Los Angeles lawyer Paul J. Watford discusses the commerce clause and the Rehnquist Court page 24

Federal versus State Disability Law page 31

Allocating Repair Costs page 14
Lemon Law Arbitrations page 19
Trademark Law and the Internet page 38
UPGRADE
your telephone system.

Integrated Dictation Systems
Application Integration
Call Detail Records
Conference Calling
Unified Messaging
Instant Messaging
Call Recording

Skyy Consulting can integrate your existing software with our Voice Over Internet Protocol (VoIP) PBX phone system.

Embrace technology that brings your legal office to new levels of productivity and freedom.

Call for a Free consultation today.
310.622.7076

SKYY CONSULTING INC
www.skyyconsulting.com
A Legal IT Services Company.
Incorporating your clients just got easier and more affordable.

Document Filings...
It's what we do!®

- Incorporations (For-Profit, Non-Profit, Sub-S)
- Limited Liability Companies (LLCs & PLLCs)
- Trademarks & Copyrights
- DBA/Fictitious Business Names
- Name Checks & Reservations
- Initial & Annual Report Filings
- Foreign Qualifications
- Certificates of Good Standing
- Document Retrieval Services
- Amendments & Name Changes
- Conversions, Mergers & Dissolutions
- Corporate Kits & Supplies
- IRS Forms, Filings & Compliance
- Registered Agent Representations

...and much more!

Incorporate a Business in ANY STATE in 24 to 48 hours!

For as little as $99
Plus state filing fees

$25 Discount!
for Los Angeles Bar Association Members
Enter coupon code: LALAW-25D when ordering at our website.

- FAST
- Affordable
- Reliable
- Guaranteed

Toll Free: 1-888-692-3614
Direct/Intl: 1-818-879-9079
Website: www.mycorporation.com
Email: info@mycorporation.com

MyCorporation.com®

Business Starts Here!®

MyCorporation.com is a Document Filing Service and CANNOT provide you with legal or financial advice.
Clients don’t care about...almost...winning

The financial advisor you use can affect the ultimate result.

We deliver better results through:

▲ Investigative capabilities that discover otherwise-hidden evidence
▲ Experience-directed research and analysis that delivers right answers the first time
▲ Better-trained full-time personnel with focused, relevant experience
▲ Technology that provides responsive, cost-effective answers
▲ Persuasive visual presentations, by consistently following our proven methodology

Because of this, we have an unequalled track record in successful court testimonies and substantial client recoveries.

Call us when you need:

▲ Damage analysis & related testimony
▲ Electronic discovery & computer forensics
▲ Business & asset valuations
▲ Economic & market studies
▲ Fraud & other investigations
▲ Forensic accounting & audits

To avoid mistakes, follow the online advice at www.fulcruminquiry.com, or call us at 213-787-4100 to get a free no-obligation consultation.
FEATURES

24 State Lines  BY PAUL J. WATFORD
The Supreme Court’s evolving commerce clause jurisprudence seems to have taken a U-turn in *Raich*

31 Challenging Barriers  BY EVE HILL AND SHEILA KHAN-VARIBA
Unlike the Americans with Disabilities Act, California law allows parties to seek damages for discrimination by private businesses

Plus: Earn MCLE credit. MCLE Test No. 142 appears on page 33.

38 Search Terms  BY STEVEN D. ATLEE AND BRIAN F. MCMAHON
The lawful use of trademarks in search engines may ultimately hinge on evolving standards of “initial interest confusion”

45 Special Section
Semiannual Guide to Expert Witnesses

DEPARTMENTS

10 Barristers Tips
Working with court-appointed attorneys in probate matters
BY JOHN F. L. POMEROY

14 Practice Tips
The allocation of repair obligations in form leases
BY WALTER R. ZAGZEBSKI

19 Practice Tips
Handling Better Business Bureau vehicle claims
BY MICHAEL B. RAINEY

85 Computer Counselor
Useful legal Web sites for California lawyers
BY NANCY A. KAISER

88 LACB Foundation
2004-2005 Fund Drive Results

92 Closing Argument
The unmasking of a legal urban legend
BY DAVID HAZELKORN

87 Classifieds

90 Index to Advertisers

91 CLE Preview
COPYFAX COMMUNICATIONS offers "NEW LACBA Member Benefit." Automatic 30% Off on all models of new TOSHIBA Copiers that Copy, Fax, Print and Scan to E-mail.

- AUTOMATIC 30% DISCOUNT
  Quick and Easy - No Pricing Battle!

- LIMITED TIME PROMO
  FREE Print and Scan Enabler for Networking Printing and Scanning!

- SPECIAL LEASE
  0 Down - 0 Interest Lease
  Includes All Service and Supplies. Turn Key!

- FULL REPLACEMENT WARRANTY
  It Runs Right Always or It’s Replaced!

Please contact: Dane Rebers @ 714.892.2444 ext 116
E-mail: dane@copyfax.net or http://www.copyfax.net

TOSIBA digital copier, a law office's best friend!
The combined experiences and resources of the Los Angeles County Bar Association and Aon Direct Insurance Administrators provide LACBA Members with a solution to the professional liability insurance dilemma. That solution is the CA Aon Attorneys’ Advantage Insurance Program.

Through Aon Direct Insurance Administrators, the LACBA’s sponsored broker for nearly two decades, LACBA members can obtain advice on coverage, information on new products, compare quotes with their current carrier or talk to experienced and knowledgeable brokers.

Aon also provides a portfolio of products ranging from Businessowners packages, and a new Court Bond product, to personal products such as life, health or auto through the Aon Insurance Solutions program.

Visit the Solutions website today to learn more about the many products and services available.

www.aonsolutions.com/ca6
Judgments Enforced

Law Office of Donald P. Brigham

23232 Peralta Dr., Suite 204, Laguna Hills, CA 92653
P: 949.206.1661
F: 949.206.9718
dbrigham@earthlink.net

WHAT’S A DAY OF YOUR TIME WORTH?

Traffic School

with

MCLE Credit

MCLEforLawyers.com (310) 552-5382

Asset Protection Planning Now Can Insulate Your Clients’ Assets From Future Judgments

Yes, it’s true. By properly restructuring your clients’ estate plan, their assets and the assets they leave to their family will be protected from judgment creditors. Here are some of the situations in which our plan can help protect your clients’ assets:

- Judgments exceeding policy limits or exclusions from policy coverage.
- Judgments not covered by insurance.
- Children suing each other over your client’s estate.
- A current spouse and children from a prior marriage suing each other over your client’s estate.
- A child’s inheritance or the income from that inheritance being awarded to the child’s former spouse.

STEVEN L. GLEITMAN, ESQ.
310-553-5080

Mr. Gleitman has practiced sophisticated estate planning for 26 years, specializing for more than 14 years in offshore asset protection planning. He has had and continues to receive many referrals from major law firms and the Big Four. He has submitted 52 estate planning issues to the IRS for private letter ruling requests; the IRS has granted him favorable rulings on all 52 requests. Twenty-three of those rulings were on sophisticated asset protection planning strategies.
2005 will mark the 10th straight year of Dividend Payments to our policyholders!

MARK NOVEMBER 1, 2005 ON YOUR CALENDAR

While a ten year anniversary can be thought of in traditional (tin/aluminum) or more modern (diamond jewelry) terms, your Board has voted to mark this occasion in the most stable and recognizable way it knows: by issuing a dividend* of 8% of your total policy premium to all policyholders of record as of November 1, 2005 and who paid a premium during the 12-month period prior to 11/1/04.

COOL HOLIDAY WISHES

Although your check will not arrive until the December holidays, we certainly don’t think it is too early to wish you healthy and prosperous thoughts. And while we can now proudly declare a “Decade of Dividends”, it is worth remembering that LMIC has been a provider of professional liability for decades . . .

MCLE! As a State Bar of California approved MCLE provider, we are pioneers in loss prevention education and offer a range of seminars and self-study programs exclusively for our members at little or no cost.

Claims-Free Longevity Credits can start after the first year and you may be eligible for “Preferred” status after just 4 consecutive years - resulting in a 15% (or more) Premium Credit.

A.M. Best’s Rating of “A” (Excellent) . . . we are insurance specialists. Professional Liability coverage for California lawyers is the only product we offer. Through sound and disciplined underwriting, our Standard Program rates have been the same for over 15 years . . . imagine that!

LMIC . . . it pays to stick around!

Visit us at — www.LMIC.com or call (800) 252-2045

* Dividends are paid at the sole discretion of the Company’s Board of Directors, and past dividends do not guarantee the payment of future dividends.
Why did you become a lawyer? “To help people,” many have answered—some of them honestly. “To make money,” a few confess—all of them honestly. Litigators sometimes claim that they love to argue. Few lawyers say that they thought becoming a lawyer would make them happy, but an expectation of happiness lay beneath all the ostensible reasons for becoming a lawyer.

The “pursuit of happiness” ranks right up there with the other unalienable rights of life and liberty. Yet, attorneys are notoriously unhappy. Perhaps the Declaration of Independence should have included an explanatory footnote that the pursuit of happiness is alienable from some classes of people—such as lawyers and failed screenwriters, and especially lawyers who are also failed screenwriters.

Admittedly, some lawyers are deeply fulfilled by representing deserving clients on meaningful cases. How many of those lawyers do you know? Contrary to popular cliché, the money some lawyers make does buy happiness, for a time. Purchased happiness, however, loses value faster than a new house sliding down a hill, because we quickly get used to the money. Our families get used to our money. Our kids really get used to our money. And soon it’s not about having money, it’s about making money. At this point, for many lawyers, what was once a calling slips past being a career and becomes merely a job.

None of this is news. In her 2004 book *Lawyer, Know Thyself*, Susan Swaim Daicoff provides a survey of studies done over two decades showing that attorneys suffer from diagnosable depression at a rate that is at least twice the rate in the general population. Attorney dissatisfaction manifests itself in substance abuse, legal malpractice, professional incivility, medical complications attributable to stress, and family problems.

Daicoff suggests adapting one’s professional life to fit the not-very-endearing personality traits that she claims lawyers tend to have in common. By contrast, the mandatory CLE sections on stress management typically accept without question that practicing law is stressful. Instead of sympathizing with your secret desire to transform your in-box chores into a Burning Man festival, CLE providers typically offer relaxation techniques that are about as useful as a horse expert providing emergency management during a hurricane.

The bottom line is that sometimes, oftentimes, being a lawyer just blows. Should we, therefore, abandon all hope ye who enter here? Yes. So long as we think practicing law should bring happiness, we are bound to be dissatisfied.

Having abandoned that pesky rascal hope, we can now pursue satisfaction as a scientifically attainable outcome of practicing law. This year Emory University neuroscientist Gregory Berns, in his book *Satisfaction: The Science of Finding True Fulfillment*, distinguished satisfaction from happiness because achieving satisfaction requires us to engage in activities that present us with novelty and challenge. According to Berns, the neurotransmitter most associated with pleasure, dopamine, is released when we encounter and overcome something novel and challenging.

A lawyer can easily create a professional rut by remaining too long in the comfort zone of what that lawyer knows and does well. We are in demand. The work becomes routine as the demands increase exponentially. Then we feel overwhelmed. So we work harder at the same old thing until we have dug a deeper, increasingly boring hole.

Thus, the “feel good” goal of our profession should be finding evermore novel and challenging ways to practice law within our areas of expertise and focus. Consider teaching a CLE course in your practice area. Defense attorneys might consider taking on a plaintiff’s case—very selectively, of course. Here’s an idea: Write an article for *Los Angeles Lawyer* magazine. Satisfaction awaits.
Shouldn’t your practice guide be more in touch with the times?

Tuned in to the way you research today, Matthew Bender Practice Guides deliver more of what you want in a practice guide. More checklists, more forms, more practical tips and strategic insight from the names you know and trust.

Updated twice annually for the most current perspective, only Matthew Bender Practice Guides have the familiarity of print-based research as well as the speed and precision of research online. How you research is up to you.

Clear, step-by-step directions help you jump seamlessly from print to online at lexis.com® for fast access to even more on-point content—statutes, case law from the California Official Reports, leading treatises such as California Forms of Pleading and Practice, legal news and more.

For more information about Matthew Bender Practice Guides, call 877.810.5324 or go to www.lexisnexis.com/mbpracticeguide/ca

See what you’ve been missing.
Working with Court-Appointed Attorneys in Probate Matters

PROBATE MATTERS OFTEN INVOLVE parties who lack, or are asserted to lack, the mental capacity to make financial decisions or personal care decisions. In these situations, courts typically appoint an attorney to represent the allegedly incapacitated party. These attorneys, taken from the Probate Volunteer Panel, are referred to as PVP counsel. Attorneys whose work involves conservatorships, guardianships, or any other proceeding in which the capacity of a party is at issue will encounter PVP counsel. Attorneys may encounter PVP counsel in other situations as well, because a court may appoint a PVP in one of various roles in a matter in which the court determines that such an appointment is necessary to protect the interests of a party or an estate.

Working with PVP attorneys presents challenges and opportunities. Among the challenges are determining how the PVP fits into the overall picture: Is the PVP an ally? An adversary? An extension of the court? While the matter proceeds, how may the relationship with the PVP be conducted so as to best serve the client? If the PVP is opposed to the client’s position, how can an attorney work around the PVP?

PVP attorneys are appointed and discharged upon order of the court. If there is a significant estate, the PVP’s fees are paid out of the estate. In general, a PVP counsel is appointed whenever there are questions as to a party’s capacity. This occurs most often in conservatorship matters and in the various matters that can be described as conservatorship substitutes (for example, petitions for approval of a transaction when a party is asserted to lack capacity and petitions related to healthcare decisions). PVP counsel will always be appointed to represent a proposed conservatee when a petition for appointment of a conservator of the person or estate is pending or when a substituted judgment petition is pending. In matters that substitute for conservatorships, a PVP counsel will be appointed to represent the person who is asserted to lack capacity. PVP counsel are sometimes appointed in guardianship of the estate proceedings but rarely in guardianship of the person proceedings. Appointment may also be made in any other case in which the court determines that it would be in the best interests of any party or estate.

For example, a recent guardianship of the estate matter involved a dispute between parents over how to manage the significant income earned by the minor. On an attorney’s recommendation, the court appointed a PVP counsel for the minor while the guardianship petition was pending because of danger that the minor’s estate would be dissipated. Had the estate been smaller, the appointment likely would not have been made.

The appointment lasts while a particular petition is pending, and the PVP is often discharged upon resolution of the pending petition. In some matters, however, the PVP will stay on after the petition is determined, particularly if disputes between the parties remain, or if another petition will soon be filed about which the court would prefer a report from the PVP who is already familiar with the matter. Upon determination of a petition, you may have the opportunity to argue either in favor of or against the continued service of the PVP. If the PVP has recommended against your client’s position, and the matter is ongoing, you may get better results in the future if that PVP is no longer involved.

Role of the PVP

The PVP counsel performs several functions. The primary function of a PVP is to represent the interests of the client. After that, however, the PVP also acts as the “eyes and ears of the court.” This role was so described by Judge Thomas Stoever, who recently retired from the probate department in the Central District. The PVP reports to the court on the condition of the client and on the person’s wishes regarding a pending matter. In some cases, this overlaps with the duties of the court investigator. For example, when a petition for appointment of a conservator is pending, the proposed conservatee will likely be visited separately by a court investigator as well as a PVP, who separately report to the court.

The PVP also recommends to the court how to rule on a pending petition. The PVP’s assistance to the court in resolving a matter, however, remains the PVP’s secondary duty after representing the best interests of the client. This recommendation carries great weight. For this reason alone, you should treat the PVP well.

The PVP’s recommendation is usually provided to the court in the form of a written report as well as an appearance at the relevant hearing. The preparation of the report is often the most important function of the PVP. To prepare that report, the PVP reviews the evidence, speaks with parties, and visits with the client. There are a number of ways that an attorney can assist the PVP in preparing that report, primarily by ensuring that evidence and witnesses are available.

In contested matters, the PVP may be called upon to assist in resolution, including engaging in negotiations and even mediation with the opposing parties. Finally, in unusual cases in which the PVP determines that the client is in danger of either physical harm or imminent loss of assets, the PVP may commence proceedings on behalf of the client. The PVP may, for example, seek the appointment of a conservator, removal of a conservator, or orders protecting the client’s assets from dissipation.

The manner in which you should work with the PVP depends on the circumstances. As with all probate matters, the situation changes dramatically when a matter becomes contested. In addition, the circumstances depend on which parties are involved and who has retained counsel. When working with the PVP, it is important to see the attorney as an extension—the eyes and ears—of the court. Although the PVP will advocate a position before the court (and you should be prepared to advocate a contrary position if necessary), the PVP may also assist the court in deciding the pending matter. In a contested matter, you may even find that the PVP is hav-

John F. L. Pomeroy is a Los Angeles attorney with practice experience in estate planning, conservatorships, and guardianships.
The most productive partner in the firm.

BlackBerry 7250™ – with the most powerful processor yet.

• Access a variety of law applications such as METAmessage® – Legal, which provides invaluable features for every mobile attorney
• Access office email, scheduling tools and new HTML web browser in real time – from just about anywhere within the National Enhanced Services Coverage Area
• Talk to colleagues with available Bluetooth® wireless headset technology (headset sold separately)
• Manage larger files and email attachments with expanded memory

BlackBerry 7250™ | Only $199.99 after $100 Advanced Device Credit when activating selected combinations of 2-year voice plans & data features.

Other valuable corporate discounts available.

Visit a Verizon Wireless store or Circuit City, or go to verizonwireless.com

1.800.VZW 4 BIZ
1.800.899.4249

*Our Surcharges (incl. 2.13% Federal Universal Service (varies quarterly), 5¢ Regulatory & 40¢ Administrative/line/mo. & others by area) are not taxes (details: 1-888-684-1888); gov't taxes & our surcharges could add 6%-27% to your bill. $35 activation fee per line. Important Consumer Information: Subject to Customer Agreement, Calling Plan, terms and conditions of BlackBerry® product brochure and credit approval. $175 termination fee per line, other charges & restrictions. Cannot combine with other offers. Coverage & offers not available in all areas. Must be within National Enhanced Services Coverage Area to send/receive email. Details/maps at verizonwireless.com. Individuals with Desktop Redirector must have desktop PC on and in a condition to receive email. Voice calls cannot be received when an email or other data transmission is occurring. The BlackBerry and RIM families of related marks, images and symbols are the exclusive properties of and trademarks or registered trademarks of Research In Motion Limited – used by permission. METAmessage® is a trademark of Onset Technology. PDA: In CA, Sales tax based on full retail price of PDA. While supplies last. Limited time offer. ©2005 Verizon Wireless
ing too much contact with one party, to such an extent that a judge may consider it ex parte. If you treat the PVP as an adversary, however, you may later find that the PVP's recommendation to the court is not in line with your client's wishes. For this reason, the PVP should be treated with respect.

In uncontested matters in which you represent the petitioner, your goal is for the PVP to do two things: report that there are sufficient factual grounds for the relief that you seek and recommend approval of your petition. You should provide the PVP with as much information as needed and make all parties to the matter and all documents and other sources of evidence available. Initially, you may find that the PVP has not received all pleadings. It is good practice to send the PVP copies of all pleadings immediately upon appointment. In many cases, the appointment happens a short time before the hearing. The PVP will be appreciative if, thanks to the pleadings you provided, he or she has an extra day or two to work on the matter. For the same reason, it is important to be responsive to requests from the PVP.

If the matter is contested, you may need to be more persuasive with the PVP, while remaining deferential and respectful. This can be a tricky balance. You should try to move the PVP to your client's position and against the position taken by an adversarial party. Having a PVP on your side can make matters easier for your client. You may find that the PVP takes positions, in opposition to an adversary, that your client would otherwise take. In effect, the PVP can fight your battle for you and allow your client to save capital for a different dispute. On the other hand, if the PVP opposes your client's position, you may find yourself arguing at a hearing against opposing counsel and the PVP. This is an uphill battle, and your client may best be served with a settlement that leaves as little as possible for the court to decide.

Working with a PVP provides an attorney with less experience in probate matters good opportunities for education. Attorneys on the panel have years of experience in the field and are appointed by the court because they are respected. With regard to the matter at hand, the PVP may educate you about solutions that you had not considered. More generally, you may also learn new procedures or approaches that you can apply to other matters.

The bottom line is that you should treat the PVP with the professional courtesy that you would provide to a colleague and the deference that you would provide to a judicial officer.

---

1 See generally Los Angeles Super. Ct. R. 10.173, and app. E.
“I missed the deadline? Aaarrgh!”

Don’t get caught with your pants down—DOD your dates first

Now, you can drastically reduce malpractice exposure while saving countless hours of time. Introducing Deadlines On Demand™ (“DOD”), the first nationwide legal deadline calculation service.

DOD is fast, accurate and inexpensive. It’s powered by CompuLaw,® the leader in court rules-based calendar technology.

Access DOD to check your deadlines. No need to purchase, install or learn software—just log onto the DOD website. Enter basic case information and watch DOD instantly display your deadlines. You can import your dates into Outlook,® or any application supporting iCalendar files.

Think about it—no more worries of calendar vs. court days, local vs. federal holidays, or counting backwards and forwards—DOD does it all. Plus you can bill-back your clients for the minimal DOD research charges.

Why run the risk of missing critical dates? Protect your clients with the same CompuLaw-checked deadlines that the big firms have used for decades. Visit www.deadlines.com and DOD your dates today!

(888) 363-5522 | www.deadlines.com

For a FREE PREVIEW: Use Promo Code LAL2005

Copyright © 2005, Deadlines on Demand LLC, all rights reserved. U.S. and foreign patents pending. CompuLaw® is a registered trademark of CompuLaw LLC.
The Allocation of Repair Obligations in Form Leases

**NATURAL DISASTERS** such as earthquakes and mudslides are an ever-present risk in California. When they happen, landlords and tenants in leased property are often left fighting over who is required to pay the repair bills and government-mandated upgrades.

Before 1994, the terms of a typical net lease expressly provided that a tenant was required to pay for all repairs to leased property, regardless of whether the tenant was big or small, regardless of the length of the lease or amount of rent paid under the lease, and regardless of the cost. Thus, when an earthquake or hazard damaged leased property, many small tenants faced repair bills that were huge in comparison to the rents paid under their leases. The California Supreme Court sought to remedy this problem in *Hadian v. Schwartz* and *Brown v. Green* by creating a judicial balancing test that allowed certain tenants to escape onerous repair burdens despite express lease terms to the contrary.

This balancing test forced courts to look at the total repair cost in comparison to the total rents payable under the term of the lease and the length of the lease, among other factors, to decide whether the landlord or tenant should pay the cost of repair. However, it opened the door for protracted litigation because neither landlords nor tenants could rely solely on the terms of their leases to determine who was required to repair leased property. The appellate courts have not curtailed the uncertainty created by this balancing test because there is no reported court of appeal decision that gives additional guidance.

In an apparent attempt to respond to this test and restore confidence that their leases would be applied according to their terms, the AIR Commercial Real Estate Association amended its form net leases twice—once in 2001 and again in 2004—to make the provisions dealing with code compliance and repair obligations more tenant-friendly. But neither the 2001 nor the 2004 AIR Multi-Tenant Net Leases foreclose the possibility of litigation under *Hadian* and *Brown*; instead, they create new ambiguities that raise the likelihood of litigation. However, adopting a more simple and streamlined approach to the language of form net leases may provide landlords and tenants with more confidence that the language of their form leases will be applied by the courts without alteration.

**The Supreme Court Balancing Test**

In *Hadian* and *Brown*, the California Supreme Court developed a six-factor test to invoke when deciding whether the tenant or landlord should pay for government-mandated repairs and upgrades, even when a lease expressly provides that the tenant must pay for all repairs:

1) The ratio of the total cost of the repair to the total rent payments required for the term of the lease.
2) The length of the lease.
3) A comparison of the benefit of the repairs to the lessee versus the reversionary benefit to the landlord.
4) Whether the repair is structural or nonstructural.
5) The degree to which the lessee’s use and enjoyment of the premises will be interfered with during the repair.
6) The likelihood that the parties anticipated the application of the particular law or order involved.

In *Hadian*, the tenant leased a very small space to operate a bar and cabaret. The lease was for three years at $650 per month with one five-year option to renew at a $800 per month, which the tenant exercised. During the five-year option period, the city issued an order requiring a seismic upgrade of the property. The cost of the upgrade was more than $30,000. The supreme court held that the landlord was required to make the repairs despite the fact that the express terms of the lease imposed the burden on the tenant.

In applying that six-factor test, the court found that the repair cost amounted to about 150 percent of the amount of the total lease payments under the initial three-year lease term and nearly half the total lease payments under the extended term. The initial lease was also a relatively short-term lease. As a result, the court decided that the first two factors weighed in the tenant’s favor. The court decided that the third factor also favored the tenant because the landlord stood to gain far more benefit over the life of the repairs than the tenant. Further, because the repairs were structural in nature and the tenant’s business suffered as a result of the repairs, the court determined that the fourth and fifth factors also favored the tenant. Finally, because the tenant was unsophisticated and did not contemplate incurring the repairs at issue, the court determined that the sixth factor also favored the tenant. As a result, the court held that the tenant could not be required to incur the costs of the repairs.

**Walter R. Zagzebski** is a partner with Gaims, Weil, West & Epstein, LLP, and practices real estate litigation. He thanks his colleagues Kenneth Feingold, Damon Rubin, Marc Epstein, and Sander Zagzebski for their input.
Managing my law practice can take most of my day … or only a few minutes with tools from LexisNexis®.

Your law practice matters. Your firm’s reputation matters. And how well you manage clients, cases, communications, documents, your calendar and your time—clearly, that matters, too. The challenge today is to do all of this and more, without losing your focus on the law.

LexisNexis Time Matters is the legal profession’s most widely used, most award-winning practice management tool. It helps you manage a wide range of matters, from client activity to firm communications and billable time—all from a central desktop location.

The new Time Matters 7.0 gives you dozens of calendar, email, and reporting improvements, plus new Client and Matter Journals that track all critical information on one screen, active Monitors that alert you to special client and matter needs, and Customizable Navigators based on your workflow which dramatically simplifies using practice management. You also get standout support options and a money-back guarantee*. Visit our web site to see a complete list of the top 40 new features and improvements.

LexisNexis® … more than research.
Visit www.timematters.com/ or call 800.328.2898.

*Full 60-day money-back satisfaction guarantee subject to terms and conditions. Limited-time offer. Other restrictions may apply.
By contrast, in Brown, the tenant operated a large furniture business and was the sole tenant of the leased property. The tenant entered into a 15-year lease with a total of $5 million in rent paid over the term of the lease. During the lease term, public officials inspected the property and determined that asbestos had begun to flake in one area of the leased property, requiring a repair and cleanup costing $230,000. The repair cost was only 2 percent of the rent paid under the lease, and the lease was relatively long term. Therefore, the court decided that the first and second factors weighed in the landlord’s favor. The court considered the third factor, a comparison of benefits, to be neutral. There was substantial time remaining on the lease, thus providing the tenant with substantial benefit of the repair. But the court also recognized a reversionary benefit to the landlord because the repair would permanently remove an environmental hazard from the property. The court considered the fourth factor to be in the tenant’s favor because the repair at issue was structural. The court found the fifth factor to be in the landlord's favor because the tenant was able to mitigate the effects of the repair on its business by closing off the affected portion of the property and continuing operations with little disruption. The court also considered the sixth factor to favor the landlord because, although there was no evidence that the parties contemplated the exact repair at issue, the tenant was an experienced lessee who fully understood the terms of commercial leases. In weighing the factors, the court required the tenant to incur the cost of the repair.

The Hadian and Brown balancing test resulted in a rule of thumb that big anchor tenants with sophisticated management were generally required to undertake substantial repair obligations, while smaller, short-term, unsophisticated tenants could likely escape even potentially small repair burdens. As for the numerous tenants who fell in the middle, the court created uncertainty and the likelihood of protracted litigation.

The New AIR Cost-Sharing Formula

After Hadian and Brown, the AIR forms were amended in 2001 and 2004 to create a new approach to allocating repair burdens. The repair burdens under the new forms were addressed in two separate lease provisions: Paragraph 2.3, addressing legal compliance, and Paragraph 7, addressing maintenance and repairs.

Paragraph 2.3 of the 2001 form provides a definition of “Applicable Requirements” which essentially includes every type of law, ordinance, code, or order that could possibly affect the property. It also defines “Capital Expenditure” as every type or alteration, modification, remediation of hazardous substances, or any other type of upgrade to the property mandated by the Applicable Requirements. In the 2001 form, the landlord absolutely warrants that the property was in compliance with the Applicable Requirements at the time each improvement was made. The tenant is advised to inspect the property and is given six months after the commencement of the lease to notify the landlord if the property does not fully comply. If the tenant notifies the landlord, the landlord is required to make any necessary repair at its expense. Otherwise, the tenant must make the repair. In the 2004 form, the landlord’s absolute warranty is replaced by a warranty limited to the best of the landlord’s knowledge, meaning that the landlord is only required to repair property for prior noncompliance if it had knowledge that the property did not comply.

Under both the 2001 and 2004 forms, if the Applicable Requirements change when the tenant is in possession, requiring a Capital Expenditure, the following two rules apply: 1) If the required expenditure is caused by a specific and unique use by the tenant, a change in the intensity of the tenant’s use, or the tenant’s alteration of the premises, the tenant must either cease the changed use or pay for the repair (with some minor exceptions). 2) If the required expenditure is not caused by a tenant’s specific or unique use, such as a seismic upgrade, the parties shall “allocate the obligation to pay for the portion of such costs reasonably attributable to the premises pursuant to the formula set out in Paragraph 7.1(d).”

Paragraph 7.1 addresses which party must pay for general repairs and maintenance to the property, such as maintaining heating and ventilation, boiler and pressure valves, and any other type of utility equipment. Paragraph 7.1(d) states that if any utility equipment covered by Paragraph 7.1 cannot be repaired at a cost that is less than 50 percent of the amount it would cost to replace it as new, the item shall be replaced and the replacement cost prorated between the parties with the tenant’s share equal to 1/144th the total cost times the number of months remaining on the lease.

Both the 2001 and 2004 forms are vulnerable to judicial redrafting under Hadian and Brown. First, the language in Paragraph 2.3 that attempts to incorporate the cost-sharing formula in Paragraph 7.1(d) is ambiguous. It would seem that the drafters intended that the allocation formula of Paragraph 7.1(d) applies to all capital expenditures other than those involving prior noncompliance for which the landlord breached its warranty. But the express language of Paragraph 7.1(d) provides that the allocation formula does not apply unless a replacement is required because the repair cost is greater than 50 percent of the replacement cost. Does this mean that the tenant must pay the entire cost for all Capital Expenditures that are less 50 percent of replacement cost, just as the tenant would be required to do with utility costs under Paragraph 7.1(d)? Or, was it the intention of the 2001 and 2004 forms to skip the 50 percent triggering language in Paragraph 7.1(d) and assume that the allocation formula applies to all Capital Expenditures made necessary by changes to the Applicable Requirements that are not caused by a tenant’s special use? This ambiguity leaves the door open for the courts to apply Hadian and Brown.

Second, the 2004 form has created a new problem with the change from an absolute warranty of the landlord’s prior compliance to a warranty limited to the best of the landlord's knowledge. Under the 2001 form, if a repair became necessary because the property was not in compliance as warranted, the landlord was forced to incur the costs of the repair, assuming the tenant gave proper notice. Otherwise, the tenant had to bear the cost. There was no possibility of a third option. But under the 2004 form, it is unclear which party is responsible when the property was not in compliance with the Applicable Requirements at the time each improvement was made, but the warranty was not breached because the landlord had no knowledge. Nothing in Paragraph 2.3 applies to these repairs. Even Paragraph 2.3(b), the section that makes reference to the cost-sharing formula in Paragraph 7.1(d), does not apply because by its terms it only applies when the Applicable Requirements have changed during the tenancy. Thus, Paragraph 7, which addresses general repair burdens, apparently applies.

Paragraph 7 imposes a general repair burden on the tenant but also provides that the landlord must keep the “foundations, exterior walls, [and] structural conditions” in good repair. Thus, when the landlord does not breach its warranty for noncompliance under the 2004 form, it appears that if the mandated repair is structural the landlord must incur the entire cost, and if the repair is nonstructural the tenant will have to pay the entire cost. This all-or-nothing approach raises the risk that a court would apply Hadian and Brown, allowing smaller tenants to escape repairs that are onerous in comparison to the rent they pay.

Finally, the cost-sharing allocation formula expressed in Paragraph 7.1(d) is not tied to the factors that the supreme court found most important in Hadian and Brown and thus remains vulnerable to judicial revision. If the tenant in Hadian had been subject to the 2001 or 2004 form (and assuming that the
At Stonefield Josephson, we see the big picture while never losing sight of the person sitting across the table—you.

Our full-service certified public accounting firm serves public and privately held clients throughout the United States and internationally. We promise our thoughtful attention to your needs—call us for a complimentary meeting to discuss your situation.

**Assurance/accounting**
- Business valuation
- Financial recovery
- Forensic services
- Litigation support
- Public companies services
- Tax services

**Business consulting**
- Profit enhancement
- Finance sourcing
- Mergers and acquisitions
- Family-owned business
- Succession planning
- Executive incentive compensation
- Business plans and budgeting
cost-allocation formula in Paragraph 7.1(d) applied despite its ambiguity) the tenant’s share of the repair cost would have been $15,550 (a total repair bill of $34,450.26 divided by 144 and multiplied by the 65 months remaining on the lease). That is a pretty stiff bill for a tenant that was paying $650 per month in rent and had just exercised a renewal option at $850 per month for five years. It is likely that the supreme court would have struck down this repair burden.

For these reasons, even when the 2001 and 2004 forms are used, courts are likely to have struck down this repair burden. It is likely that the supreme court would adopt this approach to allocating repair burdens. This means that the likelihood of protracted litigation continues to exist. However, it is possible to overcome the danger of judicial intervention by creating a cost-sharing formula that focuses on the factor the supreme court found most important in Hadian and Brown—the ratio of the cost of repair to the total rent paid or to be paid under the lease. If the tenant’s share of a repair obligation is reasonable in comparison to the lease payments, it will most likely be upheld. Paragraph 2.3(a), which requires the tenant to pay for all Capital Expenditures made necessary by the tenant’s special use of the premises, should withstand judicial scrutiny. But Paragraph 2.3(b), which addresses all other Capital Expenditures, should be amended to include language similar to the following:

The cost of any Capital Expenditure or repair (other than a Capital Expenditure or repair involving a breach of warranty or the tenant’s special use as set forth above) shall be allocated between the landlord and tenant with the tenant’s share of the cost being either the total cost or an amount equal to 5 percent of the total amount of rent payable under the entire term of the lease (excluding unexercised options), whichever is less.

The exact percentage used in the above paragraph can, of course, be negotiated between the parties. The landlord, however, should be advised not to demand too high a percentage, or a court may find it over-reaching and strike it down. The parties can also negotiate other factors, such as the extent of the landlord’s warranty of existing compliance and repairs and upgrades caused by the tenant’s use. If landlords and tenants adopt this approach to allocating repair burdens, the likelihood of protracted litigation and the risk of a court rewriting the lease should be minimized.

1 Hadian v. Schwartz, 8 Cal. 4th 836 (1994).
3 Lower court decisions that have cited Hadian and Brown have not relied upon, expanded upon, or provided any further guidance for applying their balancing test. See, e.g., SDC/Pullman Partners v. Tolo Inc., 60 Cal. App. 4th 37 (1998) (holding that a lease term requiring a tenant to clean up all toxic substances did not require a tenant to clean up soil that had minimal toxicity and was not subject to a clean-up order). The court of appeal relied on Hadian and Brown solely for the proposition that the circumstance surrounding a lease must be examined to determine the scope of lease obligations.
4 See also Prudential Ins. Co. of Am. v. L.A. Mart, 68 F. 3d 370 (1995), in which a landlord obtained engineering reports recommending seismic upgrades to leased property. The property was in compliance with all statutory laws and was not subject to a repair order. The landlord demanded that the tenant make and pay for the recommended upgrades, the tenant refused, and the landlord sued, claiming the tenant was responsible for the upgrades under Hadian and Brown. The court of appeal ruled against the landlord and distinguished Hadian and Brown, holding that in both of those cases there was a government-mandated repair order.
7 2001 Lease, supra note 5, ¶¶2.3(a), (c).
8 Id. at ¶2.3(b).
9 Id. at ¶7.1(a).
10 Id. at ¶7.1(b), 7.1(d).
11 2004 Lease, supra note 6, ¶7.1(a), (b).

A wider perspective:

What the legal community expects from a law school devoted to the big picture.

Creative, versatile graduates with panoramic vision for today’s complex legal challenges.

www.CaliforniaWestern.edu
A CALIFORNIA ATTORNEY MAY at some time represent a client in a Better Business Bureau (BBB) arbitration for a vehicle alleged to be defective. The requirements of California Civil Code Section 1793.22, commonly called the Lemon Law, are of primary importance in this representation. When representing a client in a Lemon Law arbitration, counsel should build the case around the requirements and educate the client as much as possible regarding the legal standards of a Lemon Law arbitration. When these standards are met, the client is prepared, and the typical defenses presented by the manufacturer’s representative are adequately addressed, counsel may feel more confident of a successful resolution.

The Lemon Law, formally known as the Tanner Consumer Protection Act, applies to new vehicles registered in California. A new vehicle is one primarily used for personal or household transportation; a business vehicle with a gross vehicle weight of less than 10,000 pounds (as long as the buyer/lessee does not have more than five other vehicles registered in California); the chassis, cab, and propulsion part of a motor home; dealer owned vehicles; demonstration vehicles; other vehicles sold with a new car warranty; and new purchased or leased vehicles.1 The Lemon Law does not apply to off-road vehicles, the part of a motor home primarily used for human habitation, or vehicles that have been abused. Examples of abuse would be street or off-road racing, seriously overloading a vehicle, and avoiding necessary maintenance.

There are three critical components or elements that give rise to a rebuttable presumption a new vehicle is a lemon. These elements are time/mileage, the number of attempts to repair and the time the vehicle has been out of service, and materiality of the defect. If the consumer meets the statutory criteria of Section 1792.22, he or she is entitled to a presumption that the vehicle is defective. If the manufacturer cannot rebut the presumption, the consumer is entitled to a rebuttable presumption a new vehicle is a lemon. These elements are time/mileage, the number of attempts to repair and the time the vehicle has been out of service, and materiality of the defect.

The critical element of materiality is usually the most difficult to prove. Plastic body trim that is out of alignment, for example, is not material. A failed antilock braking system or failed engine clearly is.

Minor body defects, rattles, squeaks, and interior defects routinely do not qualify. However, in one case, a vehicle was presented to the dealer on numerous occasions for a squeak. At every presentation, the dealer carefully inspected, analyzed, and repaired the vehicle. One time the dealer replaced a right control arm. The next time it replaced the left control arm. On another occasion it found chafing brake lines. The vehicle was out of service for 37 days in one year. The defect was not considered material in the BBB arbitration, but when counsel brought suit, the manufacturer offered to repurchase the vehicle.4

The defect must be the primary reason for returning the vehicle. The squeak in the example, one should note, appeared to be only a symptom of a number of defects. Often, whether the BBB arbitrator sees the defect as material may depend upon the persuasive power of counsel. The gravity of some dangerous defects may not be obvious.

Michael B. Rainey is an attorney in Woodland Hills and a professor at Pepperdine University. His practice focuses on mediation and arbitration, including products, real estate, personal injury, and transactions.

There are three critical components or elements that give rise to a rebuttable presumption a new vehicle is a lemon. These elements are time/mileage, the number of attempts to repair and the time the vehicle has been out of service, and materiality of the defect.

1 A CALIFORNIA ATTORNEY MAY at some time represent a client in a BBB arbitration for a vehicle alleged to be defective. The requirements of California Civil Code Section 1793.22, commonly called the Lemon Law, are of primary importance in this representation. When representing a client in a Lemon Law arbitration, counsel should build the case around the requirements and educate the client as much as possible regarding the legal standards of a Lemon Law arbitration. When these standards are met, the client is prepared, and the typical defenses presented by the manufacturer’s representative are adequately addressed, counsel may feel more confident of a successful resolution.

2 Time/mileage. The statutory period of the presumption is 18 months or 18,000 miles, whichever occurs first. The time runs from the date of delivery, which is usually on the sales contract or parts order if the car was purchased with cash. If the last repair event comes toward the end of the statutory time period, the statute is satisfied if the vehicle enters the repair facility before the deadline of 18 months or 18,000 miles. The crucial date is the date the vehicle enters the repair facility.

3 Number of attempts to repair. There are two general categories of nonconformity. The first category of nonconformity is a condition that is likely to lead to death or serious bodily harm. The manufacturer or its agent, usually a dealership, has two or more opportunities to fix the vehicle. In conjunction with presenting the vehicle for repair, if the manufacturer has conspicuously disclosed the provisions of the Lemon Law and provided a contact address, the consumer must notify the manufacturer of the need for the repair.

The second category of nonconformity is defined as service on the vehicle for the “same nonconformity” that requires four or more repairs. Like the first category of more serious or potentially fatal defects, if the manufacturer met its notice responsibility, the consumer has the responsibility to put the manufacturer on notice of the repair.

Finally, under either category, the vehicle must be out of service for a cumulative period of 30 days. This period is measured in calendar days and is not required to be consecutive.

4 Material defect. As Civil Code Section 1793.22(e)(1) states, the nonconformity must adversely affect the “use, value, or safety of the vehicle.” The critical element of materiality is usually the most difficult to prove. Plastic body trim that is out of alignment, for example, is not material. A failed antilock braking system or failed engine clearly is.

Minor body defects, rattles, squeaks, and interior defects routinely do not qualify. However, in one case, a vehicle was presented to the dealer on numerous occasions for a squeak. At every presentation, the dealer carefully inspected, analyzed, and repaired the vehicle. One time the dealer replaced a right control arm. The next time it replaced the left control arm. On another occasion it found chafing brake lines. The vehicle was out of service for 37 days in one year. The defect was not considered material in the BBB arbitration, but when counsel brought suit, the manufacturer offered to repurchase the vehicle.

5 The defect must be the primary reason for returning the vehicle. The squeak in the example, one should note, appeared to be only a symptom of a number of defects. Often, whether the BBB arbitrator sees the defect as material may depend upon the persuasive power of counsel. The gravity of some dangerous defects may not be obvious.

Michael B. Rainey is an attorney in Woodland Hills and a professor at Pepperdine University. His practice focuses on mediation and arbitration, including products, real estate, personal injury, and transactions.
For example, if the alleged defect is that the vehicle stalls at inopportune times, it may require explanation as to why this problem adversely affects the use, value, or safety of the vehicle. The car may stall on train tracks or on a busy freeway.

Once the consumer meets the statutory criteria, the vehicle is presumed defective and the manufacturer has the burden to rebut the presumption.

The Arbitration Process

The BBB is separate from the California Department of Consumer Affairs and is a private business entity that engages in treaties and agreements with dealers and manufacturers to provide arbitration. There is no cost for the consumer. If he or she prevails, the manufacturer is bound by the award. If the consumer loses, he or she has alternatives.

In conjunction with the process of notification required under Civil Code Section 1792.22, the claimant can also request a separate BBB hearing. The claimant can handle the case by himself or herself or engage counsel. The claim can be processed in several ways. The consumer or counsel can call the BBB Auto Line at (800) 955-5100. A claim can also be processed online at http://www .dr .bbb.org/autoline/caprocess.asp. The BBB can also be contacted in writing at BBB Auto Line, 4200 Wilson Boulevard, Suite 800, Arlington, VA 22203-1838.

The arbitration process can involve both parties presenting their cases in person, but there are alternatives. The consumer can request to present his or her statement and evidence by phone or in writing. If the consumer appears in person, the manufacturer has the choice of appearing in person, by phone, or in writing. If the consumer chooses the phone, the manufacturer is restricted to the phone or writing. If the consumer chooses to present his or her case only in writing, the manufacturer is likewise limited to presenting its case in writing. When one of the parties does not appear in person, the BBB Arbitration Rules, which are available online, require the arbitrator to provide a speaker phone or conference call so all the parties can effectively participate in the hearing.

The consumer presents his or her case, rests, and then the manufacturer presents its case. The key to a successful resolution is how the consumer or his or her counsel presents the facts.

The Consumer’s Presentation

The statutory presumption arises when the consumer or the consumer’s counsel has shown the three criteria called for in Section 1793.22. They are that the new vehicle falls within the claim period; the consumer has put the manufacturer on notice and has presented the vehicle to the manufacturer or its agent for the requisite number of times and it has been out of service for the required days; and the nonconformity adversely affects the use, value, or safety of the vehicle.

Assuming counsel has prepared the proper BBB paperwork, on the date of the arbitration, the consumer will have to show the BBB a valid driver’s license, vehicle registration, and proof of insurance. It is probable the arbitrator and/or the manufacturer will want to take a test drive. For all parties, it is important to have proof of current license, vehicle ownership, and current insurance.

The first step—the statutory period—is adequately proven by presenting the arbitrator and manufacturer with copies of the sales contract to indicate the date of delivery. Photos of the odometer, repair orders, or making the vehicle available to the arbitrator can establish the mileage. This is usually the easiest element to prove.

The next element is proof of the duration and notice to the manufacturer. Copies of the repair order or orders, in chronological order, with a summary of the number of days the car was out of service will be required for the consumer to prove the time the vehicle was out of service. The consumer will also have to provide evidence that he or she put the manufacturer on notice. A copy of the letter should suffice.

The last element—showing that the nonconformity adversely affects the use, value, and safety—is often the most difficult. The consumer has purchased an expensive commodity. When the consumer discovers a defect, he or she does not want to be placated. He or she does not want to be told the manufacturer has a range in which the vehicle can be conforming. The consumer wants action. The consumer wants redress. These desires do not translate, however, into a legal requirement that a car be replaced.

In order to show the problem is a statutory nonconformity, counsel may have to do some research. Online research on the Highway Data Loss Institute (HDLI), the National Highway Traffic Safety Administration (NHTSA), and Google can yield information. A number of very valuable Web sites yield highly valuable information. For example, http://www.theautochannel.com/news/recalls, http://www.internetautoguide .com/auto-recalls/index.html, and http:/ /groups.msn.com/toyotaownersunitedforresolution are all sites worthy of bookmarks for research into how a given defect affects the use, value, or safety of a motor vehicle. The MSN group site requires the researcher to join. This takes time, but the information available is tremendous. One excerpt from the site, for example, concerns brake defects:

Please see attached file on Toyota Camry brake problems. This file is 62 pages long from 1997-2004 Toyota Camrys. Many have resulted in accidents. My question is why are these vehicles still on the road? Why hasn’t the NHTSA recalled these vehicles? If I were GM, Ford or Chrysler I would be asking the NHTSA if Toyota is exempt from recalls. Do you want your family riding or driving in these vehicles? Steering problems, brake system failures... If you or someone you know has had brake problems and Toyota denies any problems[,] have [that person] print out this file and present it to Toyota.

The author of this message provides the full report. The following is an example of the information contained therein:

Make: Toyota
Model: Camry
Year: 1998
Complaint Number: 745143
Since buying my Toyota in April of 1998, I have needed to replace the brakes and rotors 3 times. I still continue to have screeching and grinding noises. I have been told by Toyota dealerships that this noise has been a noted problem. I find this to be unacceptable for a “new” car. I bought a new car to avoid making repairs and I have made more on this Toyota and its bad breaks than I would have spent on keeping my used rodeo. I mean with regular maintenance check, oil change, car payments, $200 brake jobs every 8 to 12 months, this is ridiculous. I have also had problems with clunking noises coming from my front suspension, especially if I go over a rough road. For a company that has a reputation for superior cars, this has been a disappointing first buy as I find the car to have a very, very poor braking system and suspension. From reading your technical bulletins, there has been 90 reported complaints on the brakes...

Another helpful source is a skilled mechanic or a dealer. Often they will provide you with copies of the manufacturer’s notices, intercompany repair messages, or recall notices.
The California Wellness Foundation

2005 California Peace Prize

Otilio “O.T.” Quintero
Santa Cruz

“One of our first points of contact with young people is not necessarily programmatic, but spiritual. A lot of our young people are spiritually bankrupt and need to go through a process of healing before they can start to participate in a program.”

Maria Velasquez
Shingletown

“The family dynamics have changed in the rural areas and our kids are really struggling. Part of our movement is to empower children with the skills and tools that let them know they have rights and choices in life that no one can take away from them.”

Sayre Weaver
Brea

“Gun violence is the leading cause of death for young people of color between the ages of 18 and 24. People don’t understand the public health consequences of gun violence, or realize that it is children and young people who are being killed and maimed.”

Violence Is Preventable!

Crime and violence rates in California have fallen significantly over the past decade. The State of California has passed some of the toughest gun control laws in the nation and has dramatically increased spending for violence prevention and youth safety programs. At the same time, committed individuals have established innovative programs that are helping prevent violence in cities all across California.

The California Wellness Foundation honors three of these outstanding community leaders with its 2005 California Peace Prize. Otilio “O.T.” Quintero, Maria Velasquez and Sayre Weaver will each receive a cash award of $25,000 as an acknowledgement of their commitment to prevent violence and promote peace in their communities.

The California Wellness Foundation is an independent, private foundation created in 1992 to improve the health of the people of California. Violence prevention is part of our mission because the characteristics of a healthy community, as defined by the World Health Organization, include a safe physical environment. To learn more about our 2005 honorees and the Foundation, please visit www.tcwf.org.
We have obtained recoveries totaling millions of dollars for defective and unsafe vehicles. We enjoy a superb success rate and obtain speedy and full recoveries without litigation in nearly all cases.

Delsack & Associates is known for experience, positive relationships with manufacturers, and speedy and satisfactory settlements.

Delsack & Associates, P.C.

1801 Century Park East, Suite 2400, Los Angeles CA 90067

Ph (310) 475-1700 • Fax (310) 475-1799 • E-mail info@delsacklaw.com

Website www.lemonlawspecialists.com

— LEMON LAW SPECIALISTS —

✔ Automobiles
✔ Motorcycles
✔ Motor Homes
✔ Boats

Kich-av-en

n. Mediator; Prepared. Persistent. Professional.

Harvard Law J.D. Berkeley ФВК.

“When it’s time to get the tough one settled.”

www.jeffkichaven.com 213.996.8465

SERVING THE COMMUNITY THROUGH YOUR BETTER BUSINESS BUREAU

Successful completion of a one and a half-day training will qualify you to become a volunteer arbitrator for the BBB AUTO LINE program and other consumer/business disputes for your local Better Business Bureau. Training sessions are being held throughout the state of California as early as November 2005 and continuing into the year 2006.

Applications can be completed online at www.dr.bbb.org and click on Training.

Please call 1.800.334.2406 ext. 374 or e-mail alee@ebb.bbb.org. BBB certified arbitrators are offered an honorarium of $100 for each completed BBB AUTO LINE case they hear.

There have been “secret” problems regarding which customers were informed only when they presented their vehicles for repair. These problems are difficult, but not impossible, to uncover. A good example from the late 1980s involved the alleged self-acceleration of the Nissan 280ZX and 300ZX. The NHTSA complaint file contained numerous claims. The first paragraph of Nissan’s answering letters expresses sympathy for the person’s plight and explains how this is the “first incident of this nature” concerning the model.6

Finally, it can be very helpful to know about cars. Sometimes the danger of a defect may not be obvious to a person who is unfamiliar with the mechanical and electrical operations of cars. The customer and counsel must consider how to present the claimed defect so that it falls within the statutory definitions. Anyone presenting a Lemon Law claim should be completely familiar with the various codes that are found on the repair orders. Often, a visit to a local dealer (even the dealer that did the work) can help decipher the codes. It is a worthwhile exercise.

The Manufacturer’s Presentation

The manufacturer’s representative may present his or her case by phone or in person. A local service manager or mechanic may also be present as a live witness. At the hearing, the manufacturer’s representative may examine the local service manager or mechanic. The client’s attorney must assume that the representative and witness are very well prepared.

Depending on the relationship among the consumer, the dealership, and its employees, the service manager or mechanic may be friendly and willing to talk to counsel before the hearing. At this stage of the proceeding, the witness is not usually represented by counsel, so there is no ethical violation to talk to the witness. A conversation at this time can be crucial. If counsel carefully probes and actively listens, he or she can glean a great deal of information. Counsel can sense whether this witness will be hostile. Counsel can also ask the witness about his or her feeling as to whether there is a real problem with the car or if the heart of the problem is nothing more than one customer’s dissatisfaction. If the former scenario seems more likely, probe for some facts. If the latter does, try to determine the basis for the opinion: What does this or that repair code mean? How many other vehicles has the witness worked on with the same or similar problem? What was done while the vehicle was in the shop? Frequently, the witness will give valuable information that can be helpful in the hearing. Do not make the witness become recalcitrant by being too aggressive. Counsel should also consider the ramifications of what happens
after the arbitration. If counsel takes an aggressive stance against the witness and the consumer loses the arbitration, where will he or she get the vehicle serviced?

The consumer should understand that whether appearing by phone or in person, the manufacturer’s representative will be polished and professional at the arbitration. The representative has the technical expertise of a large corporation at his or her disposal and can muster statistics, copies of all repair orders, and a number of persuasive stories. The consumer and counsel will need some help to offset this technological asymmetry. First, counsel should usually not attempt to go head-to-head with the manufacturer’s representative, who, as a practical matter, is an expert with unlimited resources. The consumer’s attorney also should be prepared for the manufacturer’s representative to shower the arbitrator with statistical data such as, “The manufacturer has assembled 1,234,587 models of this vehicle in 17 countries in the world. This vehicle has been badged as X in North America, Y in South America, and Z in Europe. There have been no recalls and no governmental actions against any of the badged vehicles.”

Most of this information will be irrelevant to the particular case at hand; however, the statistical display is very influential. In essence, the manufacturer is attempting with this argument to make the car’s failings statistically insignificant. The consumer’s attorney should not try to win a numbers-quoting contest with a manufacturer’s representative. Instead, the facts concerning the particular car in question, whether or not they are part of a larger pattern, may be what ultimately matters under the law.

Another tactic that manufacturer’s representatives sometimes rely on, especially if the vehicle is not top of the line, is to imply that if the consumer had purchased the top-of-the-line model, he or she would not have had the alleged problems. It is common for the manufacturer to take the position that if the consumer had purchased a more expensive model, it would have had better construction, insulation, or electronics. The consumer’s attorney can call attention to the obvious flaw in this argument.

It is likely the arbitrator has previously dealt with the manufacturer’s representative and anticipates dealing with him or her in the future. It is common for the arbitrator to show deference to the manufacturer’s representative. The consumer’s counsel should therefore be prepared to object to and be overruled. The consumer’s counsel may ask the representative how any of the statistics presented or comments offered are relevant, for example, but should be prepared for a response to the effect that the cumulative information all goes to show what a great vehicle the consumer has purchased.

The manufacturer’s representative will then call his or her witness—typically, the service manager or mechanic. The representative will introduce the work orders. His or her job is to show how diligently the dealer worked on the vehicle and that the problems were normal. This is why it is important for the consumer to have read and understood all the repair orders, including the repair codes.

If the manufacturer’s witness dismisses the seriousness of the problem, cross-examination should concentrate on how the defect diminished the vehicle’s use, value, and safety as viewed by a reasonable person or the general public. Counsel may even ask the witness if he or she would take the vehicle on a busy highway with his or her family. This may make the allegation of defect or poor repair personal. The witness may become so defensive that he or she becomes adversarial. In the process, the witness may inadvertently compromise his or her credibility and objectivity.

Preparing the Client

Many consumers are emotional when it concerns their vehicles. This emotional relationship can play havoc with their objectivity. Counsel’s best tactic is to thoroughly educate the client about the Lemon Law. Counsel should explain what the presumption in Civil Code Section 1793.22 means and take time to fully inform the client how important it is to show that the defect is material. Once the client understands the factual and legal requirements, counsel must outline the plan to gather the necessary evidence.

Most owners do not maintain complete vehicle service records. It is not a good idea to rely on the consumer’s recollection regarding the number of times the vehicle was presented for repair or how long it was kept in the shop. Consequently, it is absolutely necessary to get copies of all work orders. An attorney should not even consider filing for a BBB arbitration until he or she has a complete history of the allegedly defective vehicle. Counsel must assume that the manufacturer will have all relevant documents.

Next, counsel should educate the client on the arbitration process. It can be confusing to someone who has never participated in an arbitration. It can be productive to do some role-playing. The BBB arbitration generally adheres to the traditional arbitration mode of question and answer.

First, both parties are given an opportunity to present an opening statement. Second, the consumer presents his or her case-in-chief with witnesses, evidence, and exhibits. It is prudent to make sufficient copies of any exhibits. Usually four copies are sufficient: one each for the witness, counsel, other party, and arbitrator. That way, all can follow the testimony without the distraction of passing a document around the room. Third, the manufacturer is given the opportunity to cross-examine the witness. Fourth, when the consumer finishes his or her case, the manufacturer presents its defense. Finally, when both sides rest, the arbitrator will give them the opportunity to give a closing argument.

In the closing statement counsel for the consumer client may reiterate the statutory elements, then specifically connect the testimony and evidence to each element to show that the burden of proof has been met. The effectiveness of this last step of the arbitration process is a function of prearbitration preparation. It is a usual tactic for the manufacturer’s representative to restate the statistics and information showing how the model of vehicle that the defective one came from is the greatest ever made. This is not relevant, but the arbitrator often allows it without comment. The manufacturer’s representative will usually close by trying to show the consumer did not prove the case. It is predictable the defense will focus on the defect, trying to show it was not material, because the other elements are generally easier to establish.

Unless very gifted, the consumer is not likely to be able to compete on the same technical level as the manufacturer’s representative. It is also unlikely the arbitrator can work at that heightened technical level either. It is incumbent upon the consumer or counsel to make the case simple, straightforward, and within the Lemon Law criteria.

Materiality of the alleged defect is the Achilles heel of the typical Lemon Law case, and building a solid foundation of materiality is the most crucial part of a Lemon Law arbitration. Although the BBB arbitration is a helpful forum for the consumer, it requires adequate evidentiary showing. The BBB is a business funded by businesses, and it is not prone to distributing the assets of its participants without an adequate showing.

---

1 See Civ. Code §1793.22(e)(2).
2 Civil Code §1793.2(d)(2)(C) provides the statutory formula. The variables may be significant modifications (sound system, new tires, or mechanical repairs or upgrades). The manufacturer will also credit license, title, registration, and sales and use tax.
3 Civil Code §1793.22(e)(1) defines “nonconformity” as what substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee. This is also referred to as “a material defect.”
5 See Uniform Commercial Code §2314(2)(d), warranty of merchantability. To be merchantable, “goods” may “run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit党委 involved.
Redefining the reach of the **COMMERCE CLAUSE** may be one of the important legacies of the Rehnquist Court
that context.6 In these cases the Supreme Court was asked to inval-
itate state laws that allegedly discriminated against interstate com-
merce.7 Thus the authority of Congress to enact legislation of its own
under the commerce clause was not at issue.

The first significant exercise of the “affirmative” commerce clause
powers of Congress did not come until late in the nineteenth cen-
tury, with the enactment of laws such as the Interstate Commerce Act in
18872 and the Sherman Antitrust Act in 1890.3 For the next half cen-
tury, the Supreme Court struggled to develop a workable standard
for determining which legislative enactments fell within the power of
Congress to regulate interstate commerce and which did not. The
Court started from the premise that, because the Constitution created
a national government of enumerated powers, the authority granted
to Congress pursuant to the commerce clause had to be meaningfully
constrained. Otherwise, the Court feared, “there would be virtually
no limit to the federal power and for all practical purposes we should
have a completely centralized government.”10 Acting on that concern,
the Court showed no hesitation in striking down federal laws on the
ground that the legislation in question exceeded Congress’s author-
ity under the commerce clause.11

By all accounts, however, the Court’s efforts to develop a coher-
ent doctrine for limiting the scope of the commerce clause powers of
Congress were unsuccessful. The Court initially attempted to distin-
guish between “production” or “manufacturing” and commerce
and held that Congress had no authority to regulate activities on the
production side of the line—that is, prior to the point when goods
enter the stream of commerce.12 When that distinction proved
unworkable in subsequent cases, the Court abandoned it and adopted
instead a test that attempted to distinguish between “direct” and “indi-
rect” effects on interstate commerce. Under this test, those activities
that had merely indirect effects on interstate commerce fell outside
Congress’s power to regulate.13 But in time that test, too, proved
unworkable.

Finally, in 1937, under pressure from President Franklin Roosevelt
to uphold the major legislative components of the New Deal, the Court
backed away from its earlier attempts to confine Congress’s commerce
clause authority within narrow channels. Beginning with NLRB v. Jones & Laughlin
Steel Corporation,14 the Court issued a series of decisions upholding legislation that significantly expanded the size and
power of the federal government.15 The Court ultimately adopted a
test for assessing the constitutionality of legislation enacted under the
commerce clause that asked only whether Congress had a rational basis
for concluding that the regulated activity “substantially affects”
interstate commerce.16

**Guns and Gender-Motivated Violence**

For almost 60 years after Jones & Laughlin, the Supreme Court did
not strike down a single federal law on the ground that the enact-
ment exceeded Congress’s authority under the commerce clause. This
period of more relaxed commerce clause scrutiny saw the Court sus-
tain the validity of a wide range of federal legislation that is now largely
taken for granted, such as the provisions of the Civil Rights Act of
1964 prohibiting racial discrimination in hotels, restaurants, and
other places of public accommodation.17

The tide appeared to turn in 1995, however, in United States v.
Lopez.18 In that case, by a 5-4 vote, the Court struck down the
Gun-Free School Zones Act of 1990, which prohibited possession of a
firearm within 1,000 feet of any public, parochial, or private school.19 Writing for the majority, Rehnquist explained that the
Gun-Free School Zones Act did not regulate commercial or eco-
nomic activity; it simply banned possession of a firearm within close
proximity to a school—an activity that had nothing to do with com-
merce.20 Moreover, the majority noted, the act was not “an essen-
tial part of a larger regulation of economic activity, in which the reg-
ulatory scheme could be undercut unless the intrastate activity
were regulated.”21

Justices Stevens, Souter, Ginsburg, and Breyer dissented. They noted
that the objective of Congress in passing the act was to reduce the
prevalence of school violence, which lowers educational attainment
among students and thus poses a substantial threat to economic
productivity and commerce generally.22 The majority, however, found
the act’s effects on interstate commerce too attenuated to satisfy the
demands of the commerce clause.23

The Court’s decision five years later in United States v. Morrison24
suggested that Lopez might have marked the beginning of a dramatic
reassessment of the Court’s commerce clause jurisprudence. In
Morrison, the Court struck down a provision of the Violence Against
Women Act that allowed victims of gender-motivated violence to bring
a civil suit against the perpetrators in state or federal court.25 The Court
split 5-4 along the same lines as in Lopez, with the chief justice
again writing for the Court. The majority rejected the extensive find-
ings Congress had compiled to show the substantial effect violence
against women has on the national economy.26 According to the
majority, the civil remedy provision of the Violence Against Women
Act, like the Gun-Free School Zones Act, did not regulate commer-
cial conduct. Instead, the Court held, the Violence Against Women
Act addressed noneconomic acts of violence that had no connection
with interstate commerce and were therefore beyond Congress’s power
to regulate under the commerce clause.27

**Medical Marijuana**

Lopez and Morrison set the stage for the next major test of the
Rehnquist Court’s apparent shift toward pre-New Deal conceptions
of the commerce clause authority of Congress. That test came last term
in Raich,28 which involved a conflict between California’s desire to
legalize medicinal marijuana use and the federal government’s inter-
est in establishing a uniform national drug policy.

The respondents in Raich were California residents who sought
to use marijuana for medicinal purposes in compliance with
California’s Compassionate Use Act,29 an initiative measure passed by
California voters in 1996. The Compassionate Use Act authorizes
the cultivation and possession of marijuana for medicinal purposes
pursuant to a doctor’s recommendation.30 The federal Controlled
Substances Act, however, classifies marijuana as a Schedule I controlled
substance and renders essentially any possession of marijuana illegal
under federal law. The CSA reflects the judgment of Congress that there
are no currently acceptable medical uses of the drug.31 The respon-
dents in Raich argued that Congress lacked authority under the
commerce clause to extend the CSAs reach to their intrastate culti-
vation and possession of marijuana for medicinal use in compliance
with state law. They argued that the CSA, as applied to those activi-
ties, was therefore unconstitutional. The Ninth Circuit accepted
this argument, relying on the Supreme Court’s earlier decisions in
Lopez and Morrison.

To the disappointment of medical marijuana advocates, as well as
those who hoped Raich would further limit the commerce clause pow-
ers of Congress, the Supreme Court reversed the lower court in a 6-3
decision authored by Justice John Paul Stevens. The majority was
composed of the four dissenters in Lopez and Morrison—Justices
Stevens, Souter, Ginsburg, and Breyer—and two defectors from the
Lopez/Morrison majorities—Justices Scalia and Kennedy. Justice
Kennedy joined the opinion of the Court in full without setting forth
separate views of his own. Although Scalia authored an opinion concurring only in the judgment, he appeared to articulate an even
broader view of Congress’s authority under the commerce clause than
that embraced by the majority.

Given the ostensible similarities between Lopez and Raich, the
immediate question confronting the Court was how the purely
intragovernmental friction. In some states, the CSA conflicts with state laws that protect the health and welfare of the state’s citizens.

Despite the strong state sovereignty interests at stake in Raich, the majority had little difficulty rejecting the arguments advanced by the respondents and the dissenters. The majority noted initially that the challenge asserted by the respondents in Raich regarding the application of the CSA differed from the facial challenges asserted in Lopez and Morrison.33 In Raich, no one disputed that the CSA was a valid exercise of Congress’s commerce clause powers. The respondents contended only that, given the purely intrastate nature of their activities, Congress had no authority to sweep those activities within the reach of the CSA.34 Moreover, unlike the legislation at issue in Lopez and Morrison, which regulated a single class of activities, the CSA’s ban on the cultivation and possession of marijuana was arguably part of a larger regulatory scheme whose overall effectiveness would be thwarted if particular subclasses of activities were exempted from its scope.31

After noting these distinctions, the majority concluded that Raich was controlled not by Lopez and Morrison but by Wickard v. Filburn,30 in which the Court upheld federal restrictions on wheat production as applied to a small farmer who grew wheat that was used solely for personal consumption. In Wickard, the Court declared that Congress’s power under the commerce clause extends to purely intrastate activities if those activities, in the aggregate, will have a substantial effect on interstate commerce.37 That test was met in Wickard, the Court held, because the regulatory scheme at issue was designed to stabilize the price of wheat by limiting output, and exempting all wheat produced for home consumption would undermine the government’s regulatory objective: “[H]ome-grown wheat supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce.”38

The majority in Raich held that the respondents stood in the same shoes as the farmer in Wickard. Although the respondents’ own intrastate cultivation and possession of marijuana did not have a substantial effect on interstate commerce, the majority held that Congress had a rational basis for concluding that, in the aggregate, these activities could have a substantial effect on the interstate market for marijuana.39 That conclusion would be open to question if the relevant subclass of regulated conduct had been defined narrowly to include only the intrastate cultivation and possession of marijuana for medicinal use in compliance with state law, as the respondents urged.40 There was no evidence in the record demonstrating the impact, if any, that an exemption of this small subclass of activities from the CSA’s reach would likely have on the interstate market for marijuana.41 But the majority avoided this problem by defining the relevant subclass of regulated conduct more broadly—namely, possession of locally grown marijuana for personal use of any kind.42 Exempting all personal use of marijuana from the CSA’s general ban, the majority concluded, would clearly have a substantial effect on the interstate market for marijuana.43

Although there are similarities between Raich and Wickard, the parallels between the two cases are by no means perfect. The purpose of the regulatory scheme at issue in Wickard was price control, and it was thus easy to see how allowing an exemption for intrastate activities that significantly reduced demand for wheat sold in the interstate market would thwart the achievement of the broader regulatory objective. It is far less clear that the same can be said for the narrow exemption from the CSA sought by the respondents in Raich. The CSA’s purpose is to ban the interstate market for marijuana altogether. If a state decides in limited circumstances to authorize possession of marijuana that is not intended for the interstate market at all, it is difficult to argue that this state action undermines the entire regulatory objective of the CSA.

Thus the real conflict in Raich concerned the differing state and federal policy judgments as to whether medicinal use of marijuana should be permitted. The federal government, despite a long-running campaign by advocates of medical marijuana, has refused to remove marijuana from Schedule I under the CSA, reflecting the judgment of federal policymakers that marijuana has not yet been shown to have any legitimate medical uses.44 The citizens of California have made the precisely opposite policy judgment, declaring that marijuana does have legitimate and acceptable medicinal uses in certain circumstances.45
This conflict between state and federal legislative policies formed the principal basis for Justice O’Connor’s dissent in Raich. She argued that California’s Compassionate Use Act was an exercise of the state’s core sovereign power to “define criminal law and to protect the health, safety, and welfare of [its] citizens.” She questioned whether the federal government should be permitted to occupy this realm to the exclusion of the states. In O’Connor’s view, the federalism concerns that had animated the Rehnquist Court’s decisions in prior cases provided a fully sufficient justification for construing narrowly the commerce clause powers of Congress in this instance: “We enforce the ‘outer limits’ of Congress’s Commerce Clause authority not for their own sake, but to protect historic spheres of state sovereignty from excessive federal encroachment and thereby to maintain the distribution of power fundamental to our federalist system of government.” As the outcome in Raich reflects, these federalism concerns were simply not strong enough to hold together the five-justice majority that had successfully defended state sovereignty interests from federal intrusion during much of the Rehnquist Court’s tenure.

Post-Raich Developments

Following the Court’s decisions in Lopez and Morrison, advocates relied on those cases to attack a surprisingly diverse array of federal enactments as exceeding Congress’s commerce clause powers, and lower courts were at least somewhat receptive. In the wake of Raich, however, whatever momentum Lopez and Morrison had generated for curtailing the commerce clause powers of Congress seems to have been halted. At the very least, Raich will likely cause lower courts to proceed with more caution as they ponder further commerce clause challenges to federal legislation, a result perhaps fore-shadowed by the cases the Supreme Court disposed of immediately after issuing its decision in Raich.

In a closely watched case from the Fifth Circuit, a developer asserted a commerce clause challenge to the Endangered Species Act on the ground that Congress had no authority to extend the act’s coverage to several species of small insects that have no commercial value and live entirely within a single state. Relying on Lopez and Morrison, the developer argued that Congress lacks authority to regulate species with no conceivable connection to interstate commerce. One week after its decision in Raich, however, the Supreme Court denied the developer’s petition for certiorari without a single dissent. The case had been viewed by many as the next logical battleground in the fight
over the proper scope of Congress’s commerce clause authority.49

In another closely watched case, the Ninth Circuit relied on Lopez and Morrison to reverse a criminal conviction for possession of a homemade machine gun.50 Because the machine gun had not moved in interstate commerce, and because the mere possession of the gun could not be said to “substantially affect” interstate commerce, the Ninth Circuit concluded that the application of federal firearms laws in the case exceeded Congress’s commerce clause powers. The Supreme Court vacated that decision and remanded the case to the Ninth Circuit for reconsideration in light of Raich.

Finally, the Eleventh Circuit reversed a federal criminal conviction for production and possession of child pornography in a case involving a defendant who took sexually explicit photographs of underage girls and kept them at his home. Relying on Lopez and Morrison, the Eleventh Circuit held that “purely intrastate, noncommercial production and possession of child pornography” falls outside the regulatory authority of Congress under the commerce clause.51 The Supreme Court vacated that decision as well and remanded the case for reconsideration in light of Raich.

As even this small sampling of cases reflects, the commerce clause powers of Congress remain highly relevant to the federal government’s ability to regulate a wide range of conduct. The Supreme Court’s decisions construing the power of Congress to “regulate Commerce…among the several States” thus continue to have considerable importance, despite the somewhat arcane nature of the subject. Raich has left the direction of the law very much in flux in this area, and the current changes in the Court’s composition only add to the uncertainty.

It may be that following the intervening events of September 11, Raich signals a shift away from the curtailment of Congress’s commerce clause powers that began in Lopez and Morrison. This type of shift would not be without historical precedent. In the late 1930s the Court responded to the exigencies created by the Great Depression by relaxing the limits it had earlier placed on Congress’s authority to legislate under the commerce clause. A post-September 11 world, in which many have called for the national government to assume a more dominant role, may similarly influence the direction the Court’s commerce clause jurisprudence takes in the years ahead.

2 See, e.g., Board of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001); Kimel v. Florida Bd. of Regents, 528
Advocates of greater state autonomy also suffered a defeat in last term’s *Granholm v. Heald*, 544 U.S. __, 125 S. Ct. 1885 (2005). In *Granholm*, the Court invalidated state laws that permitted in-state wineries to ship directly to consumers but precluded out-of-state wineries from doing so. The Court held that these concededly discriminatory state laws were not saved by the Twenty-first Amendment, which grants states significant control over the regulation of liquor within their borders.

1. U.S. CONST. art. I, § 8, cl. 3.
2. Raich, 125 S. Ct. at 2205.
5. See, e.g., United States v. E.C. Knight Co., 156 U.S. 1, 12 (1895) (“Commerce succeeds to manufacture, and is not a part of it.”).
8. Raich, 125 S. Ct. at 2205.
11. See, e.g., Carter v. Carter Coal Co., 298 U.S. 238 (1936) (invalidating law that prohibited unfair labor practices in the coal industry); Hammer v. Dagenhart, 247 U.S. 251 (1918) (invalidating law that banned shipment of goods in interstate commerce that had been manufactured using child labor); Adair v. United States, 208 U.S. 161 (1908) (invalidating law that protected membership in labor unions).
13. Raich, 125 S. Ct. at 2209.
20. Lopez, 514 U.S. at 561.
21. Id. at 623-24 (Breyer, J., dissenting).
22. Id. at 565-66.
25. Morrison, 529 U.S. at 614-15; see id. at 628-36 (Souter, J., dissenting).
26. Id. at 617-18.
27. Raich, 125 S. Ct. at 2195 (2005).
29. HEALTH & SAFETY CODE §§11362.5(d).
30. 21 U.S.C. §812(c); see Raich, 125 S. Ct. at 2204, 2211.
32. Raich, 125 S. Ct. at 2209.
33. Id. at 2204-05.
35. Id. at 127-28 (“That appellee’s own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.”).
36. Id. at 128.
37. Raich, 125 S. Ct. at 2206-07.
38. Id. at 2224 (O’Connor, J., dissenting).
39. Id. at 2208; id. at 2226 (O’Connor, J., dissenting).
40. Id. at 2212.
41. Id. at 2206-07.
42. Schedule I drugs “are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.” Id. at 2204; see Alliance for Cannabis Therapeutics v. DEA, 15 F. 3d 1131, 1133 (D.C. Cir. 1994).
43. This term, the Court will confront another conflict between differing federal and state policy judgments. The subject this time is assisted suicide. The case involves federal efforts to block the implementation of Oregon’s Death With Dignity Act. Oregon v. Ashcroft, 368 F. 3d 1118 (9th Cir. 2004), cert. granted sub nom. Gonzales v. Oregon, 125 S. Ct. 1299 (2005) (No. 04-623).
44. Raich, 125 S. Ct. at 2221 (O’Connor, J., dissenting).
45. Id. at 2220 (O’Connor, J., dissenting).
47. United States v. Stewart, 348 F. 3d 1118 (9th Cir. 2003), vacated, 125 S. Ct. 2899 (2005).
49. The Court was presented with a somewhat similar commerce clause challenge in *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159 (2001). The case focused on whether provisions of the Clean Water Act could be applied to non-navigable, intrastate bodies of water that provided habitat for migratory birds. The Court held that Congress never intended to extend the Clean Water Act that far, thereby avoiding the need to decide whether Congress had exceeded its authority under the commerce clause.
50. United States v. Stewart, 348 F. 3d 1118 (9th Cir. 2003), vacated, 125 S. Ct. 2899 (2005).
California has prohibited discrimination on the basis of disability for over 30 years through such laws as the Fair Employment and Housing Act (FEHA), the Unruh Civil Rights Act, and the Blind and Other Physically Disabled Persons Act. As other jurisdictions develop antidiscrimination laws of their own, California continues to aggressively prohibit discrimination, including disability discrimination.

Federal law—including the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act (ADA)—embodies principles similar to those found in California law on the issue of disability rights. However, federal law has taken an approach fundamentally different from California’s regarding the redress of disability discrimination, specifically in the definition of what constitutes a “disability.”

Federal law—including the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act of 1990 (ADA)—embodies principles similar to those found in California law on the issue of disability rights. However, federal law has taken an approach fundamentally different from California’s regarding the redress of disability discrimination, specifically in the definition of what constitutes a “disability.”

California’s more expansive definition of disability provides protection for more people than federal law.

Inconsistencies have led to disparate results in cases alleging disability discrimination, specifically in the context of claims about physical access and academic testing.

The first challenge in applying the laws prohibiting disability discrimination is to determine who is entitled to protection by formulating an appropriate definition of a “disability.” Fortunately, a wealth of case law shows that courts have done just that. The cases have centered on whether the protected group should be 1) large, with the court focusing the legal inquiry on whether the plaintiff was treated unfairly, or 2) small, with the court focusing on whether the plaintiff is so significantly limited in his or her abilities that a reasonable accommodation is justified. The U.S. Supreme Court has interpreted the federal Americans with Disabilities Act to protect a limited class of people with disabilities: those whose impairments “substantially” limit major life activities.

Moreover, while federal law preempts state laws that provide lesser protection from discrimination, state laws that exceed federal requirements remain in force. As a result, the application of disability discrimination laws has varied from state to state. These inconsistent definitions have led to disparate results in cases alleging disability discrimination.
In *Sutton v. United Airlines, Inc.* the Supreme Court held that the ADA only protects people whose physical or mental impairments currently (that is, at the time of the alleged discrimination) limit a major life activity substantially. The court reasoned that if a person was using mitigating measures—such as glasses, hearing aids, or medication—to reduce the effects of his or her impairment at the time of the alleged discrimination, the limitation caused by the impairment should be balanced against the mitigating measures. Thus the plaintiffs in *Sutton,* whose vision impairment was rectified by glasses, were not substantially limited in the major life activity of seeing, and United Airlines was free to exclude them from its employment applicant pool without further consideration.

Federal courts have interpreted the “substantial limitation” requirement narrowly to exclude people whose impairments can be treated to some extent by medications or equipment. Courts have applied the *Sutton* interpretation to exclude from ADA protection people with a variety of mitigated impairments such as diabetes, depression, and epilepsy.

Many argue that this limitation is necessary to prevent the granting of unnecessary civil rights protection to people who do not have “real” disabilities—such as people who are slightly near-sighted and wear contact lenses or people who have backaches that are controlled by pain medication. They posit that businesses and employers need to be protected from lawsuits and expensive requests for reasonable accommodation by people with minor impairments. Others disagree, contending that the substantial limitation requirement can go too far. In their view, people with depression who respond well to medication could be refused a job because of their depression, even if it has no relevance to job performance—a refusal with a discriminatory basis. Employers could argue successfully that people with medically treatable depression do not have a disability and are not protected by the ADA because their impairment is not substantially limiting when they take their medication. Disability advocates argue that this type of irrational exclusion is exactly what the disability rights laws were meant to prevent.

A few years ago, the California Legislature amended the Fair Employment and Housing Act to make clear that California’s definition of “disability” diverges from that in the ADA. Under California law, a person is considered to have a disability if his or her impairment limits a major life activity. Proof of substantial limitation is not required.

Moreover, California does not consider mitigating measures, such as medication or hearing aids, when determining whether a person’s impairment is limiting. California thereby avoids the Catch-22 that federal law imposes on people with disabilities—mitigate an impairment and lose protection, or do not mitigate and lose the ability to perform a job. Therefore, employees in California may take their medication, for instance, and still be considered persons with a disability under the law.

Under California law, discrimination on the basis of minor impairments is considered irrational and thus prohibited. On the other hand, the complexity and expense of the accommodations required for the disability must be proportional to the severity of the disability. Thus, California law attempts to focus on the fairness of the treatment to which the person is subjected, not on limiting the size of the protected class. This is the same approach that is used in the context of race and gender civil rights laws. Those laws do not consider how female or male a person is, or how much minority ancestry he or she has. They instead focus on the discrimination and its causation.

Some businesses argue that California’s seemingly boundless definition of a disability permits employees and patrons to sue based upon policies that are not intended to harm people with disabilities. They further argue that the burdens of disability discrimination litigation on businesses and the courts cannot be justified. However, these arguments seek to supplant the balance the California Legislature has struck to prevent discrimination on one hand and stymie frivolous lawsuits on the other. While suits containing claims of disability discrimination may pose incidental burdens on businesses and the judicial system, significant obstacles must be overcome before plaintiffs can prevail in these suits. These hurdles principally are causation and available damages and, absent significant discrimination, they often make it impractical to bring suit in the first place.

**Damages for Discrimination**

Another major difference between the ADA and California law is the availability of damages for victims of discrimination by businesses. Both Title III of the ADA and California law require places of public accommodation (which include most private businesses that are open to the public) to remove physical barriers to access—such as steps, heavy doors, and narrow aisles—or to provide alternate means of access. The Unruh Civil Rights Act provides for either $4,000 statutory damages or up to three times actual damages. Similarly, the Blind and Other Physically Disabled Persons Act provides for $1,000 statutory damages or up to three times actual damages. In most cases, a plaintiff encountering disability discrimination may pursue damages under either the Unruh Act or the Blind and Other Physically Disabled Persons Act, both of which prohibit the same forms of discrimination covered by the ADA.

The ADA does not provide for damages for discrimination by private businesses. However, under federal and California law, a prevailing plaintiff may recover his or her reasonable attorney’s fees.

In California, when access violations are unremedied, damages are available based on statutory liability and the doctrine of continuing violations. Under this doctrine, a person who is deterred from seeking access because of a known physical access barrier is deemed to have been denied access. Therefore, a business may be held liable for each time that person is deterred. However, this does not mean that the person with a disability is entitled to $4,000 in damages for every day of an architectural barrier’s existence.

Some businesses argue that the availability of statutory damages and attorney’s fees has led to a rash of claims concerning barriers that businesses would have fixed voluntarily if they had been given notice. These claims often seek only monetary compensation, without demanding that the barrier actually be removed. Neither Title III of the ADA nor California disability rights laws require pre-filing notification or the exhaustion of administrative remedies for suits over access to businesses. Thus, a person with a disability who encounters a barrier to access is not statutorily required to inform the business (or any government agency) about the violation before filing suit and recovering damages. However, there is a developing judicial trend under both the ADA and California law to require notification by imposing limitations on recovery.

Some courts have limited the recovery of attorney’s fees in situations in which a pre-filing notice is not given to the offending business. In *Doran v. Del Taco, Inc.*, although the plaintiff was a prevailing party, and notification was not a prerequisite prior to filing a lawsuit, the federal district court determined as an exercise of its discretion that “no attorneys’ fees are recoverable in the absence of a pre-litigation unambiguous warning notice and a reasonable opportunity to cure the ADA violation.” Similarly, in *DaimlerChrysler Corporation* the California Supreme Court held that plaintiffs must engage in a reasonable attempt to settle their dispute with the defendant before litigation in order to recover fees as a private attorney general.

Other courts and defendants have sought the protections of the restrictions on vexatious litigants, which traditionally are used to curb...
1. The federal Americans with Disabilities Act (ADA) pre-empts state disability rights laws to the extent they provide lesser protection than the ADA.
   True. False.

2. California law has provided disability rights protections for over 30 years.
   True. False.

3. The ADA is the first federal law to outlaw disability discrimination.
   True. False.

4. The ADA, as interpreted by the U.S. Supreme Court in Sutton v. United Airlines, Inc., protects people with physical or mental impairments that can be mitigated by medication or devices such as glasses or hearing aids.
   True. False.

5. The Sutton decision interpreted the ADA as prohibiting discrimination on the basis of a disability, even if the disability only existed in the past.
   True. False.

6. It is difficult for people with mitigated impairments—such as diabetes, depression, and epilepsy—to be protected from discrimination under the ADA.
   True. False.

7. Mitigating measures under the ADA include medications as well as equipment.
   True. False.

8. The ADA does not apply to private businesses.
   True. False.

9. The California Fair Employment and Housing Act (FEHA) was amended in 2000 to adopt the same definition of disability contained in the ADA.
   True. False.

10. The California disability rights laws apply to a narrower group of people than the group protected by the federal ADA.
    True. False.

11. FEHA protects people whose impairments limit, but do not substantially limit, a major life activity.
    True. False.

12. Both California law (the Unruh Civil Rights Act and the Blind and Other Physically Disabled Persons Act) and Title 3 of the ADA allow parties to recover damages for disability discrimination by private businesses.
    True. False.

13. The Unruh Civil Rights Act provides damages in the sum of up to treble actual damages or statutory damages of $4,000 per violation.
    True. False.

14. A private business can be liable for a violation of the California disability rights laws each time a person with a disability is deterred from access to the business.
    True. False.

15. The ADA requires people with disabilities to notify private businesses of any violations before filing a lawsuit.
    True. False.

16. The district court in Molski v. Mandarin Touch Restaurant held that the only factor in deciding whether a person with a disability is a vexatious litigant is whether he or she has filed more than 300 lawsuits.
    True. False.

17. In Turner v. Association of American Medical Colleges, the superior court held that California law should be applied to accommodation requests made by California examinees sitting for the Medical College Admission Test.
    True. False.

18. California has played a leading role in the early development of disability discrimination law.
    True. False.

19. Courts in states other than California generally have interpreted their state laws to define disability in the same way as the ADA.
    True. False.

20. The Unruh Civil Rights Act and the Blind and Other Physically Disabled Persons Act, like FEHA, are designed to regulate employer-employee relationships.
    True. False.
pro se plaintiffs who file multiple, frivolous lawsuits against the same defendant. Recently, courts have taken the position that a person with a disability who files numerous complaints over access barriers may be considered a vexatious litigant if he or she seeks compensation for similar injuries and resolves or drops many of the cases without litigation. In Molski v. Mandarin Touch Restaurant, the plaintiff filed a suit claiming the defendant’s inaccessible restroom caused him injury. Because the plaintiff had filed over 300 suits against different defendants for access problems in the several years prior to this suit and had filed 13 suits claiming similar injuries against other defendants for the same four-day period of the claim in this case, the court found that he was a vexatious litigant. The Molski court considered five factors: 1) the plaintiff’s history of litigation, 2) his motive in pursuing the lawsuit at issue, 3) whether the plaintiff was represented by counsel, 4) whether the plaintiff had caused unnecessary expense to other parties or posed an unnecessary burden on the courts, and 5) whether other sanctions would sufficiently protect the parties.

In finding that plaintiff Molski was a vexatious litigant, the court relied primarily on the plaintiff’s history of filing lawsuits and found that his motive was a bad faith desire to extract cash. The court also found that the plaintiff’s lawyer acted in bad faith by advising defendants not to defend themselves. The court sanctioned Molski and his attorney by imposing any future complaints. Disability rights advocates argue that restrictions for vexatious litigants in the context of disability discrimination litigation unduly restrict the ability of people with disabilities to enforce access laws that businesses have been ignoring since California began enacting its laws in this area 30 years ago and since the ADA went into effect 15 years ago.

Although the ADA went into effect 15 years ago, persons with disabilities have been ignored since California began implementing its laws in this area 30 years ago and since the ADA went into effect 15 years ago. They also note that the number of people with disabilities who abuse the disability laws are very few. Business advocates respond that repetitive lawsuits are simply extortion attempts that do not further the goals of the disability rights laws but unduly interfere with the legitimate conduct of business activities.

Legislators have attempted to address this perceived problem through legislative proposals that would require claimants to notify businesses in advance of filing suit and provide businesses with an opportunity to fix the identified problems. The proposals, however, have been drafted so broadly that they would excise businesses not just for access barriers but also for intentionally excluding people with disabilities, such as through a blanket “no pets” policy that is used to exclude blind persons with service dogs.

These proposals also have failed to recognize that federal and California law impose affirmative obligations on businesses to make their facilities accessible. Like health and safety laws, OSHA requirements, and other civil rights laws, disability laws do not defer their compliance until after a complaint is filed. The statutes also do not require the person with a disability to educate a business about prohibitions against disability discrimination after a violation, thereby acting as an access consultant. Still, many businesses fail to comply with access laws despite the many years that they have been in existence.

A more palatable approach for businesses and people with disabilities may be a legislative response to the Del Taco and DaimlerChrysler decisions. This would involve an increase in statutory damages when notice of a violation is given and a business fails to make its facility accessible. If modifications are made and a plaintiff nevertheless files suit, the business could be permitted to offer evidence of the modifications as mitigation of the alleged violation.

Disability Law and Standardized Testing

The differences between California and federal law have now extended beyond employment and physical barriers. Recently, a California court ruled that California’s broad definition of “disability” also applies in the realm of standardized testing.

In July 2005, a number of California students (along with the International Dyslexia Association and the National Disabled Students Union) filed a lawsuit against the Association of American Medical Colleges (AAMC) claiming that they should be afforded additional time to take the Medical College Admission Test (MCAT) as a reasonable accommodation under state law. In Turner v. Association of American Medical Colleges, the students claimed that their various disabilities—including attention deficit hyperactivity disorder and dyslexia—affect the conditions, manner, and duration necessary for their completion of the MCAT. The plaintiffs are seeking accommodations for their disabilities.

At issue in this lawsuit is the AAMC’s eligibility criteria for testing accommodations. Specifically, the plaintiffs challenged the AAMC’s use of the ADA “substantial limitation” analysis instead of California’s “limitation” disability standard when reviewing accommodation requests made by California examinees. The plaintiffs argued that the AAMC’s failure to provide accommodations violates their civil rights guaranteed by California law. This echoes the position of many disability rights advocates. The plaintiffs also maintained that because the MCAT is not designed to measure reading or writing speed but instead assesses reasoning skills, analytical abilities, and knowledge of scientific topics, extra time would not compromise the predictive validity or integrity of the exam. Without the requested accommodations, the plaintiffs claimed that they cannot demonstrate their knowledge and skills by their performance on the MCAT.

The plaintiffs asserted claims under California’s Unruh Civil Rights Act and the Blind and Other Physically Disabled Persons Act but none under the ADA. The Unruh Civil Rights Act and the Blind and Other Physically Disabled Persons Act are public accommodations laws and, unlike FEHA, are not designed to regulate employer-employee relationships. Nevertheless, both statutes expressly invoke FEHAs more expansive definition of “disability.”

In an interim ruling, the court concluded that the AAMC should apply California’s...
disability laws when considering testing accommodations for California examinees who do not qualify as “disabled” under the ADA.46 Testing organizations and other public entities will, no doubt, challenge this ruling on the grounds that it compromises the uniformity and predictive validity of standardized exams. They will also argue, as did the AAMC, that testing conditions will be anything but uniform if public entities are required to apply different state disability discrimination laws to examinees from different states instead of a uniform standard that comports with the ADA.

Arguably, the court’s ruling creates an uneven playing field for MCAT examinees with similar mental or physical limitations residing in different states. However, the court acknowledged that the scores of examinees whose disabilities are accommodated pursuant to California law could be “flagged” in some way. But this solution, while seemingly leveling the playing field, may do more harm than good by singling out those who received an accommodation for discriminatory treatment when scores are reviewed for admissions purposes. Thus a victory for examinees seeking accommodations may ultimately result in underrepresentation of those without disabilities who do not gain an unfair advantage when sitting for the exam.40 It further noted that if the NBME departs from its procedure, including its use of the ADA’s substantial limitation test, it would alter the substance of its work or “product” because the resulting scores would not be guaranteed to reflect each examinee’s abilities accurately.41

In Massachusetts, a medical student with attention deficit hyperactivity disorder and a learning disability was refused a preliminary injunction requiring the NBME to grant her extra time on a medical licensing examination.42 The district court noted that because the state public accommodation statute provides the same kinds of protections as the ADA, the ADA standard is applicable to the plaintiff’s federal and state claims.43 Accordingly, the court applied the ADA’s substantial limitation standard, determined that the plaintiff was unlikely to show that she was disabled, and ultimately denied the plaintiff’s motion for a preliminary injunction.

A district court in Ohio reached a similar result in a case involving a medical student with a reading disorder and a generalized anxiety disorder.44 Applying the ADA’s disability standard, the medical student failed to prove that his reading disorder substantially limited his ability to learn and thus did not warrant extra time for the completion of his written exams.45

In West Virginia, a student who claimed to have a learning disability sued his college for its failure to provide him with reasonable testing accommodations.46 In addressing the plaintiff’s claims under the ADA and state law, the district court applied the ADA’s disability standard and also relied upon Department of Justice regulations that described disability as “[a]ny mental or physiological disorder such as…specific learning disabilities.”47 The court granted the college’s summary judgment motion, concluding that the student failed to show that he had a specific learning disability. Also, the court emphasized that the accommodation requests made by the student, including taking exams orally and receiving extra credit for passing scores, requested extra time to take the exam because she has dyslexia and attention deficit disorder. Thereafter, she sued the NBME for disability discrimination, alleging both state and federal claims.49 The court held that the denial of the plaintiff’s accommodation request was not discriminatory. In reaching its conclusion, the court was persuaded by many of the same arguments advanced by the AAMC in the Turner case in California. Specifically, the court emphasized that the NBME’s procedures are designed to ensure that individuals with “bona fide” disabilities receive accommodations and that those without disabilities do not gain an unfair advantage when sitting for the exam.40 It further noted that if the NBME departs from its procedure, including its use of the ADA’s substantial limitation test, it would alter the substance of its work or “product” because the resulting scores would not be guaranteed to reflect each examinee’s abilities accurately.41

Legislative Intent.
You probably seldom need it.

But when the need does arise, it can be crucial to winning your case.

Tracking down sources of information can be a frustrating and time consuming process. When legislative history is important to your case it can be very cost effective to engage our professional expertise to research the history and intent of the statutes or administrative enactments at issue in your case.

When you call, you can explain what you need, or tell me your situation and I can make suggestions on possible approaches. You can draw on my years of experience, so you will know what is likely to be available on your topic. You will get a precise quote for the cost of the project. When you authorize us to proceed, the report will be in your office on the date you specify.

JAN RAYMOND

LEGISLATIVE HISTORY & INTENT

Toll Free (888) 676-1947
Fax (530) 750-0190 E-mail: jan@naj.net
www.naj.net
State Bar #88703
would have given him an unfair advantage over nondisabled students or would have lowered the standards for course study at the college.

In Minnesota, an unsuccessful candidate for teacher certification sued the state board alleging that its refusal to waive the math portion of a standardized licensure test was discriminatory. The plaintiff was diagnosed with two learning disabilities, dyslexia and dyscalculia. Applying the ADA’s disability standard to the plaintiff’s state disability discrimination claims, the district court deemed the candidate’s accommodation request unreasonable and granted summary judgment in favor of the state board.

It is fitting that California, which played a leading role in the early stages of the development of disability discrimination law, once again finds itself apart from the rest of the nation in this area. For the sake of people with disabilities and the businesses with which they interact on a daily basis, hopefully it will not take a span of 30 years and substantial litigation for the courts to settle what is and is not a disability and what accommodations are required to prevent discrimination.

2 The Fair Employment and Housing Act, GOV’T CODE § 12926.1.
3 The Unruh Civil Rights Act, CIV. CODE §§ 51 et seq.
4 The Blind and Other Physically Disabled Persons Act, CIV. CODE § 54.
842 U.S.C. §§ 12101 et seq.
10 Id.
11 Id. at 482-83.
13 Id. at 482-83.
16 GOV’T. CODE § 12926.1.
17 Compare CIV. CODE § 52(a) and CIV. PROC. § 128.7.
18 42 U.S.C. §§ 12181 et seq.
19 CIV. CODE §§ 51 et seq.
20 CIV. CODE § 52.
21 CIV. CODE § 54.
22. CV. CODE §54.3.
26. See Lentini v. California Ctr. for the Arts, 370 F. 3d 837, 847-49 (9th Cir. 2004) (The plaintiff established sufficient evidence that she was deterred from attending a performance at the facility by showing that the plaintiff previously had attended events there and would have gone back but for the violation.); see also Botson v. Pitrucha, 13 F. Supp. 2d 1047, 1051-52 (D. Cal. 1998) (holding that if a person is deterred from going back on a daily basis to a facility, deterrence alone suffices to establish a claim for actual damages).
30. See, e.g., AB 20 (2005); SB 855 (2005) (Cal.).
32. Andres Turner and Brendan Pierce, have dropped out of the lawsuit. Their respective accommodation requests were approved by the AAMC shortly after the case was filed. As stated in the complaint, Pierce has been diagnosed with dyslexia and attention deficit hyperactivity disorder. Turner has been diagnosed with an unspecified learning disability.
33. CV. CODE §§51 et seq.
34. CV. CODE §54.
35. CV. CODE §§§51, 52, 54; GOV’T CODE §§12926(b)(1), 12926(k)(1).
36. Turner, No. RG 04166148 (Alameda County Super. Ct. (Cal.), Feb. 18, 2005) (The plaintiffs erroneously identified the name of the defendant in their complaint.). The MCAT is a timed, standardized examination used by medical schools nationwide. It is regarded as a reliable predictor of a candidate’s success in medical school and on the United States Medical Licensing Examination (commonly referred to as the “national boards”) required for medical licensure.
37. Two of the named plaintiffs in the Turner case, Andres Turner and Brendan Pierce, have dropped out of the lawsuit. Their respective accommodation requests were approved by the AAMC shortly after the case was filed. As stated in the complaint, Pierce has been diagnosed with dyslexia and attention deficit hyperactivity disorder. Turner has been diagnosed with an unspecified learning disability.
38. Id. at 89-90.
39. Id.
41. Id. at *3 n.1.
42. Id. at *3 n.1.
43. Id. at *4.
45. Because the court granted summary judgment to the university on the plaintiff’s federal claims, it declined to exercise supplemental jurisdiction over the plaintiff’s state claims. Id. at *16.
47. Id. at 738.
48. Id. at 760-61.
50. See Turner v. American Ass’n of Med. Colleges, No. RG 04166148 (Alameda County Super. Ct. (Cal.), Feb. 18, 2005) (The plaintiffs erroneously identified the name of the defendant in their complaint.).
51. Turner v. American Ass’n of Med. Colleges, No. RG 04166148 (Alameda County Super. Ct. (Cal.), Feb. 18, 2005) (The plaintiffs erroneously identified the name of the defendant in their complaint.).
52. Turner v. American Ass’n of Med. Colleges, No. RG 04166148 (Alameda County Super. Ct. (Cal.), Feb. 18, 2005) (The plaintiffs erroneously identified the name of the defendant in their complaint.).
The use of trademarked terms by Web search pages has challenged traditional boundaries of trademark protection.
**AMF, Inc. v. Sleekcraft Boats.** The test is a plaintiff one, and courts are free to determine which factors warrant the most serious consideration depending on the facts in each case. Thus, if five factors weigh in favor of the defendant, but the three most important weigh in favor of the plaintiff, courts can conclude that a likelihood of confusion exists. Also, courts need not consider every factor, and they are free to create additional factors if the need arises. In general, courts will look to the following: 1) similarity of the conflicting designations, 2) relatedness or proximity of the two companies’ products or services, 3) strength of the plaintiff’s mark, 4) marketing channels used, 5) degree of care

If a plaintiff cannot meet its burden in showing a likelihood of confusion, relief is not necessarily precluded. Under the Federal Trademark Dilution Act (FTDA), a plaintiff may seek injunctive relief (and in some cases damages) if another party wrongfully uses the plaintiff’s mark, 4) marketing channels used, 5) degree of care

likely to be exercised by purchasers in selecting goods, 6) defendant’s intent in selecting its mark, 7) evidence of actual confusion, and 8) likelihood of expansion in product lines.

If a plaintiff cannot meet its burden in showing a likelihood of confusion, relief is not necessarily precluded. Under the Federal Trademark Dilution Act (FTDA), a plaintiff may seek injunctive relief (and in some cases damages) if another party wrongfully uses the plaintiff’s mark, 4) marketing channels used, 5) degree of care

The court reasoned:

Web surfers looking for Brookfield’s “MovieBuff” products who are taken by search engine to westcoastvideo .com will find a database similar enough to “MovieBuff” such that a sizeable number of consumers who were originally looking for Brookfield’s product will simply decide to utilize West Coast’s offerings instead. Although there is no source confusion in the sense that consumers know they are patronizing West Coast rather than Brookfield, there is nevertheless initial interest confusion in the sense that, by using “moviebuff.com” or “MovieBuff” to divert people looking for “MovieBuff” to its Web site, West Coast improperly benefits from

as in the domain name context, such confusion was still actionable as “initial interest confusion.” The court reasoned:

The court began its Sleekcraft analysis by addressing the domain name issue, concluding that a likelihood of confusion did exist sufficient to support plaintiff’s request for a preliminary injunction. It then turned to the use of trademarks in metatags. Acknowledging that “all eight likelihood of confusion factors...with the possible exception of purchaser care...apply here as they did in [the] analysis of domain names,” the court expressed its view that while any confusion resulting from metatag use was “not as great”
the goodwill that Brookfield developed in its mark.\(^{17}\) As a result, West Coast was preliminarily enjoined from using Brookfield’s marks as a domain name and in metatags.\(^{18}\)

The circumstances in *Brookfield*, however, can be viewed quite differently from the use of trademarks to generate banner advertisements on pages of search engine results. While the *Brookfield* opinion focused on the consumer’s plausibly likely initial confusion, given the growing sophistication of Internet users in the past few years, it may be that banner advertisements do not necessarily confuse today’s Internet user even momentarily.\(^{19}\) Most Internet users today are sufficiently savvy to recognize and distinguish among Web sites and advertisements of competing companies. Moreover, even if there were any confusion stemming from the use of another’s trademark, such use quite possibly could be protected as a “nominative” or “fair” use.

**Nominative and Fair Use Defenses**

Generally, nominative use of a trademark occurs when a party refers to a mark as a matter of incidental use. Probably the most prevalent form of nominative trademark use is comparative advertising, in which a business uses another’s trademark only for purposes of making truthful product comparisons. More thoroughly stated, “The use of a competitor’s trademark for purposes of comparative advertising is not trademark infringement ‘so long as it does not contain misrepresentations or create a reasonable likelihood that purchasers will be confused as to the source, identity, or sponsorship of the advertiser’s product.’”\(^{20}\)

Given the threshold for invoking the defense of nominative use, however, it is of little value in instances in which confusion is likely. A defendant who intends to assert the nominative use defense when confusion is likely must make three showings, first articulated in *New Kids on the Block v. News America Publishing, Inc.*:

First, the product or service in question must be one not readily identifiable without use of the trademark; second, only so much of the mark or marks may be used as is reasonably necessary to identify the product or service; and third, the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.\(^{21}\)

In *New Kids*, various newspapers had established long-distance toll numbers in order to gather data to determine which Kid was most popular. The plaintiff filed several claims, among which was a claim for common law trademark infringement. The district court granted summary judgment in favor of the defendants on First Amendment grounds, but on appeal, a desire to avoid the constitutional issue caused the Ninth Circuit to examine whether the plaintiff had viable claims in the first instance.\(^{22}\)

In addressing the trademark infringement issue, the court began with the purpose of trademark law: “Throughout the development of trademark law, the purpose of trademarks remained constant and limited: identification of the manufacturer or sponsor of the good or the provider of a service. And the wrong protected against was traditionally equally limited: Preventing producers from free-riding on their rivals’ marks.”\(^{23}\) The court identified “a class of cases where the use of the trademark does not attempt to capitalize on consumer confusion or to appropriate the cachet of one product for a different one.” This class of cases, in which use of the mark is merely nominative, “lies outside the strictures of trademark law.” Concluding that the defendants could not possibly refer to the New Kids on the Block without particularly naming them, that the defendants did not use the mark in question beyond what was necessary for identification, and that the defendants did nothing to suggest sponsorship or endorsement, the newspapers were not liable for any claim of trademark infringement.\(^{24}\) Rather, their use was merely nominative.

Whether the nominative use defense may be successfully employed in the context of generating Internet banner advertisements will depend greatly on the facts of each case. For instance, the Ninth Circuit recently refused to extend nominative use to protect the defendants’ use of plaintiffs’ trademarks in *Playboy Enterprises, Inc. v. Netscape Communications Corporation.*\(^{25}\) There, citing *New Kids on the Block*, the court concluded that because other words besides the plaintiffs’ trademarks were available to identify the goods or products sold, the defendants’ use of “playboy” and “playmate” ran “afield of the first requirement for nominative use.”\(^{26}\)
This rationale may have wide application: In many instances, given the breadth of the English language, it will be difficult for a defendant to claim that the only word available to identify a good in a search term happens to be the trademark of a competitor. Whether use of a competitor’s trademark in search terms constitutes a fair use, however, is a different matter. Until recently, defendants in the Ninth Circuit could not rely on the defense of fair use if the plaintiff could show that there was a likelihood of confusion. For this reason, some courts have not even addressed the issue. The defense is now available, however, as the Supreme Court recently overruled the Ninth Circuit in *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*

In *KP Permanent Make-Up, Inc.* the parties were both sellers of permanent makeup, a product comprising an injectable solution used to disguise injuries and blemishes. At issue was whether the term “microcolor,” a federally registered trademark of the defendant, could be used by the plaintiff to describe the plaintiff’s own products. In the suit for declaratory judgment, the U.S. District Court for the Central District of California granted summary judgment to the plaintiff, holding that such use of the trademark was a fair use. The court did not reach the issue of whether there was a likelihood of confusion under the Lanham Act. On appeal, the Ninth Circuit reversed and remanded, concluding that “it was error for the District Court to have addressed the fair use defense without delving into the matter of possible confusion.” This conclusion was consistent with Ninth Circuit precedent, which previously had prohibited reliance on any fair use defense if there exists a likelihood of confusion. In *KP Permanent Make-Up, Inc.* the Supreme Court overruled this line of cases, reasoning that “it is only when a plaintiff has shown likely confusion by a preponderance of the evidence that a defendant could have any need of an affirmative defense.” Therefore, the fair use defense may now be invoked even in those instances in which likelihood of confusion is manifest.

In order to assert the fair use defense, one must comport with the requirements of the Lanham Act itself. Generally, a party may use another’s trademark if it is used to describe the defendant’s product, and such use is done “fairly and in good faith.” For example, in *Wonder Labs, Inc. v. Procter & Gamble Co.* the plaintiff alleged, among other things, that under the Lanham Act the defendant was infringing its trademark, Dentist’s Choice, a brand it used to market its toothbrushes.

The defendant, in marketing its Crest brand of toothpaste, had been referring to its own product as “the dentists’ choice,” and therefore asserted the defense of fair use. The court concluded that Proctor & Gamble was indeed protected by the doctrine of fair use because the defendant was using the phrase in its “primary sense,” not as a trademark “to identify the source of the product”; the Crest mark always accompanied the descriptive phrase; and the phrase was often followed by modifying or explanatory language. Furthermore, the court concluded that this marketing activity was conducted in good faith. As a result, no Lanham Act liability would follow.

**Application to “Adwords”**

In *Government Employees Insurance Company v. Google, Inc.*, an insurance company, Geico, sued two Internet search engine companies, Google and Overture, alleging several claims, including trademark infringement under the Lanham Act. The defendants were engaging in a practice whereby it would “sell advertising linked to search terms, so that when a consumer enters a particular search term, the results page displays not only a list of Web sites generated by the search engine program using neutral and objective criteria, but also links to Web sites of paid advertisers.” Geico claimed that this practice, when using Geico’s trademarks as search terms, constitutes trademark infringement. The defendants countered with a motion to dismiss, claiming, among other things, that their use of the mark was not a use in commerce as contemplated by the Lanham Act and that their use of the mark did not involve displaying the mark to consumers, and no consumer confusion could result from such use. The court denied the motion:

The complaint clearly alleges that defendants use plaintiff’s trademarks to sell advertising, and then link that advertising to results of searches. Those links appear to the user as “sponsored links.” Thus, a fair reading of the com-
plaint reveals that plaintiff alleges that defendants have unlawfully used its trademarks by allowing advertisers to bid on the trademarks and pay defendants to be linked to the trademarks.41

The court continued, “Where keyword placement of banner advertising is being sold, advertising is being sold, the portals and search engines are taking advantage of the drawing power and goodwill of these famous marks. The question is whether this activity is fair competition or whether it is a form of unfair free riding on the fame of well-known marks.”42 Although Geico’s trademark infringement claims initially survived the motion to dismiss,43 the suit was ultimately dismissed for lack of evidentiary support.44

Playboy Enterprises v. Netscape Communications45 involved similar facts. The defendants were two search engine companies generating revenue by way of advertising that “[require] adult-oriented companies to link their ads” so that they would appear whenever the words “playboy” and “playmate” were used in a search. The plaintiff held federal trademark rights to these words. Like the Google plaintiffs, Playboy filed a claim of trademark infringement, alleging that such a practice was unlawful. Though the district court had granted summary judgment in favor of the defendants, the Ninth Circuit reversed and remanded because genuine issues of material fact existed as to whether such business practices were prohibited by the terms of the Lanham Act.46

Interestingly enough, the court likened this case to that of Brookfield: “In this case, PEI [Playboy Enterprises, Inc.] claims that defendants, in conjunction with advertisers, have misappropriated the goodwill of PEI’s marks by leading Internet users to competitors’ Web sites just as West Coast misappropriated the goodwill of Brookfield’s mark. Some consumers, initially seeking PEI’s sites, may initially believe that unlabeled banner advertisements are links to PEI’s sites or to sites affiliated with PEI. Once they follow the instructions to ‘click here,’ and they access the site, they may well realize that they are not at a PEI-sponsored site. However, they may be perfectly happy to remain on the competitor’s site, just as the Brookfield court surmised that some searchers initially seeking Brookfield’s site would happily remain on West Coast’s site. The Internet user will have reached the site because of defendants’ use of PEI’s mark. Such use is actionable.”47 A week after the Ninth Circuit’s decision, the parties settled the lawsuit for undisclosed terms.48

Both the Google and Playboy cases were expressly distinguished most recently in 1-800 Contacts, Inc. v. WhenU.com, Inc.49 There, the Second Circuit reversed and remanded a grant of a preliminary injunction barring
WhenU from employing its “SaveNow” software. The “SaveNow” software, once willingly downloaded by Internet users, would “generate[e] pop-up advertisement windows” that corresponded to the particular Internet user’s “in-the-moment” activities.50 In other words, the software would scan the words typed into a search engine or the words appearing on an Internet user’s computer screen and then generate pop-up advertising that matched those results. In effect, the software would generate advertising that related to, and in some cases competed with, the products the Internet user was either currently viewing or in which the user had an interest.

In reversing and remanding the district court’s grant of a preliminary injunction, the court first determined that WhenU is not “using” 1-800’s trademark in the manner that use is contemplated by the Lanham Act: “WhenU does not ‘use’ 1-800’s trademark in the manner ordinarily at issue in an infringement claim: it does not ‘place’ 1-800 trademarks on any goods or services in order to pass them off as emanating from or authorized by 1-800.”51 In contrast to the use alleged in Google, WhenU’s alleged use of trademarks is entirely “internal,” limited only to inclusion in the “SaveNow” database, inaccessible to the Internet user or the general public. The use “is analogous to an individual’s private thoughts about a trademark. Such conduct simply does not violate the Lanham Act.”52

The court then remarked that, in any event, WhenU is not using 1-800’s trademarks “at all” because the trademark 1-800CONTACTS and the Web site www.1800contacts.com are too dissimilar. WhenU uses only the Web site address in its “SaveNow” database; as such, this does not constitute use of a trademark.53 Finally, the court distinguished the facts before it from those in Playboy and Brookfield. Unlike banner ads in the former and metatags in the latter, pop-up ads do not “misdirect [Internet users] away from [the plaintiff’s] website, or alter in any way the results a [user] will obtain when searching with the…trademark or website address.”54 Also, although the court did not explicitly focus on it, the fact that WhenU’s customers willingly chose to download the “SaveNow” software would tend to diminish the likelihood of consumer confusion arising from the pop-up ads.

A Look into the Future

While these handful of cases may provide some guidance, they seem insufficient to predict the outcome of future cases with any certainty. Consider, for example, the following hypothetical scenario: An Internet user goes to Google.com in order to find information on hunting rifles. The user has heard of Hatfield Hunting Rifles, and is vaguely aware that it has a competitor. Typing the search term, “Hatfield Hunting Rifles,” the first entry in the search results is for Hatfield’s primary competitor, McCoy Hunting Rifles. The user looks at both the Hatfield Web site and the McCoy Web site, considers the options, and chooses the product that best fits his or her requirements. Does Hatfield have a claim for trademark infringement?

Under current law, the answer is not obvious. On the one hand, this smacks of the initial interest confusion referred to in Brookfield: “by using [Hatfield Hunting Rifles] to divert people looking for [Hatfield Hunting Rifles] to its Web site, [McCoy] improperly benefits from the goodwill that [Hatfield] developed in its mark.” Also, this is the very wrong that trademark law was designed to protect against: “Preventing producers from free-riding on their rivals’ marks,” as the court described in the New Kids on the Block opinion. But for the Internet user typing “Hatfield Hunting Rifles” in Google’s query box, McCoy would not have attracted that particular customer to its Web site, at least in that particular instance, and thus, McCoy gets a free ride on the strength of the Hatfield mark. Furthermore, McCoy cannot claim fair use, as “Hatfield” does not describe its own product. And if McCoy’s advertisements do not satisfy the requisites of lawful comparative advertising, its use of the Hatfield mark arguably is not nominative because another term, such as the generic “hunting rifles,” could just as easily have been used to identify the pertinent product as Hatfield Hunting Rifles.

On the other hand, it is not clear that the consumer in this example was ever confused, or that there was even any likelihood of confusion. This becomes problematic for Hatfield on these assumed facts, because likelihood of confusion is a statutory prerequisite to establishing a claim for trademark infringement under the Lanham Act. Furthermore, the Ninth Circuit has already begun to question the applicability of Brookfield in the context of banner advertisements. In Playboy, Judge Berzon acknowledged in a concurrence that “the facts in Brookfield possibly limit the extent of its reach:

[ ][The metatag holding in Brookfield could expand the reach of initial interest confusion from situations in which a party is initially confused to situations in which a party is never confused. I do not think it is reasonable to find initial interest confusion when a consumer is never confused as to source or affiliation, but instead knows, or should know, from the outset that a product or Web link is not]
related to that of the trademark holder because the list produced by the search engine so informs him.55

Indeed, if there is any sense that what McCoy has done is wrong, perhaps the trademark owner’s better remedy is to go to Congress and ask for greater statutory protection to address situations in which another’s mark is used to generate traffic, but under circumstances that do not cause confusion.56

In this hypothetical situation, it may be that the swing vote belongs to the consumer.

Courts have traditionally accommodated the limited use of others’ trademarks when the public derives a benefit from that use. In this case, the consumer was diverted, if at all, only as far as he or she was interested in learning more about the competitor before making a purchase. Setting aside any issues of false advertising or misrepresentations, one could argue that the effect on the consumer was purely beneficial, in that he or she was able to gain exposure to additional information and commercial choices in an extremely efficient manner and was therefore able to make a more informed choice. And lest anyone forget, protecting the consumer is one of the key purposes of the Lanham Act.57

The few cases to date involving the use of trademarks on the Internet have yielded a wide variety of outcomes that do not always suggest easy or certain outcomes for future cases. One thing is certain, however: In this hypothetical situation, it may be that the swing vote belongs to the consumer. Setting aside any issues of false advertising or misrepresentations, one could argue that the effect on the consumer was purely beneficial, in that he or she was able to gain exposure to additional information and commercial choices in an extremely efficient manner and was therefore able to make a more informed choice. And lest anyone forget, protecting the consumer is one of the key purposes of the Lanham Act.57

...
Semiannual Guide to Expert Witnesses

ACCIDENT ANALYSIS/RECONSTRUCTION
A R TECH FORENSIC EXPERTS, INC.

ACCIDENT RECONSTRUCTION SPECIALIST
A Field Test Engineering Company. 5175 Pacific Coast

ACCOUNTING
ADVISORS/EXPERTS @ MCS ASSOCIATES

BALLENGER, CLEVELAND & ISSA, LLC

THE CAPANALYSIS GROUP, LLC
550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: robkinson@capanalysis.com. Web site: www.capanalysis.com. Contact Laura Robinson, PhD. Specialties: economic, financial, accounting, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of opposing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise include antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigative and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFEs, CVAs, JDs, PhDs economics.

CORNERSTONE RESEARCH
515 South Flower Street, Suite 2000, Los Angeles, CA 90071, (213) 553-2501, fax (213) 553-2699, e-mail: jmoon@cornerstone.com. Web site: www.cornerstone.com. Contact Jeannene Moon. Cornerstone Research provides attorneys with expert testimony and economic and financial analyses in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FULCRUM FINANCIAL INQUIRY
1000 Wilshire Boulevard, Suite 1650, Los Angeles, CA 90017, (213) 787-4100, fax (213) 787-4141, e-mail: dnolte@fulcruminq.com. Web site: www.talcuminq.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

GLENN M. GELMAN & ASSOCIATES, CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS

GUMBINDER SAVETT INC.
1723 Cloverfield Boulevard, Santa Monica, CA 90404, (310) 829-9798, fax (310) 829-7853, e-mail: rgreenegscpa.com. Contact Ronald S. Greene, Executive Vice President. Expert witness testimony, lost profits and damages calculations, assets and income tracing, fraud analyses and audits, family law accounting, business valuations, income tax and estate tax support, standard of care analyses, and royalty and contract audits.

The Los Angeles Lawyer

Los Angeles Lawyer November 2005
When you need more than just numbers... you can count on us...

Contact Michael Krykler
Phone (818) 995-1040
Fax (818) 995-4124
E-mail INFO@KETW.COM
Visit us @ www.KETW.COM

15303 Ventura Boulevard, Suite 1040
Sherman Oaks, California 91403

GURSEY, SCHNEIDER & CO., LLP

HARGRAVE & HARGRAVE
520 Broadway, Suite 680, Santa Monica, CA 90401, (310) 576-1090, (310) 576-1060, e-mail: terry@taxwizard.com. Web: www.taxwizard.com. Contact Terry M. Hargrave, CPA/ABV, CFE. Litigation services for family law and civil cases. Past chair of California Society of CPAs’ Family Law Section, business valuation specialist for California CPA Foundation and AICPA. Services include business valuations, income available for support, tracing separate property, litigation consulting, real estate litigation, mediation, fraud investigations, damage calculation, and other forensic accounting work. See display ad on page 50.

HAYNIE & COMPANY, CPAS

KROLL
660 South Figueroa Street, Suite 900, Los Angeles, CA 90017, (213) 443-6090, fax (213) 443-6055. Contact Troy Dahlberg, CPA/ABV, tdahlberg@krollworldwide.com or Christian Tregillis, CPA/ABV, ctregillis@krollworldwide.com. Investigations, economic damages, and valuation firm with offices across the country and around the globe. Specialties include accounting, financial, economic and statistical analysis, as well as computer forensics, in the context of commercial litigation and forensic investigations: accounting/fraud, securities, intellectual property (including damages analyses, licensing and valuation), breach of contract, lost profits, royalty audits, corporate governance, business valuation, real estate, construction, bankruptcy. Practitioners include former partners at Big Four accounting firms, law enforcement/FBI, computer forensics, and appraisers. See display ad on page 67.

KRYCLER, ERVIN, TAUBMAN, & WALHEIM
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 995-1040, fax (818) 995-4124. Web site: www.info@kewt.com. Contact Michael J. Krykler. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, fraud investigations, and lost earnings. Krykler, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 67.

DIANA G. LESGART, CPA, CFE, AN ACCOUNTANCY CORPORATION
22224 Lassen Street, Suite 106, Chatsworth, CA 91311, (818) 886-7140, fax (818) 886-7146, e-mail: lesgart3@mism.com. Contact Diana G. Lesgart, CPA, CFE, FCFA. Specialized accounting and litigation support services in the areas of family law litigation, tracing of assets, pension plan tracing, forensic accounting, business valuation, goodwill, expert testimony, commercial litigation, fraud investigations, economic damages, and real estate litigation. Over 21 years’ accounting experience with 17 years’ litigation support specialization. Assigned as §730 accounting expert. Ms. Lesgart’s profile can be found at www.jurispr.com. using “Lesgart” under Search by Name. Expert is fully English/Spanish bilingual.

MIOD AND COMPANY, LLP CPAS
11600 Indian Hills Road, Building B, Suite 300, Mission Hills, CA 91345-1225, (818) 898-9911, fax (818) 898-9922, 74-478 Highway 111, Suite 254, Palm Desert, CA 92260, (760) 779-0990, fax (760) 779-0960, 1055 East Colorado Boulevard, Suite 500, Pasadena, CA 91106, (626) 441-1090, fax (626) 441-1096, e-mail: dmill @miocl-CPA.com. Visit our Web site at www.mioclcpa.com. Contact Donald John Miod, CPA, ABV, CVA, CBA. More than 30 years’ experience in litigation support, including computation of income available for support, tracing, business valuations, fraud investigations, earnings loss calculations, and income tax matters. Our firm is very computer-oriented, involving the use of computer graphics. We are members of the Institute of Business Appraisers, the International Society of CPAs (founders member), the American Institute of CPAs, and California Society of CPAs. See display ad on page 64.

DAVID OSTROVE, ATTORNEY-CPA
5757 Wilshire Boulevard, Suite 535, Los Angeles, CA 90036-3600, (323) 939-3400, fax (323) 939-3500, e-mail: dostrove@comcast.net. Web site: www.lawyers.com/okida/law. Contact David Ostrove. Accounting malpractice (defense/plaintiff), Experts in legal malpractice (defense/plaintiff), auditor’s malpractice (defense/plaintiff), business valuations, breach of fiduciary duty, insurance bad faith cases, tax matters, fraudulent conveyances, leveraged buyout, analysis of financial statements, estate planning, civil litigation, tax litigation, probate litigation, criminal tax litigation, and business and real estate transactions. See display ad on page 49.

SANLI PASTORE & HILL, INC.
1990 South Bundy Drive, Suite 800, Los Angeles, CA 90025, (310) 571-3400, fax (310) 571-3420. Web site address: www.sphvalue.com. Contact Nevin Sanli or Tom Pastore. Sanli Pastore & Hill, Inc. is a premier provider of business valuation and valuation advisory services, specializing in litigation support and expert witness testimony. Services include valuations for goodwill loss, estate and gift tax planning (family limited partnerships), lost profit analysis, mergers and acquisitions, goodwill impairment, fairness and solvency opinions, ESCPs, incentive stock options, capital raises, corporate real estate transactions, comprehensive economic, industry, and market research. Extensive experience in expert witness testimony, pretrial preparation, and settlement negotiations. See display ad on page 69.

SCHULZE HAYNES & CO.

STONEFIELD JOSEPHSON
Valuation, Litigation & Forensic Group. 1620 26th Street, Suite 400 South, Santa Monica, CA 90404, (866) 225-4511. Web site: www.sjaccounting.com. Contact Jeffrey Sumpter, director of litigation. The Stonefield Josephson Valuation, Litigation & Forensic Group serves business leaders, attorneys, and other professionals with business valuation, litigation support, and forensic ac-
counting services. Stonefield Josephson serves public and privately held clients throughout the United States and internationally from four California locations: Los Angeles, Orange County, San Francisco, and East Bay. See display ad on page 17.

SUGARMAN & COMPANY, LLP

THOMAS NECHES & COMPANY LLP

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & HUNT

ZIVETZ, SCHWARTZ & SALTSMAN, CPAS
• Expert Witness Testimony
• Forensic Accounting & Economic Analysis
• Damage Analysis of Lost Profits, Unjust Enrichment & Reasonable Royalties in Commercial Litigation
• Damages Analysis of Lost Earnings in Personal Litigation
• Business Valuation
• Fraud Investigation
• Marital Dissolution
• Client Service Oriented
• Excellent Communication Skills

Call Barbara Luna, Bill Wolf, Drew Hunt, Paul White, Jack Zuckerman, Fred Warsavsky, David Turner or Cindy Holdorff

14455 Ventura Boulevard, Suite 300, Sherman Oaks, California 91423
Phone: (818) 981-4226, Fax: (818) 981-4278

363 San Miguel Drive, Suite 130, Newport Beach, California 92660
Phone: (949) 219-9816, Fax: (949) 219-9095
ADA/DISABILITY DISCRIMINATION

BIDDLE CONSULTING GROUP, INC.
193 Blue Ravine Road, Suite 270, Folsom, CA 95630, (916) 294-4250, fax (916) 294-4255, e-mail: staff@biddle.com. Web site: www.biddle.com. Contact Dan Biddle, PhD, president. We specialize in compensation analysis, test development, EEO/AA reviews, validation studies (content, criterion-related), and adverse impact analyses. We have a special emphasis in the protective service fields. Over 30 staff. Degrees/licenses: MA, PhD, other staff with various degrees.

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2968, fax (310) 454-4516. Contact Marcia Haight. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 15 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and FEHA discrimination and harassment, retaliation, FMLA/CIFRA, and safety. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

HRM CONSULTING, INC.
P.O. Box 1786, Murphys, CA 95247, (209) 728-8905, fax (209) 728-8970, e-mail: hrm@hrmconsulting.com. Web site: www.hrmconsulting.com. Contact Beth Hirsch. Plaintiff and defense attorneys respect Ms. Hirsch’s experience working on employment and vocational rehabilitation matters from both the employee and employer perspective. Her expertise is utilized in cases involving ADA (Americans with Disabilities Act), FMLA (Family Medical Leave Act), sexual harassment, personal injury, or divorce. We provide litigation support, expert testimony, and investigations. We also specialize in helping companies understand and comply with rules and issues in the complicated realm of human resources management.

HUMAN RESOURCES MANAGEMENT NETWORK

ADEA/AGE DISCRIMINATION/AGING

GEROBIZ
9040 Harratt Street, Suite 10, West Hollywood, CA 90069, (310) 588-8366, e-mail: gerobiz@pacbell.net. Contact Wendy Goldman, MBA/MS Gerontology. Gerobiz offers expert witness testimony for age discrimination in employment cases. We also offer review and evaluation of employee benefits policies to identify areas of potential conflict, and analyze corporate literature to ensure age-neutral communications with shareholders. Pension bene-

Davide Ostrove — Attorney–CPA

- Professor of Law and Accounting
- Expert Witness — 47+ years
- Lawyer Malpractice
- Accountant Malpractice
- Forensic Accounting
- Business Valuation
- Computation of Damages
- Mediator, Arbitrator

323/939-3400 dostrove@comcast.net

Kenneth J. Fischbeck
Construction Expert Witness

511 Oak Street, Laguna Beach, California 92651
714.609.7481 • Fax 949.715.6714
KFlischbeck@cox.net
CA Lic #475327

Construction Consulting Services

- Construction Consulting/Expert Witness
- Construction Defect Failure Analysis
- Contract Issue Analysis - Liability Allocation
- Building Safety Evaluation & Code Compliance
- Destructive Testing & Inspection
- Cost Estimates
- CPM Scheduling/Delay Claims
- Construction Accidents/Personal Injury

Providing In-House Experts In All Fields Of Construction Since 1982 For Plaintiff & Defense Cases

PCMI
Toll Free:
(800) 576-7264
www.pcmi.biz
firm has over 20 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 63.

KRYCER, ERVIN, TAUBMAN, & WALHEIM

SANLI PASTORE & HILL, INC.
1990 South Bundy Drive, Suite 800, Los Angeles, CA 90025, (310) 571-3400, fax (310) 571-3420, Web site address: www.sphvalue.com. Contact Nevin Sanli or Tom Pastore. Sanli Pastore & Hill, Inc. is a premier provider of business valuation and valuation advisory services, specializing in litigation support and expert witness testimony. Services include valuations for goodwill loss, estate and gift tax planning (family limited partnerships), lost profit analysis, mergers and acquisitions, goodwill impairment, fairness and solvency opinions, ESOPs, incentive stock options, mergers and acquisitions, goodwill impairment, fairness and solvency opinions, ESOPs, incentive stock options, property value, enterprise value, partnership interest and closely-held share value, fair compensation, lender liability and reorganization plan feasibility. Professional staff of six with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 66.

RICHARD R. SYLVESTER, JD, PHD
(310) 391-2063, fax (310) 827-1166. Valuation expert. Specialist in business value, partial interests, securities value, real property, goodwill, and intangible asset value, including patents, trademarks, and copyrights. Valuation for income tax, estate and gift tax, dissolution of marriage, fairness opinions, solvency opinions, economic damages, wrongful death, and personal injury. For two decades, selected by leading trial attorneys and Fortune 500 companies, and listed in Marquis’ Who’s Who in the World and Who’s Who in Finance and Industry. See display ad on page 77.

WARNZOF ASSOCIATES, INC.
12200 West Olympic Boulevard, Suite 480, Los Angeles, CA 90064, (310) 984-8060, fax (310) 984-8059. Web site: www.warnzof.com. Contact Timothy R. Lowe, MAI, CRE. Warnzof Associates provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, highest and best use, property-value, enterprise value, partnership interest and closely-held share value, fair compensation, lender liability and reorganization plan feasibility. Professional staff of six with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 70.

APPRAISAL/BUSINESS VALUATION
ADVISORS/EXPERTS @ MCS ASSOCIATES

ARCHITECTURE
PHILIP KROEZE, AIA, CONSULTING
ARCHITECTURAL SERVICES
19 Summerside, Coto De Caza, CA 92673, (949) 589-0554, fax (949) 589-4351, e-mail: kroeze@cox.net. Contact Philip Kroeze, AIA. Expert witness: architectural and engineering standard of care, construction defects, moisture intrusion, and construction documents. Thirty-five years of experience in design and construction, residential, commercial, and office buildings. Exhibits (photos, models, charts, renderings). Service area: California and Nevada.

AVIATION
CONDOR-AVSEC INC.

ACCOUNTING EXPERTS FOR BUSINESS LITIGATION

- Expert testimony
- Damages calculation
- Forensic accounting
- Business valuation
- Database analysis

Thomas Neches
Certified Public Accountant
Accredited in Business Valuation
Certified Valuation Analyst
Certified Fraud Examiner

Thomas Neches & Company LLP
Biltmore Court, Suite 350
520 South Grand Avenue
Los Angeles, California 90071-2662
(213) 624-8150

www.thomasneches.com
Manager of Security Continental Airlines and United Airlines.

BANKING
ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts @mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending customs, practices, policies, in all types of lending (real estate, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and construction defects/disputes, and title insurance.

ANDELA CONSULTING GROUP, INC.
15250 Ventura Boulevard, Suite 610, Sherman Oaks, CA 91403, (818) 380-3102, fax (818) 501-5412, e-mail: tatter @earthlink.net. Contact Thomas A. Tarter, managing director. Former CEO of two banks. Lending, forgery, endorsements, letters of credit, guarantee, lender liability, checking accounts, credit cards, and bankruptcy. Expert witness, litigation consulting. Expert referral service escrow, corporate governance, mortgage banking, and real estate. Over 500 cases nationally. See display ad on page 84.

B & F EXPERTS
P.O. Box 700384, San Antonio, TX 78270, (866) 365-7212, fax (866) 869-4063, e-mail: fjmorrow@earthlink.net. Web site: www.fjmorrow.com. Contact J F "Chip" Morrow. Expertise: financial institutions, banks, mortgage, and real estate. Loans: mortgage, construction, real estate, SBA, international, secured, unsecured, business, consumer, etc., checks, fraud, operations, lender liability; policy/procedure; fiduciary duties, D/O duty/conduct, other. Federal/state reports, depositions, and court preparation and testimony. Background: 35+ years experience financial/mortgage institutions and public companies including president, CEO, and director. Thirty-plus years of all types of lending experience. Fifteen-plus years of national and state trade association leader/directorship. Clients: 150+ federal/state nationwide cases for FDIC, state of California, federal and mortgage institutions, business, individuals. Fifty percentplaintiff/50 percent defendant.

BANKRUPTCY/TAX
ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts @mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending customs, practices, policies, in all types of lending (real estate, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and construction defects/disputes, and title insurance.

ANDELA CONSULTING GROUP, INC.
15250 Ventura Boulevard, Suite 610, Sherman Oaks, CA 91403, (818) 380-3102, fax (818) 501-5412, e-mail: tatter @earthlink.net. Contact Thomas A. Tarter, managing director. Former CEO of two banks. Lending, forgery, endorsements, letters of credit, guarantees, lender liability, checking accounts, credit cards, and bankruptcy. Expert witness, litigation consulting. Expert referral service escrow, corporate governance, mortgage banking, and real estate. Over 500 cases nationally. See display ad on page 84.

BALLINGER, CLEVELAND & ISSA, LLC
10900 Wilshire Boulevard, 16th Floor, Los Angeles, CA 90024, (310) 873-1717, fax (310) 873-6600. Contact Bruce W. Ballinger, CPA, executive managing director. Services available: assist counsel in determining over-all strategy; help evaluate depositions and evidence. Provide well-prepared, well-documented, and persuasive direct and cross-examination testimony regarding complicated accounting, financial, and business valuation matters, fairness of interest rates, feasibility of reorganization plans, fraudulent conveyances, bankruptcies, mergers and acquisitions, and management misfeasance/malfeasance. More than 100 open-court testimony federal and state, civil and criminal. See display ad on page 50.

GREENBERG GLUSKER FIELDS CLAIMANT MACHTINGER & KINSHELLA LLC

STONEFIELD JOSEPHSEN

SUGARMAN & COMPANY, LLP

BOATING
CAPTAIN TUULI MESSER-BOKUMAN, ESQ.
230 Carlisle Way, Benicia, CA 94510, (707) 745-8335, fax (707) 745-8335, e-mail: tulimbi@aol.com. Maritime academy professor, personal injury, collision, rules of the road, maritime training and education, seaman’s health, boat handling, tides, and weather.

BUSINESS
ROBERT C. ROSEN
300 South Grand Avenue, Suite 2700, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: rosen@rosen-law.com. Web site: www.rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, NASD disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability and defense in securities lawsuits, public and private offerings, Internet securities, and law firm liability. Former chair, LACBA Business & Cor-
corporations Law Section; LLM, Harvard Law School. More than 32 years practicing securities law, 12 years with the U.S. Securities & Exchange Commission, Washington, DC. Published author/editor of securities regulations, including multivolume treatises. See display ad on page 65.

BUSINESS APPRAISAL/BUSINESS VALUATION

BUSINESS ENTERPRISE APPRAISAL CO., INC.
23801 Calabasas Road, Suite 1016, Calabasas, CA 91302, (818) 591-9282, or (800) 928-7463. Contact Larry Grant, ASA or Robert Weinstock, JD, CBA. Appraisal of businesses and professional practices for all litigation and nonlitigation purposes, including estate planning and taxation, for 708 filings, FLP and LLC discounts, S corporation elections, corporate dissolutions, damages, loss and earnings and condemnation of goodwill. Also real property appraisals. Expert witnesses in all jurisdictions. Established 1972.

THE CAPANALYSIS GROUP, LLC
550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: robinsonl@capanalysis.com, Web site: www.capanalysis.com. Contact Laura Robinson, PhD. Specialties: economic, financial, accounting, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of opposing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise include antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigative and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFEs, CVAs, JDs, PhDs economics.

COHEN, MISKEI & MOWREY LLP
15303 Ventura Boulevard, Suite 1150, Sherman Oaks, CA 91403, (818) 986-5070, fax (818) 986-5034, e-mail: smowrey@cmmcpas.com. Contact Scott Mowrey. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/license: CPAs, CFEs, MBAs. See display ad on page 60.

DESMOND MARCELLO AND AMSTER

FULCRUM FINANCIAL INQUIRY
1000 Wilshire Boulevard, Suite 1650, Los Angeles, CA 90017, (213) 787-4100, fax (213) 787-4141, e-mail: dnote @fulcruminquiry.com, Web site: www.fulcruminquiry.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequaled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, los Angeles Lawyer November 2005 53

Let ForensicsGroup’s technical advantage give you the edge.

GS GURSEY, SCHNEIDER & CO. LLP
CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS
LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS


Setting the Standard In Litigation Support

▶ Accounting Related To Family Law And Civil Litigation
▶ Tax Preparation And Consulting
▶ Accounting And Auditing
▶ Business Management
▶ Information Technologies Consulting
▶ Business Valuation And Appraisals

An experienced and professional staff dedicated to your needs. A trusted business partner, providing guidance towards success and prosperity.

Gursey, Schneider & Co. LLP
Much more than facts and figures.
lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

GURSEY, SCHNEIDER & CO., LLP
10351 Santa Monica Boulevard, Suite 300, Los Angeles, CA 90025, (310) 552-0960, fax (310) 557-3488, e-mail: vpausing@gursey.com. Web site: www.gursey.com. Contact Vanita M. Spaulding, CFA, ASA. Partner qualifications include MBA, CFA, ASA, and ABV. GS&SC is an accounting firm specializing in forensic accounting, litigation support services, business valuation, and appraisal services, for a variety of purposes including marital dissolution, gift and estate planning, eminent domain goodwill loss, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profit assessments, insurance claims, court accounting, tracing, and entertainment industry litigation. GS&SC has over 30 years’ experience as expert witnesses in litigation support. See display ad on page 53.

HAYNIE & COMPANY, CPAS
4910 Campus Drive, Newport Beach, CA 92660, (949) 724-2450, fax (949) 724-1189, e-mail: gspaulding@gursey.com. Web site: www.hayniecpa.com. Contact Steven C. Gabrielson. After ego, consulting and expert witness testimony in a variety of practice areas: commercial damages, ownership disputes, economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, professional liability, and expert cross examination. Extensive public speaking background assists in courtroom presentations.

HIGGINS, MARCUS & LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, e-mail: info@hmnc.com. Web site: www.hmnc.com. Contact Mark C. Higgins, ASA, president. The firm has over 20 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 63.

NANCY A. KEARSON, CPA, ABV, CVA, DABFA

MIOID AND COMPANY, LLP CPAS
11600 Indian Hills Road, Building B, Suite 300, Mission Hills, CA 91345-1225, (818) 898-9911, fax (818) 898-9922, 74-478 Highway 111, Suite 254, Palm Desert, CA 92260, (760) 779-0990, fax (760) 779-0960, 1055 East Colorado Boulevard, Suite 500, Pasadena, CA 91106, (626) 441-1090, fax (626) 441-1096, e-mail: dmioid@mioid-cpa.com. Visit our Web site at www.mioidcpa.com. Contact Donald John Miod. CPA, ABV, CVA, CBA. More than 30 years’ experience in litigation support, including computation of income available for support, tracing, business valuations, fraud investigations, earnings loss calculations, and income tax matters. Our firm is very computer-oriented, using the interface of computer graphics. We are members of the Institute of Business Appraisers, the International Society of OPAs (founding member), the American Institute of CPAs, and California Society of CPAs. See display ad on page 64.

SANLI PASTORE & HILL, INC.
1990 South Bundy Drive, Suite 800, Los Angeles, CA 90025, (310) 571-3400, fax (310) 571-3420, Web site address: www.sphvalue.com. Contact Nevin Sanli or Tom Pastore. Sanli Pastore & Hill, Inc. is a premier provider of business valuation and valuation advisory services, specializing in litigation support and expert witness testimony. Services include valuations for goodwill loss, estate and gift tax planning (family limited partnerships), lost profit analysis, mergers and acquisitions, goodwill impairment, fairness and solvency opinions, ESOPs, incentive stock options, capital raises, corporate partnership, and marital dissolutions. Comprehensive economic, industry, and market research. Extensive experience in expert witness testimony, pretrial preparation, and settlement negotiations. See display ad on page 69.

SCHULZE HAYNES & CO.
680 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: schulziehaynes.com. Web site: www.schulziehaynes.com. Contact Karl J. Schulez or Dana Haynes, principals. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery, assistance, business and real estate valuations, construction claims, corporate investigations, real estate transactions, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA; CVA; ABV; PhD-economics.

SINGLER VALUATION CONSULTING
2127 Lyons Drive, La Cañada, CA 91011, (818) 541-1500, fax (818) 541-1565, e-mail: noasinger@earthlink.net. Contact Noa Singler. Valuation of closely held businesses, eminent domain, goodwill loss analysis, expert witness testimony, litigation consulting, gift and estate tax, damage analysis, and acquisitions.

STONEFIELD JOSEPHSON

SUGARMAN & COMPANY, LLP

VICENTI, LLOYD & STUTZMAN LLP
2210 East Route 66, Glendora, CA 91740, (626) 857-7300, fax (626) 857-7302, e-mail: rstutzman@vllsp.com. Web site: www.vllsp.com. Contact Royce Stutzman, CPA, CVA, Chairman. Our certified professionals serve as consultants and experts in business valuations and litigation support. We conduct valuations related to mergers and acquisitions, buy-sell agreements, purchase/sale of closely held businesses, partner disputes, etc. Our forensic accounting experts assess the amount of economic loss, whether it be business interruption from casualty, unfair competition, condemnation, damage caused by others, or loss of earnings from various events. Our fraud investigation team reviews documentation, interviews witnesses and suspects, and assesses evidence to resolve allegations. We provide expert witness testimony and implement fraud prevention programs. VLS Celebrates 52 Years of Quality Service!

WHITE, ZUCKERMAN, VARSANSKY, LUNA, WOLF & HUNT

ZAMUCEN, CURREN, HOLMES & HANZICH
17848 Sky Park Circle, Irvine, CA 92614, (949) 955-2522, e-mail: bva@earthlink.net. Contact Joanna Hernandez. Zamucen, Curren, Holmes & Hanzich, CPAs specialize in the following: business valuations, economic damage calculation for businesses and individuals, forensic accounting, financial fraud investigation, expert witness testimony, computer support for litigation, goodwill impairment, merger and acquisition consulting, corporate “after ego” analysis and testimony, and other general CPA services. Our designations include certified public accountant, certified business appraisers, certified fraud examiners, certified valuation analyst, accredited business valuator, MSA, and JD. We have been court appointed over 100 times in cases involving valuation of business, economic damages, and family law matters.

CHEMISTRY
CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (502) 645-3369, fax (520) 749-0861, e-mail: service@chemaxx.com. Web site: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical accidents and chemical-related consumer product injuries, chemical fires and explosions, chemicals labeling, packaging, chemical handling and shipping, chemical burns, chemical waste disposal, chemical safety, EPA, DOT, OSHA, propane, natural gas, flammable liquids, hazardous chemicals, aerosols, metalurgy, corrosion, failure analysis, water contamination, water testing, plastics, acids, alkalis, and MSDSs. State-of-the-art equipment available, including natural SEM/EDAX, GC/MS, FTIR, etc. PhD physical chemistry, certified fire and explosion investigator, NACE accredited in corrosion, ASTM accredited metallogy and failure analysis, OSHA certified in hazardous chemicals and processes, DOT certified (shipment of hazardous materials), accredited in aerosol technology.
CREDIBLE
• Built, developed and/or managed the construction of 400+ buildings totaling in excess of $100 million
• 1000+ physical inspections of buildings for real estate investors
• 100+ expert designations in construction litigation matters

COMPETENT
A reputation for integrity earned through 40+ years of credible and competent consultation with construction users, real estate investors and legal professionals in Southern California

EXPERT DESIGNATIONS & TESTIMONY
• Construction Defects
• Cost to Repair
• Owner Responsibilities
• General Contractor Standard of Care
• Subcontractor Practices
• Job Site Safety

Time to call Clock! 949-640-7890

CLOCK CONSTRUCTION CONSULTANTS
TEL 949-640-7890  FAX 949-640-8778  E-MAIL Rclock6418@aol.com
2981 QUEDADA, NEWPORT BEACH, CALIFORNIA 92660
CIVIL LITIGATION

GURSEY, SCHNEIDER & CO., LLP
10351 Santa Monica Boulevard, Suite 300, Los Angeles, CA 90025-2114, phone (310) 557-3489, 20355 Hawthorne Boulevard, First Floor, Torrance, CA 90503.
Forensic accounting and litigation support services in the areas of marital dissolution, business valuation and appraisal, goodwill, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profit assessments, insurance claims, court accounting, tracing, and entertainment industry litigation. See display ad on page 53.

COMPUTER FORENSICS

DATACHASERS, INC.
P.O. Box 2861, Riverside, CA 92516-2861, (877) Data Exam, (877) 328-2392, (951) 780-7892, fax (951) 780-9199, e-mail: admin@datachasers.com. Web site: www.datachasers.com. Contact Rick Abeel.
Hard drive imaging, use assessment and auditing, intellectual property and trade secret disputes, restore hidden, deleted, or lost files and images, file dates when created, modified, or deleted, Internet history and e-mail recovery, computer use auditing and evaluations, human resources, employer/employee exams, experienced expert witness and special master and full computer laboratory. Many years of public sector experience. Multiple certifications. Prior law enforcement. See display ad on page 52.

FULCRUM FINANCIAL INQUIRY

Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, loss/profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

SETEC INVESTIGATIONS

Setec Investigations offers unparalleled expertise in computer forensics and enterprise investigations providing professionalized, case-specific forensic analysis and litigation support services for law firms and corporations. Setec Investigations possesses the necessary combination of technical expertise, understanding of the legal system, and specialized tools and processes enabling the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes or misuse. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.

COMPUTER FORENSICS ELECTRONIC DISCOVERY

ROBERT J ABEND, PE
1658 Laraine Circle, San Pedro, CA 90732, cell (310) 346-6543, (310) 221-0716, fax (310) 221-0716, e-mail: rabend@linkline.com Web site: www.linkline.com/personal/rabend.
Specialties: Electrical engineering, computer forensics, data recovery, electronic discovery, computer engineering, software, electronics, microelectronics, electronics manufacturing, intellectual property, and trade secret litigation.
Technical support during case preparation. Practiced at software, electronics, microelectronics, electronics manufacturing, and computer forensics.
3D computer simulations for all aspects of accident reconstruction, vision related malpractice, criminal reenactment, and more. Vision perception, site visibility, and human factors analysis. Opposing demonstrative evidence analysis. In-house scientific and engineering experts. Led by internationally recognized vision scientist, Dr. Arthur P. Ginsburg, who has over 16 years of experience as a vision and visibility expert consultant for the legal industry and government agencies. Plaintiff and defense. Seen on CBS’s 60 Minutes and Court TV. See display ad on page 84.

COMPUTERS/INFORMATION SCIENCES

ROBERT J ABEND, PE
Technical support during case preparation. Practiced at court and deposition testimony. Thirty-five years of experience in the electronics and computer industry. Thirteen years as a forensic engineering consultant. References provided on request. Degrees/licenses: BSEE, MS, Registered Professional Engineer, Cert EnCase Computer Forensic Examiner, FCC General Radiotelephone licenses.

COSGROVE COMPUTER SYSTEMS, INC.
7141 Earldom Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4021, e-mail: jcosgrove@cosgrovecomputer.com. Web site: www.cosgrovecomputer.com. Contact John Cosgrove. John Cosgrove, PE, has over 40 years’ experience in computer systems and has been a self-employed, consulting software engineer since 1970.
He is a part-time lecturer in the UCLA School of Engineering and LMU graduate school. He recently completed an invited article, “Software Engineering & Litigation,” for the Encyclopedia of Software Engineering. He holds the COP, a member of ACM, NSPE, a senior member of IEEE Computer Society, and a professional engineer in California. Forthcoming includes a BSEE from Loyola University and a master of engineering from UCLA.

CONSTRUCTION

AVONDALE RESOURCES, INC.
14 Via Andorra, Coto de Caza, CA 92679, (949) 644-1735, fax (949) 644-6542. Contact Alex Robertson Jr.
Construction consulting including construction claims, damages, defects, construction failure, project scheduling, overhead and job cost analysis, site inspections, expert testimony, arbitration consulting, document discovery, deposition assistance, expert witness testimony, consulting services, site investigations and analysis, cost estimating, and expert witness testimony. Computer simulations and graphic software available. Limited to construction cases.

BALL CM
24405 Chestnut Street, Suite 201, Newhall, CA 91321, (661) 254-3357, fax (661) 254-2177, e-mail: chris@ballcm.com. Web site: www.ballcm.com. Contact Chris Ball. Contract claims, disputed change orders, schedule analysis, delay claims, labor impact claims, construction defect investigations and analysis, cost estimating, destructive testing, builders risk claims, commercial, residential, and public works.

KENNETH J. FISCHBECK
511 Oak Street, Laguna Beach, CA 92651, (714) 609-7481, fax (949) 715-6174, e-mail: kfishbeck@cox.net. Contact Kenneth J. Fischbeck. A construction consultant/expert witness for construction litigation specializing in critical path scheduling analysis, construction standards, estimating, manpower, loading, construction techniques, construction industry customs and practices, disputes involving payment, quality and scope of contract work between owners, contractors, subcontractors, and suppliers, job site safety, and multi-employer and dual-employer work injuries, EDD and labor compliance. Service area: Los Angeles, Orange, Riverside, and San Bernardino counties. See display ad on page 49.

FORSERIGROUP
Thousands of our clients have gained the technical advantage and the competitive edge in their cases from our resource group of high-quality experts in construction, medical, engineering, product liability, safety, environmental, accident reconstruction, automotive, failure analysis, explosions, slip and fall, real estate, economics, appraisal, employment, computers, and other technical and scientific disciplines. We provide you with a select group of high-quality experts as expeditiously as possible. Unsurpassed recruitment standards. Excellent client service. See display ad on page 53.

GLENN M. GELMAN & ASSOCIATES, CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS

PHILIP KROEZE, AIA, CONSULTING ARCHITECTURAL SERVICES

MPGROUP CONSTRUCTION CONSULTANTS • FORENSIC EXPERT WITNESSES • MEDIATION
202 Greenacre Avenue, West Hollywood, CA 90046-5708, (323) 874-6973, toll free (800) 684-9100, fax (323) 874-8948, email: experts@mpgroup.com. Web site: www.mpgroup.com. Contact Michael S. Poles, GC, CM, RCI, DABFET, ACFE. MPGroup is a collaboration of architects, engineers, contractors and other technical experts specializing in consulting, forensic expert witness, and litigation support services since 1962. Specialty areas: accident reconstruction; Americans with Disabilities Act; building code compliance; building code standards; claims analysis and mitigation; construction administration; construction defects; contract compliance; cost estimating; customs and practices; design and implementation; earthquake hazard; flooring and floor covering; framing (wood and steel); geotechnical and hydrological; personal injury; quality of workmanship;
reinforced concrete; reinforced masonry; roofing and waterproofing; safety and OSHA standards; scaffolding; scheduling and delays; slips, trips and falls; stairs, stair rails and railings; Standards of Care; Standards of Practice; structural failure; structural steel and welding; water intrusion and mold.

See display ad on page 52.

PACIFIC CONSTRUCTION CONSULTANTS, INC.
(800) 655-PCCI. Contact marketing director. Construction contract disputes (claims) analysis, prep and presenta-
tion, delay and monetary impact evaluation, including CPM schedules. Architectural, civil, structural, mechanical, and electrical specialties. Full in-house courtroom visual exhibit presentation. Assistance in negotiations, mediation, arbitration, and litigation. Expert witness testimony. Additional phone (310) 337-3131 or (916) 638-4848. See display ad on page 52.

PCMI THE EXPERT CHOICE®
2402 Cross Street, Riverside, CA 92503, (800) 576-7264, fax (888) 307-7264, e-mail: scottvivian@pcmi.biz. Web site: www.pcmibiz.com. Contact Scott Vivian. PCMI is a construction consulting firm providing litigation, mediation, and court testimony since 1982 for construction defects, delay claims, breach of contract, and personal injury. PCMI has provided expert services for both plaintiff and defense. See display ad on page 49.

PINNACLEONE
445 South Figueroa Street, Suite 3650, Los Angeles, CA 90071, (213) 498-9884, fax (213) 498-9894, e-mail: DAR@pinnacleone.com. Established in 1980, PinnacleOne is a national firm of leading construction consultants who promote a full range of professional services, including dispute resolution and avoidance, claims analysis and management, litigation support services, expert witness, project management, financial services, and more. Headquartered in Phoenix, PinnacleOne regional operations are located in San Diego, Irvine, Los Angeles, Sacramento, and Hartford, CT.

RIMKUS CONSULTING GROUP, INC.
333 City Boulevard West, Suite 1805, Orange, CA 92868, (877) 978-2044, fax (714) 978-2088, e-mail: cjyaworski@rimkus.com. Web site: www.rimkus.com. Contact Curt Yaworski. Rimkus Consulting Group is a full-service forensic consulting firm. Since 1983, we have provided reliable investigations, reports, and expert witness testimony around the world. Our engineers and consultants analyze the facts from origin and cause through extent of loss. Services: construction defect and dispute analysis, vehicle accident reconstruction, fire cause and origin, property evaluation, mold evaluations, indoor air quality assessments, biomechanical analysis, product failure analysis, foundation investigations, industrial accidents and explosions, water intrusion analysis, geotechnical evaluations, construction accidents, construction disputes, financial analysis and assessments, forensic accounting, HVAC analysis, electrical failure analysis, and video/graphics computer animation. See display ad on page 75.

SPECTRUM DEVELOPERS
1241 Flemington Road, Riverside, CA 92506, (909) 776-1194, fax (909) 776-1186, e-mail: steve@spectrumdvelopers.com. Web site: www.spectrumdvelopers.com. Contact Steve Koppes. Inspections, expert testimony, and consulting for construction defects related to swimming pools, fountains, and spas.

TRAUNER CONSULTING SERVICES, INC.
3111 Camino del Rio North, Suite 1350, San Diego, CA 92106, (619) 640-8500, fax (619) 640-8501, e-mail: ken.baker@traunerconsulting.com. Web site: www.traunerconsulting.com. Contact Ken Baker, VP. Extensive expert witness testimony on construction delays, CPM scheduling, inefficiency claims, disputed extra work, claim damages, specification interpretation, contractor termina-

ULTIMO ORGANIZATION INC.
Geotechnical Construction & Engineering 1411 East Borchard Avenue, Santa Ana, CA 92705, (714) 560-8999, fax (714) 560-8998, e-mail: fram@geotechnical.com. Web site: www.geotechnical.com. Contact Frank Ultimo Sr. Our team can provide the resources, expertise, and techniques to identify causes and effects of a problem and implement remedies. We can provide site, structure, and geotechnical investigations; industry expert services; foundation floor level surveys; repair plans; accurate documentation; estimates; emergency stabilization; and environmental remediation. Industry expert services for foundation and construction problems. Remedial foundation, slope pool, ground stabilization, re-leveling and repairs; forensic documentation, estimates, and repair plans; emergency stabilization services; hillside and waterfront expert- tise, and repair techniques; environmental remediation ser-
tices; geotechnical investigations; authorized installer of Atlas and Chance foundation underpinning. See display ad on page 80.

URS
915 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017, (213) 996-2549, fax (213) 996-2521, e-mail: matthew.tankenau@urscorp.com. Expert witness for entit-
tement, causation damages on design, construction, and geotechnical environmental disputes. Experienced in all types of construction projects. See display ad on page 83.

CONSTRUCTION DEFECT
GHH ENGINEERING, INC.
11960 Heritage Oak Place, Suite 2B, Auburn, CA 95603, (530) 886-3100, fax (530) 886-3108, e-mail: ghh@ghheng.com. Web site: www.moldservicessgroupeing.com. Contact Alisa Smith. Civil engineering and design, environmental consulting, PSA’s, water and wastewater, storm water management, hazardous waste, asbestos, soil storage tank compli-
ance, construction defect, litigation support, third party oversight, expert witness, mold management and consult-
sing services, and mold training and certification.

CONSULTING
PLUMBING INSPECTION PIPE EVALUATION SERVICES (Pipes)
43141 Business Center Parkway, Suite 201, Lancaster, CA 93535, (661) 949-8811, fax (661) 940-7318. Contact Arnold A. Rodio. Specialties include evaluation of plumbing systems and installation in housing, apartment, condo-
mium, and commercial. Expert on uniform plumbing codes and installation standards. Twenty-five years’ expe-
rience, 8,000+ residential units and assorted commercial projects. Active plumbing contractor. Call for CV.

CORPORATE INVESTIGATIONS
THE CEPANALYSIS GROUP, LLC
550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: robinson@cepanalysis.com. Web site: www.cepanalysis.com. Contact Laura Robinson, Ph.D. Specialties: eco-
nomics, financial, accounting, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of oppos-
ing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise in-

CREDIT DAMAGE MEASUREMENT
PLAINTIFFS AND DEFENDANTS
Discover the Secrets to Equitable Credit Damage Recovery
Protect your case value and get the FAIREST COMPENSATION FOR YOUR CLIENT including: Increased out-of-pocket costs, Loss of Capacity, and Loss of Expectancy Call the only expert witness with a proven compensable method to measure credit damage since 1995.
Georgy Finder 714.441.0800
For more information, visit www.creditdamageweight.com
(CLE training seminars available)

G. GOVINE CONSULTING
Developing the Workforce for the 21st Century
LITIGATION CONSULTANT AND EXPERT WITNESS: EMPLOYMENT
SPECIALIZES IN:
✔ SEXUAL HARASSMENT, INCLUDING AB 1825 TRAINING
✔ EMPLOYMENT DISCRIMINATION: AGE, RACE, SEX
✔ HUMAN RESOURCES AND EMPLOYMENT PRACTICES
✔ WRONGFUL TERMINATION
✔ MEDIATION

DR. GERDA GOVINE
260 N. MAR VISTA, SUITE NO. 2
PASADENA, CA 91106
TEL: 626/564-0502
FAX: 626/564-8702
800-564-0501
www.govineconsults.com

Los Angeles Lawyer November 2005 57
clude antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigatory and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFEs, CIVAs, JDs, PhDs economics.

FULCRUM FINANCIAL INQUIRY
1002 West Bouquete, Suite 1650, Los Angeles, CA 90017, (213) 787-4100, fax (213) 787-4114, e-mail: drnottfe@fulcruminquiry.com. Web site: www.fulcruminquiry.com. Contact David Nottle. Our professionals are experienced CPAs, MBAs, ASAs, CPAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market asssessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

SULTAN & COMPANY, LLC

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & HUNT
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278, and 363 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-9616, fax (949) 219-9095, e-mail: expert@szwh.com. Contact Barry White, Larry Grant, ASA or Robert Weinstock, JD, CBA. Experienced in the service of an economist or CPA. Often increases plaffice liability by 90 percent. CV: Director of Curr Financial Education Academy; Author of 3 MOLE seminars; credit reports: misconceptions and realities; credit report: compliance and opportunity; credit damage: evaluation and compensation. Numerous publications. See display ad on page 57.

CRIMINOLOGY/GANGS
DR. LEWIS YABLONSKY
2311 Fourth Street, Suite 312, Santa Monica, CA 90405, phone and fax (310) 450-3697, e-mail: expertwitness@leyablonsky.com. Web site: www.leyablonsky.com. Contact Dr. Lewis Yablonsky, PhD -NYU. Emeritus professor criminology, California State University Northridge. Professor at other universities, including UCLA, University of Massachusetts, Harvard, Texas A&M, and Columbia University. Published 19 books on criminology and social problems, including Criminology (1990), Gangstetes (1997), and Gange in Court (Lawyers & Judges Publishers, 2003). Consultant/expert witness in over 180 legal cases in various areas of criminality, especially gangs (165 gang cases). Also homicide, drug addiction, company security liability, and responsibility. See Web site. Appointed to the "Panel of Experts" approved by the L.A. County Superior Court Judge’s Committee. See display ad on page 83.

DISPUTE ANALYSIS
THE CAPANALYSIS GROUP, LLC
550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: robinson@capanalysis.com. Contact Laura Robinson, PhD. Specialties: economic, financial, accounting, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of opposing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise include antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigatory and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement), and valuation of intellectual property. Insurance coverage, non-litigation and litigation purposes, including asbestos, asbestos-related tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFES, CIVAs, JDs, PhDs economics.

DESMOND MARCELLO AND AMSTER

CREDIT DAMAGE
GEORGE FINDER
2501 East Chapman Avenue, Suite 100, Fullerton, CA 92831, (714) 441-0900, e-mail: gfinder@thebocs.com. Web site: www.creditdamagemanager.com. Contact George Finder. Consultant/expert witness testimony plus credit damage report reveals, change of creditworthiness, loss of capacity, loss of expectancy, in cases of fraud, breach of contract, bad faith insurance, negligence, wrongful termination, identity theft, malpractice, PI, divorce, creditor or credit bureau error. Very different than the service of an economist or CPA. Often increases plaintiff case value by 450 percent or more. May reduce de-
include antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigative and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFEs, CVAs, JDs, PhDs economics.

CONLEY FORENSICS
15436 Albright Street, Pacific Palisades, CA 90272, (310) 454-7390, fax (310) 459-6386, e-mail: bcconley@att.net. Contact Bryan C. Conley, PhD, principal. Specializing in personal injury, wrongful death, wrongful termination and breach of contract damages. Published in forensic economic and leading academic journals. Testifying since 1977.

CORNERSTONE RESEARCH
515 South Flower Street, Suite 2900, Los Angeles, CA 90071, (213) 553-2501, fax (213) 553-2699, e-mail: jmoon@cornerstone.com. Contact: Jeanene Moon. Cornerstone Research provides attorneys with expert testimony and economic and financial analyses in all phases of commercial litigation. We work with faculty and industry experts in a distinctive partnership that combines the strengths of the business and academic worlds. Our areas of expertise include identifying and supporting expert witnesses in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

CORPORATE SCIENCES, INC.
3215 East Foothill Boulevard, Pasadena, CA 91107, (626) 440-7200, fax (626) 440-1800. e-mail: jsdantoni@hotmail.com. Web site: www.corporatesciences.com. Contact: Dr. Joseph S. D’Antoni, Managing Principal. Services available: consultants with extensive litigation analysis and testimonial experience providing economic, forensic and litigation services to assist law firms and their clients analyze and present economic damages in civil litigation matters. Our highly skilled team is composed of a diverse group of practitioners—economists, CPAs, CFAs, statisticians, real estate and business valuation specialists, insurance, financial and economic damages experts with Big Four accounting firm experience. Services performed include real estate, business valuation, economic feasibility studies, survey and market studies. Areas of litigation specialization include general economic damages, construction defects, insurance recovery and defense, intellectual property, environmental damages, business valuations, real estate valuations and damages, land economics, antitrust, standard of care, forensic investigations, employment, corporate and partnership dissolutions, securities, and class action lawsuits. Professionals also serve as mediators, special masters, third party administrators, as well as consulting and testifying experts.

CRA INTERNATIONAL
1055 East Colorado Boulevard, Suite 420, Pasadena, California 91106-2327, (626) 564-2000, fax (626) 564-2099. Web site: www.crai.com. Contact John Hirshleifer, vice president. CRA International provides economic, financial, and business analysis in such areas as antitrust, contracts, damages, energy, environment, entertainment, healthcare, intellectual property, international trade, mergers & acquisitions, professional sports, regulation, securities fraud, taxation and transfer pricing, telecommunications, and valuation. In concert with leading academic and industry experts, CRA multidisciplinary staff offers wide-ranging consulting assistance (from modeling projects to trial preparation and testimony) to attorneys, executives, and government officials the world over. See display ad on this page.

ECON ONE RESEARCH, INC.
601 West Fifth Street, 5th Floor, Los Angeles, CA 90071, (213) 624-9600, fax (213) 624-6994, e-mail: lskylr@econone.com. Web site: www.econone.com. Contact
Lisa Skylar, general manager. Econ One is an economic research and consulting firm with extensive experience combining theory and empirical analyses. We understand the need for clear, accurate, persuasive answers to complex problems. We work with our clients to keep our efforts focused on necessary tasks, with close attention to costs. We provide economic analysis and expert testimony in many areas, including: antitrust, contract disputes, damages analysis/calculations, intellectual property and patent infringement, market analysis, regulation, employment issues, and unfair competition.

ECONOMIC CONSULTANTS & ASSOCIATES
2030 Main Street, Suite 1300, Irvine, CA 92614, (714) 547-6588, (310) 246-9993, fax (714) 547-9916, e-mail: stephen355@sbcglobal.net. Contact Stephen T. Riley, PhD. Quantifying losses in the following areas: P/L, wrongful death, loss of household services, loss of earning capacity, medical/legal malpractice, business losses (lost profits), wrongful termination, and expert testimony.

FULCRUM FINANCIAL INQUIRY
1000 Wilshire Boulevard, Suite 1650, Los Angeles, CA 90017, (213) 787-4100, fax (213) 787-4141, e-mail: dnolte@fulcruminquiry.com. Web site: www.fulcruminquiry.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

HIGGINS, MARCUS & LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, e-mail: info@hmlinc.com. Web site: www.hmlinc.com. Contact Mark C. Higgins, ASA, president. The firm has over 20 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 63.

HOLLIS & ASSOCIATES
238 Pasadena Avenue, Suite 200, South Pasadena, CA 91030-2920, (626) 441-1103, fax (626) 441-1107, e-mail: mholis@hollis-associates.com. Contact Michael R. Hollis, MBA, MA (Econ). Economic damages analysis and expert witness testimony regarding personal injury, wrongful death, earning capacity, household services, wrongful termination, employment discrimination, sexual harassment, medical malpractice, business damages (lost profits), products liability, and pediatrics.

KROLL
660 South Figueroa Street, Suite 900, Los Angeles, CA 90017, (213) 443-8090, fax (213) 443-8055. Contact Troy Dahlberg, CPA/ABV, tdahlberg@krollworldwide.com or Christian Tregillis, CPA/ABV, ctregillis@krollworldwide.com. Investigations, economic damages, and valuation firm with offices across the country and around the globe. Specialties include accounting, financial, economic and statistical analysis, as well as computer forensics, in the context of commercial litigation and forensic investigations: accounting/fraud, securities, intellectual property (including damages analyses, licensing and valuation), breach of contract, lost profits, royalty audits, corporate governance, business valuation, real estate, construction, bankruptcy. Practitioners include former partners at Big Four accounting firms, law enforcement/FBI, computer forensics, and appraisers. See display ad on page 67.
We Carry It All!

- Avery® Style Tabs
- All-State® Style Tabs
- Ruggles Style Tabs
- Side Numbers to 8000
- Legal Size Tabs
- Blank Tabs
- Custom-made Tabs
- Leather Tabs
- Tabbies Exhibit Labels
- Tabbies Exhibit Tabs
- Redi-Tag Laser Tabs

Millions of tabs in stock for immediate delivery!

Check us out online - www.rsrggles.com

Request a free catalog today!

www.rsrggles.com
1-800-526-0863
SANLI PASTORE & HILL, INC. 1990 South Bundy Drive, Suite 800, Los Angeles, CA 90025, (310) 571-3400, fax (310) 571-3420, Web site address: www.sphvalue.com. Contact Nevin Sanli or Tom Pastore. Sanli Pastore & Hill, Inc. is a premier provider of business valuation and valuation advisory services, specializing in litigation support and expert witness testimony. Services include valuations for goodwill loss, estate and gift tax planning (family limited partnerships), lost profit analysis, mergers and acquisitions, goodwill impairment, fairness and solvency opinions, ESOPs, incentive stock options, capital raises, corporate, partnership and marital dissolutions. Consulting affords services, economic analysis, industry, and market research. Extensive experience in expert witness testimony, pretrial preparation, and settlement negotiations. See display ad on page 69.

SCHULZE HAYNES & CO. 660 South Figueroa Street, Suite 1290, Los Angeles, CA 90017, (213) 627-8820, fax (213) 627-8301, e-mail: expert@schulzehaynes.com. Web site: www.schulzehaynes.com. Contact Karl J. Schulze or Dana Haynes, principals. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, disclosure assistance and business and real estate valuations, construction claims, corporate recovery, real estate transactions, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business issues. Degrees/credentials: CPA, CFA, CFE, ABV, PhD-economics.


VENCENTI, LLOYD & STUTZMAN LLP 2210 East Route 66, Glendora, CA 91740, (626) 857-7300, fax (626) 857-7302, e-mail: rntuzman@vilstlp.com. Web site: www.vilstlp.com. Contact Royce Stutzman, CVA, CPA, Chairman. Our certified professionals serve as consultants and experts in business valuations and litigation support. We conduct valuations related to mergers and acquisitions, buy-sell agreements, purchase/sale of closely held businesses, partner disputes, etc. Our forensic accounting experts assess the amount of an economic loss, whether it be business interruption from casualty, unfair competition, condemnation, damage caused by others, or loss of earnings from various events. Our fraud investigation team reviews and documents, interviews witnesses and suspects, and assesses evidence to resolve all allegations. We provide expert witness testimony and implement fraud prevention programs. VLS Celebrates 52 Years of Quality Service!


WILLIAMS & RIBB LLP 600 Witshire Boulevard, Suite 1515, Los Angeles, CA 90017-3227, (213) 683-1013, fax (213) 683-0510, e-mail: cgc@williamsribb.com. Contact Charles R Gross, partner. Specialties: expert witness testimony and forensic accounting in business contracts and business disputes, marriage dissolution, and lost profits, and earnings disputes, earnings loss and economic damage calculations, income tax analysis, and fraud investigations. Our expertise encompasses engineering training, operational business experience, plus accounting and financial consulting, including economic analysis. Degrees/licenses: CPA; BS: Engineering; Masters; Management Science; Registered Investment Advisor; Insurance and Securities Advisor; Financial Planner.

ZAMUCEN, CURRÉN, HOMÈS & HANZICH 1748 Sky Park Circle, Irvine, CA 92614, (949) 955-2622, e-mail: bvisa@earthlink.net. Contact Joanna Hernandez. Zamucen, Curren, Homes & Hanzich, CPAs specialize in the following: business valuations, economic damage calculation for businesses and individuals, forensic accounting, financial fraud investigation, expert witness testimony, computer support services for litigation, goodwill impairment, merger and acquisition consulting, corporate “after ego” analysis and testimony, and other general CPA services. Our designations include certified public accountant, certified business appraisers, certified fraud examiners, certified valuation analyst, accredited business valuator, MBA, and JD. We have been court appointed over 100 times in cases involving valuation of business, economic damages, and family law matters.

ECONOMICS

THE CAPANALYSIS GROUP, LLC 550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: robinson@capanalysis.com. Web site: www.capanalysis.com. Contact Laura Robinson, PhD. Specialties: economic, financial, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of opposing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise include antitrust, bankruptcy, electronic commerce, telecommunications, defined benefit, defined contribution, health care, insurance, labor, market, market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigative and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFEs, CAs, JDs, PhDs economics.

COHEN, MISKIE & MOWREY LLP 15303 Ventura Boulevard, Suite 1150, Sherman Oaks, CA 91403, (818) 981-5034, fax (818) 981-5034, e-mail: smowrey@cmmcpas.com. Contact Scott Mowrey. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/licenses: CPAs, CFEs, MBAs. See display ad on page 60.

ELECTRICAL

ROBERT J. ABEND, PE 1658 Larraine Circle, San Pedro, CA 90732, cell (310) 346-6543, (310) 221-0716, fax (310) 221-0716, e-mail:rabend@linkline.com Web site: www.linkline.com/personal/rabend. Specialties: Electrical engineering, computer forensics, data recovery, electronic discovery, computer engineering, security, telecommunications, microcontrollers, electronics, manufacturing, intellectual property, and trade secret litigation. Technical support during case preparation. Practiced at court and deposition testimony. Thirty-five years of experience in the electronics and computer industry. Thirteen years as a forensic engineering consultant. References provided on request. Degrees/licenses: BSEE, MS, Registered Professional Engineer, Cert EnCase Computer Forensic Examiner, FCC General Radiotelephone licenses.

ELECTRICAL ACCIDENTS

JAMES A. SMITH, CONSULTANT 2562 Treasure Drive, Suite 4102, Santa Barbara, CA 93105-4717, (805) 687-7911, fax (805) 687-0382, e-mail: jasmith181@aol.com. Electrical accidents, electrocution and electric shock, analyzing what happened and
why, consulting on case strategy, and being an expert witness, National Electric Code compliance, California GO-95 compliance, National Electric Safety Code compliance, protective relaying, and equipment and product testing.

ELECTRICAL ENGINEERING

CTG FORENSICS, INC.
16 Technology Drive, Suite 109, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: mdewes@CTGforensics.com. Web site: www.CTGforensics.com. Contact Dr. Malcolm Lewis, PE. Construction-related engineering, plumbing, mechanical (heating, ventilating, A/C) and electrical (power, lighting), energy systems, residential and nonresidential buildings, construction defects, construction claims, and mold.

ELECTRONIC DISCOVERY

ROBERT J ABEND, PE
1658 Larane Circle, San Pedro, CA 90732, cell (310) 348-6543, (310) 221-0716, fax (310) 221-0716, e-mail: rabend@linkline.com Web site: www.linkline.com/personal/rabend. Specialties: Electrical engineering, computer forensics, data recovery, electronic discovery, computer engineering, software, electronics, microelectronics, electronics manufacturing, intellectual property, and trade secret litigation. Technical support during case preparation. Practiced at court and deposition testimony. Thirty-five years of experience in the electronics and computer industry. Thirteen years as a forensic engineering consultant. References provided on request. Degrees/licenses: BSEE, MS, Registered Professional Engineer, Cert EnCase Computer Forensic Examiner, FCC General Radiotelephone licenses.

FULCRUM FINANCIAL INQUIRY
100 Wilshire Boulevard, Suite 1650, Los Angeles, CA 90017, (213) 787-4100, fax (213) 787-4141, e-mail: dnolte@fulcruminquiry.com. Web site: www.fulcruminquiry.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

SETEC INVESTIGATIONS
8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90048, (800) 748-5440, fax (323) 939-5481, e-mail: tstefan@setecinvestigations.com. Web site: www.setecinvestigations.com. Contact Todd Stefan. Setec Investigations offers unparalleled expertise in computer forensics and enterprise investigations providing personalized, case-specific forensic analysis and litigation support services for law firms and corporations. Setec Investigations possesses the necessary combination of technical expertise, understanding of the legal system, and specialized tools and processes enabling the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes or misuse. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.

EMPLOYMENT

BIDDLE CONSULTING GROUP, INC.
193 Blue Ravine Road, Suite 270, Folsom, CA 95639, (916) 294-4250, fax (916) 294-4255, e-mail: staff@biddle.com. Web site: www.biddle.com. Contact Dan Biddle, PhD, president. We specialize in compensation analysis, test development, EEO/AA reviews, validation studies
content, criterion-related), and adverse impact analyses. We have a special emphasis in the protective service fields. Over 30 staff. Degrees/licenses: MA, PhD, other staff with various degrees.

G. GOVINE CONSULTING

HAIGHT CONSULTING
1726 Paldalis Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 15 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and FEHA discrimination and harassment, retaliation, FMLA/CPSA, safety, and wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assesses human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

HRM CONSULTING, INC.
P.O. Box 1766, Murfay, CA 92427, (209) 728-8905, fax (209) 728-8970, e-mail: hrm@hrmconsulting.com. Web site: www.hrmconsulting.com. Contact Beth Hirsch. Plaintiff and defense attorneys respect Ms. Hirsch’s experience working on employment and vocational rehabilitation matters from the both the employer and employee perspective. Her expertise is utilized in cases involving ADA (Americans with Disabilities Act), FMLA (Family Medical Leave Act), sexual harassment, personal injury, or divorce. We provide litigation support, expert testimony, and investigations. We also specialize in helping companies understand and comply with regulations and issues in the complicated realm of human resources management. HUMAN RESOURCES MANAGEMENT NETWORK
544 West Walnut Avenue, Fullerton, CA 92832, (714) 542-9525, fax (530) 885-4394, e-mail: baillichfind@earthlink.net. Web site: www.ballexpertwitness.com. Contact Lawrence P. Ball. Expert testimony related to human resources standards of care, discipline, wrongful discharge, wrongful termination, sexual orientation/discrimination, sex/sexual/gender discrimination, race/color/racial discrimination, religious discrimination, national origin/ancestry discrimination, age discrimination, sexual orientation harassment, race/color/racial/color harassment, religious harassment, disability harassment, national origin/ancestry harassment, age harassment, FMLA/CPSA violations, ADA violations, negligent hiring/retention, performance evaluation/review, DFHE and DOL regulations, pregnancy, and EEOC guidance. Cases: 45 percent plaintiff, 55 percent defense.

EMPLOYMENT/DISCRIMINATION/HARASSMENT
BRIAN H. KLEINER, PHD
Professor of Human Resource Management, California State University, 800 North State College Boulevard, LH-640, Fullerton, CA 92834, (714) 879-9705, fax (714) 879-5600. Contact Brian H. Klein, PhD. Specializations include wrongful termination, discrimination, sexual harassment, ADA, evaluation of policies and practices, reasonable care, progressive discipline, conducting third-party workplace investigations, retaliation, RFs, statistics, negligent hiring, promotion selections, CFRA/FMLA, compensation, wage and hours, ERISA, workplace violence, and OSHA. Consultant to over 100 organizations. Over 500 publications. Five-time winner of CSUF Meritorious Performance Award. Extensive experience giving testimony effectively.

EMPLOYMENT HARRASSMENT
STEFANIE STOLINSKY, PHD, LICENSED PSYCHOLOGIST, PSY 14053
9107 Wilshire Boulevard, Suite 200, Beverly Hills, CA 90210, (310) 724-0048. Contact Stefanie Stolinsky, PhD. Neuropsychological and psychological testing and measurement; personal injury and personal injury examinations, intelligence, cognitive and personality testing. Expert witness for adults abused as children, PTSD. See display ad on page 75.

EMPLOYMENT/WAGE EARNING CAPACITY
CALIFORNIA CAREER SERVICES
6024 Willeshire Boulevard, Los Angeles, CA 90036, (323) 933-2900, fax (323) 933-9929, swmcareer@aol.com. Web site: www.californiacareerservices.com. Contact Susan W. Miller, MA. Vocational examinations/labor market research and testimony on employability and earning capacity as well as educational options in divorce and wrongful termination cases.

GOLDFARB AND ASSOCIATES
1101 Fremont Avenue, Suite 103, South Pasadena, CA 91030, (828) 441-9687, fax (828) 799-8736, e-mail: goldfarbassociates@yahoo.com. Contact Howard Goldfarb. Vocational rehabilitation consultant providing expert witness testimony on employability and wage loss in personal injury, marriage dissolution, ERLSA, age discrimination, and sexual harassment.

PERSONNEL SYSTEMS ASSOCIATES, INC.
743 East Moonridge Lane, Los Angeles, CA 90066, (714) 281-8337, fax (714) 281-2949, e-mail: mding @personnelsystems.com. Web site: www .personnelsystems.com. Contact Mae Lon Ding, MBA, CCP. Expert witness in employment, business dispute, disability, and divorce cases involving issues of employee or owner compensation, discrimination, wrongful termination, exemption from overtime, labor market/employability, lost wages/benefits, employee performance, and evaluation of personnel policies and practices. Nationally recognized human resource management and compensation consultant, speaker, author of book and articles, university instructor. Quoted in Los Angeles Times, Orange County Register, Business Week, Workforce, and Working Woman. Over 14 years of testifying in cases involving major national organizations in a large variety of industries involving multiple plaintiffs. MBA, Certified Compensation Professional.

ENGINEERING
FORENSISGROUP
3452 East Foothill Boulevard, Suite 1160, Pasadena, CA 91107, (800) 555-6422, (626) 795-5000, fax (626) 795-1965, e-mail: experts@forensisgroup.com. Web site: www .forensisgroup.com. Contact Mercy Steenwyk. Thousands of our clients have gained the technical advantage and the competitive edge in their cases from our resource group of high-quality experts in construction, medical, engineering, product liability, safety, environmental, accident reconstruction, automotive, failure analysis, fires, explosions, slip and fall, real estate, economics, appraisal, em-
employment, computers, and other technical and scientific disciplines. We provide you with a select group of high-quality experts as expeditiously as possible. Unsurpassed recruitment standards. Excellent client service. See display ad on page 53.

GHH ENGINEERING, INC.
11960 Heritage Oak Place, Suite 2B, Auburn, CA 95603, (530) 886-3100, fax (530) 886-3108, e-mail: ghhl@ghheng.com. Web site: www.moldservicesgroup.com.
Contact Alisa Smith. Civil engineering and design, environmental consulting, PCA's, water and wastewater, storm water management, hazardous waste, fuel storage tank compliance, construction defect, litigation support, third party oversight, expert witness, mold management and consulting services, and mold training and certification.

HICHBORN CONSULTING GROUP

RICK ENGINEERING CO.
1223 University Avenue, Suite 240, Riverside, CA 92507, (951) 782-0707, fax (951) 782-0723, e-mail: rstockton@rickengineering.com. Web site: www.rickengineering.com. Contact Robert A. Stockton, PE. Specialties include subdivision, commercial/industrial site design, construction review and value engineering, flood control studies/engineering, aerial topographic mapping, and special computerized services, including forensic engineering and CADD modeling. See display ad on page 64.

CARL SHERIFF, PE

ENGINEERS/ELECTRONICS
JOHN R. GRINDON & ASSOCIATES
Image Processing, Image Analysis, and 3-D Scene Measurement from Images. P.O. Box 4087, Hazelwood, MO 63142, (314)892-4747, fax (314)895-0830, e-mail: john.grindon@alum.m.t.c.edu. Web site: www.image-analytics.com. Contact John R. Grindon, DSc. Services include processing and analyzing still and video images for information about the imaged scenes or objects. Dr. Grindon has developed systems and software that process images, measurements, and data for information extraction and analysis. He holds patents for electronic imaging systems and processing methods for computing three-dimensional scene measurements from images. Dr. Grindon is a consultant and court-qualified expert witness experienced in working with litigation teams during discovery and trial. See display ad on page 73.

ENVIRONMENTAL
THE CAPANALYSIS GROUP, LLC

THE BEST LEGAL MINDS IN THE COUNTRY TALK TO US

- Metallurgical Failures
- Corrosion & Welding Failures
- Glass & Ceramic Failures
- Chairs / Ladders / Tires
- Automobile/Aerospace/Accidents
- Bio-Medical/Orthopedic Implants
- Plumbing/Piping/ABS Failures
- Complete In-House Laboratory Testing & Analysis Facilities
- Expert Witnesses/Jury Verdicts
- Licensed Professional Engineers

Contact: Dr. Naresh Kar, Fellow ASM, Fellow ACFE
Dr. Ramesh Kar, Fellow ASM, Fellow ACFE

ADVANCED MATERIALS, INC.
Testing & Research Labs
2528 W. Woodland Drive
Anaheim, CA 92801
TEL: (714)527-7100
FAX: (714)527-7169
www.karslab.com
email: kars@karslab.com
Valuation of environmental liabilities and other legal claims using a decision tree approach that produces an accurate representation of liability cost versus the probability of those costs being incurred. 2. Provision of crucial information to help ensure that products or services meet the environmental, health, and safety requirements of the jurisdictions in which they do business. 3. Staff of Washington-based regulatory analysts monitor federal and state regulatory developments and interact with government officials to explain the interests of their clients. Degrees/license: hydrogeology, geology, environmental scientists.

CRA INTERNATIONAL
1055 East Colorado Boulevard, Suite 420, Pasadena, California 91106-2327, (626) 564-2000, fax (626) 564-2099.
Web site: www.crai.com. Contact John Hirshleifer, vice president. CRA International provides economic, financial, and business analysis in such areas as antitrust, contracts, damages, energy, environment, entertainment, healthcare, intellectual property, international trade, mergers & acquisitions, professional sports, regulation, securities fraud, taxation and transfer pricing, telecommunications, and valuation. In concert with leading academic and industry experts, CRA multidisciplinary staff offers wide-ranging consulting assistance (from modeling projects to trial preparation and testimony) to attorneys, executives, and government officials the world over. See display ad on page 59.

HARGIS + ASSOCIATES, INC.
2360 Northdale Drive, Suite C-100, San Diego, CA 92108, (858) 521-0165, fax (858) 521-8580, e-mail: hargis@hargis.com. Web site: www.hargis.com.
Contact David R. Hargis, PhD, RG. Expert witness testimony, technical consultation, and litigation support concerning hydrogeologic assessments to evaluate groundwater supply, basin studies, nature/extent of soil/groundwater contamination, source identification, identification of potentially responsible parties, cost allocation studies, and negotiations with USEPA and state regulatory agencies involving cleanup levels and approval of RI/FS/RA/RA documents for various state and federal Superfund sites. See display ad on page 70.

GHM ENGINEERING, INC.
11960 Heritage Oak Place, Suite 2B, Auburn, CA 95603, (530) 888-3100, fax (530) 888-3108, e-mail: ghminc@ghminc.com. Web site: www.moldservicегroup.com. Contact Alisa Smith. Civil engineering and design, environmental consulting, PSA’s, water and wastewater, storm water management, hazardous waste, fuel storage tank compliance, construction defect, litigation support, third party oversight, expert witness, mold management and consulting services, and mold training and certification.

PACIFIC HEALTH & SAFETY CONSULTING, INC.

THE REYNOLDS GROUP
P.O. Box 1996, Tustin, CA 92781-1996, (714) 730-5397, fax (714) 730-6476, e-mail: edreynolds@reynolds-group.com. Web site: www.reynolds-group.com. Contact Ed Reynolds. Principal of the Reynolds Group, a multi-disciplined, environmental engineering, contracting, and consulting firm founded in 1989. Experienced in matters related to environmental distress or contamination, assessment and remediation, construction, and related financial matters. Degrees from the University of Southern California, B.S., Civil Eng., 1981; University of Houston, MS, Civil Eng., 1984; and Harvard University, MBA, 1986. Adjunct faculty member at the USC School of Engineering, and member of its Board of Councilors.

EQUINE
CAROL MESCHTER, DVM, PHD, DACVP
786 Lucerne Drive, Sunnyvale, CA 94085, (408) 738-9261, fax (408) 738-9278, e-mail: carolmeschter@compbio.com.
Contact Carol Meschter, DVM, PhD, DACVP, PhD, Board Certified Veterinary Pathologist. Twenty-plus years’ expertise in biotechnology, pharmaceuticals, toxicology; additional life of long experience with horses and dogs, as a veterinarian and as a competitor.

ESCROW
ADVISORS/EXPERTS @ MCS ASSOCIATES
Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1997). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties: lending customs, practices, policies, in all types of lending (real estate, business/commercial, construction, consumer/credit card), banking operations/administration, trust and investments, economic analysis and valuations/damages/appraisals, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and construction defects/disputes, and title insurance.

EXPERT REFERRAL SERVICE
FORENSIC EXPERT WITNESS ASSOCIATION

TASA
(800) 523-2319, fax (800) 329-8272. FIND YOUR EXPERT, EXPERT WITNESS, OR CONSULTANT in minutes. TASA provides time-saving, customized referrals by our experienced staff to outstanding, local, national, and global specialists, including hard-to-find authorities in virtually all professions. We offer more than 10,000 categories of expertise, including 900 medical specialties through the TASAmed division. Your request receives our prompt personal attention. Our services include unlimited searches, referrals, resumes, and initial screening telephone interviews which we help you arrange with candidates—all at NO CHARGE until you designate or engage an expert. Plain- tiff/defense, civil/criminal cases, and ADR. Experts can assist you at any stage of your case from early case merit assessment to deposition and testimony. Sample expertise categories: accident reconstruction, banking, computers, construction, economics, electronics, engineering, forensic accounting, healthcare, intellectual property, machine design, medical devices, mold, OSHA, personal injury, product liability, safety, security, and toxicology. Over 44 years of successful referrals to California’s finest law and insurance firms. Please see insert in this issue and display ad on page 74.

EXPERT WITNESS
AMFS, INC. (AMERICAN MEDICAL FORENSIC SPECIALIST)
2640 Telegraph Avenue, Berkeley, CA 94704, (800) 275-8603, (510) 549-1683, fax (510) 486-1255, e-mail: medicalexperts@amfs.com. Web site: www.amfs.com. Contact Barry Gustin, MD, MPH, FACEP. AMFS is a physician and attorney managed company that provides initial in-house case screenings by 72 multidisciplinary physician partners. Medical experts are matched to meet case requirements by AMFS Physician Partners from our panel of over 3,500 carefully prescreened board-certified experts.
practicing specialists in California. All recognized medical specialties. Plaintiff and defense. Fast, thorough, objective, and cost-effective. Medical negligence, hospital and managed care, personal injury, product liability, and toxic torts.

“A 92 percent win record” — California Lawyer magazine. See display ad on page 73.

CRA INTERNATIONAL
1055 East Colorado Boulevard, Suite 420, Pasadena, California 91106-2327, (626) 564-2000, fax (626) 564-2099. Web site: www.crai.com. Contact John Hirshleifer, vice president. CRA International provides economic, financial, and business analysis in such areas as antitrust, contracts, damages, energy, environment, entertainment, healthcare, intellectual property, international trade, mergers & acquisitions, professional sports, regulation, securities fraud, taxation and transfer pricing, telecommunications, and valuation. In concert with leading academic and industry experts, CRA multidisciplinary staff offers wide-ranging consulting assistance (from modeling projects to trial preparation and testimony) to attorneys, executives, and government officials the world over. See display ad on page 59.

FAILURE ANALYSIS
KARS ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: kars@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh J. Kar or Naresh J. Kar. Southern California’s premier materials/mechanical/metallurgical/structural/forensics laboratory. Registered professional engineers with 20-plus years in metallurgical/forensic/structural failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are fellows of American Society for Metals and board-certified diplomates, American Board of Forensic Examiners. See display ad on page 65.

SEAL LABORATORIES

FAMILY LAW
COHEN, MISKEI & MOWREY LLP
15303 Ventura Boulevard, Suite 1150, Sherman Oaks, CA 91403, (818) 986-5070, fax (818) 986-5034, e-mail: smowrey@cmmcpas.com. Contact Scott Mowrey. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/license: CPAs, CFEs, MBAs. See display ad on page 60.

GLENN M. GELMAN & ASSOCIATES, CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS

How do you describe the integrity, expertise and knowledge of an independent advisory firm such as ours?

We don’t. We demonstrate it.

OFS™ • The Business Doctors™

- Sarbanes-Oxley (SOX) Corporate Governance and /COBIT IT Compliance
- Dispute Analysis, Best Practices and Expert Consultation & Testimony in Business Litigation and Disputes
- Business Judgment; Vendor Disputes; Partner and Director Disputes: Partnership Dissolution
- Purchasing & Contracting Issues; Supply Chain & eCommerce Implementation and Practices; Corporate Supplier Diversity, SBE, DBE, MWBE Guidelines & Best Practices

Contact BJ Hawkins PhD Certified Expert Witness
310.821.1893 FAX 310.821.1083 E-MAIL thebizdoctors@ofs3.com
POST OFFICE BOX 4182, INGLEWOOD, CALIFORNIA 90309

For more information, contact:
Troy Dahlberg • Phone: 213.443.1072
Chris Tregillis • Phone: 213.443.1091
Our engineers and consultants analyze investigations, reports, and expert witness testimony in the context of commercial litigation and forensic investigations: accounting, fraud, securities, intellectual property (including damages analyses, licensing and valuation), breach of contract, lost profits, royalty audits, corporate governance, business valuation, real estate, construction, bankruptcy. Practitioners include former partners at Big Four accounting firms, law enforcement/FBI, computer forensics, and appraisers. See display ad on page 67.

Miod and Company, LLP CPAs

Contact Donald John Miod, CPA, ABV, CVA, CBA. More than 30 years’ experience in litigation support, including computation of income available for support, tracking, business valuations, fraud investigations, losses, earnings loss calculations, and income tax matters. Our firm is very computer-oriented, involving the use of computer graphics. We are members of the Institute of Business Appraisers, the International Society of CPAs (founding member), the American Institute of CPAs, and California Society of CPAs. See display ad on page 64.

Sanli Pastore & Hill, Inc.
1990 So. Bundy Drive, Suite 800
Los Angeles, California 90025
310/571-3400

Sanli Pastore & Hill, Inc. is a premier provider of business valuation and valuation advisory services, specialising in insurance and court proceedings. Services include valuations for goodwill loss, estate and gift tax planning, lost profits, royalty audits, corporate governance, business valuation, real estate, construction, bankruptcy. Practitioners include former partners at Big Four accounting firms, law enforcement/FBI, computer forensics, and appraisers. See display ad on page 66.

Rimkus Consulting Group, Inc.
333 City Boulevard West, Suite 1805, Orange, CA 92868, (877) 979-2044, fax (714) 979-2088, e-mail: cjyaworski@rimkus.com. Web site: www.rimkus.com. Contact Curt Yaworski. Rimkus Consulting Group is a full-service forensic consulting firm. Since 1983, we have provided reliable investigations, reports, and expert witness testimony around the world. Our engineers and consultants analyze investigations, reports, and expert witness testimony from a variety of practice areas: commercial damages, ownership disputes, economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, professional liability, and expert cross examination. Extensive public speaking background assists in courtroom presentations.
the facts from origin and cause through extent of loss. Services: construction defect and dispute analysis, vehicle accident reconstruction, fire cause and origin, property evaluation, mold evaluations, indoor air quality assessments, biomechanical analysis, product failure analysis, foundation investigations, industrial accidents and explosions, water intrusion analysis, geotechnical evaluations, construction accidents, construction disputes, financial analysis and assessments, forensic accounting, HVAC analysis, electrical failure analysis, and video/graphics computer animation.

See display ad on page 75.

FOOD SAFETY/HACCP

FOOD SAFETY & HACCP COMPLIANCE
20398 De Mina Street, Woodland Hills, CA 91364, (818) 703-7147, e-mail: jeffnelken@cs.com. Web site: www.foodsafetycoach.com.

Contact Jeff Nelken, MA, RD.

Food safety expert knowledgeable in both food safety and HACCP program development. Specializes in expert witness testimony and litigation consultant in matters regarding food safety, HACCP, crisis management, food-borne illness, health department representation, food spoilage, and customer complaints. Performs inspections, vendor audits, and training. Hands-on food safety consultant for restaurants, manufacturers, distributors, country clubs, schools, nursing homes, and casinos. NRA and NSF HACCP certified instructor. Thirty years of food and hospitality experience. Registered as a food handler instructor with the Los Angeles County Health Department. Provider # 015. Food safety expert for CBS, NBC, and Inside Edition.

FOOD TOXICOLOGY

COOK & ASSOCIATES

629 Camino de Los Mares, San Clemente, CA 92673, (949) 361-2288, fax (949) 361-2598, e-mail: charlie@countryfareconsulting.com.

Contact Dr. Charles F. Cook.


FORENSIC ACCOUNTING

BALLenger, CLEVendA& ISSA, LLC

10980 Wilshire Boulevard, 16th Floor, Los Angeles, CA 90024, (310) 873-1717, fax (310) 873-6600, Contact Bruce W. Ballenger, CPA, executive managing director. Services available: assist counsel in determining overall strategy. Help evaluate depositions and evidence. Provide well-prepared, well-documented, and persuasive in-court testimony regarding complicated accounting, financial, and business valuation matters, fairness of interest rates, feasibility of reorganization plans, fraudulent conveyances, bankruptcies, mergers and acquisitions, and management misfeasance/malfeasance. More than 100 open-court testimonies, federal and state, civil and criminal.

See display ad on page 50.

DESMOND MARCELLO AND AMSTER

Southern California Office: 6060 Center Drive, Suite 825, Los Angeles, CA 90045, (888) 240-5184, (310) 216-1400, fax (310) 216-0800. Contact Wes Nutten, Aaron Amster, or Madeleine Mamaux.

Litigation consulting, forensic accounting, expert witness testimony, class action claims administration services, and business valuation services. Staff qualifications include CPA, CMA, ABV, CFA, and ASA designations. Testimony experience in numerous court jurisdictions. Established in 1968.

See display ad on page 47.

FULCRUM FINANCIAL INQUIRY


Contact David Nolte. Our professionals are experienced
OPAs, MBAs, ASAs, CFAs, affiliated professionals, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequivocal record of successful court cases and client recoveries. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 2.

NANCY A. KEARSON, CPA, ADY, CVA, DABFA
1801 Century Park East, Suite 2400, Los Angeles, CA 90067, (310) 785-9614, fax (310) 277-1278, e-mail: nkearsen@earthlink.net. Contact Nancy Kearson. Cost-effective, timely expert witness/consultation services, investigative forensic accounting, asset tracing, shareholder and partner disputes, business valuation, and professional practice appraisal. Frequent lecturer on forensic accounting and business valuation. Certified Public Accountant; Accredited in Business Valuation, Certified Valuation Analyst, Diplomate of the American Board of Forensic Accountants.

LEWIS, JOFFE & CO., LLP
10880 Wilshire Boulevard, Suite 520, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268. Contact Brian Lewis, CPA, CVA. Forensic accounting, business valuations, cash spendable reports, estate, and trust and income tax services.

SUGARMAN & COMPANY, LLP

VICENTI, LLOYD & STUTZMAN LLP
2210 East Route 66, Glendale, CA 91240, (828) 857-7300, fax (828) 857-7302, e-mail: rlstutzman@vlcpp.com. Web site: www.vlcpp.com. Contact Royce Stutzman, CVA, CPA, CMA. Our certified professionals serve as consultants and experts in business valuations and litigation support. We conduct valuations related to mergers and acquisitions, buy-sell agreements, purchase/sale of closely held businesses, partner disputes, etc. Our forensic accounting experts assess the amount of an economic loss, whether it be business interruption from casualty, unfair competition, condemnation, damage caused by others, or loss of earnings from various events. Our fraud investigation team reviews documentation, interviews witnesses and suspects, and assesses evidence to resolve allegations. We provide expert witness testimony and implement fraud prevention programs. VLS Celebrates 52 Years of Quality Service!

ZAMUCEN, CURREN, HOLMES & HANZICH
17848 Sky Park Circle, Irvine, CA 92614, (949) 955-2522, e-mail: bflya@earthlink.net. Contact Joanna Hernandez. Zamucen, Curren, Holmes & Hanzich; CPAs specialize in the following business valuations, economic damage calculation for businesses and individuals, forensic accounting, financial fraud investigation, expert witness testimony, computer support for litigation, goodwill impairment, merger and acquisition consulting, corporate “after ego” analysis and testimony, and other general CPA services. Our designations include certified public accountant, certified business appraisers, certified fraud examiners, certified valuation analyst, accredited business valuator, MBA, and JD. We have been court appointed over 100 times in cases involving valuation of business, economic damages, and family law matters.

FORENSIC CONSULTING

IMPACT GENERAL, INC.
1405 East Chapman Avenue, Orange, CA 92866, (714) 532-1621, fax (714) 532-5734, e-mail: assignments @impactgeneral.com. Contact Bill King. Impact General, Inc., is a forensic expert firm with over 500 experts working in all engineering fields, science disciplines, and unique specialties. We are 28 years of experience ensure in-depth analysis with objective evaluations. A comprehensive approach guarantees that clients will receive consistency within our firm’s business precepts of timeliness, effective communications, and cost effectiveness.

FORENSIC PSYCHOLOGIST—TESTING AND MEASUREMENTS FOR COURT

STEFANIE STOLINSKY, PHD, LICENSED PSYCHOLOGIST, PSY 16053

FRANCHISING

LEON GOTTLEIB
US-IN’T RESTAURANT, HOTEL & FRANCHISE CONSULTANT
4601 Sendero Place, Tarzana, CA 91356-4821, (818) 757-1131, fax (818) 757-1816, e-mail: lgottlieb@aol.com. Web site: http://members.aol.com/myhomepage/business.html. Specialties: USA/Int’l restaurant/hotel/franchise experience since 1960. Hands-on consultant and expert witness, all types of restaurants, franchises, fast food, training manuals, safety, security, inventory, operating standards, and P&L damages. Former VP/Partner IHOP, director to USA chains, author, arbitrator, and expert witness.

FRAUD INVESTIGATIONS

DESMOND MARCELLO AND AMSTER

STONEFIELD JOSEPHSON

HOTEL & RESORTS

STRAIGHTLINE ADVISORS

HUMAN FACTORS

D. WYLIE ASSOCIATES

INFERTILITY

GIL N. MILEIKOWSKY, MD, FACOG
Offices in Encino and Beverly Hills, 29341 Beverly Glen Circle, Suite 373, Bel Air, CA 90077, (310) 655-1300 or (818) 981-1888, fax (310) 655-1994. Web site: www.babytou.com. Contact Gil N. Mileikowsky, MD, OB/GYN, NF, laser surgery, laparoscopy, and reproductive endocrinology. Diplomate, board certified by the American Board of OB/GYN. Board eligible, American Board of Reproductive Endocrinology Division. Fellow, American College of OB/GYN FACOG. Member of the American Society for Reproductive Medicine, Society of Assisted Reproductive Technologies, former Medical Director IVF (In Vitro Fertilization) at Northridge Hospital, former Chairman Laser and Safety Committee at Northridge Hospital and member of the Los Angeles County Medical Association. Author, numerous scientific papers and articles published in peer review journals. Former clinical instructor at USC. Former clinical assistant professor, OB/GYN at UCLA. See display ad on page 63.
LAUNIE ASSOCIATES, INC.
11663 Tunnel Road, Santa Barbara, CA 93105, (805) 569-9175, fax (805) 687-8597, e-mail: launiej@cox.net.
Contact Joseph J. Launie, PhD, CPCU, insurance professor, author, and consultant. Over 25 years’ experience as an expert witness in state and federal courts. Co-author of books and articles on underwriting, insurance company operations, and punitive damages. Consulting, expert witness on underwriting, company and agency operations, and bad faith.

CLINTON E. MILLER, JD, BCFE
502 Park Avenue, San Jose, CA 95110, (408) 279-1034, fax (408) 279-3562, e-mail: cemccom@aoil.com. Contact Clint Miller. Insurance expert regarding claims, underwriting, agent and broker errors and omissions, coverage disputes, customs and practices, and bad faith. See display ad on page 60.

JANICE A. RAMSAY, ESQ.
2 Park Plaza, Irvine, CA 92614, (949) 474-1880, (949) 400-5040 (cell), fax (949) 474-7265, e-mail: jramsay@cox.com. Contact Janice A. Ramsay, Esq. Experience in testifying in depositions and at trial. Can provide consultation to litigation counsel on property insurance coverage issues and proper claim handling. Has acted as appraiser, arbitrator, and mediator in coverage disputes.

SHARP & ASSOCIATES; INSURANCE CONSULTANTS & EXPERTS.
21730 Mackenzie Drive, Lake Forest, CA 92887, (213) 407-9597, e-mail: nisharp1995@aol.com. Web site: sharpanassociates.org. Contact Robert Sharp. Good faith/bad faith. In regard to all insurance related issues. Mr. Sharp has 33 years of experience, and retired as president and CEO of a property-casualty insurance company. He also held the positions of senior vice president claims and executive vice president. He is providing services to law firms, insurance companies, and corporations as a consultant and expert. Mr. Sharp has testified in state and federal court in insurance related matters such as property/casualty claims, sales and underwriting issues, policy cancellations, coverage denials, general liability, uninsured/underinsured claims, and bad faith claims. CV on request. For immediate background information please see my Web site, as listed above.

BARRY ZALMA, INC.; ZALMA INSURANCE CONSULTANTS

ZAMUCEN, CURREN, HOLMES & HANZICH
17848 Sky Park Circle, Irvine, CA 92614, (949) 955-2522, e-mail: bvsa@earthlink.net. Contact Joanna Hernandez. Zamucen, Curren, Holmes & Hanzich, CPAs specialize in the following: business valuations, economic damage calculations for businesses and individuals, forensic accounting, financial fraud investigations, business value testimony, computer support for litigation, goodwill impairment, merger and acquisition consulting, corporate “alter ego” analysis and testimony, and other general CPA services. Our designations include certified public accountant, certified business appraisers, certified fraud examiners, certified valuation analyst, accredited business valuer, MBA, and JD. We have been court appointed over 100 times in cases involving valuation of business, economic damages, and family law matters.

INVESTIGATIONS
BENCHMARK INVESTIGATIONS
to measure credit damage since 1995.

LAW ENFORCEMENT/SECURITY

DANIEL R. SULLIVAN, DEPUTY CHIEF, LAPD, RET.


LEGAL MALPRACTICE

PHILLIP FELDMAN, BS, MBA, JD, AV

15250 Ventura Boulevard, Suite 610, Sherman Oaks, CA 91403-3287, (310) LEG MALP 834-6257, fax (818) 986-1757, e-mail: legmapexpert@aol.com. Web site: www.legalmalpracticeexperts.com. Contact Phillip Feldman, BS, MBA, JD, AV. Board certified in legal and medical malpractice by CA, ABA, ABPLA, Former Judge Pro Tem, State Bar Pro Tem. Fee Dispute Arbitrator. Thirty-eight years as litigator/transactional attorney, supervising partner. Never failed to qualify or disqualified, and 23 years as expert. Any standard of care, conduct, causation, fiduciary duty or fee dispute issues. Any transaction. Any litigation. Any underlying matter, transaction or litigation. (Also de-fends lawyers before the State Bar. StarBarDefender@aol.com).

BOYD S. LEMON

Ventura office (805) 687-2137, Beverly Hills office (310) 880-4767. Contact Boyd S. Lemon. Experienced expert witness in legal malpractice and attorney fee dispute cases, 40 years of business trial experience, extensive malpractice litigation experience, retained expert witness in over 700 cases, former litigation department chairman major law firm, State Bar disciplinary committee, and court appointed mediator and arbitrator. See display ad on page 70.

LISE A. PEARLMAN, ESQ.

484 Lake Park Avenue, P.M.B. # 105, Oakland, CA 94610, (510) 288-8159, fax (510) 832-0847, e-mail: pearlma @fman.com. Web site: www.forensic.org. Contact Lise Pearlman. Former presiding judge of the California State Bar Court (1989-95). Consultant to law firms, individual lawyers on required standard of professional conduct and standard of care under California law in wide variety of practice situations and in connection with State Bar proceedings; expert witness for plaintiff or defense in attorney malpractice actions, motions to disqualify, and other civil proceedings.

LIFE CARE PLANNING/CRITIQUE

ROUGAN & ASSOCIATES AT LINC.

41 East Foothill Boulevard, Suite 102, Arcadia, CA 91006, (626) 482-9675, fax (626) 482-9676, e-mail: jflanc@linc.biz Contact Jan Roughan. Specialties: Roughan & Associates at LINC is a case management and medical/legal consulting firm. Services/products offered include 1) Life care planning/future medical costs, 2) Expert testimony, 3) Independent medical evaluation (IME) specialists identification, merit analysis. Medical chronologies, attendance at IMEs/mediation/arbitrations, and settlement conferences.

LITIGATION

THE CAPANALYSIS GROUP, LLC

550 South Hope Street, Suite 1100, Los Angeles, CA 90071, (213) 892-2568, fax (213) 892-2300, e-mail: roblinson@capanalysis.com. Web site: www.capanalysis.com. Contact Laura Robinson, PhD. Specialties: economic, financial, accounting, and statistical analysis for complex litigation, arbitration, regulatory proceedings, and strategic corporate decision making. Assist attorneys with discovery, identification of relevant economic and financial issues, preparation of analytical models, critique of opposing experts, and expert testimony in federal and state courts, and before the FTC and DOJ. Areas of expertise include antitrust (including cutting-edge analyses of market definition, market power, coordinated interactions, and unilateral effects), economic damages, business valuation, investigation and forensic accounting and auditing, intellectual property (including patent, trademark, and copyright infringement, and valuation of intellectual property), insurance coverage, contract disputes and tort claims, mergers and acquisitions, and securities fraud. Degrees/licenses: CPAs, CFAs, ASAs, JDs, PhDs economies.

CRA INTERNATIONAL

1055 East Colorado Boulevard, Suite 420, Pasadena, California 91106-2327, (626) 564-2000, fax (626) 564-2099. Web site: www.crai.com. Contact John Hirshleifer, vice president. CRA International provides economic, financial, and business analysis in such areas as antitrust, contracts, damages, energy, environment, entertainment, healthcare, intellectual property, international trade, mergers & acquisitions, professional sports, regulation, securities fraud, taxation and transfer pricing, telecommunications, and valuation. In concert with leading academic and industry experts, CRA multidisciplinary staff offers wide-ranging consulting assistance (from modeling projects to trial preparation and testimony) to attorneys, executives, and government officials the world over. See display ad on page 59.

ECON ONE RESEARCH, INC.

601 West Fifth Street, 5th Floor, Los Angeles, CA 90071, (213) 624-9600, fax (213) 624-6994, e-mail:iskyler @econone.com. Web site: www.econone.com. Contact Lisa Skyler, general manager. Econ One is an economic research and consulting firm with extensive experience combining theory and empirical analyses. We understand the need for clear, accurate, persuasive answers to complex problems. We work with our clients to keep our efforts focused on necessary tasks, with close attention to costs. We provide economic analysis and expert testimony in many areas, including: antitrust, contract disputes, damages analysis/calculations, intellectual property and patent infringement, market analysis, regulation, employment issues, and unfair competition.

GHM ENGINEERING, INC.

11960 Heritage Oak Place, Suite 2B, Auburn, CA 95603, (530) 886-3100, fax (530) 886-3106, e-mail: ghmgengineering.com. Web site: www.moldservicergroup.com. Contact Alissa Smith. Civil engineering and design, environmental consulting, PSAs, water and wastewater, storm water management, hazardous waste, fuel storage tank compli-

SANDOVAL & HILL, INC.

1990 South Bundy Drive, Suite 800, Los Angeles, CA 90025, (310) 571-3400, fax (310) 571-3420, Web site address: www.sphvalue.com. Contact Nevin Sanil or Tom Pastore. Sanil & Hill, Inc. is a premier provider of

CREDIT DAMAGE MEASUREMENT

PLAINTIFFS AND DEFENDANTS

Discover the Secrets to Equitable Credit Damage Recovery

Protect your case value and get the fairest compensation for your client including: increased out-of-pocket costs, Loss of Capacity, and Loss of Expectancy

Call the only expert witness with a proven compensable method to measure credit damage since 1995.

Georg Finder 714.441.0900

For more information, visit www.creditedamageexpert.com

(GLE training seminars available)
BUSINESS VALUATION AND MEDICAL CONSULTING

LESTER WINKLER, MD

Outstanding Medical Expert

SUGARMAN & COMPANY, LLP

2640 Telegraph Avenue, Berkeley, CA 94704, (800) 275-8903, (510) 549-1693, fax (510) 486-1255, e-mail: medicalexperts@amfs.com, Web page: www.amfs.com.

GUNTER RENE BAUER, MD, JD

19 Hilltop Circle, Rancho Palos Verdes, CA 90275, fax (310) 553-4538, e-mail: sbiermanmd@aol.com. Contact Stanley Bierman, MD. Dr. Bierman is an expert witness in matters relating to diagnosis and treatment of skin cancers as well as matters relating to sexually transmitted diseases. Dr. Bierman is Honorary Associate professor of medicine and past president of Los Angeles Dermatologic Society.

BEHROOZ (BRUCE) BROUKHIM, MD

40 YEARS EXPERIENCE


BRUCE WAPEN, MD

EMERGENCY MEDICINE EXPERT

969-G Edgewater Boulevard, Suite 807, Foster City, CA 94404-3760, (650) 577-8835, fax (650) 577-0191, e-mail: ExpertWitness@DrWapen.com. Web site: www.DrWapen.com. Contact Bruce Wapen, MD. Board-certified emergency physician and experienced public speaker offers consultation, chart review, and testimony as an expert witness for defense or plaintiff involving litigation arising from the emergency department.
MEDICAL/ENDOCRINOLOGY

RICHARD D. HORNICTER MD

MEDICAL/INFECTIOUS DISEASE

BERNARD T. MCNAMARA, MD
409 North Pacific Coast Highway, Suite 923, Redondo Beach, CA 90277, (310) 480-4770, fax (310) 943-3274, e-mail: mcnamarab12749@msn.com. Contact Bernard T. McNamara, MD. Current practice, full time emergency medicine, and assistant clinical Professor of Medicine. Over 20 years experience in the practice of emergency medicine, infectious diseases, and HIV/AIDS. Experience in medical malpractice for both plaintiff and defense. Board certified, emergency medicine since 1987; board certified, infectious disease since 1984; board certified, international medicine since 1980. Degrees/licenses: MD; Fellow, American College of Physicians; Fellow, American College of Emergency Medicine; Member, American Academy of Emergency Medicine; and member, Infectious Disease Society of America; OCMA (Orange County Medical Association); Lic: (CA, WA); CA Lic-G36838 since 1978, WA Lic-MD00041205 since 2002.

MEDICAL/NEUROLOGY

ROGER V. BERTOLDI, MD
8610 South Sepulveda Boulevard, Suite 200, Los Angeles, CA 90045-4810, (310) 670-5555, fax (310) 670-9222. Web site: www.bcl.ucla.edu/~rbertold. Contact Leslie. Traumatic brain injury (TBI): Neuro behavior-anatomical-functional (PET, brain-mapping, neuropsychological) workup and treatment. Diplomate (ABPN) qualification in clinical neurophysiology: electrodiagnostics of electromyography (EMG), electroencephalography (EEG), and evoked potentials for carpal tunnel syndrome (CTS), complex regional pain syndrome (CRPS), back pain radiculopathy, peripheral nerve injuries, neurotoxic injuries, and chronic pain, somatiform disorders, epilepsy, dementia, headache, assistant clinical professor of neurology, UCLA, AME, QME, IME.

MEDICAL/NEUROLOGY/PERSONAL INJURY

ANDREW WOO, MD, PHD

MEDICAL/NEUROPSYCHOLOGY

PHILIP K. STENQUIST, PHD
Stenquist Neurocognitive Laboratories, 6230 Wilshire Boulevard, Suite 37, Los Angeles, CA 90048, (323) 957-4700, fax (661) 291-1741, e-mail: phil@thevine.net. Contact Philip K Stenquis, PhD. Specialties: Neurocog-

MEDICAL/PATHOLOGY
LESTHER WINKLER, MD
Encino-Tarzana Regional Medicine Center Pathologist. (consulting emeritus status) 10155 Topkea Drive, Northridge, CA 91324, (818) 349-8568, fax (818) 993-9701. Contact Lesther Winkler, MD, Specialties: surgical and autopsy pathology, clinical pathology. Forty years of experience in reviewing medical records (hospital records, office records) with emphasis on pathology aspects, gross and microscopic, and relationships to general medical and hospital care. Experience with hospital bylaws, rules, and regulations, consent issues, and medical staff privileges. Also experienced in hospital healthcare law, medical, hospital, and “outside” ethical medical issues. Helped establish concepts and chaired hospital ethics committees for more than 10 years. Represented physicians before California Medical Board when requested by attorneys. Degrees/Licenses: MD. See display ad on page 74.

MEDICAL/PLASTIC AND COSMETIC RECONSTRUCTIVE SURGERY
JOHN M. SHAMOUN, MD, FACS, INC.

MEDICAL/TOXICOLOGY
JONATHAN S. RUTCHIK, MD, MPH, QME
20 Sunnyside Avenue, Suite A-321, Mill Valley, CA 94941, (415) 381-3133, fax (415) 381-3131, e-mail: jsrutchik@msn.com. Web site: www.neomega.com. Jonathan S. Hutchik, MD, MPH is a physician who is board certified in both Neurology and Occupational and Environmental Medicine. He provides clinical evaluations and treatment, including electromyography, of individuals and populations with suspected neurological illness secondary to workplace exposure. Services include medical record and utilization review and consulting to industrial, legal, government, pharmaceutical, and academic in-stitutions on topics such as metals and solvents, mold ill-ness, Baycoal issues, Persian Gulf War syndrome, musci-ans’ injuries, and others. See display ad on page 77.

MEDICAL/UROLOGY
DUDLEY SETH DANOFF, MD, FACS
Cedars-Sinai Medical Center, 8835 West 3rd Street, Suite One West, Los Angeles, CA 90048, (310) 854-9898, fax (310) 854-0267, e-mail: danoff@cla.com. Web site: www.toveruology.com. Contact Dudley Seth Danoff, MD, FACS. Experience in urologic case review and testimony for plaintiff and defense, court experience, and strategies. Extensive expertise in prostate, bladder, and kidney cancers; kidney transplantation; pelvic trauma; sexual dysfunction; penile implants; incontinence; infections; and stone disease. Publishing experience in scientific jour-nals, books, lectures, training seminars, and course direc-torships. Princeton University, Summa Cum Laude; Yale Medical School; Columbia University urologic training. Major, U.S. Air Force; Who’s Who in America; Academic achievement. Detailed CV available.

MEDICAL MALPRACTICE
LESTHER WINKLER, MD
Encino-Tarzana Regional Medicine Center Pathologist. (consulting emeritus status) 10155 Topkea Drive, Northridge, CA 91324, (818) 349-8568, fax (818) 993-9701. Contact Lesther Winkler, MD, Specialties: surgical and autopsy pathology, clinical pathology. Forty years of experience in reviewing medical records (hospital records, office records) with emphasis on pathology aspects, gross and microscopic, and relationships to general medical and hospital care. Experience with hospital bylaws, rules, and regulations, consent issues, medical staff privileges. Also experienced in hospital healthcare law, medical, hospital, and “outside” ethical medical issues. Helped establish concepts and chaired hospital ethics committees for more than 10 years. Represented physicians before California Medical Board when requested by attorneys. Degrees/Licenses: MD. See display ad on page 74.

METALLURAL AND CORROSION ENGINEER
KARS ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527- 7169, e-mail: kars@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh J. Kar or Naresh J. Kar. Southern California’s premier materials/mechanical/metal-lurgical/structural/forensic laboratory. Registered profes-sional engineers with 20-plus years in metallurgical/foren-sic structural failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and struc-tural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal in-vestigations). Principals are fellows of American Society for Metals and board-certified diplomats, American Board of Forensic Examiners. See display ad on page 65.

METEOROLOGY
GOLDEN GATE WEATHER
781 McDuff Avenue, Fremont, CA 94539, (510) 657-2246, fax (510) 315-3015, e-mail: jnuil@gwweather.com. Web site: http://gwweather.com. Contact Jan Nuil. Certified consulting meteorologist experienced at trial and deposition. Weather event reconstruction and expert analysis for rain, storms, wind, snow, flooding, ice, fog, and other weather events. Twenty-three years’ experience with Na-tional Weather Service. Degrees: BS, MA, CCM.

NEUROPSYCHOLOGY & PSYCHOLOGI-CAL TESTING & MEASUREMENT FOR COURT
STEFANIE STOLINSKY, PHD, LICENSED PSYCHOLOGIST, PSY 16053

NURSING/SURGERY
MED-LINK
3362 Budleigh Drive, Hacienda Heights, CA 91745, (626) 333-5110, fax (626) 988-2064, e-mail: dorotheapoll@adelphia.net. Contact Dorothy Pollock, LMCC. Registered nurse with 37 years’ clinical experience. Non-testifying services include case analysis/for merit, chronology, translation, written reports, medical record organization. DME/IME accompanies including tape recording and written report. Expert witness and testifying services, including affidavit, arbitration, declaration, deposition, and trial. Courtroom experience both plaintiff and defendant.

OBSTETRICS AND GYNECOLOGY
ANTON L LAMBROSE, MD, FACOG
18330 Roscoe Boulevard, Suite 504, Northridge, CA 91325, (818) 341-3111, fax (818) 886-6925, e-mail: antonlambrosemd@aol.com. Contact Anton L. Lambrose, MD, FACOG, Specialties: OB/GYN. Diplomate, American Board of OB/GYN; Fellow, American College of OB/GYN; member; American Medical Association, Los Angeles County Medical Association, Sri Lanka Medical Association of North America; Assistant clinical professor, UCLA School of Medicine; OB/GYN Coordinator Family Practice Residency Program, Northridge Hospital; private practice OB/GYN, Northridge California. Experienced expert wit-ness.

GIL N. MILEIKOWSKY, MD, FACOG
Offices in Encino and Beverly Hills, 2934 1⁄2 Beverly Glen Cir-e, Suite 373, Bel Air, CA 90077, (310) 858-1300 or (818) 981-1888, fax (310) 858-1303 or (818) 981-1994. Web site: www.baby4you.net. Contact Gil N. Mileikowsky, MD, OB/GYN, IVF, laser surgery, laparoscopy, and reproductive endocrinology. Diplomate, board certified by the American Board of OB/GYN. Board eligible, American Board of Reproductive Endocrinology Division, Fellow, American College of OB/GYN (FACOG), Member of the American Society for Reproductive Medicine, Society of Assisted Reproductive Technologies, former Medical Di-rector (In Vitro Fertilization) at Northridge Hospital, for-mer Chairman Laser and Safety Committee at Northridge Hospital and member of the Los Angeles County Medical Association. Author, numerous scientific papers and arti-cles published in peer review journals. Former clinical in-structor at USC. Former clinical assistant professor, OB/GYN at UCLA. See display ad on page 63.
ORTHOPEDIC SURGEON

MARC J. FRIEDMAN, MD

GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR
ORTHOPAEDIC SURGERY, UCLA
3600 Wrightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: www.gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, sub-speciality in spinal disorders affecting adults and children. He possesses 25 years of orthopedic and 15 years of med-legal experience, including defense, plaintiff, insurance carriers, CA Attorney General’s office and Public Defender’s office. Expert testimony pertains to med-mal, personal injury, and workers’ compensation cases. As qualified medical evaluator, Dr. Purcell has extensive experience in per-forming QMEs, AMEs, IMEs, WC evals. See display ad on this page.

RICHARD C. ROSENBERG, MD

JERROLD M. SHERMAN, MD
1360 15th Street, Suite 614, Santa Monica, CA 90404, (310) 393-9829, fax (310) 476-8438. Contact Jan Lindsey. Orthopedic surgeon who is board certified as an independent medical examiner and chief executive officer of Outpatient Surgery Center. Licensed in California and Nevada.

PEER REVIEW

GIL N. MILEIKOWSKY, MD, FACOG
Offices in Encino and Beverly Hills, 29341/2 Beverly Glen Circle, Suite 373, Bel Air, CA 90077, (310) 856-1300 or (818) 981-1888, fax (310) 858-1903 or (818) 981-1994. Web site: www.baby4you.net. Contact Gill N. Mileikowsky, MD, OB/GYN, IVF, laser surgery, laparoscopy, and reproductive endocrinology. Diplomate, board certified by the American Board of OB/GYN. Board eligible, American Board of Reproductive Endocrinology Division. Fellow, American College of OB/GYN (FACOG). Member of the American Society for Reproductive Medicine, Society of Assisted Reproductive Technologies, former Medical Director IVF (In Vitro Fertilization) at Northridge Hospital, former Chairman Laser and Safety Committee at Northridge Hospital and member of the Los Angeles County Medical Association. Author, numerous scientific papers and articles published in peer review journals. Former clinical instructor at USC. Former clinical assistant pro-fessor, OB/GYN at UCLA. See display ad on page 63.

PERSONAL INJURY

STEFANIE STOLINSKY, PHD, LICENSED PSYCHOLOGIST, PSY 16053
9107 Wilshire Boulevard, Suite 200, Beverly Hills, CA 90210, (310) 788-3436. Web site: www.act-it-out.com. Contact Stefanie Stolinsky, PhD. Neuropsychological and psychological testing and measurement, personal in-jury evaluations, intelligence, cognitive and personality test-
WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & HUNT

POLICE/SECURITY
DANIEL R. SULLIVAN, DEPUTY CHIEF, LAPD, RET.

POLYGRAPH
JACK TRIMARCO & ASSOCIATES POLYGRAPH INC.
9454 Wilshire Boulevard, 6th Floor, Beverly Hills, CA 90212, (310) 247-2637, fax (310) 306-2720, e-mail: jtrimarco@aol.com. Web site: www.jacktrimarco.com. Contact Jack Trimarco. Former manager of the Federal Bureau of Investigation's polygraph program in Los Angeles. Former Instructor General Polygraph Program—Department of Energy. Nationally known and respected Polygraph Expert. I have the credentials you would want when dealing regarding polygraph, or an in-depth professional investigation. My unique background allows me to bring the highest levels of service and expertise to any polygraph situation. Degrees/licenses: BS Psychology; Certified APA, AAPP, CAPE, AAFA. See display ad on page 42.

PHARMACEUTICAL
CAROL MESCHTER, DVM, PHD, DACVP
786 Lucerne Drive, Sunnyvale, CA 94085, (408) 738-9281, fax (408) 738-9278, e-mail: carolmeschter@compxio.com. Contact Carol Meschter, DVM, PhD, DACVP, Board-Certified. Veterinary Pathologist. Twenty-plus years’ expertise in biotechnology, pharmaceuticals, toxicology; additional lifetime of long experience with horses and dogs, as a veterinarian and as a competitor.

ETTIE ROSENBERG, JD, PHARM.D.
Alan N. Lowy & Associates, APLC, 424 South Beverly Drive, Beverly Hills, CA 90212, (310) 553-8533, ext. 122, fax (310) 557-1505, e-mail: erosenberg@lowylawcorp.com. Web site: www.lowylawcorp.com. Contact Ettie Rosenberg. Consultation and/or forensic expert witness services, medical chart review, charting errors, case review, research, deposition or trial testimony in areas of pharmacy, pharmacology, pharmacy malpractice, pharmacist standard of care, drug related malpractice, drug product liability, adverse drug reactions, drug interactions, and failure to warn, etc.

PROBATE LAW
DARLING, HALL & RAE, LLP
520 South Grand Avenue, 7th Floor, Los Angeles, CA 90071-2645, (213) 627-8104, fax (213) 627-7795, e-mail: darlinghallrae@dhfw.com. Contact Matthew S. Rae Jr. Attorney specialists in estate planning, trust, and probate law. Consultant and expert witness, special and associate counsel, guardian ad litem, referee, special administrator, and independent trustee.

PROCESS SERVER
BENCHMARK INVESTIGATIONS

PRODUCTS LIABILITY
A R TECH FORENSIC EXPERTS, INC.

PSYCHIATRY/Psychology
ARNOLD L. GILBERG, MD, PHD
Associate Clinical Professor of Psychiatry, UCLA School of Medicine, a professional corporation, 9730 Wilshire Boule-
vard, Suite 101, Beverly Hills, CA 90212, (310) 274-2304, fax (310) 274-2476. Contact Arnold L. Gilberg, Board certified and appointed by three governors to Medical Board of California 11th District MQRC 1982-1991. Certified in psychiatry and psychoanalysis. All civil matters, and experienced as expert witness. Degrees/licenses: M.D., PhD. Licensed in California and Hawaii. See display ad on page 57.

JEFF SUGAR, MD
312 East Sycamore Avenue, El Segundo, CA 90245, (310) 322-6933, e-mail: jsugarfu@uclalca.edu. Jeff Sugar, MD, child, adolescent, and adult psychiatrist. Associate clinical professor, UCLA. A practicing psychiatrist for 15 years, he is board certified in child and general psychiatry. He is past president of the Southern California Society of Child and Adolescent Psychiatry. As founding director of research at Hathaway Children and Family Services, he led a study of the long-term effects of trauma. Currently, co-chairment, University of Southern California, adolescent inpatient unit and in private practice-general and child psychiatry. Dr. Sugar’s reports and/or testimony have had an impact in cases (both child and adult) involving: trauma; sexual and physical abuse (with or without PTSD), personal injury and workers’ compensation, psychiatric medication issue, diagnosis and appropriate treatment, ethical issues and stress in legal practice, battered woman’s syndrome, child custody. Free initial telephone consultation with attorney.

Attorney references and/or redacted past reports available on request. See display ad on page 80.

STEFANIE STOLINSKY, PHD, LICENSED PSYCHOLOGIST, PSY 16053

PUBLISHING
BAY SHerman Crag & Goldstein, LLP
11845 West Olympic Boulevard, Suite 849, Los Angeles, CA 90024, (310) 477-1404, fax (310) 479-0720, e-mail: craig@bscgllp.com. Web site: www.baysherman.com. Contact Peter Craig or Hal Jaffe. Many legal disputes involve operational, financial, accounting, and income tax considerations. Bay Sherman Craig & Goldstein, LLP, work together with counsel to resolve these conflicts. We specialize in intellectual property publishing. In addition to expert witness testimony, we provide the following: services prior to trial, financial, accounting and income tax issues defined, record analysis, economic fact-finding and analysis, deposition preparation assistance, and settlement negotiations.

REAL ESTATE
ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts @mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specializes: lending customs, practices, policies, in all types of lending (real estate, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and construction defects/disputes, and title insurance.

ADVISORY SERVICES GROUP
Coldwell Banker Commercial, 2220 South Pacific Coast Highway, Suite 318, Hermosa Beach, CA 90254, (310) 937-7100, fax (310) 798-8836. Specialties: Real estate, valuations, business valuations, condemnations, and FF & E. As part of the Coldwell Banker Commercial group, over 450 offices nationwide. Additional services for special purpose mixed use and contaminated/toxic properties, environmental civil engineering. Right-of-way eminent domain, structural/defect reports, and construction defect reports. In-house CPA, general contractor, and engineers. Approved for IRS, federal, state, and municipal courts. Offices in Orange County, San Diego/Inland Empire, and Northern California. See display ad on page 83.

B & F EXPERTS
P.O. Box 700384, San Antonio, TX 78270, (866) 365-7212, fax (886) 869-4062, e-mail: jfmorrow@earthlink.net. Web site: www.jfmorrow.com. Contact J F "Chip" Morrow. Expertise: financial institutions, banks, mortgage, and real estate. Loans: mortgage, construction, real estate, SBA, international, secured, unsecured, business, consumer, etc., checks, fraud, operations, lender liability; policy/procedure; fiduciary duties. D/O duty/conduct, other. Federal/state reports, depositions, and court preparation and testimony. Background: 35+ years’ experience financial/mortgage institutions and public companies including president, CEO, and director. Thirty-plus years of all types of lending experience. Fifteen-plus years of national and international experience.
state trade association leader/directorship. Clients: 150+ federal/state nationwide cases for FDIC, state of California, financial and mortgage institutions, business, individuals. Fifty percent plaintiff/50 percent defendant.

**STEPHEN B. FAINSBERT, ESQ., FAINSBERT MASE & SNYDER, LLP**
11835 West Olympic Boulevard, Suite 1100, Los Angeles, CA 90064, (310) 473-6400, fax (310) 473-8702, e-mail: sfainsbert@msn.com. Contact Stephen B. Fainsbert. Expert testimony in real property exchanges (co-author CEB publication Real Property Exchanges, 2nd ed.), real estate transactions, standard of care and practice for real estate brokers, escrow, and real estate attorneys, disclosures in purchase and sale agreements, real estate financing, and secured real property transactions.

**LAWRENCE H. JACOBSON, ESQ.**

**MAURICE ROBINSON & ASSOCIATES LLC**
880 Apollo Street, Suite 125, El Segundo, CA 90245, (310) 640-9656, fax (310) 640-9276, e-mail: maurice@mauricerobinson.com. Web site: www.mauricerobinson.com. Contact Maurice Robinson, president. Hotel and real estate industry business issues, including market, economic and financial feasibility, valuation, and disputes between owner-operator, borrower-lender, and franchisee-franchise. Fluent in management contracts, license agreements, ground and building leases, partnership and JV agreement, concession contracts, development agreements, and loan docs. Can estimate damages and appraise property values under multiple scenarios. Expert witness testimony, litigation strategy, consultation and support, damage calculations, lost profits analysis, real estate appraisals, deal structuring, workouts, new development, strategic planning, market demand assessment, acquisition due diligence, and economic, financial, and investment analysis.

**JACK KARP/NATIONAL PROPERTIES GROUP**
31115 Ganado Drive, Rancho Palos Verdes, CA 90275, (310) 377-6349, fax (310) 868-2880, e-mail: jkarp@karpcox.net. Industrial and commercial broker’s care and duties, professional obligations to clients, Mediation and arbitration between brokers and clients regarding disputes, ethical questions, and fee division. Deal structuring and site location analysis. Real estate leases and purchase contracts and their interpretations. Author AIR Net and Gross Leases and AIR Standard Offer and Agreement and Escrow Instruction for Purchase of Real Estate. See display ad on page 86.

**OVERLAND, PACIFIC & CUTLER, INC.**
100 W. Broadway, Suite 500, Long Beach, CA 90802, (800) 400-7356, fax (662) 304-2020, e-mail: rarmstrong@opcservices.com. Web site: www.opcservices.com. Contact Ray Armstrong, vice president. Overland, Pacific & Cutler, Inc. provides relocation assistance services and real estate consulting for public agencies and private sector clients. We specialize in business relocation and forensic site searching for public agencies and law firms. For the past 25 years, we have offered support for eminent domain litigation with expert witness testimony. We are completely familiar with the relocation laws and guidelines for state and federal programs and programs involving multiple funding sources.

**PRITCHETT/RAPP & ASSOCIATES**
3858 Cross Creek Road, Malibu, CA 90265, (310) 457-0537, fax (310) 589-1145, e-mail: kathryn@rapp.com. Web site: www.kathrynpritchett.com. Contact Kathryn.

R.A. SYNDER PROPERTIES, INC.

SCHULZE HAYNES & CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: expert@schulzehaynes.com. Web site: www.schulzehaynes.com. Contact Karl J. Schulze or Dana Haynes, principals. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business and real estate valuations, construction claims, corporate recovery, real estate transactions, financial analysis and modeling, major professional organizations, and have experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA; CVA; CFE; ABV; PhD-economics.

TEMMY WALKER, INC.
5026 Veloz Avenue, Tarzana, CA 91356, (818) 760-3355, fax (818) 999-0826, e-mail: temmyvw@icaim.com. Contact Temmy Walker. Specializes in expert witness testimony and litigation consultant in matters regarding residential real estate, with emphasis on the customs and practice, standards of care, disclosure requirements, agency relationships, and broker supervision. Complete assistance. Extensive transaction and court experience. Director California Association of Realtors, master faculty instructor for continuing education C.A.R. Excellent credentials and references. See display ad on page 81.

WARONZOF ASSOCIATES, INC.
12200 West Olympic Boulevard, Suite 480, Los Angeles, CA 90064, (310) 964-9030, fax (310) 964-8039. Web site: www.waronzof.com. Contact Timothy R. Lowe, MAI, CRE. Waronzof Associates provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, highest and best use, property value, enterprise value, partnership interest and closely-held share value, fair compensation, lender liability and reorganization plan feasibility. Professional staff of six with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 70.

REAL ESTATE APPRAISAL
ADELMAN APPRAISALS, INC.

ADVISORY SERVICES GROUP
Coldwell Banker Commercial, 2220 South Pacific Coast Highway, Suite 318, Hermosa Beach, CA 90254, (310) 937-7700, fax (310) 798-6838. Specialties: Real estate, valuations, business valuations, condemnations, and FF & E. As part of the Coldwell Banker Commercial group, over 450 offices nationwide. Additional services for special purpose mixed use and contaminated/toxic properties, environmental/civil engineering. Right-of-way eminent domain, structural defect reports, and construction defect reports. In-house CPA, general contractor, and engineers. Approved for IRS, federal, state, and municipal courts. Offices in Orange County, San Diego/Inland Empire, and Northern California. See display ad on page 83.

CURTIS-ROSENTHAL, LLC

STEVEN J DECKER & ASSOCIATES
5800-A Hannum Avenue, Suite 235, Culver City, CA 90230, (310) 645-9691, fax (310) 645-9692, e-mail: sjdassoc@sbcglobal.net. Contact Steven Decker, MAI. Specialties: expert witness in real estate and fractional interest (FLP & LLC) valuation, approved IRS appraiser panel (LA district). Experience in construction defects, ease- ments, title defects litigation, toxic contamination, estate taxes, and all property types.

RECEIVER
SALTZBURG, RAY & BERGMAN, LLP
12121 Wilshire Boulevard, Suite 600, Los Angeles, CA 90025, (310) 481-6700, fax (310) 481-6720. Contact David L. Ray, Esq. Specializes in handling complex receivership matters, such as partnership and corporate dissolutions, including law firm dissolutions, and government enforcement receivership actions, including actions brought by the California Department of Corporations, Department of Real Estate, Commodities Future Trading Commission, and Federal Trade Commission. Nationally recognized in both the lender and litigation communities as qualified to assist in complicated and commercially sophisticated liquidations, reorganizations, and ongoing business operations. See display ad on page 12.

RECEIVER, FEDERAL AND STATE COURT
SUGARMAN & COMPANY, LLP

RESTAURANT/HOTEL
MAURICE ROBINSON & ASSOCIATES LLC
880 Apollo Street, Suite 125, El Segundo, CA 90245, (310) 640-9656, fax (310) 640-9276, e-mail: maurice
SafEGTY

AMERICAN SAFETY CONSULTING
P.O. Box 71017, Los Angeles, CA 90071, (818) 284-6907, fax (818) 286-0311. E-mail: gfr46@virgin.net. Contact Gary L. Buffington, CSP, CRSP, CSHM. Construction (all phases, general industry, CAL/OSHA, OSHA, and MSHA regulations. Inspections, safety training, and accident investigations. Workers’ compensation, injury and illness prevention plans, cranes/hoists/rigging, confined space, fall protection, ladders/scaffolds, forklifts’ scissor lifts, risk assessment/risk management, personal injury and wrongful death, and hazard communication.

SECURITIES

ROBERT C. ROSEN

SEXY HARASSMENT/DISCRIMINATION

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 15 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and FEHA discrimination and harassment, retaliation, FMLA/CFRA, safety, and wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigators. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

ROOFING AND WATERPROOFING

SHEPHERD CONSULTING SERVICES
P.O. Box 10010, Torrance, CA 90605, (310) 378-0791, fax (310) 378-0794, e-mail: jdjs@sherpherdconsulting.com. Contact John Shepherd, RRC, RRO. Roofing, waterproofing, sheet metal and building envelope consulting services for construction defect litigation, personal injury and water damage loss (standard of care and building code issues), and property loss claims (wind, fire, earthquake, and hail). Support services include: visual inspections, inverse condemnation, leak investigation, water testing, report development, document collection, document review, research, mediation and trial expert witness testimony, and cost estimating.

VAN DIJK & ASSOCIATES, INC.
### Compliance Group H-M: There’s no need to panic! We can help.

The following MCLE self-test articles are available from Los Angeles Lawyer. Simply check the ones you want, fill out the coupon below, and mail your order to Los Angeles Lawyer, ATTN: MCLE Reprints, P.O. Box 55020, Los Angeles CA 90055; or FAX to 213/613-1972. There is no charge for reprints, but please limit your order to 12 tests. All MCLE articles published after January 1996 are also available online at www.lacba.org/mcle_tests.

<table>
<thead>
<tr>
<th>No.</th>
<th>Article Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 6</td>
<td>Toring Over Client Files</td>
<td>(Legal Ethics credit) What you don’t know can hurt you—2/93</td>
</tr>
<tr>
<td>No. 24</td>
<td>A Firm Grip</td>
<td>(Law Practice Management credit) Unwinding a law firm partnership requires strict adherence to legal and ethical principles—12/96</td>
</tr>
<tr>
<td>No. 42</td>
<td>Golden Rules</td>
<td>(Legal Ethics credit) A series of decisions and opinions issued in 1996 provides lawyers with clear guidance through ethical minefields—7-8/96</td>
</tr>
<tr>
<td>No. 46</td>
<td>For What It’s Worth</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 7</td>
<td>Wise Deductions</td>
<td>(Law Practice Management credit) The deductibility of a lawyer’s educational expenses may be more questionable than you think—12/97</td>
</tr>
<tr>
<td>No. 60</td>
<td>An Indiscriminate Measure</td>
<td>(Elimination of Bias credit) Now that Proposi- tion 20 has survived judicial scrutiny, consider- able litigation to determine its scope and reach can be expected-3/98</td>
</tr>
<tr>
<td>No. 63</td>
<td>Ruling on the Rules</td>
<td>(Legal Ethics credit) White 1997 was a busy year for the development of legal ethics, no dramatic developments from precedent emerged-6/98</td>
</tr>
<tr>
<td>No. 75</td>
<td>Firing at Will</td>
<td>(Legal Ethics credit) California’s new Domestic Partnership Registration Act may aid same-sex partners in providing a legal basis for their relationships—7-8/01</td>
</tr>
<tr>
<td>No. 85</td>
<td>Who’s the Client?</td>
<td>(Legal Ethics credit) Last year’s court decisions on lawyer conflicts of interest have handed attorneys an array of sometimes conflicting rules—6-9/02</td>
</tr>
<tr>
<td>No. 87</td>
<td>Bonus Points</td>
<td>(Legal Ethics credit) Bonus provisions agreed to by attor- neys and their clients will likely be enforceable if the agreement clearly delineates an &quot;extraor- dinarily favorable result&quot;—9/02</td>
</tr>
<tr>
<td>No. 110</td>
<td>High Accountability</td>
<td>(Legal Ethics credit) The Sarbanes-Oxley Act increases executive liability for SEC filings by eliminating the need to estab- lish actual knowledge of wrongdoing—11/02</td>
</tr>
<tr>
<td>No. 111</td>
<td>For Your Eyes Only</td>
<td>(Legal Ethics credit) California can clarify the confu- sion surrounding the law of confidentiality with a new rule of professional conduct—12-02</td>
</tr>
<tr>
<td>No. 112</td>
<td>Defective Solutions</td>
<td>(Legal Ethics credit) Legislation intended to encourage the resolution of controversy without judicial consid- eration—9/02</td>
</tr>
<tr>
<td>No. 113</td>
<td>Waiting for the Dust to Settle</td>
<td>(Legal Ethics credit) A guide to the settlement of a lawsuit that may find that the payment constitutes a preference in a subsequent bankruptcy pro- ceeding—3-03</td>
</tr>
<tr>
<td>No. 114</td>
<td>2002 Ethics Roundup</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4/03</td>
</tr>
<tr>
<td>No. 115</td>
<td>Preemptive Strike</td>
<td>(Legal Ethics credit) Are opinions on the application of law being improperly admitted in attorney breach of fiduciary duty cases—5-03</td>
</tr>
<tr>
<td>No. 116</td>
<td>Unwelcome Opinions</td>
<td>(Legal Ethics credit) Are opinions on the application of law being improperly admitted in attorney breach of fiduciary duty cases—5-03</td>
</tr>
<tr>
<td>No. 117</td>
<td>Death of a Litigant</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4-03</td>
</tr>
<tr>
<td>No. 118</td>
<td>Unwelcome Opinions</td>
<td>(Legal Ethics credit) Are opinions on the application of law being improperly admitted in attorney breach of fiduciary duty cases—5-03</td>
</tr>
<tr>
<td>No. 119</td>
<td>Uninviting Forefronts</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 120</td>
<td>Back SLAPP</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 121</td>
<td>Bad Compromises</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4-03</td>
</tr>
<tr>
<td>No. 122</td>
<td>In a Class of Their Own</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4-03</td>
</tr>
<tr>
<td>No. 123</td>
<td>Undesignated Hitters</td>
<td>(Legal Ethics credit) The rules promulgated in response to recent financial scandals threaten the traditional relationship between attorneys and clients—3-04</td>
</tr>
<tr>
<td>No. 124</td>
<td>Multiple Choice</td>
<td>(Legal Ethics credit) California can clarify the confu- sion surrounding the law of confidentiality with a new rule of professional conduct—12-02</td>
</tr>
<tr>
<td>No. 125</td>
<td>Code Breaking</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 126</td>
<td>Second Acts</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 127</td>
<td>Licensed to Bill</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 128</td>
<td>Preemptive Strike</td>
<td>(Legal Ethics credit) Are opinions on the application of law being improperly admitted in attorney breach of fiduciary duty cases—5-03</td>
</tr>
<tr>
<td>No. 129</td>
<td>For Your Eyes Only</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 130</td>
<td>Deadening Denials</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 131</td>
<td>For Your Eyes Only</td>
<td>(Legal Ethics credit) Recent court decisions have redefined the reach of anti- SLAPP statute in unexpected directions—9-03</td>
</tr>
<tr>
<td>No. 132</td>
<td>Private Eyes</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4-03</td>
</tr>
<tr>
<td>No. 133</td>
<td>Advice and Counsel</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 134</td>
<td>Advice and Counsel</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 135</td>
<td>Expert Declarations</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 136</td>
<td>Trees of Two Courts</td>
<td>(Legal Ethics credit) Recent corporate scandals are playing a major role in shaping the future of legal ethics—4-03</td>
</tr>
<tr>
<td>No. 138</td>
<td>Access Hollywood</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 139</td>
<td>California Supreme Court has parted ways with the U.S. Supreme Court in preserving the catalyst theory under the private attorney general fee statute—7-8/05</td>
<td></td>
</tr>
<tr>
<td>No. 140</td>
<td>Advice and Counsel</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 141</td>
<td>Restoration Drama</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
<tr>
<td>No. 142</td>
<td>Challenging Barriers</td>
<td>(Legal Ethics credit) The deductibility of a deductible expense for defense costs can sometimes overcome a Statute of Limitations—7-8/99</td>
</tr>
</tbody>
</table>

---

**NAME**

**FIRM**

**TELEPHONE**

**ADDRESS**

**CITY** **STATE** **ZIP**

LAL—R11/05
plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

HRM CONSULTING, INC.
P.O. Box 1786, Murphys, CA 95247, (209) 728-8905, fax (209) 728-8970, e-mail: hrm@hrmconsulting.com. Web site: www.hrmconsulting.com. Contact Beth Hirsch. Plaintiff and defense attorneys respect Ms. Hirsch’s experience working on employment and vocational rehabilitation matters from both the employer and employee perspective. Her expertise is utilized in cases involving ADA (Americans with Disabilities Act), FMLA (Family Medical Leave Act), sexual harassment, personal injury, or divorce. We provide litigation support, expert testimony, and investigations. We also specialize in helping companies understand and comply with regulations and issues in the complicated realm of human resources management.

HUMAN RESOURCES MANAGEMENT NETWORK
544 West Wilshire Avenue, Fullerton, CA 92832, (714) 542-9525, fax (630) 885-4394, e-mail: ball@earthlink.net. Web site: www.ballexpertwitness.com. Contact Lawrence P. Ball. Expert testimony related to human resources standards of care, discipline, wrongful discharge, wrongful termination, sexual orientation/discrimination, sex/gender/gender discrimination, race/color/racial discrimination, religious discrimination, national origin/ancestry discrimination, age discrimination, sex/gender/gender harassment, sexual orientation harassment, race/racial/color harassment, religious harassment, disability harassment, national origin/ancestry harassment, age harassment, FMLA/CFRA violations, ADA violations, negligent hiring/termination, performance evaluation/review, DFEH and DOL regulations, pregnancy, EEOC guidance. CASES: 45% plaintiff/55% defense.

STEPHEN J. MOREWITZ, PHD & ASSOCIATES
695 Nox Street, Suite 1, San Francisco, CA 94114, (818) 594-1587, (415) 252-0569, fax (818) 345-9981, (415) 252-0579, e-mail: morewitz@earthlink.net. Web site: http://home.earthlink.net/~morewitz/ Contact Dr. Steve Morewitz. Evaluates sexual harassment policies and procedures and sexual harassment impact. Assesses disability, rehabilitation, and quality of life losses. Adjunct professor and former dean. Management consultant, researcher, and lecturer. Author of 5 books, including Sexual Harassment and Social Change and Chronic Disease and Health Care, and 70 other publications. Awards and honors: research and training grants, Outstanding Scholar Book Awards in 2003 and 2004, American Public Health Association Top 10 Injury Research, Sigma Xi, Pi Gamma Mu, Who’s Who in Medicine and Healthcare, and other honors.

PERSONNEL SYSTEMS ASSOCIATES, INC.
7551 East Moonridge Lane, Anaheim, CA 92808, (714) 281-8337, fax (714) 281-2949, e-mail: mding@personnelsystems.com. Web site: www.personnelsystems.com. Contact Mae Lon Ding, MBA, CCP. Expert witness in employment, business dispute, disability, and divorce cases involving issues of employee or owner compensation, discrimination, wrongful termination, exemption from overtime, labor market/employability, lost wages/benefits, employee performance, and evaluation of personnel policies and practices. Nationally recognized human resource management and compensation consultant, speaker, author of book and articles, university instructor. Quoted in Los Angeles Times, Orange County Register, Business Week, Workforce, and Working Woman. Over 14 years of testifying in cases involving major national organizations in a large variety of industries.
EXPERT WITNESS SERVICES

- Bankruptcy - Interest Rates
- Banking - Lending & Operations
- Lender Liability, Letters of Credit, Guarantees
- Forgery, Credit Cards
- Checking Account Disputes
- Consumer, Commercial, Real Estate, Construction Loans & Regulatory Issues
- Credit Damages
- Appraisal and Expert referrals

- 35 years experience – CEO, Director, Sr. Loan Officer, State & Federal Court

THOMAS TARTER
ANDELA CONSULTING GROUP
818-380-3102 or 818-884-2525
E-Mail: tatter@earthlink.net
www.commercepartners.org

SPOUSAL EVALUATION IN DISSOLUTION CASES

GOLDFARB AND ASSOCIATES
1101 Fremont Avenue, Suite 103, South Pasadena, CA 91030, (626) 441-9687, fax (626) 799-8736, e-mail: goldfarbassociates@yahoo.com. Contact Howard Goldfarb. Vocational rehabilitation consultant providing expert witness testimony on employability and wage loss in personal injury, marriage dissolution, EPLSA, age discrimination, and sexual harassment. Testify as vocational expert for Social Security, Office of Hearings and appeals. Administers and interprets vocational aptitude, interest and earning capacity. Part-time Lecturer, rehabilitation counseling program. Certified Department of Labor Rehabilitation Counselor. Trained and certified on evaluation diminished earnings capacity. Expert/Lawyer, rehabilitation counseling program, Cal State, Los Angeles. Graduate and Undergraduate program.

TOXICOLOGY

CAROL MESCHTER, DVM, PhD, DACVP
788 Luceme Drive, Sunnyvale, CA 94085, (408) 736-9261, fax (408) 736-9278, e-mail: carolmeschter@compbio.com. Contact Carol Meschter, DVM, PhD, DACVP, PhD, Board Certified Veterinary Pathologist. Twenty-plus years’ experience in biotechnology, pharmaceuticals, toxicology, additional life of long experience with horses and dogs, as a veterinarian and as a competitor.

PRINCETON-SOMERSET GROUP, INC.
4 Carroll Drive, Hillsborough, NJ 08844, (800) 597-8836, fax (908) 369-6681. Contact Dr. Dennis Stainken. Expert witness in toxicology, health issues, chemical exposure, mold issues, worker exposure, contamination issues, causation assessment, property damage/contamination and remediation, sewage, gasoline and oil issues and age determination, petroleum releases, chemicals/products, risk assessment, indoor air quality/health effects, toxic tort evaluation, chemistry, site assessment (soils, rocks), environmental toxicology, environmental issues, and wetland/ecological. Services nationwide. Thirty plus years of industrial and government experience in pollution under NPDES, CERCLA, RCRA, SDWA & CWA. Former federal and state regulator, professor, consultant, industrial research. Seventy-five plus publications.

VOCATIONAL ECONOMIC ANALYST

STEPHEN M. BERRY, MSR, CRC
4132 Katella Avenue, Suite 101, Los Alamitos, CA 90720, (562) 594-4821, fax (562) 594-4822. e-mail: sberry2@ecl.com. Contact Stephen M. Berry, MS, CRC. Vocational economic analyses, assessments of pre-and-post-incident earning capacity and worklife expectancy; impact of disability on post-injury earning capacity and worklife expectancy; loss of future earnings and earning capacity; vocational testing, employability evaluations and labor market research in cases of personal injury, wrongful death, medical malpractice, employment discrimination, product liability, wrongful termination, marital dissolutions, and sexual harassment.

WEATHER

GOLDEN GATE WEATHER

WORKERS’ COMPENSATION

GRAHAM A. PURCELL, MD, INC.
Assistant Clinical Professor Orthopaedic Surgery, UCLA, 3600 Wrightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gurolmfmd.com. Web site: gurolmfmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, sub-specialty in spinal disorders affecting adults and children. Examples of spinal disorders treated by Dr. Purcell include disc diseases, stenosis, infections, tumors, injuries, and deformities including scoliosis. He possesses 24 years of orthopaedic and 15 years of med-legal experience, including defense, plaintiff, insurance carriers, CA Attorney General’s office and Public Defender’s office. Expert testimony pertains to med-mal, personal injury, and workers’ compensation cases. As qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC evals. See display ad on page 77.
Useful Legal Web Sites for California Lawyers

AS A BUSY LAWYER, you need the answers to your research questions quickly, preferably at little or no cost. The Web can meet that need if you know where to look. Legal sites on the Web are plentiful; many are worth exploring. But watch your time! The Web’s vast and varied amounts of information and inviting visual and audio stimuli can lure you away from your billable work and destroy your efforts toward time management.

If you do not know where else to look, the first step to find what you are looking for may be to do a search on an all-purpose search engine such as Google or Yahoo. Remember that the information provided online is only as good as its source. Check where the information is coming from and determine whether or not you can trust the source.

Next, there are several general legal sites that are free and worth exploring. These include Lexis One, Lawyer Express, Findlaw, and LLRX. You will have to spend some time figuring out how best to use these sites. Lexis One is a portal for free resources and links to paid services to suit the solo or small firm. Free information includes cases, forms, news, e-alerts, and links to legal Web pages and state resources. Lexis One is also a starting place for obtaining MCLE credit. Lawyer Express, a portal for legal research and news links, is organized into approximately 40 categories, including Legal Search Engines, Federal Law, State Law, Office Tools (with forms), and Speech and Writing. Findlaw has legal news, case law, codes, and practice area articles. LLRX has articles and Internet research and technology-related information, tools, and resources.

To research California codes, start with a bookmark for the state government’s site at www.leginfo.ca.gov/calaw.html. The site uses key words and code section numbers, but it does not have a table of contents for each title. If you do not know the exact code section number, you may have to open several links and read the text of various sections before you find the appropriate one. Findlaw’s California codes (http://caselaw.lp.findlaw.com/cacodes) provides a table of contents for each title and chapter with links to the code section’s text, but the code may not be current. To be safe, you may want to search Findlaw’s California codes for the code section number and then read the text on the official site.

The full text of the California legislature’s resolutions, bills, and constitutional amendments—as well as their status and history—are available at www.leginfo.ca.gov/bilinfo.html. This site asks for the bill number, session, and origin. If you do not have this information, do a key word search in Google or Yahoo to find the identifying information of the legislation and then return to the official site for the text.

Every California litigator needs regular access to the California Rules of Court, local rules, and online information for pending cases. The official site for California rules is www.courts.info.ca.gov/rules, which uses a table of contents and has the rules in PDF. This site also has downloadable California Judicial Council forms at http://www .courtinfo.ca.gov/forms and sample jury instructions at http://www.courtinfo.ca.gov/reference/4_34juryinst.htm.

The superior court of every California county has a site with courthouse locations, local rules, forms, and summaries of pending cases. The site for the Los Angeles Superior Court is at www .lasuperiorcourt.org. The Orange County Superior Court is at http://www.occourts.org; the San Bernardino Superior Court is at www .co.san-bernardino.ca.us/courts; the Riverside Superior Court is at www.courts.co.riverside.ca.us; and the Ventura County Superior Court is at www.vtcourts.gov. A site for current filing fees and court costs can be found at http://www.rushetimeontime.com /feemainmenu.htm.

The Los Angeles Superior Court site has recently added a feature that, for a small fee, allows users to search and pay traffic tickets online; e-file small claims cases; search the civil party and criminal defendant indexes; and retrieve divorce record copies and civil case documents from the court’s files. The sites of other superior courts have similar capabilities.

The official site for California case law (www.lexisnexis.com /clients/CACourts) is powered by Lexis. Another source for California case law is on the Findlaw site at www.findlaw.com/cacases/index.html. You can find basic legal citation guidance at the URL http://www.law.cornell.edu/citation. The only efficient Shepardizing tools are available with the paid online legal research services, Lexis and Westlaw.

If you are looking for official state codes, you may access the California Code of Regulations (formerly the California Administrative Code) at www.calregs.com. The codes for Los Angeles County can be found at http://ordlink.com/codes/lacity102.htm, and the City Charter and codes at http://www.cityofla.org/lacity102.htm.

For federal code information, the U.S. code can be accessed at www .law.cornell.edu/uscode via the site’s title list or its table of popular names. Users can also search for specific code sections or simply go to the site’s search engine. The U.S. Government Printing Office has a site (www.gpoaccess.gov) that is a good source for the Code of Federal Regulations and the Federal Register. This site also provides a link to the U.S. Supreme Court site at www.supremecourts.gov, the federal courts home page at www.uscourts.gov (which has links Nancy A. Kaiser practices family law with Gould-Saltman Law Offices, LLP, in Los Angeles and is a member of the Barristers Executive Committee.

Federal case law can be found on Findlaw. PACER, which is an acronym for Public Access to Court Electronic Records, allows users to download documents from the files of the federal district courts and bankruptcy courts. PACER has a registration requirement and charges a small fee for the documents. It can be found at http://pacer.psc.uscourts.gov/cgi-bin/links.pl. A wealth of California and federal discovery rules, case outlines, and practice tips are available on Findlaw (http://californiadiscovery.findlaw.com/index.htm). However, be sure to check official sites for current codes.

Fact Finding

Along with legal research, the Web is the logical first choice for finding facts. In certain instances, investigating an individual or a business can be as important as investigating the law. Transactional attorneys and litigators may find the California Secretary of State’s business portal very useful. It can be accessed at www.ss.ca.gov/business/business.htm. This site contains information regarding entity formation, dissolution, reporting, general business information, and forms. You can also search online for records of corporations, limited liability companies, and limited partnerships, which include the agent for service of process, the status of the entity (whether active, suspended, or dissolved), as well as the correct spelling and address of the entity. You can file UCC statements and search for UCC filings for $5 per search. The business portal site will not give you information about current officers and directors of a corporation. Some secretary of state sites, however, provide the name of the current officers. An example is the Nevada Secretary of State’s corporation search portal, which is found at https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx.

A search site is available for fictitious business names in Los Angeles (www.lavote.net/ibn/FBN.cfm). Keep in mind, however, that Los Angeles businesses do not always register or renew their fictitious business names. It is helpful to have telephone, zip code, and area code directories available at the click of a mouse. Contact information for all California attorneys and law firms is at http:/members.calbar.ca.gov/search/member.aspx.

Accurint.com is a cost-effective investigative site that charges a small fee per search. You can instantly find addresses, telephone numbers, assets, relatives, and more. To verify an individual or business license, a site to check is http://www2.dca.ca.gov/pls/willpub/willquery$. The Department of Consumer Affairs licenses accountants, automobile mechanics, doctors, psychologists, and contractors, to name a few. You can check the status of a contractor’s license at http:/www.csll.ca.gov and look up a physician’s disciplinary history at www.medbd.ca.gov/ Lookup.htm.


Forms and Documents

After you find the relevant law, you must apply the law to the facts of your case in an acceptable format. There are samples of just about every imaginable type of legal document on the Web. For example, the Web sites of national title companies have many downloadable blank real estate forms. For example, at www.stewarttitlela.com/index.cfm?page=docsondisk, users can find deeds, secured promissory notes, and a cover page for nonconforming documents. You can find various legal practice samples and forms at www.findlaw.com/16forms/collections.html and www.iig.com/forms. Nevertheless, before you blindly start searching for forms on the Internet, check your firm’s database for samples. Sample documents do not take the place of doing the research necessary to ensure that you are drafting the document correctly and have included everything that is needed. Even with documents from your firm, there is no way to determine if a document has been updated to comply with current law. Also, the drafter may have deleted standard provisions that apply to your situation. Finally, we all make mistakes, even partners.


Even though the Internet is in its infancy, just about everything you need to satisfy your legal information requirements is available on it somewhere. To use the Internet and the Web effectively and efficiently, you have to know where to look, which source to trust, and how to verify the accuracy of what you find.
Classifieds

Consultants and Experts


MEDICAL MALPRACTICE, HEALTHCARE LAW & PERSONAL INJURY. B. Chandler May, MD, JD, MS.—Law Offices of Thiele, McGovern & May. Referral fees paid, please call for details: (805) 963-7226 or (805) 403-2320 cell, bchandlermay@gmail.com.

NEED AN EXPERT WITNESS, legal consultant, arbitrator, mediator, private judge, attorney who outsources, investigator, or evidence specialist? Make your job easier by visiting www.expert4law.org. Sponsored by the Los Angeles County Bar Association, expert4law—the Legal Marketplace is a comprehensive online service for you to find exactly the experts you need.

Court Records

CIVIL/CRIMINAL COURT RECORDS. We retrieve and review court records. We also retrieve and review grantee/grantor, liens and judgments, birth/death and marriage records from the recorders’ offices. We cover any court or recorders office anywhere in California. We are former federal agents. DCW & Associates (800) 899-0442. Web site: www.dcwpl.com.

Investigations

CIVIL/CRIMINAL INVESTIGATIONS. We conduct all types of investigations. We conduct background checks, surveillances, marital infidelity decoys, family law, child custody/retrieval, due diligence, elder abuse, locates, mystery shops/bar checks, civil and criminal investigations. We are former federal agents. DCW & Associates (800) 899-0442. Web site: www.dcwpl.com.

Office Space


Transcription Services

OVERNIGHT LEGAL TRANSCRIPTION SERVICE Only $140 per dictated hour. This special price and free digital recorder upon signup this month!!! Fast, Economical, reliable, efficient! Dictate anything you need typed, send over the Internet, we transcribe overnight while you sleep, and you get it before 8 a.m. next morning. Call Angelo (888) 262-2973 e-mail sales@bizsetter.com Visit www.bizsetter.com.

NORIEGA CHIROPRACTIC CLINIC

Clinica Para Los Latinos • Serving the Latin Community for 50 Years

Personal Injury and Worker’s Comp cases accepted on lien basis.

MONTEBELLO HEALTH SERVICES
901 W. Whittier Blvd., Montebello, CA 90640
(323) 728-8268
INDIVIDUAL CONTRIBUTIONS

$20,000 or more
Frank R. Brown
Susan E. Brown

$10,000 or more

$2,000-$9,999

$1,000-$1,999

$50,000 or more

IN MEMORY OF...

IN HONOR OF...

THE LOS ANGELES COUNTY BAR FOUNDATION'S 2004-
2005 FUND DRIVE raised approximately $305,000 from corpo-


dures required in connection with its annual audit, the Foundation
hereby lists all individuals who made contributions of $200 or
more, and all law firms, corporations, foundations, and other orga-
nizations that contributed $1,000 or more during the period begin-
ing July 1, 2004, and ending June 30, 2005. If you are not listed
below, and you made a contribution to the Foundation fitting any of
the above criteria, please contact the Foundation's independ-
ent certified public accountants, Green, Hasson & Janks LLP, by call-
ing Gayle Whitemore directly at (310) 873-1605.

The Foundation regrets that space limitations prevent the list-
ing of the names of all contributors.
A Life Fellow has contributed, or pledged to contribute, $2,500 to the Foundation. Annual installments must be at least $500. (List includes participants as of 6/30/05.)

James N. Adler
Linda Auerbach Allerdice
Dean V. Ambrose
Paula Amorosini
Donna A. Armstrong
Richards D. Barger
Jane H. Barrett
Teresa A. Beaudeit
Loi R. Behar
Mollie F. Benedict
Jennifer A. Bensch
Blanche C. Bersch
William M. Birtling
Michael I. Blaylock
Stephen M. Blitz
Merrick J. Bobb
Robert C. Boffa
Phillip L. Bosl
Theodore J. Boutrouss, Jr.
Joel E. Boxer
Jamie Broder
Thomas M. Brown
Geoffrey L. Bryan
Carolyn C. Burger
Lauren Burton
Claudia Carver
Paul A. Catalano
Edward C. Cazier, Jr.
Tyrene R. Childress
Afene Colman Schwimmer
Brian K. Condon
Douglas C. Conroy
Hon. Lawrence W. Crispio
Hon. H. Walter Croskey
Patricia Egan Daehike
Grace M. Danziger
Albert F. Davis
Katessa Charles Davis
Andrew J. Demetriou
Pamela Dunn & Maria Louise Cousineau
Gregory Evans
Jonathan W. Evans
Laura V. Farber
Gregg A. Farley
Hon. Lisa Hill Fenning
Hon. Macklin Fleming
Stuart A. Forsyth
Georgia Franklin-Shutan
Jeffrey C. Freedman
Alan H. Friedenthal
James J. Gallagher
Patricia A. Gartner
Robert T. Gelber
Russell T. Ginise
Richard B. Goetz
Hon. Arnold H. Gold
Prof. Marc Goodman
Jo-Ann W. Grace
Noah Graff
Jan Charles Gray
Hon. Paul Gutman
Alan N. Halbert
Amos E. Hartston
Rex Heeseman
Robert Henigson
Grover R. Horn
Edward W. Hieronymus
Bernard S. Kamine
Kelly W. Kay
Russell I. Killy
Frederick W. Lambert
John A. Lapiniski
Linda M. Lawson
James D. Layden
Bruce H. Leiserowitz
Roderick W. Leonard
Fred L. Leydorf
Michael S. Lurey
Leanne E. Mallian
Hon. Nora M. Manella
Vicki E. Marmorstein & Seth A. Rabine
Michael E. Meyer
Charles E. Michaels
Audra Mori
Richard T. Morrow
Richard R. Murzak, Jr.
Mark A. Neubauer
Robert H. Nida
Andrew J. Nocas
Stacey Oliff & Tracy Rich
Gregg Oppenheimer
Lee E. Pettiton
Karen Randall
Barbara A. Reeves
Denis D. Resh
Kenneth O. Rhodes
Hon. Andria K. Richey
David K. Robinson
Ivorine Rosefield
Alan L. Rothenberg
Deborah J. Rousch
Harvey L. Safiersten
Nicholas P. Saggese
Marc L. Sallus
Laura A. Seigle
Marc M. Seltzer
Patricia L. Shanks
Frans & Leonard Smith
Hon. John R. Stahr
Sheryl E. Stein
David W. Steuber
Clinton R. Stevenson
Richard J. Stone
Linda M. Studte
Susan Koehler Sullivan
Jill Switzer
Hon. Robert M. Talcott
Stuart P. Tobinmas
Franklin Tom
Clyde E. Trott
Eugene L. Trope
Rhonda R. Trotter
Susan J. Troy
David C. Tseng
Robert C. Vanderer
Patric M. Verrone
Caroline C. Vincent
Richard S. Volpert
Richard Walsh
John F. Walker, Jr.
Stuart B. Walzer
Michael R. Whalen
Karen B. Wong & Scott W. Lee
Kenneth B. Wright
Hon. Paul Wyler
Rosalyn S. Zakheim
2004-05 FELLOWS
Individuals who contributed a minimum of $500 between 7/1/04-6/30/05 and are not Barristers fellows, Life fellows or Honor Roll participants.

Barbara J. Bacon
Randee Barak
Saneepee Bawaie
James W. Biderfield II
Gabrielle Hamer Brumback
Shawn C. Chou
Luci-Ellen M. Chun
Susan Skelding Couig
Rebecca A. Dallin
Gavin H. Wasserman

BARRISTERS FELLOWS
A Barristers Fellow has contributed, or pledged to contribute over a five-year period, $500 to the Foundation. Barristers are individuals who are 36 years of age or less or who have been in practice 10 years or less. (List includes participants as of 6/30/05.)

BARRISTERS FELLOWS
Individuals who have pledged to contribute a minimum of $500 annually to the Foundation. Those with asterisks have previously completed pledges at the Barristers Fellow* life level.
CLE Preview

Eliminating Bias by Increasing Cultural Diversity

ON THURSDAY, NOVEMBER 10, the Barristers Section and the Diversity in the Profession Committee will proudly present a panel of academics and practitioners who will discuss what the legal profession can do to increase awareness of cultural and racial diversity in the workplace and how diversification can help to eliminate bias in the profession. Speakers Jody D. Armour, Cristina Felix-Carrasco, J. Craig Fong, Michael A. Lawson, and Judge Fumiko H. Wasserman will discuss the challenges in today’s competitive legal market concerning the recruitment, retention, and promotion of attorneys of color, women, and gay and lesbian attorneys. The program will take place at the LACBA/LexisNexis Conference Center, 281 South Figueroa Street, Downtown. Parking is available at the Figueroa Courtyard parking garage for $9 with LACBA validation. On-site registration will be available starting at 11:30 A.M. and lunch at 11:45, with the program continuing from noon to 1:30 P.M. The registration code number is 009160. CLE+PLUS members may attend for free ($15 meal not included). The prices below include the meal.

$25—Barristers members
$35—all others

1.5 CLE hours in elimination of bias

Power Point for Litigators

ON TUESDAY, NOVEMBER 15, the Los Angeles County Bar Association and its Litigation Section will present a course taught by Russell Jackman on how demonstration programs (in particular, Microsoft’s Power Point) can be an integral part of trial and business presentations. Course topics will include setting up slides, creating slides, text effects, bullets and numbering, pictures, borders, line drawing and edit points, animation, and exporting files. Participants are encouraged to bring their laptops for a more interactive experience. Please note, however, that limited access to power outlets will be available on a first-come, first-served basis, and that those who bring a computer should have Power Point already installed. This course does not provide the Power Point software. The program will take place at the LACBA/LexisNexis Conference Center, 281 South Figueroa Street, Downtown. A reduced parking rate is available with validation. On-site registration and dinner will begin at 5:30 P.M., with the program continuing from 6 to 9:15. The registration code number is 009160. CLE+PLUS members may attend for free ($15 meal not included). The prices below include the meal.

$150—CLE+PLUS members
$200—Litigation Section members
$300—other LACBA members
$450—all others

3.25 CLE hours

GAMBLING ON PREEMPTION

On Wednesday, November 16, the Intellectual Property and Entertainment Law Section will present a discussion of the implications of Grosso v. Miramax. The decision could alter the landscape of the submission of ideas in the entertainment industry and the idea submission claims that often follow. The panelists will include Jonathan H. Anschell, Glen L. Kulik, and Gail M. Title. In Grosso, the Ninth Circuit ruled that certain idea submission claims are not preempted by federal copyright law. Aspiring screenwriter Jeff Grosso brought an implied contract claim based on his submission of a script titled The Shell Game, which he claims was used to create Miramax’s motion picture Rounders. Miramax argued that the Copyright Act preempted the claim. In a truncated decision, the Ninth Circuit ruled that Grosso could pursue his state law claim. Studios, writers, agents, and entertainment lawyers are now grappling with the effects of Grosso. This program will take place at the Wyndham Bel Age—West Hollywood, 1020 North San Vicente Boulevard. Parking with validation costs $6. On-site registration will begin at 11:45 A.M. and the meal at 11:45, with the program continuing from 12:30 to 1:30 P.M. The registration code number is 009186. CLE+PLUS members may attend for free ($15 meal not included). The prices below include the meal.

$60—Intellectual Property and Entertainment Law Section members
$75—all others
$85—all at-the-door registrants

1 CLE hour

PLEASE NOTE: FIGUEROA COURTYARD NOW USES AN AUTOMATED PARKING PAYMENT SYSTEM. PLEASE BRING YOUR PARKING TICKET WITH YOU TO THE PROGRAM.
The Unmasking of a Legal Urban Legend

OVER THE PAST COUPLE OF YEARS an increasing number of lawyers have been filing “notices of unavailability” that state, for one reason or another, that the lawyers are unavailable to do anything regarding a particular case during specified periods of time. These notices are then waved before opposing counsel like a cross in front of a vampire, with the argument that all service, discovery, motions, hearings, and everything else concerning the case must cease during the periods of unavailability.

_Tenderloin Housing Clinic, Inc. v. Sparks_1 invariably is presented as authority for this proposition. However, _Tenderloin does not so hold._ That belief is a legal urban legend.

_Tenderloin_ is about an attorney who persistently engaged in discovery in a frivolous and oppressive fashion with the obvious intent to harass and inconvenience opposing counsel and her client. The ruling concerned sanctions for persistent bad faith and frivolous and harassing tactics.

In _Tenderloin_ the defendants’ lawyer advised the plaintiff’s trial counsel by telephone that the defendants’ lawyer would be away for two and one-half weeks, first at an arbitration proceeding in New York and then on a long-planned vacation in England. Shortly after the telephone conversation, the plaintiff’s trial counsel served discovery motions for hearing on a date he knew defense counsel would be away, forcing defense counsel to file a motion and obtain a continuance. While defense counsel was away, the plaintiff’s trial counsel served two of defense counsel’s clients with trial subpoenas that required them to appear as witnesses in an unrelated third-party action. Defense counsel had to obtain a telephone hearing from London to quash the subpoenas and protect her clients’ interests.

The plaintiff’s trial counsel never explained why he waited until opposing counsel was in London to serve subpoenas in a case that was later dismissed by the plaintiff. Several days after defense counsel’s departure, the plaintiff’s lawyer set three depositions for days he knew to be the last two weekdays of defense counsel’s vacation. The plaintiff’s lawyer refused to continue the depositions. The defendants’ lawyer had to cut her vacation short and purchase a one-way ticket from London to San Francisco to safeguard her clients’ interests. Upon arrival in San Francisco, she was informed by the plaintiff’s trial counsel that at least one of the depositions was canceled. She also learned that, contrary to a written stipulation, the plaintiff’s counsel, in an attempt to cause a default by the defendant, had secretly moved forward a hearing to a date that required the defendant to file their opposition papers while their lawyer was supposed to still be in England.

Attorneys who say _Tenderloin_ is about notices of unavailability are misreading the case by taking the facts out of context. _Tenderloin_ stands for only two principles: 1) the availability of sanctions, and 2) the imposition of sanctions for bad faith tactics. _Tenderloin_ has been cited repeatedly for the principle that trial courts have broad discretion in ruling on sanctions. A monetary sanction may be based not only on attorney’s fees and costs but also on any other reasonable expenses incurred, including compensation for airfare and reimbursement for lost vacation. An appellate court will not reweigh the evidence or substitute its discretion for the trial court’s.

_Tenderloin_ also has been cited for the imposition of sanctions under Code of Civil Procedure Section 128.5 for bad faith actions and tactics. For example, in _Wells Properties v. Popkin_, the court cited _Tenderloin_ to show that Wells’s course of conduct evinced bad faith.

“[E]ven if a legal step taken or legal procedure pursued may have justification in law, the timing of these may be oppressive and may constitute harassment if it unjustifiably neglects or ignores the legitimate interest of a fellow attorney.”

In _Abandonato v. Coldren_, the court cited _Tenderloin_ to support its holding that the trial court did not abuse its discretion in awarding sanctions based on persistent bad faith tactics.

Sanctions in _Tenderloin_ were based on the trial court’s finding that the appellant acted in bad faith, frivolously, and solely to harass the respondent. No case or article citing _Tenderloin_ mentions unavailability, notices of unavailability, or any similar concept.

There is nothing in _Tenderloin_ creating or discussing a legal concept of unavailability. It does not discuss a notice of unavailability as a recognized legal document. Nor does _Tenderloin_ or any other case say a lawyer’s unavailability creates or abrogates legal rights, tolls deadlines, or has any other effect except when there is bad faith by a party (including, probably, the unavailable party).

3 _Abandonato_, 41 Cal. App. 4th at 267 (citing Tenderloin, 8 Cal. App. 4th at 304).
5 _Abandonato_, 41 Cal. App. 4th at 267 (citing Tenderloin, 8 Cal. App. 4th at 304).

David Hazelkorn is not currently practicing law. He consults on litigation and trial strategy in Santa Ana.
Assistant Professor of Law
Seval Yildirim
B.A., Randolph-Macon Woman’s College, *cum laude*
M.A., George Washington University
LL.M., J.D., New York University School of Law
Visiting Scholar, Hagop Kevorkian Center for Near Eastern Studies, New York University
Associate, Sills Cummins Epstein & Gross
*Aftermath of a Revolution: A Case Study of Turkish Family Law, PACE INTERNATIONAL LAW REVIEW* (Fall 2005) (forthcoming)

Assistant Professor of Law
Martin H. Pritikin
B.A., University of Southern California, Los Angeles, *summa cum laude*
J.D., Harvard Law School, *magna cum laude*
Editor, *HARVARD LAW REVIEW*
Adjunct Coach, Bryne Trial Advocacy Program, Loyola Law School
Litigation Associate, Quinn Emanuel Urquhart Oliver & Hedges, LLP
*Toward Coherence in Civil Conspiracy Law: A Proposal to Abolish the Agent’s Immunity Rule, NEBRASKA LAW REVIEW* (Fall 2005) (forthcoming)

Acting Director, Center for International and Comparative Law
Visiting Assistant Professor of Law
David A. Kaye
B.A., University of California at Berkeley
J.D., Boalt Hall School of Law, University of California at Berkeley
Deputy Legal Counselor, Embassy of the United States, The Hague, The Netherlands
Adjunct Professor of Law, Georgetown University Law Center
*Adjudicating Self-Defense: Discretion, Perception and the Resort to Force in International Law, COLUMBIA JOURNAL OF TRANSNATIONAL LAW* (Fall 2005) (forthcoming)

Visiting Assistant Professor of Law
Michael Evans
B.A., Duke University, *magna cum laude*
J.D., Stanford Law School, *Order of the Coif*
Member, *STANFORD LAW REVIEW*
Law Clerk, Honorable Raymond C. Fisher, United States Court of Appeals, 9th Circuit
Litigation Associate, Brancart & Brancart
This forms book guides you through every turn of California real estate law.

You get your best results at the intersection of form and substance.
You get more than up-to-date forms with Miller & Starr Real Estate Forms 2d. This forms set by Alexander Hamilton also includes a wealth of drafting comments covering
- Alternative considerations and approaches
- Substantive law
- Procedural concerns
- Strategies for negotiating and drafting specific provisions and clauses

Miller & Starr is a California classic. It contains
- Easy-to-use, easy-to-customize forms
- Extensive coverage of commercial and residential real property
- Extensive cross-references to the entire Miller & Starr California Real Estate Library

Also available on Westlaw.

To order or for more information, call 1-800-762-5272.

NEW EDITION!
Vol. 1 available May 2005
More forms and commentary.

The most valuable view in California real estate, Miller & Starr.

west.thomson.com