President's Column

The Battle – Why Do We Do This?

by Scott Levine

Scott Levine is CASD's President for 2010. He is a partner in the law firm of Silldorf & Levine, LLP. He represents homeowners in construction defect actions and also practices business litigation, employment and franchise law. Mr. Levine received his undergraduate degree from the University of California, Santa Barbara, and his Juris Doctor degree from California Western School of Law. Mr. Levine was the Tort Law column editor and then the Legislative Law column editor for ***Trial Bar News.*** *He was awarded the 2002 Legislative Champion Award by CAOC and the David S. Casey, Jr., Consumer Advocate Award by the CASD for 2003. He may be reached by email at:* ***slevine@silldorf-levine.com****.*

In January, I attended the Defense Lawyers' Installation Dinner. To my surprise, I actually heard the award winner say that they appreciate plaintiff attorneys! This is not a real surprise as I have head that over the years from many defense attorneys, but we forget this often when we are battling with these same lawyers. Oftentimes it is not the same lawyers who recognize that we are good for their business who then battle us in a manner that makes us ask, "Why do we do this?"

I write this from the perspective of preparing for a big trial against multiple defendants. These defendants are coordinating and maneuvering on multiple fronts. The first shot was to try to continue the trial. As the attorney for a plaintiff, I think that one of our most precious assets in a case is a firm trial date. If we have a firm trial date, the defense is now forced to evaluate the case. The defense is also required to face the end of the road and a possible verdict against their client(s). In my case, I was able to fight back the motion to continue the trial. The requests began at a Status Conference. The next request was at an Ex Parte Motion which turned into an Ex Parte Motion for an Order Shortening Time to Continue the Trial.

Then, the other defendants wanted to join in the motion. The tentative ruling was against me because it is usually easier to just continue the trial. I argued that the defense was coordinating by using a cross-defendant that they brought in late and did not make appear until even much later so as to "create the need for a continuance." I pointed out that the cross- complaint was actually brought by the same firm that represented the cross-defendant. (If you ask how can that happen you are not alone.) Next, the judge asked if it would be prejudicial to sever the cross- defendant? Nobody could find a reason so the cross-defendant was severed. We have a "firm" trial date!

Next, the defense wanted another "Status Conference" so that they could "carve up the trial." They wanted me to agree to the Status Conference and the carving up of my case. I would not agree and did not really want to go back to court because I did not want to discuss continuing the trial again and I certainly was not going to agree to carve up the case so that the defense could decide how I could try my case.

In the meantime, I was doing the depositions of all of the experts. I was able to quickly coordinate all of my experts, but when I tried to depose the defense experts, they were just "not available." The push to continue the trial continued in the form of "experts are not available for their deposition." The discovery dates were pushed forward toward the trial date, crushing the time that I was supposed to have between the discovery cutoff and the start of the trial.

Instead of having time to prepare for trial, we are preparing for trial and finishing the depositions. In addition, we faced three or four motions in which the defense again tried to carve up the case and explain to the court that "this will shorten the trial." The reality was that this would only lengthen the trial and

cause a case that should only take a couple of weeks to take a couple of months. The Trial Readiness Conference Report is now being prepared and we will surely receive an onslaught of Motions *in limine* that are really Motions for Summary Adjudication! The only real difference is that a Motion for Summary Adjudication would have a separate statement of facts and evidence and would provide more than a few days to respond/oppose the motion.

So I ask, "Why do we do this?" Do we enjoy the thrill of doing more each day than is humanly possible? Do we enjoy missing family events and missing being with our families at night and on the weekend? Do we enjoy the thrill of winning? Are we crazy? Do our clients really know what we are going through for them? Do our clients appreciate the work and sacrifices that we make for them? When people go to law school are they really deciding that they want "this" for their career? Do they realize the kind of sacrifice that will be required?

I guess that the answer could be that we take very seriously our duty to our clients and our role in the judicial system. We know that, in the end, our work will lead to a just result for our clients and that without our hard work and sacrifice, business and insurance companies would be able to silence our clients and pound them into the ground. It is the strength that we have that prevents our clients from being silenced. In the end, we are the voice that seeks justice for our clients! **Fight on and remain strong!**