Spring 2011

THE Verdict

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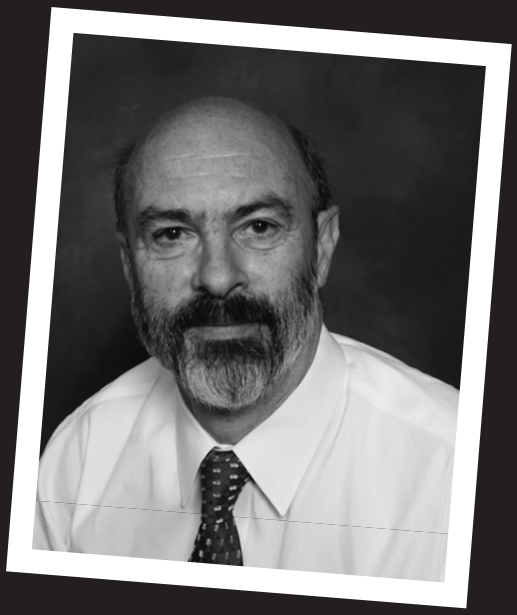
Trial Judge Of The Year
HONORABLE BARRY GOODE
Contra Costa County Superior Court

Trial Judge Of The Year
HONORABLE FRANK ROESCH
Alameda County Superior Court





Also in This Issue:
Meet Your New Civil Judges:
Honorable Steven K. Austin • Honorable Laurel S. Brady • Honorable Robert D. McGuiness

ACCTLA **ALAMEDA-CONTRA COSTA TRIAL LAWYERS' ASSOCIATION**

2011 Dues Notice

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THE Verdict

Spring 2011

CONTENTS

DEPARTMENTS

From the President. 4
A. Charles Dell'Ario

Editors' Corner 6
Suizi O. Lin and Rica Cruz Santo

Sustaining Members 7

Member News 18

FEATURES

Trial Judges of the Year
Hon. Barry Goode and Hon. Frank Roesch 8

Meet Your New Civil Judges
Hon. Steven K. Austin, Hon. Laurel S. Brady and Hon. Robert D. McGuiness 12

Photos from ACCTLA's 2011 Judges Night 17
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Statement of Editorial Policy

This magazine presents a forum for the various authors of matters published herein. Therefore, it does not necessarily represent the views of ACCTLA, which publishes this magazine as a public service without charge to members and judges. Materials submitted may be subject to review and editing.



A. Charles Dell'Ario

As you read this, Law Day will be upon us. It's the time to celebrate our profession. Law Day always provides a time for us to reflect on why plaintiffs' and criminal defense lawyers do what we do. Corporate lawyers don't do it; prosecutors don't do it; and insurance defense lawyers most certainly don't do it. We represent people who need our help. Without our help, money, corporate might, governmental oppression and popular prejudice would tyrannize individuals and small business more than they already do.

Often this means taking on unpopular causes. Our first lawyer-president, John Adams, defended the British officer in command of the detail charged with murder after the "Boston Massacre." In his diary, Adams wrote that his service, *"procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life."* This is our tradition down through history including Samuel Leibowitz's 1930s defense of nine black Alabama teenagers, the Scottsboro Boys, accused of rape to the representation by Michael Tigar and Brian Hermanson of Terry Nichols in the 1995 Oklahoma City bombing case to contemporary efforts by lawyers to represent Guantanamo detainees in the global war on terrorism. We are duty bound ["n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed."[1]

Our zeal, of course, must always be tempered by the bounds of the law and professionalism. Reading the interviews of the judges featured in this issue, I was struck by the similarity of the advice each gave — be prepared, be patient, be civil and be respectful of the court and your opponent. Judge Austin said it best. "Always behave in court like your mother is sitting in the back row."

Law Day is a time to be proud you're a lawyer on our side. Do well by doing good. ◆

— Chuck Dell'Ario graduated from Stanford and Hastings, where he founded the Hastings Constitutional Law Quarterly. He's practiced law in Oakland since 1974 and has been a certified appellate specialist since 1997. His resume includes million-dollar jury verdicts, and he has preserved on appeal the largest ever tort award against the City of San Francisco.

[1]Business and Professions Code sec. 6068 (h).

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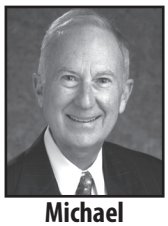
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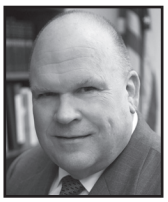
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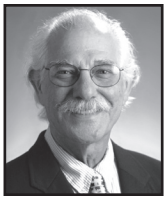
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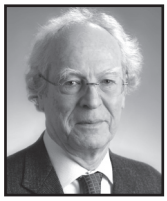
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Take advantage of ACCTLA's Mentoring Program to improve the quality of litigation in our courts. Attorneys who call will be referred to a mentor attorney for a free consultation. The mentor will not prepare your case but will assist you in your approach to the case.

This program is not just for newer attorneys, but also is available for seasoned practitioners who run into problems or simply want to bounce ideas off another seasoned practitioner. The mentors — who are all ACCTLA members — have varied degrees of experience in varied areas of the law, and can address your concerns regarding Motions in Limine, jury selection, problems that arise during trial or issues relating to proposed instructions, or questions involving any of the earlier stages of litigation.

For further information, please contact:

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The Verdict Editors are Looking for YOU!

Are you funny? witty? The legal equivalent to Will Durst or Stephen Cobert? If so . . . *The Verdict* wants you for a new segment adding humor to the magazine through funny, witty commentary on current legal issues. Contact Suizi Lin at suizilaw@gmail.com - or - 510.909.8224.



In light of the positive feedback we received for the Spring 2010 edition of *The Verdict*, this year's Spring edition also focuses on our brethren in black through interviews with Alameda and Contra Costa Trial Judges of the Year: the Honorable Frank Roesch and the Honorable Barry Goode, respectively, and interviews with judges new to the civil calendar in both counties. We hope these interviews, which have been transcribed verbatim, will assist our members in becoming familiar with these judges. If we get further positive feedback and volunteers to conduct the interviews, we hope to include interviews with judges new to the criminal bench next year.

Your hard-working editors have brainstormed and developed the themes for the next two issues:

Summer/Fall: Experts/Discovery. Tips from the Masters on what must be asked of experts in deposition; on preparing your expert for deposition and qualifying your expert in Federal Court. We plan on having this edition hot off the presses in September.

Winter: ADR. Articles concerning pre-litigation settlement via demand letters; mediation, arbitration and Kaiser arbitration. This edition is scheduled to be in your hands by January of next year.

If you're interested in authoring an article for an upcoming issue or providing witticisms via your literary skills, please contact Suizi Lin at suizilaw@gmail.com or 510.909.8224.



Editor-in-Chief Suizi Lin represents the injured party in a myriad of personal injury claims. The principal of the Law Offices of Suizi Lin, she is also an independent contractor to Bay Area personal injury law firms.



Managing Editor Rica Cruz Santo is an associate at the firm of Kathleen K. Reeves & Associates. Her practice includes all aspects of divorce and legal separation, child custody, support and visitation.



Publications committee member Jay Chafetz represents the injured party in personal injury, medical malpractice, wrongful death, elder abuse/neglect, child sexual abuse, product liability, miscellaneous torts, and contested will or trust matters. The Law Offices of Jay Chafetz is located in Walnut Creek.

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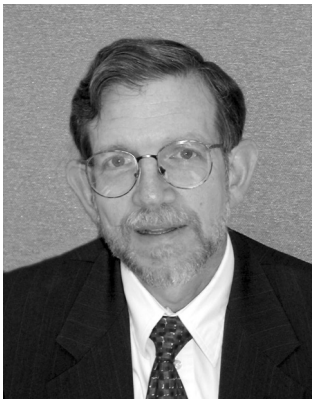
Trial Judges



Interviewed by Suizi Lin

Hon. Barry Goode

Contra Costa County

Now that you've been on the bench for over a year, what has surprised you the most?

I think the mix of cases has surprised me the most. Construction defect cases make up a larger part of my caseload than I would have predicted. Another surprise — the extent to which parties fail to complete their discovery until very close to trial. That results in frantic deposition schedules and requests to hear discovery motions on shortened time. Other than that, there have been few surprises. Having had a civil practice for more than 25 years, I had a pretty good idea of what I was getting into.

Is there a difference in how you view civil cases sitting on the bench versus when you practiced as an attorney with an extensive civil background?

I find that I have a different mindset now. Putting it simply: I don't care who wins. I approach a case as a very interested spectator. I just think, "Well, let's see what law and evidence everybody has."

Even though a lawyer has to evaluate a client's case objectively and rigorously, most lawyers tend to become partisan; they "buy into" their side of the litigation. A judge is freed from that. I get to watch things play out in a more open, receptive way. It is a refreshing take on litigation.

Another thing I have noticed... As a lawyer, you do not know what issues the judge is going to find most important. You can often do a pretty good job of predicting that. In fact, attorneys will sometimes try to position a case so their best issues are the decisive ones. But you can never know for sure how the judge will see it. So you spend time dealing with many issues. As a judge, I can often ferret out what I believe to be the linchpin issues and focus on them. That lets me be more effective in how I deploy my energy. Of course, I want to be sure I have found the right issues. So, before I make up my mind, I will almost always go back and look at the papers filed by the side against which I am leaning. I want to see if there is something I missed. But I do find that my focus can be tighter as a judge than it was as a lawyer.

How has your experience been this past year as a civil judge?

It's been terrific. I have spent a fair amount of time in trial and have had the pleasure of watching some very fine trial lawyers at work. I also spend a lot of time managing cases, trying to get them in a position to be resolved. I enjoy the freedom the complex litigation department gives the judge and the attorneys to find creative and effective ways to isolate and resolve the one or two issues that can help settle a case. All in all, it has been a nice mix of cases, issues and people. It has been a very enjoyable year.

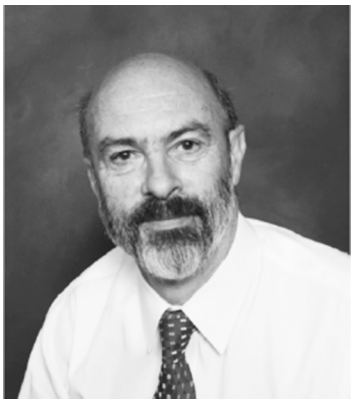
How has the declining economy impacted the cases coming through your department?

I have to divide that into three parts. First, as a result of the economy, we have many collection cases. But that same economy has brought budget cuts and a 25% reduction in our staff. That means we are backlogged in our limited jurisdiction filings. In addition, the time to process default judgments has been extended considerably.

continued on page 10

of the Year

and Rica Cruz-Santo



Hon. Frank Roesch

Alameda County

What motivated you to become an attorney?
Well, I think there were two motivations. One was to help people. The other was that I wanted to change the world.

And did you change the world?
The world has changed a great deal in my life time. A huge amount. I'd like to think that I helped to make it a better place, both in practice and on the bench.

Please tell ACCTLA members about your work experience before becoming a judge.
I started practice as a legal aid lawyer in Union City. I did that for about five years before the whole legal aid system was reduced by Ronald Reagan by the statutory limitations he put on what legal aid lawyers could do. Prior to that time, we did a good number of class action lawsuits. We did a lot of what we liked to call "impact litigation." The kinds of things where there might be an impact bigger than just on the individual litigant involved. After 1980 we had to scope down the kinds of things we did. Between that and a reduction in funding from the federal government, I went on a half-time basis in about 1980 or 81 and started a private practice for the other half time. After five to six years of that, I realized it's hard to maintain two full time jobs. So I left the Legal Aid Society and went into private practice full time. I was a sole practitioner in Union City from about 1987 until I was appointed to the bench in 2001.

What did you do in private practice?
I did mostly civil litigation across a very broad spectrum of types of cases. I am easily bored and dislike doing just one kind of case all the time. In my later years, I started doing less litigation and more process type of work. I had started taking probate litigation cases and later began to do probate administration cases, a different animal all together. They were actually a very nice fit to litigation practice because you can spread out the work on a much more relaxed schedule, so you can fit in other things easily. You can go to trial for a week in another case and not have to worry about the probate cases at all.

Since your clients have passed away, they're not in any major hurry…
No, no. Your clients are the people who are the survivors, not the decedents. Sometimes they are banging on the door, needing something done quickly.

Do you ever wake up at night thinking about a case, wishing you had handled something differently?
You mean those cases in my past where I was the lawyer and we lost but we should have won?

Either in practice or as a judge.
I still remember those. Those are the cases that you remember; the ones that you should have won but somehow didn't.

continued on page 10

Judge Goode (cont)

We just don't have the personnel to keep up with the flood of these cases. That's the "inside baseball" part of the answer.

Second each civil judge in our county has a portfolio of limited jurisdiction cases. So, every Monday through Thursday I have an 8:30am calendar of collection cases. That's my window into the world of those who lost their jobs, fell ill, lost a spouse, or for some other reason can no longer pay their credit cards. Most of those defendants have no lawyer. So I have, in effect, a *pro per* calendar. And — while I like working with self-represented litigants — that calendar brings a measure of emotion and real pain to an assignment in which (in the general run of cases) you deal with lawyers arguing without that kind of difficult, personal overlay.

The third observation gets a bit more speculative. I have seen a number of bankruptcy filings that have caused stays in my cases. That's undeniable. But beyond that, it seems to me that a number of settlements have probably been influenced by the chance that a plaintiff or defendant may have to file for bankruptcy. Some settlements have brought less money than they might have in better times; and some cases pursue fraud rather than contract claims, in part, so the judgment cannot be discharged in bankruptcy. In other words, the fact that parties are in straitened circumstances can affect the positions both sides take.

What are you doing in your department to mitigate the effects of the budget cuts that have been successful and that you would suggest to other judges?

As I mentioned, the budget cuts have been devastating to the courts. The loss of 25% of our staff has put enormous pressure on those who remain. People are working much harder and we are very mindful of the strain they are under. There is no easy answer to the problem. If you don't have people to file papers, papers don't get filed.

I have one advantage. Most of my unlimited jurisdiction cases are e-filed. Still, the one tip I give litigants is to be sure to provide the judge's chambers with courtesy copies of motion papers. That would be particularly true in departments without e-filing. Our staff tries very hard to make sure all the judges' files are kept up to date. But the system is not perfect and it is unlikely to get better any time soon. So a lawyer ought to question, *"Am I in a court that is so resource-starved that the department may need a courtesy copy?"* At an appearance, you may want to ask the judge if it would help to have a courtesy copy delivered to chambers. The judge wants to spend his or her time reading your papers, not hunting for them.

Last year, your advice was to "Remember the Boy Scout motto: be prepared. And while you're at it, being trustworthy, helpful, friendly, courteous, kind and cheerful are not bad attributes either." Do you have any new advice for lawyers appearing before you?

I don't think so. Being prepared, trustworthy and courteous are about as important as it gets for a lawyer. I guess I would underline civility. Your clients are adverse. *They* have a problem that needs to be resolved. But when lawyers are respectful and civil to one another, it goes a long way to helping them do their job of bringing the matter to resolution — even if the case has to be tried. One of the nice things about sitting in the complex civil litigation department is that most of the lawyers with whom I work are experienced enough to know that. The level of civility in this courtroom is usually very high.

Anything you would like to share with the members of the ACCTLA?

I appreciate their consideration in giving me the "Trial Judge of the Year" award. And I look forward to continuing to merit having been given it.

Judge Roesch (cont)

As a judge, I don't wake up at night worrying. When I was a lawyer, I did all the time. Mostly, I woke up trying to figure out how I was going to get that juicy piece of hearsay pass the hearsay rule.

What case, good or bad, stands out in your memory?

That's hard to say. On the bench, I have had a number of cases that stand out. I think what I call the "Furlough Cases" — the cases where various employee groups had sued the governor for compelling them to take furlough were maybe amongst the most interesting cases I have done; a lot of close issues and importance to the outcome. The four cases where I had issued decisions are still on appeal.

There was a different related compelling case coming out of Sacramento Superior Court that ended up in the Supreme Court, which was decided there. The four cases from my court are back in the Court of Appeal and the Court is now considering the issue of how the Supreme Court's decision in the Sacramento case impacts those four cases. Three of them are pretty similar, while one is fairly different.

Another case, the case about the smelt and the salmon, comes to mind. It was the first case where editorials in newspapers called me a "horse's ass" or something like that. It stands out mostly because of the significance of the issue. I really think there are some other important ones that weren't quite so newsworthy.

There was the issue about the Alameda School District teaching tolerance towards gay students or children of gay parents in the school. There were a group of parents who believed this was health education, and their children didn't need to take it

as there is a statute that permits parents to opt out of health education. I didn't think it was health education and ruled that way. I thought that was an important case even though it's probably not on anybody's radar.

What has been your greatest accomplishment in your legal career?

I don't know how to answer that question. In generic or overall terms, I think that both as a lawyer and as a judge, I have been able to obtain justice in situations where people wouldn't always get it. We live in a very formalized kind of a legal system. Is filing a lawsuit to compel Peterbilt Motors to hire women welders obtaining justice? Well, I thought it was. That was a case I had a long time ago — when I worked at the Legal Aid Society actually. That's the theme — being able to implement justice.

What has been the greatest accomplishment in your personal life?

Well, I have a couple nice kids but that's probably because my wife made them nice as opposed to me. That's a hard question. I'm unable to answer that. I am able, however, to make some pretty good salami!

What do you like to do for fun?

I have a lot of extra curricular activities that I do. I build furniture. I make sausage and charcuterie. I like to travel. I liked to do cooking of other kinds of things.

I know you were in the Congo at the time of Judges' Night.

I wasn't in the Congo. I was in the Amazon — a different jungle and a big river as well — in Peru.

What judicial assignment are you most looking forward to?

I have a judicial assignment where, in the morning, I have a calendar that includes law and motion for cases that don't have a direct calendar judge. On that same calendar, I have petitions for writ of mandate. Well, all kinds of petitions: corporate governance petitions, petitions for writ of mandate and petitions for administrative mandamus. Today, for example, there was a petition for administrative mandamus for a high school girl who had been denied the ability to transfer to a different high school to play basketball. She had been a basketball player at the old high school, and issues arose of whether she was entitled to a hardship exemption from the rule that you have to wait for a year before you can play varsity sports at a different high school. Another case on the calendar was one having to do with governance of a radio station that was a dispute among the people who were board members. I get a lot of different interesting questions. In the afternoons, I do settlement conferences; sort of mediation-style settlement conferences with any variety of cases. I can't imagine a better assignment than this.

What words of advice would you give lawyers who will be appearing before you?

Be prepared to have a frank conversation about the authorities that help your case and about the authorities that hurt you and why I shouldn't be paying attention to those. It was Melvin Belli who said it was "preparation, preparation, preparation." That's true — lawyers need to be prepared.

How has the declining economy impacted the cases coming through your department?

We get an awful lot of unlawful detainers following foreclosures. It's remarkable that just five years ago, we almost never saw this animal and now it's a daily issue. Part of that is almost every eviction that a bank wants to perform against a sold-out mortgagor is one where they want to do it by summary judgment because they don't like the results in front of a jury. I probably see, each week, three to five summary judgment motions in unlawful detainers by foreclosing banks. I also manage the defaults in collection cases. The number of those cases has grown quite a bit, although I think the collection agency people are making less money because they just can't collect on them. But it's increased the work load.

What are you doing in your department to mitigate the effects of the budget cuts that have been successful and that you would suggest to other judges?

I don't know that we've done anything to deal with budget cuts. The budget cuts in the Court in general have caused a lot of problems on the staff side. Mostly staff people have picked it up and they are just doing a lot more work. We're sort of getting things done but clerks make more mistakes now because they are forced to be rushing all the time. It takes longer to get documents imaged. In the old days, we wouldn't get the file with the recent filings in it. Nowadays it will take a few days to have the document imaged on the domain system. That might mean I won't be able to see a reply brief in a law and motion matter. If I can't see a reply brief, then it's difficult to make a decision. Although that interferes sometimes, it has not been a big, big problem yet. Ask me again in a year because the State is planning some really big additional cuts this year. I don't know how we're going to be dealing with it. I'm not an administrator in the Court so I don't know how to answer that at this point in time. ◆

— Meet Your New Civil Judges —



Hon. Steven K. Austin

Contra Costa County

What motivated you to become an attorney?
After majoring in math, I majored in Communications Studies at UCLA. I took a Constitutional Law class and I really liked that. I had an idea that I was going to do entertainment law because I was down in Los Angeles, and I liked the whole idea of that. My conception of it though was completely wrong. I thought you just drove around in convertibles and you had movie stars as clients and somehow lived off of them.

When I got to law school, I took an entertainment law class. It was in Intellectual Property at Hastings, taught by a guy who used to work in a movie studio. I realized it was all contracts, all the time, and wasn't quite as glamorous as I thought, so I changed out of that career idea.

Please tell us about your work experience.
I started out doing plaintiff's work and had a small office in San Francisco. I did that for three years. And then the two partners I worked for split up, and I didn't know what I was going to do. I had a wrongful death case at the time that I was dealing with, with a firm in Berkeley. So I was complaining to the attorney on the other side, *"What am I going to do?"* I was panicked about where I was going to go, and he said, *"Why don't you come work for me?"* I didn't have to go through any interview process or anything. I ended up switching over and doing insurance defense.

I did insurance defense with Jon York and Scott Buresh in Berkeley for a number of years, then York left and I became one of the named partners at Buresh, Kaplan, Jang, Feller and Austin. We did insurance defense, insurance coverage, and near the end, I was doing more insurance coverage.

You were appointed by which governor?
Governor Wilson, in 1998.

Do you ever wake up at night thinking about a case, wishing you had handled something differently?
Yes I have, but I can't think of any off the top of my head. It's funny. I'm just noticing now that I'm back to civil. I am thinking … I'm waking up more than I was when I was doing criminal for the last three years, which is interesting. I think it's because I'm having to shift my mind back over into the civil world. Many of the issues are more complex; because criminal is more evidence based, I think. There are so many areas of law in civil that you have to deal with as a judge. It makes it difficult.

Each of you attorneys are kind of like in one practice area, and so within civil there are so many different practice areas. So you have to know about foreclosures, and you have to know about personal injury actions, insurance coverage, and construction practices, and many other different areas. It can be difficult to keep up with all of them.

What case, good or bad, stands out in your memory?
I presided over a trial that involved a student at U.C. Davis who was a diver, an Olympic caliber diver, well on that track anyway. He was helping out at Heather Farms pool and dove in near a synchronized swimming team and he hit one of the synchronized swimmers and became a quadriplegic. It was a really sad case. A memorable trial because the lawyers were just excellent on both sides, and technology was kind of ahead of its time. So both sides presented amazing technological presentations and the lawyering

was great. The plaintiff was an amazing guy. Really handled his injury in a way that I don't know that I would be capable of doing. Was always kind of upbeat, was a really nice kid. Had all the defense lawyers liking him. Everybody who came in contact with him liked him.

That may have dictated the result?
The jury liked him too.

What would you say has been your greatest accomplishment in your legal career?
Oh, I don't know. Becoming a judge, really. It has been sort of a pinnacle. I really enjoy it. It's the best job ever.

I like the difference. You see different things come in everyday. You sit in the same place and the world kind of goes by. Everyday you're in the same seat, watching it. You get to learn about so many different things involved in every case. So every time you have a trial, or you get really involved in a motion or a settlement conference, you learn about all different kinds of areas of life. So, that's fun for me. I like to do that.

You're kind of intellectually curious?
Yes. Plus, it gives you opportunities to do a lot of other things. One of the things I like about being a judge is I've always been involved in things outside of my normal practice area, volunteering and doing things. And, I'm involved in a lot of committee work — in a lot of different places that are outside of what happens in the courtroom. I wouldn't be able to do that if I weren't a judge. And I enjoy that.

How about in your personal life? What has been your greatest accomplishment there?
Let's see if I can get this right. Winston Churchill once said that my greatest accomplishment in life was convincing my wife to marry me. And, that is the saying I live by. I married beyond my … beyond me. My wife is wonderful. She does defense work. She's an attorney in Oakland and does asbestos defense for Berry & Berry.

Are you a member of any organizations?
The judge's association. I was a member of the Association of Defense Counsel when I was in practice. When I was doing plaintiff's work, I don't think there was any organization, or if there was, I don't think I had enough money to be a member. Nothing else that comes to mind. As a judge, it's hard. You can't really be involved in too many organizations because of ethical concerns. So, there are many organizations that you can't be a part of, but I'm involved in a lot of different things.

I am on the Access to Justice Commission, which is affiliated with the State Bar. I'm one of the two appointees by the Chief Justice who are judges on there. So, I've been on that for a long time and it takes up a lot of my time.

What do you like to do for fun?
I swim. I coach soccer, although I think I'm going to hang up my cleats because my youngest daughter just played her last game last weekend in the rain, in Ripon. It was cold. So I don't think I'm going to have the opportunity to coach any longer and I always really liked that.

How old is your daughter?
She's graduating from high school this year. I've got all the soccer pictures there. But, look how little they are [gesturing toward his photos]. She's graduating now.

What judicial assignment are you most looking forward to?
I was looking forward to coming back to civil, that's for sure, because I'm most familiar with that. I'm really glad that I'm here.

Finally, what words of advice would you give to lawyers who will be appearing before you?
Always behave in court like your mother is sitting in the back row. In fact, if you behave that way in all parts of your life, you can't go wrong.

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— Hon. Laurel S. Brady —

Contra Costa County



What motivated you to become an attorney?

My mother always said, "You like to argue. You're going to grow up to be a lawyer." I heard that forever. When I finished college, I took the LSAT, and later sat down and really thought about it. I wondered, "Am I really doing this because I heard my mother say that for so long or is this something I really want to do?"

I took some time off from school and got into a completely unrelated line of work for about four years. I finally decided to go back to law school to see if it was something I really wanted to do or if I was doing it because I always just assumed I would go to law school. I made the decision I should at least try it. I found that I loved it, and it did suit me. So that is how I ended up being a lawyer. Those four years in the business world were very helpful in making the decision to go to law school because I wanted to make sure I was doing it for all the right reasons.

Please tell us about your work experience.

For four years between college and law school, I was in the business world. I worked for several manufacturers of office furniture. I was a district manager first for a manufacturer's rep., which handled a number of different manufacturers, and then I went to work directly for one of the manufacturers. As their district manager, my territory covered all of the Bay Area, Napa, Sonoma, all the way down to San Jose.

I continued working in sales and marketing as a district manager even after I started law school and went to school at night. I did both for the first two years and then in the third year, decided it was time to get a legal job and put into practice what I was doing in school at night.

So I quit the job that everyone thought I was crazy to quit — and got a job as a law clerk at the Attorney General's office in the civil division doing consumer protection. That was full time during the day and I went to law school at night. I did that for a year or year and a half.

I then clerked full time for the civil law and motion judge in Marin County for my very last semester in law school. While waiting for bar results, I worked for a small firm doing medical malpractice work. After bar passage, I ended up taking a position with the DA's office here in Contra Costa County. I had no particular interest in criminal law, but I really wanted trial experience. My initial interest was in consumer and environmental protection, but at the time, no one was hiring in those areas without trial experience.

I decided to take the offer from the DA's office here and get some trial experience and ended up falling in love with practicing criminal law, much to my surprise. It wasn't even on the radar while in law school. I worked for the DA's office here in Contra Costa for a little under two years. I then went to Solano County and worked for the Solano County DA's office for six years before I was appointed to the bench.

Do you ever wake up at night thinking about a case, wishing you had handled something differently?

I stayed up at night thinking about some cases, especially in criminal where there are very difficult issues at times. I'm trying

to think of a time where I thought I made the wrong decision. I'm sure I have and I'm sure I did some "Monday night quarter backing," stewing about a tough issue in a case. If I ever felt I made the wrong decision or made an error, I moved to correct it. I called the attorneys back in, told them I had given the issue more thought, shared my reasoning and advised that I planned to change my initial decision. I can't remember a specific example where I had to do that, but I'm sure there have been some.

What case, good or bad, stands out in your memory?

I'm not sure I can answer that because those cases are still on appeal and I can't comment on any cases that are still active. The cases I have handled in the last eight years or more have been serious criminal cases, which means they are active for a long time after they pass through my hands. Those cases are on appeal for many years, so it makes it very difficult to answer that question, much as I would like to, without running afoul of the ethics rules.

What has been your greatest accomplishment in your legal career?

The greatest accomplishment would be litigants walking away from your courtroom, regardless of the decision you make, feeling they had their day in court, had a fair hearing with a judge who heard them out, considered everything they presented and made a decision, whether it went their way or not. I think that more than anything for a judge — at least for me — that is probably the greatest accomplishment. I would like to think that people walk away from my courtroom feeling that way, even if they don't like the end result.

What has been your greatest accomplishment in your personal life?

Having a child. Being a mom is the greatest thing in the world. It just is — and it tops anything else that I can think of. Some days, it is not easy, but you do it because the job of raising a child into a well-rounded adult is so important. Watching a child develop is just amazing.

What do you like to do for fun?

We do family things — spending time with my child and husband. We spend a lot of time at the park now and at kids' sports events. A lot of it is child-driven at this point. We go to museums, to the library. My husband loves to fish, so once a year, we go on a fishing trip so he can get his fix. Now he can teach our child a love of the outdoors and the art of chasing (and catching) those "wily fishies" as he puts it. We travel, but in a much different way now. We try to go places that are fun for all of us.

What judicial assignment are you most looking forward to?

Well, I've had a criminal assignment for virtually my entire judicial career, except for the two years I was presiding judge. I've supervised a branch court in Richmond and I am enjoying my first couple months here in civil. This civil assignment has given my brain something new to chew on — not necessarily completely new because I did civil work long ago, it is coming back to an old familiar arena. I'm not sure if there is something else out there I am pining to do — but you never know.

What words of advice would you give lawyers who will be appearing before you?

Patience, civility with each other and with the court — probably patience with me because something that was at my fingertips in criminal may not be in civil. I'll get there soon.

I view this as a team effort to move a case through the process efficiently. It's not just the lawyers, it's all of us that sheppard a case all the way through. Everyone has a role to play and the attorneys are advocating for their particular side, but in terms of the mechanics of moving the case forward, we all should be working together to accomplish that goal. Working together lowers the stress level for everyone and we accomplish more. Then we can focus on both sides, having their position heard and a decision being made based on the merits as opposed to spending a great deal of time and effort battling each other on the minutia.

I think civility with each other and the court goes a long way to accomplishing better outcomes for everyone involved. Why battle the things that aren't worth fighting about and instead focus the attention on the things that are really important to your case and your client. Perhaps some people have a better sense of that than others. It's a process in which you advocate for your client assertively, but it doesn't mean you have to beat up the opposing counsel in the process.

— Hon. Robert D. McGuiness —

Alameda County



What motivated you to become an attorney?
I grew up in a courtroom. My father was a judge so I had the opportunity to see trial work at an early age. Early on, I felt it was something I was suited for and that I would enjoy.

Please tell us about your work experience.
I was a research attorney for two years for Sonoma County Superior Court. Thereafter, I worked for a sole practitioner, who is now deceased. I then worked at a mid-size well-established firm. In 1983, based on my original plan, I started my own firm.

Do you ever wake up at night thinking about a case, wishing you had handled something differently?
Certainly. As a lawyer who dealt with hundreds of cases, I viewed the practice of law as a learning experience every day. I literally had a history of cases I handled. I would keep track of what worked in that case, what didn't and my view at that time as to why or why not. Anyone who has done a lot of courtroom work as a lawyer is going to reconstruct what they either did or did not do. It just comes with that territory. No specific case comes to mind. Again, I did a lot of courtroom work and I was always working hard to both remember what had worked and not worked. At the same time, I was always concerned with what could happen in a trial. I wanted to be able to anticipate the unexpected.

What case, good or bad, stands out in your memory?
There are a number of cases. I was a plaintiffs' lawyer in a shareholder litigation against Lucky Stores where the result was very beneficial to the shareholders. The nature of the litigation was conducted professionally at the highest level and the shareholders received great benefit. They received a stock share price well in excess of the price at the commencement of the litigation. It was particularly meaningful to me because I started as a grocery clerk with Lucky Stores at age 12, so there was considerable professional benefit. There was also benefit for all the friends from my youth who remained employees of Lucky's because they all had Lucky shares in their 401(k) plan. Their shares went effectively from $22 to $66 a share. Another case was *Estate of H. Earl Hoover*. It was a 10-year estate litigation in Chicago, Illinois, where I was a private attorney for the plaintiff. It ended up in the State Supreme Court. Again, it was a litigation that had exceptionally talented attorneys on both sides, advancing and protecting their clients' interests, which was both challenging and established new law. I was also involved in a number of appellate cases, which either established law or produced a result I thought was right. These include *In Re Marriage of Reuling*, *In Re Marriage of Roesch*, and *In Re Marriage of Seamen-Menjou*.

What has been your greatest accomplishment in your legal career?
Having had the opportunity to serve thousands of clients in a fashion that I believed served their interests in a professional way.

What has been your greatest accomplishment in your personal life?
The quality and unrelenting support of my family.

What do you like to do for fun?
I like to travel. I would really like to do more of it. I like to watch baseball games at virtually any level. I enjoy cooking, reading, weightlifting and running. I could go on and on.

What judicial assignment are you most looking forward to?
That is a very timely question because I just started this assignment. I thoroughly enjoyed my five-year criminal assignment, notwithstanding having very little experience as a lawyer in the criminal sphere. I look forward to this assignment and its challenges, which are many.

What words of advice would you give lawyers who will be appearing before you?
Be professional and thoroughly prepared. You should assume the judicial officer that you are dealing with will be the same. ◆

~ 2011 Judges' Night ~



ACCTLA Past President Elise Sanguinetti presents Hon. Barry Goode with the Trial Judge of the Year award for Contra Costa County

Congratulations to Alameda County Trial Judge of the Year, **Hon. Frank Roesch** and Contra Costa County Trial Judge of the Year **Hon. Barry Goode**



Chief Justice Tani Cantil-Sakauye with 2011 ACCTLA President A. Charles Dell'Ario

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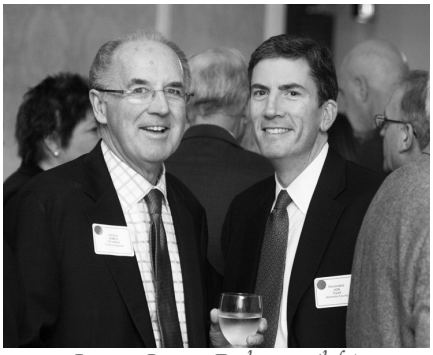

Justice James Richman (left) and Hon. Jon Tigar



Peter Hinton (left) with Kathleen Courts and Steve Kazen

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MEMBER *news*

ON THE MOVE

Jerome Fishkin of Walnut Creek's Fishkin & Slatter LLP has been elected president of the Association of Discipline Defense Counsel (ADDC), attorneys who specialize in defending other attorneys at the State Bar of California.

The law firm of Hinton, Alfert & Sumner is pleased to announce the firm's name change to **Hinton, Alfert, Sumner & Kaufmann**.

Aaron Kaufmann started up the firm's employment law practice in 2003. He has served as class counsel on scores of cases, recovering millions of dollars in back wages and expenses on behalf of workers. He has also successfully prosecuted claims for individuals who have suffered unlawful discrimination and retaliation in the work place.

Mr. Kaufmann is a frequent writer and lecturer on wage-and-hour laws and employment class action litigation, and currently serves as the Co-Editor-in-Chief for the American Bar Association's treatise on the Fair Labor Standards Act. The addition of Mr. Kaufmann to the firm name reflects the importance of the employment law practice to the firm, and the outstanding contributions and accomplishments he has made to the firm and to the legal community.

With its additional principals — Elise Sanguinetti and David Pogrel — Hinton, Alfert, Sumner & Kaufmann offer clients over 100 years of combined litigation experience. Associate Mark T. Baller joined the firm in November of 2010.

Hinton, Alfert, Sumner & Kaufmann is dedicated to representing individuals who have suffered significant personal or financial injuries and workers who have been denied workplace rights and protections.

The firm's personal injury and wrongful death practice focuses on product liability, motor vehicle accidents, unsafe highway design, industrial accidents, spine injury, brain injury and wrongful death cases, elder and sexual abuse, negligent security, government tort liability, insurance bad faith, and legal malpractice claims.

The employment practice focuses on prosecuting class actions to enforce overtime, expense reimbursement, employee misclassification and other wage and hour laws, and representing individuals with wrongful termination, discrimination, whistle-blower and other employment retaliation claims.

SETTLEMENTS

Auto v. Bicycle

Jerry Doe v. Peebles

Contra Costa County Superior Court

Settlement: $1,100,000.00

Attorney: Richard J. Baskin *(Law Offices of Richard J. Baskin)*

The plaintiff, 75-year-old Jerry Doe, a real estate professional, was wearing a helmet and riding his bicycle northbound on Danville Blvd. in Alamo at the start of a 30-mile bike ride. Jerry is an experienced bicyclist and was in excellent condition. At age 70, he rode his bicycle 500 miles across Italy. He completed 37 marathons. On a weekly basis he rode his bike 30 miles and ran 40 miles.

The defendant did not see plaintiff in the bike lane and made a left turn without yielding to him. Defendant struck plaintiff, cracking his helmet and fracturing his back.

Plaintiff Doe experienced loss of consciousness at the scene and had no recollection of the accident. He was transported to John Muir Medical Center with a diagnosis of "closed head injury with amnesia, fracture, a large subgaleal hematoma, fractures of the left transverse process at



T4, comminuted fracture at T5, rib fracture and abrasions to right knee and left hand."

He was transferred to ICU and was to undergo surgery for ORIF of the thoracic fractures, a T5 laminectomy and segmental fixation from T2 to T7. During surgery, screws were inserted at T6 and T7, hooks at T2 through T4 and grafted bone was mixed with preexisting bone. He was then transferred to John Muir Hospital Acute Rehabilitation Unit for rehabilitation, including physical and occupational therapy, speech therapy, cognitive screening and neuropsychological evaluation.

At the time of discharge it was noted that his attention, concentration, reading and visual functions were impaired. Neuropsychological testing confirmed slowness in process and verbal memory, alterations in his functioning ability, short-term memory, concentration skills and word finding difficulty. He has permanent pain in the upper back and neck and has continued difficulties with activities of daily living, such as lifting, sitting, standing or walking.

The parties reached a settlement of $1.1 million.

Construction

Lew Van Blois and Tim Knowles settled a construction accident case in late March 2011 for over $1,300,000. The case was set for trial on April 4, 2011 in San Francisco. They represented a 51-year-old heavy equipment operator for his injuries that occurred on January 28, 2008 when a multi-story boiler structure collapsed prematurely during a demolition project at the Hunters Point PG&E facility. The plaintiffs claimed that the structural engineer and PG&E negligently planned and supervised the demolition of the structure. The settlement provided that the plaintiff would receive all workers' compensation benefits without any credits to the workers' compensation carrier from the settlement.

Semi-Truck v. Auto

Donna Roth, et al., v. Abel Magallanes, Classic Cartage Trucking Corporation
San Joaquin County Superior Court
(39-2009-00215811)
Settlement: $5,375,000.00
Attorneys: Michael D. Meadows *(Casper, Meadows, Schwartz & Cook)* – plaintiffs; John Cotter, Joshua Rose *(Diepenbrock & Cotter)* – defendants

On eastbound Highway 132 near Tracy, plaintiff Acacia Roth was driving her mother-in-law, Donna Roth, and her nine-month-old son, Wyatt Roth, in her 2007 Chevy Suburban. The plaintiffs were on their way to visit a family member and were preparing to make a left turn when they were hit by the defendant's semi-truck, which was traveling at nearly 60 mph and carrying a full cargo. The plaintiff's vehicle was crushed by the impact and propelled across the highway, coming to rest on the opposite shoulder of the roadway.

Donna Roth suffered a traumatic brain injury; Acacia Roth suffered bilateral crush injuries to her legs; and Wyatt Roth suffered a frontal subdural hematoma.

Donna Roth's case settled for $5,375,000. The settlement covers only her claims, which were $452,000 in past medical expenses, and $2,000,000 in future care. The cases of Acacia Roth and her son are pending.

Sexual Harassment

Lisa Capocci v. City of Concord
Contra Costa County Superior Court
(C09-02137), Hon. Judith Craddick
Settlement: $750,000.00 ▶

Attorneys: Stan Casper, Nick Casper *(Casper, Meadows, Schwartz & Cook)*, Toni Lisoni – plaintiff; Maureen McClain, Constance Norton *(Littler Mendelson)*, Mark Coon *(Office of the City Attorney, Concord)* – defendant

Lisa Capocci, a 33-year-old female, was employed as a patrol officer for the Concord Police Department for four-and-a-half years. She resigned from her job in July of 2010, claiming an intolerable work environment.

The plaintiff alleged that her supervisor, Michael Hansen, made improper sexual advances toward her. Further, she claimed that she suffered retaliation when she complained about the conduct because Hansen and others allegedly filed unfounded internal affairs investigations against her. She also contended that other officers took too long to back her up when she was called to duty.

The defendant argued that the police department treated the plaintiff with fairness and looked into her complaints. Also, the defendant asserted that any inquiry against plaintiff was justifiable and based upon performance issues.

After the third day of trial, the parties reached a settlement totaling $750,000, of which $500,000 was attorneys' fees.

Wrongful Death

Carolyn Desmond, et al. v. Security Group LLC, Security Associates International, Inc., et al.
Contra Costa County Superior Court
(C08-02092)
Settlement: $4,600,000.00
Attorneys: Andrew C. Schwartz, Thom Seaton *(Casper, Meadows, Schwartz & Cook)* – plaintiffs; Bradley M. Zamczyk *(Hinshaw & Culbertson, LLP)* for Securities Associates Inc. (SAI); Jill Rizzo, Charles H. Horn *(LeClairRyan LLP)* for Pinnacle Security LLC – defendants

Scott Desmond and Matthew Burton, employed firefighters of the Contra Costa County Consolidated Fire District (CCCFD) responded to a fire at 149 Michele Drive in San Pablo. Upon arriving at Michele Drive, Desmond and Burton entered the residence to save the occupants. A fire gas ignition flashover occurred, killing both firefighters, as well as the two occupants.

That same day at 1:34:27, SAI received an automated smoke alarm signal from that address. Upon receipt of that alarm, the SAI customer service representative, located in Ft. Lauderdale, Florida, activated a two-way intercom inside the residence and spoke with Mrs. Moore. The representative asked if everything was okay. Mrs. Moore replied, "No, we have a fire."

The SAI representative then asked if the resident wanted her to call the fire department, to which Mrs. Moore replied "please, please." Approximately 2 minutes and 12 seconds after the SAI representative was told that there was a fire, the Contra Costa County Regional Fire Communications Center ("CCRFCC") finally received a call from the representative who told them specifically "Okay, I'm calling to report a fire alarm." She called the fire district on a non-emergency number and never told the district that she had communicated with the resident, or that the resident had reported a fire.

Given that the SAI representative had reported a fire alarm *rather* than accurately reporting a fire, the CCRFCC dispatcher placed the call on hold to answer a higher priority 911 emergency call. The call was on hold for 4 minutes and 51 seconds.

At 1:42:16, a second dispatcher retrieved the call on hold from SAI and once again the SAI representative indicated that she was calling to report a fire alarm, not a fire. Once again, she failed to report that she had communicated with the residents and was aware of a fire.

Following their standard practice, the CCRFCC dispatcher called the residents at 149 Michele Drive to verify the alarm; that call resulted in a busy signal. The dispatcher then made a second call which was not answered. At 1:43:42, more than 9 minutes after the initial call was placed to the SAI representative, the CCRFCC initiated a residential fire alarm dispatch.

Plaintiff alleged that had the SAI representative accurately reported a fire, the call would not have been placed on hold, would have been given a higher priority, and the response would have been much greater in magnitude. Rather than sending one engine with three firefighters, CCCFD policies and procedures would have included three engines, a quint (a tanker truck equipped with specialized equipment such as chainsaws), and a battalion chief in a separate vehicle. In other words, 16 firefighters including a chief, rather than three firefighters with no chief would have responded to the fire on 149 Michele Drive within four minutes of taking the call.

At 1:46:11, 2 minutes after Engine Co. 70 had been dispatched, the call was upgraded from a fire alarm to a residential structure fire.

At 1:51:23, Captain Burton transmitted an updated report indicating that "we have two people inside" and both he and Scott Desmond were making entry in an attempt to save them. After knocking down the fire in the living room, Burton and Desmond exited 149 Michele Drive and retrieved a thermal imaging camera to assist them in assessing the situation. At 1:57:13, the body of Mrs. Moore was found in the residence and removed by members of Engine Co. 73.

Burton and Desmond then re-entered the residence in an attempt to rescue Mr. Moore from the fire. At 1:59:30, Unit 76 arrived when it appears that a flashover occurred at 149 Michele Drive. It is believed

that Scott Desmond and Matthew Burton died as a result of this flashover.

The case settled at mediation with Hon. Ronald Sabraw (JAMS) for $4.6 million. Pinnacle contributed $2,600,000 and SAI contributed $2,000,000.

Wrongful Death

Lew Van Blois and Tim Knowles settled a wrongful death case against Alameda County and Pacific Surfacing, Inc. in late January 2011 for $2,650,000. They represented the husband and children of a 34-year-old woman who was struck by a Ford F450 truck while she was jogging on the shoulder of Patterson Pass Road in Alameda County. The uninsured driver claimed he was not working for his employer that day and was on his way home when the accident occurred. Plaintiffs contended he had been called to do a special task for his employer. The plaintiffs also contended the road was in a dangerous condition and constituted a concealed trap. The case settled shortly before the February trial date.

VERDICTS

Asbestos

Ricker, et al v. Allied Packing & Supply, et al.
Alameda County Superior (RG10496251)
Hon. Lawrence John Appel
Verdict: $5,482,047.54
Attorneys: William Ruiz, Ian Rivamonte, Gordon Greenwood, and Frank Fernandez *(Kazan, McClain, Lyons, Greenwood & Harley)* – plaintiff; Douglas Wah, Sandy Liu, Thomas Tarkoff *(Foley & Mansfield)*, Peter Bonis *(Law Offices of Peter Bonis)*, David Gabianelli, Amy Rose *(Squire Sanders & Dempsey)* – defendant

Plaintiff Ronald Ricker was exposed to asbestos from Rockbestos Surprenant Cable Corporation (RSCC) asbestos insulated wire products from 1966-1971, which ▶

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was brought home on the clothing, person, and personal effects of his mother, Clara Ricker, when she worked at Varian, Inc. in Napa and Walnut Creek; and from his own employment as a machinist at Varian, Inc. in from 1969-1971. He was diagnosed with mesothelioma, an asbestos-caused cancer, in October of 2009. Evidence at trial showed that the cutting and stripping of RSCC's asbestos insulated wire products released dangerous levels of asbestos dust and that it was a cause of Mr. Ricker's mesothelioma. The evidence also showed that RSCC specialized in asbestos insulated wire and cable products, and even incorporated the word "asbestos" in the name of its brand "Rockbestos," but ignored all the medical and scientific information about the health hazards associated with asbestos dust for over 60 years. RSCC continued to sell its asbestos insulated wire products until 1986, and did not warn its customers or end users about asbestos-related health hazards until 1979.

The jury found that RSCC's defective design of its asbestos insulated wire products, its failure to adequately warn consumers and customers of the dangers its wire products posed, its negligence, and its malicious and oppressive misconduct all contributed to causing Mr. Ricker's mesothelioma, and was 33 percent responsible for all the damages caused by Mr. Ricker's mesothelioma. The jury also found that RSCC acted with malice and oppression, requiring an additional phase of the trial to determine a punitive damages amount. Shortly after the second phase of the trial started, the case was resolved to the parties' mutual satisfaction.

Auto v. Auto

Armando Cervantes v. Ronny W. Sono
Alameda County Superior Court
(RG09484889), Hon. Ronni MacLaren

Verdict: $50,000.00 (policy limits)
Attorneys: Nick Casper *(Casper, Meadows, Schwartz & Cook)* – plaintiff; Fulvio Picerno, Steven Toschi *(Toschi, Sidran, Collins & Doyle)* – defendant

The plaintiff, 44-year-old hardwood flooring employee Armando Cervantes, was making a lumber delivery in a company Ford F-250 Super Duty truck, from Richmond to Sonoma. While approaching the Richmond-San Rafael Bridge on Interstate 580, the plaintiff collided with defendant's vehicle in the toll plaza where the FasTrak lane split from one to two lanes.

The plaintiff alleged that he was driving in the #1 FasTrak lane, with defendant driving behind him. The plaintiff contended that as the FasTrak lane widened and began to split into two FasTrak lanes at the bridge toll plaza, defendant attempted to pass plaintiff's truck and tried to establish himself in front of the plaintiff. Plaintiff alleged that the defendant's maneuver resulted in the two vehicles colliding.

The defendant contended that he was driving in the #1 FasTrak lane, and that the plaintiff was driving in the #2 lane to the right. The defendant alleged that the plaintiff crossed the solid white line separating the lanes and merged into the defendant's vehicle in the FasTrak lane near the toll plaza.

After a three-day jury trial, the jury rendered a verdict for the plaintiff, finding defendant 90% at fault. Prior to trial, the parties stipulated that if defendant was found negligent, insurance carrier would pay $50,000 in policy limits; accordingly, there was no evidence of damages introduced.

The jury poll was 12-0 on finding the defendant negligent; and 10-2 on fault apportionment.

FELA

Martin v. BNSF Railway Company
Los Angeles County Superior Court
Verdict: $4,931,549.00
Attorneys: Anthony S. Petru and Victor A. Russo *(Hildebrand McLeod & Nelson, LLP)* – plaintiff

Mr. Martin was injured on November 14, 2008 while working as a switchman for BNSF at its Hobart Yard in Commerce, California. The accident occurred as a result of poor and overcrowded radio traffic and a defective radio, which severely limited the crew to two operative channels. Due to excessive radio traffic, the engineer mistakenly understood a 30 railcar count as a request to change radio frequencies. He did so. Mr. Martin soon saw a constant line of locomotives on the track ahead of him and radioed the engineer to prepare to stop. The engineer heard nothing as he had already changed frequencies. Mr. Martin's car came to a stop. Immediately prior to the collision and to avoid being crushed, Mr. Martin, 28 years old at the time of the accident, jumped from the locomotive platform and suffered a grossly fractured right ankle. The severity of the ankle fracture and ongoing pain required Mr. Martin to undergo an ankle fusion surgery. His foot and ankle may ultimately require amputation. He continues to suffer from posttraumatic stress disorder.

The trial lasted ten days and the jury deliberated for one-and-a-half days before rendering a verdict of $4,931,549.00 to compensate Mr. Martin. BNSF's formal offer to compromise was $650,000 and was made contingent upon on Mr. Martin's resignation from employment with BNSF.

Strict Products Liability, Negligence, Intentional Concealment

Bankhead, et al. v. Allied Packing & Supply, et al.
Alameda County Superior Court

(RG10502243), Hon. Robert B. Freedman
Attorneys: Joseph Satterley *(Sales & Satterley)*, Louisville, KY; Leigh Kirmsse, Justin Bosl *(Kazan, McClain, Lyons, Greenwood & Harley)* – plaintiff; John Brydon *(Brydon, Hugo & Parker)*, San Francisco (Abex); Frank Berfield *(McKenna Long & Aldridge)*, San Francisco (ArvinMeritor & Kelsey Hayes); Joseph McGuire, Mt. Laurel, NJ and Joseph Dioszeghy *(Rasmussen Firm)*, Kansas City, MO (Carlisle) – defendants

Plaintiff, Gordon Bankhead worked from 1965-1999 in the service and repair of heavy-duty vehicles as a "parts man" and spent most of his career at Sea-Land Shipping Company in Oakland. He regularly handled asbestos-containing brakes, and was present for the inspection, replacement, grinding, and blowing out of asbestos-containing brakes. All of these activities caused him to breathe deadly asbestos dust. Abex and Carlisle manufactured the vast majority of the brake linings Mr. Bankhead was exposed to, which in turn, Rockwell and Fruehauf attached to brake shoes and axles that were sold to Mr. Bankhead's employers.

Gordon Bankhead was diagnosed with mesothelioma, an asbestos-caused cancer, in January of 2010. Suit was filed on behalf of Mr. and Mrs. Bankhead in March of 2010, and trial commenced on October 25, 2010. Evidence at trial showed that Pneumo Abex had been aware of the deadly health effects of breathing asbestos dust since at least the 1940s, but that Pneumo Abex did not begin warning its customers of those effects, if at all, until years after Mr. Bankhead was exposed to the asbestos-containing brakes it made and sold.

Abex and Carlisle were involved in discussions within the Friction Materials Standards Institute in the 1970s about whether to warn about the health hazards from its brakes. Rockwell knew starting in the early 1970s that its employees were exposed to dust from Abex and Carlisle brakes, but did nothing to warn its customers of the same hazards. As early as 1977, Rockwell learned that one of its employees who handled brakes was diagnosed with mesothelioma, the same disease Mr. Bankhead developed. Despite their knowledge of the hazards of asbestos, Carlisle and Pneumo Abex continued to sell asbestos-containing brakes until 1987; Rockwell did not cease selling asbestos brakes until 2000.

The defendants argued that brake mechanics are not at an increased risk of developing mesothelioma, that the chrysotile asbestos in their brakes does not cause mesothelioma, and that exposure to their products was *de minimis*.

The jury found that all defendants defectively designed their brakes, failed to adequately warn consumers and customers of the dangers the brakes posed, were negligent, and intentionally concealed information that could have prevented the harm Mr. Bankhead suffered, all of which contributed to causing Mr. Bankhead's mesothelioma.

The jury apportioned 30% liability each to Carlisle and Pneumo Abex, 15% each to ArvinMeritor and Kelsey-Hayes, and 10% to Mr. Bankhead's employers. The jury awarded Mr. Bankhead $1,470,000 for his past and future economic loss, and $1,500,000 for his pain and suffering. The jury also awarded his wife Emily Bankhead $1,000,000 for her loss of her husband's support and companionship. The jury found that defendants' actions were malicious, fraudulent, and/or oppressive. The jury assessed $4,500,000 in punitive damages against ArvinMeritor, Inc. and $9,000,000 in punitive damages against Pneumo Abex LLC.

The trial lasted 33 days. Phase 1 of the jury deliberation took four-and-a-half days, while Phase 2 took two hours.

Upheld

Shelby v. Seariver Maritime, Inc. 2011 (WL 576569)
Attorneys: Lyle Cavin, local trial counsel for Shelby; Chuck Dell'Ario, appeal

When Mack Shelby signed on as an able-bodied sailor on Exxon oil tankers, he was healthy. He devoted years of exemplary service.

Exxon long knew of the dangers of benzene to its sailors yet never effectively protected or warned them as its and the Coast Guard's regulations required. Exposure limits were merely something "to shoot for." In 2003, he contracted kidney cancer from persistent benzene over-exposure and lost a kidney. A San Francisco jury awarded him $8 million in economic and non-economic damages.

On appeal, Exxon contended that the trial court erred in admitting the testimony of Shelby's expert, claiming his opinions lacked foundation. It also claimed that no evidence supported the economic damages and that Shelby's lawyers inflamed the jury with misconduct during closing argument.

The court of appeal rejected all the arguments. It concluded that the expert opinions were predicated on the very types of matters on which experts rely. It found the economic damages were properly supported and that Exxon had waived whatever improprieties may have occurred during oral argument by failing to request an admonition. ◆

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