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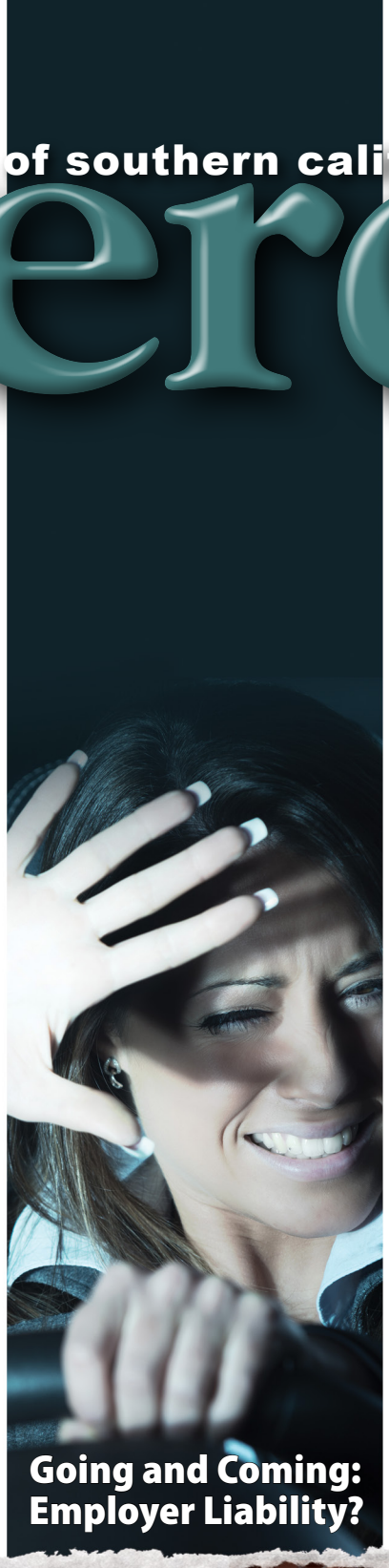

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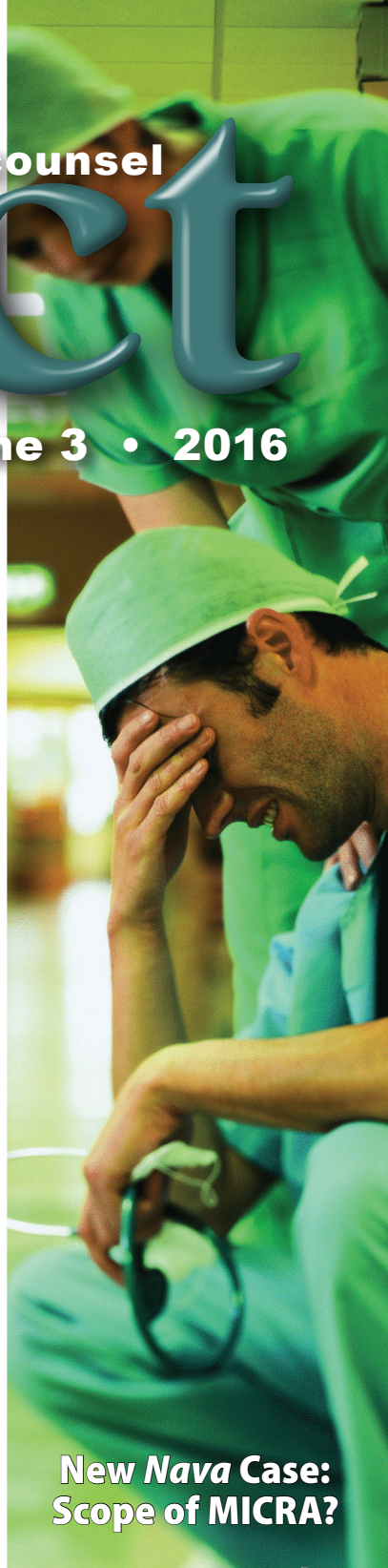

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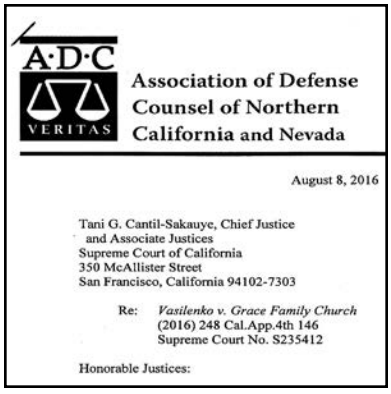

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August 8, 2016

Tani G. Cantil-Sakauye, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-7303

Re: *Vasilenko v. Grace Family Church*
(2016) 248 Cal.App.4th 146
Supreme Court No. S235412

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ASCDC Continues to Grow

Glenn T. Barger
ASCDC 2016 President

As 2016 comes to a close, through the efforts of the Board and our members, I can report that membership is again up for the year, we have been active participants in bench and bar meetings, we have completed many educational and social events including the Litigation Summit with a focus of civility and ethics, our amicus committee remains an influential force, we have launched the Marketplace section on our website, and our listserv continues to provide substantive information, all while being an outstanding resource for all of our members.

2017 will begin quickly with our 56th Annual Seminar, to be held once again at the J.W. Marriott at LA Live in downtown Los Angeles on February 23rd - 24th. This is an outstanding venue for the seminar and provides a close proximity to some of LA's best restaurants, Staples Center, and other fun venues where you can socialize with the fellow attendees as well as entertain clients.

To ensure this remains one of the best seminars to attend year in and year out, we have an outstanding line-up of speakers including many sitting judges and leading defense and plaintiff attorneys. These speakers will cover a wide range of topics, each of which is important to our daily practices, including panels on strategies and legal issues related to *Howell, Sargon,* and the Reptile approach, along with our annual case law update. We have also assembled a panel of well-known and successful trial attorneys to discuss Civility Matters.

We are extremely pleased to welcome Bill Walton as our special guest speaker. After his storied career at UCLA, Walton was named one of the 50 Greatest NBA Players of all time. Upon retiring his high tops, he became a successful author, broadcaster and humanitarian. I was fortunate to hear Walton speak alongside Coach Wooden at another event years ago, and one of the stories they told was the year Walton let his hair grow down to his shoulders. He told Coach Wooden that he didn't have the right to tell him how to wear his hair. Wooden responded by saying, "You're right, I don't. I just have the right to set rules for my team. I want you to know I fully understand your feelings and we're going to miss you, Bill." With grace and humility, Walton immediately jumped on his bike and got his hair cut.

Walton has been quoted as saying, "I don't sleep much. I'm on the go. My mind is racing. My wife says my mind is like the rolling dials on a slot machine. So, yeah, I think about everything." Knowing what an active thinker he is, we're certain Walton will entertain, motivate, and provide thought provoking comments meaningful to each of us on a broad range of topics.

Importantly, a big part of ASCDC's continued success – and one of the reasons we continue to provide countless educational and social events for our members, including the upcoming Annual Seminar – are the many vendors and sponsors that support us throughout the year. In our competitive business, we strive to do the best we can for our clients to obtain successful results day in and day out. To do that, we partner with our vendors and sponsors, including court reporters, mediators, experts, trial technology providers, copy services and other individuals and companies, who are among the best in their respective fields. We should strive to support them the way they support ASCDC. Whenever you need a vendor's services, be sure to check out the advertisers listed at the beginning of every *Verdict* magazine, and also the supplemental list in this issue identifying every vendor and sponsor who supported one or more of our events this year, from the 2016 Annual Seminar up to the 2017 Annual Seminar. I recommend that you save this edition of *Verdict,* and when you need someone to assist you, go to these companies first because they are all leaders in their specific fields of expertise and because they support us, the defense bar, through their support of ASCDC.

Happy New Year to each of you, your firms and your families. I look forward to seeing you at the 2017 Annual Seminar, and thank you for your continued support of ASCDC.

While Nation Moved Right, California Moved Left

Michael D. Belote
Legislative Advocate
California Defense Counsel

People will be talking about the November 2016 general elections for a very, very long time. The simple explanation is that California zigged while the national government zagged. Come to think of it, "Zig-Zag" also had a certain relevance on the November 8 ballot!

At the macro level, Republicans captured both houses of Congress, while the exact opposite occurred in California. Going into November 8, Democrats held 52 of the 80 seats in the California Assembly, two short of the ⅔ supermajority. In the state Senate, Democrats numbered 26 of the 40 seats, missing a supermajority by only one seat.

Expectations were that capturing a supermajority in the Assembly was more likely than the Senate, as there were more contested races in the lower house. We now know, however, that supermajority status was achieved in both houses: in the Assembly the ratio of Democrats to Republicans is 55-25, while in the Senate Democrats outnumber Republicans by 27-13. At the same time, every statewide constitutional office and both U.S. Senate seats are held by Democrats.

In theory, achieving a ⅔ supermajority permits the majority party to raise taxes, place items on the ballot, and override gubernatorial vetoes without any votes by Republicans. In practice, however, Democrats are unlikely to line up solidly behind such dramatic actions. More likely, the huge numerical imbalance will simply make it harder to defeat Democratic bills opposed by business, or to pass bills with any significant Democratic opposition. For this reason, we should expect to see most business groups gear up to "play defense" in 2017, instead of leading with controversial affirmative proposals.

The real fight on many bills will come down to differences among Democratic legislators, since obviously not all Democrats think alike. In Sacramento the two blocks are commonly described as the "progressives" and the "moderates," and those differences often are decisive on bills. The truth is that the ratio of progressives and moderates coming out of the November elections (those labels of course are generalizations, as members can be progressive on some issues and moderate on others) really did not change significantly. There are still perhaps 16-20 moderate-leaning Democrats in the Assembly.

But, the California legislative leadership is already positioning our state to be the "anti-Trump" on issues such as immigration, climate change, and perhaps more. The Senate President pro Tem and the Assembly Speaker issued a rate joint press release the morning after the election, indicating that they woke up "strangers in a foreign land," and promising to uphold "California values." It has suggested that California will now become to President-Elect Trump what Texas has been to President Obama.

We should expect to see traditional Democratic constituencies, such as our friends on the plaintiffs' side, go on the offensive in 2017. It is unclear how this might affect issues relevant to ASCDC, but one obvious area of contention relates to arbitration. In fact, the first day of the new legislative session was Monday December 5, when the houses were officially sworn into office, and this issue was already raised in a new 2017 bill. SB 33 (Dodd) proposes to ban "forced" arbitration in contracts for goods or services, where there is an allegation of fraud, identity theft or the misuse of personally identifying information. Interestingly, Senator Dodd is normally considered a moderate Democrat, and the bill may have been prompted to some degree by the Wells Fargo Bank scandal.

Given the new political configuration, various proposals relating to employment law, including some which have been defeated in the past, also should be expected.

The November elections also were significant for the passage of Proposition 55, extending the surcharge in high-income tax filers until 2030. While this is not good news for those paying the higher marginal rates, continuation of the surcharge prevents the opening of an $8 billion hole in the state general fund, and should help tamp down the temptation to seek new revenue sources, including possible extension of the sales tax to services.

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Interrogatory Answers Can Wait

Patrick A. Long

Let's go back in time, I mean way back, within a decade or so after the Association of Southern California Defense Counsel was founded. I'm always looking for our members who have a lower bar number than I do, and this will give me a chance to reference a couple of them. I was very much a baby lawyer when the following events occurred, and I am grateful to this day for the senior members of this association at the firms where I worked who helped me learn how to practice law. But please understand, what follows has nothing to do with practicing law, but only something to do with what some members of this association did in those long-ago days.

In those days my income was, how to say this, significantly less than today, and I always appreciated activities that were not expensive. My senior colleagues once approached me and suggested that we drive down to Tijuana on a Sunday and attend the bullfights. Bullfights! I'd never seen one, but was curious. I'd read Hemingway's *Death In the Afternoon,* and was intrigued. We had a group, two partners, and three associates, all of whom were senior to me, who were in on the trip.

So the following Sunday we drove down to TJ, arriving about 1:00 pm. I thought this somewhat early since I knew that the bullfights didn't begin until 4:00. But I was informed that we were going to spend some pre-fight time at a joint my colleagues thought my family may have some connection with. I advised them that my family is of Irish descent, not Mexican, and that I had no relatives in Mexico. They said that we were going to the Long Bar, a very famous place on *Ave. Revolucion*. It may well have been famous but my family sure had no connection with it.

Well, when we got there I understood why it was named the Long Bar. The bar stretched for darn near a city block. It was enormous. I had eight dollars in my pocket (remember, this was a very long time ago.) I quickly learned that in the Long Bar eight dollars was plenty. Beer was 75¢ for a half gallon pitcher of Carta Blanca. Tequila was 25¢ a shot. The Long Bar was strictly a drinking place, no floor show, no working girls, just a great mariachi band that played pretty much nonstop.

Two hours and $3.00 later we hoisted our last drink and headed by taxis to the bullring, which in those long-ago days was downtown. We arrived at the bullring in a definitely relaxed mood. Our tickets were on the "sunny" side, and mine cost $4.00, so I had a dollar to spare. Several in our crew offered to buy me beers from the sellers roaming the stands.

For those of you who have not seen a bullfight, they are quite remarkable, with much pageantry and music along with the fight between a man with a sword and a huge angry bull. Now the bull is angry because some guys called *banderillos* stuck barbed sticks into its neck, and some other guys on horseback jabbed him with long spears. Heck, you'd be angry too. Suffice it to say that all the toreadors stuck their swords through the bull's neck and down into the heart, causing the bulls to fall over and die. Loud music celebrated this event while the bulls were dragged out of the ring by horses. When the fights were finished we loaded back into the car and drove back to Los Angeles.

Nothing in my law school education had quite prepared me for a day such as this. I'd had too much to drink, spent too much time in the sun, and witnessed skinny little guys dressed in skin-tight costumes put their lives at risk. However, upon awakening the next morning I began to consider that the previous day might have had some value. I was a baby lawyer. Every second of my time at the office was taken up by never-ending discussions of the cases we were working on, legal problems to be solved, clients to please. I really didn't think my colleagues at the firm could have had much of a life outside of the office. That day at the bullfights, strange as it was to me, demonstrated that while we worked crazy hours and talked nothing but the law at the office, it was possible to forget legal matters for a few hours, and to maintain an interest in things other than drafting answers to plaintiffs' interrogatories. Even today I'm grateful to my former partners and associates, who were members of this association, for helping me grow from an obsessed baby lawyer to a more well-rounded person with interests outside interrogatory answers.

Wanting sometimes to root for the bull,

Patrick A. Long
palong@ldlawyers.com

Employer Liability Under the Going and Coming Rule – No Bright Line

by Gabriele M. Lashly

Under the "going and coming" rule, an employee going to and from work is ordinarily considered outside the scope of employment so that the employer is not liable for the employee's torts. The "going and coming" rule is based on the grounds that the employment relationship is suspended from the time the employee leaves until the employee returns and that in commuting to work the employee is not rendering service to the employer. Nevertheless, there are exceptions to the rule, particular the "required vehicle" and "incidental benefit" to employer exceptions. Accidents involving employees traveling to and from work, or engaged in other types of travel, arise in many varying circumstances. The application of the "going and coming" rule depends upon the facts of the particular case making the outcome difficult to predict.

Required Vehicle/ Incidental Benefit Exception

The "required-vehicle exception" covers situations where there is an express or implied employer requirement that the employee have his private vehicle at work. If an employer requires an employee to furnish a vehicle as an express or implied condition of employment, the employee will be in the scope of his employment while commuting to and from the place of his employment.

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Likewise, the drive to and from work may be within the scope of employment if the use of the employee's vehicle provides some direct or incidental benefit to the employer. There may be a benefit to the employer if (1) the employee has agreed to make the vehicle available as an accommodation to the employer, and (2) the employer has reasonably come to rely on the vehicle's use and expects the employee to make it available regularly. (CACI No. 3725.) Not all benefits to the employer are of the type that satisfies the incidental benefits exception. The requisite benefit must be one that is not common to commute trips by ordinary members of the work force.

Several recent decisions have addressed these issues. In *Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, the plaintiff sued Almir Da Fonseca and its employer, Culinary Institute of America, for injuries sustained when he was struck by a car driven by Da Fonseca, a chef instructor employed by the Culinary Institute. Even though Da Fonseca had finished his shift at the Culinary Institute and was driving home in his own car at the time of the accident, the jury had found that that the employer vicariously liable. *Jorge* reversed the judgment in favor of plaintiff, finding Da Fonseca only used his personal vehicle to get to and from his off-campus commitments and that he could have used alternative means to get there. This was insufficient to take Da Fonseca's negligent conduct outside the scope of the going and coming rule, because the required vehicle exception applies only where the employer requires the employee to use his or her vehicle to perform his or her work duties during the work day. The Court of Appeal found it dispositive that the Institute did not require the use of a vehicle as an integral part of performing the job duties at disparate locations throughout the workday. Rather, Da Fonseca chose to drive his vehicle as a matter of convenience.

Ride Sharing/Car Pooling

The going and coming rule was applied to employees who made their own carpooling or ridesharing arrangements. (*See Anderson v. Pacific Gas & Electric Co*. (1993) 14 Cal. App.4th 254, 262 [employee-driver was not engaged in a special errand for employer because he was carpooling—i.e., taking another employee to a park-and-ride lot on his way]; *Caldwell v. A.R.B., Inc*. (1986) 176 Cal.App.3d 1028, 1042 [no employer liability where carpooling was organized informally by individual workers]. Another recent decision, *Pierson v. Helmerich & Payne International Drilling Co. (*Cal. Ct. App., Oct. 6, 2016, No. F070379) 2016 WL 5845771, affirmed summary judgment in favor of the employer. While cautioning that each case must be analyzed on its own facts, it held the "going and coming" rule precluded the employer's liability where the employee offered to give his supervisor a ride home to his hotel. The employer did not required or request the driver to provide transportation to his supervisor between the hotel and the jobsite and thus the employee's act of driving supervisor from work site to hotel was not within "special errand" exception from "going and coming" rule . The supervisor's requests for such rides were personal in nature and not reasonably imputed to the employer. Consequently, the employer was not liable for the traffic accident under respondeat superior doctrine.

Deviation from Normal Commute

Halliburton Energy Services, Inc. v. Department of Transportation (2013) 220 Cal. App. 4th 87 addressed the use of company vehicle and "substantial" deviation from normal commute. It affirmed summary judgment in favor of an employer whose employee caused a serious highway accident while driving to work in a company truck. The Court of Appeal found the employee had been acting outside the scope of his employment at the time of an accident. even though the employee was driving to work in a company-owned vehicle, because had made a substantial deviation of 140 miles to drive the Bakersfield to purchase a car.

In contrast, in *Moradi v. Marsh USA, Inc*., (2013) 219 Cal. App. 4th 886, an employee collided with a motorcyclist while driving her personal vehicle after work. The Court of Appeal held that the doctrine of respondeat superior applied. Under the "required vehicle" exception to the going and coming rule, the employee was acting within the scope of her employment when she was commuting to and from work because the employer required her to use her personal vehicle to travel to and from the office and make other work-related trips during the day.

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Her planned stops for frozen yogurt and a yoga class on the way home did not change the incidental benefit to the employer of having the employee use her personal vehicle. On the day of the accident, the employee had used her vehicle to transport herself and other employees to an employer-sponsored program, and the employee had planned to use her vehicle the next day to drive to a prospective client's place of business. The planned stops did not constitute an unforeseeable, substantial departure from the employee's commute. Rather, they were a foreseeable, minor deviation, making the employer responsible for the employee's negligence.

Intoxicated Employee Driving After Employer-Sponsored Party

Purton v. Marriott International, Inc. (2013) 218 Cal. App. 4th is a cautionary tale for all employers who sponsor company parties. While California law immunizes social hosts who provide alcoholic beverages from civil liability for merely furnishing alcohol, except for furnishing alcohol to a minor. (Bus. & Prof. Code § 25602; Civil Code § 1714), it does not immunize the employer for vicarious liability under a respondeat superior theory for accidents caused by an employee who becomes intoxicated at an employer sponsored office party.

In *Purton*, an employee consumed alcoholic beverages at the annual holiday party sponsored by his employer Marriott. The employee became intoxicated. He arrived home safely, but then left again to drive a coworker home. During that drive, he struck another car, killing the driver. *Purton* held that alcohol consumption at an employer sponsored party falls within scope of employment by improving employee morale and furthering employer-employee relations. Thus, a trier of fact could conclude that the alcohol consumption occurred within the scope of employment. *Purton* determined that it is irrelevant that foreseeable effects of the employee's negligent conduct occurred after the employee had returned home and was no longer acting within the scope of employment. Vicarious liability does not end when the employee returns home from the party, because a jury could find that it was reasonably foreseeable that the intoxicated employee return home, get in his or her car again, and cause an accident. It explained that vicarious liability is not based on when the injury occurred, but on the act that caused the injury, i.e. the employer sponsored party.

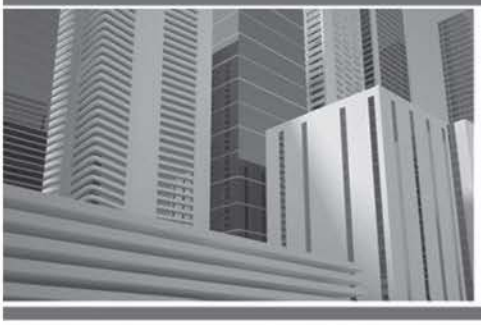
Conclusion

Jorge v. Culinary Institute of America and *Pierson Helmerich & Payne* clarify when the use of a vehicle is for the convenience of the employee for his or her commute and not required by the employer, the issue of liability can be resolved on summary judgment or even by post judgment motion – except for employer sponsored parties.

The confusion under the required vehicle exception begins when an employee deviates from his or her commute – whether the personal errand was a minor deviation or substantial departure from the employer's business. This answer to this question depends on the foreseeability of the particular errand and is often a question of fact, thus preventing summary judgment.

Gabriele M. Lashly is a certified appellate specialist with Slaughter, Reagan & Cole, LLP in Ventura.

Gabriele M. Lashly



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High Risk Parties and the Social Host after Proposition 64

Allison Meredith Horvitz & Levy

On November 8, 2016, Californians voted to legalize non-medical, or recreational, marijuana use, with about 56% of the vote favoring legalization. Under the Control, Regulate, and Tax Adult Use of Marijuana Act, No. 15-0103 (the "Adult Use of Marijuana Act" or the "Act"), presented on the ballot as Proposition 64, it is now legal for adults over the age of 21 to smoke or ingest marijuana products and to possess up to 28.5 grams of marijuana, excluding concentrated cannabis. (Of course, marijuana remains illegal under federal law, and it remains to be seen whether the incoming administration will be as tolerant of recreational marijuana as the Obama administration has been.)

Unfortunately, there is a significant gap in the law that could lead to increased tort liability for those who furnish marijuana to others – in a private or a public setting. Individuals and commercial establishments should strongly consider refraining from providing marijuana to guests or customers until the courts settle whether or not social hosts and commercial establishments have a duty of care to protect third parties against torts caused by individuals to whom they furnished marijuana.

Under the Adult Use of Marijuana Act, adults will be able to smoke or ingest marijuana similarly to the ways that adults now consume alcohol. The Act permits adults to smoke or ingest marijuana in non-public places (Health & Safety Code § 11362.1, subd. (a)(4); *id.,* § 11362.3, subd. (a)(1)), as well as in licensed commercial establishments founded for just that purpose (sometimes referred to as "cannabis cafes"; many will likely be similar to Amsterdam's "coffee shops") (Bus & Prof. Code, § 26070, subds. (a)(1), (b), (c).) From a consumer standpoint, the Act imposes relatively few requirements on the licensing and operation of these cannabis cafes; however, Cannabis cafes cannot also serve alcohol or tobacco products (Bus. & Prof. Code, § 26054, subd. (a)), and may not be located within certain distances of schools or similar institutions (*id.,* § 26054, subd. (b)). The Act does not impose any requirements for what hours cannabis cafes may stay open or how much marijuana may be served to an individual customer, though localities will likely be able to impose such requirements as they see fit. (Bus. & Prof, Code, § 26200.)

Because permissible use of marijuana under the Act mimics how adults now consume alcohol – either in their homes or in licensed public establishments – many Californians will likely assume that the rest of the laws surrounding the consumption of alcoholic beverages also will apply to smoking and ingesting marijuana products. But in one key respect, they are wrong. Under the Adult Use of Marijuana Act, it is very likely that social hosts and cannabis cafes who provide marijuana to their guests and customers will be liable to third parties for torts committed by their guests and customers as a result of their intoxication.

California has a regime of strict immunities from liability to third parties for social hosts or commercial establishments that provide alcoholic beverages to guests or customers, set forth in the Civil Code and the Business and Professions Code.

Prior to the 1970s, social hosts and commercial establishments had no duty to protect third parties from injuries caused by the intoxication of a guest or customer to whom the social host or commercial establishment served alcohol. Commercial establishments could, however, be guilty of a misdemeanor for providing alcoholic beverages to "a habitual or common drunkard or to any obviously intoxicated person." (Bus. & Prof. Code, § 25602.) But in 1971, the California Supreme Court changed the law when it decided *Vesely v. Singer* (1971) 5 Cal.3d 153 (*Vesley*), which held that "civil liability results when a vendor furnishes alcoholic beverages to a customer in violation of Business and Professions Code section 25602." (*Vesley, supra,* 5 Cal.3d, p. 157.) Vesley reasoned that Business and Professions Code section 25602 created a class of persons which a commercial establishment had a duty to protect – third parties who might be injured by an obviously intoxicated person – and

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that civil liability could therefore attach when a commercial establishment violated that statute and a third party was injured as a result. (*Vesley, supra,* 5 Cal.3d, pp. 165-166.) *Vesley's* holding regarding commercial establishment liability was affirmed in *Berhnard v. Harrah's Club* (1976) 16 Cal.3d 313, and then extended to private social hosts in *Coulter v. Superior Court* (1978) 21 Cal.3d 144 (*Coulter*): "We conclude that a social host who furnishes alcoholic beverages to an obviously intoxicated person, under circumstances which create a reasonably foreseeable risk of harm to others, may be held legally accountable to those third persons who are injured when that harm occurs." (*Coulter, supra,* 21 Cal.3d, p. 145.)

Coulter was a bridge too far for the Legislature. In 1978, the Legislature amended Civil Code section 1714 to expressly reject social host liability:

> It is the intent of the Legislature to abrogate the holdings in cases such as *Vesely v. Sager* (1971) 5 Cal.3d 153, *Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, and *Coulter v. Superior Court* (1978) 21 Cal.3d 144 and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(Civ. Code, § 1714, subd. (b).) The same legislation also amended Business and Professions Code section 25602 to reject *Vesley* and its progeny and return to the prior state of the law:

> The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as *Vesely v. Sager* (5 Cal.3d 153), *Bernhard v. Harrah's Club* (16 Cal.3d 313) and Coulter v. Superior Court (_____ Cal.3d _____)1 be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

(Bus. & Prof. Code, § 25602, subd. (c).)

With narrow exceptions for the provision of alcoholic beverages to minors, social host/commercial establishment liability for acts caused by the provision of alcoholic beverages remains the law of the state. Civil Code section 1714 was amended in 2010 to include a narrow exception to permit social host liability where adults knowingly furnish alcoholic beverages to minors at the adults' residences. (Civ. Code, § 1714, subd. (d).) This amendment was enacted in response to public outcry after a 17-year-old girl died after consuming alcohol that was provided by her friend's parents for a sleepover, and the parents were held to be not civilly liable for the girl's death because there was no exception for the provision of alcoholic beverages to minors at the time. (*Allen v. Liberman* (2014) 227 Cal.App.4th 46.) Similarly, the Business and Professions Code permits a cause of action to be brought against a commercial establishment that sold or furnished alcoholic beverages to an "obviously intoxicated minor." (Bus. & Prof. Code, § 25602.1.) Both of these exceptions are narrow and still require an injured third party to show that the social host or commercial establishment was negligent in providing the alcoholic beverages to the minor.

Because of these broad immunities, social hosts in California do not have to babysit their guests, and commercial establishments do not have to strictly monitor their customers' alcohol intake, in order to escape civil liability for harm caused by intoxicated guest or patrons. But the Adult Use of Marijuana Act *does not extend these immunities to encompass liability for injuries caused by marijuana consumption:* The Act does not modify the existing immunity statutes to include consumption of marijuana, nor does it add sections to the relevant Codes granting immunity to hosts or cannabis cafes for the torts committed by their intoxicated guests and customers.

As a result of this gap, individuals and businesses who plan to serve marijuana to guests and customers should be aware that they could be liable for torts committed by those guests and customers who become intoxicated as a result of their consumption of marijuana. Although we cannot predict whether the courts will hold that social hosts and cannabis cafes have a duty to protect third parties from torts committed by their intoxicated guests and customers, it is very possible that, in the absence of statutory immunity, courts could adopt the rationale of the Supreme Court's decisions in *Vesley, Berhnard,* and *Coulter,* and hold that injuries resulting from the acts of a person who became intoxicated due to marijuana consumption are a foreseeable consequence of furnishing marijuana to a guest or customer, and that the furnisher therefore has a duty to protect against those injuries.

The risk of liability to social hosts and cannabis cafes is arguably more pronounced in light of marijuana's (relative) novelty as a recreational intoxicant. According to the most recent National Survey on Drug Use and Health, more than four million Californians had used marijuana within

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the prior year, compared with more than 16 million Californians who had used alcohol within the prior month. (2013-2013 National Surveys on Drug Use and Health: Model-Based Estimated Totals, Tables 2 and 9, available at *www.samhsa.gov/data/sites/default/files/NSDUHsaeTotals2014.pdf*.) It is therefore probable that, following the legalization of recreational marijuana use, we will see an influx of first-time or irregular marijuana users who will be unfamiliar with the effects of marijuana intoxication, will not realize if and when they have become intoxicated or impaired, and will not know how long their intoxication or impairment will last. This risk is particularly acute in light of the legalization of edible marijuana products. The intoxicating effects of marijuana are more severe, and longer-lasting, when marijuana is eaten than when it is smoked, but it takes longer for the intoxicating effects of digested marijuana to set in. Social guests or customers at a cannabis cafe might not be prepared for the longer set-in period or the stronger intoxication effects, and as a result might not take the proper precautions to prevent themselves from driving while impaired or undertaking other negligent acts that harm others.

Social hosts and commercial establishments likely face a high risk of liability for injuries caused by individuals "driving while high." The Adult Use of Marijuana Act did not alter the criminal prohibition on driving under the influence of marijuana. (Health and Safety Code, § 11362.3, subd. (a)(7).) However, the Adult Use of Marijuana Act did not impose any mandatory waiting periods between consuming marijuana – for example, a mandatory four-hour wait between smoking and driving, and an eight-hour wait between eating and driving – that would assist marijuana users in determining when a sufficient period of time has passed to resume driving. Furthermore, there is currently no commercially available device, comparable to a breathalyzer, to determine whether an individual has objectively ingested too much marijuana to drive. As a result, in the absence of state guidelines on what is a proper period of time between ingesting marijuana and driving, users will simply use their own (impaired) judgment to determine whether or not they are too intoxicated to drive – or to rely on their social hosts or cannabis café employees to take away their keys. Given that it is entirely foreseeable that intoxicated persons will overestimate their ability to drive safely, there is a decent chance that the courts will conclude that social hosts and cannabis cafes have a duty to prevent their guests or customers from driving while intoxicated from marijuana the hosts/cafes provided.

The provisions of the Adult Use of Marijuana Act allowing ingestion of marijuana in private places took effect immediately upon the passage of Proposition 64. It will take longer for cannabis cafes to be licensed and established: Under the Act, licensing authorities are scheduled to begin issuing licenses to retail marijuana establishments by January 1, 2018. (Bus. & Prof. Code, § 26012, subd. (c).) We can therefore expect that plaintiffs will begin suing the social hosts who provided a tortfeasor with marijuana soon, and that lawsuits against cannabis cafes will soon follow. It could be years, however, before the courts (or perhaps the Legislature) resolve whether the social host and dram shop immunities for torts caused by alcohol intoxication also apply to torts caused by marijuana intoxication. Attorneys should therefore be prepared for this onslaught of litigation and craft strategies for handling the uncertain legal issues; for those considering entering the burgeoning field of marijuana law, be sure to advise your cannabis café customers on their potential liability (and the likely hefty insurance costs that will come with it).

Finally, if you plan to partake in marijuana at your home, it is advisable to do so without guests present. And if you are invited to someone else's home for the same purpose, consider bringing something other than marijuana – like snacks.

Allison Meredith

Allison Meredith's appellate practice at Horvitz & Levy includes defending clients in cases alleging personal injury and vicarious liability.

A Claim Is for Medical Negligence – Not General Negligence – When "Integrally Related" to a Patient's Medical Treatment or Diagnosis

By Angela S. Haskins and Vangi M. Johnson

On October 18, 2016, in *Nava v. Saddleback Memorial Medical Center, et al.* (Case No. G052218), the Fourth Appellate District, Division Three considered the latest in a line of cases involving the definition of professional negligence in cases involving health care providers, and the statute of limitations applicable (Code of Civil Procedure section 340.5) to alleged conduct that does not fall squarely within customary medical malpractice scenarios. Publishing one of the first appellate court opinions following the California Supreme Court's decision earlier this year in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, the *Nava* court explained how a court should approach the key question whether an injury is "integrally related" to health care services, and thus constitutes professional negligence within the meaning of section 340.5. To appreciate the significance of that decision, it helps to review the legal backdrop for the holding.

A brief recap regarding the MICRA statute of limitations

On May 5, 2016, the California Supreme Court filed its Opinion in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, holding that a claim for negligence in the maintenance of equipment needed to implement a physician's order concerning medical treatment sounded in professional negligence and, therefore, was subject to the one-year statute of limitations set forth in section 340.5, which is a provision of MICRA (Medical Injury Compensation Reform Act of 1975) relating to professional negligence actions against health care providers.

The plaintiff in that matter, Catherine Flores, was receiving medical treatment at the defendant hospital, Presbyterian Intercommunity Hospital, when she fell out of her hospital bed after the latch on the bedrail – raised in accordance with her physician's orders – failed. Almost two years later, she filed her claim against the hospital for negligence and premises liability. The hospital filed a Demurrer, arguing that the claim was barred by the applicable one-year statute of limitations, Section 340.5, as the plaintiff was injured during the rendition of professional services, and she discovered her injury when she fell out of her bed.

In opposition, the plaintiff argued that the act of raising the bedrails was ordinary and not of a professional nature, therefore triggering the two-year statute of limitations pursuant to *Code of Civil Procedure* § 335.1, which governs personal injury actions generally. Agreeing with the defendant hospital, the trial court sustained the demurrer without leave to amend, on the ground that the claim was time-barred. The plaintiff appealed, and the Court of Appeal reversed, finding that the defendant hospital failed to use reasonable care in maintaining its premises.

The *Flores* court addressed whether negligence in the use or maintenance of hospital equipment or premises sounds in professional negligence subject to the one-year statute of limitations in Section 340.5. The court analyzed two seminal cases, *Gopaul v. Herrick Memorial Hospital* (1974) 38 Cal. App.3d 1002 and *Murillo v. Good Samaritan Hospital* (1979) 99 Cal.App.3d 50. In *Gopaul,* the court held that a claim sounds in professional negligence when "the negligence occurred within the scope of the 'skill, prudence, and diligence commonly exercised by practitioners of the profession.' " Framing the test somewhat differently, the *Murillo* Court held that professional negligence is determined by "whether the negligent act occurred in the rendering of services for which the health care provider is licensed." (*See, Flores,* 63 Cal.4th at 82-87.)

Seeking to harmonize these approaches, the *Flores* Court reasoned that the distinction between ordinary and professional negligence depends on the nature of the relationship between the equipment / premises and the provision of medical care to the plaintiff. It held as follows:

> A hospital's negligent failure to maintain equipment that is necessary or otherwise ***integrally related*** to the medical treatment and diagnosis of

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> the patient implicates a duty that the hospital owes to a patient by virtue of being a health care provider. Thus, if the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5. (*Id.* at 88, emphasis added.)

The *Flores* court cited with approval cases that had reached a result consistent with that standard. For example, in *Bellamy v. Appellate Department* (1996) 50 Cal.App.4th 797, a plaintiff alleged an injury after falling from an unsecured X-ray examination table, after being left unattended by the hospital staff. More than one year after that alleged incident, the plaintiff in *Bellamy* filed her complaint against the hospital, asserting causes of action for general negligence and premises liability. The trial court sustained the hospital's demurrer to the plaintiff's complaint without leave to amend, on the grounds the action was time-barred by the one-year statute of limitations, set forth in Section 340.5. The Court of Appeal affirmed. The *Bellamy* court reasoned, "Assuming that patient who alleged that she was injured in fall from unattended x-ray table was injured either in the preparation for, during, or after x-ray exam or treatment, her claim against hospital was one for professional negligence such that Medical Injury Compensation Reform Act and its time limitations applied, and action was not governed by general personal injury statute of limitations; under facts alleged, hospital was rendering professional services to patient in taking x-rays and patient would not have been injured but for receiving such services, and any negligence in allowing her to fall thus arose 'in the rendering of professional services." (*Id.* at 806.)

Turning to the facts alleged by the plaintiff in *Flores*, the California Supreme Court concluded that because the physician ordered that the handrails be raised following a medical assessment of the plaintiff's condition, the negligence occurred in the rendering of professional services. Thus, the applicable statute of limitations was Section 340.5, and the Court reversed the decision of the Court of Appeal.

Several other matters on appeal leading up to the *Flores* decision were closely watched by the medical community. Many had been decided by the intermediate appellate courts and then were up by the California Supreme Court on a "grant and hold" basis pending the filing of the decision in *Flores*.

One such case is *Pouzbaris v. Prime Healthcare Services,* formerly published at 236 Cal.App.4th 116, filed by the Fourth Appellate District, Division Three (Santa Ana), on April 23, 2015. The plaintiff, Asma Pouzbaris, appealed the granting of summary judgment entered in favor of the defendant hospital, Anaheim Medical Center. Ms.

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green sheets

NOTES ON RECENT DECISIONS

Lisa Perrochet

The Green Sheets, although published later than most current advance sheets because of copy deadlines, should serve as a useful review of recent important decisions. Readers are invited to suggest significant decisions for inclusion in the next Green Sheets edition. Please contact:

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To make the Green Sheets a useful tool to defense counsel, they are printed in green and inserted in the middle of *Verdict* magazine each issue. They can be easily removed and filed for further reference. Of course, the Green Sheets are always one attorney's interpretation of the case, and each attorney should thoroughly read the cases before citing them or relying on this digest. Careful counsel will also check subsequent history before citing.

ATTORNEY FEES AND COSTS

A defendant in a wage-and-hour case who prevails because he is not the plaintiff's employer is not entitled to attorney fees under Labor Code section 218.5.

Ramos v. Garcia (2016) 248 Cal.App.4th 778

In this wage-and-hour case, the plaintiff prevailed against two defendants but not the third, who was found to be plaintiff's manager rather than his employer. The trial court awarded the manager defendant his attorney fees under Labor Code section 218.5 [attorney fees awarded to prevailing party in wage-and-hour case, but "if the prevailing party is not an employee," fees are awarded "only if the court finds that the employee brought the court action in bad faith"].

The Court of Appeal (Fourth Dist., Div. One) reversed the fee award to the prevailing manager defendant. Although the defendant prevailed because he was an employee, the statute contemplates awards to prevailing employees when they are the *plaintiff*, not the defendant who prevails because he is a co-employee rather than an employer. Further, there was no finding that the plaintiff's claims were brought in bad faith sufficient to support a fee award.

In class actions that resolve with a common fund, trial courts may use the percentage fee method to award fees to class counsel.

Laffitte v. Robert Half International, Inc. (2016) 1 Cal.5th 480

A class member objected to the terms of a proposed $19 million class action settlement, arguing the attorney's claimed 1/3 "contingency fee" ($6.33 million) was unreasonable. After considering information including the hours class counsel had spent on the case, applicable hourly fees, the course of the pretrial litigation, and the potential recovery and litigation risks involved in the case, the trial court approved the settlement and awarded the $6.33 million attorney's fee. The Court of Appeal (Second Dist., Div. Seven) affirmed.

The California Supreme Court affirmed the lower courts. Trial courts have considerable discretion in determining the proper way to calculate attorney fee awards in class actions so long as the award is fair and reasonable to absent class members and class counsel. When class action litigation results in a settlement with a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund. Trial courts may also "double check the reasonableness of the percentage fee through a lodestar calculation," which "provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee."

ARBITRATION

Equitable tolling applies to the time limits for moving to vacate arbitration awards under the Federal Arbitration Act.

Move, Inc. v. Citigroup Global Markets, Inc. (2016) 840 F.3d 1152

Four years after a Financial Industry Regulatory Authority arbitration resulted in a ruling against the plaintiff, the plaintiff learned the arbitration panel's chairperson had misrepresented that he was an attorney. The plaintiff moved to vacate the arbitration award. The defendant moved to dismiss the motion to vacate, arguing that under the Federal Arbitration Act, notice of a motion to vacate an arbitration award must be served within three years. The plaintiff argued the three-year limitations period should be equitably tolled. The district court held that equitable tolling was available, but that the award need not be vacated because the chairperson's alleged fraud did not prejudice the plaintiff.

The Ninth Circuit reversed. The FAA is subject to equitable tolling. Further, the plaintiff demonstrated that it was important the chairperson be an attorney and have appropriate experience with the complex securities issues involved in the arbitration. The plaintiff's right to a fair hearing before such a chairperson was violated because of the chairperson's misrepresentation.

Absent clear contractual language to the contrary, the arbitrator, not the court, decides whether class claims can be arbitrated.

Sandquist v. Lebo Automotive, Inc. (2016) 1 Cal.5th 233

The plaintiff brought a class action against his employer for discrimination and harassment. Defendants moved to compel arbitration per the parties' employment agreement. The trial court, finding the parties' agreement did not permit class arbitration, struck the class allegations and granted the motion. The Court of Appeal (Second Dist., Div. Seven) applied the "death knell" doctrine to review the arbitration order, and held the trial court improperly decided the class claim arbitrability issue itself rather than referring that issue to the arbitrator in the first instance.

The California Supreme Court agreed. Addressing the existing split among state and federal decisions on the question of who decides whether an arbitration agreement permits classwide arbitration, the Court explained that question depends on the language of the agreement as interpreted under state contract law. Where the contract is ambiguous on the question of who decides the arbitrability of class claims, but the agreement otherwise contains broad and all-encompassing arbitration language, an arbitrator, rather than a court, has the power to decide whether class claims can proceed in arbitration.

See also *Morris v. Ernst & Young, LLP* (2016) 834 F.3d 975 [9th Cir.: deepening the divide over whether class action waivers in mandatory arbitration clauses between employers and employees are enforceable, the court in this misclassification wage and hour case address employees' substantive right "to engage in ... concerted activities for the purpose of ... mutual aid or protection," and held that right extends to filing class actions in court; a class waiver in a mandatory employment arbitration clause impairs that right; he court joined with the Seventh Circuit on this issue, but disagreed with the Second, Fifth, and Eighth Circuits, as well as the California Supreme Court, thus setting up the issue for United States Supreme Court review];

Perez v. U-Haul Company of California (2016) 3 Cal.App.5th 408 [Second Dist., Div. Seven: Employers may not compel employees to arbitrate the employees' standing to bring a PAGA claim, and may not "split" a claim into "individual" and "represented" components and then compel an employee to arbitrate individual aspects of a PAGA claim while retaining its own right to litigate the representative aspects of the claim in court];

Young v. REMX, Inc. (2016) 2 Cal.App.5th 630 [First Dist., Div. Five: order dismissing class claims and compelling arbitration, but staying representative PAGA claim, is not appealable, consistent with general rule on orders compelling arbitration; "death knell" exception to nonappealability did not apply because the PAGA claim remained pending; the named plaintiff had ample financial incentive to pursue the representative PAGA claims, which permit recovery of significant civil penalties and attorney fees, following arbitration].

ANTI-SLAPP

Trial courts may strike specific allegations when ruling on anti-SLAPP motion even if that does not dispose of an entire cause of action. *Baral v. Schnitt* (2016) 1 Cal.5th 376

Baral and Schnitt were co-owners of a business. Baral sued Schnitt for various claims including some arising from an audit Schnitt hired an accounting firm to undertake. Schnitt filed an anti-SLAPP motion, arguing any allegations relating to the audit arose out of activity protected by the litigation privilege. The trial court did not decide whether the allegations arose from protected activity because it concluded it could strike only entire causes of action, not specific allegations within causes of action. The Court of Appeal affirmed, holding that communications concerning the audit were protected activity but that the court was powerless to strike individual allegations.

The California Supreme Court reversed. Resolving a split among intermediate appellate courts about how to apply California's anti-SLAPP statute, Code Civ. Proc., § 425.16, in so-called "mixed cause of action" cases where both protected and unprotected activities are challenged by plaintiff's complaint, the Court held that the anti-SLAPP statute operates like a traditional motion to strike, in that the court must strike those portions of a claim that are protected under the anti-SLAPP statute and for which plaintiff cannot make a prima facie showing of possible merit.

The anti-SLAPP statute protects legislative votes, even though they are not protected by the First Amendment, because the statute protects activities "in furtherance" of First Amendment rights.

City of Montebello v. Vasquez (2016) 1 Cal.5th 409

The City of Montebello sued three of its former councilmembers for voting to approve a waste hauling contract with a company that had allegedly contributed to those councilmembers' campaigns. The lower courts held the anti-SLAPP statute did not apply to the city's lawsuit.

The California Supreme Court reversed. The councilmembers' votes were protected by the anti-SLAPP statute because the votes were "act[s] ... *in furtherance* of" the legislators' constitutional rights of free speech and petitioning activity. Although the United States Supreme Court recently held a legislator's act of voting is not protected by the First Amendment (see *Nevada Commission on Ethics v. Carrigan* (2011) 564 U.S. 117), the anti-SLAPP statute is broader than the First Amendment. The court also resolved a split of authority concerning the scope of the public enforcement exemption from the anti-SLAPP statute, Code Civ. Proc., § 425.16, subd. (d), holding that the exemption is narrow and applies only to a public enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor – criteria not satisfied in this case.

Commercial speech exemption to anti-SLAPP statute applies to alleged material omissions on ADR company's website.

JAMS, Inc. v. Superior Court (Kinsella) (2016) 1 Cal.App.5th 984

Based on representations on JAMS's website about Judge Sheila Prell Sonenshine's experience with business matters, plaintiff agreed to hire her to resolve his marital dissolution action, which potentially involved allocation of his business assets. During the proceedings, plaintiff became concerned that Judge Sonenshine did not have the quality of experience represented. Plaintiff sued JAMS and Judge Sonenshine for omitting material information on the website. The defendants sought to strike the complaint under the anti-SLAPP law on the grounds that the statements in the online biography were made in connection with a litigation proceeding and that they had no duty to disclose the information plaintiff said should have been disclosed. Plaintiff responded that the "commercial speech exemption" to the anti-SLAPP statute applied so the claims could proceed. The trial court agreed, and the defendants sought a writ of mandate.

The Court of Appeal (Fourth Dist., Div. One) issued an order to show cause and ultimately denied the petition. The representations on the website were designed to induce litigants to hire JAMS, and so were plainly commercial speech exempted from protection under the anti-SLAPP law. That was true regardless of whether the alleged misrepresentations were affirmative misstatements or material omissions, and whether the statements had additional purposes besides commerce.

Medical resident's wrongful termination suit against her university was not a SLAPP.

Nam v. Regents of the University of California (2016) 1 Cal.App.5th 1176

Following her termination, the plaintiff medical resident sued the U.C. Regents alleging the Regents retaliated against her for rebuffing a doctor's unwanted sexual advances, and had inadequate policies and procedures. The Regents moved to strike the complaint. They argued the plaintiff's claim arose out of an investigation into her fitness, which investigation was protected activity under Code of Civil Procedure section 425.16, subdivision (e) [classifying statements made in "official proceeding[s] authorized by law" or in connection with such proceedings as protected activity]. The trial court refused to strike the complaint.

The Court of Appeal (Third Dist.) affirmed. The gravamen of the resident's termination action was not the Regents' official investigation of complaints, but its harassment and retaliation. This action was plainly not the type of lawsuit the legislature intended to be considered a SLAPP, and classifying it as such would effectively render all lawsuits against public entities SLAPP suits.

An anti-SLAPP motion is timely if a defendant **who has not yet appeared files the motion** within 30 days of the court's mailing notice of a change of venue.

Karnazes v. Ares (2016) 244 Cal.App.4th 344

After Tyler Ares imprudently invested (and lost) Elizabeth Karnazes's funds, Ares hired his uncle to represent him in anticipation of litigation by Karnazes. The uncle communicated with Karnazes via email about setting up a repayment plan. When Karnazes filed her First Amended Complaint against Ares on December 5, 2011, she named the uncle as well, alleging misrepresentation claims based on the email communications. A motion to change venue was granted on August 7, 2012. On August 13, 2012, the uncle moved to strike the complaint as to him. The trial court held the motion to strike was timely and granted the motion because the communications were protected litigation communications.

The Court of Appeal (Second Dist., Div. Two) affirmed. The motion was timely. An anti-SLAPP motion must be filed within 60 days of the filing of the complaint absent a court order allowing a longer time. But California Rule of Court 3.1326 grants a defendant who has not previously responded to the complaint 30 days following the mailing of notice of a change of venue to move to strike, demur, or answer. Although the uncle's motion was filed more than 60 days after filing of the complaint, the motion was filed within 30 days after notice of the venue transfer. Further, communications regarding anticipated litigation and settlement constituted protected activity for purposes of the anti-SLAPP statute.

CIVIL PROCEDURE

Nonresident defendant is subject to **specific personal jurisdiction in California in** nonresidents' suit based on defendant's sales and other activities in the state.

Bristol-Myers Squibb Company v. Superior Court (Anderson) (2016) 1 Cal.5th 783

Hundreds of non-resident California plaintiffs sued a non-California pharmaceutical manufacturer for injuries allegedly sustained outside of California, from the non-California purchase and use of the defendant company's drugs. The defendant moved to quash service of summons for lack of personal jurisdiction because it is headquartered in New York, incorporated in Delaware, and maintains substantial operations in New Jersey. It does not have substantial California operations other than selling drugs to California residents and maintaining an agent for service of process there. The trial court denied the motion, and the Court of Appeal (First Dist., Div. Two) denied writ relief.

The California Supreme Court affirmed the lower courts. The Court noted that *general* jurisdiction did not exist in California because the company was not "at home" in California within the meaning of recent United States Supreme Court precedent. However, *specific* jurisdiction was not foreclosed under the circumstances. "Although [the defendant's] business contacts in California are insufficient to invoke general jurisdiction, which permits the exercise of jurisdiction over a defendant regardless of the subject of the litigation," the company's "extensive contacts with California, encompassing extensive marketing and distribution of [the alleged injury-causing drug], hundreds of millions of dollars of revenue from [the drug's] sales, a relationship with a California distributor, substantial research and development facilities, and hundreds of California employees" meant "the company's California activities are sufficiently related to the nonresident plaintiffs' suits to support the invocation of specific jurisdiction."

A petition for certiorari has been filed in this case.

Sanctions may be awarded under Code of Civil Procedure section 128.5 without complying with section 128.7's "safe harbor" provision.

San Diegans for Open Government v. City of San Diego (2016) 247 Cal.App.4th 1306

The plaintiff filed a verified action to compel the defendant city to produce public records and assert claims for taxpayer waste. The plaintiff prevailed on its public records request claim, but dismissed the waste claim with prejudice. The city moved for sanctions under Code of Civil Procedure section 128.5 (statutory authority for awarding sanctions for bad faith, frivolous litigation conduct), claiming the plaintiff's waste cause of action was frivolous, grounded on fabricated evidence, and designed to coerce a settlement. The trial court denied sanctions.

The Court of Appeal (Fourth Dist., Div. One) reversed the denial of sanctions and remanded for reconsideration. The current version of section 128.5, which became effective after the plaintiff filed its action, applies to any case pending as of its 2015 effective date. Further, a party filing a section 128.5 sanctions motion does not need to comply with section 128.7(c)(1) [providing opposing party with a "safe harbor" – 21 days to withdraw or correct a sanctionable pleading].

See also *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175 [Fourth Dist., Div. One: where defendant complied with "safe harbor" provision, trial court did not abuse its discretion in awarding sanctions under section 128.7 based on plaintiff's filing a complaint clearly barred by res judicata, prior judicial admissions, and judicial estoppel].

Judicial disqualification pursuant to a 170.6 challenge in one of two related cases does not **require disqualification in the other related** case.

Rothstein v. Superior Court (Rothstein) (2016) 3 Cal.App.5th 424

Husband and wife filed marital dissolution proceedings. Precious Time, LLC (a company affiliated with wife) then filed a civil suit against husband concerning a debt at issue in the dissolution proceedings. The trial court deemed the actions related (not consolidated) and assigned the second action to the judge presiding over the dissolution. Precious Time filed a Code of Civil Procedure section 170.6 challenge to the judge. Both cases were reassigned to another judge. Husband sought a writ of mandate, arguing that the dissolution proceedings should not have been reassigned.

The Court of Appeal (Second Dist., Div. Five) reversed the transfer of the dissolution proceedings. When a section 170.6 challenge is filed in a related (rather than consolidated) case, only the later-filed case need be reassigned. Where cases are merely related, a section 170.6 challenge in one case does not establish the judge is prejudiced in the other case. Further, where the original judge had already issued merits rulings, keeping the case with her served the interests of judicial economy.

Discretionary relief from a judgment under Code of Civil Procedure section 473b is available for counsel's cognitive impairment **that caused him to file deficient papers.**

Minick v. City of Petaluma (2016) 3 Cal.App.5th 15

The defendant in this premises liability case moved for summary judgment. Plaintiff's counsel prepared an opposition containing an expert declaration and other evidence, but the opposition was deficient—it was based on "ludicrous" arguments and inadmissible evidence. At the hearing on the motion, plaintiff's counsel showed signs of illness and was taken away by ambulance. When the hearing later continued, plaintiff's counsel appeared and the trial court granted the motion. The following month, plaintiff sought discretionary relief from the judgment under Code of Civil Procedure section 473b based on counsel's declaration that he had been suffering from illness and medication side-effects and was therefore too cognitively impaired at the time of the summary judgment proceedings to have functioned competently as an attorney, despite having tried to do so. The trial court granted relief.

The Court of Appeal (First Dist., Div. Four) affirmed. The trial court did not abuse its discretion in setting aside summary judgment based on evidence that plaintiff's counsel was suffering from a cognitive

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impairment that he was unaware of at the time and that caused him to overlook evidence that would have caused the court to deny the summary judgment motion.

A trial court abuses its discretion by denying a request for a settled statement following an unreported trial.

Randall v. Mousseau (2016) 2 Cal.App.5th 929

This breach of contract action was tried without a court reporter. Following a defense verdict, the plaintiff appealed. In aid of the appeal, the plaintiff filed a motion for a settled statement. The trial court denied the motion, reasoning the request placed a burden on the defendant and the court, and a settled statement was unnecessary because the court's minute order provided sufficient information about the case to enable appellate review. The plaintiff appealed the judgment, but not the order denying a settled statement.

The Court of Appeal (Second Dist., Div. Seven) affirmed the judgment because the record was inadequate for appellate review, and because the plaintiff forfeited the issue of the trial court's abuse of discretion in denying the motion for a settled statement by failing to raise the issue by writ or in her opening brief. However, the Court observed that the trial court did abuse its discretion in denying the request for a settled statement. Although it may be somewhat burdensome for the court and parties to prepare a statement, that is no more than the rule providing for settled statements contemplates. Trial courts may refuse to settle a statement if the proposed statement contains inaccuracies, but not otherwise.

CLASS ACTIONS

Class action settlement could not be approved where class notice of the settlement contained material misstatements.

Duran v. Obesity Research Institute, LLC (2016) 1 Cal.App.5th 635

Class counsel sought court approval of a settlement in a case alleging defendants had made false claims about the weight loss benefits of Lipozene and MetaboUp. The class notice of settlement/claim form misstated the amount of the payment to class members, referred to products not involved in the case, and included a Civil Code section 1542 release despite the trial court's statement it would not approve such a release. The trial court approved the settlement as fair and reasonable, and certain class members objected that the settlement was collusive and the attorney fee provision was excessive.

The Court of Appeal (Fourth Dist., Div. One) reversed the trial court's approval of the settlement. Although the errors in the claim form were not identified in the trial court, their existence compelled the court to disapprove the settlement. The parties' proposed remedy of (1) affirming the trial court's "fair and reasonable" determination but (2) remanding to give corrected class notice, was inadequate. The notice's failure to apprise class members of the terms of the proposed settlement injected a fatal flaw into the entire settlement process, undermining the trial court's analysis of the settlement's fairness.

When a class action plaintiff lacks of Article III standing, district courts should remand rather than dismiss the action.

Polo v. Innoventions International, LLC (2016) 833 F.3d 1193

The plaintiff brought a class action in California state court alleging the defendant made false claims about its products' ability to treat diabetes. The defendant removed to federal court under the Class Action Fairness Act (CAFA). The defendant moved for summary judgment on the ground the plaintiff lacked Article III standing because she did not have diabetes and the defendant had refunded her money. The district court granted the motion and dismissed the case. The plaintiff appealed. She did not dispute her lack of standing, but argued the case should have been remanded rather than dismissed.

The Ninth Circuit District agreed with the plaintiff. The rule that a removed case in which the plaintiff lacks Article III standing must be remanded to state court under 28 U.S.C. § 1447(c) applies to cases removed under CAFA just as it does to any other type of removed case. Remand would not be futile because the plaintiff's standing to bring a claim under California's Consumers Legal Remedies Act (CLRA) did not depend on her having diabetes and, under California law, defendants may not moot a CLRA case by paying the plaintiff (even though the payment did deprive the plaintiff of Article III standing).

LABOR AND EMPLOYMENT

Where the circumstances surrounding the plaintiff's termination from employment give **rise to conflicting inferences about whether** an employer's nondiscriminatory reason for terminating the plaintiff was pretextual, the employer may not obtain summary judgment.

Moore v. Regents of the University of California (2016) 248 Cal.App.4th 216

Plaintiff suffered from a heart condition, but advised her superior at work that her condition would not interfere with her job duties, although she would need some time off for treatment. Plaintiff's superior began assigning plaintiff fewer responsibilities, and plaintiff was eventually laid off. Plaintiff's employer claimed the layoff was due to a reorganization of plaintiff's department, but plaintiff sued under the Fair Employment and Housing Act claiming disability discrimination, failure to accommodate, failure to engage in the interactive process, and retaliation. The employer moved for summary judgment and the trial court granted it.

The Court of Appeal (Fourth Dist., Div. One) reversed the summary judgment. Plaintiff presented a prima facie case of discrimination based on evidence that the employer perceived plaintiff was disabled and ultimately terminated her. Although the employer offered a nondiscriminatory reason for the termination, in light of the timing of the relevant events and the employer's decision to terminate rather than reassign the plaintiff, triable issues remained about whether that reason was pretextual. Plaintiff also presented triable issues on failure to accommodate. Liability for failure to accommodate can be established based on the employer's perception the employee is disabled, regardless of whether the employee is in fact disabled. The trial court's conclusion that plaintiff was not actually disabled was therefore an inadequate basis to summarily adjudicate the failure to accommodate claim. The trial court correctly granted summary judgment on the retaliation claim, however, because under FEHA as it existed when the claims arose, merely requesting an accommodation was not considered activity protected from retaliation.

TORTS

Premises owners have a duty to prevent take-home exposures to asbestos.

Kesner v. Superior Court/Haver v. BNSF Railway Co. (2016) 210 Cal.Rptr.3rd 283

In two separate actions, plaintffs Haver and Kesner assserted "take-home" toxic exposure claims, alleging that employers of Haver's and Kesner's relatives had a duty under negligence law to prevent secondary asbestos exposures that allegedly caused Haver and Kesner to develop mesothelioma. The First and Second appellate districts reached conflicting conclusions on the duty question.

The California Supreme Court held, in a single opinion addressing the companion cases, that an employer or premises owner has a duty prevent exposure to asbestos "carried by the bodies and clothing of on-site workers ... from the premises to household members...." However, the Court held that "this duty extends only to members of a worker's household." Moreover, the Court distinguished cases in which manufacturers are sued on product defect theories: "[T]ake-home asbestos cases against employers or premises owners allege that the defendants had direct knowledge as to how fibers were being released and circulated within their facilities and failed to prevent those employees from leaving workplaces owned or controlled by the defendants with asbestos on their clothing or persons. Product liability defendants, by contrast, have no control over the movement of asbestos fibers once the products containing those fibers are sold. Because the *Rowland* analyses for these two theories of liability differ significantly, product liability cases are inapposite."

A nightclub aware that sexual activity is conducted in its bathrooms has a duty to protect its invitees from sexual assault in the bathroom.

Janice H. v. 696 North Robertson LLC (2016) 1 Cal.App.5th 586

A busboy sexually assaulted a nightclub patron in a bathroom stall. None of the dozen security guards present that evening were monitoring the bathrooms at the time because they had discretion to leave the bathrooms unpatrolled when the crowds were not large. The jury awarded the plaintiff patron $5.42 million, apportioning 40% fault to the nightclub.

The Court of Appeal (Second Dist., Div. Three) affirmed. Applying the *Rowland* factors, the court imposed a duty on the club to protect intoxicated and vulnerable patrons from sexual assault in the bathrooms. Despite the nonexistence of prior similar incidents, the assault was foreseeable because the club promoted a "sexually-charged atmosphere," was aware that intoxicated patrons often did not lock the bathroom stalls, and was aware that sexual activity occurred in the restrooms and could quickly become nonconsensual. The burden to monitor the restrooms was small, given all it would require is removing the security staff's discretion to leave the bathrooms unattended.

See also *Huang v. The Bicycle Casino* (2016) 4 Cal.App.5th 329 [Second Dist., Div. Eight: reversing summary judgment where plaintiff was knocked down trying to board a casino shuttle bus;

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triable issue existed as to whether the bus owed a duty to ensure orderly or supervised boarding despite no prior incidents of injury].

Lost earning capacity damages must be based on evidence of what it is "reasonably probable" the plaintiff could have earned.

Licudine v. Cedars-Sinai Medical Center (2016) __ Cal.App.4th __ [2016 WL 5462099]

In this medical malpractice suit, the plaintiff – a senior in college at the time of her injuries – claimed her injuries delayed her matriculation to law school and therefore impaired her earning capacity as an attorney. Her only evidence of lost earning capacity as an attorney was her testimony that she wanted to be a lawyer and had been admitted to a few law schools. Following a large jury verdict for lost earning capacity, the trial court ordered a new damages trial on the ground the plaintiff had presented insufficient evidence of lost earning capacity as an attorney to support the award.

The Court of Appeal (Second Dist., Div. Two) held the trial court correctly ordered a new trial. An award of lost earning capacity damages must be based on earning capacity it is "reasonably probable" the plaintiff could have had but for her injures, and plaintiff's evidence of her law school aspirations did not meet that standard.

EVIDENCE

Online posts were admissible in a defamation suit under Evidence Code section 1552 where there was evidence the posts were seen online and evidence tied the posts to the defendant's computer.

Kinda v. Carpenter (2016) 247 Cal.App.4th 1268

The plaintiffs claimed the defendant posted defamatory reviews on Yelp. In response to the defendant's motion in limine, the trial court excluded the Yelp posts as lacking sufficient authentication, despite plaintiff's proffer that she and another witness would testify they saw the posts online, and lacking foundation that the defendant had posted them, despite evidence from Yelp, Comcast, and AT&T that tied the posts to defendant's home and business networks. Once the posts were excluded, the defendant obtained a directed verdict on the defamation claim.

The Court of Appeal (Sixth Dist.) reversed. When a motion in limine effectively resolves a cause of action, trial courts must apply the same standard as they would for a motion for nonsuit and interpret all facts most favorably to the plaintiff. The posts could have been authenticated under Evidence Code section 1552, which presumes a printed representation of computer generated information is an accurate representation of that information at the time it was printed. As for foundation, taking the evidence most favorably to the plaintiff, evidence tying the posts to the defendant's computer was sufficient to give rise to an inference he wrote the posts.

Outside counsel's pre-litigation report concerning a charge of harassment expected to lead to litigation is protected by the attorney-client privilege even if counsel is not engaged to render legal advice.

City of Petaluma v. Superior Court of Sonoma County (Waters) (2016) 248 Cal.App.4th 1023

Andrea Waters claimed to have suffered harassment while working for the defendant city's fire department. She went on leave, then quit and filed a complaint with the Equal Employment Opportunity Commission. The City Attorney assumed Waters was exhausting her administrative remedies in order to sue rather than seeking reinstatement. The city retained outside counsel to investigate the underlying facts of the claim rather than providing legal advice about how to respond to Waters' claim. The attorney took steps to ensure her ultimate report was kept confidential from anyone other than the city. Waters eventually filed suit and sought to discover the attorney's report. The city objected, but the trial court granted Waters's motion to compel production, reasoning the report was not privileged because the attorney was specifically asked not to render legal advice and any privilege concerning the investigation was waived by the city's assertion of an "avoidable consequences" defense (i.e., a defense based on the employee's failure to take advantage of the employer's internal complaint procedures). The city sought a writ of mandate.

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The Court of Appeal (First Dist., Div. Three) issued the writ, finding the report was protected by the attorney-client privilege. "The dominant purpose of outside counsel's factual investigation was to provide legal services to the employer in anticipation of litigation. Outside counsel was not required to give legal advice as to what course of action to pursue in order for the attorney-client privilege to apply." Further, the privilege was not waived by the city's assertion of an "avoidable consequences" defense given that the investigation began after the employee had already quit.

INSURANCE

Insurers who offer policy limits may still act in bad faith if they do not do all they reasonably can to complete the settlement.

Barickman v. Mercury Casualty Company (2016)
2 Cal.App.5th 508

Mercury's insured hit plaintiffs with his vehicle. Mercury offered its $15,000 policy limits to plaintiffs, but after many delays and communications with their counsel, declined to agree to release language stating that "This does not include court-ordered restitution" (referring to a $165,000 restitution award entered in their favor by the criminal court). The driver's criminal defense attorney objected to the language out of a concern it would interfere with the driver's right to offset the insurance proceeds against the restitution award. Plaintiff's counsel confirmed the language was not intended to interfere with the offset and was merely intended to ensure plaintiffs could recover the entire restitution award. Nonetheless, Mercury did not communicate this to the criminal defense attorney and declined to agree to the release. The plaintiffs obtained a stipulated judgment against the driver for about $3 million. The plaintiffs then filed suit against Mercury for bad faith to collect the excess judgment, and the referee found for plaintiffs.

The Court of Appeal (Second Dist., Div. Seven) affirmed the bad faith award. The additional release language was essentially superfluous because a civil release does not release an order made by a criminal court, but it was clear and did not say anything that would have interfered with the defendant's right to an offset. Although Mercury initially acted in good faith by offering policy limits, there were issues of credibility concerning whether it did everything it could to effectuate the settlement, such as offer clarified language or provide more information to the insured's criminal attorney to obtain his agreement to the release. Substantial evidence supported the referee's resolution of those issues against Mercury.

CONTRACTS

Lease did not require lessee to indemnify landlord against claim arising out of a common area accident involving the lessee's invitee.

Morlin Asset Management LP v. Murachanian (2016)
2 Cal.App.5th 184

A dentist hired a carpet cleaner to clean his suite in an office building. The carpet cleaner fell in the building's common area staircase while transporting water to the dentist's suite. He sued the building. The building demanded the dentist defend and indemnify it against the carpet cleaner's claims according to a term in the parties' lease agreement requiring the dentist to defend and indemnify the building against claims "arising out of, involving or in connection with" the dentist's use or occupancy of the suite. The trial court granted summary judgment for the dentist on the indemnity issue.

The Court of Appeal (Second Dist., Div. Eight) affirmed. The connection between the dentist's use of his suite and the accident in the stairwell (over which the dentist had no control) was too remote to have been within the contemplation of the parties when they entered into the lease.

See also *Aluma Systems Concrete Construction of California v. Nibbi Bros. Inc.* (2016) __ Cal.App.4th __ [First Dist., Div. Five: reversing order sustaining demurrer on indemnity claim where subcontractor promised to defend and indemnify contractor against claims by subcontractor's employees other than those "arising out of" the contractor's negligence; even if the employees alleged only contractor negligence (precluding any contractual duty to *defend*), there was a triable issue on whether the contractor's ultimate liability to employee was joint and several with subcontractor employer].

HEALTHCARE

The Medicare Act's standards governing Medicare Advantage plans preempt state law consumer causes of action.

Roberts v. United Healthcare Services, Inc (2016)
2 Cal.App.5th 132

United Healthcare offered prospective insureds Medicare Advantage coverage. The plan's written advertising materials, which were pre-approved by the Center for Medicare and Medicare Services, referred to "one of the nation's largest networks, made up of local doctors, clinics and hospitals who know your community" and specified a certain co-payment schedule. Edward Roberts, a California resident who purchased and attempted to use Medicare Advantage coverage from United Healthcare, filed a class action alleging unfair competition, unjust enrichment and financial elder abuse, claiming the plan's marketing materials were misleading as to the availability and adequacy of in-network urgent care centers. The trial court sustained United Healthcare's demurrer, ruling that Roberts' claims were preempted by federal law and that Roberts had failed to exhaust administrative remedies under Medicare's four-tiered review process.

The Court of Appeal (Second Dist. Div. Two) affirmed, disagreeing with *Cotton v. StarCare Medical Group, Inc.*(2010) 183 Cal.App.4th 437 and *Yarick v. PacifiCare of California*(2009) 179 Cal.App.4th 1158 (which erroneously relied on authority interpreting an earlier, more limited Medicare Act preemption provision). Roberts' causes of action were both expressly and impliedly preempted by the Medicare Act, which has an expansive preemption provision and would be impeded by enforcement of state law causes of action. Roberts also failed to exhaust his administrative remedies with respect to his excessive co-payment claim, as he had not engaged in any administrative review process.

A health care plan may be liable to pay emergency service providers if it negligently **delegates its financial responsibilities to an** independent physicians' association it should know lacks the ability to pay.

Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc. (2016)
1 Cal.5th 994

The defendant heath care service plans (HMOs) delegated to several individual practice associations (IPAs) their responsibility to pay for emergency services the HMO's enrollee's obtained from out-of-network providers. The IPAs became insolvent and did not pay. The emergency service providers then sued the HMOs to recover the cost of treating the HMOs' enrollees. The trial court sustained the HMOs' demurrers to the emergency service providers' claims because state law permits HMOs to delegate responsibility to pay for emergency services to their contracting medical providers (including the IPAs). The Court of Appeal (Second Dist., Div. Three) reversed.

The California Supreme Court affirmed the Court of Appeal. An HMO may be liable to out-of-network emergency service providers for negligently delegating its financial responsibility to an IPA or other contracting medical provider group that it knew or should have known would not be able to pay for emergency care provided to the HMO's enrollees.

CASES PENDING IN THE CALIFORNIA SUPREME COURT

Addressing how to create an appealable judgment.

Kurwa v. Kislinger, case no. S234617
(review granted August 10, 2016)

In this case involving breach of fiduciary duty and defamation claims and cross-claims, the trial court ruled pretrial that the parties owed no fiduciary duties to each other. In 2010, the parties stipulated to dismiss the defamation claims without prejudice but with a statute of limitations waiver. The Court of Appeal held this created a final appealable judgment, but the Supreme Court reversed, holding that "the parties' agreement holding some causes of action in abeyance for possible future litigation after an appeal from the trial court's judgment on others renders the judgment interlocutory and precludes an appeal under the one final judgment rule." (*Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100.)

Once back in the trial court in 2015, the plaintiff dismissed his defamation cause of action *with* prejudice and again sought to appeal the 2010 judgment. The Court of Appeal held the appeal from the five-year-old judgment was untimely on its face, and improper because the defendant had pending cross-claims precluding a final judgment.

The Supreme Court has again granted review to decide the following question: "Can plaintiff take an appeal in the current posture of this litigation?"

Addressing the statute of limitations for pre-birth exposure to toxins.

Lopez v. Sony Electronics, case no. S235357
(review granted August 24, 2016)

Code of Civil Procedure section 340.4 imposes a six-year statute of limitations for actions alleging birth and pre-birth injuries and provides no tolling of the limitations period during the plaintiff's minority. Code of Civil Procedure section 340.8 imposes a two-year statute of limitations for actions alleging injuries caused by exposure to hazardous materials or toxic substances, but allows the limitations period to be tolled during a plaintiff's minority. In this case, the twelve-year-old plaintiff alleged that she was exposed in utero to toxic chemicals at her mother's workplace. The trial court granted summary judgment for the defendant, concluding that section 340.4 applied and barred the lawsuit.

The California Supreme Court granted review to decide which statute of limitations governs personal injury actions alleging pre-birth injuries caused by exposures to toxic substances.

Addressing scope of the anti-SLAPP law.

Rand Resources v. City of Carson, case no. S235735
(review granted September 21, 2016)

Plaintiffs had an exclusive agency agreement with the City of Carson giving plaintiffs the right to act as the City's agent in securing an NFL stadium. Plaintiffs alleged the City breached that agreement by allowing other developers to act as the City's agent. Plaintiffs further accused the City of attempting to conceal its meetings and communications with other developers. The trial court granted defendants' Code of Civil Procedure section 425.16 (anti-SLAPP) motion to dismiss plaintiffs' lawsuit. The Court of Appeal (Second Dist., Div. One) reversed, holding that although the City's goal of bringing an NFL team and stadium to Carson was a matter of public interest, plaintiffs' complaint focused on the identity of the City's agent, which was not an issue of public interest. The Court of Appeal also determined that defendants' speech was not made in connection with a legislative proceeding because the allegations concerning the City were too remote in time from the City's legislative action.

The California Supreme Court granted review to decide the following issues: "(1) Did plaintiffs' causes of action alleging the breach of and interference with an exclusive agency agreement to negotiate the designation and development of an NFL stadium and related claims arise out of a public issue or an issue of public interest within the meaning of section 425.16? (2) Did plaintiffs' causes of action arise out of communications made in connection with an issue under consideration by a legislative body?"

Addressing a landowner's duty to provide invitees with safe passage across a public street.

Vasilenko v. Grace Family Church, case no. S235412
(review granted September 21, 2016)

The plaintiff was injured when crossing a public street to get to his church from the church's overflow parking lot. In the trial court, the church obtained summary judgment. But the Court of Appeal (Third Dist.) reversed, holding that although a landowner usually has no duty to prevent injury on adjacent property, here the church did owe a duty because the church controlled the location and operation of the overflow parking lot.

The California Supreme Court has granted review to decide the following issue: "Does one who owns, possesses, or controls premises abutting a public street have a duty to an invitee to provide safe passage across that public street if that entity directs its invitees to park in its overflow parking lot across the street?"

Addressing insurance coverage for negligent supervision.

Liberty Surplus Insurance v. Ledesma & Meyer Construction, case no. S236765
(Request to Answer a Question of State Law granted October 19, 2016)

While performing work at a school, a construction company's employee allegedly molested a student. The student sued, alleging the school district negligently supervised the construction company. The construction company and school district tendered the defense to the construction company's insurer, but the insurer refused to defend the school district. The insurer then filed a declaratory relief action seeking an adjudication that it owed no defense or indemnity to the school district because negligent supervision is not an "occurrence." The Ninth Circuit sought the California Supreme Court's guidance on this question in light of conflicting state authorities.

The Supreme Court granted the request to answer the following certified question of state law presented: "Whether there is an 'occurrence' under an employer's commercial general liability policy when an injured third party brings claims against the employer for the negligent hiring, retention, and supervision of the employee who intentionally injured the third party."

Addressing whether excess insurer can recover settlement funds from primary insurer who unreasonably refuses to settle within primary policy's limits.

Ace American Ins. Co. v. Fireman's Fund Ins. Co., case no. S237175 (review granted November 9, 2016)

The plaintiff in a personal injury suit offered to settle with the defendant for an amount within the defendant's primary layer of liability insurance. The primary insurer, who was defending, refused to settle. The case later settled for an amount in excess of the primary limits, so the defendant's excess carrier had to pay a portion of the settlement. The excess carrier sought to recover the portion of the settlement it paid from the primary carrier on the ground the primary carrier unreasonably refused to settle earlier for an amount within the primary policy. The Court of Appeal (Second Dist., Div. Four) held that the excess carrier could bring an equitable subrogation action under the circumstances.

The California Supreme Court granted review of the following issue: "When a primary insurer unreasonably refuses to settle an underlying action against its insured within policy limits and the underlying action later settles for the full amount of the primary policy as well as the full amount of an excess insurer's policy, can the excess insurer maintain an equitable subrogation action against the primary insurer to recover the amount it expended in settlement?"

See also *Migdal Insurance Company v. Insurance Company of the State of Pennsylvania*, case no. S236177 (Certified Questions of State Law modified October 12, 2016 [addressing role of "other insurance" clauses in equitable subrogation actions, in response to request from Second Circuit Court of Appeals, but reframing issue in terms different from those posed by the federal appellate court: "Issue 1: When two primary liability insurers agree that their policies cover the same loss, may the primary insurer whose policy contains an "other insurance" clause (stating that its insurance is excess over any "other insurance or ... self-insurance plan that covers a loss on the same basis") enforce that clause in an action for equitable contribution brought by the primary insurer who defended and settled the insured's claim and whose policy does not contain an other-insurance clause? Issue 2: In the same equitable contribution action described in Issue 1, when the amount paid by the primary insurer that settled the claim exceeds the non-settling primary insurer's liability policy limits, what is the effect, if any, of the non-settling insurer's "limits reduction" clause (stating that "[a] ll payments made under any local policy issued to [the insured] by us or any other insurance company will reduce the Limits of Insurance of this policy")?"]

Are you interested to know whether a legal issue you are briefing is pending before the California Supreme Court?

Check out the text-searchable list of cases found on the Court's website at *www.courts.ca.gov/13648.htm:*

Click on the link for "pending issues: civil" and you will be directed to this page: *www.courts.ca.gov/documents/DEC2316civpend.pdf*

Pouzbaris alleged that while a patient at the hospital, she slipped and fell on a recently mopped floor, which lacked any warning signs. Anaheim Medical Center obtained summary judgment on the ground that the plaintiff's action was time-barred by the one-year statute of limitations, set forth in Section 340.5.

The Court of Appeal reversed, holding that the hospital's alleged conduct of mopping a floor and failing to provide warning signs constituted general negligence subject to the two-year statute of limitations, as set forth in Section 335.1, rather than professional negligence under Section 340.5. The *Pouzbaris* Court defined the pertinent inquiry as whether the negligence occurred "in the rendering of professional services," and concluded that mopping the floor and failing to provide a warning sign did not involve professional services. The court also stated, generally, that the statutory definition of professional negligence does not embrace a negligently maintained, unsafe condition on hospital premises that causes injury to a patient.

In so concluding, the court performed a comprehensive analysis of the pre-MICRA and post-MICRA case law to determine the applicable definition of professional negligence, and ultimately aligned its holding with *Bellamy, supra,* 50 Cal.App.4th 797 and *Murillo, supra,* 99 Cal.App.3d 50, that the statutory definition of professional negligence in Section 340.5 required the determination of "whether the negligence occurs in the rendering of professional services" and not the level of skill required for each individual task. (*Bellamy, supra,* 50 Cal.App.4th at pp. 806-807.) In response, Anaheim Medical Center filed a Petition with the Supreme Court, which granted review and issued a hold order. The case was dismissed by the Supreme Court once its Opinion in *Flores* was filed.

The *Nava* decision holding the line on the MICRA definition of professional negligence.

On October 18, 2016, in *Nava v. Saddleback Memorial Medical Center, et al.* (Case No. G052218), the Fourth Appellate District, Division Three considered yet another case involving the definition of professional negligence and the applicable statute of limitations. The plaintiff, Manuel Nava, filed his case more than one year, but less than two years, after his alleged injury, claiming general negligence and premises liability. The facts alleged were ambiguous, at best. The plaintiff's complaint and first amended complaint stated that "...plaintiff was caused to fall and injure his leg as a result of the dangerous condition of defendant's premises...." In the plaintiff's discovery responses, he claimed, "... gurney collapsed curbside at ambulance on hospital premises." The plaintiff's deposition did not clarify any of the facts surrounding the alleged injury. The medical records maintained by Saddleback Memorial Medical Center documented that, while in the Radiology Department, the plaintiff suffered a fall during transfer by hospital staff from a gurney to an X-ray examination table.

In its Motion for Summary Judgment, Saddleback Memorial Medical Center argued that regardless of the factual scenario, the actions of the hospital staff were in the course of the provision of medical services, and therefore, the applicable statute of limitations was the one-year statute of limitations in Section 340.5.

The trial court in *Nava* agreed with the arguments advanced by the hospital, which relied primarily on *Bellamy, supra,* 50 Cal. App.4th 797, and granted summary judgment. Another defendant, the ambulance service involved, also successfully moved for summary judgment.

The plaintiff appealed the judgment in favor of the hospital, arguing that the personnel providing the services (holding a gurney) were not licensed, and therefore, the actions were general negligence in nature. The

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plaintiff relied heavily on the application of the common law definition of professional negligence set forth in *Gopaul, supra,* 38 Cal.App.3d 1002, which had been discussed by the *Flores* Court. The plaintiff also argued that the definition of professional negligence for purposes of section 340.5 should be informed by the definition applied in *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, where the Supreme Court examined the term professional negligence for purposes of a different statute, Code of Civil Procedure section 425.13, which governs claims for punitive damages against health care providers. The plaintiff noted that when a doctor performs surgery, he or she exercises a task that requires specialized education, training and skill. When a hospital employee is asked to hold up a gurney and not drop it, no such specialized education, training or skill is necessary.

The *Nava* Court disagreed with the plaintiff's arguments, and instead applied the holding from *Flores v. Presbyterian Intercommunity Hospital, supra,* 63 Cal.4th 75, affirming the judgment for the hospital. The Court noted that the unclear facts from which the claim arose were not material for purposes of the appeal. However the disputed or ambiguous facts might be resolved, there could be just two scenarios – the plaintiff suffered a fall during transfer by hospital staff either (a) from a gurney to an X-ray examination table or (b) from a gurney into an ambulance. The *Nava* Court held, "The transfer of Nava in the hospital on a gurney was ***integrally related*** to Nava's medical treatment or diagnosis, and, therefore, the injury occurred in the rendering of professional services." (Emphasis added.) In addition, the *Nava* court stated, "We need not address the pre-*Flores* cases cited by the parties in their briefs regarding the meaning of 'professional negligence' for purposes of section 340.5. (See, e.g. *Gin Non Louie v. Chinese Hospital Assn.* (1967) 249 Cal.App.2d 774; *Gopaul v. Herrick Memorial Hosp.* (1974) 38 Cal. App.3d 1002; *Murillo v. Good Samaritan Hospital* (1979) 99 Cal.App.3d 50; *Flowers v. Torrance Memorial Medical Center* (1994) 8 Cal.4th 992; *Bellamy v. Appellate Department* (1996) 50 Cal.App.4th 797.) In light of the Supreme Court's holding in *Flores,* which governs this case, these cases do not provide any further insight."

Conclusion

Nava v. Saddleback Memorial Medical Center is one of the first opinions by a Court of Appeal to cite and rely upon the California Supreme Court's holding in *Flores,* and to adopt the Court's language, ***"integrally related"*** in determining application of the medical negligence statute of limitations, Code of Civil Procedure section 340.5. Pre-*Flores* cases regarding the meaning of professional negligence for purposes of the applicable statute of limitations (Section 340.5) no longer govern, thereby creating a major shift from prior precedent and a new beginning on the characterization of claims against healthcare providers in future cases.

Haight partners, Angela S. Haskins and Vangi M. Johnson, were trial counsel and appellate counsel, respectively, for Saddleback Memorial Medical Center in this *Nava* matter.

Angela S. Haskins

Angela S. Haskins is a partner with Haight, Brown & Bonesteel, LLP. Ms. Haskins has a specialized focus in the defense of healthcare providers, including physicians, nurses, certified nurse midwives, technicians, therapists and facilities.

Vangi M. Johnson

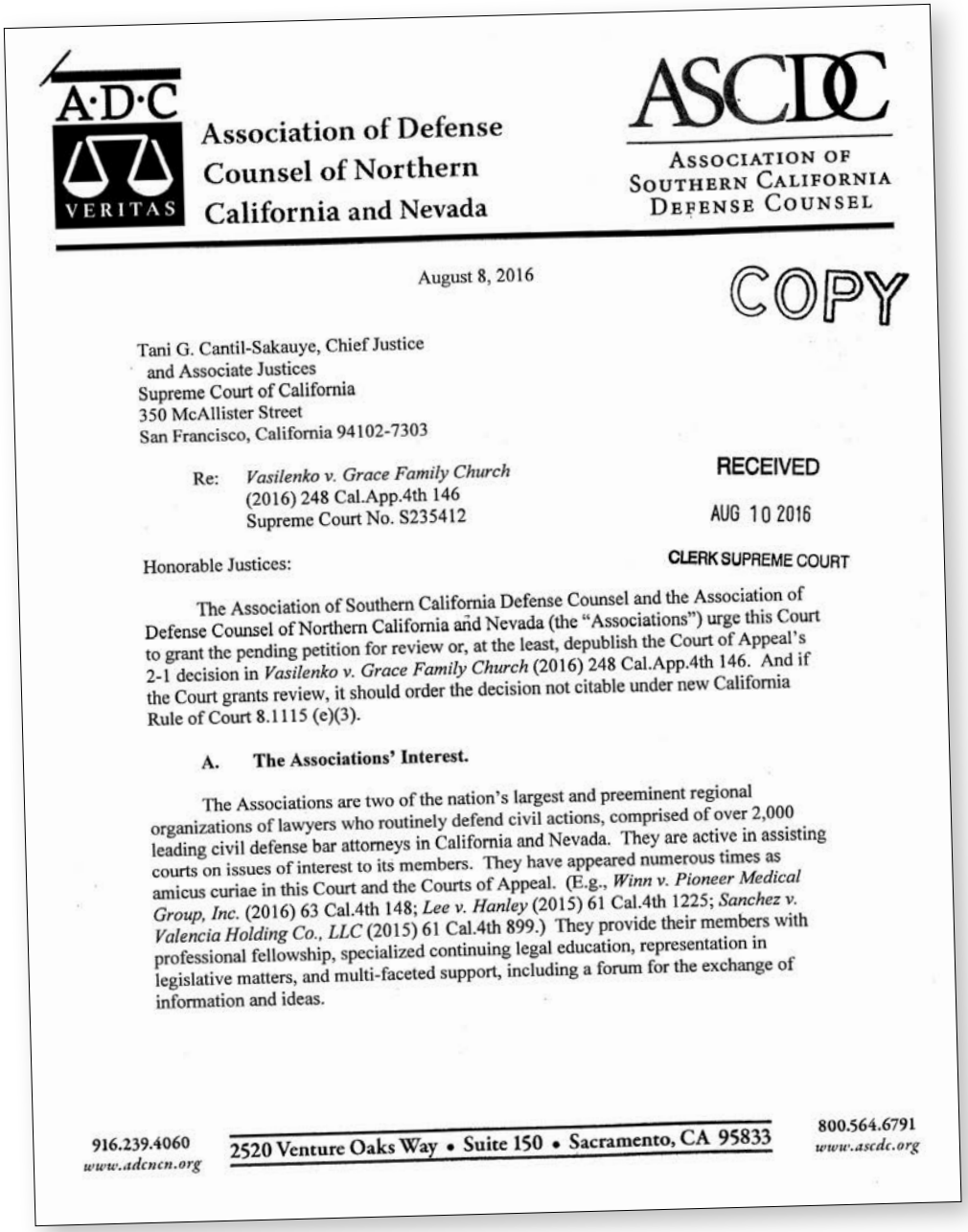
Vangi M. Johnson is a partner with Haight, Brown & Bonesteel, LLP. Ms. Johnson has distinguished herself in appellate work, being certified as a specialist in Appellate Law by the State Bar of California, Board of Legal Specialization.

Spotlight On Premises Liability

We are reprinting in this issue of *Verdict* magazine a letter in support of review filed as a joint submission by ASCDC and its sister organization, the Association of Defense Counsel of Northern California and Nevada. Working together, the amicus committees of the two groups spot and comment on a select number of cases affecting the practices of defense counsel. The California Supreme Court granted review in this case (no. S235412) on September 21, 2016, with the following docket notation: "Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does one who owns, possesses, or controls premises abutting a public street have a duty to an invitee to provide safe passage across that public street if that entity directs its invitees to park in its overflow parking lot across the street?" Counsel handling premises liability claims may look to this letter for ideas in responding to claims while we all await the Supreme Court's ruling in the next year or two.

While review is pending, the *Vasilenko* opinion is not binding on trial courts, and is citable only for any persuasive value it may have. (Cal. Rules of Court, rule 1115.) Moreover, as the amicus letter below notes, the opinion (which is from the Third District in Sacramento) conflicts with other reported decisions. Thus, even if review had not been granted, no trial judges in any district would be bound to follow it, if they believe another reported decision more accurately reflects California law. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

— Lisa Perrochet, Editor



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August 8, 2016

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Tani G. Cantil-Sakauye, Chief Justice
and Associate Justices
Supreme Court of California
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San Francisco, California 94102-7303

Re: *Vasilenko v. Grace Family Church*
(2016) 248 Cal.App.4th 146
Supreme Court No. S235412

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Honorable Justices:

The Association of Southern California Defense Counsel and the Association of Defense Counsel of Northern California and Nevada (the "Associations") urge this Court to grant the pending petition for review or, at the least, depublish the Court of Appeal's 2-1 decision in *Vasilenko v. Grace Family Church* (2016) 248 Cal.App.4th 146. And if the Court grants review, it should order the decision not citable under new California Rule of Court 8.1115 (e)(3).

A. The Associations' Interest.

The Associations are two of the nation's largest and preeminent regional organizations of lawyers who routinely defend civil actions, comprised of over 2,000 leading civil defense bar attorneys in California and Nevada. They are active in assisting courts on issues of interest to its members. They have appeared numerous times as amicus curiae in this Court and the Courts of Appeal. (E.g., *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148; *Lee v. Hanley* (2015) 61 Cal.4th 1225; *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899.) They provide their members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multi-faceted support, including a forum for the exchange of information and ideas.

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Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-7303

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continued on page 24

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Many of the Associations' members have considerable experience litigating premises liability and other negligence lawsuits. They regularly confront instances in which personal injury plaintiffs in search of deep pockets seek to expand the concept of duty beyond all reasonable bounds. This is such an instance.

No party has paid for or drafted this letter.

B. Review Should Be Granted Because *Vasilenko* Creates a New and Untenable Rule of Landowner Liability That Conflicts With Other Court of Appeals Decisions

1. *Vasilenko's* new landowner duty rule is contrary to sound public policy.

The Court of Appeal's *Vasilenko* decision paints with a broad brush. In sweeping terms, it holds that if a landowner invites a visitor to park his car where the visitor must cross a public street to get to the landowner's premises, that parking location must be near a marked crosswalk or signal-controlled intersection." (248 Cal.App.4th at pp. 154, 157.) Otherwise, the landowner will be liable if the visitor is injured crossing the street. In this particular case, the Court of Appeal holds there is such a duty even though the visitor, plaintiff Alexsandr Vasilenko, was hit by a negligent motorist on a public street while Mr. Vasilenko was jaywalking at night in the rain from an offsite parking lot that defendant Grace Family Church was permitted to use when its own onsite lot was full. (*Id*. at pp. 149-150; 2 AA 450 [plaintiff's statement of undisputed material facts].)

No California case has ever imposed such a broad and onerous duty on landowners, nor should there be such a duty. As emphasized by Presiding Justice Raye in dissent, "The safety of streets and crosswalks has never been the responsibility of parking lot operators or businesses that rely on such parking lots...." (248 Cal.App.4th at pp. 162-163.) Imposing such a duty would have a profound adverse impact on every sort of landowner – and anyone else who occupies premises and does not or cannot provide secure onsite parking adequate to house the vehicles of every potential visitor – including businesses large and small, public entities, religious institutions, and even homeowners and renters.

One of the primary factors to consider in the duty analysis is "'the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach.'" (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771, quoting *Rowland v. Christian* (1968) 69 Cal.2d 108, 113.) "In some cases, when the consequences of a negligent act must be limited to avoid an intolerable burden on society, 'policy considerations may dictate a cause of action should not be sanctioned no matter how foreseeable the risk.'" (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 364, quoting *Elden v. Sheldon* (1988) 46 Cal.3d 267, 274.)

Policy considerations dictate against the Court of Appeal's new-found duty. It is an unavoidable fact of modern life that pedestrians must cross busy streets from time to time to get to where they are going. Few businesses, churches, or others can afford unlimited onsite parking, and in urban areas onsite parking often is impossible. Still fewer could afford, and none would even have the authority, to provide safe passage over public streets to the premises from wherever a visitor parked. (*City of El Segundo v. Bright* (1990) 219 Cal.App.3d 1372, 1376 ["The Brights had

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no duty to install traffic signs or signals"].) Likewise, no public entity is obligated to, or even could, provide marked crosswalks or traffic controls at every intersection. (Gov. Code, § 830.8 ["Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code"]; *Mixon v. State* (2012) 207 Cal.App.4th 124, 136 ["the absence of a pedestrian crossing sign at the 3rd and R Streets intersection does not prove a dangerous condition"].) Yet under *Vasilenko*, Grace Family Church would be liable for that very same condition – all despite the combined negligence of Mr. Vasilenko attempting to jaywalk across the road at night in the rain and the motorist traveling too fast to avoid a collision with him.

If the Court of Appeal's new-found duty rule were to be upheld, the only way to avoid liability would be to refrain from providing offsite parking or even suggesting where visitors can park offsite. That would serve no one's best interests.

Here is just one example of how onerous and unworkable this duty rule would be. The First District Court of Appeal informs visitors on its website: "**No parking is available in the building.** Directly across the street from the Earl Warren Building and Courthouse is the Civic Center Plaza Garage at 355 McAllister Street. Current rates are $3.00/hour or $24.00 maximum/day. Other public lots and limited metered street parking are available in the Civic Center area."[1] Under *Vasilenko*'s duty rule, the Court of Appeal would have breached its duty if, as the Court suggested, a visitor parked at a meter on a public street, and the visitor was hit by a negligent motorist while lawfully crossing at an intersection where there was no marked crosswalk or stop signs. This result would stretch the concept of duty beyond reason, just as it does in this case.

2. *Vasilenko* conflicts with other California decisions.

As the Church's petition for review points out, the general rule is that a landowner has no duty to protect visitors from injuries suffered outside the premises. (*Contreras v. Anderson* (1997) 59 Cal.App.4th 188, 197.) The rule makes perfect and necessary sense because the landowner has no control over what happens outside the premises. (*Steinmetz v. Stockton City Chamber of Commerce* (1985) 169 Cal.App.3d 1142, 1147; *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1623 ["the courts have consistently refused to recognize a duty to persons injured in adjacent streets or parking lots over which the defendant does not have the right of possession, management or control"].)

Accordingly, numerous California cases have held that landowners have no duty to protect visitors from the dangers of crossing a street to get to the premises. (E.g., *Seaber v. Hotel Del Coronado* (1991) 1 Cal.App.4th 481, 487-488 [pedestrian struck by motorist while crossing street to get to parking lot across the street]; *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 386 [pedestrian leaving market struck by motorist on adjacent public street]; *Nevarez v. Thriftimart, Inc.* (1970) 7 Cal.App.3d 799, 804 [child struck by car while crossing public street alone to reach grand-opening carnival on premises of supermarket]; *Donnell v. California Western School of Law* (1988) 200 Cal.App.3d 715, 720 [school had no duty to student attacked on adjacent sidewalk]; *A. Teichert & Son, Inc. v. Superior Court* (1986) 179 Cal.App.3d 657, 663 [landowner owed no duty to bike-rider struck on public street by truck making delivery to the property].)

There is nothing materially different about the *Vasilenko* case that would warrant an exception to the rule. It creates a conflict in the decisions of the Courts of Appeal that require this Court's resolution. (Cal. Rules of Court, rule 8.500(b)(1).)

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3. *Vasilenko* addresses an important, recurring statewide issue.

But even if prior case law did somehow support the unbounded duty rule adopted by the Court of Appeal, there is still good reason for this Court to grant review. The issue of a landowner's duty to prevent injuries to those off the premises is a recurring one in a variety of contexts in California cases, both published and unpublished. (E.g., *Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 38-39 [duty to design exit from property so as not to impede visibility of adjacent highway]; *Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15, 29 [no duty to protect family members of workers on premises from secondary exposure to asbestos]; *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1170 [triable issue of fact as to whether the landowner exercised control over strip of land abutting property and therefore owed a duty of care to protect or warn plaintiff of allegedly dangerous condition of that land]; *Hamilton v. Gage Bowl, Inc.* (1992) 6 Cal.App.4th 1706-1714 [no duty to protect visitor from sign falling from adjacent building over which landowner had no control]; *Corcoran v. City of San Mateo* (1953) 122 Cal.App.2d 355, 356 [no duty to prevent child from passing over premises and falling into ditch on adjacent land]; *Saran v. W.M. Bolthouse Farms* (Cal. Ct. App., April 18, 2006, No. F047107) 2006 WL 1000354; *Grazulis v. Harborland Ventures, Inc.* (Cal. Ct. App. Feb. 1, 2007, No. G036405) 2007 WL 283053.)

Absent clear boundaries for determining this off-the-land landowner duty – and the Court of Appeal draws none – plaintiffs and defendants will continue to litigate and clog our already-overcrowded trial and appellate courts with cases that either should never have been filed or that should have been quickly settled. Only this Court can definitively draw those boundaries.

C. At the Least, *Vasilenko* Should Be Depublished Because It Creates a Rule of Liability Broader Than Necessary on the Facts of the Case

Even if this Court were not inclined to grant review, it should nevertheless depublish the *Vasilenko* opinion. (Cal. Rules of Court, rule 8.1125.) *Vasilenko* stretches duty principles beyond all tenable limits. Moreover, *Vasilenko* states a rule of law far broader than the facts of the case warrant. Mr. Vasilenko chose to jaywalk in the middle of the block at night in the rain when he was hit by a negligent motorist. It therefore would not have mattered in the slightest if there was a marked cross-walk or traffic controlled intersection nearby. Yet the Court of Appeal holds that Grace Family Church had a duty not to invite any visitor to park where Mr. Vasilenko parked because there was no marked cross-walk or traffic signal controls at a nearby intersection. (248 Cal.App.4th at pp. 154, 157.) The determination of whether a duty should exist in a situation not presented by the case should be left to a future case that actually presents that situation.

D. Conclusion

The Associations urge this Court to grant review to resolve the conflict between Court of Appeal decisions on an important question of landowner duty and to lay down definitive limits for such a duty. Once review is granted, *Vasilenko* should be ordered not citable. At the least, *Vasilenko* ought to be depublished because it purports to expand landowner liability to circumstances beyond those presented by the case.

Respectfully submitted,
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL
Edward L. Xanders
Marc J. Poster

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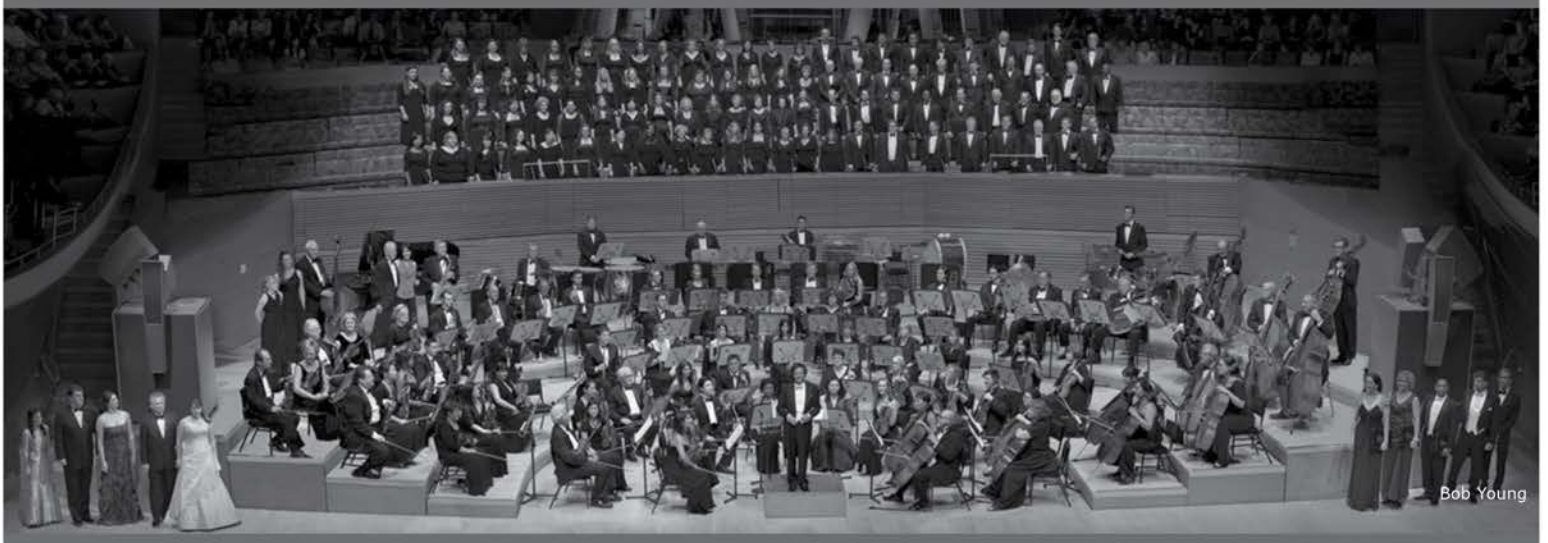

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amicus committee report

ASCDC's Amicus Committee continues to work energetically on behalf of its membership. ASCDC's Amicus Committee has submitted *amicus curiae* briefs in several recent cases in the California Supreme Court and California Court of Appeal, and has helped secure some major victories for the defense bar.

Please visit *www.ascdc.org/amicus.asp*

RECENT AMICUS VICTORIES

The Amicus Committee has recently participated as amicus curiae in the following cases:

1. *Foxen v. Carpenter* (Nov. 3, 2016, B268820) __ Cal.App.5th __ [2016 WL 7017964]. In this case, the Court of Appeal affirmed the granting of a motion for summary judgment based on the statute of limitations in a legal malpractice action brought against plaintiffs' attorney Nick Rowley and his law firm Carpenter, Zuckerman & Rowley, LLP. The Court of Appeal held that under *Lee v. Hanley* (2015) 61 Cal.4th 1225, all of the plaintiff's claims involved the providing of professional services and, thus, were governed by the one-year statute of limitations for legal malpractice claims (Code Civ. Proc., § 340.6), including claims for conversion and unfair business practices. Harry Chamberlain from Buchalter Nemer wrote the successful publication request on behalf of ASCDC.

PENDING CASES AT THE CALIFORNIA SUPREME COURT AND COURT OF APPEAL

ASCDC's Amicus Committee has also submitted *amicus curiae* briefs in the following pending cases:

1. *McGill v Citibank*, docket no. S224086. The California Supreme Court granted review in this case to decide whether the Federal Arbitration Act (FAA) preempts the so-called "*Broughton-Cruz*" rule. This rule consists of two prior California Supreme Court decisions holding that parties cannot be compelled to arbitrate claims for public injunctive relief brought under California's Unfair Competition Law and Consumers Legal Remedies Act. Lisa Perrochet, Felix Shafir and John Quiero from Horvitz & Levy submitted an amicus brief on the merits.

2. *County of Los Angeles Board of Supervisors v. Superior Court* (*ACLU*), docket no. S226645. The California Supreme Court granted review to address the Court of Appeal holding that attorney fee invoices sent by defense counsel to the County of Los Angeles are privileged. Lisa Perrochet and Steven Fleischman from Horvitz & Levy submitted an amicus brief on the merits.

3. *Parrish v. Latham & Watkins*, docket no. S228277. The California Supreme Court granted review to address issue whether the one-year statute of limitations (Code Civ. Proc., § 340.6) applies to claims for malicious prosecution brought against attorneys. Harry Chamberlain from Buchalter Nemer will be submitting an amicus curiae brief on the merits.

4. *Perry v. Bakewell Hawthorne*, S233096. The California Supreme Court granted review to address the following issue: Does Code of Civil Procedure section 2034.300, which requires a trial court to exclude the expert opinion of any witness offered by a party who has unreasonably failed to comply with the rules for exchange of expert witness information, apply to a motion for summary judgment? The Court of Appeal, Second District, Division Two, held in a published decision that (1) a premises owner that participated in exchange of expert witness information with a premises occupant had standing to object to visitor's expert declarations in personal injury action, even if occupant, rather than owner, served demand, and (2) visitor unreasonably failed to disclose his expert witnesses such that trial court could exclude visitor's expert declarations. Steven Fleischman and Josh McDaniel from Horvitz & Levy submitted an amicus brief on the merits.

5. *B.C. v. Contra Costa County*, A143440. In this medical malpractice case pending before the First Appellate District, Robert Olson from Greines, Martin, Stein & Richland submitted an amicus brief on behalf of ASCDC addressing *Howell* and MICRA issues. The appeal remains pending.

6. *M. (J.) v. Huntington Beach Union High School District*, S230510. The California Supreme Court has granted review to address the following issue: Must a claimant under the Government Claims Act file a petition for relief from Government Code section 945.4's claim requirement, as set forth in Government Code section 946.6, if he has submitted a timely application for leave to present a late claim under Government Code section 911.6, subdivision (b)(2), and was a minor at all relevant times? Susan Knock Beck from Thompson & Colegate has submitted an amicus brief on the merits.

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HOW THE AMICUS COMMITTEE CAN HELP YOUR APPEAL OR WRIT PETITION, AND HOW TO CONTACT US

Having the support of the Amicus Committee is one of the benefits of membership in ASCDC. The Amicus Committee can assist your firm and your client in several ways:

1. *Amicus curiae* briefs on the merits in cases pending in appellate courts.
2. Letters in support of petitions for review or requests for depublication to the California Supreme Court.
3. Letters requesting publication of favorable unpublished California Court of Appeal decisions.

In evaluating requests for *amicus* support, the Amicus Committee considers various issues, including whether the issue at hand is of interest to ASCDC's membership as a whole and would advance the goals of ASCDC.

If you have a pending appellate matter in which you believe ASCDC should participate as *amicus curiae*, feel free to contact the Amicus Committee:

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defense successes
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Sean D. Beatty
Beatty & Myers, LLP
Abubaker v. Oakland Motor Cars, Inc. et al.
Katakis v. Toyota Motor Sales, U.S.A., Inc.
Zubin v. Toyota Motor Sales, U.S.A., Inc., et al.

Raymond Blessey
Taylor Blessey LLP
Gonzalez v. Patana, et al.
Seeman v. Kawamoto

Anthony Kohrs
Hennelly & Grossfield LLP
Total Tech Resources Corp v. WP Capital Partners, LLC

Timothy J. Lippert
Demler, Armstrong & Rowland
Eidson v. Westfield LLC
Sabbah v. Mojaradi

Hugh A. McCabe & Joanna R. Shippee
Neil, Dymott, Frank, McFall, Trexler, McCabe & Hudson APLC
Ferris v. Sarpes Beverages, LLC

David J. O'Keefe
Bonne, Bridges, Mueller, O'Keefe, & Nichols
Estrella v. Hemmati
Wu v. Tabsh, et al.

Terry A. Rowland
Demler, Armstrong & Rowland, LLP
Cortez v. Choi

Richard J. Ryan
Ryan Datomi LLP
Coffman v. Glendale Adventist Medical Center

Terrence J. Schafer
Doyle Schafer McMahon, LLP
Cervantes v. Asaad Hakim, M.D. et al

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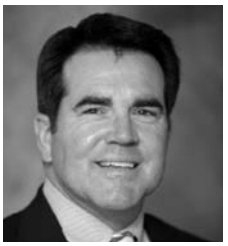
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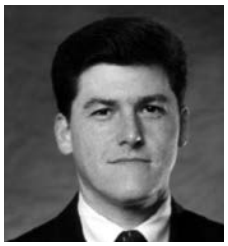
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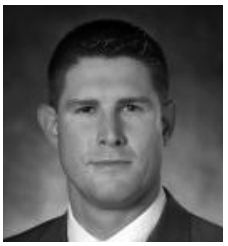
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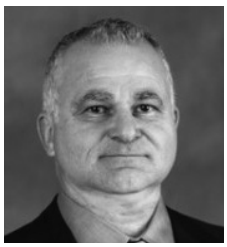
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