A·D·C VERITAS

DEFENSE COMMENT

Association of Defense Counsel of Northern California and Nevada – *Serving the Civil Defense Bar Since 1959*

Vol. 35, No. 1 / Spring 2020

Renée Welze Livingston

2020 ADC President

www.adcncn.org

Now showing on a small screen near you ....

The Association of Defense Counsel of Northern California and Nevada has a wealth of valuable information available to you at *www.adcncn.org,* including Discussion Forums, links to the Judicial Council, an Attorney Locator, an up-to-date Calendar of Events, online meeting registration, archives of important and timely articles and legislative updates including back issues of *Defense Comment* magazine, and a Members-Only section.

Log on today.

A·D·C VERITAS DEFENSE COMMENT

Association of Defense Counsel of Northern California and Nevada – *Serving the Civil Defense Bar Since 1959*

ADC HEADQUARTERS OFFICE

2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
Phone: (916) 239-4060 / Fax: (916) 924-7323
E-mail: *adcncn@camgmt.com*
www.adcncn.org

ADC HEADQUARTERS STAFF

EXECUTIVE DIRECTOR
Jennifer Blevins, CMP
jennifer@camgmt.com

John Berkowitz
Publications Director / Graphic Design
john@camgmt.com

Michael Cochran
Webmaster / IT Manager
michael@camgmt.com

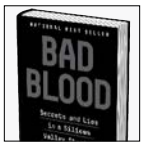
Kim Oreno
Membership / Education
kim@camgmt.com

Stephanie Schoen
Special Projects
stephanie@camgmt.com

Tricia Schrum, CPA
Accountant / Controller
tricia@camgmt.com

The price of subscription is included in the membership dues. All other subscriptions are $100.00 per year.

Features



Departments

Defense Comment **would be pleased to consider publishing articles from ADC members and friends. Please send all manuscripts and/or suggestions for article topics to:**

- **Ellen C. Arabian-Lee**, Arabian-Lee Law Corporation, 1731 East Roseville Parkway, Suite 150, Roseville, CA 95661. Phone: (916) 242-8662; Fax: (916) 797-7404; E-mail: *ellen@arabian-leelaw.com,* and
- **Jill J. Lifter**, Ryan & Lifter, 2000 Crow Canyon Place, Suite 400, San Ramon, CA 94583. Phone: (925) 884-2080; Fax: (925) 884-2090; E-mail: *jlifter@rallaw.com.*

Renée Welze Livingston
2020 President

Leadership Nuggets I Learned from Tom Petty

For those of you who know me, this is old news. But for those of you who don't, I am a huge fan of Tom Petty & The Heartbreakers. In fact, I was a fan long before the band became mainstream or achieved commercial success. Think 1975-76. I was a sophomore in high school and American Girl was just starting to get airtime on KSAN (OMG Bay Area peeps, remember KSAN?). I drove down to UC Santa Barbara to start my freshman year in college in my 1973 Volkswagen Bug with my T.P. cassettes in tow, excited to see who else might like this punk-ish looking rock star who threw down a rebel smirk on the cover of his first album. Well, it turns out there were quite a few students who liked him. Actually, a lot of students. As I studied Political Science and English and Sociology, dreaming about becoming a lawyer, I also learned a lot about life, love, loss, even leadership, from Tom Petty, which I share with you now as President of ADC.

It's Good to be King (1974) Wildflowers – Unless your head has been in the sand (or you've been billing too many hours) you surely know the Association of Defense Counsel celebrated its 60th anniversary as an association last year. The seeds of an idea to create a unified civil defense association in Northern California were sowed in 1959 by members of the stalwart civil defense firms of the day. Formal organization occurred in the Spring of 1960 and the association continues to be the "go to" industry group for civil defense practitioners in Northern California and Nevada. It is an honor to serve as your 61st President this year (and 6th woman president!). We had 21 past presidents of ADC attend the 2019 annual meeting luncheon and it was truly impressive. ADC has staying power and we work hard every day to engage, educate, and elevate the skills and interests of our members. No one else is fighting your fight in Sacramento to keep the playing field fair, working to change biased CACI instructions, and arming civil defense lawyers with up to date legal developments that affect our practice. Yes, ADC, **it's good to be king.**

I Need to Know (1978) You're Gonna Get It – The ADC listserv continues to be one of the most popular benefits of membership. For those of you who don't know, members have access to three separate listservs related to expert witnesses, *Howell* issues, and matters of general interest. It's easy to opt in to 1, 2, or all 3. Want to know how experts designated by plaintiffs testified in other cases? Ever wondered if someone handled a particularly unique legal issue you are struggling with? Want input on mediators, a judge's proclivities, *Howell* motions in limine, or whether certain counties are getting cases out? Looking for an expert in a different geographic territory? The ADC listserv is a virtual chat room of shared knowledge and experience. **You need to know.**

Fooled Again (I Don't Like It) (1976) Tom Petty & The Heartbreakers – Remember that awful feeling when the court ruled against your motion not because you cited the wrong law, but because you didn't follow local rules? Or when you didn't check a tentative ruling

Continued on page 34

Michael D. Belote
California Advocates, Inc.

2300 Ideas to Make Our Lives Better

The California Legislature has been described as a bill factory. While others make computers or cars, our legislature makes laws, lots of them. In a typical year, approximately 800-1000 new statutes are added to the California Codes. You'd be hard-pressed to find an issue too small to be the subject of California legislation.

For 2020, slightly over 2300 bills have been introduced to improve the lives of Californians. It will come as no surprise that large percentages relate to the high-profile issues of the day, including AB 5 and *Dynamex,* housing and homelessness, wildfires, energy and homeowner's insurance availability, and education. But every year, a few are true "eyebrow raiser." Consider, for example, AB 2712, which proposes to pay every California resident over 18 years old a guaranteed universal basic income of $1000 monthly, with funding provided by a new 10% VAT on nearly every good or service sold in California, including law. The chance of this bill passing is zero, but it will certainly generate headlines and discussion!

All told, the California Defense Counsel's electronic folder of pending legislation contains over 130 measures. As in past years, virtually every area of defense practice is represented by one or more bills, and ADC members are encouraged to see what has been introduced by accessing the information through the website. Impress your friends at cocktail parties!

Almost three dozen bills have been introduced just relating to AB 5. Republicans believe that AB 5 is a wedge issue which might improve the party's fortunes in California, but there is simply no way that a Republican legislator will successfully pass legislation on this incendiary topic. The real action will revolve around AB 1850, carried by the author of AB 5 from last year, Assembly Member Lorena Gonzalez of San Diego, and SB 900, carried by the Chair of the Senate Labor Committee, Senator Jerry Hill of San Mateo. Literally hundreds of occupations are seeking exemptions from AB 5 and *Dynamex*, instead wishing to be classified according to the *Borello* standard. The bills in this area are remarkably specific, like SB 963, relating to youth sports umpires and referees.

One group unlikely to receive an AB 5 exemption is the gig sector, with companies like Uber, Lyft and Doordash. These entities are very close to qualifying an initiative for the November 2020 ballot, which would preserve independent contractor status if certain compensation and benefits standards are met. The initiative might well be qualified for the ballot by the time this column appears.

Continued on page 35

Meet the 61st President of ADC

Renée Welze Livingston

David S. Rosenbaum
ADC Immediate Past President

NAME: **Renée Welze Livingston**

BORN: **Oakland, CA**

RAISED: **San Leandro, CA**

HIGH SCHOOL: **San Leandro High School ('78) – Home of the Pirates**

COLLEGE: **University of California, Santa Barbara ('82) – Go Gauchos!**

LAW SCHOOL: **University of San Francisco School of Law ('86) – Go Dons!**

WORK EXPERIENCE: **Bledsoe Law Firm (1986 – 2000); Livingston Law Firm (2000 – present)**

ADC MEMBER SINCE 1987

Renée Welze Livingston was sworn in as the 61st President and 6th woman President of ADC at the Annual Meeting last December. Described by peers as enthusiastic, energetic and engaging, she leads the association with the same passion she has for her family and the practice of law. Although she has been a member of ADC for many years, let's test your knowledge to see how much you really know about her.

TRUE OR FALSE

Renée was born on the same day as Eddie Vedder. **TRUE.** He also happens to be her favorite singer.

Continued on page 6

Renée went to her first New Year's Eve party when she was 8 days old. **TRUE.** Renée chalks up her outgoing personality to this early social experience. That and her natural optimism.

When Renée visited her great grandmother as a young child, the house had no hot water and the bathroom was an outhouse. **TRUE**. Renée's great grandmother immigrated from Portugal as a young woman to marry her great grandfather. She lived on a farm and heated water on a wood-burning stove.

Renée ran track in high school. **FALSE.** She hates to run. She did tryout for the "no-cut" varsity swim team as a senior, which her family still chides her about, and she did play second base for the Bledsoe Bashers in the San Francisco Lawyers Softball league, where she was often described as a five-tool player.

Renée graduated from San Leandro High School exactly 20 years after her mother. **TRUE.** They even had some of the same teachers.

Renée graduated #6 in her high school class due to a 5-way tie for #1. **TRUE.** Renée received a "B" in chemistry, thus dropping her GPA slightly below the others. That titration question still haunts her.

Renée planned to be a veterinarian but changed course when she was kicked by a horse on the beach at UCSB. **FALSE.** She knew in 8th grade she wanted to be a lawyer. Her determined Capricorn personality kept her on track. Thirty-three years later, she still loves being a civil trial lawyer.

Renée met her husband, Craig, on the rugby field in college. **FALSE.** She and Craig met at Bancroft Jr. High School when their two elementary school classes came together. They didn't start dating until their senior year in high school. They are celebrating 35 years of marriage this year.

After two years as a cheerleader in high school, Renée went on to be a cheerleader in college. **TRUE.** She was a cheerleader at UCSB her freshman year for basketball only because there wasn't a football team and it was hard to make up cheers for the hacky sack team.

In law school, Renée worked as both a cocktail waitress and law clerk for the California Supreme Court. **TRUE.** Renée says they were both a respite from law school, which she found to be a necessary means to an end. She writes well and has the gift of gab because of both experiences. Her dream job in retirement would be as a cocktail waitress at The Fillmore Auditorium where she could see live music every night.

In law school, Renée was a teaching assistant for civil procedure and torts professor Delos Putz. **TRUE.** She owes him a great debt of gratitude because he not only helped her secure an interview with the Bledsoe firm (where she practiced for 14 years), but he also referred legal rock star Crystal Van Der Putten to Livingston Law firm years later (she was a TA for him as well).

To celebrate turning 50, Renée climbed to the top of Half Dome and had to be helicoptered out due to a knee injury. **FALSE.** She indeed climbed Half Dome when she turned 50 and she indeed hurt her knee trying to keep up with her gazelle-like brother, but she hobbled down the mountain with one knee that wouldn't bend.

Renée is planning a sky-diving trip with her best girlfriends from college (the Niners). **FALSE.** "Not on your life." But she is planning a birthday vacation with the Niners this year.

As a result of 23andme testing, Renée learned she is 16% Jewish. **TRUE.** Who knew? She feels this is not surprising given adoptions on both sides of her family.

Renée has one tattoo and four piercings. **FALSE.** But she wouldn't say which part is false.

Renée loves to cook. **FALSE.** But she loves to eat.

Renée tried a lawsuit with two ADC past presidents. **TRUE.** It was a triple fatality case where the three defendants were represented by three ADC members –

Continued on page 7

Renée, ADC Past President Mike Kronlund and ADC Past President John Cotter. (She won't tell whose client got whacked.)

Renée can play the harmonica. **FALSE.** She doesn't know how to play any musical instruments, although she took piano lessons and tried to play the clarinet in elementary school. Her son, John, is a musician and taught himself to play music by ear.

Renée loves rap music. **FALSE.** She doesn't like it at all. She is all about rock 'n roll – classic and new artists. She loves going to see live music. For her, it started with Days on the Green at the Oakland Coliseum in high school, but these days, she says there is nothing like a show at The Fillmore or the Fox Theater. She has attended Bottlerock every year since it started and has been to The Ride Festival in Telluride five times. She saw Pearl Jam at Austin City Limits and Eric Clapton at Madison Square Garden. She loves The Beacon Theater in NYC and saw Bob Dylan there last December. She'd like to see a concert at Red Rocks.

Renée had her third child, Grace, in the hallway at John Muir Medical Center as they were rushing her to the delivery room. **FALSE.** But Grace came fast and the doctor almost didn't make it.

The thing Renée loves most about being President of ADC is the big paycheck. **FALSE.** She and the other members of the ADC Board volunteer countless hours to lead and set policy for an association of civil defense lawyers in Northern California and Nevada. As President, Renée feels it is critical for the civil defense bar to be heard in the Legislature and by the Governor and Judiciary. To do this effectively, she encourages input and engagement from all of members of ADC, not just a handful. ADC offers something for every defense attorney – education, advocacy, networking, and business opportunities.

DEFENSE COMMENT

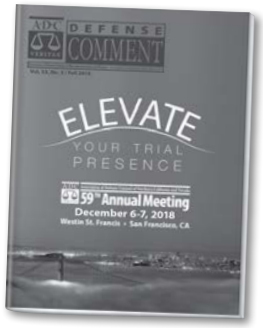
Accepts and Publishes Readers' Articles and Trial Success Stories

Do you have an article or trial success story to share with readers?

We will endeavor to publish your article or trial success story in an upcoming edition of the *Defense Comment* magazine (space permitting).

Please include any digital photos or art that you would like to accompany your article or submission. All articles must be submitted in "final" form, proofed and cite checked. Trial success submissions should be short and limited to less than ten (10) sentences.

All submissions should be sent to *ellen@arabian-leelaw.com* and *jlifter@rallaw.com*.



New California Employment Laws for 2020

Laura C. McHugh, Duggan Law Corporation
Samantha Tanner, Duggan Law Corporation

The New Year brings with it many new workplace laws affecting California employers, including not only the headliner AB 5 relating to independent contractors, but also less-publicized but nonetheless significant laws. Below is a summary of these laws, which took effect January 1, 2020, unless otherwise noted.

WAGE AND HOUR

Minimum Wage Increase. The state minimum wage increased to $13.00 per hour for employers with 26 or more employees, and to $12.00 per hour for those with 25 or less. This is in accordance with the mandatory annual minimum wage increases that will last through 2023, based on SB 3 signed in 2016. Note, local minimum wage ordinances may provide for higher wages. And, there are new overtime requirements for agricultural employees.

Exempt Employees – Minimum Salary Threshold Increase. For employers with 26 or more employees, the minimum exempt salary is $54,080. For those with 25 or fewer employees, it is $49,920. These amounts are based on the state minimum wage rate, since exempt employees must be paid at least twice the minimum wage, and may be higher where an applicable local minimum wage ordinance applies.

The thresholds also increased for specific exempt employees, including computer software professionals (the minimum hourly rate increased to $46.55, and the minimum monthly and annual salary exemptions increased to $8,080.71 and $96,968.33) and licensed physicians and surgeons (the minimum hourly rate increased to $84.79).

Independent Contractors – Law Expanded. AB 5 codifies the use of the "ABC" test adopted by the California Supreme Court's 2018 decision in *Dynamex v. Superior Court* (2018) 4 Cal.5th 903 to determine whether workers in California are independent contractors. *Dynamex* held that a worker hired by a business is an employee under California's Wage Order unless the business proves all of the following:

(A) The worker is free from control and direction of the hirer in connection with performing the work, both under contract and in fact;
(B) The worker performs work outside the usual course of the hiring entity's business; and
(C) The worker customarily engages in an independently established trade, occupation, or business of the same nature as the work performed for the hirer.

AB5 expands *Dynamex* by applying the "ABC" test to those claims brought not only under the Wage Orders, but also the Labor Code and Unemployment Insurance Code.

AB 5, however, contains a number of highly specific, statutory exemptions for certain categories of workers, including:

- A "business-to-business" exemption that applies to "business service providers" that contract to provide services to another business;
- A "service providers" exemption in certain fields, including graphic design, photography, tutoring, etc.

Continued on page 10

- An exemption for certain "professional services" such as jobs in marketing, human resources administration, etc.
- Certain other occupational exemptions, including (but not limited to) certain medical professionals, attorneys, architects, engineers, etc.
- Per AB 170, newspaper carriers will be exempted from the ABC test until 2021.

Although exempt from AB 5, the above workers are still subject to the common law 11-factor "economic realities" test adopted by the California Supreme Court in *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1988) 48 Cal.3d 341 ("*Borello* test") for determining independent contractor status.

Unpaid Wages – Grounds for Citations Expanded. Current law permits the Labor Commissioner to issue a citation and recover penalties, restitution of wages, and liquidated damages where an employer pays less than the minimum wage. SB 688 expands the Labor Commissioner's power to issue a citation and recover amounts where the employer has contractually promised to pay more than the minimum wage, but fails to do so.

Certain Labor Code Violations – Employees May Now Bring Private Actions. Currently, Labor Code 210 allows the Labor Commissioner to recover civil penalties for certain Labor Code violations through a hearing or independent civil action. AB 673 gives employees the right to bring an action to recover specified statutory penalties against the employer in either a Labor Commissioner hearing or under the Private Attorneys General Act of 2004 ("PAGA"), but not both, for the same violation, and removes the authority for the Labor Commissioner to recover civil penalties in a civil action.

Entertainment Industry – New Laws for Print Shoot Employees, Professional Baseball Teams, and Infants. Generally, wages earned are due and payable immediately to employees who are discharged or laid off. SB 671, the Photoshoot Pay Easement Act, allows employers of "print shoot employees" (individuals hired for a period of limited duration to render services relating to a still image shoot) to pay wages owed upon termination "by the next regular payday." Similarly, SB 286 applies to employers of "events employees" who are employees of a professional baseball team or venue, to pay wages on the "next regular payday" after the season ends (unless the employee is hired for a limited period of time); however, if an events employee quits or is discharged, usual rules apply and wages are generally due and payable immediately. AB 267 expands the certification requirements for infant employees who work on motion pictures.

EMPLOYMENT BENEFITS

Domestic Partnerships – Definition Expanded. SB30 removes the requirement that persons in "domestic partnerships" be of the same or opposite sex and over the age of 62. Now, any two adults over the age of 18 "who have chosen to share one another's lives in an intimate and committed relationship of mutual caring" may enter into a domestic partnership. Consequently, more employees may be entitled to an employer's workplace benefits, such as health insurance and leaves of absences, based on their "domestic partner" status.

Unemployment Benefits – Motion Picture Production Workers. SB 271 allows temporary or transitory employment outside of California to count towards eligibility for unemployment benefits for motion picture production workers who live in and intend to return to California.

Flexible Spending Accounts – Notice Requirements. AB 1554 requires employers to use two different forms, one of which may be electronic, to notify employees who participate in flexible spending accounts of any deadline to withdraw funds before the end of the plan year.

LEAVES OF ABSENCE

Living Organ Donation Leave Time Extended. AB 1223 requires employers with 15 or more employees to provide organ donors an additional 30 business days of unpaid leave in a one-year period for donation related-leave. This is on top of the current requirement of 30 business days of paid leave.

Paid Family Leave Time Extended. Beginning July 1, 2020, the amount of time qualifying employees may receive Paid Family Leave ("PFL") under California's State Disability Insurance ("SDI") program will increase from six (6) to eight (8) weeks under SB 83. PFL provides partial wage replacement, but not job protection, to employees who take time off work to care for a seriously ill family member or bond with a child within one year of birth, adoption, or foster care placement.

HEALTH AND SAFETY

Occupational Injuries and Illnesses – Changes to Definitions and Reporting Requirements. AB 1805 updates the definition of "serious injury or illness" and "serious exposure" for purposes of reporting to Division of Occupational Safety and Health (Cal OSHA). "Serious injury or illness" no longer requires a 24-hour minimum time requirement for qualifying hospitalizations, meaning all hospitalizations must be reported, and includes the loss of an eye as a qualifying injury. It also defines "serious exposure" as exposure to a hazardous substance that has a "realistic possibility" of death or serious physical harm, which is lower

Continued on page 11

than the current "substantial probability" standard. AB 1804 requires employers to report serious workplace injuries, illnesses, or death immediately by telephone or "through an online platform to be developed by the Division of Occupational Safety and Health (Cal OSHA)." Until the online platform is available, employers may make these reports by telephone or e-mail.

Valley Fever – Training Required. AB 203 requires construction employers engaging in specified work activities in counties where Valley Fever is highly endemic to provide effective awareness training on Valley Fever to all employees annually and before substantial dust disturbances. It also requires the training to cover specific topics as part of the employer's injury and illness prevention program ("IIPP") or as a stand alone program.

Gun Violence Restraining Orders. Effective September 1, 2020, AB 61 expands the law and allows employers and co-workers with employer approval to seek a petition for a gun violence restraining order. Currently, law enforcement officers and immediate family members may petition the court for an *ex parte* gun violence restraining order for up to 21 days.

HARASSMENT, DISCRIMINATION AND RETALIATION

Workplace Lactation Accommodation. Labor Code section 1030 *et seq.* provides that every employer "shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child" and requires that the lactation room must be "other than a bathroom" and "in close proximity to the employee's work area." SB 142 amends this law to clarify that an employer is required to provide such accommodation **each time** the employee has need to express milk and sets specific requirements for the lactation space, including that:

- It cannot be a bathroom;
- It must be in close proximity to the employee's work area, shielded from view, and free from intrusion while the employee is lactating;
- It must contain a surface to place a breast pump and other personal items;
- It must contain a place to sit; and
- It must have access to electricity or alternate devices, including but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump.

Employers also must provide access to a sink with running water and refrigerator (or other cooling device) suitable for storing milk in close proximity to the employee's workspace. Where a multipurpose room is used for lactation, the use of the room for lactation shall take precedence over the other uses during the time it is in use for lactation purposes.

This bill also requires employers to develop and implement a lactation accommodation policy. Employers with fewer than 50 employees may be exempt upon a qualifying showing of undue hardship.

Continued on page 12

Race Discrimination – Definition Expanded. SB 188 expands the definition of "race" under the Fair Employment and Housing Act (FEHA) to include, "traits historically associated with race, including but not limited to, hair texture and protective hairstyles." "Protective hairstyles" expressly includes "braids, locks, and twists."

Sexual Harassment Prevention Training – Deadline Extended to 2021. SB 778 extends the deadline by one year for employers to comply with FEHA's sexual harassment training laws. California employers with five (5) or more employees must provide at least two (2) hours of training to all supervisory employees and one-hour training to all nonsupervisory employees by **January 1, 2021**, and thereafter once every two years. The training also must be completed within six months (6) for new hires and employees who assume a supervisory position. And effective January 1, 2021, employers must provide training to seasonal and temporary workers within one month or 100 hours of their hire.

Note: there are several other bills with additional, industry-specific rules for harassment training including for janitorial workers (AB 547), the construction industry (SB 530), and birth/perinatal healthcare workers (SB 464).

Extension of FEHA Statute of Limitations to Three Years. AB 9 extends the deadline from one (1) year to three (3) years to file a complaint of unlawful workplace harassment, discrimination, or retaliation with the Department of Fair Employment and Housing (DFEH) for alleged FEHA violations. The bill will not serve to revive lapsed claims and does not change the one-year statute of limitations for filing a civil lawsuit following receipt of a DFEH right-to-sue letter.

County Patients' Rights Advocates – Whistleblower Protection. Under AB 333, patients' rights advocates who provide patient services at county mental health facilities are now protected against retaliation for whistleblowing activities. And, under SB 322, employers may not retaliate against employees of health facilities who discuss possible regulatory violations or safety concerns during a California Department of Public Health ("CDPH") investigation.

EMPLOYMENT AGREEMENTS

"No Rehire" Clauses Prohibited. Under AB 749, settlement agreements related to employment disputes may no longer contain a "no re-hire clause." Thus, employees who have made claims against an employer may not be prohibited, prevented or otherwise restricted from obtaining future employment with the employer or an affiliated company or contractor. Any settlement agreement entered into on or after January 1, 2020, containing a "no re-hire clause" is void as a matter of law. There are some narrow exceptions to this rule, including when an employer has made a good-faith determination that the employee engaged in sexual harassment or assault.

Note: AB 749 does not prohibit the use of a "no re-hire clause" in severance agreements, so long as the employee has not filed a "claim," which is defined in newly added Code of Civil Procedure section 1002.5 subdivision (c)(1) as "a claim filed in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer's internal complaint process."

Mandatory Arbitration Agreements Prohibited. AB 51 prohibits mandatory arbitration agreements "as a condition of employment." However, as of the time of writing this article, a federal judge issued a last-minute temporary restraining order enjoining the new law.

Enforcement of Arbitration Agreements Against Employers. SB 707 provides remedies for employees where an employer who drafted an arbitration agreement fails to pay arbitration fees and costs within 30 days of the due date. Where such a breach occurs, the employee may: (1) withdraw the claim from arbitration and proceed in court; or (2) compel arbitration and make the employer pay reasonable attorney's fees and costs for the arbitration. If the employee withdraws the claim, all claims that relate back to any claim brought in arbitration are tolled. Also, an employer who breaches an arbitration agreement may be sanctioned.

CONCLUSION

Many new laws affect California employers beginning in 2020, most filled with complexities and nuances. Employers need to be aware of these laws and revise their workplace practices and written policies accordingly, and should consult legal counsel if they have questions.

Laura C. McHugh

Laura McHugh is Chair of the Employment Law Committee of ADCNCN and a shareholder at Duggan Law Corporation in Sacramento. For over 24 years, she has specialized in representing companies in employment and labor law litigation and counseling matters.

Samantha Tanner

Samantha Tanner is an Associate at Duggan Law Corporation in Sacramento. Samantha provides advice and counsel to employers on all workplace issues, including discrimination, harassment, retaliation, wage and hour, leave laws, disability and reasonable accommodations, and other compliance issues. She also represents employers in all aspects of employment litigation.

Jones v. Awad, and How Defense Attorneys Can Bring Successful Motions for Summary Judgment in Premises Liability Actions

Ashley N. Meyers
Clapp Moroney | Vucinich | Beeman Scheley

Riana E. Daniel
Clapp Moroney | Vucinich | Beeman Scheley

As defense attorneys, we are all familiar with the seemingly ever heightening standards being applied to motions for summary judgment. Many judges are reluctant to grant these motions, even when meritorious. Plaintiffs' attorneys have seized upon this growing difficulty in staking out their positions for settlement and trial. The holding of *Jones v. Awad* (2019) 39 Cal.App.5th 1200 is a breath of fresh air and is especially exciting for attorneys handling premises liability cases. *Jones* specifies the scope of a landowner's duty in the context of a granted and affirmed motion for summary judgment and will help defense attorneys bring successful motions for summary judgment in similar cases.

In *Jones*, defendants Clyde and Julia Awad purchased a home in 1989, which was built in 1977. Twenty-five years later, plaintiff Theresa Jones visited the Awad home and fell on a step from the house to the garage. Ms. Jones sustained injuries and filed a lawsuit against the Awads asserting a single cause of action based on premises liability. The Awads filed a motion for summary judgment. The trial court granted their motion on the basis that Ms. Jones could not prove breach of duty. In affirming the trial court's decision, the appellate court focused on a lack of constructive notice and the application of negligence per se.

To step down into the garage, Ms. Jones had to step from the parquet floor landing inside the home and onto a step. From the step, Ms. Jones would then reach the garage floor. The height from the parquet floor to the step was about ten and a half inches, and the height from the step onto the garage floor was about seven inches. During the entire time the Awads lived in the home, they never fell from the step and were unaware of any other person tripping or falling from the step.

When Ms. Jones fell, the step violated seven provisions of the Uniform Building Code. The exterior landing was more than seven and a half inches below floor level, the step rise was more than eight inches, the variation between the largest and smallest rise was in excess of a quarter of an inch, and there was no handrail on the open side. When Ms. Jones fell, the Awads had no knowledge about any of these code violations.

Unsurprisingly, plaintiff's counsel made a negligence per se argument focusing on the code. However, *Jones* tells us that a landowner's violation of a statute or building code does not automatically prove breach of a duty.

The court first focused on notice of a dangerous condition. Ms. Jones could not point to substantive evidence showing that the Awads had either actual or constructive notice of a potentially dangerous condition. There must be "some overt feature surrounding the dangerous condition, which would notify the landowner of its existence." (*Id.* at. 1209.) The varying height and condition of the step were not enough to determine that the Awads had constructive notice that a dangerous condition existed. The Awads never fell from the step, there were no prior incidents, and there was no reason to believe that the step constituted a dangerous condition. Importantly, the *Jones* court also determined that that the building code violations did not automatically impute constructive notice. Ms. Jones would have had to show that the violations "produced some sort of noticeable feature of the garage steps. Without more it cannot be concluded that a variation of a few inches is sufficient to raise a triable issue of material fact with respect to constructive notice." (*Id.* at 1210.)

Continued on page 14

The court then focused on Ms. Jones's negligence per se argument and her position that the building code violations established that the Awads breached their standard of care. The court found that because the Awads did not take any part in the design or construction of the step area, had no knowledge that the code violations existed, and there were no prior incidents, negligence per se could not impute liability under the circumstances. (*Id.* at. 1213.)

Although the *Jones* court concluded that the doctrine of negligence per se was within the scope of plaintiff's complaint because it generally alleged negligence, it held that negligence per se was not applicable to the facts of this case. Defendants were homeowners and did not take part in the design or construction of the garage step area where the accident happened. The presence of a building code violation does not automatically render defendants at fault, especially when the plaintiff cannot show the defendant had notice of the condition at issue. *Jones* will certainly help defense attorneys successfully bring motions for summary judgment in premises liability actions, specifically when there is a lack of notice of a dangerous condition.

Ashley N. Meyers

Ashley Meyers joined Clapp Moroney as an associate in 2015 and is a member of the Personal Injury and Products Liability Practice Groups. Prior to joining Clapp Moroney, Ashley practiced in the area of administrative law, with a specialty in representing veterans before the Board of Veterans' Appeals and the Court of Appeals for Veterans' Claims.

Riana E. Daniel

Riana Daniel is a member of Clapp Moroney's General Liability Practice Group. Prior to joining Clapp Moroney, Riana practiced civil litigation at a law firm in Stockton, CA. She represented law enforcement, cities, and counties in excessive force litigation in both federal and state courts. She also defended various general liability matters, including a variety of personal injury claims.

Past President Highlight Featuring

JULIA A. MOLANDER

Consultant and Expert Witness

Crystal L. VanDerPutten
Livingston Law Firm, P.C.

Julia A. Molander became the first female president of the Association of Defense Counsel of Northern California and Nevada (ADC) in 1996. As the oldest of nine children (six younger sisters and 2 younger brothers), she is used to being in charge. During her career as an attorney, Julia was first chair in more than 20 bench trials, jury trials and arbitrations. She also made time to speak at many conferences and programs for various organizations such as the Association of Defense Counsel, Defense Research Institute (DRI), Association of California Insurance Companies and the Insurance Risk Management Institute. Additionally, Julia authored numerous articles and scholarly discussions on a variety of insurance topics. At the same time, Julia remained active in the ADC and other organizations such as DRI, where she headed up the Insurance Law Committee. Along with many other honors over the years, Julia was elected a Fellow of the American College of Coverage and Extracontractual Counsel in 2014 and the Insurance Litigation Institute of America.

After 41 years representing the insurance industry in various aspects, including but not limited to insurance coverage litigation, insurance counseling, extracontractual (bad faith) liability, insurance fraud, underwriting matters, policy drafting, regulatory compliance, brokerage and agency liability, insurance insolvency and legislative issues, Julia was ready for a change. In the late summer of 2019, Julia retired from the active practice of law. She is now putting her vast knowledge of the insurance industry to use as a consultant and expert witness on insurance coverage matters. She is thoroughly enjoying this new role and having a blast in the "teaching" aspect of it.

HOW DID YOU COME TO BE THE FIRST FEMALE PRESIDENT OF THE ADC?

I became a member of the ADC when I was an associate at Bronson Bronson & Mckinnon LLP. Paul Cyril was one of my mentors and he was very active in the ADC, including a term as president of the ADC. Around 1982, I was asked to speak on a panel about property law coverage. One of the other speakers was Sue Popik, the first female member of the ADC Board of Directors. After that panel, I became more involved in the ADC and joined [what was then called] the Appellate Committee, which was very active. I also joined the Education Committee, where I helped set up seminars. When a leadership position was offered to me in 1988, I happily accepted and became a member of the Board of Directors. I became more invested in the organization and how it was run and ultimately became an officer on the Board of Directors. As an officer, the natural progression is to become president.

WHAT WERE YOUR TOP PRIORITIES AS PRESIDENT?

I don't really recall what my top priorities were, but I know the ADC's relationship with the insurance industry was changing. I really wanted to improve the relationships between attorneys and the insurance industry so we could work together toward mutual goals, such as responding to the plaintiffs' bar. I was also interested in increasing business development opportunities in the insurance industry by way of increasing the involvement of insurance carriers, brokers and risk managers in the ADC. I also wanted to increase membership and diversity in the organization. I think membership increased by about 150 members during my time as president.

Continued on page 15

WAS THERE A LOT OF FOCUS ON YOUR GENDER WHEN YOU BECAME PRESIDENT?

It was a big jump forward for the organization and there was a lot of focus on it. And it was important to me because I have six younger sisters. There is this concept of an attorney as a "warrior" and fitting a woman into that image was, at times, a difficult transition. But there was also an effort to promote women in the organization and more and more women were beginning to fill leadership positions. I think the organization leadership is now 40% female. As a whole, I have seen the legal profession change since my time as president. It has become more diversified with respect to gender and race and I think that is reflected in the ADC's membership.

IS THERE ANYTHING THAT STANDS OUT IN YOUR MIND ABOUT YOUR TIME AS PRESIDENT?

Well, I recall the year prior to becoming president, I was charged with planning the Annual Meeting. This meeting has been held at the Westin St. Francis for many, many years. But the year I planned the meeting, the hotel somehow booked a large sports organization event at the same time and the ADC could not hold the meeting there. We ended up at the Marriott on very short notice. It was amazing, but we were happy to return to the Westin St. Francis the following year. I generally remember my speech at the meeting – it was largely focused on my alma mater, Northwestern University, and the school's first Rose Bowl in 50 years and I used football analogies. It was a very exciting time.

WHAT HAVE YOU BEEN DOING SINCE YOU COMPLETED YOUR TERM AS ADC PRESIDENT?

I stayed active in the practice of law, specifically in insurance law, until recently. After my presidency, I became a partner at Bronson Bronson & Mckinnon LLP. When Bronson dissolved, I went to Sedgewick, Detert, Moran and Arnold. Around 2011, a Chicago firm, Meckler, Bulger and Tilson opened a San Francisco office and I joined them. When it merged with Cozen O'Connor, a Philadelphia based firm, I stayed and happily practiced there until I decided to retire and spend more time doing other things, like diving.

WHAT ARE SOME OF THE CHANGES YOU HAVE SEEN IN THE ADC SINCE YOUR TIME AS PRESIDENT?

As I mentioned, the organization has really diversified over the years as the legal profession has also diversified. I am a huge fan of the listservs – especially the expert witness listserv. They are a great way to get messages out. I love the seminars and webinars provided. The webinars especially are a great change because they allow a wider audience to participate with less cost to the ADC and allow members to stay abreast or even ahead of changes. I also think the ADC does a great job of informing the membership of bills relevant to the legal profession and giving the members a voice where there is opposition from the defense bar. The ADC is a very worthwhile organization, as much now as when I was a practicing attorney.

WHEN YOU REFLECT ON YOUR TIME IN THE ADC, WHAT COMES TO MIND?

I owe the ADC for introducing me to two of my great passions – golfing and scuba diving. Around 1989, I attended an ADC seminar in Maui and participated in a scuba diving lesson. I loved it and went on to get my scuba diving certification and have completed over 1000 dives, including dives in Bali, Indonesia (Sulawesi Island) and Papua New Guinea, where they still have cannibalism. As for golfing, when I completed my term as president, Dennis Moriarty gifted me with a full set of golf clubs and told me I should try golf. I ended up at a driving range with a golf pro and learned how to golf. I have improved a lot since then. Now, as a consultant and expert, I have more time to enjoy both.

Crystal L. VanDerPutten

Crystal L. VanDerPutten is a shareholder at Livingston Law Firm in Walnut Creek. Crystal received her law degree from the University of San Francisco Law School. Her undergraduate degree is from Pepperdine University; she concentrates on litigation involving commercial matters.

Technology Corner

Videotaped Deposition with Interactive Exhibits

Sean P. Moriarty, Cesari Werner And Moriarty

If you are still taking and using depositions the old-fashioned way, utilizing a Court Reporter and the later prepared transcript, the following may be informative and useful for you in your practice.

A. BE SURE TO PROPERLY PREPARE FOR VIDEOTAPED TESTIMONY:

Because videotaping depositions is becoming the norm, please be sure to keep in mind the following:

Remind you client to dress appropriately for his/her deposition. Because most deposition notices routinely state that the party noticing the deposition reserves the right to videotape it, you may want to state this in your standard correspondence to your client when notifying of the deposition date.

Some clients want to avoid dressing neatly and will try to circumvent dressing appropriately. When your client asks you how he/she should dress, try the following example: Dress in such a way that your Mom would be proud if she saw you dressed similarly at a family wedding or a funeral. Recently, there was a deposition where the deponent came with a large baseball hat on his head; although this looked odd at the start, when he removed his cap halfway through the deposition and revealed a gang tattoo on his forehead, the reason for the cap then made sense.

Remind your client to look at the deposition examiner (opposing counsel) and not at you during the course of the deposition. As you know, most clients are nervous during the deposition process. Even after you prepare them, even after you remind them to testify truthfully, and remind them that they are under oath, some still have a tendency, when answering a question that they feel is material, of looking at you prior to answering. This can inaccurately depict your client as testifying untruthfully and looking to you for signs as to how to answer a question. Your client will not look good when video of her testimony is played in front of the trier of fact and she is looking to her right prior to providing material responses.

Be sure to remind your client to stay on an even keel. Many clients do not realize that when they become nervous or excited, their appearance is potentially offputting. Many clients are irritated by the legal process, by the person/entity that is suing them, and by opposing counsel. Making sure to take the time to walk your client through the importance of politeness and professionalism, notwithstanding the pressure conditions, will avoid your client looking poorly/differently in the deposition setting and opposing counsel using that to potentially alienate your client before the trier of fact by playing selected excerpts of your client's deposition.

Be sure to review the video image being made of your client to ensure that the camera angle and the lighting present your client in a favorable manner. Also, make sure the camera picture of your client does not include you in the video; you definitely do not want to become the unintended show.

B. UTILIZING TECHNOLOGY TO LINK A MATERIAL EXHIBIT WITH WITNESS TESTIMONY CAN BE A POWERFUL TOOL:

The new key for taking depositions of parties, witnesses, and experts is to link a material exhibit with the testimony. Not only does this make for effective testimony to be shown to the trier of fact, it also helps you use the deposition tool to get your case cleanly ready for trial.

Normally during your opening of a file or during the initial discovery phase, you will discover a few exhibits that are important pieces of evidence for your client's defense that you will want to introduce and to place into the spotlight for the trier of fact. For example, if a certain portion of an OSHA Report or an Investigative Report is critical to the defenses of your client, having material witnesses identify and answer questions related to this piece of evidence in a split screen setting can be very powerful.

With this split screen technology, you can use an important exhibit during the taking of a deposition, highlight the exhibit, and link it to active witness testimony. This is called an "interactive deposition."

Using video depositions with interactive exhibits leaves no doubt as to what the witness is describing. This allows you to display the deponent's video testimony while simultaneously showing the electronic exhibit that the deponent is referencing.

Continued on page 18

Clips of this testimony can be created to be played in the courtroom. If an exhibit demonstrates a critical piece of evidence for your case, having a witness confirm and reference the evidence with this split screen technology in deposition can really hammer home one of your closing argument main points; you may also be lucky enough to receive bonus points if an adverse witness stumbles through your reference to an admissible piece of evidence and inadvertently helps you ring home a main theme of your closing argument.

Another powerful deposition tool is synchronicity of the transcript with the witness video. Taking the time prior to deposition to familiarize yourself with the applicable jury instructions that you will be requesting that the court read to the jury, and then utilizing the same or similar language during questioning of witnesses, and eventually showing the video of testimony with synchronized transcription will aid you in linking the evidence to a specific question on the verdict form and the jury instructions in closing. Creation of these synched video clips with transcript text can be a potent instructional tool for the jury.

To break this down into steps, before depositions, your office will sort through all the available evidence (possibly thousands of documents) to find the most relevant evidence for the case and each specific witness. Once identified, this evidence is categorized, labeled, and possibly annotated. You then construct your deposition strategy based on this evidence and the testimony you hope to garner to support your theory of the case. There are several technological solutions available that make preparation for a deposition much easier. We'll call those "pre-deposition technologies." There are several categories of pre-deposition technologies:

Document management refers to any software that allows you to organize, tag, search, and annotate electronic documents. These types of applications allow you to easily mark up and annotate documents, adding questions and comments, highlighting, underlining and more. Popular apps offering this include iAnnotate and GoodReader. While popular, these apps aren't made specifically for attorneys or depositions, and thus have some limitations. For example, the annotations are usually "flattened," which means they become a permanent part of the file. What this means is that if you want to share a document (as in revealing a document during a deposition), you have to provide a separate version without your annotations.

Making annotations on documents that are private annotations is possible with solutions more targeted toward attorneys. For example, AgileLaw's deposition software offers private annotation functionality, allowing paralegals and attorneys to make annotations and notes without having to keep a separate "clean" version for the witness/opposing counsel.

Although the video deposition is not exactly cutting edge, it is nevertheless an important technology that has aided many attorneys to conduct better depositions.

Video accurately captures a witness's testimony. In addition, for better or worse, in our video/screen dominated society, video is much better received by a jury. For that reason alone, in the proper case, using a sophisticated provider is the smart route. These providers will not only provide high quality video that will be admissible in court, they will also allow you to easily search, annotate and index footage, which you can then use to make a very powerful trial presentation.

Also, while the deposition is occurring, deposition technology allows participants and observers to now follow along the deposition by viewing the transcript in real time. While attorneys can connect the court reporter's computer to a monitor for others to follow along, solutions made specifically for this, such as Merrill's RealTime, not only allow observers to annotate their own version of the transcript, but also allows participants who are remotely located to actively follow a deposition.

In addition, electronic exhibits provided to parties and court reporter in advance of a deposition make for a streamlined deposition. Paperless depositions allow lawyers to manage, reveal, and use exhibits electronically (with a laptop/tablet) instead of with paper copies. Electronic exhibits are usually stored in the cloud, which also allows sharing of document exhibits with remote participants.

As you know, lawyers are increasingly conducting remote depositions or are having observers join remotely. This leads to the need to turn to various teleconferencing solutions. This can be as simple as a telephone conference call or a Skype chat, or more sophisticated like GoToMeeting or WebEx. These technologies allow the sounds, and some of the sights, of a deposition to be streamed live anywhere.

As you come across important pieces of evidence in your case, having your assistant receive the proper training to properly name, download/scan, and save them in your file directory for the specific case is invaluable. You will have easy access to each important piece of evidence, and can easily transfer it to your court reporter in advance to be marked and utilized as an exhibit in deposition.

As a reminder, all the video, transcripts, and exhibits must be stored somewhere after the deposition. Using a dropbox is popular if you are comfortable utilizing the technology. Having a good relationship with a court reporting firm or a specific vendor that has shown that it can properly store material evidence can put your mind at ease.

Deposition technology is here to stay and will increasingly become widespread; learning to use this technology to your advantage will be in your client's best interests.

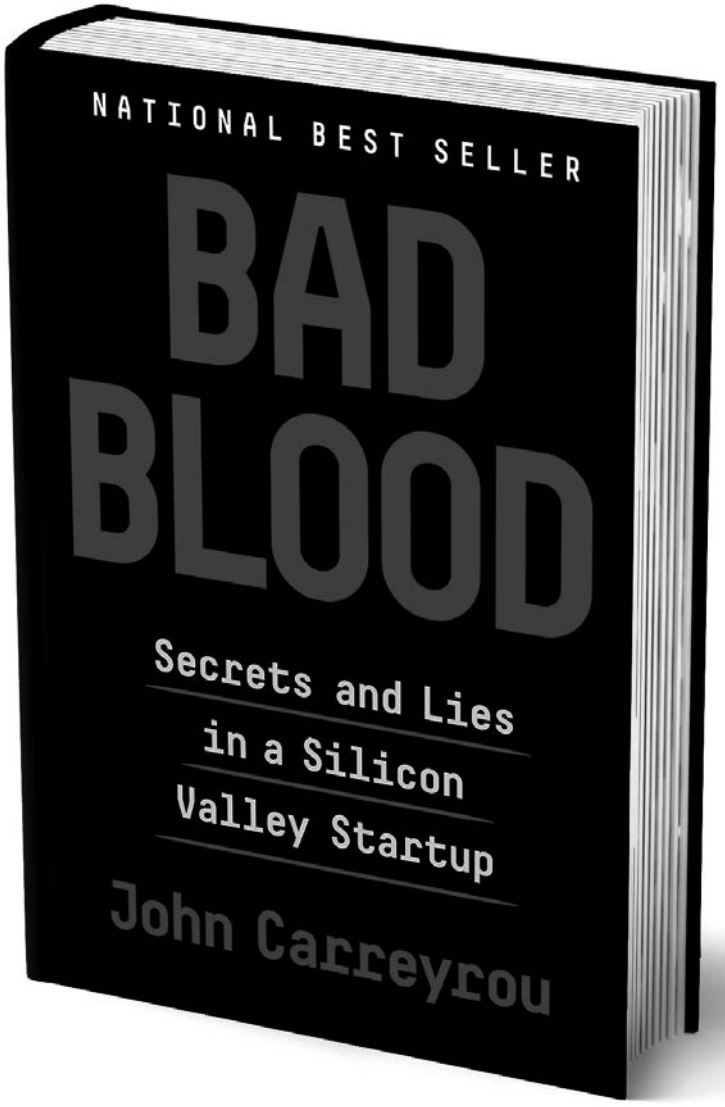
Sean P. Moriarty

Sean Moriarty is a member of Cesar, Warner & Moriarty, a Bay Area based defense firm in practice since 1965. Sean graduated from St. Cecilia's grammar school (Irish) of SF in 1986, St. Ignatius high school (Wildcats) of SF in 1990, UCLA (Bruins) in 1994, and University of San Francisco (Dons) School of Law in 1997. Sean handles a variety of civil defense cases, including automobile, premises liability and other matters on behalf of both individuals and business.

Bad Blood: Secrets and Lies in a Silicon Valley Startup

By David A. Levy
Mediator and Arbitrator

While technically not a book about the law, legal issues and lawlessness flow through the pages of *Bad Blood: Secrets and Lies in a Silicon Valley Startup* (Alfred A. Knopf – 2018). In *Bad Blood*, John Carreyrou tells the true story of Theranos Corporation, the biotech startup founded by Elizabeth Holmes after she dropped out of Stanford. Holmes thought of combining nanotechnology and biochemistry to create a method for performing diagnostic blood tests with a single drop of blood, instead of the conventional draws that require vials of blood. Her thought was that many people dislike needles and, if the technology could improve, her company would be able to do complex blood tests with a single tiny needle prick in small laboratories in shopping malls and grocery stores. Holmes raised nearly a billion dollars in venture capital.



It was a great business plan, but the science was lacking. Unfortunately, that did not stop Holmes. She installed her boyfriend, "Sunny" Balwani, as president of the company. Balwani had a background in the dot-com industry, but none in healthcare.

Theranos had an august group of directors, including George Schultz, Henry Kissinger, Sam Nunn, and James Mattis. Eventually, well-known attorney David Boies represented the company. He ultimately served on the board and received stock options. No one on the board had any background in healthcare, much less hematology, but they all admired Holmes's passion.

Holmes admired Apple founder Steve Jobs. She even dressed like Jobs, down to the black turtlenecks. Her management style was intimidating, and she demanded unbending loyalty to her vision of her business plan.

Continued on page 20

Based on falsified test results, Theranos entered into partnerships with Safeway and Walgreens to install small, nicely appointed, Theranos labs in their stores. Theranos brought in attorneys to help intimidate whistleblowers – employees who understood the science, or, more accurately, the lack thereof – by making them sign non-disclosure agreements when they quit or were terminated. When anyone – inside or outside the organization – announced an intention to go public with information, Theranos's attorneys threatened them with libel suits.

Eventually, it all caught up with them. When the book's author, a journalist for *The Wall Street Journal*, started investigating and asking questions, he, too, received defamation threats by the Theranos attorneys. Carreyrou also received legal counsel and the *WSJ* apparently felt that they were sufficiently protected by the First Amendment. Concurrently, the federal Centers for Medicare and Medicaid Services started investigating the labs and their claimed results. The entire scheme collapsed and Theranos was forced to shut down. Holmes paid large penalties to the SEC and the U.S. Attorney filed criminal charges (wire fraud and conspiracy to commit wire fraud) against Holmes and Balwani. The case is set for trial in the summer of 2020 in San Jose.

Bad Blood is a quick read full of compelling characters. It offers much insight into the potential consequences of a total lack of corporate governance. As lawyers, we should look at the attorneys' roles in enabling this enterprise, including the distinction between being an aggressive advocate for our clients and crossing the line. There are many intriguing details that I have omitted from this book review and I think you will find it a compelling read.

And for those of you who just want to wait until the Hollywood film comes out, I understand that it is in the works, and Jennifer Lawrence is to be cast as Elizabeth Holmes.

David A. Levy

David A. Levy is a semi-retired attorney, who serves as a mediator and arbitrator in Redwood City. He is a past member of the ADCNCN Board of Directors, and served as editor of ADC Defense Comment for five years.

IN MEMORIAM

Jesse Ruiz

May 21, 1952 – October 17, 2019
Resident of Santa Clara County

Surrounded by his family, Jesse Ruiz passed away at the age of 67.

Jesse will be remembered as a vibrant and loving husband, father, son, and friend. Never one to sit still, you could find Jesse tailgating before a local Bay Area sports game, snowboarding down the black diamonds at Northstar, or golfing with his decades-old foursome at Stanford and with Lucy at Lahontan. Jesse's love for cooking and wine made for great parties, and he cherished any opportunity to bring together large groups of family and friends.

Jesse was a talented and accomplished trial attorney. He spent the first 40 years of his career as a partner at Robinson & Wood, Inc., and the last two years as a partner at Messner Reeves LLP. Jesse's professional legacy includes eight published decisions, fellowship in the American College of Trial Lawyers and American Board of Trial Advocates, President of the Association of Defense Counsel of Northern California and Nevada in 2000, and a vast network of colleagues, clients, and friends.

Jesse was born in Sault Ste. Marie, Ontario, Canada, proudly raised in Hollister, CA, and received his undergraduate education from the University of California at Berkeley (A.B., 1974) and his legal education at Stanford Law School (J.D., 1977).

Jesse is survived by his wife, Lucy, his children, Rachel, David, and Sarah, his grandchildren, Sofia and Julian, his mother, Gloria, his brother, Philip, and so many other family and friends.

Meet the New ADC Board Members

Lisa A. Costello

Lisa Costello has over 24 years of litigation experience, defending individuals and businesses in various disputes, including personal injury, premises liability, landlord/tenant, insurance coverage, and insurance bad faith matters. She has experience in all phases of litigation, including mediation, binding arbitration, trial and appellate matters.

Lisa received her Bachelor of Arts degree in 1992 from the University of California at Santa Barbara. She received her Juris Doctor degree, cum laude, from the New England School of Law in Boston. While in law school, Lisa served as Senior Technical Coordinating Editor for the New England Law Review.

She is admitted to practice in California, Arizona, and Nevada, as well as the Commonwealth of Massachusetts.

Lisa enjoys traveling, attending live theater and music events, and spending time with friends and family, especially her daughter who is living in New Zealand. Contact Lisa at *lisa.costello@csaa.com.*

Emily Fowler

Emily Fowler has been the chairperson of the ADC Membership Committee since 2019 and recently became a member of the Board of Directors. She is also a member of the Litigation Sub-Law Committee.

Emily is a Partner at Vogl Meredith Burke LLP, where she defends personal injury cases. Her general liability practice includes defense of catastrophic personal injury cases, including claims for wrongful death, amputation, and traumatic brain injury. She received her undergraduate degree at the University of California, Santa Barbara, and her J.D. at Golden Gate University, School of Law. While at GGU, she was awarded the International Academy of Trial Lawyers' Award for the Most Outstanding Student in the Field of Litigation. She also received Certificates of Distinction in Criminal Law and Civil Litigation. As a graduate, Ms. Fowler was awarded the prestigious Baxter Fellowship position, teaching litigation courses to J.D. students and coaching the mock trial competition teams. She has been practicing civil litigation since 2008.

Before joining Vogl Meredith Burke, Ms. Fowler developed extensive experience representing individuals in personal injury, products liability, medical malpractice matters and contract disputes. She has tried civil cases to verdict in state court.

Rachel Leonard

Rachel H. Leonard has over thirteen years of litigation experience and defends clients in all aspects of premises liability and medical malpractice litigation, representing retail businesses, hospitals and other healthcare providers. Rachel's experience includes representing mechanical contractors, flooring and ship decking contractors, car manufacturers,

Continued on page 22

and product manufacturers in asbestos litigation, as well as handling all aspects of auto accident insurance defense cases. Rachel formerly served as a prosecutor for the Contra Costa District Attorney's office, where she personally tried numerous criminal jury trials to verdict. In addition to her trial experience, Rachel has considerable experience in law and motion practice, including targeted and successful motions for summary judgment, depositions, discovery, oral argument, settlement conferences, mediations, and arbitrations.

In her free time Rachel enjoys spending time with her family, including her husband (Matt) and two children (Tyler, 9 and Danielle, 6). She loves to ski, run, kickbox, and read.

Laura C. McHugh

Laura McHugh is Chair of the Employment Law Committee of ADCNCN and a shareholder at Duggan Law Corporation in Sacramento. For over 24 years, she has represented companies in employment and labor law litigation and counseling matters. She received her J.D. from Santa Clara University of Law, where she was an editor on Law Review and served as an extern for Justice Gerome Smith of the First District Court of Appeal.

Nicholas H. Rasmussen

Nicholas H. Rasmussen has been a member of the ADC Membership Committee since 2018. He is pleased to join the ADC Board, where he also serves on the Insurance Coverage Substantive Law Committee.

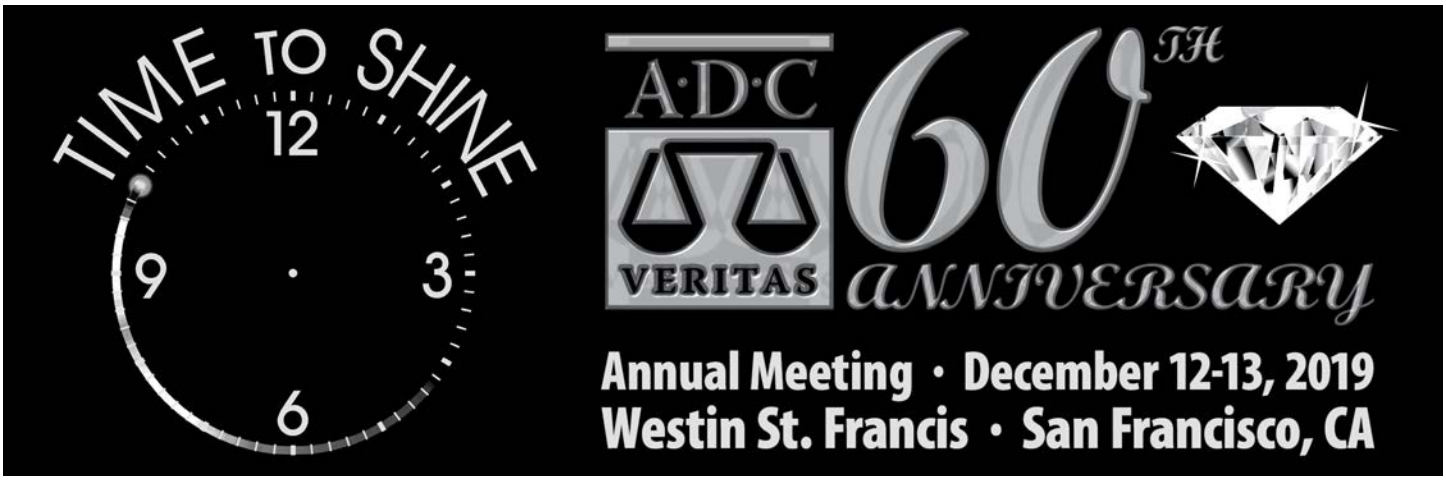
Mr. Rasmussen is a Partner at McCormick, Barstow, Sheppard, Wayte & Carruth, LLP, where he practices in the Insurance Coverage and Bad Faith Litigation practice group in the firm's Fresno office. Mr. Rasmussen received his J.D. from the Washington University in St. Louis School of Law. Before joining McCormick Barstow, Mr. Rasmussen had the opportunity to practice before the United States Court of Appeal for the Eighth Circuit, handling constitutional, general civil and criminal appeals on behalf of indigent and incarcerated pro se appellants under the tutelage of Professor D. Bruce LaPierre of the Washington University in St. Louis Appellate Clinic.

In his spare time Mr. Rasmussen enjoys backpacking, rock climbing, and skiing.

Brandon D. Wright

Brandon Wright is a Partner in Lewis Brisbois's Reno office and a member of the General Liability Practice and Cyber Security Practice groups. Mr. Wright earned his undergraduate degree from Gustavus Adolphus College in Minnesota in 2003. In 2007, Mr. Wright graduated from Hamline University School of Law and began working as a Judicial Law Clerk for Chief Judge Paul A. Nelson in Minnesota. Mr. Wright relocated to Las Vegas in 2011 and began working as a plaintiff's attorney. In 2014, Mr. Wright joined Lewis Brisbois's Las Vegas office. Mr. Wright relocated to Reno in 2019 and has grown his practice to include autonomous vehicle regulatory compliance, crypto currency (development, valuation, and litigation), and cyber security coverage opinions.

AROUND THE ADC



Christopher F. Johnson, Maranga • Morgenstern

Everyone was shining brightly at the 60th Annual Meeting of the Association of Defense Counsel, held at the Westin St. Francis Hotel in San Francisco this past December. A wide variety of programs was available to all attendees, covering such topics as how to limit your client's exposure in a high general damage case and how to defend against psychological damage claims. We even had a veteran filmmaker teach us how to develop our presence in front of a jury. We also had presentations on construction, gender bias litigation, the California Consumer Privacy Act, cyber-risk and cyber insurance, and time management for lawyers. We had a great lineup of speakers and all of the programs were very informative and well-received.

The Meeting began on Thursday morning with our State of the Courts address. Judges from San Francisco, San Mateo, and Santa Clara Superior Courts spoke to the attendees regarding their respective courts. Special thanks to Judges Wong, Swope and Zayner for their support of the ADC. The ADC has always enjoyed a great relationship with the bench, which is one of the great benefits of membership in our organization.

This was the second year of our NextGen lunch on Thursday. Thank you to all who attended. The future of our organization

Continued on page 24

depends upon young lawyers becoming involved as leaders of the ADC and we encourage all young lawyers to attend the NextGen lunch at this year's Annual Meeting.

Thanks to our Silver Sponsor, Verus Forensic, our Bronze Sponsor, Roughan & Associates, and all of the exhibitors and vendors. The Annual Meeting could not take place without your participation and financial support, and we are very grateful for our relationships with each of you.

The Annual Meeting ended on Friday with two fabulous speakers. Our inspirational speaker, Tom Kowalski of Guide Dogs For The Blind, helped remind us what courage and perseverance can do when you're faced with what seems like an insurmountable obstacle. Thank you, Tom, for a presentation we won't soon forget. You too, Dynamo! And thank you to our keynote speaker, Dean Erwin Chemerinsky of UC Berkeley School of Law, who delivered a fabulous speech about the United States Supreme Court.

Finally, thank you to the most important part of our organization – our members. We are so fortunate to practice law in such a wonderful part of our great country and membership in the ADC gives us all the opportunity to shine even brighter. Mark your calendars now to attend this year's Annual Meeting, set for December 10 and 11 at the Westin St. Francis Hotel. See you at the 2020 Annual Meeting!

ADC Past-Presidents

Howell: Still Under Attack Nine Years Later

153 people attended the ADCNC's first educational event for 2020, "*Howell:* Still Under Attack Nine Years Later," held on January 24 at the Milton Marks Conference Center in San Francisco. Given the high demand for this program, it will likely be repeated in Sacramento in the near future.

The Lawyer's Lawyer

William A. Muñoz
Murphy Pearson Bradley & Feeney

Getting Back to the Basics

In this installment of The Lawyer's Lawyer, we are getting back to the basics that are often overlooked in our daily practice and that can mean the difference between liability or no liability in the unfortunate event that you are sued for malpractice. I'm not one to make myself the example, but a fairly recent legal malpractice case that I tried (and lost) prompted me to write this article. The issue comes down to simply documenting significant developments in a case or discussions with the client. This article will explore the simple things that you need to do to avoid being the lawyer on the wrong side of a malpractice verdict, and perhaps avoid a potential claim altogether.

OVERVIEW

As noted above, the impetus for this article was an adverse judgment for a client of mine in a legal malpractice case. Fortunately, I was able to speak to the jury afterward, which provided valuable insight into the case and where it went wrong. The jury was very complimentary of me, which took some of the sting away, but it was hard nonetheless. Although I felt that I was able to link conversations between my client and the plaintiff regarding certain key events that occurred during the representation with billing records, e-mails and both parties' testimony, there was an absence of contemporaneous correspondence between my client and the plaintiff. The jurors said, "If it is not in writing, then it does not exist." What is a lawyer to do? Simple. Put it in writing. Easier said than done.

RULES OF PROFESSIONAL CONDUCT

Oddly, the jurors' sentiment does not find much support in the Rules of Professional Conduct or standard of care requiring something to be in writing to the client. Significantly, Rule 1.4 regarding communication with clients does not require any communication to be in writing other than informed written consent required by Rules 1.7 (conflicts – current clients), 1.8.1 (business transactions with clients), 1.8.6 (compensation from third party), 1.8.7 (aggregate settlements), 1.8.8 (limiting liability to clients), 1.9 (duties to former clients), 1.18 (duties to prospective client), and 3.7 (lawyer as witness).

Rather, Rule 1.4 uses phrases such as "promptly inform," "reasonably consult," "reasonably informed," and "advise." In other words, there is simply no prohibition, and you cannot be disciplined for, "promptly informing," "reasonably consulting," "reasonably informing," or "advising" a client about significant developments *in person or over the telephone*. While there is no prohibition and you are in compliance with the Rules of Professional Conduct, the problem of advising or consulting with your client in person or over the phone is that clients tend to have memory issues about these significant events when things go south.

HOW DO YOU PROTECT YOURSELF?

The simplest way to protect yourself is to document, document, and document the conversations in writing. What that means is take concise, accurate notes of telephone calls and meetings. Then, after the meeting or telephone call, send a letter to the client summarizing the conversation giving the client the opportunity to confirm that you accurately summarized the conversation. For example, you are representing a plaintiff and the defendant made a settlement offer that you, as the lawyer, believe is a reasonable one that your client should seriously consider accepting. In your meeting with the client to discuss the settlement offer, you discuss the merits of the claims being asserted, the likelihood of prevailing on those claims and the potential damages. At the end of the meeting, your client agrees with your analysis and wants to accept the offer.

To ensure that there is no misunderstanding, you should follow up with a letter to the client setting forth exactly what you discussed in the meeting about your analysis of the claims and why you believe the settlement offer is reasonable and should be accepted, as you have documented in your detailed notes of the meeting. You should also state that after providing this information to the client in the meeting, the client agreed to accept the

Continued on page 26

offer and authorized you to do so, ending the letter with words to the effect, "If this is not your understanding of our discussion, please let me know immediately." Unless there is a timing issue with regard to the offer, give the client a few days to let it sink in before you accept the offer on his or her behalf. If there is no change in heart, then communicate the acceptance to the other side in writing and copy your client on the communication. Seems simple enough, right? You would be surprised how many lawyers do not do this.

Another common issue that is often the subject of malpractice claims is the costs of litigation with malpractice plaintiffs claiming that the lawyer never apprised him or her of the costs that would be involved. Preliminarily, the issue of costs and attorney's fees should be clearly set forth in the written legal services agreement with a statement to the effect that the "client acknowledges that Lawyer has made no promises about the total amount of attorney's fees to be incurred by client under this agreement." Even though this should appear in the legal services agreement, you should have the discussion with the client about the estimated cost of litigation before the litigation is filed and give the client an estimated budget.

Preparing an initial estimated budget for the client is not the time to be conservative. You need to be realistic and should consider the worst case scenario so that the client is "reasonably informed" about whether he or she wants to move forward with the litigation. If you are working on an hourly fee agreement and the client says that he or she cannot afford it, then you need to have a further discussion with the client about moving forward and you really need to consider passing on the case, otherwise you will find yourself with a large bill that the client will not pay. It is absolutely critical that a written budget be provided to the client early on because, if you do not, the client will have sticker shock with the first bill he receives after you have dived head first into discovery. This will only create tension between you and the client, which experience informs will not get any better the longer the litigation lasts.

These are just two examples of documenting in writing to a client key events or significant developments in a case. Because I am overzealous in my need to document, I would also recommend that your billing records also contain sufficient detail to memorialize these key events. Obviously, the client will not want a billing entry that is three pages long. But, what you do not want to do is waste the opportunity by simply making the following billing entry: "meeting with client" or "meeting with client to discuss offer." While the latter gives the reader (i.e., juror) some idea of what is being discussed, it provides no detail into the content of the discussion. The former entry is useless and, for those insurance defense attorneys, will get rejected by the carrier. A better entry would look like this: "meeting with client to discuss $50,000 offer, analysis of merits of case, likelihood of prevailing, and recommendation to accept offer."

CAN YOU OVER DOCUMENT?

The simple answer is yes. Not everything needs to be confirmed in a three-page letter that takes an hour to write. If you do this the client is going to start screaming that you are overbilling or churning the file. Another concern would be that too much documenting can create the impression that you are attempting to cover your rear – another sentiment that I have heard from jurors.

However, this latter point can be dealt with in front of a jury in light of the litigious nature of your now-former client and the fact that parties have the tendency to forget or misremember if it is not in writing, thus prompting you to put everything in writing in of an abundance of caution.

The takeaway from this particular issue is to use your best judgment as to what you document, recognizing that everything does not need to be in writing.

TAKEAWAYS

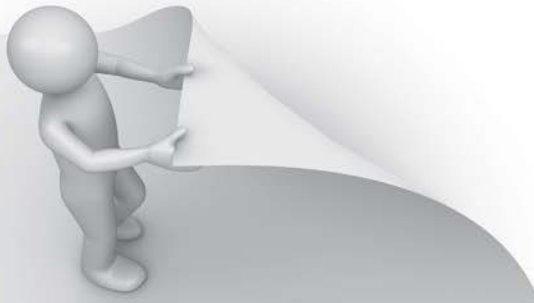
The Rules of Professional Conduct only require certain communications with clients be in writing. Those instances generally involve disclosures to the client necessary to obtain the client's informed written consent. When informing clients of key events or significant developments in a case, and you are wondering if you should (or need) to put it in writing, think about using "informed written consent" as a guide, even if the Rules do not require it. You want to be able to show that you provided the client the information that he or she needed to make an informed decision about how to proceed in the case. Whether the client makes the "right" decision based upon the information that you provide to him or her is entirely up to them. Your job is to provide the information. If you provide this information in writing and the client goes against your advice, you are in a much better position down the road if it turns out that the client's decision was wrong.

Take the extra time to document those in-person meetings or telephone calls with clients about key events or developments in a case in writing with confirming letters or e-mails and in your billing records. With this information in writing, it will be much harder for your client to bring a claim against you down the road and could provide a reason for a legal malpractice plaintiff's attorney not to take the case. Good luck!

William A. Muñoz

Bill Muñoz is a shareholder at Murphy Pearson Bradley & Feeney in Sacramento, where he specializes in legal malpractice and other business matters. He received his Bachelor's degree from University of California, Davis, and his J.D. from Hamline University School of Law.

ADC Amicus Corner



By Don Willenburg
Gordon Rees Scully Mansukhani, LLP

The ADC's amicus briefs committee exists to bolster and provide institutional support for the defense position at courts of appeal and the California Supreme Court, and sometimes the Legislature or other bodies as well. The committee also provides excellent opportunities for members (this means you or the smart colleagues at your office) to write amicus briefs, letters supporting Supreme Court review, and letters supporting publication or depublication of decisions involving important defense issues.

Here is some of the committee's activity since the last issue of *Defense Comment.*

SUPPORT FOR CALIFORNIA SUPREME COURT REVIEW

1 ***State Farm General Ins. Co. v. Lara***, No. S259327. As described in our letter supporting review:

> Parties need certainty about when the time to appeal begins. The time does not ordinarily begin until entry of a final judgment or another order made appealable by statute. (Cal. Rules of Court, rule 8.104; Code Civ. Proc., § 904.1.) Here, however, the Court of Appeal dismissed an appeal as untimely when notice was filed less than 60 days after judgment, but more than 60 days after an earlier denial of a petition for writ of mandate. Denial of a petition for writ of mandate is not made appealable by section 904.1 or any other statute.

2 ***Berroteran v. Superior Court (Ford Motor Co.)*** (Oct. 29, 2019) 41 Cal. App.5th 518, S. Ct. No. S259522. For years, courts have held that deposition testimony from a prior case was not admissible unless "the party's interest and motive for cross-examination on the previous occasion" was the same – and it is never the same when a party's own witness is being deposed, given that it is generally inadvisable to cross-examine one's own witness at a discovery deposition. (See, e.g., *Wahlgren v. Coleco Industries, Inc.* (1984) 151 Cal.App.3d 543.) But *Berroteran* rejected *Wahlgren* and ruled that prior deposition testimony of corporate witnesses could be used at trial in a different case, even without a showing of unavailability. (Contra Evid. Code, § 1291.) This disproportionately affects the defense. Plaintiffs will try to re-use unfavorable PMQ testimony ad infinitum.

3 ***Swanson v. County of Riverside*** (June 17, 2019) 36 Cal.App.5th 361, S. Ct. No. S257110. Plaintiffs sued when an individual was released from a "section 5150" hold, went home, and bludgeoned three people to death with a baseball bat. The County filed an anti-SLAPP motion, because the procedure for releasing individuals is an official proceeding involving protected speech. The trial court denied the County's anti-SLAPP motion, and the Court of Appeal affirmed. The Committee advanced the defense position that it is important to determine whether activities involving such holds under the Landerman-Petris-Short Act, and perhaps similar other proceedings, are protected by the anti-SLAPP law. Unfortunately, review was denied.

REQUESTS FOR PUBLICATION OF UNPUBLISHED DECISIONS

Your Amicus Committee sought publication of ***Vlahakis v. Hilton Worldwide, Inc.*** (Nov. 12, 2019, No. E069631, 4th Dist. Div. 2). Parents sued for the wrongful death of their adult sun who drowned in a pool after considerable drinking. The pool had a "swim at your own risk" sign. Your Association argued that the case should be published because:

First, it addresses dram shop immunity, which although commonly called "dram shop" actually applies to anyone providing alcohol to adults, including hotels, social hosts, etc. ADCNCN members regularly represent defendants in such cases.

Second, it addresses assumption of risk, an entirely reasonable limitation on tort duty that, as the decision recognizes, ought properly apply to a wide range of activities beyond its California origins in sporting activities. As the decision recited, "Where swimmers are warned that there is no lifeguard present, and a person uses a swimming pool, drunk or sober, that person has voluntarily accepted the risk of drowning."

The decision also contained the following common-sense proposition that would provide useful guidance at the trial court level in many negligence and premises liability cases: "To the extent plaintiffs argue that Hilton was bound to follow its policies, they cannot establish negligence by defendants' adherence to those policies."

Unfortunately, the request was denied, so the case cannot be cited as precedent.

WHAT CAN, AND DOES, THE ADC'S AMICUS BRIEFS COMMITTEE DO FOR YOU?

The ADC's amicus committee can help support you and your clients in a case of general defense interest in all the following ways:

Continued on page 28

Amicus Corner

– continued from page 27

1. Requests for publication or depublication of Court of Appeal decisions.

2. Amicus brief on the merits at the Court of Appeal.

3. An amicus letter supporting a petition for California Supreme Court review.

4. Amicus brief on the merits at the Supreme Court.

5. Share oral argument time, with court approval.

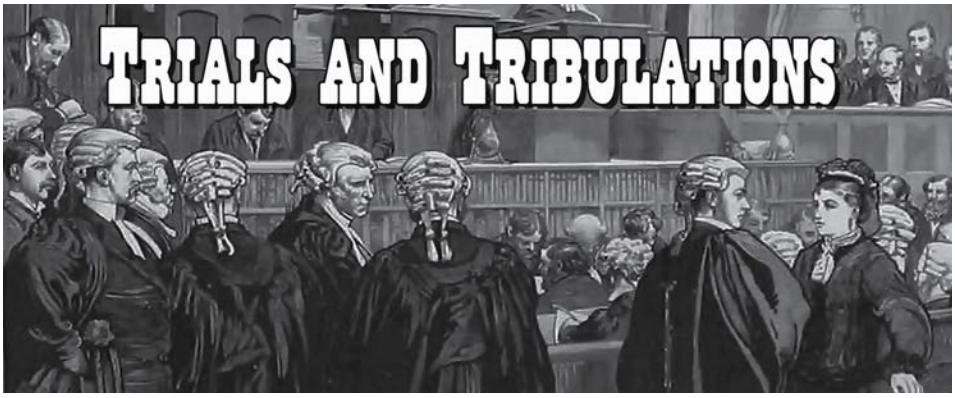
6. Help moot court advocates in advance of oral argument.

In many cases, the ADC works jointly with our Southern California colleagues, the Association of Southern California Defense Counsel. Getting the chance to bat around these issues with lawyers from across the state is another great benefit of being on or working with the amicus committee.

If you are involved in a case that has implications for other defense practitioners, or otherwise become aware of such a case, or if you would like to get involved on the amicus committee, contact any or all of your amicus committee: Don Willenburg at *dwillenburg@gordonrees.com;* Patrick Deedon at *pdeedon@maire-law.com;* Jill Lifter at *jlifter@rallaw.com;* Jim Ostertag at *jostertag@lclaw.com;* Bina Ghanaat at *bghannat@lclaw.com;* Alexandra Carraher at *alexandria.carraher@rmkb.com;* Nicole Whatley at *nw@pollara.com;* Christopher D. Hu at *chu@horvitzlevy.com;* Adam W. Hofmann at *AHofmann@hansonbridgett.com.*

Don Willenburg

Don is Chair of the Amicus Committee of ADCNCN, and chair of the appellate department at Gordon Rees Scully Mansukhani, LLP in Oakland.



We recognize and salute the efforts of our members in the arena of litigation – win, lose or draw.

Compiled by
Heather Barnes
Murphy Pearson Bradley & Feeney

James Weakley and **Ashley Reyes** of Weakley & Arendt, PC, of Fresno, CA received a ruling sustaining their demurrer in a personal injury action to plaintiff's First Amended Complaint with prejudice, based on plaintiff's failure to timely file suit after notice of rejection of a tort claim.

Plaintiff was injured in an automobile accident involving an employee of a school district. She sought treatment from a chiropractor who requested that she fill out and sign a tort claim. Plaintiff signed the tort claim, and the chiropractor faxed it to the school district. Plaintiff retained counsel shortly thereafter, who in turn filed another tort claim on plaintiff's behalf, two months after she had submitted the original tort claim. Both claims were timely filed. The school district then mailed a timely notice of rejection of the tort claim filed by the chiropractor to plaintiff's counsel. Plaintiff's counsel did not receive a notice of rejection of the tort claim filed by their office. Plaintiff's counsel filed a complaint two months after the six month deadline expired under Cal. Gov. Code § 945.6(a)(1) with respect to the notice of rejection, and defendant demurred.

In opposition to the demurrer, plaintiff argued that the notice of rejection of the original tort claim was improper because it was not sent to her address listed in the claim as required under Government Code 915.4. Rather, it was sent to plaintiff's counsel of record. Therefore, plaintiff felt she had two years from the accrual of the cause of action within which to file her complaint under Cal. Gov. Code § 945.6(a)(2). Defendant argued that as soon as plaintiff retained counsel, it was improper for them to communicate with plaintiff any further, including by sending the notice of rejection directly to plaintiff, and therefore the notice was proper. The Honorable Kimberly A. Gaab agreed with defendant and sustained the demurrer, without leave to amend. Plaintiff filed a writ in the Fifth District Court of Appeal shortly thereafter, which was denied.

Laura McHugh of Duggan Law Corporation, of Sacramento, CA, prevailed in the Third District Court of Appeal on a terminated employee's challenge of a trial court order denying his motion for attorney's fees under the Private Attorney General Doctrine (Code Civ. Proc. § 1021.5). The appeal arose from an employee-employer dispute in which the California Supreme Court held that the employee's refusal to sign a disciplinary notice was not misconduct disqualifying the employee from receiving unemployment compensation. After prevailing on the unemployment issue, the employee moved for attorney fees under Code of Civil Procedure section 1021.5. The trial court denied the motion for fees under *In re Adoption of Joshua S.* (2008) 42 Cal.4th 945, which held that even if the statutory elements are met, Section 1021.5 does not authorize an award of attorney fees against an individual that has done nothing to adversely affect the rights of the public or a substantial class of people. Following oral argument, the Third District Court of Appeal rejected the employee's argument that he was entitled to fees because the employer had done something to adversely affect the rights of "unemployed workers" by requesting that the Court of Appeal publish its prior decision, now overturned by the Supreme Court.

Continued on page 29

David Rosenbaum and **Jennifer Emmaneel** of McDowall Cotter, of San Mateo, CA, received a ruling in late January from the First District Court of Appeal upholding the City of Newark's summary judgment. The plaintiff was a 14 year old girl struck by a car while using a crosswalk. The driver testified that he did not see plaintiff because the sun hit his eyes as he was entering the intersection. In her claim against the City, the plaintiff argued that a combination of circumstances made the marked crosswalk a dangerous condition, including: the width of the roadway; the high speeds of vehicular traffic; the lack of traffic controls; the glare of the morning sun; and the absence of pedestrian actuated devices. As a result of these features, and absent any signals, plaintiff contended that the City marking the crosswalk with white lines and installing signs created a dangerous condition. After oral arguments, the Court of Appeal disagreed. The court noted that the overwhelming weight of authority suggests an intersection with a crosswalk but no signals, whether or not marked, is not a dangerous condition within the meaning of the Government Claims Act; and further that the proffer of an expert declaration opining a condition is dangerous does not preclude summary judgment to the contrary. The court also reasoned that there was a lack of any similar collisions at the location in the 10 years preceding the accident. Thus, the Court of Appeal agreed with the trial court and the City that the tragic accident and injury plaintiff suffered were caused entirely by the negligence of the driver and not by a dangerous condition of the property.

Robert H. Zimmerman of Schuering Zimmerman & Doyle, LLP in Sacramento, California recently defended a primary care provider in a double wrongful death matter alleging medical negligence in the prescription of opioids. The doctor prescribed opioids to an older working man with off and on issues with alcohol and the narcotic prescriptions continued over an 18-year period, with frequent requests for early refills and stories of sharing with friends and having pills lost or stolen.

After a period of relative stability, the patient claimed that he was no longer obtaining pain relief and stronger narcotics were attempted. The patient then took somewhere between 3 and 5 tabs of Ambien in the middle of the afternoon and attempted to drive his pickup. He lost control of his vehicle, striking and killing two 16-year old boys walking on the side of the road.

The patient was criminally convicted and is incarcerated. Plaintiff claimed the defendant physician "created this monster" and was obligated not only to taper and discontinue narcotics in light of various "red flags," but should have reported the patient to DMV for revocation of his driver's license.

The jury in Placer County was unanimous with a defense verdict on behalf of the physician.

Jill J. Lifter of Ryan & Lifter in San Ramon, CA defended a subcontractor in the third phase jury trial concerning the duty to indemnify a general contractor pursuant to a contractual indemnity provision and the equitable subrogation claim of its general liability carrier based upon the contractual indemnity provision, following two court trial phases dealing with the duty to defend a general contractor. (Ms. Lifter was not counsel for the subcontractor for the court trial phases.)

The jury returned a special verdict finding that none of the settlement money paid by the carrier on behalf of the general contractor was on account of claims arising out of the subcontractor's work, that none of the damage to the underlying plaintiffs' home arose out of the subcontractor's performance of its work under its subcontract with the general contractor, and that none of the settlement money paid by the carrier was for damages caused by or directly connected with the subcontractor's work. The jury also found that the property damage arose from the sole negligence of the general contractor and its subcontractors other than Ms. Lifter's client.

As of this writing, judgment has not been entered and a "motion for mistrial" is pending.

Crystal L. Van Der Putten of Livingston Law Firm, in Walnut Creek, CA, recently obtained a victory in the Sixth District Court of Appeal in a personal injury action filed against a shopping center. An elderly driver accidentally depressed his accelerator, causing his vehicle to jump over a parking block and severely injure the plaintiff, an invitee at the shopping center. The California Court of Appeal agreed with the shopping center that appellants waived challenges to the lower court's rulings on two separate motions to compel and to the lower's court's evidentiary rulings at summary judgment when appellants failed to set forth separate headings and arguments on those issues in their appellate brief. Based on the evidence before it and current case law with substantially similar facts, the appellate court affirmed the lower court's summary judgement ruling in favor of the shopping center.

Jason Fellner and **Alston Lew** of Murphy Pearson Bradley & Feeney, in San Francisco, CA, obtained orders granting summary judgment from the Alameda County Superior Court and the San Mateo Superior Court in favor of two attorney clients sued by the same plaintiff. Plaintiff's professional licenses were revoked and suspended as a result of plaintiff's prior criminal convictions and subsequent violation of probation. Plaintiff subsequently sued both the attorney who represented plaintiff in the criminal action, and also the attorney who represented plaintiff in administrative proceedings before the relevant State Boards in a pro bono capacity.

In the Alameda case, summary judgment was entered in favor the attorney defendant representing plaintiff at the administrative proceedings because plaintiff failed to provide any evidence that another attorney acting in a reasonably prudent manner could have obtained a better result. Further, plaintiff failed to properly respond to discovery and had various matters deemed admitted.

In the San Mateo case, summary judgment was entered in favor of the attorney defendant representing plaintiff in the criminal proceedings on the grounds plaintiff would not have been able to prove his actual innocence due to his conviction, decision to plead guilty, and subsequent probation violations. The court thus found the attorney defendant did his utmost to defend plaintiff in the criminal case.

Heather A. Barnes

Heather A. Barnes is a litigation attorney working with the Sacramento and San Francisco offices of Murphy Pearson Bradley & Feeney, where she represents businesses and individuals in all aspects of litigation. Her practice extends to professional liability, general commercial liability and business litigation, real estate, and complex litigation matters.

Jan Roughan, RN

LIFE CARE PLANS

- Comprehensive (Trial)
- Mini (Mediation/Settlement Conference)
- Critique

EXPERT TESTIMONY

- Trial
- Arbitration
- Mediation/Settlement Conference

VIDEO SERVICE

- Day in Life
- Mediation/Settlement Documentary

MEDICAL RECORDS

- Review
- Chronology

IME

- Attendance
- Report/Critique

Roughan
& ASSOCIATES

114 West Colorado Blvd.
Monrovia, CA 91016
626.303.6333, Ext. 16 or 17
www.linc.biz

Roughan
& ASSOCIATES

The DNA of Damage Analysis

LIFE CARE PLANNING

SUBSTANTIVE LAW SECTION REPORTS

Compiled by Kaveh Mirshafiei
Clapp Moroney | Vucinish Beeman Scheley

Are you interested in writing an article? Joining one or more substantive law sections? Do you have a suggestion for a topic for a seminar? We are always looking for ways to involve our ADC Members, and encourage you to be active in as many substantive law committees as you are interested. Please contact the section chairs (see roster of sections and contact information for co-chairs in box below) and let them know how you would like to participate.

Substantive Law Sections

Business Litigation

Michele C. Kirrane (Chair)
Freeman Mathis & Gary, LLP
(415) 352-6411 • *mkirrane@fmglaw.com*

Construction

Jill J. Lifter (Co-Chair)
Ryan & Lifter
(925) 884-2080 • *jlifter@rallaw.com*

Wakako Uritani (Co-Chair)
Lorber, Greenfield & Polito, LLP
(415) 986-0688 • *wuritani@lorberlaw.com*

Employment

Laura C. McHugh (Chair)
Duggan Law Corporation
(916) 550-5309 • *laura@duggan-law.com*

Insurance

Sean P. Moriarty (Chair)
Cesari, Werner & Moriarty
(650) 991-5126 • *smoriarty@cwmlaw.com*

Landowner Liability

Ashley N. Meyers (Chair)
Clapp Moronry Vucinich Beeman Scheley
(925) 734-0990 • *ameyers@clappmoroney.com*

Litigation

James J. Arendt (Co-Chair)
Weakley & Arendt, LLP
(559) 221-5256 • *james@walaw-fresno.com*

Patrick L. Deedon (Co-Chair)
Maire & Deedon
(530) 246-6050 • *pdeedon@maire-law.com*

Medical / Healthcare

(Vacant)

Public Entity

James J. Arendt (Co-Chair)
Weakley & Arendt, LLP
(559) 221-5256 • *james@walaw-fresno.com*

Patrick Deedon (Co-Chair)
Matheny, Sears, Linkert & Jaime
(916) 978-3434 • *jlevine@mathenysears.com*

Toxic Torts

Edward P. Tugade (Co-Chair)
Demler, Armstrong & Rowland, LLP
(415) 949-1900 • *tug@darlaw.com*

Yakov P. Wiegmann (Co-Chair)
Riley Safer Holmes & Cancila LLP
(415) 275-8549 • *ywiegmann@rshc-law.com*

Transportation

Jeffrey E. Levine (Chair)
Matheny, Sears, Linkert & Jaime
(916) 978-3434 • *jlevine@mathenysears.com*

For more information, contact any of these attorneys or the ADC office:
2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833 • (916) 239-4060 • fax (916) 924-7323
or visit *www.adcncn.org/SubLaw.asp*

BUSINESS LITIGATION

Michele C. Kirrane | *Chair*

Impact of New Legislation

Assembly Bill 5 went into effect January 1, 2020, and has had a litigious start since its enactment on September 18, 2019. The bill amended and added sections to California's Labor Code, and amended the Insurance Code to codify the Supreme Court's decision in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903.

In *Dynamex*, a delivery company sought a writ of mandate to compel the Superior Court to vacate its order denying Dynamex's motion to decertify a class. Upon review, the Supreme Court determined that there was a sufficient commonality of interest to support certification of the proposed class. *Id*. at 965. Further, the Court concluded that "unless the hiring entity establishes (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, *the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that*

Continued on page 32

the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order." *Id*. at 964 (emphasis added).

AB 5 goes one step further and provides that "a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business… if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341." (*Legislative Counsel's Digest*, Chapter 296, Assembly Bill No. 5.) The Bill also goes on to state that "[e]xisting provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments. *By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing a state-mandated local program*." *Id*. (emphasis added). The Bill provides for some exemptions based upon occupation. *Id*.

Unsurprisingly, this language prompted the filing of several lawsuits. In December 2019, the American Society of Journalists and Authors, Inc. and the National Press Photographers Association filed a Complaint for Declaratory and Injunctive Relief, Motion for Preliminary Injunction, and Ex Parte Application for Temporary Restraining Order in the United States District Court for the Central District of California (*American Society of Journalists and Authors, Inc., et al. v. Xavier Becerra*, Case No.: 2:19-cv-10645, Dkt. Nos. 1, 12, 27 ("Press Case")). Specifically, the Complaint alleged that AB 5 violated Federal Civil Rights under 42 U.S.C. §1983, on the basis that "the constitutional rights of the [plaintiffs'] members are impaired, threatening the livelihood of those who work as freelancers…by drawing unconstitutional content-based distinctions about who can freelance…" *Press Case*, Complaint ¶3-5, pg. 2:13-24.

The Honorable Judge Philip S. Gutierrez denied the ex parte application on the basis that plaintiffs could not explain their delay in filing, noting that "AB 5 was enacted and signed by the Governor on September 18, 2019. Plaintiffs did not file suit until December 17, 2019, three months after the challenged law was approved, and less than fifteen days before AB 5's effective date. Plaintiffs then waited another two weeks to file this request for a temporary restraining order." Press Case, Dkt. 30. Plaintiff's motion for a preliminary injunction was set for hearing on March 9, 2020. *Id*.

Uber also has filed a Complaint and Motion for Preliminary Injunction in the Central District of California, alleging that AB 5 violates the Federal and California constitutions. (*Lydia Olson, et al. v. State of California, et al.*, Case No. 2:19-cv-10956, Dkt. Nos. 1, 14.) The hearing on the Motion for Preliminary Injunction was set for February 7, 2020.

If you are interested in joining the Business Litigation Committee or have suggestions for future articles, please contact Michele Kirrane (*mkirrane@fmglaw.com*).

CONSTRUCTION

Jill J. Lifter | *Co-Chair*
Wakako Uritani | *Co-Chair*

The construction substantive law group thanks all members for attending our 60th Annual Meeting and new members for joining our group. We started the year off by participating in the ever-popular Wednesday Webinar with a session on February 26. The webinar focused on how to analyze construction defect cases and was presented by Pete Fowler Construction Services, Inc. Next up is our Annual Construction Seminar on April 3, 2020, at the DoubleTree by Hilton Hotel in Pleasanton. This is our second seminar at the DoubleTree and we are looking forward to returning to this wonderful venue. At our construction law group meeting during the Annual Meeting, we discussed topics of interest for the Construction Seminar, and the overwhelming topic of interest related to best trial practices, so that will be the focus of our program.

If you are interested in helping to develop and participate in our Annual Meeting program, please contact the co-chairs at *jlifter@rallaw.com* or *wuritani@lorberlaw.com.*

EMPLOYMENT

Laura C. McHugh | *Chair*

The Employment Law Committee has lots of exciting things planned for 2020 and would love for you to join! If you join, you will serve as an employment/labor law leader in our communities of Northern California and Nevada. You will have the tremendous opportunity to influence changes in our field of law, network amongst defense colleagues, and promote yourself by writing articles, doing webinars, etc.

If you are interested in joining the Employment Committee or have suggestions for future articles, please contact Laura McHugh (*laura@duggan-law.com*).

INSURANCE

Sean P. Moriarty | *Chair*

If you did not see, in January of 2020, Insurance Commissioner Lara released the following statement to the press:

"Extending Medi-Cal to our undocumented seniors will bring dignity to thousands of people who have helped build California's economy over decades and are still contributing to our future. So many of our seniors have died too early because they put off care for cancer and other diseases

Continued on page 33

they could not afford to treat or caught too late. Thank you to Governor Gavin Newsom, Senator María Elena Durazo and Assembly member Joaquin Arambula for finally delivering on this dream that so many have shed blood and tears to make a reality."

To our Insurance Substantive Law Members, to follow up on our meeting during our annual conference, if any have an interesting subject for a lunch webinar/seminar, please do not hesitate to call/email Sean Moriarty; *smoriarty@cwmlaw.com*; (650) 991-5126 Ext. 15.

PUBLIC ENTITY

James J. Arendt | *Co-Chair*
Patrick L. Deedon | *Co-Chair*

AB 218: Opening the Floodgates?

After repeated vetoes from past Governor Jerry Brown, Governor Gavin Newsom signed AB 218 into law on October 13, 2019. It amends Section 340.1 of California's Code of Civil Procedure. This section deals with the statute of limitation involving childhood sexual abuse. It allows a plaintiff to now file suit before they turn 40. Civ. Proc. § 340.1(a). It also allows for treble damages if there was a cover-up. Civ. Proc. § 340.1(b)(1). It defines a cover up as a "concerted effort to hide evidence relating to childhood sexual assault." Finally, and most dramatically, it gets rid of the statute of limitations for the next three years. This three-year period started on January 1, 2020. Code Civ. Proc. § 340.1(q). For local public entities, it waives the claims presentation requirement and makes it retroactive. Gov. Code § 905(m) and (p). The claims presentation requirement was one of the most valuable tools in a defense counsel's bag of tricks because it effectively dealt with older claims when the statute of limitations may have tolled or not run for various reasons. Now it is gone.

Now entities that have dealt with large numbers of children historically such as religious groups, scouting groups, and school districts will have to defend old claims relating to child abuse. With the addition of treble damages now at play, this is a huge potential exposure for these entities. Likely effects of these new changes will include higher insurance premiums and potential insolvencies of entities if enough suits come forward. Only time will tell how many plaintiffs avail themselves of these new, expanded statutes of limitation. What is certain is that many of these cases will be difficult to defend because of the passage of time. Documents will be lost or destroyed. Witnesses will no longer remember or be deceased. Locating insurance policies that covered defendants that long ago may also be a difficult task.

For those of you who regularly defend organizations that have exposure to these claims, prepare for a busy year.

As always, please let us know of any public entity topics you would like addressed either in a Newsflash, *Defense Comment* magazine, at the annual meeting, or some other format. Please feel free to contact either Jim Arendt at *james@walaw-fresno.com,* or Patrick Deedon at *pdeedon@maire-law.com* if you have any ideas. We will also endeavor to keep you updated on any significant updates in public entity law. There are many benefits to being a member of ADCNCN and the subcommittee groups. Please take advantage!

TOXIC TORTS

Edward P. Tugade | *Co-Chair*
Yakow P. Wiegmann | *Co-Chair*

Save the Date
Toxic Tort Series 2020

WHERE:
SPANOS|PRZETAK
475 14th Street, Suite 550
Oakland, CA 94612

WHEN:
Friday, May 1, 2020
Friday, May 8, 2020
2:00 pm to 4:30 pm each day

Join Co-Chairs Yakov Wiegmann of Riley Safer Holms & Cancila and Edward Tugade of Demler Armstrong & Rowland for the Toxic Torts Series, featuring top trial attorneys, judges, key thought leaders, as well as current and emerging specialists in toxic torts from across CA, in an exchange of insights on the most important trends and changes fueling the defense of tomorrow's cases.

TRANSPORTATION

Jeffrey E. Levine | *Chair*

If you have any suggestions or thoughts about future transportation events please send Jeff Levine an e-mail at *jlevine@mathenysears.com.*

A·D·C
VERITAS

THERE OUGHT TO BE A LAW

Do you have an idea for a change in the law which might be sponsored by the California Defense Counsel? Most of the 3,000 bills introduced each year come from those affected by the Codes, exactly like you. In order to consider your idea, we need:

- **The Code Section involved;**
- **A statement of the problem with existing law;**
- **A brief statement explaining how your suggestion solves the problem.**

Any background information you can provide will also be helpful: case citations, law review articles, statistics, etc.

Please send your ideas and info to:
Jennifer Blevins, Executive Director
ADCNCN
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833

that requested you to address a particular issue at the hearing? Or that time you thought the court was so backlogged you wouldn't get a courtroom for trial only to learn the new PJ assigned more civil judges? The ADC's annual "Do's and Don'ts in the Courtroom" seminar at the Sutter Club in Sacramento on **March 6** featured four judges from Sacramento, San Joaquin, and Placer Counties who shared current staffing in their courts, discussed best practices for Law & Motion and handling of discovery disputes, and provided tips on how to reverse a tentative ruling. There was a takeaway for every member. If you came for the education, you won't be **fooled again.**

Learning to Fly (1991) Into the Great Wide Open – Since its inception, ADC has been dedicated to teaching new lawyers the fundamental skills to be the best practitioner possible – things like how to take a deposition, how to read an insurance policy, how to respond to a policy limits demand, how to vet experts, what to expect from mediation, how to write good report letters, and so on. Our six-week Basic Training Program, with panels led by experienced ADC members, is offered every fall in San Francisco, Sacramento, and now via webinar. What better way to teach your new associates **how to fly** with stellar programming that will help them become better lawyers?

The Damage You've Done (1987) Let Me Up (I've Had Enough) – Year after year, the ADC Construction Section puts on a superb educational program that addresses cutting edge issues on, for example, how to evaluate the construction defect **damages (your clients) may have done**, mechanic's liens, insurance coverage, transfer of risk, and indemnification clauses. This program attracts attorneys, clients, and vendors alike. This year the program will be held on **April 3** at the Pleasanton Hilton.

Runnin' Down a Dream (1989) Full Moon Fever – About five years ago, the ADC Board of Directors round-tabled an idea to offer a family-friendly summer event for its California and Nevada members that would offer cutting edge programming to senior level law firm managers, useful training for new partners and mid-level associates, fantastic networking opportunities in and out of the classroom, and a chance for members and their families to relax and socialize in a world class setting. From this, the ADC Summer Session at Squaw Valley was born. Sometimes law firm management focused, sometimes leadership and business success driven, there is always a takeaway and a memorable connection made. Momentum and member engagement for this event has grown every year. ADC is truly **runnin' down a dream** with this event. Come join us on **August 28-29** at the Resort at Squaw Creek. You won't regret it.

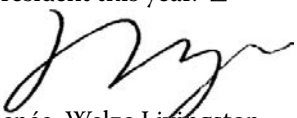
Yer So Bad (1989) Full Moon Fever – The ADC Golf Tournament is an excellent way to showcase your skills on the green, mix and mingle with colleagues, clients and vendors at a world class venue, and celebrate the events of the day at the spirited awards dinner. If **yer so bad** at golf (like I am), don't fret – we have a wine-tasting event for non-golfers that still allows you to enjoy Napa with colleagues. This year the golf tournament will be on **September 25** – a week later than usual – again at beautiful Silverado Resort in Napa. Start putting your foursomes together now; ADC will be offering discounts this year for early (June 15) registration of foursomes. You know you want to go, so treat yourself, your partners, associates, clients and colleagues to a fun day. You deserve it!

The Waiting (1981) Hard Promises – I'm not sure how we can improve the ADC annual meeting – the 60th Anniversary Time to Shine meeting was just stellar – but I say that every year, and every year the annual meeting continues to exceed expectations. Many thanks to First Vice President Chris Johnson for the care and thought that went into development of program content and selection of inspirational and keynote speakers. Dynamo, I love you! It's never too late to make a financial or other contribution to our local heroes at Guide Dogs for the Blind, Inc. in San Rafael. *https://www.guidedogs.com/support*

I know it seems a long way off, but I encourage you to mark your calendar now for this year's meeting at the Westin St. Francis hotel on December 10 and 11. It's true; **the waiting is the hardest part.**

None of the work of ADC could be done without the dedication and thankless hours of the Board of Directors, our professional staff – Jenny Blevins and her team – and of our legislative advocate in Sacramento – Mike Belote.

Thanks for the honor of serving as your President this year.



Renée Welze Livingston
(aka **American Girl)**

A·D·C

VERITAS

Defense Comment **wants to hear from you. Please send letters to the editor by e-mail to Ellen C. Arabian-Lee at *ellen@arabian-leelaw.com*, or Jill J. Lifter at *jlifter@rallaw.com*,**

We reserve the right to edit letters chosen for publication.

Employment bills unrelated to *Dynamex* include proposals extending paid family leave and creating 10 days of protected bereavement leave, creating a protected class of medical cannabis patients, requiring predictable schedules for retail, restaurants and groceries, and many more.

Relating to privacy, there are bills again proposing modifications to the California Consumer Privacy Act (CCPA), and creating new requirements on facial recognition. Another bill would regulate entities which swipe and store drivers license information. In privacy as well as AB 5, an initiative is likely to appear on the November ballot which would once again make very substantive changes to the CCPA.

More generally relating to civil procedure, proposals have been introduced extending meet and confer obligations, providing additional time for replies to oppositions in summary judgment motions, clarifying e-filing rules, and limiting "secret settlements" in consumer actions.

The foregoing are only a tiny fraction of the bills affecting specific areas of defense practice. Whether the issue is sexual misconduct, landowner liability, construction defects, false claims, or many, many others, there literally is something for everyone.

Finally, the State Bar is moving forward with consideration of licensing paralegals and potentially seeking the ability of nonlawyers to own law firms. CDC has submitted a nominee to serve on a working group looking at the paralegal licensing issue. Whether the issue is specific to an area of practice or relates to the ability to represent clients, or relates to the taxation of professional services, CDC is there to represent defense practitioners.

CALIFORNIA DEFENSE COUNSEL

MEMBERSHIP APPLICATION

Association of Defense Counsel of Northern California and Nevada

Membership

Membership into the Association of Defense Counsel of Northern California and Nevada is open by application and approval of the Board of Directors to all members in good standing with the State Bar of California or Nevada. A significant portion of your practice must be devoted to the defense of civil litigation.

Membership Categories

Annual dues for ADC membership are based on your type of defense practice (staff counsel or independent counsel) and, for independent counsel, the length of time in practice and the number of ADC members in your firm. The following are the base fees:

☐ **REGULAR MEMBER ($350)** – Independent Counsel in practice for more than five years.
☐ **YOUNG LAWYER ($225)** – In practice zero to five years.
☐ **ASSOCIATE MEMBER ($300)** – In-house, corporate, or government counsel.
☐ **LAW STUDENT ($25)** – Currently enrolled in law school.
☐ **DUAL MEMBER ($100)** – Current member in good standing of the Association of Southern California Defense Counsel.

Information

Name:_____ Firm: _____

Address: _____

CIty / State / Zip:_____ Birthdate *(year optional)*: _____

Phone: _____ Fax: _____

E-mail: _____ Website: _____

Law School:_____ Year of Bar Admission:_____ Bar #: _____

Years w/Firm:_____ Years Practicing Defense Litigation: _____ Gender: _____ Ethnicity:_____

Currently engaged in the practice of law? ☐ Yes ☐ No

Do you devote a significant portion of your practice to the defense of civil litigation? ☐ Yes ☐ No

Practice area section(s) in which you wish to participate *(please check all than apply)*:

☐ Business Litigation ☐ Construction Law ☐ Employment Law ☐ Insurance Law & Litigation
☐ Landowner Liability ☐ Litigation ☐ Medical Malpractice ☐ Public Entity ☐ Toxic Torts ☐ Transportation

I was referred by:

Name:_____ Firm: _____

Signature of Applicant:_____ Date: _____

Contributions or gifts (including membership dues) to ADC are not tax deductible as charitable contributions. Pursuant to the Federal Reconciliation Act of 1993, association members may not deduct as ordinary and necessary business expenses, that portion of association dues dedicated to direct lobbying activities. Based upon the calculation required by law, 15% of the dues payment only should be treated as nondeductible by ADC members. Check with your tax advisor for tax credit/deduction information.

Payment *(do not e-mail credit card information)*

Amount: _____ ☐ Enclosed is check # _____ (Payable to ADCNCN)

☐ AMEX ☐ MasterCard ☐ Visa Last 4 digits of card:_____ Name on Card: _____

Billing Address:_____ Signature: _____

Full Credit Card# _____ Exp: _____ CVV#: _____

(2/20)

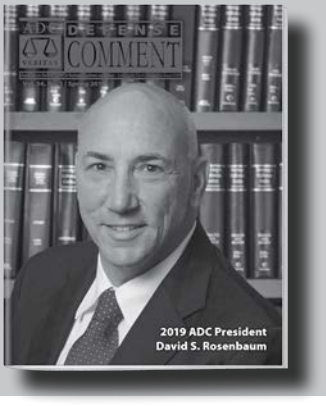
Return completed form & payment by mail or fax to: **Association of Defense Counsel • 2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833 • (916) 924-7323 – fax**

For more information, contact us at: (916) 239-4060 – phone • *www.adcnc.org*

Association of Defense Counsel of Northern California & Nevada

www.adcnc.org

ADC Defense Comment Magazine - Advertise Today!



ADC Defense Comment
Defense Comment is a valued resource that defense attorneys and judges read from cover to cover and save for future use. Advertising in the Comment offers a unique opportunity to market to the defense bar-without paying the high advertising costs of larger circulation magazines and newspapers. Since many of our **2,000** readers are managing partners of their law firms, your advertisement always speaks directly to the right readers.

Defense Comment Articles include:
Recent Court Decisions • Pending Legislation • Trial Tips • Case & Statutory Analyses • Interesting & Entertaining Profiles • Association Activities • Substantive Law Reports and much more!

Great Value

Magazine is mailed and posted on the ADC website

Ad Size	Wide	High	Rates 1x	Rates 2x	Rates 3x
2-Page Spread	17″	11″	$1,300	$1,200	$1,100
Outside Back Cover*	7½″	4½″	$960	$860	$760
Inside Front/Back Cover*	8½″	11″	$960	$860	$760
Full Page	**8½″**	**11″**	**$840**	**$780**	**$730**
2/3 Page Vertical	5″	10″	$715	$660	$605
1/2 Page Horizontal	7½″	4½″	$590	$560	$505
1/3 Page Vertical	2½″	10″	$420	$358	$350
1/3 Page Horizontal	7½″	3¼″	$420	$385	$350
1/4 Page	5″	4½″	$350	$325	$300
Business Card	3½″	2″	$300	$280	$265

* Available in full color ($100 additional cost)

Submission Deadlines
Issue 1 - Spring 2/1 **Issue 2** - Summer 5/1 **Issue 3** - Fall 9/1

Conditions

- Advertisers and advertising agencies are liable for all content (including text, representations, and illustrations) of their individual advertisements and are responsible, without limitation, for any and all claims made thereof against the Defense Comment, the ADC Annual Directory, the association, its officers, agents, or vendors relating to such advertisement.
- No advertiser is guaranteed placement, but every attempt will be made to provide the desired position.
- Publisher reserves the right to revise, reject or omit any advertisement at any time without notice.
- ADC accepts no liability for its failure, for any cause, to insert advertisement.
- Publisher reserves the right to publish materials from a previous advertisement if new materials are not received by material deadline.
- The word "advertisement" will appear on any ad that resembles editorial material.
- Drawings, artwork and articles for reproduction are accepted only at the advertiser's risk and should be clearly marked to facilitate return.
- No verbal agreement altering the rates and/or terms of this rate card shall be recognized.
- All advertisements, layout and designs produced for the advertiser by ADC's Graphic Staff will remain the property of ADC.
- All requests for advertising must be in writing, in the form of this signed contract, for the protection of both the advertiser and ADC.
- Once an order for advertising is placed, it cannot be withdrawn or cancelled in whole or in part unless special circumstances exist.
- By signing this contract, advertiser agrees to pay in full for reserved space, even if the ad is not run due to lateness or absence of materials.

Association of Defense Counsel
of Northern California & Nevada

ADC Newsletter/Directory Advertising
Policies and Agreement to Advertise

ADC DEFENSE COMMENT MAGAZINE – INSERTION ORDER FORM

Association of Defense Counsel of Northern CA and NV
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
Phone: (916) 239-4060
Fax: (916) 924-7323

E-mail: *info@adcncn.org* or *kim@adcnc.org*

Artwork Specifications
Please submit ads digitally via e-mail. Electronic submissions should be in EPS, TIF, or PDF format, including all fonts where applicable, and should be compatible with Adobe Photoshop, Illustrator, InDesign, or Acrobat.

Name of Advertising Company / Organization: _____

Billing Contact:_____

Billing Address: _____

City: _____ State:_____ Zip:_____

Phone: _____ Fax:_____ E-mail:_____

Magazine Submission Deadlines - Select Issue(s)

☐ Issue 1 **2/1** ☐ Issue 2 **5/1** ☐ Issue 3 **9/1**

My total cost is $_____ **(From prior page)**

Please check one:

☐ Send me an Invoice ☐ Enclosed is check #_____ ☐ AMEX ☐ MC ☐ Visa

Last 4 Digits of Credit Card #: _____ Billing Address:_____

Print Cardholder's Name:_____ Signature:_____

☐ ***I agree to the terms and conditions listed on the prior page.***

If paying with a credit card please fax to 916.924.7323; please do not e-mail.

(new rev. 10/19)

Full Credit Card #: _____ Exp.:_____ CVV#: _____

welcome, new members

Since October 2019, the following attorneys have been accepted for membership in the ADC. The Association thanks our many members for referring these applicants and for encouraging more firm members to join.

Marta A. Alcumbrac
Robie & Matthai, APC
Los Angeles
ASCDC MEMBER
Referred By: David Rosenbaum

Jason Aniel
Lorber, Greenfield & Polito, LLP
San Francisco
REGULAR MEMBER
Referred By: Wakako Uritani

Gino Barrica
Tiza Serrano Thompson & Associates
Sacramento
YOUNG LAWYER MEMBER

August Beam
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
YOUNG LAWYER MEMBER
Referred By: Steven H. Gurnee

Luke E. Bernthal
The Mitchell Law Firm, LLP
Eureka
REGULAR MEMBER
Referred By: Nicholas Kloeppel

Raquel Birch
Law Offices of Raquel Birch
Fresno
ASSOCIATE MEMBER

Phillip R. Bonotto
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
REGULAR MEMBER

Andreanne Breton
McCormick, Barstow, Sheppard, Wayte & Carruth
Fresno
YOUNG LAWYER MEMBER
Referred By: Nicholas H. Rasmussen

Christopher L. Campbell
Tyson & Mendes
San Rafael
REGULAR MEMBER
Referred By: Salayha K. Ghoury

Patrick J. Campbell
Law Office of Patrick J. Campbell
Rocklin
ASSOCIATE MEMBER

Andrew J. Chan
Ericksen Arbuthnot
Concord
REGULAR MEMBER

Benjamin Chen
Hayes, Scott, Bonino, Ellingson, Guslani, Simonson & Clause
San Carlos
YOUNG LAWYER MEMBER
Referred By: Mark Bonino

Alexander Cheung
Lorber, Greenfield & Polito, LLP
San Francisco
YOUNG LAWYER MEMBER
Referred By: Wakako Uritani

Cleve Collado
Clapp Moroney Vucinich Beeman Scheley
San Bruno
REGULAR MEMBER

Patricia Conway
Tyson & Mendes
San Rafael
REGULAR MEMBER

Dan Cortright
Tyson & Mendes
San Rafael
REGULAR MEMBER

Joseph V. Diestel
Bledsoe, Diestel, Treppa & Crane LLP
San Francisco
YOUNG LAWYER MEMBER
Referred By: James Treppa

Jessica A. Fakhimi
Chapman & Intrieri, LLP
Alameda
REGULAR MEMBER

Mark D. Fenske
Vogl Meredith Burke LLP
San Francisco
REGULAR MEMBER
Referred By: Michael Burke

Cathleen J. Fralick
Evans Wieckowski Ward & Scoffield, LLP
Sacramento
REGULAR MEMBER
Referred By: Carol Wieckowski

Samuel Francis
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
Pleasant Hill
YOUNG LAWYER MEMBER
Referred By: Nolan Armstrong

Tracy Fritch-Thym
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
REGULAR MEMBER
Referred By: Steven H. Gurnee

Sarah K. Glatt
Diepenbrock & Cotter, LLP
Sacramento
YOUNG LAWYER MEMBER
Referred By: John Cotter

Jeffrey A. Gourgon
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
Pleasant Hill
YOUNG LAWYER MEMBER
Referred By: Nolan Armstrong

Candice Hamant
Tyson & Mendes
San Rafael
REGULAR MEMBER
Referred By: Salayha K. Ghoury

Zachary Hamilton
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
YOUNG LAWYER MEMBER
Referred By: Steven H. Gurnee

Joseph G. Helfrick
Lauria, Tokunaga, Gates and Linn, LLP
Sacramento
YOUNG LAWYER MEMBER
Referred By: Brian Rosenthal

Shanan L. Hewitt
Rivera Hewitt Paul LLP
Gold River
REGULAR MEMBER
Referred By: Jesse M. Rivera

Ryan I. Ichinaga
Spinelli, Donald & Nott
Sacramento
YOUNG LAWYER MEMBER
Referred By: Scott Donald

Brian C. Johnson
Tyson & Mendes
San Rafael
REGULAR MEMBER

Suliman Khan
Hardy, Erich, Brown & Wilson
Sacramento
YOUNG LAWYER MEMBER

Jeffrey D. Koelemay
Lewis, Brisbois, Bisgaard & Smith
Reno
YOUNG LAWYER MEMBER
Referred By: Jack Angaran

Shelley A. Kramer
Tyson & Mendes
San Rafael
REGULAR MEMBER

Hannah Kreuser
Porter Law Group, Inc.
Sacramento
YOUNG LAWYER MEMBER
Referred By: Brittany Haefele

Allison M. Lawrence
Tyson & Mendes
San Rafael
REGULAR MEMBER

Quyen Thi Le
Gordon Rees Scully Mansukhani, LLP
San Francisco
REGULAR MEMBER
Referred By:
Marie Trimble Holvick

Emma Lloyd
Hayes, Scott, Bonino, Ellingson, Guslani, Simonson & Clause
San Carlos
YOUNG LAWYER MEMBER
Referred By: Mark Bonino

Alyssa Malinoski
McCormick, Barstow, Sheppard, Wayte & Carruth
Fresno
YOUNG LAWYER MEMBER
Referred By:
Nicholas H. Rasmussen

John A. McFadden
Carbone Smith & Koyama
Stockton
ASSOCIATE MEMBER
Referred By: Michael Kronlund

Heather L. Mills
Skane Wilcox
Los Angeles
ASCDC MEMBER

Joseph B. Muller
Matheny, Sears, Linkert & Jaime
Sacramento
REGULAR MEMBER
Referred By: Matthew Jaime

Continued on page 40

welcome, new members

Cyrus Nazarian
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
Pleasant Hill
YOUNG LAWYER MEMBER
Referred By: Nolan Armstrong

Tracy Neistadt
Tracy Neistadt
Palo Alto
REGULAR MEMBER

Darrell V. Nguyen
Tyson & Mendes
San Rafael
REGULAR MEMBER

Courtney O'Brien
Bishop | Barry PC
Emeryville
REGULAR MEMBER
Referred By:
Renée Welze Livingston

Sweta Patel
Klein, Hockel, Iezza & Patel, PC
San Francisco
REGULAR MEMBER
Referred By: Nolan Armstrong

Jonathan B. Paul
Rivera Hewitt Paul LLP
Gold River
REGULAR MEMBER
Referred By: Jesse M. Rivera

Jerrald K. Pickering
Maire & Deedon
Redding
REGULAR MEMBER
Referred By: Patrick Deedon

Brian Plummer
Raffalow, Bretoi, Lutz & Stele
Folsom
ASSOCIATE MEMBER

Heather Puentes
Evans Wieckowski Ward & Scoffield, LLP
Sacramento
REGULAR MEMBER
Referred By: Lindy Scoffield

Jaime Ritton
Coddington, Hicks & Danforth
Redwood City
YOUNG LAWYER MEMBER
Referred By: Hyon Kientzy

Rachel N. Rivers
Bledsoe, Diestel, Treppa & Crane LLP
San Francisco
REGULAR MEMBER

Shani Roark
Carbone Smith & Koyama
Sacramento
ASSOCIATE MEMBER

Christopher R. Robyn
Bates Winter & Associates LLP
Roseville
REGULAR MEMBER
Referred By: Mark Bates

Jonathan Romvary
Freeman Mathis & Gary, LLP
Roseville
REGULAR MEMBER
Referred By: David M. Daniels

Jason A. Rose
Colman Law Group
Sacramento
REGULAR MEMBER
Referred By: Jeffery Long

Paul S. Rosenlund
Duane Morris, LLP
San Francisco
REGULAR MEMBER

Matthew G. Salazar
Zenith Agribusiness Solutions
Roseville
REGULAR MEMBER

Kristabel Sandoval
Ropers, Majeski, Kohn & Bentley
Redwood City
YOUNG LAWYER MEMBER
Referred By: Enrique Marinez

Ian Schaeffer
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
Fairfield
YOUNG LAWYER MEMBER

Jordan Elizabeth Scott
Bledsoe, Diestel, Treppa & Crane LLP
San Francisco
YOUNG LAWYER MEMBER
Referred By: Alison M. Crane

Timothy Scully
Porter Law Group, Inc.
Sacramento
REGULAR MEMBER
Referred By: Brittany Haefele

James E. Sell
Tyson & Mendes
San Rafael
REGULAR MEMBER

Hasan Basri Shaik
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
YOUNG LAWYER MEMBER
Referred By: Steven H. Gurnee

Pegah Shetabi
Tyson & Mendes
San Rafael
REGULAR MEMBER

Daniel Shevtsov
Coddington, Hicks & Danforth
Redwood City
YOUNG LAWYER MEMBER
Referred By: Hyon Kientzy

Coell Simmons
Hardy, Erich, Brown & Wilson
Sacramento
REGULAR MEMBER

Angelika Singh
Tiza Serrano Thompson & Associates
Sacramento
ASSOCIATE MEMBER

Wendy Skillman
Tyson & Mendes
San Rafael
REGULAR MEMBER

Shannon Smyth-Mendoza
VTA
San Jose
ASSOCIATE MEMBER
Referred By: Jonathan Lee

Ryan Snyder
Hayes, Scott, Bonino, Ellingson, Guslani, Simonson & Clause
San Carlos
YOUNG LAWYER MEMBER
Referred By: Mark Bonino

Sean Erik Svendsen
Tyson & Mendes
San Rafael
REGULAR MEMBER

Matthew G. Tang
Tyson & Mendes
San Rafael
REGULAR MEMBER

Tara M. Tarasen
White Canepa LLP
Fresno
YOUNG LAWYER MEMBER
Referred By: William M. White

Damon M. Thurston
Rankin, Shuey, Ranucci, Mintz, Lampasona & Reynolds
Oakland
REGULAR MEMBER
Referred By: Maria Lampasona

Craig Tomlins
Gurnee Mason Rushford Bonotto & Forestiere LLP
Roseville
REGULAR MEMBER
Referred By: Steven M. Gurnee

Christopher Tuttle
Tyson & Mendes
San Rafael
REGULAR MEMBER

Julia Van Roo
City of San Jose - Attorneys Office
San Jose
ASSOCIATE MEMBER

Bryan R. Walters
Jones & Dyer
Sacramento
YOUNG LAWYER MEMBER
Referred By: Gregory Dyer

Alicyn B. Whitley
Lorber, Greenfield & Polito, LLP
San Francisco
YOUNG LAWYER MEMBER
Referred By: Wakako Uritani

Wendy Wilcox
Skane Wilcox
Los Angeles
ASCDC MEMBER

Kara Wild
Ericksen Arbuthnot
Concord
REGULAR MEMBER

Drew Williams
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
Pleasant Hill
YOUNG LAWYER MEMBER
Referred By: Nolan Armstrong

Terry A. Wills
Cook Brown, LLP
Sacramento
REGULAR MEMBER
Referred By: Laura McHugh

Brandon D. Wright
Lewis, Brisbois, Bisgaard & Smith
Reno
REGULAR MEMBER
Referred By: Jack Angaran

Jason Yang
Jacobsen & McElroy PC
Sacramento
REGULAR MEMBER
Referred By: Karen Jacobsen

Samantha Zelezen
Law Offices of Shahin Karim
Walnut Creek
ASSOCIATE MEMBER

2020
Executive Committee

Renée Welze Livingston
President

Christopher Johnson
First Vice-President

Ellen Arabian-Lee
Second Vice President

Nolan S. Armstrong
Secretary-Treasurer

David S. Rosenbaum
Immediate Past President

Board of Directors

James J. Arendt

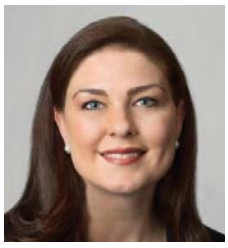
Lisa A. Costello

Patrick L. Deedon

J. Scott Donald

Emily Fowler

Salayha K. Ghoury



Michele C. Kirrane

Rachel Leonard

Jeffrey E. Levine

Jill J. Lifter

Laura C. McHugh

Ashley N. Meyers

Sean P. Moriarty

Maria Quintero

Nicholas H.Rasmussen

Michon M. Spinelli

Edward P. Tugade

Wakako Uritani

Don Willenburg

Brandon D. Wright

Association of Defense Counsel
of Northern California and Nevada
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
www.adcnc.org

2020

Calendar of Events

Save the Dates!

April 3, 2020	**Annual Construction Seminar**	Hilton, *Pleasanton*
May 1 & 8, 2020	**Toxic Torts Series**	*San Francisco*
August 28-29, 2020	**Summer Seminar**	Resort at Squaw Creek
September-October, 2020	**Basic Training Series**	[TBD]
September 25, 2020	**27TH Annual Golf Tournament**	Silverado Resort, *Napa Valley, CA*
December 10-11, 2020	**61ST Annual Meeting**	Westin St. Francis, *San Francisco*

Please visit the calendar section on the ADC website – *www.adcncn.org* – for continuous calendar updates.