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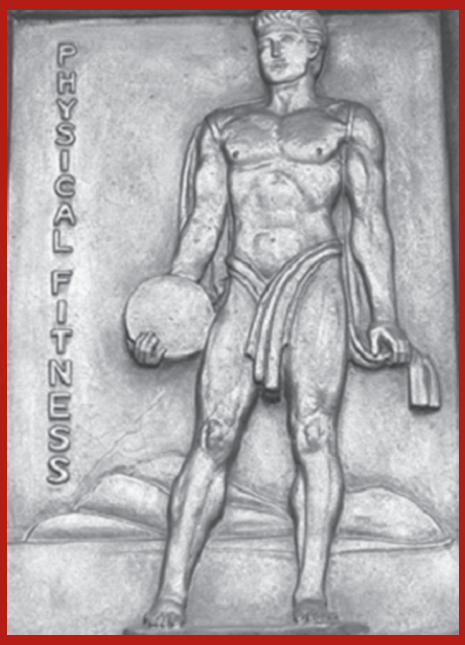
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(see page 24)

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Charles Dell'Ario has been representing individuals and small businesses in the California and federal courts since 1974. Beginning in 1997, Mr. Dell'Ario has specialized in appellate matters and has participated in over 250 appeals in the California Courts of Appeal, Supreme Court of California, Ninth U.S. Circuit Court of Appeals and the United States Supreme Court.

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Former ACCTLA and CAOC president Micha Liberty and I have teamed to fight the cause of school children victimized on account of their disabilities. The Supreme Court of California granted our petition for review and will decide the issue of first impression whether the state Unruh Act applies to the 7 million public school children. The high court only grants about 55 of the 3,500+ petition it received each year.

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from the president



Casey Kaufman

2024 was a year of extremes, and this psychological roller coaster is likely to continue in both our local and national spheres. Locally, voters decided to recall both the Oakland mayor and the Alameda County District Attorney. Despite your feelings on their performance, it's undeniable that these recall votes expressed significant frustration on the part of residents. Surprisingly, our national political outlook is even more uncertain as we start the new year.

Please join us on January 16 for our Annual Judge's Night Gala at Bloc15 in Oakland, where we will honor our Alameda and Contra Costa Judges of the Year. This year, we will also present Gary Gwilliam with the Legend of the Law Lifetime Achievement Award. He is a founder, past-president, and perennial advisor of this organization since its inception over 50 years ago. His impact on our legal community (local and statewide) cannot be understated. Gary Gwilliam is a passionate champion for justice.

For many, the holidays are a time of reflection that allow us to hold close those who mean the most. Looking back on this last year, the ACCTLA continued its upward trajectory and increased its reputation among our local bar and bench. Our incoming board is very strong, and Teresa Li will be an impactful president. Thank you to all our board members who volunteer their time and energy for the ACCTLA!

I hope you all had a happy holiday season and look forward to seeing you all in 2025! ◆

— Casey Kaufman represents plaintiffs in the areas of personal injury, product liability, and actions against public entities. He is a member of the California, Arizona, Washington State, and Washington D.C. bars and can be reached at casey@caseykaufmanlaw.com.

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Laurel Halbany

Dear Readers,

As we close another remarkable year, The Verdict continues to stand as a testament to the passion, perseverance, and purpose that define our legal community. This edition highlights the triumphs, challenges, and innovations shaping our profession while celebrating the voices of those driving change.

In this issue, we honor our new jurists and the leaders who inspire us, spotlight the causes that unite us, and explore the ideas that push us forward. From compelling legal analysis to personal reflections on advocacy and justice, our contributors offer insights that remind us why we chose this path.

As co-editors, we are privileged to amplify these voices and connect you with stories that resonate deeply. We thank our contributors, readers, and the wider legal community for making this publication a platform for dialogue, learning, and growth. We hope you had the happiest of holidays.

The road ahead is filled with opportunities to advance justice and equity. Let this edition energize you for the challenges and rewards to come.

Thank you for your continued support of The Verdict. We look forward to journeying together in the pursuit of excellence and the commitment to justice. ◆

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Commitment to Public Service and a Respect for the Judicial Process Leads Judge Stegeman on a Path to Serve as a Judge in Alameda County



by Susan Kang Gordon

On September 30, 2024, the Hon. Chad Stegeman was appointed by Cal. Governor Gavin Newsom to serve as a judge of Alameda County. Judge Stegeman was sworn in on October 23, 2024 and was recently assigned to Dept. 511.

EARLY EXPERIENCES INSPIRE JUDGE STEGEMAN TO BECOME INTERESTED IN LAW

Judge Stegeman grew up in a small town outside of Jefferson City, Missouri. He was one of three boys in his family. During high school, he participated in track and field, practiced Jujitsu with his brothers and was involved in his school's activities. He recalls positive experiences volunteering in Youth Court and Youth Government. Judge Stegeman knew what it meant to work hard from an early age. He worked alongside migrant workers picking peaches. He got to meet people from different walks of life and saw firsthand the difficulty of the work in the fields.

His parents played a significant influence on his perspective on life. His father volunteered his time to Habitat for Humanity. Judge Stegeman watched his father run electrical lines in homes being built for the needy. Mrs. Stegeman was active in her community and served on his school's Parent Teacher Association.

Judge Stegeman's late mother, although she did not attend college, showed him how to act as an advocate for his local community. In the town where the Stegemans lived, residents were getting sick from bad water running through the town. Judge Stegeman's father also became sick and was admitted into the local hospital's intensive care unit. The community did not have the resources of its neighbors, and it did not seem as if the public officials were taking their obligations to the public seriously. That is when his mother stepped in and became a voice for the community. Mrs. Stegeman demanded clean water for her neighbors. She was brave and unwavering. Eventually, after a long-fought battle, the town addressed the contaminated water, however the harm had already been done to the community. Unlike in the movie, Erin Brockovich, there were no lawyers helping residents. No one received compensation for their injuries. No one was reimbursed for their medical bills. This was one of the first experiences of injustice Judge Stegeman witnessed for himself. Judge Stegeman also saw how important it was for members of the community to look out for one another.

A COMMITMENT TO SERVING THE COMMUNITY REINFORCED JUDGE STEGEMAN'S INTEREST IN THE LAW

Judge Stegeman was the first member of his family to attend college. He attended Macalester College for his undergraduate studies, receiving triple majors in philosophy, German and political science. He deferred law school so that he could spend his time volunteering for AmeriCorps in San Diego. During the two years in AmeriCorps National Civilian Community Corps, Judge Stegeman worked as a firefighter, disaster-relief specialist, teacher, and otherwise assisting communities in need. His experiences served as further reinforcement of the value of public service instilled in him by his parents.

A COMMITMENT TO FAIRNESS AND RESPECT FOR THE JUDICIAL PROCESS GUIDED JUDGE STEGEMAN TO SERVE AS A JUDGE IN ALAMEDA COUNTY

In law school, Judge Stegeman took interest in philosophy, criminal law/procedure and federal law. He audited a philosophy of law class, which he found challenging but, at the same time, rewarding as well. He was exposed to great legal minds such like Ronald Dworkin, Thomas Nagel and Jurgen Habermas.

The opportunity presented itself to serve as a clerk for the Hon. Robert E. Payne, who served in the United States District Court for the District of Virginia. Judge Stegeman took on the position from 2001 to 2002. Judge Payne became a "generous mentor" to him. Judge Payne, whom Judge Stegeman continues to keep in touch with, took fairness and justice very seriously. He went out of his way to ensure access to the judicial process. He demanded good decorum. Judge Payne spent the time necessary to get to the right answer. The experience working for Judge Payne was so positive that it served as an early inspiration to become a judge.

VARIED WORK EXPERIENCE IN THE PRIVATE AND PUBLIC SECTORS PROVIDES PERSPECTIVE

In the 15 years Judge Stegeman worked in private practice, he handled a variety of cases. From 1999 to 2001, he worked at Fried, Frank, Harris, Shriver & Jacobson. From 2002 to 2003, he worked as an associate at Sidley, Austin Brown & Woo. From 2003 to 2005, Judge Stegeman worked as an associate at Carroll Burdick and McDonough. During his time in these firms, he defended corporations such as Mercedez Benz in product liability cases. He also worked on matters concerning privacy and data control, fraud, business transactions and employment matters. He provided advice on risk management on litigation avoidance. From 2005 to 2011, Judge Stegeman worked as an associate at Akin Gump, Strauss, Hauer & Feld, LLP. Here, Judge Stegeman handled cases on behalf of claimants. He recalls a couple of significant matters.

One of his favorite cases was representing a refugee from El Salvador who was seeking political asylum in the United States. He recalls the woman as having experienced terrible things as a result of her involvement in the gang known as La Mara Salvatrucha or MS13.

Judge Stegeman worked with the Hastings Center for Refugee Studies (now the Refugee and Women's Center) to find an expert to help in the case. It was an uphill battle from the start, but Judge Stegeman's tenancy paid off. He recalls the day after the final hearing he was in the elevator with his client. He told her that she had won her case, and she fainted right in front of him. When he learned that ICE might appeal, he wrote to then President Barack Obama to prevent an appeal from being filed. For unknown reasons, ICE never filed its appeal and his client prevailed. He felt a sense of pride from having helped his client through a difficult process.

Judge Stegeman has visited almost ever prison in California. His second favorite case was helping with prison overcrowding. The case went all the way to the California Supreme Court. The case was memorable to him. It gave him the experience to meet members from the Attorney General's office, where he eventually worked.

From 2015 to 2022, Judge Stegeman worked as a Deputy Attorney General at the California Department of Justice. After 2022, he was promoted to the role of Supervising Deputy Attorney General. He worked in the Government Law Section, handling many different types of cases. A memorable case to him was one involving AB51. Judge Stegeman defended AB51, which prohibited forced arbitration in the employment context. He also challenged the former Trump Administration's ban on allowing transgenders from serving in the military.

Judge Stegeman also worked as an Adjunct Professor at UC Law School, formerly known as Hastings College of Law.

MAINTAINING BALANCE WHILE WORKING

Judge Stegeman has many interests beyond the law. He shares his joy of watching musicals with his daughter. He enjoys watching the San Francisco 49ers games, while staying true to his first team, the Kansas City Chiefs. He enjoys watching the St. Louis Cardinals. He has climbed six of the world's highest "Seven Summits." And he looks forward to the opportunity to climb Mt. Whitney. ◆



— Susan Kang Gordon practices personal injury and elder abuse in her Orinda Office. She was the 2022 Trial Lawyer of the Year for the San Francisco Trial Lawyers Association and the 2021 Trial Lawyer of the Year for the Ventura County Trial Lawyers Association. She can be reached at susan@skg-law.com.

For Plaintiff and Defense
The Challenge of the Different Options

by Eric Ivary

Non-Economic loss cases have long been undervalued for settlement. Not only by the defense but by plaintiff counsel as well. But of late I've seen a growing number of these cases go to trial and produce dramatic results. For the plaintiff, it's a pleasant surprise. For the defense, the result is nothing short of disastrous. In my experience this is a relatively new phenomenon. But as a mediator, how can I identify these cases ahead of time? More importantly how can you? And how can the defense? I believe there is a good explanation. But to understand the evolution of this, let's start with some history.

BACKGROUND

Learning the "Ropes." As a young and inexperienced attorney, I soon learned the ropes. The ropes back then consisted of being lectured to by judges and even senior attorneys in my own firm that the standard for the evaluation of any case depended on what were commonly known as "special damages." In other words, economic loss. Back then, in the typical personal injury case, (and even in most employment cases), "special damages," no matter how small, were always considered as part of the case. A case with no "specials" meant a case with no value. And things *stayed that way for a long time.* But over the past two or three years, I noticed that something had changed. The cases themselves hadn't changed, but I noticed a trend that puzzled me. I began to see what seemed to be inexplicably large verdicts in cases with low and, in some cases, *no* economic loss claimed. Did I miss something? As it turns out, yes, I did. And it really complicates the evaluation of these cases for settlement. Especially hard if one uses a "special damages" template from the last century.

THE SEARCH FOR AN ANSWER

This article will attempt to identify some reasons for how that trend began and why it persists. As a mediator, I need to stay in touch with what is happening in trials because that is the crucible for what kind of evidence and argument drives large jury verdicts. Whether you're the plaintiff or defendant, you need to recognize what gives your case value. Important decisions with large consequences are based on your evaluation. If you're the defendant, why should you pay much money if the case has no "specials"? If you're the plaintiff, should you push for more or should you compromise? Unfortunately (from my selfish point of view), almost all the "no specials case don't get multi-million dollar settlements. Instead, they're going to trial. But a certain group of those cases are now resulting in verdicts that have been in a range of $8 million to as high as $40 million dollars. But from jury verdict reports, networking, podcasts and MCLE programs, you all are no doubt aware of those verdicts.

SO, WHAT ACTUALLY ARE "THOSE" CASES?

My analysis is as follows: these huge verdicts in non-economic loss cases fall into three categories.

1) Serious injury to or the wrongful death of a child.

2) A severe accidental physical injury occurring to an elderly person. (This can even include injuries incurred in recreational activities such as gyms, boats etc.)

3) Elder abuse cases involving neglect of a patient's health or safety during stays in long-term care facilities.

There are other variations. While fact patterns may vary, all these cases have at least three features in common that make this remarkable. Those features are:

- They are all cases of very clear (and usually aggravated) liability.
- They involve a severe traumatic injury, human loss, or violation of trust or liberty
- None of these cases have any significant economic loss.

So, what is there about these cases that cause such dramatic results?

One answer is that it's in the *way they are tried.* While the skills and abilities of lawyers vary widely, regardless of your skill level, as the plaintiff, you have one unique advantage that should not be squandered — you get to go first. You tell the story first. You get to set "the anchor" for the value early on. Lawyers getting these results do not present an insignificant economic loss just because it's there. Doing that tends to trivialize an otherwise large case. Without unnecessary distractions, the jury is free to see the case any way they want. This creates a huge opportunity. Skillful counsel can be very creative.

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conferences and podcasts that teach techniques for voir dire, opening statements and evidence presentation — all of which are designed to reinforce your theme. (The specifics of those are its own subject and will not be gone into here). But beginning as early as voir dire, the value of a case can be imprinted or suggested in the jurors' minds and emotions in a variety of ways. Some attorneys and jury consultants refer to this process as "anchoring." If done successfully, it can create an actual value for the case in the jurors' minds without them being explicitly told. They do it themselves. It therefore comes off as *authentic.* And without preconceived boundaries about the value of the case, who is going to tell them they're wrong?

Depending on the tolerance of the trial judge, the anchoring process can continue to be reinforced during opening statement and throughout the evidence. The jury begins with a blank slate. Creative lawyers have a free hand to draw a portrait for the jury by filling in all the blanks on the verdict form with the numbers that add up to a large verdict. Of course, the defense counsel, if skillful, will present a counter narrative. But if you have successfully used the advantage of going first (primacy), your narrative can survive all the defense's efforts to try to "explain it away." An explanation is not a defense. The only real defense is an outright denial, not an *excuse*.

Regardless of what trial techniques you use to establish why your client's losses have great value, the result must still resonate with the jury. And it will survive all attacks if the jury believes they've arrived at the final decision *themselves*. But there are some cases that don't need much help from lawyering trial skills to be a huge case in the eyes of a jury.

One such case is the wrongful death of a child. If you ask most parents "what's the worst loss you personally could suffer," the answer comes back "the death of my son or daughter." With no legal guidance or "proof" whatsoever, anyone could believe that such a profound loss is worth a hundred million dollars. So, who's going to be offended if you ask for $10 million? Without cluttering the case with such things as small expenses, or a dubious future wage loss claim, the creative plaintiff's counsel often will skip all that in favor of going to the heart of the case. Remember, the value of the loss to the parent is already a potential multi-million-dollar loss even before there is any evidence. The jury possesses a societal "gatekeeper" function. Each juror is asked to be the judge of what is acceptable conduct in our society. If a jury doesn't like the defendant's conduct, they will say so in their verdict. I sometimes facetiously refer to this as "punitive damages in sheep's clothing." So when your case has both reprehensible conduct and severe harm, you can have a big case even if you have no medical bills or wage loss. However, as a caution, to qualify as a huge case, the death must be truly *wrongful, not just heartbreaking.*

MORE HELP

CACI Instruction 3905 et seq. But it's not all the lawyer's skill and technique that help anchor the value of the "no economic loss" case. A recent statute has evolved to provide quite a lot of help in the form of helpful jury instructions. Specifically, CACI Instruction 3905a, in its present form, provides the jury with a list of *every possible* kind of non-economic damages they can award! Merely going through the exercise of filling out a long verdict form underscores how an extremely large verdict can literally be constructed, one brick at a time. And the bricks all come from the mouth of the judge, not some lawyer. Here's the menu of the individual damage awards.

- Past physical pain
- Future physical pain
- Past mental suffering
- Future mental suffering
- Past loss of enjoyment of life
- Future loss of enjoyment of life
- Disfigurement
- Past physical impairment
- Future physical impairment
- Inconvenience
- Grief___ Anxiety___ Humiliation___
- Past emotional distress

Fill in all the amounts and write your total verdict here_____.

To me, that looks like a lot of help.

CONCLUSION

Applied to a civil case, the concept that "the damages must reflect the harm" is a legitimate argument to make. This argument is *not* the "this could happen to you" argument that might get you in trouble with the judge (the "golden rule"). The jury is instructed that the value of the harm to the plaintiff is *the* criterion for the award of non-economic damages. Therefore, in my opinion, there are really *two* phenomena in combination that drive huge verdicts. First, as stated above, the loss must be significant and personally devastating to the plaintiff. But second, where the defendant's conduct is reprehensible, not just negligent, that alone will enhance the verdict *exponentially*. Combined, that's a kind of legal perfect storm. Even more than the skill of counsel, that combination accounts for many of these phenomenal verdicts. ◆



— Eric Ivary is a mediator with ADR Services, Inc. He has mediated over 1,000 cases in the past 15 years. Eric can be reached at 415.772.0900.

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An interview with
Judge Kevin Wong



by Catherine Haley

I met with Judge Wong on a Zoom call. I found him to be very engaging, down to earth, intelligent and thoughtful. He will be a great asset to the Alameda County bench because of his broad range of experience. His experience that he brings to the bench started as a summer law clerk in the Alameda County District Attorney's Office. He was later hired by the office and spent 22 years as a district attorney. His work included misdemeanor and felony jury trials, along with heading the Narcotics Unit.

After 10 years, he was qualified to apply for a specialized assignment, one of which was the Environmental Protection Unit. This was an interest Judge Wong had always had, since college. His work in the Environmental Protection Unit included prosecuting violations in both civil and criminal actions. This work involved not only cases in Alameda County but was expanded to statewide prosecutions that included working with the Attorney General's Office.

Following this, he spent a year-and-a-half in the San Francisco District Attorney's Office running their Environmental Unit. He spoke about his enjoyment of this experience because he was able to grow the unit, build relationships with government partners, and start new environmental cases.

In talking about his background, Kevin Wong was born in New York and lived in Queens, where he spent his childhood through college. His father immigrated from China when he was a teenager, and his mother is second-generation and lived in Queens. He has an older brother who used to practice in the legal field. He later met his wife during his first year of law school. They have two children, both teenagers, and the family lives in the East Bay.

After studying political science at Binghamton University, he and a buddy decided to come out to San Francisco for a year. That was in 1996. He ended up staying in San Francisco, and worked at different jobs for three years before he decided to apply to law school at UC Law San Francisco, formerly Hastings. It was his continuous curiosity and interest in the law that prompted his decision to apply to law school.

We spoke about his decision to apply to be appointed a judge. In response to my question, he said after 20 years of practicing law, he was looking for a new challenge that would allow him to still serve the public, but in a different capacity. With his criminal and civil background and other friends that were judges encouraging him to apply, he went ahead and submitted his application. He was appointed and sworn in at the end of October of 2024.

> "For judges, they look to each other for perspective and guidance, so there is a value to having diversity on the bench.

In talking about bringing diversity to the bench, his view is that having all backgrounds and experiences makes the bench more well-rounded. For judges, they look to each other for perspective and guidance, so there is a value to having diversity on the bench. He did remind me that the interview with me is only after four weeks of serving as a judge.

When I explained to Judge Wong that I was on the diversity committee for our organization, he expressed an interest and offered to be involved with outreach to young students looking for a career in law and those wanting to learn about applying for a judgeship.

In a follow-up question I asked: "Is there anything specific you want to accomplish while serving as a judge for Alameda County?" Judge Wong gave us the following response:

"I want to make sure that the citizens of Alameda County find a courtroom where they find fairness, empathy and justice. That is my overall goal I would like to accomplish every day throughout my career serving the public.

"I would like to continue in criminal assignments, progressing to a trial and preliminary hearing court. At some point down the road, it would be great to be assigned to a court that allows me to hear environmental cases. Using my background in both areas as a judge would be very rewarding." ◆



— Inspired by her father who practiced law for 45 years, Catherine Haley always knew she wanted to be an attorney. Her experience is diverse and includes jury and judge trials, mediation, arbitration and writing appeals, and her expertise is in family law, probate and civil litigation. She can be reached at catherine@catherinehaleylaw.com.



Luis Landeros (right) and his guest

A's

v.

Dodgers



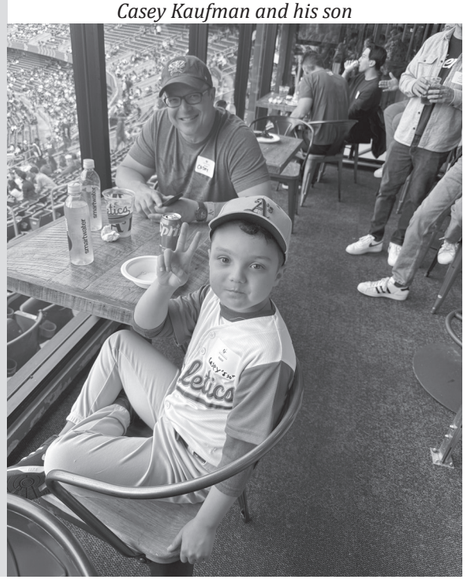
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Mariana Harris & Teresa Li



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Casey Kaufman and his son



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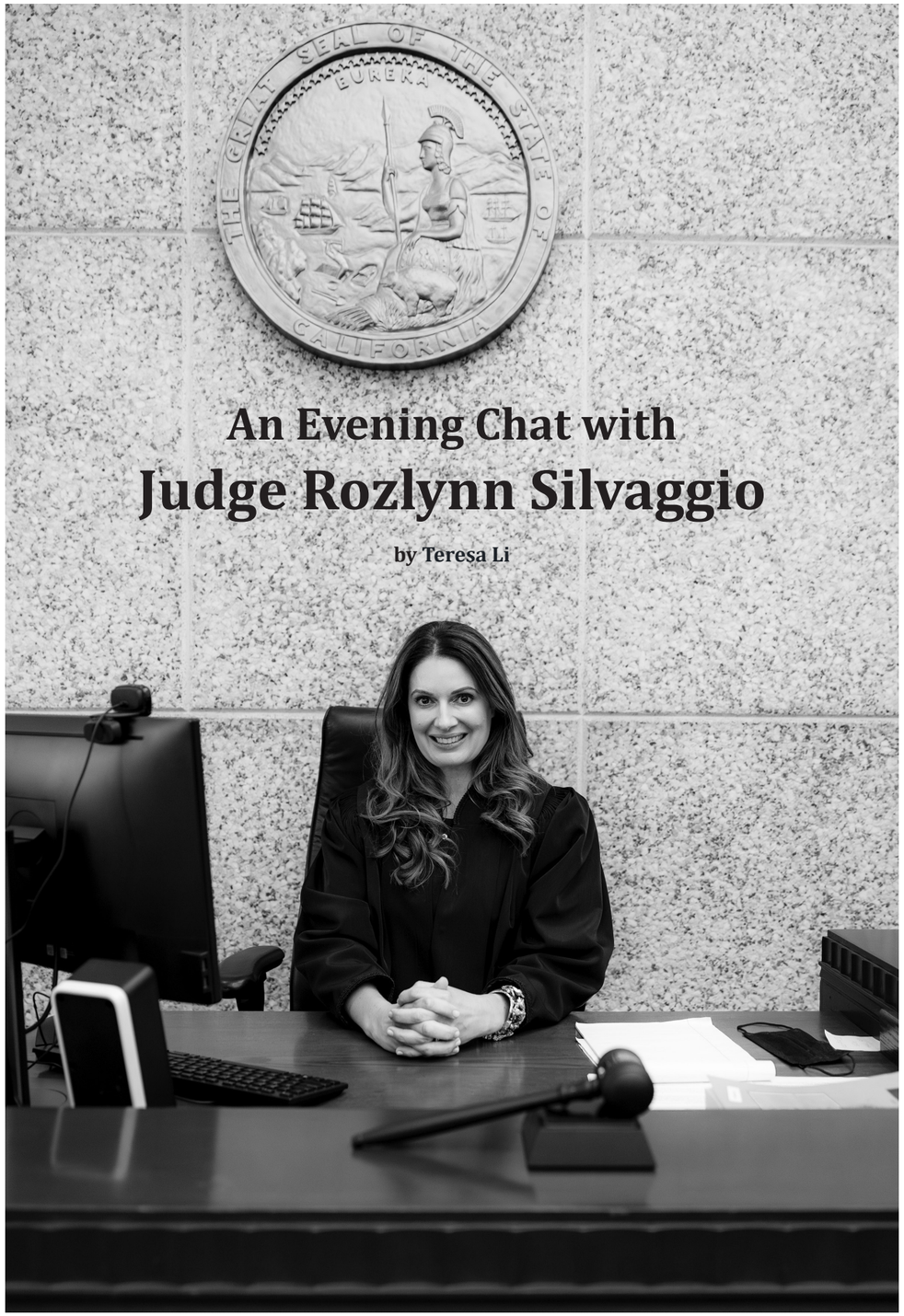


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An Evening Chat with Judge Rozlynn Silvaggio

by Teresa Li

On September 30, 2024, Governor Gavin Newsom appointed Hon. Rozlynn Silvaggio Bauman to the Alameda County Superior Court. Judge Silvaggio is currently assigned to Department 108 in the Misdemeanor Arraignments and Pretrials Department at the Wiley Manuel Courthouse in Oakland.

I had an opportunity to interview Judge Silvaggio on a Friday evening in San Francisco. We were going to meet at a coffee shop called La Boulangerie in Hayes Valley. However, unbeknownst to us, the coffee shop was already closed by the time we arrived. It was a cold and wet night, with the usual Friday rush in the city. I was standing outside the coffee shop, scanning my phone, trying to find another place to meet.

Suddenly, someone tapped on my shoulder, "Teresa, is that you?" I turned around and saw Judge Silvaggio standing behind me. I immediately saw the warm and welcoming smile on her face. Judge Silvaggio was wearing a long puffer jacket with a high collar that covered part of her face. I was immediately taken by her warm demeanor.

We settled to a quiet wine bar for a quick chat.

Judge Silvaggio was born and raised in San Luis Obispo. She went to San Francisco for law school, and earned a JD degree from the University of San Francisco School of Law. After law school, she was hired as a Deputy Public Defender at the Los Angeles County Public Defender's Office from 2004 to 2007. She then briefly served as an attorney at the Contra Costa County Alternate Defender's Office in 2007 before she became a Deputy Public Defender in Alameda County. She had two decades of experience in criminal law before being appointed to the bench.

When asked whether Judge Silvaggio had always wanted to be a judge, she chuckled. Years prior, when a former colleague suggested to her that she put in her application for judicial appointment, she scoffed at the idea. "I remember saying something like 'you know me girl, I'm a PD for life.' In retrospect, I hoped I wasn't rude about it as I ended up asking for her thoughts on my application more than a handful of years later."

> "...she realized that she could contribute more as a judge than a public defender, because as a judge, she could provide access to justice on a larger scale and to all parties.

Judge Silvaggio contracted COVID towards the end of December 2022 and had to be quarantined. This was a rare opportunity before her January 1st birthday to reflect quietly and in isolation on what would come in the following year. She is a mother of two young children. At that time, she also had the responsibility of taking care of her ailing father and husband recovering from cardiac surgery, and her mother had recently passed away.

"I realized I was probably halfway through my career and possibly through my life," Recalls Judge Silvaggio. "It was time for me to reflect honestly on what I wanted to accomplish in the second half of it all." She realized that what she loved the most about her job were two things: the people she served and the time and energy she spent appearing in court.

"A case is not just number, there are real people at issue," the Judge said to me. Reflecting on this, she realized that she could contribute more as a judge than a public defender, because as a judge, she could provide access to justice on a larger scale and to all parties.

After getting out of quarantine, she spent the next year talking to as many judges as she could — she wanted to find out two questions: "Will I be good, and will I love it?" In 2024 she had her answers and took the leap.

The rest is history.

When asked about her current assignment, Judge Silvaggio's eyes lit up and said that she loved her current assignment in the Misdemeanor Arraignments and Pretrials department. Some days, she has over 100 cases on calendar, and it is busy.

Her two decades of criminal defense experience make her intimately familiar ▶

Have you heard???

Did you know that ACCTLA is on social media? You didn't? ACCTLA has had social media accounts for a while, but perhaps you haven't noticed. We'd love to have everyone like/follow our social media accounts. Take a moment to like/follow us using the QR codes below. Here's how:

1. Open the camera app on your phone.

2. Focus the camera on the QR code by gently tapping the code.

3. Follow the instructions on the screen for each code to follow up on LinkedIn, Instagram and Facebook! What??

You say you don't have a social media account? You can reach out to the members noted below for help setting up your account!! Then you can like/follow us to hear what's going on with ACCTLA.

Our facebook person is Ann Kariuki (ann@lawofficesofamk.com) and here is the QR code to our page.

Our Instagram person is Jeena Jiampetti (jeena@benefitslaw.com) and here is the QR code to our feed.

Our LinkedIn person is Sophia Achermann (sophia@thefafirm.com) and here is the QR code for our account.

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with the criminal court legal process and high volume. Sometimes Judge Silvaggio will suggest avenues that the parties have not considered, and she sees herself as a resource to provide access to justice for all.

To Judge Silvaggio, every court appearance should be meaningful. This is not to mean that every court appearance must result in a plea deal, or a jury trial date being set, but something meaningful should happen — whether a defendant learns a key aspect of the case or the attorneys have a conversation that moves the case forward. In practice, it means if one or more of the parties anticipate they won't have the information they need to take the next step in the case for a couple months, then the next date in Judge Silvaggio's courtroom will be set after that time — not before.

"Oh, I have to leave and pick up my daughter from her ballet practice," Judge Silvaggio told me, with a big smile on her face.

Governor Newsom made the right choice to appoint Judge Silvaggio to the bench, because she possesses the quality to be a great judge — she cares. She cares about being a good judge and she cares deeply about the people behind each case that she oversees. It was my great pleasure to have the opportunity to interview Judge Silvaggio. ◆



— Teresa Li is a trial attorney with the Law Offices of Teresa Li, PC, where she focuses on catastrophic personal injury cases. She can be reached at her San Francisco, South Bay or East Bay office at teresa@lawofficesofteresali.com.

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…To Make No Peace with Oppression

By Scott J. Lantry

I love to analogize litigation to military science.

I am fond of quoting old, dead generals. Their words help me manage a case. Or to prepare for trial. War and litigation are not so very different, I think.

Admit it. You too use military jargon in your practice. Have you ever advised a client to choose wisely which "hill to die on?" Can you say you once helped a client by "falling on your sword?" Have you told the story of the courtroom lawyer that "won the battle" only to "loose the war?" I bet you have.

Here is one of my favorites. I share this with clients frequently – often before they undergo cross examination. In the Art of War, Sun Tzu tells us that, "if you know yourself, and know your enemy, you will not fear the outcome of 1,000 battles." The hardest part of that equation is knowing yourself.

A Litigator Touring European Battlefields

I have an affinity for martial witticisms. So, you might expect me to jump at the chance to tour European battlefields with my dad. Alas, not so. Selfishly speaking, my perfect vacation involves some combination of fishing tackle, an exotic metropolis, and a long motorcycle ride. Touring dusty war museums that exit through the gift shop is not high on my bucket list.

But my dad insisted. He planned our entire campaign, from the Normandy beachhead to the Battle of the Bulge. And who am I to turn down a European vacation? Besides, it wasn't all blood and guts — at my request, the itinerary included *une apartment fantastaqué sur les Champs Elysées*, (translation: a fancy-pants stay in Paris).

My mildly sour attitude toward my dad's vacation plan changed completely when we visited the American Luxembourg Military Cemetery. There, I saw martial words chiseled in stone that haunt and inspire me to this day.

"Make No Peace with Oppression"

In a quiet wood just east of Luxembourg City is an American military cemetery. Like the one depicted in Saving Private Ryan, it is a somber, green and tranquil place. General George S. Patton rests there. His simple headstone — identical in size and shape to all the others — tells us that the "General, Third Army" hailed from the greatest state in the Union: California.

Near the center of the cemetery sits a chapel. On it, high above the rows of the fallen, are these words carved in large Roman letters:

"Grant us grace fearlessly to contend against evil and to make no peace with oppression."

"To make no peace with oppression…" That phrase struck me. It stayed with me.

Show me a true litigator, and I'll show you someone who makes no peace with oppression. Criminal defense attorneys stand up to oppressive state overreach. District attorneys help victims by prosecuting their oppressors. Employment plaintiff's counsel hold tyrannical bosses to account. Family lawyers liberate spouses from abusive and controlling relationships. I could go on.

Litigators: take heart in these words. Undertake to never make peace with oppression. Fearlessly. Remember the importance of the work you do.

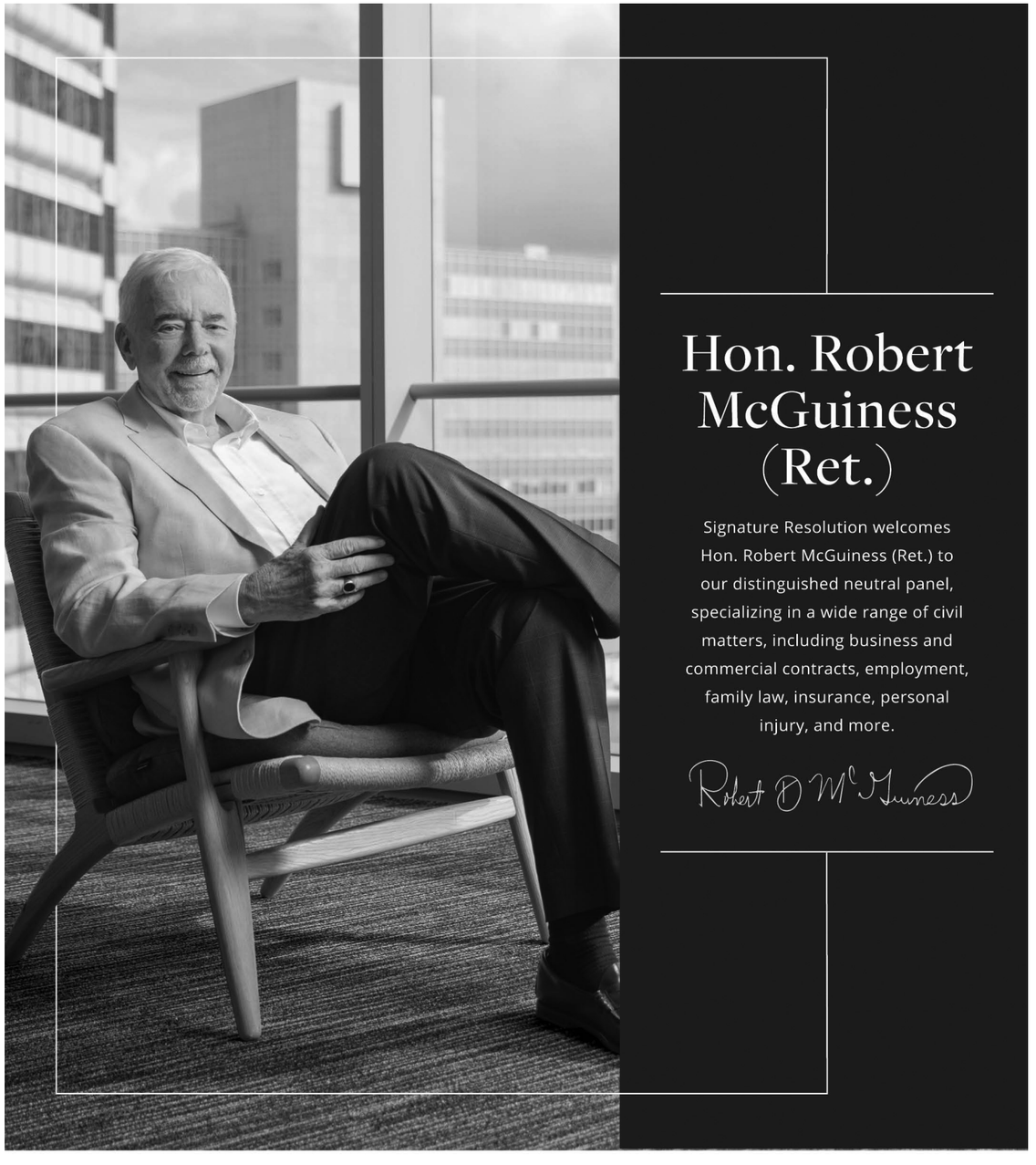
The opportunity to hold the tyrannical to account gets me out of bed in the morning. I find great meaning in the work of a litigator. I hope you do, too.

But this job is hard. It takes courage. And it often forces us to walk a difficult road.

How to Make No Peace with Oppression: The Four Tools

To make no peace with oppression means to fight our clients' battles for them. We take on their issues. We must bear the psychological scars that inevitably follow from litigation.

With that in mind, the chapel door at the Luxembourg American Cemetery has some more helpful words. These words ▶



are cast in bronze. They are accompanied by bas relief sculptures done in the Social Realism style typical of the 1930s and 40s. They illustrate the four tools we litigators need to fight these battles.

These four tools were intended for soldiers. But I submit that litigators should keep the exact same tools in their toolbox. And we should keep them sharp, through constant practice.

PROFICIENCY

To stand up to oppression and tyranny, you need to be a proficient litigator. Devote yourself to your art. Study. Rehearse. Focus. Prepare. Practice. Through consistent use and effort comes competence. Competence makes you a bad-ass.



FORTITUDE

I've got bad news. You're fighting a dragon. Sometimes the dragon wins. Sometimes you fall flat on your face. Sometimes you'll convince yourself that you're an imposter; that you have no business litigating in a court of law.



Don't give in to such nonsense. Don't quit. Yes, give yourself room to grieve your losses. Learn from your failures. Resolve to do better tomorrow. Keep at it. And next time, stab that damn dragon in the mouth.

VALOR

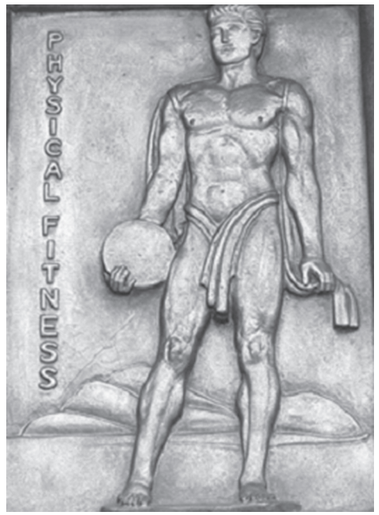
It takes courage to stand up to tyranny. To litigate against the big dogs, with the odds stacked against you. Hell, it takes guts to simply get out of bed every morning. Just don't let your opponent see you flinch. Stand up straight with your shoulders back when confronting the bully, the tyrant, the oppressor.



Courage is not Rambo; it is not Chuck Norris. Courage is the small voice that, at the end of a hard day, says "I'll come back again tomorrow."

PHYSICAL FITNESS

Yes. Your physical fitness matters. If you don't take care of yourself, how can you care for your clients? You don't need to run a marathon. You do need to take a walk. Habitually. Longer or faster than you did yesterday. So get after it.



These words and images are found at a military cemetery. They are martial in character. But if you'll indulge my analogy between military science and litigation, I hope you'll take heart — and find inspiration, as I do — in these images, in the words, and in the tools they depict. And to be resolved to make no peace with oppression.[1] ◆



—The State Bar of California certified Scott J. Lantry as a specialist in the field of Family Law. He is a partner with Whiting, Ross, Abel & Campbell. For approximately 15 years he has practiced family law exclusively in Contra Costa and Alameda counties. He has made new law in California regarding the treatment of extraordinary income from stock option compensation that may exceed the needs of minor children. (In re Marriage of MacIlwaine (2018) 26 Cal.App.5th 514.) He has been qualified to testify as an expert in the field of family law and has been selected for inclusion in the Northern California Super Lawyers® Rising Stars List continuously since 2017. Less than 2.5% of attorneys in Northern California are named Rising Stars.

[1]One tricky little thing with absolutes like this: there are always exceptions. The exception to this rule is: don't be too eager to fight oppression and unfairness, for fear that you lose the wisdom and prudence needed to settle cases. Or, to quote another great martial voice of the past (or was he a lawyer?): "Blessed are the peacemakers. . . ."

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ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

The Alcoholic Beverage Control Appeals Board: Where ABC Licensees Plead their Case

The California Alcoholic Beverage Control Appeals Board may be a lesser-known state entity to some, but it has real significance for alcoholic beverage licensees who may at some point face disciplinary action from the California Department of Alcoholic Beverage Control (ABC).

The Board is an entirely separate state entity from ABC. The three-member Board provides quasi-judicial administrative review of ABC decisions regarding issuing alcoholic beverage licenses, license conditions, protests against a license, and violations of law by a licensee. Common appeals heard by the Board involve licensees selling alcohol to minors, drug sales or illegal gambling by a licensee, and protests against the issuance of licenses involving noise ordinances or other community concerns.

If a licensee receives a final decision from ABC, they may have a right to appeal with the Alcoholic Beverage Control Appeals Board. The questions that may be considered by the Appeals Board are limited by the California Constitution and by statute.

The Board hears appeals at monthly hearings, and it decides matters based upon a review of the administrative record, legal briefs, and oral argument presented by the parties. The Board issues written decisions with orders affirming, reversing, and/or remanding ABC decisions. Judicial review of the Board's order may be obtained by filing a petition for writ of review with the California Supreme Court or the Court of Appeal.

Appellants range from billion-dollar corporations to mom-and-pop shops. The same ABC laws apply to all, and all licensees have the same right to an independent review by the Board.

The timeline to file an appeal with the Board is quick – 40 days from ABC's decision (unless the decision is effective immediately, then an appeal must be filed 10 days following ABC's decision). Licensees choosing to file an appeal may represent themselves or be represented by an attorney.

The Board provides all Californians who appeal with an efficient, timely, and approachable appeals process with fair and transparent legal review. The Alcoholic Beverage Control Appeals Board's decisions have broad impacts on business owners, public safety, and across California.

For more information on filing an appeal, guides, forms, videos, and informational materials translated into several languages, please see the ABC Appeals Board's website.

Disclaimer: Information contained in this article is not legal advice and should not be relied upon as legal advice. Before making any personal or business decisions, please consult with a private attorney.

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Legislative Update

by Nancy Peverini
Consumer Attorneys of California Legislative Director
and Saveena Takhar
CAOC Senior Legislative Counsel

It was a very mixed year on the CAOC legislative front. We saw highs with the successful prevention of a looming contingency fee initiative and the signing of a key bill addressing evidence in childhood sex abuse cases; yet we saw extreme disappointments with Governor Newsom vetoing three CAOC-sponsored bills, including two on elder abuse.

On the success front, first, we want to remind you that CAOC-sponsored legislation to increase the auto financial responsibility limits goes into effect in 2025! This difficult multi-year effort finally came to fruition when CAOC sponsored SB 1107 (Dodd-2022) to increase the minimum financial responsibility limits to $30,000/$60,000/$15,000. These new limits will come into effect on January 1. Please note that minimum limits will increase as drivers renew their policies, so not all policies will increase on January 1, but all minimum-limit policies will increase to the new limits as drivers renew in 2025.

CAOC has had consistent success in the Legislature defending against terrible bills to limit your practices, stop negative legislation, and defend consumer rights. As a result, though, our opponents are increasingly pursuing extreme measures via the initiative process. We are proud to report two such efforts were neutralized in 2024.

First, the California Chamber of Commerce sought to remove the right for worker enforcement of labor rights in the Private Attorneys General Act (PAGA) through an initiative that had qualified to be on the 2024 ballot if negotiations were not successful. However, CAOC and our allies at the California Employment Lawyers Association (CELA) and the California Labor Federation fought back and were able to reach a compromise legislative deal to preserve PAGA and avoid a costly initiative battle.

Second, on the fee cap initiative front, a huge success was stopping a contingency fee initiative by the tort reform coalition Civil Justice Association of California (CJAC) for the 2026 ballot. CJAC first filed a 20% contingency fee cap in 2021. CAOC, with your efforts, successfully kept that initiative off the ballot. However, their pause was temporary, as they continued to fundraise and raised approximately $4 million. Their large donors were auto manufacturers motivated by their concerns with California's lemon law, which protects auto buyer rights with strong remedies against manufacturers. Auto manufacturers, like employers with PAGA, were unable to obtain any limiting legislation on lemon law (the Song-Beverly Consumer Warranty Act) and instead focused their funding to support CJAC and the fee initiative.

In a successful strategic move, CAOC engaged with one of the two top funders of the CJAC initiative fund, General Motors, and opened discussions regarding lemon law. After months of intense negotiations, CAOC and GM came to an agreement that was ultimately supported by the California Judges Association, Ford Motor Company, Stellantis, and the California Defense Counsel. This agreement was introduced as AB 1755 (Kalra/Umberg) and was passed and signed by the governor this year to enact procedural lemon law reform while protecting and expanding consumer rights. As many as 13 other auto manufacturers, led by Toyota, opposed this bill as these manufacturers (1) wanted to strip substantive rights, not focus on amending procedure, and (2) opposed some consumer protections CAOC spearheaded in the bill. A key component of this package was that passage of AB 1755 included an express agreement for a mutual moratorium between CAOC and CJAC on filing an affirmative state or local ballot initiative against the interests of each organization's ▶

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Voluntary Statistical Information:

Membership Status:
___ I am a new member.
___ I am renewing my membership.
___ I am rejoining after a lapse

I am also a member of: (Check all that apply)
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____ CAOC ____ ACBA
____ Other _____

Race: (Check all that apply):
___ African American ___ Caucasian
___ Asian/Pacific Islander
___ Native American ___ Latino/Latina
___ Mixed Race ___ Other

Gender:
___Female ___Male ___Other

By signing below, I hereby certify that I am:

___ A regular member (voting member whose practice predominantly involves representing plaintiffs in tort matters, criminal defense, family law or general civil litigation)

___ I am an associate member (non-voting member whose practice primarily involves insurance defense or criminal prosecution.)

Signed: _____ Date: _____

respective members through the 2026 election cycle.

As mentioned, we had mixed success on our sponsored bills. Below is the 2024 package and status:

SB 1386 (Caballero) was signed by Governor Newsom and states that evidence of a victim's unrelated sexual assault or sexual history may not be brought in to impeach their testimony as to consent by the plaintiff or absence of injury to the plaintiff. This bill protects survivors from being further victimized when seeking justice.

SB 949 (Blakespear), supported by CAOC's Women's Caucus, was signed and requires state superior courts to allow for breaks in a court proceeding for a person to use a lactation room, starting July 1, 2026.

AB 2773 (Kalra), vetoed by Governor Newsom, would have protected seniors abused in nursing homes by lowering the standard of proof when a facility destroyed evidence.

SB 278 (Dodd), vetoed by Governor Newsom, would have required financial institutions to take specified actions intended to deter financial abuse of elder or dependent adults and clarified the legal responsibility of financial institutions related to financial elder abuse.

AB 3061 (Haney), co-sponsored with the Teamsters and the Consumer Federation of California, would have required manufacturers of autonomous vehicles that are being tested or deployed in California to report data to the Department of Motor Vehicles. Although the bill was vetoed, the DMV has now fast-tracked its regulatory rulemaking process on AV data collection.

AB 1755 (Kalra/Umberg), signed by the governor, reforms litigation procedures in lemon law cases and includes an agreement for a mutual moratorium between CAOC and CJAC on filing an affirmative state or local ballot initiative against the interests of each organization's respective members through the 2026 election cycle.

AB 2288 (Kalra) and SB 92 (Umberg) codify negotiated reforms to the California Labor Code's Private Attorneys General Act of 2004 (PAGA) and removed the 2024 ballot initiative. ◆

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Hu v. Lopez
Case No. 23CV029881
Alameda Superior Court

On May 17, 2021, a 54-year-old female plaintiff was rear-ended by a street sweeper, operated by defendant Vargas and owned by defendant Lopez on SR-87 Northbound to US 101-N/B in San Jose. A few minutes before the accident, there was another hit-and-run collision that occurred in the left lane, which caused a vehicle to spin out of control, moving towards the plaintiff's vehicle that was in the very right lane. The plaintiff applied the brakes and stopped for a couple of seconds before she was rear-ended by the defendant's street sweeper. The plaintiff sustained mild traumatic brain injury with cognitive impairments, and injuries to her neck and lower back.

Defendants disputed causation and damages of the case, arguing that the plaintiff did not use an ambulance or go to the ER right away. The defendants also contended that the plaintiff's 20-lb poodle in the car was not injured and therefore the impact was not that severe. The first time plaintiff went to see a doctor was two days after the incident and the treating doctor did not note any symptoms of TBI or diagnosed her with TBI. The defendants also contended that the subsequent TBI-related treatment was done by a lien doctor and therefore cannot be trusted. The defendants argued that the TBI diagnosis by the plaintiff's treating doctor only occurred almost two years after the collision, so it was not related to the subject collision. In addition, the defendants argued that after the subject incident, plaintiff got a pay raise as a financial advisor and, therefore, plaintiff did not suffer any TBI.

The plaintiff contended that her TBI was verified by the brain MRI using neuroquant technology. In addition, her own treating neurologist diagnosed her with a concussion and TBI and recently has put her on disability based on the TBI diagnosis. Her own disability insurance has approved the disability. The plaintiff was a very intelligent person, as she owns 13 U.S. patents and she only took a financial advisor job after she was laid off by her prior employer in order to take care of her three children. Now her three children are grown, but for the subject collision, she was going to go back to working as a chief scientist at a technology company.

Regarding the other part of the wage loss claim, plaintiff contended that she generated a large sale after the collision, based on the relationship she cultivated before the subject collision and used that sale as a jumping board to get a position at a different bank with a guarantee fixed pay of $17,500 a month, which expired in August of this year. Her performance at the new bank was poor because the various symptoms of the TBI had caused her to be unable to meet her targets or remember the company policies and trainings.

Her past medical cost is $73,394.47. Her past wage loss is $22,343.59. Her future wage loss is either $1.2 million (if she stays as a financial advisor) or $5 million (if she goes back as a chief scientist). Her future medical is $1 million and her pain and suffering is at least $1 million.

The case settled at mediation with Hon. Bonnie Sabraw (Ret) of ADR on October 23, 2024 for the policy limit (the policy has paid out $12,071.05 in property damage).

Plaintiff's Attorney: *Teresa Li*

Heinrich Law is pleased to announce a $6 million settlement reached in *Degala v John Stewart Co., Cahill Contractors*, 88 Cal. App.5th 158. What is notable about this settlement is the circuitous route taken to get Abraham Degala to the finish line.

Some of you may recall that SFSC Judge Shulman granted MSJs filed by JSC and Cahill pursuant to the Privette Doctrine in this case.

Following Judge Shulman's ruling, I reached out to ACCTLA's appellate specialist Chuck Dell'Ario for consultation. Chuck reviewed the file and opined Shulman's ruling was wrong and that the Hooker exception to the Privette doctrine did in fact apply to the facts in this case. Chuck agreed to take the lead on the filing of an appeal.

In January of 2023, the First Appellate District, following the filing of briefs and oral arguments, agreed with us and reversed Judge Shulman's decision. This is now a published decision that the plaintiffs are citing to prove an exception to the Privette Doctrine.

SFSC then reset the case for trial on November 4, and 48 hours before the trial was scheduled to begin, the matter settled for $6 million via a mediator's proposal made by Rebecca Grey.

I want to give a huge shout out and thank you to Chuck Dell'Ario, and to our friends Andje Medina and Jeremy Cloyd with Altair Law, who agreed to jump in at the 11th hour to help try the case, if necessary, to verdict. ◆

Got News?

If you have any member news that you'd like to share, please email it to:

Mariana Harris
ACCTrialLawyers@gmail.com

Alameda-Contra Costa
TRIAL LAWYERS' ASSOCIATION

— Calendar of Events —

Thursday, January 16
- Judges' Night Gala -
Bloc15 | 5:30pm
(See page 11 for more information)

Wednesday, January 29
- Tort & Trial Seminar -
Zoom | 2:45 - 6:00pm
(See page 17 for more information)

Wednesday, April 9
- Spring Social -
Trader Vic's | 5:30 - 7:30pm

Sunday, July 20
- Annual BBQ -
Oak Park Picnic Space | 11:00am - 1:00pm

Tuesday, September 9
- Fall Social -
Lafayette Park Hotel | 5:30 - 7:30pm

Jeffrey B. Wolfert, Esq.



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— BENEFITS OF MEMBERSHIP —

See page 23 for the tear-out Dues Notice

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Membership entitles you access to ACCTLA's web listing
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❖ ❖ ❖

For further information on any of the above, please contact:
Mariana Harris, ACCTLA Executive Director
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