

Fifth Amendment Right Against Self-Incrimination May be Asserted in All Stages of Civil, Criminal, Administrative, Judicial, Investigatory or Adjudicatory Proceedings, Under State or Federal Law, Procedures for Same, by Tee, Jun./Jul. 6:21

Mediation, Written and Oral Communications Made in Connection With Mediation are Confidential and Not Subject to Discovery, Conversations May be Discoverable Depending on the Circumstances, by Temple, Aug./Sep. 7:11

Motion to Compel, Timing for Filing Motion to Compel Discovery From Third Party is Triggered by Receipt of Objection From Third Party, by Williams, Dec. 10:13

Objections in Deposition, Which are Proper and When is It Appropriate to Instruct a Witness Not to Answer the Question? by Levinson, Apr. 4:9

Out of State Discovery and International Discovery, Procedures Outlined, by Evans, Nov. 9:13

Protective Order, Colorado Supreme Court Rules Documents Produced in Bad Faith Claim Against Insurance Carrier Should Not Be Sealed From Public Scrutiny, by Temple, Jan. 1:25

Recording Statements or Conversations is Subject to Various State and Federal Rules, Differences Discussed, Uses of Recorded Statements, by Leavitt, Mar. 3:25

Sanctions, Court Has Discretion to Award Sanctions for Failure to Comply With Discovery, Procedures for Obtaining Sanctions Outlined, Award of Sanctions Upheld, by Temple, May 5:23

Subpoena, Financial Institution Producing Records Pursuant to a Subpoena is Not Liable for Privacy Violations as Litigation Privilege is Bar to Suit, Consumer's Sole Remedy is to Fight the Subpoena After Notice, by Temple, Dec. 10:21

Terminating Sanctions for Failure to Respond to Discovery Upheld Against Propounding Party But Reversed as to Non-Propounding Parties Unless Detriment Shown, by Evans, Jun./Jul. 6:25

Tire Manufacturing Materials Are Not Trade Secrets, Subject to Discovery, Court May Issue Protective Order Limiting Disclosure, by Butz, Mar. 3:21

EMINENT DOMAIN -- see also PROPERTY LAW, *infra*

EMPLOYMENT LAW

Arbitration Agreement in Employment, Presented as Take It or Leave It, is Unconscionable and Unenforceable When It Limits Statute of Limitations for Actions, Imposes Confidentiality Requirements, Preserved Certain Employer Disputes for Judicial Forum, Was Not Mutual for Employee, and Included Other Inequities, by Plato, Oct. 8:25

Class Action Waiver in Employment Arbitration Agreements Unenforceable as Unconscionable Unless Court Finds Class Action Would Not be More Effective in Resolving Dispute, by Morris, Nov. 9:11

Compensation for Rest and Meal Time Violations Deemed Wages, Not Penalties, Three-Year Statute of Limitations Applies, Attorney's Fees Available, by Morris, Aug./Sep. 7:21

Constructive Discharge Claim Under Uniformed Services Employment and Reemployment Rights Act Requires Proof of Intolerable and Discriminatory Working Conditions and is Question of Fact, by Morris, May 5:21

Email, Employer Not Liable for Employee's Threats Communicated on Employer's Computer System, 47 U.S.C. §230 Immunity for Interactive Computer Service Provider Applies, by Cadena, Mar. 3:7

Employee Challenging Class Action Waiver as Unconscionable Must Establish That Only Small Amounts of Individual Damages are Involved, by Cadena, Feb. 2:17

Sexual Harassment, Hostile Work Environment, Ninth Circuit Rules Prison is Liable for Title VII Sexual Harassment and Retaliation Claim by Guard for Third-Party Conduct by Prisoners Which Administrators Failed to Correct, by Cadena, Jan. 1:11

Undocumented Workers May Sue Employers for Unpaid Compensation Owing Under Labor Statutes and Laws Despite Illegal Worker Status If Work Has Already Been Performed, by

Morris, Jun./Jul. 6:23

EVIDENCE

Depositions, When Witness Changes Deposition Testimony, Tactics for Use of Changes at Trial, by Lance, Jan. 1:9

Disability, Employee Bringing Disability Discrimination Claim Under Fair Employment and Housing Act Must Prove Capability to Perform the Job, by Morris, Dec. 10:23

E-Discovery, New Federal Rules of Civil Procedure Address Electronic Discovery, Including Production, Form of Delivery, Sources of Material and Other Matters, by Evans, Mar. 3:13

Evidentiary Objections Raised in Connection with Motions for Summary Judgment Must be Ruled on by Trial Court Following Rule of Court 3.1354, *Biljac* Rule Repudiated, by Williams, Jun./Jul. 6:19

Expert, Court Has Broad Latitude to Determine Whether Expert Qualifies to Testify in Particular Case, *Daubert* Factors Govern, by Kirby, Dec. 10:15

Expert Witnesses, Qualifying and Presenting Expert Witnesses, Bases for Challenging Same, by Levinson, Jan. 1:21

Hearsay, Spontaneous Statements or Excited Utterances Are Exceptions to Hearsay Rule, Requirements to Qualify, by Levinson, May 5:11

Litigation Privilege Provides Absolute Protection to Any Communication Made in Judicial or Quasi-judicial Proceeding to Achieve Objects of Litigation, May be Defense to Civil Action Based on Perjury, by Robinson, Aug./Sep. 7:7

Mediation, Written and Oral Communications Made in Connection With Mediation are Confidential and Not Subject to Discovery, Conversations re Same May be Discoverable Depending on the Circumstances, by Temple, Aug./Sep. 7:11

Objections in Deposition, Which are Proper and When is It Appropriate to Instruct a Witness Not to Answer the Question? by Levinson, Apr. 4:9

Prior Inconsistent Statements, Using 911 Call Records to Impeach and for Truth of Statement, by Levinson, Feb. 2:19

Privilege, Financial Institution Producing Records Pursuant to a Subpoena is Not Liable for Privacy Violations as Litigation Privilege is Bar to Suit, Consumer's Sole Remedy is to Fight the Subpoena After Notice, by Temple, Dec. 10:21

Products Liability, Both Consumer Expectation and Risk/Benefit Theories Can be Used to Determine a Design Defect, Differences Between the Theories, Choice Can Make Big

Difference in Case Outcome, by Robinson, Jun./Jul. 6:9

Recording Statements or Conversations is Subject to Various State and Federal Rules, Differences Discussed, Uses of Recorded Statements, by Leavitt, Mar. 3:25

Tire Manufacturing Materials Are Not Trade Secrets, Subject to Discovery, Court May Issue Protective Order Limiting Disclosure, by Butz, Mar. 3:21

Unfair Competition Law, Person Must Have Suffered Injury or Damages, Remedies Available, Disgorgement of Profits Not Available Unless Plaintiff Has Ownership Interest in Such Profits, by Robinson, Restitution is Available Even Though Plaintiff Made Payment Through Third Party Vendor, Nov. 9:7

INSURANCE LAW

Attorney's Fees, Insurer is Not Liable for Prevailing Party's Costs and Attorney's Fees Awarded as Part of Damages for Intentional Tort of Its Insured, Such Amounts are Part of the Award for the Intentional Tort for Which the Insurer is Prohibited From Paying, by Huver, Apr. 4:7

Duty to Defend is Triggered by Actual or Constructive Notice of Lawsuit, But Carrier Liable for Bad Faith Only if It Wrongfully Refuses to Defend Suits of Which It Had Actual Notice, by Huver, May 5:9

Duty to Defend Under Homeowner's Policy Includes Defending Against Acts When There is a Potential for Coverage Even if Complaint Alleges Intentional Act But Facts May Show Negligent Act, by Barry, Nov. 9:19

Duty to Opposing Party, Insurance Coverage Attorneys Who Fraudulently Misrepresent Existence or Amount of Coverage Are Liable for Fraud to Insured Even if Insured is Opposing Party in Suit, by Steinberg, Dec. 10:11

Express and Implied Obligations in Insurance Contracts, Remedies for Breach of Same, by Miller, Oct. 8:7

Fees Charged for Insurance Premiums Paid in Installments are Actually Interest Paid for Time Value of Money, Not Subject to Premium Rules, Department of Insurance Opinion re Same Not Entitled to Deference, by Barry, Aug./Sep. 7:23

Liens, Purchasing Hospital Lien at Discount and Claiming Full Amount from Patient's Injury Lawsuit, Remedies to Prevent Same, by de Camara, Jan. 1:5

Occurrence Under Commercial General Liability Policy for Concrete Manufacturer Means Injuries Sustained by Defective Product, Not Decision to Manufacture Defective Product, by Steinberg, Jun./Jul. 6:13

"Under Construction" in Building Insurance Policy Included Renovations as Well as New

Construction, California Supreme Court Rules, by Huver, Feb. 2:15

JURY

Information Necessary to Challenge Constitutionality of Jury Selection Process Must be Provided by Jury Commissioner But Must be Balanced With Jurors' Right to Privacy and Limited to Extent Necessary to Assist in Proving the Factors in Selection Process, by Spitzer, Oct. 8:23

LABOR LAW, see **EMPLOYMENT LAW**, *supra*

LAWYERS, see **ATTORNEYS**, *supra*

LEGISLATION/ LEGISLATIVE LAW

Class Action Moratorium Initiative, Proposed, Negotiations re Same, Withdrawn, by Lorens, Nov. 9:5

DOE Defendants, New Legislation Codified at Government Code §68616 Prohibits Judicially Mandated Dismissal or Severance of DOE Defendants Before Conclusion of Introduction of Evidence at Trial, by Sigelman, Dec. 10:5

Elder Abuse, New Legislation Provides for Survival of Claim After Death of Elder Claimant and Permits Attachment in Cases of Financial Elder Abuse, by Sigelman, Dec. 10:5

Health Care Legislation Bills Pending in California Legislature, by Sigelman, Aug./Sep. 7:5

Legislation Pending for 2007 Legislative Session, by Sigelman, May 5:5

Legislation Summary for 2006, Summary of New Laws Impacting Civil Litigation and Consumer Law, by Levine, Feb. 2:23

Legislation, Summary of 2007 Session With Highlights of Bills Vetoed and Passed, by Sigelman, Dec. 10:5

Lobby Day, CAOC and CASD Visit California State Legislators in Sacramento, by Hoxie, Apr. 4:13

Medical Injury Compensation Reform Act ("MICRA") Project to Educate Legislators About Urgent Need for MICRA Reform, by Hoxie, Jun./Jul. 6:15

Report on Status of 2007 Legislation Benefiting Consumers, by Sigelman, Oct. 8:5

Uniformed Services Employment and Re-employment Rights Act, Constructive Discharge Claim Under Same Requires Proof of Intolerable and Discriminatory Working Conditions and is Question of Fact, by Morris, May 5:21

Voting Rights, Pending Legislation in California Threatens the Right to Vote by Burdensome Requirements, by Hoxie, May 5:18

Websites for Information About New Laws, by Hoxie, Mar. 3:4

LIMITATIONS -- see CIVIL PROCEDURE, *supra*

MEDIATION -- see ARBITRATION, *supra*

MEDICAL MALPRACTICE -- see TORT LAW, *infra*

MEMBER ACCOMPLISHMENTS

Achord, David, Oct. 8:20

Allen, James, May 5:17

Aman, Philip, Aug./Sep. 7:20; Oct. 8:20

Atkins, James T., Jan. 1:20; Mar. 3:20

Babbitt, Edward J., Feb. 2:15; Oct. 8:20; Nov. 9:17

Balingit, Michael, Oct. 8:15

Ballard, James R., May 5:17

Barry, Su L., Mar. 3:15; Mar. 3:20

Bartolotta, Jr., Vincent J., Jan. 1:20; Mar. 3:15; Mar. 3:20

Basile, J. Jude, Feb. 2:15; May 5:17; Oct. 8:20

Berman, Andrew, Mar. 3:15

Cadena, Raul, Mar. 3:20

De Camara, Donald M., May 5:17; Jun./Jul. 6:18; Aug./Sep. 7:20

Demanski, David A., Oct. 8:15

Diachenko, Thomas M., Jun./Jul. 6:18; Oct. 8:15

Duquette, Richard L., Feb. 2:15; Oct. 8:20

Fischer, Noel A., May 5:17

Fleming, Melissa, May 5:17

Frantz, James P., Aug./Sep. 7:20; Oct. 8:20

Frostrom, Karen R., Jan. 1:20; Mar. 3:20

Gomez, John, Mar. 3:15

Green, Donald A., Feb. 2:15

Hagen, Christopher, Aug./Sep. 7:20; Oct. 8:15; Nov. 9:17

Hamparyan, Robert, Aug./Sep. 7:20

Hoey III, James D., Nov. 9:17

Hughes, Wayne Alan, Mar. 3:20

Jackson, Robert W., Jan. 1:20; Aug./Sep. 7:20

Kirch, Jacques J., Feb. 2:15

Lavelle, Joseph C., Aug./Sep. 7:20

Levine, Harvey, Mar. 3:20

Levinson, Gordon, Feb. 2:15

Lorens, Tracee, Mar. 3:20

Marrinan, Michael R., Nov. 9:17

McIntyre, Monty A., Jan. 1:20

Miller, Craig A., Mar. 3:15

Moore, Charles, Aug./Sep. 7:20

Nelson, Virginia C., May 5:17; Jun./Jul. 6:18

Pacello, Jr., Raymond, Mar. 3:15

Prevost, Mary F., Oct. 8:15

Rava, Alfred G., Oct. 8:15

Ritter, Dwight, May 5:17; Nov. 9:17

Saad, Leon J., Jun./Jul. 6:18

Sayre, Michael, Oct. 8:20

Schreiber, Brett, Mar. 3:15

Seiken, Eric, Mar. 3:20

Sigelman, Kenneth M., Jun./Jul. 6:18

Simpson, Sean, Aug./Sep. 7:20

Slavens, Vincent D., Aug./Sep. 7:20

Stewart, Andrew M., Nov. 9:17

Vallee, J. Michael, Jan. 1:20

Vosseller, Steven, Jun./Jul. 6:18

Ward, Peter C., Aug./Sep. 7:20; Oct. 8:15; Nov. 9:17

Wertz, John R., Aug./Sep. 7:20

Wohlfeil, Joel R., Feb. 2:15; Mar. 3:15

Zeidman, Daniel, Jun./Jul. 6:18; Oct. 8:15

Zucker, Andrew J., Oct. 8:20

MOTIONS -- see CIVIL PROCEDURE, *supra*

PERSONAL INJURY -- see TORT LAW, *infra*

PRIVILEGES -- see EVIDENCE, *supra*

PRODUCTS LIABILITY -- see TORT LAW, *infra*

PROPERTY LAW

Broker, Neither Exculpatory Language in Purchase Contract Nor Buyer's Lack of Due Diligence

Shield Broker From Liability for Intentional Misrepresentation in Real Property Sale, by Brehl, Jun./Jul. 6:11

Brokers' Commissions Charged, Federal Court Certifies Class of Real Estate Purchasers Who Claimed Real Estate Brokers Violated the Sherman Antitrust Act, by Brehl, Feb. 2:5

Escrow Company Closing Escrow on Sale of Mobile Home Despite Notice of Dispute from Buyer Liable to Buyer for Damages, by Brehl, Mar. 3:9

Federal Court Certifies Class of Real Estate Purchasers Who Claimed Real Estate Brokers Violated the Sherman Antitrust Act, by Brehl, Feb. 2:5

Late Charge of 10% Specified in Promissory Note Applies Only to Installment Payments of Interest Only Under Note, Does Not Apply to Large Balloon Payment of Principal and Interest Due on Maturity, Requirements for Enforceability of Late Charges, by Slania, Oct. 8:13

Mobile Home is Personal Property and Subject to Sale Provisions of Health & Safety Code, by Brehl, Mar. 3:9

PUNITIVE DAMAGES -- see DAMAGES, *supra*

TORT LAW

Assumption of the Risk Defense Does Not Bar Action for Injury in Seventh Grade Golfing Class, Plaintiff Hit by Golf Ball, by Robinson, May 5:7

Assumption of the Risk Defense Does Not Bar Plaintiff's Action Against Defendant Who Violated Statutes or Regulations, ATV Collision Involving Underage ATV Operator, by Robinson, May 5:7

Assumption of Risk Defense Does Not Bar Strict Products Liability Claim for Recreational Vehicle Design Defect, by Robinson, May 5:7

Class Actions, See Civil Procedure, *supra*

Criminal Restitution, Determining Damages for a Restitution Order, Factors to Include as Compensable Losses, Insurance Issues, by Tee, Feb. 2:7

Defamation, Publishers, Distributors, and Individual Users are Immune From Liability for Republishing Potentially Offensive Content on the Internet or Interactive Computer Services, by Ryan, Feb. 2:9

Disability, Employee Bringing Disability Discrimination Claim Under Fair Employment and Housing Act Must Prove Capability to Perform the Job, by Morris, Dec. 10:23

Drug Manufacturer Liability, FDA Approval of Drug Does Not Pre-Empt State Law Claims for Failure to Warn, by Hoxie, Jan. 1:18; by Butz, Feb. 2:21

Elder Abuse, New Legislation Provides for Survival of Claim After Death of Elder Claimant and Permits Attachment in Cases of Financial Elder Abuse, by Sigelman, Dec. 10:5

Escrow Company Closing Escrow on Sale of Mobile Home Despite Notice of Dispute from Buyer Liable to Buyer for Damages, by Brehl, Mar. 3:9

Federal Tort Claims Act Exception Bars Military Service Member's Heirs From Asserting a Claim Against the Government for Wrongful Death Caused by Defective Military Equipment, Injuries Occurred in Activities Incident to Service, by Butz, Aug./Sep. 7:9

Fraud by Attorney, Duty to Opposing Party, Insurance Coverage Attorneys Who Fraudulently Misrepresent Existence or Amount of Coverage Are Liable for Fraud to Insured Even if Insured is Opposing Party in Suit, by Steinberg, Dec. 10:11

Fraud, Neither Exculpatory Language in Purchase Contract Nor Buyer's Lack of Due Diligence Shield Broker From Liability for Intentional Misrepresentation in Real Property Sale, by Brehl, Jun./Jul. 6:11

Internet, Publishers, Distributors, and Individual Users are Immune From Liability for Republishing Potentially Offensive Content on the Internet or Interactive Computer Services, by Ryan, Feb. 2:9

Liens, Purchasing Hospital Lien at Discount and Claiming Full Amount from Patient's Injury Lawsuit, Remedies to Prevent Same, by de Camara, Jan. 1:5

Medical Injury Compensation Reform Act ("MICRA"), Enacted in 1975, Deprives Patients of Fair Compensation for Medical Provider Negligence, Has Not Been Adjusted Since Enactment, Project to Get California Legislature to Change MICRA, by Sigelman, Jun./Jul. 6:7

Medical Malpractice, Arbitration Clause in Medical Provider Agreement Applies to Any Future Treatment, Despite Lapse of Time, Unless Terminated Clearly by Patient, by Williams, Apr. 4:15

Occurrence Under Commercial General Liability Policy for Concrete Manufacturer Means Injuries Sustained by Defective Product, Not Decision to Manufacture Defective Product, by Steinberg, Jun./Jul. 6:13

Perjury, Litigation Privilege Provides Absolute Protection to Any Communication Made in Judicial or Quasi-judicial Proceeding to Achieve Objects of Litigation, May be Defense to Civil Action Based on Perjury, by Robinson, Aug./Sep. 7:7

Privacy, Financial Institution Producing Records Pursuant to a Subpoena is Not Liable for Privacy Violations as Litigation Privilege is Bar to Suit, Consumer's Sole Remedy is to Fight the Subpoena After Notice, by Temple, Dec. 10:21

Products Liability, Assumption of Risk Defense Does Not Bar Strict Products Liability Claim for Recreational Vehicle Design Defect, by Robinson, May 5:7

Products Liability, Both Consumer Expectation and Risk/Benefit Theories Can be Used to Determine a Design Defect, Differences Between the Theories, Choice Can Make Big Difference in Case Outcome, by Robinson, Jun./Jul. 6:9

Products Liability Does Not Require That Injury Occur During Use of Product by End User; Bystander Can Recover for Injuries Caused by Foreseeable Use of Product by Anyone, by Robinson, Jan. 1:7

Products Liability, Drug Manufacturer Liability, FDA Approval of Drug Does Not Pre-Empt State Law Claims for Failure to Warn, by Hoxie, Jan. 1:18

Products Liability, Maryland's Highest Court Rules Products Liability Claim Sounding in Tort, Contract and Consumer Protection Can be Pursued for Repair of Unmanifested Defects to Front Car Seats Which are Likely to Collapse, by Roberts, Nov. 9:21

Punitive Damages, United States Supreme Court Rules Due Process Clause Forbids a State From Using Punitive Damage Award to Punish Defendant for Injury Inflicted on Non-Parties, by Randall, May 5:13

Sexual discrimination/ sexual harassment, see also EMPLOYMENT LAW, supra
Sexual Harassment, Hostile Work Environment, Ninth Circuit Rules Prison is Liable for Title VII Sexual Harassment and Retaliation Claim by Guard for Third-Party Conduct by Prisoners Which Administrators Failed to Correct, by Cadena, Jan. 1:11

Tort Claims Act, California Procedural and Filing Traps, Six-Month Limitation, Delayed Discovery, Leave to File Late Claim, by Robinson, Mar. 3:5

Unfair Competition Law, Person Must Have Suffered Injury or Damages, Remedies Available, Disgorgement of Profits Not Available Unless Plaintiff Has Ownership Interest in Such Profits, by Robinson, Restitution is Available Even Though Plaintiff Made Payment Through Third Party Vendor, Nov. 9:7

Waiver and Release at Health Club Does Not Bar Claim for Injury Caused by Violation of Health and Safety Code, Nor Does Defense of Assumption of Risk, by Robinson, May 5:7

Wrongful Death, Apportionment of Damages in Wrongful Death Action May be Done by Court, Including Allocation of Settlement Proceeds, by Robinson, Dec. 10:7

TRIAL BAR NEWS

Column Editors Thanked for Dedicated Service, by Hoxie, Dec. 10:17

Trial Bar News Welcomes Jacob Slania as Property Law Column Editor, by Hoxie, Oct. 8:19

TRIAL STRATEGY

Conclusory Terms in Testimony Prejudice an Accused, May Violate Right to Fair Trial, by Raskin, Oct. 8:21

Depositions, When Witness Changes Deposition Testimony, Tactics for Use of Changes at Trial, by Lance, Jan. 1:9

Expert Witnesses, Qualifying and Presenting Expert Witnesses, Bases for Challenging Same, by Levinson, Jan. 1:21

Hearsay, Spontaneous Statements or Excited Utterances Are Exceptions to Hearsay Rule, Requirements to Qualify, by Levinson, May 5:11

Jury Selection, Information Necessary to Challenge Constitutionality of Jury Selection Process Must be Provided by Jury Commissioner But Must be Balanced With Jurors' Right to Privacy and Limited to Extent Necessary to Assist in Proving the Factors in Selection Process, by Spitzer, Oct. 8:23

Prior Inconsistent Statements, Using 911 Call Records to Impeach and for Truth of Statement, by Levinson, Feb. 2:19

Private Spectator Conduct Wearing Buttons With Picture of Murder Victim at Trial May Amount to Denial of Due Process, by Brav, Mar. 3:11

Psychodrama, Telling the Client's Story May be Most Powerful if Attorney Tells It in First Person as if the Attorney Were the One Who Experienced the Events, by Basile, Nov. 9:23

Recording Statements or Conversations is Subject to Various State and Federal Rules, Differences Discussed, Uses of Recorded Statements, by Leavitt, Mar. 3:25

Telling the Client's Story May be Most Powerful if Attorney Tells It in First Person as if the Attorney Were the One Who Experienced the Events, by Basile, Nov. 9:23

Trial Court Does Not Have Authority to Order Parties to Attend and Pay For Private Mediation, Although Ordering a Mandatory Settlement Conference Pursuant to C.C.P. §639 is Authorized, by Williams, Mar. 3:23

Words Used or Conclusory Terms in Testimony Prejudice an Accused, May Violate Right to Fair Trial, by Raskin, Oct. 8:21

WORKER'S COMPENSATION – see **EMPLOYMENT LAW**, *supra*

WRONGFUL TERMINATION -- see **EMPLOYMENT LAW**, *supra*