Los Angeles lawyer James Juo examines the standard for design patent infringement

Eye of the Beholder

Los Angeles lawyer James Juo examines the standard for design patent infringement

page 20
Introducing Related Content at lexis.com for searching more sources more efficiently.

Related Content is a new feature that draws on an exclusive mix of sources—more than other research providers. Displayed in a convenient, left-hand pane, links to these sources make your search more efficient, more focused. Related Content at lexis.com helps you avoid missing critical information, so you gain a deeper understanding of your case law searches.

Learn more at lexisnexis.com/relatedcontent.

LexisNexis, the Knowledge Burst logo, lexis.com and Shepard’s are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc. BNA is a registered trademark of The Bureau of National Affairs, Inc. ALR and Am Jur are registered trademarks of West Publishing Corporation. Other products and services may be trademarks or registered trademarks of their respective companies. © 2009 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LP19880-1 0709
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

Fulcrum Inquiry

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

AHERN INSURANCE BROKERAGE
LAW FIRM INSURANCE SPECIALISTS

LOSA GELES COUNTY BAR ASSOCIATION

ENDORSED PROFESSIONAL LIABILITY INSURANCE BROKER

- 2,000+ LAW FIRM CLIENTS
- ACCESS TO OVER 25 PROFESSIONAL LIABILITY PROVIDERS
- ON-LINE APPLICATIONS FOR EASY COMPLETION

Call 1-800-282-9786 today to speak to a specialist.
FEAT U R E S

20 Eye of the Beholder
BY JAMES JUO
A recent Federal Circuit decision restores the “ordinary observer” standard as the sole test in design patent infringement cases

26 Operating Room
BY HOWARD A. KAPP
The standard of care in medical malpractice cases is not what a doctor should or would do but rather what a member of the doctor’s professional community actually does

Plus: Earn MCLE credit. MCLE Test No. 186 appears on page 29.

32 Going Out of Business
BY GORDON ENG
There are myriad corporate, employment, and tax law issues to consider when a small business closes its doors

40 Special Section
Semiannual Guide to Expert Witnesses

DEPARTMENTS

8 Barristers Tips
Creating effective electronically stored information systems
BY SHANE LOOMIS

10 Practice Tips
The court of appeal splits on asbestos liability issues
BY DANIEL L. MARTENS

16 Practice Tips
Legal and ethical issues regarding third-party litigation funding
BY JONATHAN D. PETRUS

68 LACB Foundation
2008-2009 Fund Drive Results

70 Ethics Opinion No. 522
Whether a lawyer for corporate entity engaged in debt collection aids and abets the unauthorized practice of law or violates the rules of professional conduct for failure to supervise employees and seeking attorney’s fee awards based upon the legal work of the entity’s unlicensed employees

76 Closing Argument
We need a creative solution to the superior court funding crisis
BY JUDGE CHARLES W. MCCOY JR.

73 Classifieds

75 CLE Preview
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.

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.

STEFAN L. GLEITMAN, ESQ.
310-553-5080
Biography available at lawyers.com or by request.

Los Angeles Lawyer

VISIT US ON THE INTERNET AT www.lacba.org/lalawyer
E-MAIL CAN BE SENT TO lalawyer@lacba.org

EDITORIAL BOARD
Chair
DAVID A. SCHNIDER
Articles Coordinator
MICHAEL A. GEIBELSON
JERROLD ABELES (PAST CHAIR)
DANIEL L. ALEXANDER
ETHEL W. BENNETT
CAROLINE BUSSIN
CYNDIE M. CHANG
R. J. COMER (PAST CHAIR)
CHRIS C. COOMBS (PAST CHAIR)
ELIZABETH L. CROOKE
ANGELA J. DAVIS (PAST CHAIR)
PANKIT J. DOSHI
GORDON ENG
HEDINE J. FARBER
STUART F. FRAENKEL
TED HANDEL
JEFFREY A. HARTWICK
STEVEN HEECH (PAST CHAIR)
NAYISE NINA J. HIDORAT
LAWRENCE J. IMMEL
GREGORY JONES
MARY E. KELLY
JOHN P. LECREONE
THANYI LINDSEY
KAREN LUONG
PAUL MARKS
AMY MESSIGIAN
MICHELLE MIHAEOLIS
ELIZABETH MUNISOGLO
RICHARD H. NAKAMURA JR (PAST CHAIR)
CARMELA PAGAY
DENNIS PEREZ
ADAM J. POST
GARY RASKIN (PAST CHAIR)
JACQUELINE M. REAL-SALAS (PAST CHAIR)
HEATHER STERN
KENNETH W. SWENSON
BRUCE TEPFER
J. J. TROJAN
THOMAS H. VIDAL
JEFFREY D. WOLF
KOREN WONG-ERVIN

STAFF
Publisher and Editor
SAMUEL LIPSMAN
Senior Editor
LAUREN MULCOV
Senior Editor
ERIC HOWARD
Art Director
LES SECHLER
Director of Design and Production
PATRICK HUGHES
Advertising Director
LINDA LONERO BAKAS
Account Executive
MERYL WEITZ
Sales and Marketing Coordinator
AARON J. ESTRADA
Advertising Coordinator
WILMA TRACY NADEAU
Administrative Coordinator
MATTY JALLOW BABY

Copyright © 2009 by the Los Angeles County Bar Association. All rights reserved. Reproduction in whole or in part without permission is prohibited.
The opinions and positions stated in signed material are those of the authors and not by the fact of publication necessarily those of the Association or its members. All manuscripts are carefully considered by the Editorial Board. Letters to the editor are subject to editing.
Would you risk eating a bad meal, risk seeing a bad show or risk reading a bad book?

Why should your Practice be any different?

Minimizing Your Risk is Our Business...

PRE-EMPLOYMENT | BACKGROUND INVESTIGATIONS | PROSPECTIVE CLIENT
www.scherzer.com | http://Scherzerblog.com

Judge Michael D. Marcus (Ret.)

Mediator • Arbitrator • Discovery Referee
EXPERIENCED • PERSUASIVE • EFFECTIVE
Daily Journal Top 30 Neutral 2007

- Employment
- Legal Malpractice
- Business
- Real Property
- Personal Injury
- Intellectual Property

WHILE A SINGLE STONE may make only a small splash,
the ripples travel far beyond where the stone landed—just
like the benefit of your single gift to the Los Angeles
County Bar Foundation.

The Bar Foundation is the fund-raising arm of the Bar
Association. The Association’s own public service projects
rely heavily on the Foundation for funding, as do many
other very worthwhile programs serving our community.

Donations may be made online at www.lacbf.org or by
mail to Los Angeles County Bar Foundation, PO Box 55020,
Los Angeles, CA, 90055-2020. For additional information,
call (213) 896-6409 or send an e-mail to iprice@lacba.org.

Visit the Foundation’s Web page at www.lacbf.org.
My least favorite soccer player in the world is Mexico’s Cuauhtémoc Blanco. Before you Mexico fans pull out your pitchforks and stake out the Los Angeles Lawyer offices, let me note that I hold this view not because I think Blanco lacks skill. You need only watch highlight reels to see that he is a talented player. In fact, you might say I dislike him because he is so effective.

Blanco is a bully. When the United States played Mexico in the 2002 World Cup, Blanco roughly tackled Pablo Mastroeni and then stood over him with a clenched fist, mocking him. During his career Blanco has regularly taunted opponents and yelled at referees, even when he was undeniably wrong. His behavior has been infantile and offensive. But it worked. Blanco plays a little rough, but his pinpoint passes and read of the game ignited his team to entertaining victories. He goaded referees and demeaned opposing players, but he would argue that he did this only because they provoked him. But the more referees let him get away with his antics, the worse he behaved.

Until last year. Blanco finally received a two-year ban from the U.S. Open Cup games for head-butting an official after being ejected from the game. He has not had a single significant incident since. I don’t think he is completely reformed, but the firm punishment had an effect.

There is a lesson in this experience for our legal community. It seems to have become standard practice for lawyers to overwhelm judges with a flurry of petty disputes and tit-for-tat accusations. The best way to get away with discovery abuses is to accuse the other side of similar misconduct. This is especially effective for experienced, respected attorneys because judges assume there must be some merit to their claims. For judges who have 30 matters to cover in the first three hours of their day, trials to hold in the afternoons, and decisions to write in their off hours, it is easy to simply dismiss both sides. This sort of “boys will be boys” mentality is common and understandable. But it also fosters worse behavior.

One lawyer told me that he feels like he is not doing his job if the judge refrains from sanctioning him. Another told me that she does not see the point of written discovery anymore because opposing counsel is just going to stonewall and force her to spend thousands of dollars to get little of value. I would like to think that these stories are the exceptions, but they seem to be the rule.

The solution is not to bemoan the lack of civility and call for each of us to aspire and adhere to a higher standard. That sounds nice, but we do still live in the real world. Just as Blanco’s infantile tactics did not change until he was hit with a significant punishment, lawyers are not going to change until judges impose consequences. I had a case a few years back in which the judge initially decided that the sides were equally out to get each other and actually said he was going to let us “dig each others’ scabs out.” It took him a couple of years of litigation before he finally lost his patience and started to truly engage the petty issues. When he realized what was going on and doled out harsh punishments to the attorneys responsible, the conduct changed.

If judges truly want to reduce meaningless bickering among lawyers and prevent abuse, they must take time during the early days of their cases to get into the details and punish misconduct harshly. It is admittedly a very difficult thing to do, but if litigants know that their judge is someone to fear, they will think twice before engaging in funny business. Just ask Cuauhtémoc Blanco.

David A. Schnider is general counsel for Leg Avenue, Inc., a distributor of costumes and apparel. He is the 2009-10 chair of the Los Angeles Lawyer Editorial Board.
*Our Past Experience is Your Best Advantage in these Turbulent Times*

Experience creates knowledge.
Knowledge creates good habits.
Discipline, planning, hard work and plain old common sense — Everyday.

Good habits combined with conservative investments made on sound business principles have placed us in a strong financial position to carry forward.

We face the future with confidence and we will manage it with expertise as we have done for the past 30 years.

**Lawyers’ Mutual Insurance Company**

*Your Best Advantage in Today’s World*

Call 1.800.252.2045 or visit www.LMIC.com
Creating Effective Electronically Stored Information Systems

Most attorneys are keenly aware that a client’s failure to preserve electronically stored information (ESI) carries the risk of significant sanctions. As a result, counsel should not only advise business clients of the best practices for preserving ESI once litigation becomes foreseeable but also help reduce the costs and risks of electronic discovery by advising clients to take action before litigation becomes foreseeable. The most effective preservation procedures are not implemented after the fact.

In response to litigation, attorneys typically advise company clients to take steps to preserve ESI. One step is to send litigation hold memoranda. Along with instructions to preserve documents, these memos typically advise the IT department to ensure that no potentially relevant electronic data is deleted from the company’s systems. Best practices also dictate that the IT department preserve backup tapes. While these steps are certainly necessary, they illustrate two inherent flaws in the way lawyers, whether in-house or outside counsel, tend to address preservation.

First, the start of a suit too often marks the first time that a company’s attorneys and IT professionals work together. As a result, these interactions are almost always reactionary. The attorneys and IT professionals may find themselves scrambling, without a plan or strategy, to prevent potentially relevant ESI from being deleted. Second, the methods commonly used—suspending deletion policies (which are designed to reduce storage costs) and preserving backup tapes (which are designed solely for disaster recovery)—rely upon systems that do not factor in the content of data. Suspending a system-wide deletion policy forces the client to begin storing ever-increasing volumes of data, much of which is not related to the litigation. This taxes the servers, increases the cost and complexity of data backup, and can expand the number of “reasonably available” documents in other, unrelated matters. Backup tapes are similarly problematic because they are designed for disaster recovery, not content-specific preservation, and so contain reams of data that are wholly unrelated to the dispute. Common deletion policies and backup practices use a bulk approach, operating on indiscriminate chunks of data without regard to content. By contrast, efficient litigation preservation focuses largely on content, since the company’s duty is to preserve only the potentially relevant data.

A New Approach

Rather than waiting for an emergency, attorneys should work with business clients to plan for e-discovery before litigation is on the horizon, and rather than reacting after litigation looms, counsel and the IT staff can establish systems that are intended for litigation rather than data recovery. For example, data can be analyzed according to functional information, like a project name or a product name, to segregate blocks of related data rather than simply using the date of creation or modification. This allows the system to segregate data for backup and retrieval based on content. Companies taking these steps will enjoy reduced costs, lower risks of sanctions, and less stress when a lawsuit is filed.

Open communication between a client’s IT and legal departments is key. If the client does not have an in-house legal department, IT should know and have a working relationship with the client’s outside litigators. After all, the best way to ensure that a company’s technology systems work in the event of litigation is for the company’s lawyers to have a say regarding how backup systems are maintained.

The best way to ensure that a company’s technology systems work in the event of litigation is for the company’s lawyers to have a say regarding how backup systems are maintained.

The objective is to focus preservation procedures on data relevant to litigation, and this does not necessarily require starting over. While disaster recovery systems are likely insufficient to meet preservation demands on their own, the IT department, once properly informed, can often provide solutions for integrating content-based analysis into these systems so that potentially relevant ESI can be located later.

Next, once that open communication exists, the lawyers and IT professionals should work together to define the universe of data in their company that could require preservation in different scenarios. The attorneys should be consulted about any decisions relating to changes in the company’s overall IT architecture and in every major technology investment. Servers and systems that actually analyze the data, rather than treating it in bulk, will help later litigation hold’s to be more targeted, which will reduce storage costs and time during an already stressful event. By working together, the lawyers and IT professionals can craft customized systems that are able to segregate (and later preserve) data based on content and not, for example, date.

Finally, the relationship between a company’s lawyers and IT professionals must remain an ongoing priority. Only then can a company truly adapt to ever-changing legal and technical landscapes. IT departments are tremendous resources for addressing the needs of ESI retention and collection. If attorneys work with company clients to forge a partnership between the IT and legal departments, clients and attorneys can reduce costs and operational distress during litigation.

Shane Loomis is an associate at Marron & Associates in Long Beach.

Shane Loomis is an associate at Marron & Associates in Long Beach.
NOT JUST MORE...
MORE OF WHAT MATTERS MOST FROM LexisNexis®

Exclusive Content  | Leading Names  | Practice Area Tools

It’s not just about big numbers. LexisNexis provides the resources that make a difference to your success—including those frequently quoted in the nation’s courts.

Give yourself a competitive edge—and get MORE with LexisNexis.

lexisnexis.com/notjustmore

Comparison data based on information available as of January 2009.

LexisNexis, the Knowledge Burst logo, Lexis and lexis.com are registered trademarks of Reed Elsevier Properties Inc., used under license. Thomson is a registered trademark of Thomson Reuters Canada Limited. West is a registered trademark of West Publishing Corporation. Other products or services may be trademarks or registered trademarks of their respective companies.

© 2009 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LD19589-0 0409
FOR A NUMBER OF YEARS, trial courts in California have struggled with the issue of whether a manufacturer may be strictly liable for injuries caused by asbestos-containing parts and materials that were incorporated into a product many years after it was sold. Recently, two divisions of the California Court of Appeal have taken opposite sides on the issue. The decisions are Taylor v. Elliott Turbomachinery Company, Inc., which found in favor of product manufacturers on the issue, and O’Neil v. Crane Company, in which the court strongly criticized the Taylor decision and resolved the issue in favor of asbestos plaintiffs.

The particulars considered by both courts arise most commonly in cases in which a plumber, pipe fitter, or machinist claims exposure to asbestos through the removal and replacement of gaskets and packing used with pumps or valves. Many large industrial operations utilize dozens or hundreds of pumps and valves to pressurize and circulate water and other fluids. Gaskets and packing fit within pumps and valves to prevent leaks. Over time, these components wear out and need to be replaced. Many brands of gaskets and packing contained asbestos.

Plaintiffs in these cases often name as defendants not only the makers of the asbestos-containing gaskets and packing but also the manufacturers of the pumps and valves. In the vast majority of cases, however, the plaintiff cannot prove that the gaskets or packing that he or she removed from the pump or valve were the original components that the manufacturer installed at the factory. Indeed, the evidence in many cases establishes the opposite: The gaskets and packing were removed and replaced many times before the plaintiff first came into contact with the pump or valve. In these cases, plaintiffs are left to argue that pump and valve manufacturers are liable for injuries caused by asbestos-containing gaskets and packing that may have been used in their products, even though the particular components to which the plaintiff was exposed were not original to the pump or valve.

This typical fact pattern was presented in Taylor and O’Neil. In Taylor, the plaintiff claimed that her late husband, Reginald Taylor, developed mesothelioma as the result of exposure to asbestos during his service in the Navy in the mid-1960s. The evidence confirmed that the defendants had supplied the Navy with various pumps and valves that were installed on the particular ship on which Taylor served. It was also established that the pumps and valves included asbestos-containing gaskets and packing when the defendants originally sold the equipment to the Navy in the 1940s. In addition, it was undisputed that Taylor worked on the defendants’ pumps and valves, removing and replacing asbestos-containing gaskets and packing in that equipment on numerous occasions.

By the time Taylor served aboard the ship in question, however, the vessel had undergone extensive repairs and overhauls on at least three occasions. Faced with these facts, the plaintiff’s expert witnesses had to concede that the original asbestos-containing components in the defendants’ equipment had been removed and replaced long before Taylor first boarded the ship. Furthermore, the plaintiff was unable to identify the company that may have manufactured or supplied the asbestos-containing gaskets or packing that Taylor actually handled.

The pump and valve manufacturers moved for summary judgment. In responding to that motion, the plaintiff did not attempt to assert that Taylor had been exposed to the original asbestos-containing components inside the defendants’ equipment. Nor did the plaintiff contend that any of the defendants made or supplied any of the replacement gaskets or packing that Taylor actually handled. Rather, the plaintiff raised a legal argument, contending under strict products liability law that the defendants “owed a duty to warn of the dangers inherent in the asbestos-containing gaskets, packing, discs and insulation that were used in conjunction with their products, even if [the defendants] did not themselves produce or supply the injury-causing materials.”

The trial court rejected that argument and granted summary judgment in favor of the defendants. The plaintiff appealed. In a lengthy published decision (of which the California Supreme Court denied review in June 2009), the court of appeal upheld the grant of summary judgment, concluding that several independent grounds pre-

Daniel L. Martens is a partner at Dal Soglio & Martens LLP who specializes in toxic tort and products liability litigation.
vented the plaintiff from pursuing a duty-to-warn claim against the pump and valve manufacturers.

In one part of its analysis, the court articulated the premise that a manufacturer’s duty to warn under California law is limited to the manufacturer’s own products and does not extend to products made or supplied by others. Applying this premise, the court noted that the asbestos that caused Taylor’s injury did not come from any of the defendants’ equipment but instead was released from the replacement parts that were later used with the equipment. The court explained that the law does not require a party to warn about hazards that are caused or created by another company’s product. The pump and valve manufacturers in Taylor, therefore, were not obligated to warn about dangers associated with asbestos-containing gaskets and packing made by other entities.

As part of its analysis on this point, the court embraced a line of duty-to-warn cases on which asbestos defendants often rely when faced with the arguments that the plaintiff raised in Taylor. The court first endorsed Garman v. Magic Chef, Inc., which holds that the manufacturer of a stove did not have a duty to warn about the potential for gas leaks in connecting copper tubing that was made by another company. The court similarly embraced Blackwell v. Phelps Dodge Corporation, in which it was held that a chemical manufacturer had no duty to warn about the potential for tanker cars made by another company to allow dangerous releases of chemicals. Finally, the court trumpeted the holding of Powell v. Standard Brand Paint Company, finding that the manufacturer of lacquer thinner did not have a duty to warn about the possibility of dangerous explosions caused by a similar product from a different company.

Not only did the court endorse the triumvirate of cases that support the position of manufacturers, it specifically distinguished the cases on which asbestos plaintiffs often rely when asserting the duty-to-warn theory that was advanced in Taylor. In particular, the court rejected the reasoning of Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Company, which generally serves as the centerpiece of a plaintiff’s argument on this issue.

In Tellez-Cordova, a grinder manufacturer was held liable for failing to warn about dangerous airborne toxins that were released from grinding wheels used with the grinder. Distinguishing that case, the Taylor court explained that the holding in Tellez-Cordova was premised on two factual conditions that are not present in pump-and-valve cases: The operations and functions of the grinder itself caused the airborne toxins to be released from the wheels, and the grinding wheels were not dangerous until they were used with the grinder. By contrast, asbestos fibers in gaskets and packing are released when those parts are installed or removed, not by any operations of the pump or valve. Also, those asbestos-containing components are dangerous separate and apart from any use with pumps or valves. It was on these grounds that the Taylor court distinguished Tellez-Cordova and rejected its holding in connection with pump and valve manufacturers.

The Taylor court also distinguished DeLeon v. Commercial Manufacturing and Supply Company, another case on which asbestos plaintiffs often rely in duty-to-warn scenarios. The manufacturer in DeLeon designed and manufactured a custom piece of industrial equipment for ongoing plant operations after meeting with the purchaser, inspecting the area where the equipment would be installed, and taking measurements throughout the area. The DeLeon court determined that, under these facts, the manufacturer may be liable for an injury that occurred in connection with another piece of equipment in the same area of the plant, even though the equipment came from another company. Considering that holding, the Taylor court indicated that the issues in DeLeon regarding the defendant’s involvement with the design and location of particular equipment rendered the case inapposite. No facts in Taylor suggested that the pump and valve manufacturers played any role in the design or layout of any equipment but their own.

In addition to rejecting the application of Tellez-Cordova and DeLeon, the Taylor court considered and distinguished the holding of Wright v. Stang Manufacturing Company, a third case that asbestos plaintiffs often cite when pursuing the arguments made in Taylor. In Wright, the court held that the manufacturer of a water cannon could be strictly liable for injuries that a firefighter sustained when the cannon broke free from its mount, even though the accident was caused not by the failure of the cannon but rather by the mounting mechanism that was made by a different company. Rejecting that holding, the Taylor court reasoned that, unlike the case at issue, the plaintiff in Wright claimed that the water cannon contained a design defect and that the accident may have been the result of a foreseeable misuse of the cannon. Those theories of liability were not raised in Taylor, and thus the Wright decision did not apply.

With that, the Taylor court rebuffed the plaintiff’s central argument, finding that the law does not impose upon pump and valve manufacturers a duty to warn about the dangers of gaskets and packing made or supplied by other companies and added to the equipment long after it was originally manufactured and sold.

In an independent point of analysis, the court examined the component parts doctrine of products liability law and concluded that the relevant considerations favored the pump and valve manufacturers. This doctrine precludes liability against the manufacturer of a component part that is included in a finished product, so long as the plaintiff’s injury was not caused by a defect in the component itself. Applying this legal principle, the court did not consider the gaskets and packing as component parts of the pumps and valves but rather characterized the defendants’ pumps and valves as component parts of the overall steam propulsion system of the ship on which Taylor served. Because Taylor’s injuries were caused by exposure to asbestos-containing materials that were installed long after the defendants’ equipment was incorporated into the ship’s propulsion system, the defendants’ components were not the injuring instrument. As a result, the component parts doctrine shielded the defendants from strict liability under a duty-to-warn theory.

Perhaps recognizing that this was a unique application of the component parts doctrine, the court spent time addressing the plaintiff’s arguments on the issue. The court first rejected the contention that the pumps and valves were not really component parts because they were not fungible items with multiple uses, but rather were designed and manufactured pursuant to Navy specifications for particular functions aboard a particular ship. Citing a breast implant case, the court explained that manufacturers who follow a purchaser’s specifications are not precluded from successfully asserting the component parts doctrine as a shield to liability.

The court also rejected the plaintiff’s contention that this doctrine could not apply because the use of asbestos-containing parts with the pumps and valves was “foreseeable and anticipated” by the defendants. Relying on the breast implant case, the court reasoned that imposing a duty to warn based on foreseeability would force manufacturers of component parts to hire experts to second-guess the way in which the finished product was made. Such an imposition would be unreasonable, the court explained, thereby rendering any foreseeability of potential dangers in a finished product irrelevant to determining the liability of a component parts manufacturer.

The Taylor court, therefore, relied on several separate analyses and grounds in rejecting the plaintiff’s argument that pump and valve manufacturers may be strictly liable under a duty-to-warn claim in connection with asbestos-containing gaskets and packing.
August 4, 2009

John R. “Jack” Trimarco
9454 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

Dear Jack,

I am writing this letter with my deepest thanks for your tremendous efforts in assisting in a murder investigation which focused on my client, Damien Gatewood.

During the early morning hours, shots were fired at a house party in the California area. Tragically, a guest was struck and died. Questionable eye witnesses identification by one neighbor, identified Damien Gatewood as the shooter.

Mr. Gatewood was arrested days later and had been incarcerated at Wayside Honor Ranch for one year awaiting trial.

I never believed that the authorities had the right man. Your long recognized and unmatched expertise in the polygraph field made you the obvious best choice to perform this critical examination.

You contacted me after you examined Mr. Gatewood. You told me that according to your examination Mr. Gatewood was conclusively not the shooter, a fact which supported by retired FBI Agent and polygraph examiner Ron Homer, during his quality control.

Armed with the Examination video, polygraph report and your curriculum vitae, I met with the prosecutor assigned the case. He directed me to the Los Angeles County Sheriff’s Department Polygraph Unit. I met with them to evaluate your test. They all acknowledged your unimpeachable integrity and expertise. They reviewed all charts, documents and video. I was advised by the Unit Chief that you ran a perfect examination and they agreed that Mr. Gatewood was two days later the case was dismissed and an innocent man was not convicted.

It is a tribute to your reputation that polygraph testing conducted by you is so well received and respected in the legal community.

Warm Regards,

MARKS & BROOKLIER, LLP

ANTHONY P. BROOKLIER

JACK TRIMARCO & ASSOCIATES
www.jacktrimarco.com
installed years after the pumps and valves were originally made and sold to the Navy.

O’Neil Challenges Taylor

For several months following the Taylor decision, the law appeared to be settled on this issue of products liability law. Pump and valve manufacturers brandished the Taylor case as they pursued summary judgment motions and other efforts to escape or limit potential liability. This did not last long, however. In September 2009, the apparent certainty and resolution that the First Appellate District provided with Taylor was shattered when the Second Appellate District issued O’Neil, which soundly rejects the reasoning and holding of Taylor.

As in Taylor, the plaintiff in O’Neil claimed that the decedent, Patrick O’Neil, died from mesothelioma in connection with exposure to asbestos-containing gaskets and packing used with pumps and valves on a Navy ship. The defendant manufacturers supplied the pumps and valves that were on the ship in question, and those pumps and valves included asbestos-containing gaskets and packing when they were originally sold and installed. The gaskets and packing that were original to those devices, however, were removed and replaced over time. The plaintiff did not establish that O’Neil ever handled the gaskets and packing that were original to the pumps and valves, and likewise did not prove that the manufacturers made or supplied any of the replacement gaskets and packing that he handled. At the close of trial, the pump and valve manufacturers moved for nonsuit on the ground that there was no evidence that the decedent was ever exposed to asbestos from the defendants’ products.

Although the motion for nonsuit was not based on the component parts doctrine, that was the basis on which the trial court granted the motion. And that is where the Second Appellate District started with its dismantling of the trial court’s decision as well as Taylor.

The O’Neil court first walked through a brief tutorial of the component parts doctrine, a review of the relevant case law, and a discussion of the policy reasons behind the doctrine. Based on that assessment, the court then announced that the pumps and valves on board a ship did not constitute component parts under this body of law. The pump and valve manufacturers did not supply the type of fungible, building-block material to which the component parts doctrine applies. Nor was it the case that the pumps and valves were incorporated into some other product, or that the manufacturers lacked control over the end use of their devices. Rather, the pump and valve manufacturers “made separate products with a specific purpose and use.” For these reasons, the O’Neil court concluded that the component parts doctrine did not shield the pump and valve manufacturers from liability.

In articulating this holding, the court noted that Taylor had reached exactly the opposite conclusion. Rather than attempt to explain or resolve the discord, the O’Neil court rejected Taylor, unapologetically declaring “we think that Taylor misses the mark.” Repudiating the legal analysis and factual assessment of Taylor, the O’Neil court explained that Taylor improperly characterized a ship’s steam system as a finished product and pumps and valves as components of that product. Such broad definitions “make the analysis unworkable” and “simply stretch the defense too far,” the court concluded.

Next, the O’Neil court reasoned that, even if the pumps and valves could be considered components of a larger product, the component parts doctrine did not apply, because the pumps and valves themselves may be defective. Focusing on the design defect claim, the court articulated the plaintiff’s argument that the pumps and valves were defective because they were designed to be used with asbestos-containing gaskets and packing. Describing that claim as “a perfectly acceptable theory,” the court rejected the component parts doctrine on this additional ground, which was not discussed or addressed in the Taylor decision.

The O’Neil court could have ended its analysis there, as the trial court based its grant of nonsuit solely on the application of the component parts doctrine. The O’Neil court, however, was not finished with its repudiation of the Taylor decision. In a move that may prompt the California Supreme Court to grant review, O’Neil went on to address the central issue of Taylor: whether pump and valve manufacturers may be strictly liable for injuries caused by exposure to asbestos-containing gaskets and packing that were made by other companies and used with the pumps and valves many years after the original gaskets and packing were removed and discarded. Contrary to Taylor, the O’Neil court answered this question in the affirmative.

Distinguishing the cases that Taylor relied upon (Blackwell and Powell) and relying on the cases that Taylor distinguished (Tellez-Cordova, DeLeon, and Wright), the O’Neil court firmly rejected the analysis and holding of Taylor. In particular, the court argued that the Taylor decision was premised on a fundamental misunderstanding of Tellez-Cordova. According to the O’Neil court, that case stands for the proposition that a manufacturer is strictly liable for an injury that is caused by the intended use of the manufacturer’s product in conjunction with another product. Like the grinder in Tellez-Cordova, the operation of which caused certain grinding wheels from other companies to release dangerous toxins, the pumps and valves aboard ship were used as intended when asbestos-containing gaskets and packing were removed and replaced, and it was that use that caused the asbestos-related injury. The O’Neil court thus concluded that the holding of Tellez-Cordova could not be distinguished or avoided, and the Taylor court’s attempt to do so was inappropriate.

Turning to DeLeon, which the Taylor court distinguished on the ground that the defendant in that case was involved with the design of the injury-causing equipment, the O’Neil court reasoned that those facts actually brought the case in line with the issues before the court. Seizing on the plaintiff’s design defect claim, the court noted that the pump and valve manufacturers played a distinct role in designing their devices to utilize asbestos components and to fit within the larger workings of the ship’s equipment. Those facts, the court reasoned, made DeLeon directly applicable. Like the defendant in that case, the pump and valve manufacturers could be liable for injuries caused by products made by others because those manufacturers had a hand in the overall design of the system in which the products were utilized.

Finally, O’Neil not only rejected the Taylor court’s efforts to distinguish the Wright case but also proclaimed the fact pattern of Wright to be identical to the issues before the court. Focusing on the design defect claim, the court reasoned that the design defect in Wright centered on the fitness of the product at issue (a water cannon) to be used with another, necessary product (a mounting mechanism that failed). Similarly, the pumps and valves were defective because they were designed to be used with asbestos-containing gaskets and packing that caused Taylor’s injury.

Thus, in what may be considered a primary portion of its decision, and at the same time dicta, the O’Neil court determined that an asbestos plaintiff could pursue design defect and duty-to-warn claims against pump and valve manufacturers in connection with exposure to asbestos from gaskets and packing made by other companies. The court concluded succinctly by stating: “In sum, we believe that Taylor was wrongly decided.”

The sharp divide and strong dissonance between Taylor and O’Neil may prompt the California Supreme Court, having denied review of Taylor, to grant review of O’Neil. Resolution of this issue of products liability law is important for several reasons. Most notably, the holding of Taylor closes off an entire theory of liability for asbestos plaintiffs, while the holding of O’Neil provides plaintiffs with an expanded theory of liability. Resolution of this conflict, therefore, is not
merely an intellectual exercise. It will have a significant effect on asbestos cases in California.

Furthermore, the legal issues considered by Taylor and O’Neil extend beyond pump-and-valve cases. The rule that is ultimately established will apply to all cases in which plaintiffs allege exposure to asbestos through the handling of replacement parts. In particular, the rule will cover the category of asbestos matters known as friction cases, in which the claimed exposure relates to the removal and replacement of brake pads and clutch pads on vehicles. If the reasoning and holding of Taylor prevail, no longer will plaintiffs be able to argue that vehicle manufacturers are strictly liable for injuries caused by asbestos-containing brake pads and clutch pads that were installed on vehicles long after the vehicles were manufactured. By contrast, plaintiffs will vigorously pursue such a theory if the ruling set forth in O’Neil carries the day.

In addition, it may be argued that the theories and principles set forth in Taylor and O’Neil apply to all products liability actions, not just asbestos cases. Both cases included detailed overview and analysis of products liability law, and both courts discussed and relied on many cases that did not involve asbestos exposure. Accordingly, the central issue considered by these cases affects not only asbestos plaintiffs who seek to argue that a manufacturer is liable for injuries caused by replacement parts made by another company but also all claimants who seek to assert that theory with respect to any type of product.

For all these reasons, it is important that this issue of products liability law be addressed and resolved. Although Taylor and O’Neil appear to be diametrically opposed in their holdings, there may be a way to settle the relevant issue by harmonizing the two decisions. If the supreme court grants review, perhaps it will engage in such an exercise, which begins with an understanding that Taylor and O’Neil conducted their respective analyses through different prisms of products liability law.

Duty to Warn vs. Design Defect

The Taylor court specifically stated that it was concerned solely with the duty-to-warn theory of products liability.25 The court did not consider, therefore, whether the plaintiff could have properly articulated a claim for strict liability under a design defect theory. As a result, the Taylor decision does not appear to preclude a plaintiff from alleging that a product is defectively designed if it requires the use of asbestos-containing components or replacement parts. In fact, it may be argued that the court’s handling of the DeLeon and Wright cases specifically left the door open for such a claim. The court distinguished those
cases on the grounds that they did not raise pure duty-to-warn issues but rather presented facts relating to a product’s design, which allowed for the imposition of strict liability against a manufacturer for injuries caused by another company’s product.

By contrast, the O’Neil court specifically focused on the design defect theory throughout its opinion. It embraced DeLeon and Wright, both design defect cases. It twice articulated the plaintiff’s theory that the pumps and valves at issue were defectively designed because they required the use of asbestos-containing gaskets and packing. It characterized that claim, which was not even considered by the Taylor court, as “a perfectly acceptable theory.” It did all of this without explicitly recognizing that the Taylor court limited its analysis and holding to the duty-to-warn theory of products liability.

It could be argued, therefore, that the O’Neil court’s criticism of Taylor was misplaced. Perhaps both courts were correct in their analyses and conclusions. Perhaps Taylor was correct to conclude that, as a matter of law, pump and valve manufacturers cannot be strictly liable for failing to warn about the dangerous propensities of asbestos-containing gaskets and packing that were made by other companies and used with the pumps and valves many years after the original gaskets and packing were removed. At the same time, perhaps O’Neil was correct to conclude that, as a matter of law, pump and valve manufacturers may be strictly liable under a design defect theory if the devices at issue were designed to require asbestos-containing gaskets and packing.

This analysis, as well as many other factual and legal matters raised by the Taylor and O’Neil decisions, will be the subject of further discussion, debate, and decisions from California’s appellate courts. Perhaps the California Supreme Court will weigh in. In the meantime, parties to asbestos cases, as well as the attorneys who represent them, are without clear direction on an important issue of products liability law.

---

2 O’Neil v. Crane Co., ____ Cal. App. ____, 2009 Cal. LEXIS 1585 (Sept. 25, 2009), was decided by Division Three of the Second Appellate District, while O’Neil was decided by Division Five. In addition, Division Two of that district is currently considering a case that addresses the same issues and arguments: Hall v. Warren Pumps, No. B208273 (2d Dist., Div. 2), appeal filed May 29, 2008.
4 Taylor, 171 Cal. App. 4th at 574.
5 The More You Know About Us, The Better Choice You Will Make

It’s More Than Just a Referral
It’s Your Reputation
Make the Right Choice

Personal Injury • Products Liability
Medical Malpractice • Insurance Bad Faith

Referral Fees per State Bar Rules
www.cdrb-law.com
310.277.4857
The More You Know About Us,
The Better Choice You Will Make

CDR

CHEONG DE NOVE ROWELL & BENNETT

10100 Santa Monica Blvd., Suite 2460, Los Angeles, California 90067
310.277.4857 office  ■  310.277.5254 fax
www.cdrb-law.com
Legal and Ethical Issues Regarding Third-Party Litigation Funding

IN THE CURRENT ECONOMIC ENVIRONMENT, small- and middle-market business entities with shrinking operational budgets are seeking innovative means to finance their commercial litigation claims against larger, well-funded adversaries. While law firms and attorneys who offer pure contingency fee arrangements certainly present one potential solution, the complexities and explosive growth in the costs of commercial litigation often prove demonstratively prohibitive for pure contingency professionals to fully litigate a client’s claim to successful resolution. Moreover, often the client’s preferred lawyer or law firm—whose business model may be restricted as a function of billable hours—cannot take even the client’s strongest cases solely on contingency. Consequently, a large number of meritorious commercial claims never reach their day in court.

Capital market investment in commercial litigation by outside parties offers a compelling new solution to level the playing field among financially disparate parties to a lawsuit, spreading the extraordinary costs and risk of litigating claims among plaintiffs, their law firms, and outside investors.1 In a typical arrangement, the third-party funder (TPF) pays the legal bills of the plaintiff in return for a specified percentage of any damages recovered in the case.2

Under these arrangements, law firms that otherwise cannot offer pure contingency fee agreements may offer their clients a mutually preferable hybrid fee payment structure, in which one portion of the client’s legal fees is paid by the TPF and another portion is tied to a percentage of recovery by the client. For both the businesses that need funding and the law firm whose bills are paid by the investor, the TPF emerges as a white knight, affording the client the opportunity to gain access to the justice system with the legal counsel of the client’s choice.

A number of potential legal and ethical pitfalls, however, await the lawyers and law firms negotiating third-party funding contracts. Those seeking to pursue cases with a TPF must consider these issues before entering into any third-party fee arrangement for the funding of litigation.

Champerty and Jurisdiction

The legal viability of investing in commercial litigation has been the focus of a relatively small but quickly growing body of case law. Based on the common law doctrine of champerty, some jurisdictions in the United States expressly disallow third parties from funding litigation while taking a portion of any recovery. “Champerty” is defined as a “bargain between a stranger and a party to a lawsuit by which the stranger pursues the party’s claim in consideration of receiving part of any judgment proceeds.”3 The doctrine developed under common law to counter what was deemed an unsavory practice by individuals with capital to pay for the expenses of a lawsuit and share in the recovery of land.4 In modern times, the doctrine of champerty is alive and well in a number of jurisdictions throughout the United States.5

Still, sufficient jurisdictions in the United States and internationally either permit, or do not expressly proscribe, investment in litigation to make doing so a profitable enterprise.6 As a result, TPFs are starting to take root across the country. The currently nascent trend of investing in commercial litigation appears poised to grow rapidly over the coming years as a means of offering investors market-neutral returns on investment while helping corporate enterprises and law firms effectively transfer a portion of the risk inherent in litigating claims.

California courts repeatedly have held that the common law prohibition against champerty has never been adopted in the state as a general matter.7 Some might argue, however, that California Business and Professions Code Section 6129 proscribes attorneys from entering into champertous transactions. But the language of the section narrows the scope of lawyers’ prohibited champertous conduct: “Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.”

In Martin v. Freeman, the court of appeal considered the applicability of Section 6129 to the facts of the case and found that the section carves out a prohibition of specified activity from the otherwise lawful activity of champerty. In doing so, the Martin court stated that Section 6129 “proscribe[s] a very few of the many activities which two centuries and more ago were considered champertous.”8 The nominal plaintiff, Martin, obtained an assignment of a claim against the defendant, Freeman, in liquidation of a debt owed to Martin by the real party in interest to the case.9 Significantly, the Martin court gave a literal reading to Section 6129 and thus limited its reach.10 The court held that a transfer by one who owed money to an attorney of a claim that the transferor possessed against a third party was not a transaction made criminal by statute. Accordingly, plaintiff Martin, an attorney, was not barred from obtaining judgment in a suit against Freeman.11

Attorneys negotiating third-party funding contracts, and litigating claims pursuant to those agreements, must be keenly aware of the widely varied legal permissibility of champertous contract agreements across state jurisdictions. In Maine and Mississippi, for example, all champertous arrangements constitute criminal offenses.12 In a few jurisdictions, champerty is statutorily prohibited,13 while in others case law is the authority for disallowing champertous agree-

The legal viability of investing in commercial litigation has been the focus of a relatively small but quickly growing body of case law.

Jonathan D. Petrus is a lawyer and executive managing director of Arca Capital Partners, a commercial litigation risk transfer fund.
mments. Courts have done so in these juris-
dictions by declaring champertous provisions void and unenforceable. In other jurisdictions, investment in litigation is not expressly disal-
lowed, but courts have held that champertous provisions may give rise to a defense in a breach of contract claim. In jurisdictions that either prohibit champerty or recognize it as an affirmative defense to breach of contract, the TPF may not be entitled to any restitution. Finally, many jurisdictions simply do not gen-
erally prohibit investment in litigation.

Based on the widely varied jurisdictional applica-
tion of champerty laws to investment in litigation, a state-specific analysis of the legality and enforceability of third-party fund-
ning arrangements becomes the critical starting point for every attorney advising clients who are seeking to enter into an investment fund-
ing arrangement or litigate a claim financed pursuant to a third-party funding agreement. If lawyers and firms representing TPFs do not take care to structure transactions only in jurisdictions that do not prohibit them, the TPF becomes vulnerable to nonpayment by the plaintiff upon recovery. Indeed, the breaching party may assert that the funding agreement is unenforceable. Moreover, in some jurisdictions the TPF may be denied conventional remedies available for nonpay-
ment. Attorneys litigating funded cases must similarly take precaution not to partici-

pate in any arrangement that violates local champerty laws. Though not completely obvi-
ating these concerns, a choice-of-law provi-
sion in a third-party funding agreement select-
ing a jurisdiction that does not prohibit champerty or investment in litigation may offer a potential solution.

Ethical Considerations for Counsel

Jurisdictional legality, while crucial, is only a threshold issue in third-party funding mat-
ters. Equally significant are the ethical con-
siderations that may arise under these arrangements. Attorneys must be vigilant in mon-
toring these issues. First, attorneys rep-
resenting commercial plaintiffs in a juris-
diction that would void a funding agree-
ment as champertous should take care to advise against the consummation of a third-
party funding contract on behalf of a client that intends to dishonor the contract. An attorney that instructs a client to enter into a contract and then breach it based on unen-
forceability may be in violation of applicable ethical rules.

Second, a potential ethical conflict of inter-
est may arise for attorneys litigating their client’s claim stemming from litigation fund-
ing arrangements. The American Bar Association’s Model Rules of Professional Conduct address the concern that an attor-
ney’s financial relationship with a third party

may interfere with the attorney’s ability to render independent legal advice to the client. According to Model Rule 5.4(c), “A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal ser-

vices for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.” Courts similarly have been wary that an attorney’s duty of loyalty to a client may be subordinated to the demands of the entity that pays the lawyer’s fees. In a third-party funding arrangement, attorneys may compromise their independence by sub-
ordinating the best interests of their clients to the demands of the TPF paying the attorneys’ bills. Accordingly, attorneys litigating a funded claim must make sure that they do not give pri-

tority to the demands of a TPF over the inter-
ests and wishes of the client.

Third, attorneys that assist their clients in seeking outside funding must take care not to disseminate confidential information to the TPF without the client’s informed consent. Although the TPF may require information necessary to conduct its own due diligence and underwriting, the attorney cannot provide the information if it is confidential. Further-
more, the client must be made aware of any potential adverse consequences stemming from the dissemination of confidential and/or privi-

leged information, including waiver of privi-

lege and subjecting the information to dis-
covery, among other consequences.

Lastly, as a general matter, attorneys may not share fees with nonlawyers. Therefore the litigating attorney should not enter into an agreement when doing so would constitute impermissible fee splitting of the client’s recov-
ery with the TPF. Prohibited agreements could include those in which the attorney would receive a portion of the client’s recovery in a hybrid fee arrangement if the contingency portion of the attorney’s fees is shared with the TPF.

Aside from the potential for an attractive return on investment, third-party litigation funding in commercial cases offers the clear benefit of affording smaller business enter-
prises with limited legal budgets the capacity to litigate meritorious claims against adver-
saries with far greater resources. As investor demand grows for this emerging asset class, and as third-party litigation funding becomes more commonplace, applicable case law should develop to keep pace. More guidance is needed for attorneys considering the rep-
resentation of TPFs and litigants. For now, however, attorneys handling third-party litiga-
tion funding matters should be mindful and proceed with caution.


pelling economic, risk management, and public policy arguments in favor of capital market investment in litigation.

2. TPFs that invest solely in commercial litigation will fare better than lenders and investors that fund personal tort claims such as medical malpractice, personal injury, and the like. Courts around the world appear to be more hostile toward agreements involving unsophisti-
cated parties and their personal injury claims than they are toward agreements for investment in com-

mercial litigation, where parties are more sophisti-
cated. Compare Rancman v. Interim Settlement Funding Corp., 99 Ohio St. 3d 121 (Ohio 2003) with Anglo-

Dutch Petroleum Int’l, Inc. v. Int’l QPSX Ltd, 93 S.W.3d 87 (Tex. App. Houston 1st Dist. 2006). See also QPSX Ltd v. Ericsson Austl. Pty Ltd (No. 3), (2005) FCA 933 at 18 (in which the Federal Court of Australia held that litigation funding arrangements between commercial parties are not contrary to public policy, in part because “[the parties] are sophisticated, well resourced commercial actors operating in domestic and international markets for the sale of complex and potentially very lucrative technologies”).

3. BLACK’S LAW DICTIONARY 231 (6th ed. 1990) (citing Alexander v. Unification Church, 634 F. 2d 673, 677 (2d Cir. 1980)).

4. See Max Radin, Maintenance By Champerty, 24 CAL. L. REV. 48, 49, 60-1 (1935) (noting that “the prac-
tice of champerty in medieval times continued, and speculation which was the essence of the abhorred sin of usury”). See also Brown v. Bigne, 28 P. 11, 12 (Or. 1891) (“The doctrine [of champerty] was established to repress the practices of many who, when they thought they had title or right to any land, for the fur-
therance of their pretended right conveyed their inter-
est, or some part thereof, to great persons, and with

counterpart did oppress the possessors,” (cita-
tion omitted)).

5. See, e.g., Hall v. State, 655 A. 2d 827, 830 (Del. Super. Ct. 1994), aff’d, 269 Del. 583, 1995 Del. LEXIS 395 (Del. Oct. 27, 1995) (noting that champerty “continues to have vitality in this State,” and that “[i]n cases in which the evidence discloses that the assignment of the cause of action sued upon was tainted with champerty”); Toste Farm Corp. v. Hadbury, Inc., 798 A. 2d 901, 906 (R.I. 2002) (“This [c]ourt has previously recognized the common law doctrines of maintenance and champerty…although nearly half a century has elapsed since [Martin v. Clarke, 8 R.I. 389 (1866)], the opinions in adopting these doctrines, in my opinion, has never been overruled, doubted or denied, and the same remains the law of the state.”); Rancman, 99 Ohio St. 3d at 125 (“[A] contract making the repayment of funds advanced to a party to a pending case contingent upon the out-
come of that case is void as champerty…..”); Clark v. Cambria County Bd. of Assessment Appeals, 747 A. 2d 1242, 1245-46 (Pa. Commonw. Ct. 2000) (“Champerty has long been considered repugnant to public policy against profiteering and speculating in litigation and grounds for denying the aid of the court.”).

6. For a general survey of champerty rules throughout

Los Angeles Lawyer November 2009 37
‘Tis the season to keep it simple...  
...or take it over the top!

We’ll perfectly match your vision and budget this holiday season – from a casual company breakfast or lunch to an evening soirée with friends. You’ll love our creative approach to catering, budget-flexibility, exceptional cuisine and genuine service.

RESTAURANTS
PATINA | ZUCCA RISTORANTE | CAFÉ PINOT | KENDALL’S BRASSERIE & BAR
NICK & STEF’S STEAKHOUSE | PINOT BISTRO

BREATHTAKING VENUES
AT&T CENTER | MUSIC CENTER OF LOS ANGELES | WALT DISNEY CONCERT HALL | DESCANSO GARDENS

ANYTIME. ANYWHERE.  
CATERING FOR YOUR BUSINESS OR HOME!

To learn more, contact Bonnie 213 239 2593 bglassco@patinagroup.com
or Rob 213 972 7565 rcarson@patinagroup.com

Chef Joachim Splichal’s Patina Restaurant Group
www.patinagroup.com


8 Martin, 216 Cal. App. 2d at 643.

9 Martin, 216 Cal. App. 2d at 641.

10 The Martin court declined to extend §6129 to “[an assignment of a chose in action] in satisfaction of an antecedent debt,” noting that “the statute refers to an attorney who ‘buys or is interested in buying any evidence of debt or thing in action’ (italics added), and we believe the kind of transaction which is punishable as a misdemeanor is one in which there is a purchase in the ordinary sense of the word, and not the discharge of an antecedent debt.” Id. at 643.

11 Martin, 216 Cal. App. 2d at 643.


14 See note 5, supra.

15 See Rancman v. Interim Settlement Funding Corp., 89 Ohio St. 3d 121, 125 (Ohio 2005) (“[A] contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as champerty….”).

16 See, e.g., In re Faling Estate, 113 Or. 6, 34 (Or. 1924) (“It is a well-established general rule that champerty is…a defense in an action between the parties to the champertous contract.”).


19 See Schwartz, 939 P. 2d at 1037 (noting that “had there actually been a champertous agreement, [the plaintiff] would not have been entitled to restitution of the money he paid under the void agreement”) and Marshall, 445 A. 2d at 609 (denying plaintiff remedy of quantum meruit).

20 See ABA MODEL RULES OF PROF’L CONDUCT R. 8.4(c) (It is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”).

21 Oliver v. Board of Governors, 779 S.W. 2d 212, 215 (Ky. 1989) (“[A]n attorney’s primary loyalty will, as a practical matter, rest with the person or entity who pays him.”).

22 Commonwealth v. Downey, 793 N.E. 2d 377, 381-82 (Mass. App. Ct. 2003) (explaining that a lawyer’s agreement with a third party to reveal confidential client information without the client’s consent creates a conflict of interest under ABA RULES OF PROF’L CONDUCT R. 1.7(b)).

23 See CAL. RULES OF PROF’L CONDUCT R. 1.320 (“Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer.”).
A design patent protects a product’s ornamental appearance—in other words, the look of a product. This may include the shape and configuration of the product as well as any surface decoration. Design patents are used to protect products such as toys, clothing and apparel, jewelry and jewelry boxes, home furnishings and appliances, motor vehicles and automobile parts, and office equipment. A design patent consists primarily of drawings that illustrate the ornamental appearance to be protected.1

For years, well-established case law held that for a claim of design patent infringement to succeed, the accused design must appear substantially the same as the patented design to an “ordinary observer.”2 Over time, however, the law became more convoluted, particularly regarding an additional test for infringement—the “point of novelty” test.

In *Egyptian Goddess, Inc. v. Swisa, Inc.*, the Federal Circuit, in an en banc decision, abolished point of novelty as a separate test and held that the ordinary observer test is the sole test for design patent infringement.3 With *Egyptian Goddess*, the Federal Circuit has taken a more flexible approach to considering prior art in the infringement analysis for design patents. By doing so, the court was returning to the earlier guidance of the U.S. Supreme Court’s decisions in *Gorham Manufacturing Company v. White*4 and *Smith v. Whitman Saddle Company*.5

In *Gorham*, a case decided in 1871, the Supreme Court gave its seminal test for design patent infringement. The case involved a defendant who was accused of infringing the plaintiff’s design patent for spoon and fork handles.6 The Supreme Court noted that the issue was whether the determination of infringement hinged on the perspective of an ordinary observer or an expert accustomed to comparing designs side by side. The Court held that the viewpoint of an ordinary observer, rather than an expert, was determinative,7 noting that an expert was more likely to distinguish counterfeits that were

James Juo is a partner at Fulwider Patton LLP, a Los Angeles law firm specializing in all aspects of intellectual property law. His practice emphasizes patents and trademarks.
intended to deceive the less discerning eye of an ordinary purchaser.\textsuperscript{8} Indeed, patent protection for designs would be destroyed “if, while the general appearance of the design is preserved, minor differences of detail in the manner in which the appearance is produced, observable by experts, but not noticed by ordinary observers, by those who buy and use, are sufficient to relieve an imitating design from condemnation as an infringement.”\textsuperscript{9}

Moreover, the Gorham Court held “that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.”\textsuperscript{10} Nevertheless, although categorically stating that infringement was based on the “eye of an ordinary observer” rather than that of an expert, the Court relied upon testimony from tradesmen “familiar with designs” to establish how ordinary purchasers would view the patented and accused designs—and found no infringement.\textsuperscript{11}

Some 20 years later, the Supreme Court revisited the law of design patents in Whitman Saddle.\textsuperscript{12} The design patent at issue was for a saddle, which the Court described as a combination of two known saddles.\textsuperscript{13} The cantle (or back) of the saddle was substantially the same as the saddle known as the Jenifer tree, while the pommel (or front) of the saddle was substantially that of the well-known Granger tree—except that the disputed saddle did not feature the “slight curved drop” at the rear of the pommel that was typical of the Granger saddle but instead had a sharp drop (that is, “a nearly perpendicular drop of some inches”).\textsuperscript{14}

The Court found that “the Jenifer cantle was used upon a variety of saddles.”\textsuperscript{15} The Court stated that “we do not think that the addition of a known cantle to a known saddle, in view of the fact that such use of the cantle was common, in itself involved genius or invention, or produced a patentable design.”\textsuperscript{16}

Described as “being substantially the Granger saddle with the Jenifer cantle,”\textsuperscript{17} the saddle in dispute was comparable to the patented Whitman design, except that the saddle had a slight curved drop at the rear of the pommel consistent with the Granger saddle instead of Whitman’s sharp drop at the rear of the pommel.\textsuperscript{18} The Court held that if the Whitman saddle’s sharp drop at the rear of the pommel was “material to the design,” it would render Whitman’s design “patentable.” Otherwise, the patented design would be no different from an old saddle with an old cantle added—“an addition frequently made.” The Court found that the lack of the sharp drop at the rear of the pommel “was so marked that in our judgment the defendant’s saddle could not be mistaken for the [patented] saddle.”\textsuperscript{19}

**Pre-Federal Circuit Decisions**

After the Supreme Court decisions in Gorham and Whitman Saddle, circuit courts proceeded to further develop the infringement analysis for design patents with reference to the prior art. For example, in *Applied Arts Corporation v. Grand Rapids Metalcraft Corporation*, the Sixth Circuit in 1933 addressed the question, “What does the ordinary observer...know of the prior art?” and concluded, “A careful analysis of *Gorham v. White* and other adjudicated cases supplies the answer.”\textsuperscript{20}

The ordinary observer is not any observer, but one who, with less than the trained faculties of the expert, is “a purchaser of things of similar design,” or “one interested in the subject.” The mythical prudent man in negligence cases is not the Hottentot or Abyssinian who has never seen a locomotive or driven an automobile, but one who has average familiarity with such instrumentalities, and can form a reasonable judgment as to their speed and mode of operation. So is the average observer not one who has never seen an ash tray or a cigar lighter, but one who, though not an expert, has reasonable familiarity with such objects, and is capable of forming a reasonable judgment when confronted with a design therefor as to whether it presents to his eye distinctiveness from or similarity with those which have preceded it. This view is confirmed by the factual analysis which the Supreme Court gave to the evidence in the Gorham Case, laying its greatest stress upon the evidence of sameness there given by the large number of witnesses “familiar with designs, and most of them engaged in the trade.”\textsuperscript{21}

The Court concluded that “while there is some similarity between the patented and alleged infringing design, which without consideration of the prior art might seem important,” such similarity “is no greater” than that between the patented design and the prior art.\textsuperscript{22} Recognizing that infringement of a design patent “is not to be determined by making too close an analysis of detail,” the court nonetheless concluded that “where in a crowded art the composite of differences presents a different impression to the eye of the average observer (as above defined), infringement will not be found.”\textsuperscript{23}

Relying on the Whitman Saddle and Applied Arts precedents, the Eighth Circuit in 1944 stated in *Sears, Roebuck and Company v. Talge* that whether “the appearance of two designs is substantially the same” involves two considerations.\textsuperscript{24} First, “the identity of appearance, or sameness of effect as a whole upon the eye of an ordinary purchaser must be such as to deceive him, inducing him to purchase one, supposing it to be the other.” Second, “the accused device must appropriate the novelty in the patented device which distinguishes it from the prior art.”\textsuperscript{25} In view of these two considerations, a determination of infringement requires “a comparison of the features of the patented device with the prior art and with the accused design.”\textsuperscript{26} Thus, the pre-Federal Circuit decisions applied the ordinary observer test in light of the prior art—even though some courts, such as the Eighth Circuit in *Sears, Roebuck*, were starting to identify the prior art as a separate consideration.

**From Litton Systems to Egyptian Goddess**

The Federal Circuit in *Litton Systems, Inc. v. Whirlpool Corporation* relied on *Sears, Roebuck* for the proposition that “no matter how similar two items look, ‘the accused device must appropriate the novelty in the patented device which distinguishes it from the prior art.’”\textsuperscript{27} This proposition was christened the “point of novelty” test.\textsuperscript{28}

The design patent that was alleged to be infringed was for a microwave oven. The Court referred back to its prior validity analysis, which had identified the microwave oven’s patentable combination as a three-stripe door frame, a door without a handle, and a latch release lever on the control panel. None of the elements of the combination were present in the allegedly infringing Whirlpool design.\textsuperscript{29} To further support its conclusion that the differences between the two designs were not minor, the Court cited *Applied Arts* in finding that the differences between the patented and accused designs were as great as between the patented design and the prior art—which was “crowded with many references relating to the design of the same type of appliance.”\textsuperscript{30}

Subsequent Federal Circuit decisions further developed the point of novelty test as a distinct test separate from *Gorham’s* ordinary observer test of the design as a whole.\textsuperscript{31} Generally, the point of novelty test requires an identification of the differences between the prior art and the patented design, and a determination of whether the accused design has appropriated the novel ornamental features that distinguished the patented design from the prior art.\textsuperscript{32} The more points of novelty that are identified, the more opportunities exist for a defendant to argue that its accused design does not infringe because it has not appropriated all the points of novelty.\textsuperscript{33}

As a practical matter, patentees and accused infringers proceeded to cherry-pick features to be designated as points of novelty in sup-
2007 presented a refinement of the point of novelty test in which the patentee would have to prove that the point of novelty was a “non-trivial advance of the prior art.”

**The En Banc Ruling**

The Federal Circuit in 2008 heard *Egyptian Goddess* en banc “to address the appropriate legal standard to be used in assessing claims of design patent infringement.” The court suggested that the prior art Nailco buffer was not a separate point of novelty test but instead “a three-way visual comparison between the patented design, the accused design, and the closest prior art.” Swisa, the accused infringer, argued, on the other hand, that the point of novelty was “soundly based on *Whitman Saddle.*”

Addressing Swisa’s reliance on *Whitman Saddle,* the court noted that “[a] close reading of *Whitman Saddle* and subsequent authorities indicates that the Supreme Court did not adopt a separate point of novelty test for design patent infringement cases.” The court held that “the point of novelty test, as a second and free-standing requirement for proof of design patent infringement, is inconsistent with the ordinary observer test laid down in *Gorham.*”

The court approvingly discussed the Applied Arts court’s reading of *Gorham* that the ordinary observer was a nonexpert who had reasonable familiarity with similar articles in the prior art. “The context in which the claimed and accused designs are compared, i.e., the background prior art, provides such a frame of reference and is therefore often useful in the process of comparison.” An ordinary observer conversant with the prior art “will attach importance to differences between the claimed design and the prior art depending on the overall effect of those differences on the design.” Moreover, “the ordinary observer test does not present the risk of assigning exaggerated importance to small differences between the claimed and accused designs relating to an insignificant feature simply because that feature can be characterized as a point of novelty.” The court concluded that “the ‘ordinary observer’ test should be the sole test for determining whether a design patent has been infringed.”

The designs at issue in *Egyptian Goddess* involved nail buffers. EGI’s patented nail buffer design was rectangular with raised buffing pads on three sides, while the nail buffer by Swisa had raised buffing pads on all four sides. Both the patented and accused designs were hollow and had square cross-sections. The prior art included the Nailco Buffer, which was a hollow triangular (or prism-shaped) nail buffer with raised buffing pads on all three sides, and the Falley Buffer Block, which was a solid rectangular nail buffer with raised buffing pads on all four sides.

Swisa’s expert declared that “four-way” buffers with four different abrasive surfaces have long been on the market, and “[t]he difference between a buffer with abrasive on three sides—a ‘three-way buffer’—and a buffer with abrasive on four sides—a ‘four-way buffer’—is immediately apparent to any consumer used to buying nail buffers.” In contrast, EGI’s expert opined that Swisa’s design constituted infringement because, like EGI’s patented design, Swisa’s also had square cross-sections and “multiple” raised buffer pads. Despite this claim, the court found that the expert “failed to address the fact that the design of the [prior art] Nailco patent is identical to the accused device except that the Nailco design has three sides rather than four.” The court suggested that the prior art Nailco buffer also closely resembled the accused design in that both designs have a hollow tube and multiple rectangular sides with buffer pads mounted on each side.

Endorsing the district court’s conclusion that “[i]n the context of nail buffers, a fourth side without a pad is not substantially the same as a fourth side with a pad,” the en banc panel held that no reasonable trier of fact could find that an ordinary observer would believe the accused design to be the same as the patented design. The prior art was used to establish a distinguishing ornamental feature that the hypothetical ordinary observer would emphasize when viewing similar products in the marketplace.

**Applying the New Test**

A few months later, a U.S. district court in *Arc’teryx Equipment, Inc. v. Westcomb Outerwear, Inc.* relied on the ordinary observer test from the *Egyptian Goddess* decision in granting summary judgment of non-infringement for a curvilinear zipper. The court characterized the patented design as having two sections—“a straight section and a diagonal section.” The accused product, however, was characterized as having three sections—“a straight section, a diagonal section, and a second straight section.”

The prior art included a German jumpsuit with a zipper that has a long straight section, extending from the middle of the jumpsuit to the upper chest area, before it curves into a short diagonal section that loops back into a straight section near the top of the jumpsuit. In addition, the prior art contained a jacket with a zipper that has a long straight section over most of the jacket before it curves into a short diagonal section beginning at the collar. Thus, the prior art included a jacket zipper containing “one straight and diagonal section,” and a jumpsuit zipper containing “a straight section, curving into a diagonal section, which curves into a second diagonal section.”

Assessing the prior art and the patented design, the court concluded that “it is the number, length, and placement of the straight and diagonal sections which differentiate” the designs. In particular, there were at least two different types of curvilinear zipper designs in the prior art—and one had two sections (straight and curved), and the
other had three (a curved section located between two straight sections). The court found that an ordinary observer, familiar with the prior art, would not be deceived into confusing the accused three-section zipper with the patented two-section zipper.\(^4\)

As in *Egyptian Goddess*, in which the Federal Circuit concluded that the number of abrasive pads in a nail buffer was a distinguishing ornamental feature to consumers based on the prior art, the district court relied on the prior art in *Arc’teryx Equipment, Inc. v. Westcomb Outerwear, Inc.* to find the number of curved and straight sections in a curvilinear zipper to be a distinguishing ornamental feature.

A claim of design patent infringement must show that the patented and allegedly infringing designs are sufficiently the same in general appearance and effect in light of the prior art that the designs would appear to be identical to an ordinary observer.\(^5\) The ordinary observer test is the sole test for design patent infringement now that the Federal Circuit has abolished the point of novelty test as a separate test for infringement.\(^6\) Using the prior art to suggest which ornamental features an ordinary observer would emphasize may provide a basis for a finding of noninfringement. But lifting the burden of having to prove a separate point of novelty test for design patent infringement should strengthen design patents drafted with careful attention to the novel ornamental features of the design.

---

1 A utility patent, on the other hand, typically contains a significant amount of text, including claims defining the scope of patent protection for the substance of an invention. A utility patent can protect the structure or function of an invention beyond its ornamental appearance. Unscrupulous invention promotion companies, however, will routinely file design patents instead of utility patents. See Bender v. Dudas, 490 F. 3d 1361 (Fed. Cir. 2007). The U.S. Patent and Trademark Office also maintains a public forum for complaints regard-


3 Id.


6 Gorham, 81 U.S. at 512.

7 Id. at 527 (“There never could be piracy of a patented design, for human ingenuity has never yet produced a design, in all its details, exactly like another—so like that an expert could not distinguish them.”).

8 No counterfeit bank note is so identical in appearance with the true that an experienced artist cannot discern a difference.”; see also Ashley v. Weeks-Numan Co., 220 F. 899, 902 (2d Cir. 1915) (Side-by-side comparison of the accused product with the patented design “is not a proper test” for infringement.)

9 Gorham, 81 U.S. at 528; cf. Armnik & Assoc., Inc. v. Saint-Gobain Calmer, Inc., 501 F. 3d 1314, 1322 (Fed. Cir. 2007) (For trigger sprayers sold as components to producers of liquid household products, the court held that the ordinary observer was an institutional or corporate buyer rather than an end-user consumer.).

10 Gorham, 81 U.S. at 528; see also Jennings v. Kibbe, 10 F. 669, 670 (C.C. N.Y. 1882).

11 Gorham, 81 U.S. at 530.


13 Id. at 676.

14 Id. at 680, 682. The tree or saddletree is the frame of a saddle. The American Heritage College Dictionary 1199 (3d ed. 1997).

15 Whitman Saddle, 148 U.S. at 681.

16 Id.

17 Id. at 680.

18 Id. at 682.

19 Id.


21 Id. at 430.

22 Id.; see also Bevin Bros. Mfg. Co. v. Starr Bros. Bell Co., 114 F. 362, 363 (C.D. Conn. 1912) (“The shape of defendants’ bells differs from plaintiff’s more widely than plaintiff’s differs from the [prior art], and therefore defendants’ construction does not infringe [plaintiff’s patented design].”).

23 Applied Arts, 67 F. 2d at 430.

24 Sears, Roebuck & Co. v. Talge, 140 F. 2d 395, 395 (8th Cir. 1944).

25 Id. at 395-96.

26 Id. at 396.


28 Id. (citation omitted).

29 Id. at 1443.

30 Id. at 1444 (citing Applied Arts Corp. v. Grand Rapids Metalcraft Corp., 67 F. 2d 428, 430 (6th Cir. 1933)).

31 See Unidynamics Corp. v. Automatic Prods. Int’l, Inc., 157 F. 3d 1311, 1323-24 (Fed. Cir. 1998) (The ordinary observer and point of novelty tests are “two distinct tests,” and “the merger of the point of novelty test and the ordinary observer test is legal error.”); see also Sun Hill Indus., Inc. v. Easter Unlimited, Inc., 48 F. 3d 1193, 1197 (Fed. Cir. 1995); Winner Int’l Corp. v. Wolo Mfg. Corp., 905 F. 2d 375, 376 (Fed. Cir. 1990).


33 See Goodyear Tire & Rubber Co. v. Hercules Tire & Rubber Co., 162 F. 3d 1113, 1121 (Fed. Cir. 1998); see also Karl G. Hanson, Intellectual Property Strategies for Protecting the Looks of a New Product, 81 J. PAT. & TRADEMARK OFF. SOC’Y 887, 901 (“The inclusion of too many novel elements in Goodyear’s design patent effectively limited the patent’s scope, making it easier for Hercules to avoid infringement.”).


36 Id. at 672.

37 Id.

38 Id.; see also Elmer v. ICC Fabricating, Inc., 67 F. 3d 1571, 1578 (Fed. Cir. 1995) (“Under Gorham, the focus is on the overall ornamental appearance of the claimed design, not selected ornamental features.” (emphasis in original)).

39 Egyptian Goddess, 543 F. 3d at 675. The Federal Circuit also held that while the patentee has the ultimate burden of proving infringement, the accused infringer has the initial burden of production of prior art to be considered in the ordinary observer test. Id. at 678.

40 Id. at 676-78.

41 Id. at 682.

42 Id.

43 Id.

44 Id.; see also Applied Arts Corp. v. Grand Rapids Metalcraft Corp., 67 F. 2d 428, 430 (6th Cir. 1933) (“[W]here in a crowded art the composite of differences presents a different impression to the eye of the average observer [familiar with the prior art], infringement will not be found.”).


46 Id.

47 Id.

48 Id.; cf. Egyptian Goddess, 543 F. 3d at 682 (In view of the prior art, the number of abrasive pads differentiated the nail buffer designs.).

49 Egyptian Goddess, 543 F. 3d at 672.

50 Id.
The differing approaches of many practicing attorneys regarding the application of the standard of care in medical malpractice actions in California resemble Sir Winston Churchill’s description of Russia—“a riddle, wrapped in a mystery, inside an enigma.” Some trial lawyers present the standard of care as an abstract concept or as a matter of scientific principle. Others argue to the trier of fact that the standard is set by what “should have been done” in a given factual setting. Some lawyers suggest that the standard of care is a matter of policy. This definitional battle can, and frequently does, direct the outcome of malpractice litigation.

In actuality, however, California jury instructions and case law are clear: The standard of care as an abstract concept or as a matter of scientific principle. Others argue to the trier of fact that the standard is set by what “should have been done” in a given factual setting. Some lawyers suggest that the standard of care is a matter of policy. This definitional battle can, and frequently does, direct the outcome of malpractice litigation.

In actuality, however, California jury instructions and case law are clear: The standard of care, as applied to the conduct of a professional accused of negligence, should be based on objective, verifiable facts. Although medical malpractice is a subset of negligence, major substantive differences distinguish the two. For example, medical malpractice actions involve the need for expert testimony, the application of MICRA (the Medical Injury Compensation Reform Act), and the existence of special rules that apply in certain contexts.2

The “reasonable person” standard of negligence is not changed by classifying a case as a malpractice action; rather, the means of proof is altered. The defendant’s conduct is still measured against the conduct of reasonable people in the same or similar circumstances. In this sense, the standard is akin to the Basic Speed Law, which mandates that drivers maintain a safe speed, depending on the circumstances presented by a given situation, and not drive “at a speed which endangers the safety of persons or property.”3 In malpractice litigation, the standard of care likewise governs what a prudent professional would do under actual circumstances.

Thus, the standard of care should not be viewed as an abstract or mysterious concept. Instead, it should be an objectively verifiable fact of “what like people do” in any given situation. Moreover, the case law and author-

Howard A. Kapp is a Los Angeles lawyer whose practice focuses on plaintiff’s tort litigation, including medical and legal malpractice.
ites are in agreement on this point. Indeed, the prevailing approved jury instruction on standard of care in California states:

A specified type of medical practitioner is negligent if [the defendant] fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful [specified type of medical practitioners] would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the standard of care.”

Case law further amplifies that “[t]o be sure, ‘professional prudence is defined by actual or accepted practice within a profession, rather than theories about what ‘should’ have been done.’”

Because the standard of care— or its synonym, standard of practice—is not a matter of opinion but rather the objectively verifiable fact of what is actually done by practitioners, malpractice litigation should not implicate issues of what practitioners should do as a matter of “better public policy” or, on the other hand, what practitioners “can get away with” as an absolute “scientific” or “medical” minimum. The former is sometimes the plaintiff’s argument, and the latter, the defendant’s. Nor, to be sure, is it a minimum standard akin to a posted speed limit. Just as the Basic Speed Law may require a driver to maintain a speed well below the posted speed limit, so too the standard of care, when properly understood and applied, may require a professional to perform above and beyond the requirements of a bare scientific necessity.

Irrespective of the desires of well-meaning consumer advocates, malpractice is not a vehicle to improve quality by retrospective fiat but instead is a legal theory designed to compensate for past negligence. While malpractice actions may lead to improvements in the quality of professional conduct, this is a desirable but incidental outcome of a compensation-for-negligence system.

A professional whose conduct has been called into question is judged against the backdrop of the real-life experience that forms the environment in which the professional practices his or her profession, rather than abstract notions or scientific principles. Since that environment is, by definition, unknown to the lay public, expert testimony is required to inform triers of fact what competent members of the relevant professional community do in their practices. The standard jury instructions—CACI 501 (second paragraph) and BAJI 6.30— make this explicit. Evidence of the defendant practitioner’s “state of mind”—whether good or bad—may be interesting to jurors and lawyers, but it has no role to play in classic malpractice litigation except as it may pertain to ancillary causes of action, such as intentional torts. Indeed, “it is no defense to a charge of negligence that [the defendant] did the best he could.”

**Expert Testimony**

The role of the standard-of-care expert thus is usually twofold: teach the jury the specific community standard governing the case (that is, the standard of care; in the automobile analogy, the jury would be told the speed limit) and then explain how the defendant’s conduct did, or did not, depart from (or “fall below”) that standard of care. Expert testimony is generally required precisely because this information is outside an ordinary person’s knowledge. The uncommon exception to this rule is malpractice within common knowledge, such as a failure to remove a sponge during surgery. Still, in those cases, it may be good practice to have an expert testify to the obvious, since other issues—such as causation or assigning blame among defendants—may be intertwined with assertions of negligence.

CACI 506, which replaced BAJI 6.00.1 as the authoritative definition of standard of care, provides that “a [type of professional] is negligent if [he or she] fails to exercise the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful [type of professionals] would possess and use in similar circumstances.” This jury instruction is phrased in neutral, present-tense terms and does not invite the jury to make policy decisions or judge the wisdom of the present system; instead, it strictly instructs the jury to find, as a matter of fact, what “reasonably careful” practitioners do.

The standard of care (or practice) is thus a term of art that defines a threshold below which the defendant professional is deemed to be negligent. Unless the expert affirmatively demonstrates an understanding that the term is a “community standard,” the expert is likely to provide legally meaningless or misleading opinions that can only confuse the jury and the issues. This type of testimony would be a realization of the adage “garbage in, garbage out.”

In fact, the term “standard of care” is so misunderstood and so loosely applied, it would be better and more precisely identified to the jury as the “custom of the community” or “community standard.” When an expert is questioned about standard of care, the expert must first demonstrate an understanding of the concept and then be able to explain it in a manner consistent with the jury instructions. Any other testimony or opinions—whether they explicate good faith, motives, or policy concerns—should be precluded as irrelevant and affirmatively misleading.

It is not surprising that the defense and plaintiff bars often misapply the standard of practice. Naturally, their misapplications differ according to their opposing objectives. Using the testimony of their expert witnesses, defense attorneys sometimes argue that the standard of care should be judged by a minimum threshold, which in practice would equate to what a practitioner “can get away with.” This approach is designed to lower the standard of care and bring the questioned conduct of the practitioner within the community standard. However, this approach is simply not consistent with the established objective legal standard.

For example, a defense expert may be critical of a plaintiff expert’s higher standard of practice as constituting “defensive medicine”—practicing medicine in fear of being sued for malpractice. In fact, however, the relevant community is aware of the potential of being sued. Thus, this argument, while it has a certain political and logical appeal, is wrong-headed. A relevant professional community’s concerns about claims reduction is as much a part of the community standard as the existence of insurance coverage, or the practitioner’s pride in being a good doctor. What doctor, for example, would simply announce, without protest, to a patient that his or her insurer had denied coverage for a possibly important test because of concerns that the test was statistically not cost-effective?

The defense expert may choose to engage in a subjective, misleading, and irrelevant discussion of “what you can get away with” instead of “this is what practitioners really do.” This type of testimony is commonly offered in a conclusory fashion, without any discussion of why “what you can get away with” is purported to be the standard of care. By testifying in this fashion, the defense expert erroneously assumes the standard encompasses the lowest common denominator and ignores real-life considerations. Indeed, it is not uncommon for these defense experts to testify that they “would never personally practice [in the same way as the defendant]”—as if the defendant doctor were permitted to act at a lower standard.

This testimony also may be characterized by speculative, indeed dismissive, assumptions that the standard of care provided in other settings—whether in minority communities, public or charity hospitals, a teaching or nonteaching facility, or HMOs—is lower than the expert’s own practice community. Such assumptions are and should be exposed as legally erroneous and repugnant to core American values. It would undoubtedly shock providers in those other settings to know that their colleagues assume that they provide an inferior level of care. Obviously, no provider, insurer, or HMO holds itself out as being permitted to provide
argued the community standard itself was, in retrospect, inadequate, allowing infectious diseases to spread to innocent victims. This is the difference between litigation-for-compensation (permitted) and using litigation to alter community standards (not permitted).

Consider, for example, a scenario that reflects the divergent positions of the defense and plaintiffs’ bar. An HMO patient dies while waiting two weeks for a critical but expensive test that, in retrospect, would have diagnosed a life-threatening cardiac condition. The defense asserts the standard of care did not require that the test be done on an urgent basis. The plaintiff’s cardiology expert independently surveys his professional colleagues and asks, “Assuming that you had a patient with this presentation, how long could you wait to get this test done?” The answers range from one to two weeks. Plaintiff’s counsel subsequently restates the question as, “Assuming that you had a patient with this presentation, how long would a competent cardiologist in this community wait to do the test?” The doctors uniformly reply that the test should have been done no later than the next day.

The cardiologist’s phrasing (“could”) involves a scientific, risk-benefit analysis that is not based in actual practice. Essentially, his question seeks to ascertain when the risk of sudden but avoidable cardiac death became so statistically significant that it would rise to a high level of concern to the answering cardiologist. The expert’s question has no necessary relationship with the real world and is an attempt to practice medicine in a vacuum. In fact, the answer called for by the expert’s question is totally subjective, relating solely to the answerer’s—and not necessarily a patient’s or the community’s—level of risk tolerance.

The attorney’s question (“would”), however, is framed in real-life experience and the objective context of a community standard. The lawyer’s question subsumes nonmedical but important considerations that are the daily components of the practice of medicine (and, by analogy, other professions as well). In the medical context, these would include, for example, 1) the lack of benefit in delay, 2) the patient’s convenience, 3) the interim management of the patient’s potentially fatal stress, 4) the availability of the testing equipment in the community, 5) insurance coverage, 6) a doctor’s internalized desire to advocate for his or her patients, 7) the decision to maintain a reputation among colleagues as a “good doctor,” 8) a doctor’s aim to promote his or her practice by demonstrating a caring approach for the patient’s needs, 9) the aspiration to be a good doctor, 10) the doctor’s and/or the patient’s risk-benefit analysis, based on their respective tolerance of risk, and 11) concern that delay would lead to a statistically certain but totally avoidable risk of disability or even death and, in that unhappy event, a medical malpractice claim.

This approach is how doctors are taught to practice medicine. No professional is taught to practice by the “what you can get away with” test. They are taught to practice with a sense of pride in an environment in which their patients have a right to demand more. Indeed, the standard of practice may involve factors not related to “science” or “necessity” or other factors that lawyers, jurors, and judges may assume are important.

Thus, the assumption that the standard of practice is directly tied to the avoidance of a bad outcome is wrong. Professionals commonly act out of concern for patients or clients, for professional and personal pride, and even for competitive reasons—not solely out of bare necessity. These factors can establish the standard of care, even if the connection between competition-driven behavior and the injury in question seems tenuous.

Consider an example from the legal malpractice arena. A lawyer accepts a case and properly calendars it for filing. On the very last day, as is the lawyer’s established practice—a practice that has worked well for decades—the lawyer hands the package of filing materials to a courthouse messenger. Unfortunately, on the way to the courthouse, the messenger is involved in a no-fault accident and is unable to complete the task. Since the standard is negligence, and not a guarantee of success, is the lawyer guilty of malpractice? The answer reflects attitudes toward the practice of law. Although a lawyer can usually “get away with” waiting to the last minute to complete a task, is that the appropriate conduct of a competent lawyer in the community?

The motivation of competent lawyers is not merely the timely filing of lawsuits; the motivation may well be to avoid sleepless nights, to bring positive results to partners, or to achieve good client relations. The stress-reducing motivation may not appear, at first blush, to be relevant to the standard of care, but it is useful to explain to the jury why one expert’s opinion is more credible than that of his or her opponent. Motivation is not itself decisive, but it may be offered to substantiate the credibility of the conflicting testimony. In evaluating conflicting expert testimonies, the jury is entitled to consider facts that demonstrate that the opposing expert’s opinions are based on an unrealistic—and thus false—view of how similarly situated people actually operate in a complex environment.
The standard of care in medical malpractice litigation is determined by subjective criteria.
True. False.

2. The “reasonable person” standard is irrelevant in determining the standard of care.
True. False.

3. The standard of care is defined in CACI 506.
True. False.

4. The standard of care is strictly a matter of weighing the conflicting experts’ opinions as to what they think is done by competent practitioners.
True. False.

5. The standard of care is used to determine the “better” public policy and thus improve public safety.
True. False.

6. Expert opinion is required to inform the jury on the standard of care solely because it is not a matter of common knowledge.
True. False.

7. Evidence that the defendant did the best he or she could do is a defense to malpractice.
True. False.

8. The meaning of the term “standard of care” is defined by the community of practitioners at issue.
True. False.

9. The standard of care is measured by what a practitioner can usually get away with.
True. False.

10. Juries should be instructed that a plaintiff may not use the existence of the practice of “defensive medicine” to prove malpractice.
True. False.

11. Settings such as charity hospitals and HMOs can be held to a lower standard of care because they are frequently underfunded or known to be more cost-effective.
True. False.

12. Courts have permitted parties to use malpractice litigation to establish a new and better standard of care.
True. False.

13. The determination of the standard of care in medical malpractice cases includes nonmedical considerations such as insurance coverage and doctors’ concerns about their own standing in the community.
True. False.

14. The jury is entitled to consider experts’ testimony regarding external factors that affect how those in the applicable community of practitioners actually function.
True. False.

15. Geography is usually a highly relevant factor in the determination of the standard of care.
True. False.

16. The community is measured solely by the defendant’s own area of recognized expertise, as determined by factors such as board certification.
True. False.

17. Only one standard of care is applicable to a defendant in a malpractice case.
True. False.

18. Cosmetic surgery is an AMA-recognized area of medical specialty.
True. False.

19. If a defendant negligently fails to refer the plaintiff to a specialist, the defendant is held to the standard of care for that specialty.
True. False.

20. In presenting their medical malpractice cases, plaintiffs should ignore the external factors that affect the actual community standard.
True. False.
standard of care is, and always will be, subject to conscious, or unconscious, manipulation, usually to suit the needs of the hiring lawyer who has arrived with check in hand. Indeed, testimony as to the fact of a community standard, even in the most obvious case, is subject to deliberate perjury.

Every medical malpractice lawyer has stories of bizarre standard-of-practice testimony from the other side’s expert. Board-certified specialists have testified successfully to the absence of a standard of practice for something as common as an uncomplicated broken leg. This is an unavoidable consequence of allowing—indeed requiring—expert witnesses to testify as to what other competent practitioners in the community do in the privacy of their own offices in response to very specific fact patterns. Nonetheless, the courts invariably permit such testimony on the assumption that such knowledge is gleaned, apparently by some sort of professional osmosis, by practice within the relevant community. This is a convenient fiction: the issues in malpractice cases are usually very fact-specific and rarely appear in some universally accepted practice guide.

### Defining the Community

Defining the relevant professional community is an essential task. It is well established that the initial focus in a malpractice action is on the challenged conduct and the defendant’s representations, not the defendant’s specialty. The community is no longer generally related to geography.

In some cases the medical procedure at issue can be performed by multiple medical specialists. For example, many physicians are commonly involved in primary care or general care, including internists, family practitioners, gynecologists, pediatricians, and others. Virtually all of these specialists will provide ongoing nonspecialty care to their regular patients. Thus, even though their specialties may be different, the assumption by doctors of a specific medical responsibility is what counts. Ultimately, and subject to CACI 506 (the multiple acceptable modalities rule), only one standard of practice is applicable. Thus, for example, a family practitioner—whose specialty necessarily overlaps with a number of other specialties—may be qualified to testify regarding the actions of a host of other specialists. In cases involving a procedure performed by radically different professionals, the same concept may still apply. Foot surgery, for example, is commonly performed by podiatrists but is also done by orthopedists—some of whom may be well trained for the procedure (such as foot-and-ankle specialists), and some not (general orthopedists).

Moreover, more than one standard of care may be applicable to the same defendant in a single case. Practitioners trying these cases must be particularly precise in their presentations to the trier of fact. The textbook example involves the claim of a negligent failure to refer a patient to a specialist, as defined by CACI 508. The plaintiff must offer expert testimony that the standard of care required the nonspecialist to refer the patient to a specific type of specialist and that the standard of care for that type of specialist would have required specific conduct.

Geography can sometimes be a factor in the standard of care. Historically, especially in medical malpractice cases, an assumption existed that “the community” corresponded to a particular geographical area. This view is largely archaic. CACI 501, which expresses the standard of care in terms of “same or similar circumstances,” does not mention location. Moreover, “[g]eographical location may be a factor considered in making that determination, but, by itself, does not provide a practical basis for measuring similar circumstances.” In fact, one court accepted, in opposition to a motion for summary judgment, the opinions of an Israeli orthopedist regarding the relevant standard of care in the United States.

Still, locality may be important in the relatively rare circumstance of a true emergency—for example, in a rural setting where there is simply no time to transport the patient to a better-equipped facility. In fact, in that example the “community” is not a geographical construct but rather a community of like practitioners—people who do what the defendant does. This definition of “community” involves several factors, such as licensure; the availability of local emergency services; the defendant’s representations, express or implicit, of qualifications (for example, the concept of “holding out”); specialization; and the duty to refer.

A common contemporary example of a doctor “holding out” his or her qualifications is that of the now ubiquitous “cosmetic surgeon.” Organized medicine has no such specialty. An established specialty of plastic surgery, requiring many years of formal training, exists, but “cosmetic surgery” may be little more than an advertising device to entice patients confused by the difference between cosmetic surgery and plastic surgery. Some cosmetic surgeons—who may have little or no specialty training—may even claim board certification, although the boards to which they refer are not affiliated with the American Medical Association and may be the medical equivalent of diploma mills. Still, if a patient is willing to undergo a procedure by one of these physicians, the patient is entitled to assume that the surgeon has appropriate credentials and can sue for fraud if something goes wrong due to lack of training or experience.

In fact, the duty to refer essentially changes “the community” from one for nonspecialists to one for the appropriate specialist. Assuming the presence of expert opinion that the defendant should have referred the patient or client to a specialist, the jury—if it finds that the failure to refer constitutes negligence—is required to hold the defendant to the standard of care of the specialist.

Finally, it is important to recognize that a defendant cannot lower his or her own standard of practice. This is sometimes argued by lawyers representing federal institutions (for example, the Veterans Administration), county (or charity) hospitals or providers, and some HMOs. Essentially, the argument is that the defendant can define his or her own (lower) standard of care without reference to the legally required community standard. This is allegedly justified by the defendant’s internal efforts to economize or, in the case of publicly supported facilities, lack of public funding. Of course, if a defendant facility is able to define its own standard of care, that defendant, almost by definition, must prevail in all cases. This argument has no support in law, common sense, or public perceptions. It is unimaginable that any facility would advertise its services as inferior or that its own staff would admit to a lesser standard.

Attorneys trying a malpractice action must be able to convey to their experts, the court, and ultimately, the trier of fact that the standard of care is the functional equivalent of the community standard—that is, what is actually done in the relevant professional community, considering all of the relevant factors, even those that do not directly implicate the scientific basis for the profession. The focus should be exclusively on objective compliance with relevant community standards. Any expert testimony or argument that ignores factors or issues involving what is actually done in the community should be viewed with deep distrust.

---

1. The rules that are applicable in defining “standard of care” in medical malpractice cases are the same for any form of professional negligence. Similarly, the same legal standard applies to specialists, with the conduct of specialists determined by the relevant community of specialists. See, e.g., Flowers v. Torrance Mem’l Hosp. Med. Ctr., 8 Cal. 4th 992, 997-98 (1994).
2. Id.
the common knowledge exception, see Gannon v. Elliot, 19 Cal. App. 4th 1, 6 (1993). 
9 Ales v. Ryan, 8 Cal. 2d 82, 93 (1936).
10 The terminology is somewhat confusing: a practitioner who is negligent is said to be “acting below the standard of care,” as if it were a demarcation line. A practitioner who is not negligent is said to be “acting within the standard of care.”
11 N.N.V. v. American Ass’n of Blood Banks, 75 Cal. App. 4th 1358 (1999) (“Allowing an expert to second-guess the profession results in the standard of care being established by the lay opinion of the jury; i.e., the jury substitutes its opinion of what the standard of care should have been for what the standard of care was as established by the medical profession. Existing law holds the applicable standard of care should not be “evaluated by the ad hoc judgments of a lay judge or lay jurors aided by hindsight.””); Spann v. Irwin Mem’l, 34 Cal. App. 4th 644 (1995); Osborn v. Irwin Mem’l Blood Bank, 5 Cal. App. 4th 234 (1992).
12 Some experts attempt to overcome their lack of knowledge of the actual practices of other practitioners by informal surveys of their colleagues. Experts who at least attempt to objectify the process by formally surveying the relevant community are perhaps so honest that they essentially disqualify themselves as standard-of-care experts (see Korshak v. Atlas Hotels, Inc., 2 Cal. App. 4th 1516, 1525 (1992)—leaving much of the field to rogues and professional experts. This is why most experienced experts claim to rely upon the usual boilerplate and frequently cynical mantra of “training, background, and experience.”
13 This assumption is commonly false since most practitioners, especially doctors, tend to practice mostly in the privacy of their offices. See, e.g., Avivi v. Centro Medico Urgente Med. Ctr., 159 Cal. App. 4th 463 (2008). The court of appeal held that the trial court had erred in rejecting expert testimony on the standard of practice from an Israeli orthopedist. See also text, infra.
15 Avivi, 159 Cal. App. 4th at 470.
16 Id.
17 Id.
18 The concept of facilities specifically includes higher-end diagnostic or treatment equipment—but not staff. It is almost impossible to imagine any emergency case in which a rural physician could not call an appropriate specialist for an emergency consultation.
19 The defendant, by accepting the assignment, presumably has at least implicitly represented himself or herself as qualified for the task. A defendant who falsely represents his or her qualifications may be guilty of fraud in inducing the patient or client to use the defendant’s services.
20 For example, several types of physicians—including generalists, specialists (orthopedists), and subspecialists (foot-and-ankle orthopedists)—and podiatrists may treat foot conditions. In a case against a podiatrist, it may be necessary to determine whether the relevant community is podiatrists or “foot doctors.” While, presumably, the standard of care for podiatrists in some contexts may be lower than, for example, foot-and-ankle orthopedists, it is doubtful that any podiatrist would admit to having a lower standard of practice than a foot-oriented physician.
21 See http://abms.org/About_ABMS/member_boards.aspx.
22 The belief that a generalist who negligently fails to refer is automatically at fault is thus in error. A negligent failure to refer merely shifts the community and, by definition, is only the first part of a two-step proof of standard of care.
23 See CACI 508 (medical); CACI 604 and Cal. Rules of Prof’l. Conduct R. 3-110(C) (legal).
Practitioners need to consider the advantages of formal bankruptcy to other means of closing a business

THE RECESSION IS TAKING A GRIM TOLL on American small businesses. Those “with one to 19 employees, nearly all of them family run, lost 737,000 jobs from the second quarter of 2007 through the third quarter of 2008, according to figures from the Bureau of Labor Statistics...That amounts to 53 percent of all private-sector losses for a group of companies with about 20 percent of all employees.”1 As businesses are closing, owners are seeking ways to cut their financial losses and bring things to an orderly end.

How does an attorney counsel a small business owner who wants to shut the doors? Many owners have invested much of their personal wealth into their businesses, while others have relied on home equity mortgage and credit cards as the primary source of financial support. Businesses with multiple owners, in turn, face complex tax, contractual, and other legal liabilities in a closure. If family members or others closely involved with the owner have had a significant role in the business, they too may be adversely affected. These unique interests must be identified in order to develop a complete closure plan.

When an owner decides to close a small business, there is usually little cash left to make parties whole or time available to settle debts in an orderly manner. In these situations, an attorney must unequivocally convey who is the client and what services will be performed so other interested parties recognize the attorney is not acting as their lawyer.2 The attorney must gather basic information about the business, identify issues likely to arise during the closure, and prepare to resolve them. Numerous due diligence lists are available to accomplish this; however, most infor-
mation can be categorized by whether it relates to a business or personal asset or liability and if an issue needs immediate attention or can be resolved later.

Next, an attorney must assess with the client if the business should be 1) sold through an asset sale or corporate acquisition, 2) dissolved and assets liquidated with the proceeds paid to creditors (or allow them to foreclose on their collateral), or 3) bankrupted or an assignment made for the benefit of creditors.

**Sale of the Business**

Selling a business is likely the preferable option. First, the owner may recover a higher net value for the business. This is particularly true if the owner takes certain basic housekeeping actions. Businesses are often valued based on a multiple of revenue; thus, an effort should be made to collect outstanding accounts receivable. Documenting valuable contractual relationships can also enhance value. Finally, organizing and updating the books and records will help a buyer to understand the business.

Second, the owner may be able to remain with the new company as an employee or independent contractor. With many small businesses, the owner is vital to its operations either as the primary point of contact with customers or the one with the know-how on product development or service delivery. A prospective buyer may find these relationships and knowledge essential to the future success of its company.

Third, an owner may find buyer candidates among competitors, strategic vendors, employees, and investors. In addition to asking personal contacts, the owner may place advertisements in newspapers, trade publications, or online. A business broker is also another option. A sale to a party that understands the industry and may already have or can readily obtain the licenses and permits needed to operate the business may be advantageous. Employees, vendors, and customers may also benefit if they can maintain a relationship with the buyer. However, the sale of a business to a competitor presents a risk that the competitor will fail to close the purchase and instead try to steal customers or use information learned during the sales arrangements to the seller’s disadvantage. A properly drafted confidentiality or nonsolicitation agreement can usually address this, but common sense protection, like disclosing the most sensitive information only when a deal is certain, should be adopted.

An attorney must also be aware that when an owner collaborates with competitors, antitrust laws may be triggered. Antitrust violations and compliance issues generally arise when the parties meet certain financial or market share thresholds. Small businesses are not usually affected, but some acts—such as price-fixing agreements—constitute per se antitrust violations.

When the business being sold is a corporation, limited liability company, or partnership, the deal may be structured as either a corporate acquisition or asset sale. Under the former, the buyer acquires the shareholder, member, or partner interests in the entity through a transfer of those interests or a merger. While ownership changes, the entity continues to exist, and its liabilities remain intact. However, in an asset sale, identified assets (and sometimes particular liabilities) are acquired or assumed. Generally, only liabilities attached to a particular asset being acquired, such as liens, are inherited by the asset purchaser. A buyer of a distressed business is likely to prefer an asset sale because it helps reduce the potential for liability for obligations related to the business.

The deal may be structured to realize certain beneficial planning opportunities. For contracts, including leases or supply agreements, the consent of the other party is usually required to transfer that obligation. However, if the business is incorporated, a sale may be accomplished through an acquisition of ownership interests without triggering antitassignment rules.

An owner must also be aware that buyers will want certain representations and warranties. Depending on how these are drafted, including whether any remain in effect after the deal is closed, an owner could face ongoing liability. An owner may also be asked to indemnify the buyer for certain liabilities or consent to the buyer’s withholding of a portion of the purchase price until exposure for a liability has passed. The owner may try to avoid liabilities by selling the business on an as-is basis; however, buyers may reject this proposal.

Unless otherwise agreed to, a sale will not relieve an owner from liability for personal guarantees given to lenders in business transactions or personal credit card or home equity loans used to finance the business. Applying cash received from a sale to these obligations is an appropriate means of alleviating some or all of these financial burdens.

If the owner assigns a contract to the buyer for which the owner has personal liability, the nonselling party must give the owner a novation in order to eliminate the owner’s legal exposure. This means that the nonselling party agrees that it will look solely to the owner’s successor for performance under the contract. For example, if the owner leases space for the business, and the landlord consents to the buyer’s assuming the lease, the owner remains liable under the lease unless the landlord expressly releases the owner from that obligation.

In a family-owned business, the owner’s personal and business assets are frequently so intermingled that selling the business also affects the owner’s personal finances. In the sale of a business, creditors should have an incentive to reach an accommodation that maximizes the value of the business and allows the owner to pay off debts. This may be an opportune time for the owner to negotiate with lenders and creditors to accept lesser amounts as payment in full. This step, however, may not be available for other liabilities.

**Employees**

Employee liabilities include payroll taxes, statutory notices related to layoffs, pension funds, and insurance matters. If these liabilities are not addressed appropriately, owners, officers, or directors may face liability. For example, payroll taxes withheld from employee paychecks are held in trust by the employer for the benefit of the government. Those responsible for collecting these payments on behalf of a company can face personal liability for failure to do so.

When a layoff becomes effective, discharged employees must receive their final paychecks. This paycheck must include all outstanding wages and vacation time accrued up to the time of discharge. In calculating amounts due, employers should review their employment manuals, employee offer letters, and employment contracts to verify the compensation rate and number of vacation days that each employee has vested on the termination date. Expense reimbursements, if any, are due in the ordinary course for such payments.

The Worker Adjustment and Retraining Notification Act (WARN) also creates liabilities for employers. Under federal law, as supplemented by California’s stricter provisions, employers must give timely notices of mass layoffs to employees. Any owner with 75 or more full-time or part-time employees should be familiar with these statutes, especially since penalties for noncompliance include paying each affected employee an amount equal to up to 60 days of back pay and benefits, daily civil penalties, and attorney’s fees.

In addition to employees, local government officials and the California Employment Development Department (EDD) must also receive notification. An owner should expect EDD staff to visit and advise workers on their rights to unemployment insurance and, possibly, retraining programs. A silver lining in this situation is that notice of closure may cause local government leaders to attempt to find some form of assistance to
keep the business open.

While some exceptions to the 60-day notice are made for a faltering business or natural disaster, a company must still make a reasonable attempt to give notice of the layoff.\textsuperscript{15} Since the WARN laws are not entirely clear in their breadth and scope, prudence dictates erring on the side of giving notice. Finally, if the business is being sold through a corporate acquisition, or the buyer intends to rehire the employees on substantially the same terms, notice may not be required.\textsuperscript{16}

Small businesses sometimes provide their employees with a 401(k) pension program. An owner should plan to terminate any pension program to avoid ongoing responsibility. This will likely take significant time and effort. Although this process does not need to be completed before all employees have been discharged, officers and directors of a company should not overlook this issue, because they may have fiduciary responsibilities for the proper operation and termination of the plan.\textsuperscript{17}

Under federal and California laws,\textsuperscript{18} any employer with more than two employees that has a group health insurance plan must provide terminated employees covered by that plan with written notice advising them that they can keep their coverage at their own cost. However, if the company is closing and terminating all its health insurance plans, then the continuation of coverage for former employees is not required. Similarly, workers’ compensation insurance should be terminated promptly in order to save costs; however, liability may extend after the business is closed due to outstanding claims.

Employees who are laid off are generally entitled to unemployment benefits. When the last paycheck is given, the employee must be provided EDD Pamphlet DE 2320,\textsuperscript{19} which describes the employee’s rights regarding filing for unemployment. With certain jobs and industries, unemployment taxes are not collected, and employees do not qualify for unemployment benefits.\textsuperscript{20} For small businesses, the owner and family members working in the business, including children under 18,\textsuperscript{21} are customarily excluded from coverage unless an election was filed to provide for such benefits and the appropriate payroll deductions were made. When a business is sold, these rules also apply to officers and directors who are the owners of a company.\textsuperscript{22}

Close the Doors

If a sale is unrealistic, the owner may lock the doors and wait and see if anyone comes to collect on business debts. If these liabilities belong solely to a corporation or LLC, the owner may not be overly concerned. Regardless, even if the owner had the foresight to form an entity, the likelihood is that the owner bears responsibility for these obligations. Owners must often give personal guarantees for business debts or use personal credit to obtain funds to operate the business.

Secured creditors, such as mortgage lenders and personal property lenders, are likely to proceed with foreclosure actions to recover their collateral. Similarly, landlords will initiate unlawful detainer actions to regain possession of leased property.

Unsecured creditors may defer taking action to avoid paying legal fees. Nevertheless, an owner must be attentive to creditors who wait to file until the applicable statute of limitations is about to expire. For an ordinary breach of contract claim, this is usually four years.\textsuperscript{23} A creditor who obtains a judgment on a claim can enforce it for 10 years and renew it for another 10.\textsuperscript{24} A judgment can also be recorded in county real estate records. If the debtor subsequently acquires real property in that county, a judgment lien will attach to the property’s title, which will make resale difficult—if not impossible—until the judgment is settled.\textsuperscript{25} Finally, when a judgment has been obtained, the defendant can be ordered to sit for a debtor’s examination and asked about the existence and location of assets.\textsuperscript{26}

The Uniform Fraudulent Transfer Act as adopted in California\textsuperscript{27} not only gives creditors another collection tool but also allows them to wait years after a business has closed before acting. Under the act, a debtor who 1) transfers assets with the intent to hinder, defraud, or delay creditors or under certain circumstances did not receive reasonably equivalent value for the transaction and 2) is insolvent at the time of the transaction or would be made insolvent by the transaction may be deemed to have committed a fraudulent transfer. Creditors can unwind this transfer in order to recover assets. The statute of limitations on a fraudulent conveyance action is seven years from the date of the transfer.\textsuperscript{28} While numerous defenses may be asserted against a fraudulent conveyance claim, an owner needs to be cognizant that when business is starting to decline, company transactions must be validated and documented in order to protect the owner and the vendors.

An owner who lacks the funds to wind up the business may be inclined to walk away.
In this current economic environment, attorneys have a significant opportunity to demonstrate how they can assist small business owners.

is providing a mechanism for liquidating the debtor’s assets and allocating them to creditors. If the proceeds are insufficient to pay creditors in full, the balance will be discharged unless the debt relates to 1) federal, state, and local tax claims (subject to specific time rules), 2) spousal support and child support, 3) most student loans, 4) secured debts, 5) fines and penalties imposed by government agencies, 6) fraud-based claims, and 7) punitive damage claims. Further, in a personal bankruptcy, the debtor’s assets are not entirely subject to liquidation to pay creditors. While California law provides for two alternative and mutually exclusive lists of personal exemptions, there are certain common exemptions, including motor vehicles (up to a certain dollar amount), professional licenses, tools of a trade (up to a certain dollar amount), and pensions and certain other retirement accounts. A third benefit of bankruptcy is that a debtor can gain some breathing room, because bankruptcy law imposes an automatic stay against collection actions. On the other hand, a bankruptcy filing exposes the owner’s business dealings to scrutiny. Transactions engaged in prior to the filing and those between the bankrupt party and its affiliates one year prior to the filing are not covered, which should exclude most small business transactions. However, unlike a bankruptcy trustee, who can be elevated to the status of a bona fide purchaser when challenging the sufficiency of security instruments held by secured creditors, an ABC assignee is generally deemed to be a successor with rights no greater than those of the assignor. Moreover, an assignee does not have the power to force a sale of assets free and clear of pre-existing security interests, so the assignee must negotiate with secured lenders in order to sell encumbered assets. The differences between an ABC and bankruptcy include 1) the assignee is selected by the company instead of appointed by the bankruptcy trustee, 2) the assignee has discretion to set fees, while trustee fees are set by statute, 3) the debtor cannot seek an automatic stay, and 4) no cap is imposed on a landlord’s claim for breach of a lease. Generally, an ABC is considered less expensive and faster than bankruptcy; however, if creditors do not feel the ABC is being conducted fairly, they could force an involuntary bankruptcy, which could eliminate any cost or time savings.

Once the business is closed and its assets liquidated, the owner may still need to attend to some issues. If the business was operated in a corporate form, it must be dissolved with the secretary of state. This process can be started before liquidation is commenced or deferred until disposition of all assets. Once provision has been made for any remaining creditor claims and tax obligations (including the filing of returns) have been settled, the company as a legal entity will be dissolved, and minimum franchise taxes will no longer be due.

Business owners who are shutting their doors may be reluctant to retain counsel to help with this process because of concerns over fees and fears of becoming entangled in a legal morass. Also, the legal community has often not extended itself to reach out to the small business community and be responsive to their issues. However, in this current economic environment, attorneys have a significant opportunity to demonstrate how they can assist small business owners, especially those in financial distress, and help them work through the issues of closing a business in a manner that leaves little or no financial and legal exposure.

3  A business broker may be found via the California Association of Business Brokers at http://www.cabb.org.
4  See Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a, requiring detailed reporting and review by the Federal Trade Commission for deals in which the parties or the transaction is of a certain size. However, transactions under $50 million are not covered, which should exclude most small business transactions.
6  See SALES AND MERGERS OF CALIFORNIA BUSINESSES (CEB 2009).
7  CIV. CODE §1531.
8  I.R.C. §6672(a).
9  LAB. CODE §201.
11 Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§2101 et seq.; California supplement to WARN, LAB. CODE §§1400-08 (often referred to as Cal-Warn).
12 LAB. CODE §1400(a).
13 29 U.S.C. §2104(a)(1); LAB. CODE §1402.
14 LAB. CODE §1401.
18 Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. §§1161 et seq. I.R.C. §414 applies to employers who have more than 20 employees in the past year. The California Continuation Benefits Replacement Act of 1977, including Health and Safety Code §1366.20, applies to employers with two or more but less than 19 employees.
20 See, e.g., UNEMP. INS. CODE §§629-637.
21 UNEMP. INS. CODE §631.
22 UNEMP. INS. CODE §637.
23 CODE CIV. PROC. §337.
25 CODE CIV. PROC. §§697.310.
26 CODE CIV. PROC. §§708.110-708.205.
27 CIV. CODE §§3439-3439.12.
28 CIV. CODE §3439.09.
30 In general if the debtor has a certain level of financial wherewithal (income from all sources above the median income for the state, subject to deductions and adjustment), the debtor will be required to file under chapter 13, by which some secured debt can be crammed down to its fair market value and unsecured creditors are limited to net income of the debtor over the payment period. See 11 U.S.C. §1325.
34 11 U.S.C. §§547(c)(1), (2).
SELECTING THE RIGHT NEU®
California’s Foremost Mediator

The Academy is pleased to recognize over 70 n

Michael Bayard
(213) 383-9399

Daniel Ben-Zvi
(310) 234-5677

Lee Jay Berman
(213) 383-0438

Viggo Boserup
(310) 309-6205

Christine Byrd
(310) 277-1010

Kenneth Byrum
(661) 861-6191

Greg Derin
(310) 552-1062

Michael Diliberto
(310) 201-0010

Max Factor III
(310) 456-3500

Jack Fine
(310) 553-8533

William Fitzgerald
(310) 440-9090

Linda Fritz
(619) 236-1848

Leonard Levy
(310) 201-0010

James Lingl
(805) 231-7765

Christine Masters
(818) 955-8518

Steve Mehta
(310) 657-1001

Richard Millen
(818) 501-2787

Jeffrey Palmer
(626) 795-7916

At www.CaliforniaNeutrals.org you can search by subject matter expertise, location and preferred ADR service in just seconds. You can also determine availability by viewing many members’ online calendars, finding the ideal neutral for your case in a way that saves both time and money.
The California Academy of Distinguished Neutrals is a statewide association of mediators and arbitrators who have substantial experience in the resolution of commercial and civil disputes and who have been recognized for their accomplishments through the Academy’s peer nomination and extensive review process. Membership is by invitation only and is limited to individuals who devote substantially all of their professional efforts to service as a neutral, and is awarded regardless of provider affiliation.

TRIAL JUST BECAME EASIER
Neutrals & Arbitrators Profiled Online

Neutrals across Southern California, including...

George Calkins
(310) 309-6206

R.A. Carrington
(805) 565-1487

Eli Chernow
(818) 995-3584

Steven Cohen
(310) 315-5404

Tim Corcoran
(909) 798-4554

Lawrence Crispo
(213) 926-6665

Paul Fritz
(805) 963-8789

Kenneth Gibbs
(310) 309-6205

Reginald Holmes
(626) 432-7222

Laurel Kaufer
(818) 888-4840

Joan Kessler
(310) 552-9800

Louise LaMothe
(805) 563-2800

Barry Ross
(818) 840-0950

Deborah Rothman
(310) 452-9891

Steve Rottman
(310) 288-3700

Philip Saeta
(626) 799-0226

Ivan K. Stevenson
(310) 540-2138

Kenneth Weinman
(310) 444-3030

To find the best neutral for your case, please visit our complete member roster at

www.CaliforniaNeutrals.org
ACCIDENT ANALYSIS/RECONSTRUCTION

A R TECH FORENSIC EXPERTS, INC.

ACCIDENT RECONSTRUCTION SPECIALISTS

CALIFORNIA TECHNOLOGY ASSOCIATES
17410 Maysing Street, Granada Hills, CA 91344, (800) 368-9303. Web site: www.technology-assoc.com. Contact Dr. Ojavo, chairman. Over 1700 cases. Our staff of PhDs and professors has many scientific publications and decades of testing and testifying experience. We handle all types vehicle issues such as crash and precrash speeds, seatbelt usage, airbag deployment, component failure, roadway design, low speed rear-end impacts, pedestrian biomechanics, rollover, visibility issues, golf car, and low speed vehicle safety. Computer animation and simulation services, scene inspections, crash measurements, tire skid testing and calculations are also provided. Free phone consultation or visit our Web site for more information.

WILLIAM KUNZMAN, PE
1116 Down and Country #43, Orange, CA 92868, (714) 973-8383, fax (714) 973-8821, e-mail: mail@traffic-engineer.com. Web site: www.traffic-engineer.com. Contact William Kunzman, PE. Traffic expert witness since 1979, both defense and plaintiff. Auto, pedestrian, bicycle, and motorcycle accidents. Largest verdict: $10,300,000 in pedestrian accident case against Los Angeles Unified School Dist. Largest settlement: $2,000,000 in auto accident case against Caltrans. Before becoming expert witness, employed by Los Angeles County Road Department, Riverside County Road Department, City of Irvine, and Federal Highway Administration. Knowledge of governmental agency procedures, design, geometrics, signs, traffic control, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA; graduate work—Yale University.

MR. TRUCK ACCIDENT INVESTIGATION AND RECONSTRUCTION
P.O. Box 398, Brentwood, CA 90303-0398, (800) 337-6494, fax (925) 625-2965, e-mail: william@mrtruckar.com.

Contact William M. Jones. Accident analysis and reconstruction. Court-qualified expert regarding car vs. truck, truck vs. car cases, trucking industry safety, and driver training issues, including Power Point court presentations. See display ad on page 63.

CARL SHERIFF, PE, FORENSIC ENGINEER

ACCIDENT RECONSTRUCTION/MOTORCYCLE

EDWARD P. MILICH, PE
P.O. Box 5, Torrance, CA 90507, (310) 710-4788, fax (310) 323-0152, e-mail: epm@epmgengineering.com. Web site: www.epmgengineering.com. Degrees/Licenses: CA Licensed PE in Mechanical Engineering, MS Mechanical Engineering. BS Mechanical Engineering. Member: Society of Automotive Engineers Motorcycle Technical Committee, National Motorcycle Roadracing Champion, #1 Plate Holder. Expert Motorcycle Roadracing Licensee. Published by Society of Automotive Engineers, Motorcyclist Magazine, etc. Mechanic/Machinist/Weilder. Specialties: motorcycle dynamics, motorcycle performance issues accident reconstruction, vehicle testing and data acquisition, finite element analysis, technical writing and communications, 20 years of motorcycle experience, former NHTSA associate, Practical “Hands On” Mechanical Engineer, reasonable rates, “I translate the language of engineering to the understanding of the common man.” See display ad on page 41.

ACCOUNTING

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-6700, 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, subprime, 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.

ANDERSON ECONOMIC GROUP, LLC
238 Pasadena Avenue, Suite 203, South Pasadena, CA 91034-2380, fax (818) 424-1107, e-mail: MRHollis@AndersonEconomicGroup.com. Web site: www.AndersonEconomicGroup.com. Contact Michael R. Hollis. The economists, CPAs, and senior consultants at Anderson Economic Group provide expert testimony in each of their practice areas: public policy, market and industry analysis, and analysis of business valuation. Our services include business and asset valuation, commercial damages, breach of contract, antitrust economics, and strategic acquisition advice. With specialized industry expertise in alcoholic beverages, automotive, economic development, franchised businesses, real estate, technology, energy, patents and intellectual property, our experts have credibility and are recognized nationwide.

CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699. Web site: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Carlyn Irwin or Elisabeth Browne. 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 INQUIRY
889 South Figueroa Street, Suite 2003, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: drnote@fulcrum.com. Web site: www.fulcrum.com. Contact David Noite. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysts and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client victories. Our expertise encompasses damages analysis, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, MBAs in accounting, finance, economics, and related subjects. See display ad on page 1.

JAMES E. GILL, CPA, CRFA, CFE, DABFA, CFP, CFF
25 years of experience as an expert witness. Forensic accounting, securities fraud, insurance fraud, partnership disputes, corporate disputes, marital dissolutions, business valuations, estate valuations, all types of economic damage calculations, and tax and fraud investigations.

GLENN M. GELMAN AND ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: rsquar@gmgcpa.com. Web site: www.gmgcpa.com. Contact Richard M. Squar. Winner of Inside Public Accounting’s 2008 “Best of the Best” award given to only 25 firms across the country, Glenn M. Gelman and Associates provides these litigation support services: expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accounting, and trial exhibit preparation. Our areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits distribution, tax consequences of settlements, reconstruction of accounting records, embezzlement and fraud, contract costs, lost profits, construction claims, damage computations, and malpractice cases. Our comprehensive case list is available upon request. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Honored by Construction Link as the “Best Accounting Firm for the construction industry.” Glenn M. Gelman has been appointed and served as special master in litigation support matters and has testified over 30 times. Comprehensive case list is available upon request. See display ad on page 57.

GURSEY/SCHNEIDER LLP

HARGRAVE AND HARGRAVE, AN ACCOUNTANCY CORPORATION
520 Broadway, Suite 680, Santa Monica, CA 90401, (310) 576-1090, fax (310) 576-1080, e-mail: terry@taxwizard.com. Web site: www.taxwizard.com. Contact Terry M. Hargrave, CPA/ABV/CFF, CFE. Litigation services for family law and civil cases. Past chair of California Society of CPA’s Family Law Section, business valuation instructor for California CPA Education Foundation. 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.

KRYCLER, ERVIN, TAUBMAN, AND WALHEIM
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 995-1040, fax (818) 995-4124. Web site: www.info@ketw.com. Contact Michael J. Krycler. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Krycler, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 50.

DIANA G. LESGART, CPA, CFE, CVA, AN ACCOUNTANCY CORP.
22024 Lassen Street, Suite 106, Chatsworth, CA 91311, (818) 886-7140, fax (818) 886-7146, e-mail: Lesgart3@msn.com. Contact Diana G. Lesgart, CPA, CFE, CVA. Specialized accounting and litigation support services in the areas of family law litigation, including tracing of separate
and community property assets, pension plan tracing, forensic accounting, business valuations, goodwill calculation, expert testimony, cash available for support, Moore-Marsden calculations, fraud investigations, real estate analysis, community property balance sheet. Over 25 years of accounting experience with 21 years of litigation support specialization. Appointed as Section 730 accounting expert. Ms. Lesgart’s profile can be found at www.jurispro.com/DianaLesgartCPACFEPCPA. Expert is fully English/Spanish bilingual. See display ad on page 59.

SCHULZE HAYNES LOEVENGUTH AND CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: kschulze@schulzehaynes.com. Web site: www.schulze-haynes.com. Contact Karl J. Schulze, principal. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recovery, 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. See display ad on page 45.

SMITH DICKSON, AN ACCOUNTANCY CORPORATION
18100 Von Karman Avenue, Suite 420, Irvine, CA 92612, (949) 553-1020, fax (949) 553-0249, e-mail: debbie.dickson@smithdickson.com. Web site: www.smithdickson.com. Contact Deborah Dickson, CPA. CPA 25+ years, testifying 15+ years, audits, reviews, evaluations of companies, financial statement and business profitability analysis, document review, reconstruction of accounting records; asset, note, capital, expense, cash flow tracing, lost revenues, lost property, economic damages, business dissolution; business valuations, IRS, FTB, EDD, and SBE tax controversy/negotiations. Industries include service, professionals, medical, manufacturing, distribution, real estate, construction,esco, and title.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF AND HUNT
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278, 363 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-8816, fax (949) 219-9095; 831 State Street, Suite 291, Santa Barbara, CA 93101, (805) 648-4038, fax (805) 963-4088, e-mail: expert@wzwh.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 47.

ZIVETZ, SCHWARTZ AND SALTSMAN, CPAS
ADA/DISABILITY DISCRIMINATION

Haight Consulting
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 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. Expert witness in sexual harassment. 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.

ANESTHESIOLOGY

Roger F. Donenfeld, MD

APPRAISAL AND VALUATION

Fulcrum Inquiry
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnolte@fulcrum.com. Web site: www.fulcrum.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, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, 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 1.

Hargrave and Hargrave, An Accountancy Corporation
520 Broadway, Suite 660, Santa Monica, CA 90401, (310) 576-1090, fax (310) 576-1030, e-mail: Terry@taxwizard.com. Web site: www.taxwizard.com. Contact Terry M. Hargrave, CPA/ABV/CFE. Litigation services for family law and civil cases. Past chair of California Society of CPA’s Family Law Section, business valuation instructor for California CPA Education Foundation. 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.

Higgins, Marcus and 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 25 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 55.

Krycler, Ervin, Taubman, and Walheim
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 966-1040, fax (818) 966-4124. Web site: www.info@ketw.com. Contact Michael J. Krycler. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Krycler, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 50.

WARONZOF ASSOCIATES, INC.
2250 East Imperial Highway, Suite 120, El Segundo, CA 90245, (310) 322-7744, fax (310) 322-7755. Web site: www.waronzof.com. Contact Timothy R. Lowe, MAL 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 four with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 42.

AUDIO/VIDEO FORENSIC

Audio Engineering Associates
1029 North Allen Avenue, Pasadena, CA 91104, (626) 798-9129, fax (626) 798-2378, e-mail: stereomix@att.net. Web site: www.wesdooley.com. Contact Wes Dooley. Enhancement and authentication fixed price intelligibility evaluations. Audio and video evidence analysis.

AUTOMOTIVE

Sean Shideh, P.E.
19167 Harliss Street, Northridge, CA 91324, (818) 276-5905, e-mail: seanshideh@gmail.com. Providing comprehensive expert consulting in automotive litigation cases. Automotive manufacturing, and design defects analysis. Vehi-
cle suspension/handling testing and failure analysis. Vehicle brake performance and failure analysis. Seatbelt/airbag design and protection performance analysis. Vehicle fire root cause analysis. Mr. Shidhe is a registered professional mechanical engineer in the state of California. He has over 28 years of experience investigating various vehicle systems, including 18 years for major manufacturers. He has performed numerous vehicle crash and safety compliance tests under contract with the National Highway Traffic Safety Administration. Mr. Shidhe’s work includes vehicle crashworthiness and structural integrity, occupant protection, suspension/handling and brake performance. Automotive product liability issues that require specialized knowledge, testing and research to determine product design defects, product failure, and product misuse. Expert consulting in the area of automotive forensics including accident reconstruction, injury biomechanics, safety systems, human factors, and product failure analysis. Our clients include law firms, insurance companies, government agencies, and fleet operators throughout North America, all benefiting from the depth of experience we have developed over the past 25 years. See display ad on page 45.

AUTOMOTIVE ACCIDENT INVESTIGATION

DR. WILLIAM D. GUENTZLER
FORENSICS INTERNATIONAL
10296 Hawley Road, El Cajon, CA 92021, (619) 390-9301, cell (619) 823-9081, fax (619) 390-9368, e-mail: forensiccientific@cox.net. Contact William D. Guentzler, Ph.D. Dr. Guentzler has over 30 years of experience as an expert witness and forensic examiner and 36 years as a university professor. He is licensed in the state of Arizona as a private investigator. His expertise includes auto, truck, ATV, motorcycle, motor homes, and golf carts. He also specializes in braking systems, ignition, fuel systems, cooling, electrical and battery explosions, as well as vehicle fire cause and origin.

AUTOMOTIVE ACCIDENT RECONSTRUCTION

DILL ENGINEERING
30100 Town Center Drive, Suite 0-151, Laguna Niguel, CA 92677, (949) 249-9057, fax (949) 249-2648, e-mail: PDI9041@gmail.com. Contact Peter Dill. I have thirty-five years of motor vehicle accident reconstruction, auto-mobile and mobile vehicle product defect, forensic and occup-ant injury analysis, automotive safety, vehicle design, development, manufacturing and test engineering and patent infringement analysis. Product defect: automobile, truck, motorcycle, jet ski, ATV, snow mobile, golf cart, big rig truck cases: involving airbags, seatbelts, seats, fuel system fires, transmission part-to-reverse, brakes, tires, axle failures, roof crush, side impact, rollover propensity, vehicle handling dynamics, suspension and chassis, design and manufacturing defects, slip and fall, sports accidents (skiing, racing, basketball, football, horseback riding, injury bio-mechanics).

AVIATION

AEROPACIFIC CONSULTING
3650 Carson Street, Suite 120, Torrance, CA 90203, (310) 523-4350, fax (310) 523-0766, e-mail: doug.moss@aeropacific.net. Web site: www.aeropacific.net. Contact Douglas Moss. Aircraft accident analysis. Apply engineering, human factors, and operational experience to aviation accidents. Additional capabilities include aviation and airline safety, operational risk management, human factors, and engineering design. Professional experience includes over 32 years as professional military, corporate and airline pilot. Former USAF and McDonnell Douglas test pilot. Current airline pilot. Current faculty instructor in Aviation Human Factors at USC’s Viterbi School of Engineering. Education includes graduate degrees in both engineering and business management.

ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5892, e-mail: johnpratt@cox.net. Web site: www.argos-engineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

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 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, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, MBAs, and specialists in accounting, finance, economics, and related subjects. See display ad on page 1.

BANKRUPTCY/TAX

FULCRUM INQUIRY
888 South Figueroa Street, Suite 200, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnolte@fulcrum.com. Web site: www.fulcrum.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, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, MBAs, and specialists in accounting, finance, economics, and related subjects. See display ad on page 1.

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 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, lost profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, MBAs, and specialists in accounting, finance, economics, and related subjects. See display ad on page 1.

BIOMECHANICS/RECONSTRUCTION / HUMAN FACTORS

INSTITUTE OF RISK AND SAFETY ANALYSES
KENNETH A. SOLOMON, PHD, PE, POST PHD, CHIEF SCIENTIST.
5224 Canoga Avenue, Woodland Hills, CA 91364, (818) 349-1133, fax (818) 348-4884, e-mail: biomech@irsusa.com. Web site: www.irsusa.com. Specialized staff, broad range of consulting and expert testimony, 38 years of courtroom experience. Accident reconstruction, biomechanics, human factors, safety, accident prevention, adequacy of warnings, COMPUTER ANIMATION AND SIMULATIONS, construction defect, criminal defense, criminal prosecution, premises, product integrity, product liability, product testing.
warranties, and lost income calculations. Auto, bicycle, bus, chair, elevator, escalator, forklift, gate, ladder, machinery, motorcycle, press, recreational equipment, roller coaster, slip/tip and fall, stairs, swimming pool, and truck. Litigation and claims; defense/plaintiff; educational seminars; and mediation and arbitration services.

BUSINESS

ROBERT C. ROSEN
Wells Fargo Center, 333 South Grand Avenue, Suite 1925, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Web site: www.rosen-law.com. Specializing in securities law, federal securities laws enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, NASD disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, public and private offerings, Internet securities, and law firm liability. AV rated. Former chair, LACBA Business and Corporations Law Section; LL.M., Harvard Law School. More than 38 years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, DC. Published author/editor of securities regulations, including multivolume treatises. See display ad on page 53.

BUSINESS APPRAISAL/VALUATION

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, subprime, 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.

ANDERSON ECONOMIC GROUP, LLC
238 Pasadena Avenue, Suite 200, South Pasadena, CA, 91030-2920, (626) 441-2014, fax (626) 441-1107, e-mail: MRRoles@AndersonEconomicGroup.com. Web site: www.AndersonEconomicGroup.com. Contact Michael R. Holls. The economists, CPAs, and senior consultants at Anderson Economic Group provide expert testimony in each industry of their practice areas: public policy, market and industry analysis, and finance and business valuation. Our services include business and asset valuation, commercial damages, breach of contract, antitrust economics, and strategic acquisition advice. With specialized industry expertise in alcoholic beverages, automotive, economic development, franchised businesses, real estate, technology, energy, patents and intellectual property, our experts have credibility and are recognized nationwide.

BRIAN LEWIS AND COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268. Contact Brian Lewis, CPA, CVA. Forensic accounting; business valuations; cash spendable reports; estate, trust, and income tax services.

COHEN, MISKEI AND MOWREY LLP
15303 Ventura Boulevard, Suite 1150, Sherman Oaks, CA 91403, (818) 986-5070, fax (818) 986-5034, e-mail: smowrey@ccmmcpas.com. Web site: www.ccmmcpas.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 41.

Schulze Haynes Loewenguth & Co.
FORENSIC/LITIGATION EXPERTS

Designations include:
- Certified Public Accountant (CPA)
- Certified in Financial Forensics (CFF)
- Certified Valuation Analyst/Accredited in Business Valuation (CVA/ABV)
- Certified Fraud Examiner (CFE)

CONTACT KARL J. SCHULZE
kshulze@schulzehaynes.com  www.schulzehaynes.com

213.627.8280
660 SOUTH FIGUEROA STREET, SUITE 1280, LOS ANGELES, CALIFORNIA 90017

FINANCIAL FORENSIC ANALYSIS
EXPERT TESTIMONY
TURNAROUND AND BANKRUPTCY
BUSINESS VALUATION

EXPERT SERVICES

INVESTIGATIONS
Specializing in harassment, discrimination, and other misconduct issues

TRAINING/EDUCATION
Customized, enjoyable learning experiences — from anti-harassment and HR practices programs to management skills training and executive coaching

CLIENTS
UC Berkeley and UCLA School of Law graduate
Over two decades of experience in the employment/labor law areas
Superb technical and interpersonal skills

EquiLaw
Julie B. Yanow, Esq.
10061 Riverside Dr., #536
Toluca Lake, CA 91602
Office: 818 762 7676  jyanow@equilaw.com  Fax: 818 762 8003

See the pages of this publication and visit www.equilaw.com for more information

Los Angeles Lawyer November 2009 45
witnesses in litigation support. Gursey/Schneider has over 30 years experience as expert insurance claims, and entertainment industry litigation. Gursey/Schneider is an accounting firm specializing in forensic accounting, litigation support services, business valuation, and appraisal services for a variety of purposes including trademark, patent, and copyright infringement, and business dissolution, construction defects, delays, and cost-profit insurance claims, and entertainment industry litigation. Gursey/Schneider has over 30 years experience as expert witnesses in litigation support. See display ad on page 51.

GURSEY/SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, e-mail: rwatts@gursey.com or swasserman@gursey.com. Web site: www.gursey.com. Contact Robert Watts or Stephan Wasserman. Gursey/Schneider is an accounting firm specializing in forensic accounting, litigation support services, business valuation, and appraisal services for a variety of purposes including trademark, patent, and copyright infringement, and business dissolution, construction defects, delays, and cost-profit insurance claims, and entertainment industry litigation. Gursey/Schneider has over 30 years experience as expert witnesses in litigation support. See display ad on page 51.

HIGGINS, MARCUS AND LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, e-mail: info@hmfic.com. Web site: www.hmfic.com. Contact Karl J. Schulze, principal. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recoveries, business modeling, major professional organizations, and have experience across a broad spectrum of industries and business uses. Degrees/licenses: CPA; CFE; ABV; PHD- economics. See display ad on page 45.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF and HUNT
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 961-4226, fax (818) 961-4276, 363 San Miguel Drive, Suite 133, Newport Beach, CA 92660, (949) 219-9816, fax (949) 219-9905; 831 State Street, Suite 291, Santa Barbara, CA 93101, (805) 648-4088, fax (805) 963-4088, e-mail: expert@wzw.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption, business valuations, taxation, construction defects, delays, bankruptcies, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termina
See display ad on page 47.

ZIVETZ, SCHWARTZ and SALTSMAN, CPAs

CEMENT and CONCRETE PRODUCTS
CONCRETE INSIGHTS CORPORATION
1040 East Howell Avenue, Anaheim, CA 92805, (771) 231-1020, fax (714) 634-4933, e-mail: info@concreteinsights.com. Concrete Insights Corp. (CIC) specializes in evaluating all aspects of concrete, cement, and cement-containing materials, including constructed work, plans and specifications, deliveries, installation, workmanship, material conformance, and material properties. CIC examines the work and responsibilities of various parties in disputes, including owners, developers, general concrete and specialty contractors, materialmen, and related entities on projects during each construction phase, and through the service life of the work. Whether working directly for them, their insurers and/or attorneys, and often working in response to claims of construction defects, consequential damage, or other construction and payment disputes, the consultation of CIC evaluates design, installation, and performance of the many varieties of concrete and related materials, including cement, aggregates, admixtures, supplementary cementing materials, plaster, grout, masonry, integral colors, and related ingredients. Frequently provided services also include the assessment of distress or damage to such construction, whether due to poor performance, loading, earthquakes, fires, floods, soil conditions, or improper maintenance. CIC also reviews contracts, specifications, construction documents, and testing and inspection work records for comparison with industry standards.

CIVIL LITIGATION
GURSEY/SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, 20355 Hawthorne Boulevard, First Floor, Torrance, CA 90053, (310) 370-6112, fax (310) 370-6188, e-mail: rwatts@gursey.com or swasserman@gursey.com. Web site: www.gursey.com. Contact Robert Watts or Stephan Wasserman. Gursey/Schneider specializes in forensic accounting and litigation support services in the areas of civil litigation, business disputes, bankruptcy, damage and cost-profit insurance claims, court auctions, fraudulent investigations, accounting malpractice, intellectual property, construction, government accounting and entertainment litigation. Gursey/Schneider has over 30 years experience as expert witnesses in accounting related matters. See display ad on page 51.

COMPLEX TRANSACTIONS
AUGUST LAW GROUP, P.C.
19200 Von Karman Avenue, Suite 900, Irvine, CA 92612, (949) 752-7772; fax (949) 752-7776, e-mail: kaugust@augustlawgroup.com. Web site: www.augustlawgroup.com. Contact Kenneth S. August. Mr. August has over 22 years of experience in sophisticated corporate, business and financial transactions. Has provided advocacy, expert witness and dispute resolution services in connection with disputes involving corporate and shareholder relations, derivative actions, securities fraud, failed acquisitions, stock options, family business, multiple classes of lenders and equity interest, failed VCL, private equity and other investments; bankruptcy and insolvency situations, and partnerships. August Law Group has traditionally served clients in transactional matters, and not as litigators, but has provided strong support to litigation firms in analyzing, explaining and adjudicating claims involving complex business, financial, and corporate transactions. See display ad on page 59.

COMPUTER EVIDENCE DISCOVERY
ROBERT J. ABEND, PE

COSGROVE COMPUTER SYSTEMS, INC.
7411 Eirard Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4021, e-mail: jcosgrove@computer.org. Web site: www.cosgrovecomputer.com. Contact John Cosgrove. John Cosgrove, PE, has over 45 years’ experience in computer systems and has been a self-employed, consulting software engineering since 1970. He was a part-time lecturer in the UCLA School of Engineering and LMU graduate school. He provided an invited article, “Software Engineering and Litigation,” for the Encyclopedia of Software Engineering. He is a Certified Forensic Consultant (CFC), holds the CDEP, is a member of ACM, ACFE, FEWA, a life senior member of IEEE Computer Society, NSPE, a Fellow of the National Academy of Forensic Engineers (an affiliate of NSPE), and a professional engineer in California. Formal education includes a BSEE from Loyola University and a mas-
Ter of engineering from UCLA.

COMPUTER FORENSICS
ROBERT J. ABEND, PE
ing case preparation. Practiced at court and deposition testi-
mony. Thirty-five years of experience in the electronics and computer industry. Fifteen years as a forensic engineering consultant. References provided on request. Degrees/licenses: BSEE, MS, Registered Professional Engineer, Computer Forensics Examiner, FCC General Radiotelephone License.

DATACHASERS, INC.
P.O. Box 2861, Riverside, CA 92526-2861, (877) DataExem, (877) 328-2392, (951) 780-7892, e-mail: Admin@datachasers.com. Web site: www.DataChasers.com. E-Disclosure: Full e-discovery services…you give us the mountain, we give you the mole hill: Tiff production, de-duplication, redaction, Bates stamped data, and elec-
tronically stored information (ESI) production. Computer forensics, full forensic computer lab. Recovering deleted text files (documents), graphics (pictures), date codes on all files, e-mail, and tracking Internet activity. Intellectual property cases; family law; employment law; probable resolu-
tion; asset verification; criminal law (prosecution or de-
fense); etc. Litigation support, trial preparation, experi-
enced expert witnesses, and professional courtroom dis-
plays. See display ad on page 48.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dinote@fulcrum.com. Web site: www.fulcrum.com. Contact
We are experts in damages, accounting and valuation. Don’t settle for less.

Expert witnesses and litigation consultants for complex litigation involving analyses of lost profits, lost earnings and lost value of business, forensic accounting and fraud investigation

Other areas include marital dissolution, accounting and tax

Excellent communicators with extensive testimony experience

Offices in Los Angeles, Orange County and Santa Barbara

Call us today. With our litigation consulting, extensive experience and expert testimony, you can focus your efforts where they are needed most.

www.wzwlw.com  expert@wzwlw.com

White Zuckerman Warsavsky Luna Wolf Hunt LLP

Los Angeles Office
818-981-4226

Orange County Office
949-219-9816

Santa Barbara Office
805-648-4088
David Nolta. 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 unaudited record of successful court cases and client recoveries. Our expertise encompasses damages analysis, loss profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, 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 1.

SETEC INVESTIGATIONS
8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90036, (800) 748-5440, fax (323) 939-5481, e-mail: tstone@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 disputes. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.

COMPUTERS/INFORMATION SCIENCES
ROBERT J. ABEND, PE

COSGROVE COMPUTER SYSTEMS, INC.
7411 Eastdorn Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4021, e-mail: jcosgrove@computer.org. Web site: www.cosgrovecomputer.com. Contact John Cosgrove. John Cosgrove, PE, has over 45 years’ experience in computer systems and has been a self-employed, consulting software engineer since 1970. He was a part-time lecturer in the UCLA School of Engineering and LMU graduate school. He provided an invited article, “Software Engineering and Litigation,” for the Encyclopedia of Software Engineering. He is a Certified Forensic Consultant (CFC), holds the CDP, is a member of ACM, ACFE, FEWA, a Life Senior member of IEEE Computer Society, NSPE, a Fellow of the National Academy of Forensic Engineers (an affiliate of NSPE), and a professional engineer in California. Formal education includes a BSEE from Loyola University and a master of engineering from UCLA.

CONSTRUCTION
ABACUS PROJECT MANAGEMENT, INC.

ARCADIS
Construction Claims Analysis, ARCADIS, 445 South Figueroa Street, Suite 3650, Los Angeles, CA 90071, (213) 486-9884, fax (213) 486-9894, e-mail: william.broz@arcadis-us.com. Web site: www.arcadis-us.com. Contact William Broz, P.E., LEED AP. ARCADIS’ PMCM division is an industry leader in the analysis of construction claims and specializes in the prevention, investigation, evaluation and resolution of construction disputes. Our firm offers a full range of services including litigation support, expert testimony, schedule analysis, change order evaluation, delay/impact analysis, discovery/deposition assistance, cause-effect-impact analysis, contractor financial audits, merit analysis, document database development/management, and performance audits.

CONCRETE INSIGHTS CORPORATION
1040 East Howell Avenue, Anaheim, CA 92805, (714) 231-1020, fax (714) 834-4933, e-mail: info@concreteinsights.com. Concrete Insights Corp. (CIC) specializes in evaluating all aspects of concrete, cement, and cement-containing materials, including constructed work, plants and specifications, deliveries, installation, workmanship, material conformance, and material properties. CIC examines the work and responsibilities of various parties in disputes, including owners, developers, general concrete and specialty contractors, materialmen, and related entities on projects during construction through the warranty period, and through the service life of the work. Whether working directly for the owners and/or attorneys, and often working in response to claims of construction defects, consequential damage, or other construction and payment disputes, the consultation of CIC evaluates design, installation, and performance of the many varieties of concrete and related materials, including cement, aggregates, admixtures, supplementary cementing materials, plaster, grouts, masonry, integral colors, and related ingredients. Frequently provided services also include the assessment of distress or damage to such construction, whether due to poor performance, overloading, earth-quakes, fires, floods, soil conditions, or improper maintenance. CIC also reviews contracts, specifications, construction documents, and testing and inspection work records for comparison with industry standards.

COOK CONSTRUCTION COMPANY
7131 Owensmouth Avenue, Canoga Park, CA 91303, (818) 438-4335, fax (818) 596-0328, e-mail: scook18121@aol.com. Contact Stephen M. Cook. Specialties: Litigation preparation, residential construction, single and multifamily, hillside, foundations, concrete floors, retaining walls, stairs, vibration, water proofing, water infiltration, tunnels, carpentry/rough framing, tile, stone, materials/costs, and building codes. Vibration trespass, expert witness, creditable, strong, concise testimony in mediation, arbitration involving construction defect for insurance companies and attorneys, consulting services for construction, document preparation, construction material lists, costs, building codes analysis, site inspections, and common construction industry standards of practice and its relationship with the California Building Codes. See display ad on page 50.

FORENSISGROUP, INC.
EXPERT WITNESS SERVICES
3452 East Foothill Boulevard, Suite 1160, Pasadena, CA 91107, (800) 555-5422, (626) 795-5000, fax (626) 795-1856, e-mail: expertswitness@forensisgroup.com. Web site: www.forensisgroup.com. Contact Mercy T. Steenwyk. The Expert of Experts—Thousands of our clients have gained the technical advantage and the competitive edge in their cases from our group of high quality expert court witnesses, consultants and litigation support specialists since 1991! Our highly experienced staff will connect you with top engineering consultants, medical expert witnesses, forensic accountants, construction experts, securities specialists and hundreds of additional specialists and professionals covering a comprehensive field of technical and scientific disciplines. Referrals and searches are free. Call us now at (800) 555-5422 for your free initial telephone consultations with our experts. See display ad on page 41.
GLENN M. GELMAN AND ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND
BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: rsquar@gmgcpa.com.
Web site: www.gmgcpa.com. Contact Richard M. Squar. Exclusively IA and Orange County representative for CICPAC (Construction Industry CPA/Consultants Association) This is a nationwide network of CPA firms specifically selected for their experience in and commitment to serving the construction industry. We are one of only 6 firms in all of California who are members of this prestigious organization. We provide these litigation support services: expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accountings, and trial exhibit preparation. Our areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits distribution, tax consequences of settlement, accounting for construction claims, reconstruction of accounting records, embezzlement, profits distribution, tax consequences of settlement, accounting for construction claims, reconstruction of accounting records, embezzlement

THE MCMULLEN COMPANY, INC.
1260 Lake Boulevard, Suite 250, Davis, CA 95616, (530) 757-1293, e-mail: jmcmullen@earthlink.net. Web site: www.themcmullencompany.com. Contact James F. McMullen, California State Fire Marshal (Retired). Senior associates available throughout California (including Los Angeles County). Fire/building code analysis and development, code compliance inspections, fire origin/cause/spread investigations, fire services management/operations, fire safety related product analysis/evaluation, and forensic expert.

PACIFIC CONSTRUCTION CONSULTANTS, INC.

CONSTRUCTION DEFECT
M.A. CALABRESE ASSOCIATES
P.O. Box 50334, Pasadena, CA 91115, (828) 359-1908, fax (828) 359-1908, e-mail: foren6guy@earthlink.net. Web site: www.macalabreseassociates.com. Contact Michael Calabrese. Mr. Calabrese is a hands-on California licensed general contractor who has been in the construction field for over 30 years. Over the past 14 years, he has shifted his focus and expertise onto developing his consulting skills in construction forensics. Certified in mold inspections and remediation. Among his specialty areas is tracking the cause and origin of water intrusion resulting in mold growth and collateral damage, performing certified mold inspections and remediation, personal injury resulting from faulty construction components, job site safety, standards of care applied, contractor professional diligence, contractor license laws, earthquake repair and cost analyses, cost estimates for building

As an Expert Witness in Real Estate Litigation, Attorney
LAWRENCE H. JACOBSON
has consistently been on the Winning Team

• Real estate and mortgage brokers’ standard of care
• Lawyer malpractice in business and real estate transactions
• Interpretation of real estate documents

Practicing real estate law in California since 1968. Member, Executive Committees, Beverly Hills Bar Association. Former Vice President-Legal Affairs, California Association of Realtors, California Real Estate Broker since 1978.

LAWRENCE H. JACOBSON AB, UCLA 1964, JD UCLA SCHOOL OF LAW 1967
Tel 310.271.0747 Fax 310.271.0757 email law.jac@hjpc.com www.lawrenceejacobson.com

LAW OFFICES: 9401 WILSHIRE BLVD, SUITE 1250, BEVERLY HILLS, CA 90212

Do You Have A Case Involving Dogs?

• aggression
• behaviors
• training
• breeding
• rescue
• protocols
• temperament
• cruelty
• hoarding

— EVALUATIONS, CONSULTATION, BITE INVESTIGATIONS —

Jill Kessler • Dog Expert • 310-573-9615 • e-mail: jillkessler@mac.com

www.jillkessler.com

BOARD CERTIFIED ORTHOPEDIC SURGEON

MARC J. FRIEDMAN, M.D.
6815 Noble Avenue, Van Nuys, California 91405
Tel. 818.901.6600 ext. 2810 • Fax: 818.901.6685 • Email: mfriedman@scoi.com

Web Site: www.scoi.com

Education:
Princeton University and Cornell Medical School

Certificate:
Board Certified Orthopedic Surgeon

Memberships:
Fellowship Sports Medicine
Fellow American Academy of Orthopedic Surgeons
Fellow in the Arthroscopy Association of North America
Fellow in the International Arthroscopy Association
Fellow in the International Knee Society
Fellow in the American Orthopedic Society of Sports Medicine
ACLS Study Group
Certified QME, IME, AME

Specialties:
Sports Medicine, Arthroscopic and Reconstructive Surgery of the Knee and Shoulder, and Knee Replacement

Appointments:
Assistant Clinical Professor, Division of Orthopedics, UCLA School of Medicine, Chairman, Education Committee
Arthroscopy Association of North America 1997-1999
World Cup Soccer Team Physician, 1985
Physician Specialist XXIII Olympiad 1984

Publications:
60 Publications including handbook for Orthopedic Surgeons on Prosthetic Ligament Reconstruction of the Knee

Presentations:
Lectures extensively with over 375 presentations worldwide

Los Angeles Lawyer November 2009 49
Litigation support
Expert witness
Forensic accountants
Family law matters
Business valuations
Loss of earnings
Damages

When you need more than just numbers... you can count on us...

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

15301 VENTURA BOULEVARD, SUITE 1800
SHERMAN OAKS, CALIFORNIA 91403

—— EXPERT WITNESS – CONSTRUCTION —

40 YEARS
CONSTRUCTION EXPERIENCE

SPECIALTIES:

CIVIL EXPERIENCE:
Construction defect cases for insurance companies and attorneys since 1992

COOK
CONSTRUCTION COMPANY
STEPHEN M. COOK
California Contractors License B431852
Nevada Contractors License B0070588
Graduate study in Construction
L.A. Business College, 1972
Tel: 818-438-4535 Fax: 818-595-0028
Email: scook16121@aol.com
7131 Owensmouth Avenue, Canoga Park, CA 91303

Document examiner
SANDRA L. HOMEWOOD, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homewood@homework.com. Contact Sandra L. Homewood. Highly skilled and experienced document examiner and expert witness in many complex and high profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and handwriting identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory including specialized training by the FBI and Secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime lab, and San Diego County District Attorney’s office. Currently in private, criminal, and civil practice.

DOGS
JILL KESSLER
341 North Grenada Street, Pacific Palisades, CA 90272, (310) 573-9615, fax (310) 573-1304, e-mail: jiklesser@mac.com. Web site: www.jiklesser.com. Opinion, consultation, reports, evaluations in dog aggression, dog behaviors, training, showing, breed tendencies, rescued dogs, and dog bites. Specializing in Rottweilers and pit-bull type dogs. See display ad on page 49.

ECONOMIC DAMAGES
ADVISOR/EXPERTS @ MCS ASSOCIATES
19881 Von Kaman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-2770, 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, subprime, 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.

ANDERSON ECONOMIC GROUP, LLC
238 Pasadena Avenue, Suite 200, South Pasadena, CA 91030-2920, (828) 441-2014, fax (828) 441-1107, e-mail: MHolli@AndersonEconomicGroup.com. Web site: www.AndersonEconomicGroup.com. Contact Michael R. Hollis, The economists, CPAs, and senior consultants at Anderson Economic Group provide expert testimony in each of their practice areas: public policy, market and industry analysis, and finance and business valuation. Our services include business and asset valuation, commercial damages, breach of contract, antitrust economics, and strategic acquisition advice. With specialized industry expertise in alcoholic beverages, automotive, economic development, franchised businesses, real estate, technology, energy, patents and intellectual property, our experts have credibility and are recognized nationwide.

CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699. Web site: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Carolyn Irwin or Elisabeth Browne. 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

—o—

DOCUMENT CONTRACTORS LICENSING (CSLB)
CAPITOL SERVICES INC.

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 installations in housing, apartment, condominium, and commercial. Expert on uniform plumbing codes and installation standards. Twenty-eight years’ experience, 8,000+ residential units and assorted commercial projects. Active plumbing contractor. Call for CV.

CORPORATE INVESTIGATIONS
FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dhoyle@fulcrum.com. Web site: www.fulcrum.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, troubled company consultation, 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 1.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF AND HUNT
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278, 363 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-9816, fax (949) 219-9905; 831 State Street, Suite 291, Santa Barbara, CA 93101, (805) 648-4088, fax (805) 963-4086, e-mail: expert@wlwh.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testi mony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property, including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termina tion. See display ad on page 47.
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. Corporate Sciences, Inc. provides financial analysis and expert testimony in all types of commercial litigation. Extensive experience in a broad range of industries for computing economic damages, lost profits, valuation and appraisal, fraud, breach of contract, partnership disputes, and bankruptcy related matters. Professionals also serve as mediators, arbitrators, special masters, third party administrators as well as consulting and testifying experts.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnolte@fulcrum.com. Web site: www.fulcrum.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, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, MBAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 1.

GLENN M. GELMAN AND ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2838, e-mail: rsquar@gmgcpa.com. Web site: www.gmgcpa.com. Contact Richard M. Squar. Since 1983, our firm has specialized in delivering forensic accounting and litigation support services that give our clients an edge. We provide the quality and depth tradition-ally associated with Big Four firms with the personal atten-tion and fee structure of a local firm. We are recognized throughout southern California for the effectiveness of our work. Areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolu-tion, profits distribution, tax consequences of settlements, reconstruction of accounting records, embezzlement and fraud, contract costs, lost profits, construction claims, and damage computations cases. Selected by Inside Public Ac-counting as recipient of 2008 “Best of the Best” award given to only 25 firms across the country. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and profes-sional services. Glenn M. Gelman has been appointed and served as special master in litigation support matters and has testified over 30 times. Comprehensive case list is available upon request. See display ad on page 57.

HIGGINS, MARCUS AND LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, e-mail: info@hmnlinc.com. Web site: www.hmnlinc.com. Contact Mark C. Higgins, ASA, president. Our firm has over 25 years of litigation support and expert testi-mony 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 55.

SCHULZE HAYNES LOEVENGUTH AND CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: kschulze@schulzehaynes.com. Web site: www.schulze-haynes.com. Contact Karl J. Schulze, principal. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recovery, financial analysis and modeling, major professional or-ganizations, and have experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA; CVA; CFE; ABV; PhD-economics. See display ad on page 45.

WARONZOF ASSOCIATES, INC.
2250 East Imperial Highway, Suite 120, El Segundo, CA 90245, (310) 322-7744, fax (310) 322-7755. 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 reor-ganization plan feasibility. Professional staff of four with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 42.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF AND HUNT
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278; 363 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-9816, fax (949) 219-9096; 831 State Street, Suite 291, Santa Barbara, CA 93101, (805) 648-4088, fax (805) 963-4088, e-mail: expert@wzwlw.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analy-sis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testi-mony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption,
business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, tax planning and preparation, FRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 47.

See display ad on page 47.

ZIVETZ, SCHWARTZ AND SALTMAN, CPAS

ECONOMICS
ADVISORS/EXPERTS @ MCS ASSOCIATES

Nationally recognized banking, finance, insurance, and real estate consulting group (established in 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialists: lending customs, practices, policies, in all types of lending (real estate, subprime, 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.

COHEN, MISKEI AND MOWREY LLP

FULCRUM INQUIRY
380 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300. e-mail: inquiry@fulcrum.com. Web site: www.fulcrum.com. Contact David Notte. 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, troubled company consultation, statistics, forensic economic analysis, royalty audits, strategic and market assessments, computer forensics, electronic discovery, and analysis of computerized data. Degrees/license: CPAS, CFAs, ASAs, PhDs and MBAs in accounting, finance, economics, and related subjects. See display ad on page 1.

ELECTRICAL
ROBERT J. ABEND, PE
1658 Lanara Circle, San Pedro, CA 90732, (310) 346-6543, e-mail: rabend@linkline.com Web site: www.linkline.com. Contact Dr. Malcolm Lewis, PE.


ELECTRICAL ENGINEERING
ALOHA SYSTEMS
8539 Barnwood Lane, Riverside, CA 92508-7126, (951) 780-9903, fax (951) 780-1078, e-mail: mktg@alohasys.com. Web site: www.alohasys.com. Contact Dr. Mark Shilnau. Electricity and electric utility power systems, rates, and billing responsibilities. PhD in power systems—generation, transmission, distribution, energy use and conservation. PE and licensed contractor. Former utility employee.

CTG FORENSICS, INC.
16 Technology Drive, Suite 109, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: milees@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, mold, and green/LEED building.

ELECTRONIC DISCOVERY
SETEC INVESTIGATIONS
8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90066, (800) 748-5440, fax (323) 939-5481, e-mail: tsten@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.

EMBEZZLEMENT AND FRAUD
GLENN M. GELMAN AND ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: risgar@gmcpa.com. Web site: www.gmcpa.com. Contact Richard M. Squar. Glenn M. Gelman and Associates provide a variety of high-quality services traditionally associated with the Big Four firms along with the personal attention that is the hallmark of local firms. Our litigation support services include: embezzlement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accounts, and trial exhibit preparation and reconstruction of accounting records. Winner of CSUF Meritorious Performance Award. Extensive experience giving testimony effectively.

EMPLOYMENT/DISCRIMINATION/HARASSMENT
BRIAN H. KLEINER, PHD, MBA
Professor of Human Resource Management, California State University, 800 North State College Boulevard, LA 640, Fullerton, CA 92834, (714) 879-9705, fax (714) 879-5600. Contact Brian H. Kleinier, PhD. Specializations include wrongful termination, discrimination, sexual harassment, ADA, evaluation of policies and practices, reasonable care, progressive discipline, conducting third-party workplace investigations, retaliation, RFIs, statistics, negligent hiring, promotion selection, 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/WAGE EARNING CAPACITY
CALIFORNIA CAREER SERVICES
6024 Wilshire Boulevard, Los Angeles, CA 90036, (323) 933-2900, fax (323) 933-9029, e-mail: swmincareer@cal.com. Web site: www.californiacareersservices.com. Contact Susan W. Miller, MA. Career counselor, vocational expert vocational examinations, labor market research, and testimony on employability and earning capacity, as well as educational options. Specializing in divorce and wrongful termination cases.

ENGINEERING/GEOTECHNICAL
COTTON, SHIRES AND ASSOCIATES, INC.
3201 Costa Mesa, Suite 201, Camarillo, CA 93010-8074, (805) 484-5650, fax (805) 484-5650, e-mail: mphipps@cottontshires.com. Web site: www.cottontshires.com. Contact Michael Phipps or Patrick O. Shires. Full-service geotechnical engineering consulting firm specializing in investigation, design, arbitration, and expert witness testimony with offices in Los Gatos, Camarillo and San Andrews, California. Earth movement (settlement, soil creep, landslides, tunneling and expansive soil), foundation distress (movement and cracking of structures), drainage and grading (seeping slabs and ponding water in crawl-space), pavement and slabs (cracking and separating), retaining walls (movement, cracking and failures), pipelines, flooding and hydrology, design and construction deficien-
expert testimony at over 75 trials (municipal, superior and federal); 100+ depositions; 200+ settlement conferences in southern and northern California and Hawaii.

ENGINEER/TRAFFIC

WILLIAM KUNZMAN, PE
1111 Town and Country #34, Orange, CA 92868, (714) 973-8933, fax (714) 973-8821, e-mail: mail@traffic-engineer.com. Web site: www.traffic-engineer.com. Contact William Kunzman, PE. Traffic expert witness since 1979, both defense and plaintiff. Auto, pedestrian, bicycle, and motorcycle accidents. Largest verdict: $10,300,000 in pedestrian accident case against Los Angeles Unified School District. Largest settlement: $2,000,000 in solo vehicle accident case against Caltrans. Before becoming expert witnesses, employed by Los Angeles County Road Department, Riverside County Road Department, City of Irvine, and Federal Highway Administration. Knowledge of governmental agency procedures, design, geometrics, signs, traffic controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA; graduate work—Yale University.

ENGINEERING

CONCRETE INSIGHTS CORPORATION
1040 East Howell Avenue, Anaheim, CA 92805, (877) 231-1020, fax (714) 634-4833, e-mail: info@concreteinsights.com. Concrete Insights Corp. (CIC) specializes in evaluating all aspects of concrete, cement, and cement-containing materials, including constructed work, plans and specifications, deliveries, installation, workmanship, material conformance, and material properties. CIC examines the work and responsibilities of various parties in disputes, including owners, developers, general concrete and specialty contractors, materials suppliers, and related entities on projects during construction through the warranty period, and through the service life of the work. Whether working directly for them, their insurers and/or attorneys, and often working in response to claims of construction defects, consequential damage, or other construction and payment disputes, the consultation of CIC evaluates design, installation, and performance of the many varieties of concrete and related materials, including cement, aggregates, admixtures, supplementary cementing materials, plaster, grout, masonry, integral colors, and related ingredients. Frequently provided services also include the assessment of distress or damage to such construction, whether due to poor performance, overloading, earthquakes, fires, floods, soil conditions, or improper maintenance. CIC also reviews contracts, specifications, construction documents, and testing and inspection work records for comparison with industry standards.

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicav@fallbrook-eng.com. Web site: www.fallbrook-eng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, invalidity, claim construction and trade dress), personal injury, product liability, and product failure analysis. Our professionals have represented both plaintiff and defendant. We have done analysis, prepared declarations, been deposed and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

FORENSISGROUP, INC
EXPERT WITNESS SERVICES
3452 East Foothill Boulevard, Suite 1160, Pasadena, CA 91107, (800) 555-5422, (626) 795-5000, fax (626) 795-1950, e-mail: expert@forensisgroup.com. Web site: www.forensisgroup.com. Contact Mercy T. Steinwyck. The Expert of Experts—Thousands of our clients have gained the technical advantage and the competitive edge in their cases from our group of high quality expert court witnesses, consultants and litigation support specialists since 1991! Our highly experienced staff will connect you with top engineering consultants, medical expert witnesses, forensic

EXPERT WITNESS IN GENERAL CONSTRUCTION FORENSICS

M.A. CALABRESE ASSOCIATES
Contractor’s License No. 496208-B

MULTIPLE TRADE DISCIPLINES
30 YEARS HANDS-ON EXPERIENCE

• Mold growth due to water intrusion
• Moisture intrusion cause and origin
• Standards of care applied
• Professional diligence
• Job site safety
• Property maintenance and safety effects
• Contractor license laws
• Mechanic’s liens
• Project value analysis
• Cost estimates & comparisons

Certified mold inspections & remediation

Former CSLB:
• Construction Consultant
• Arbitrator & Mediator of Construction Disputes
• Instructor of Contractor’s State License Exam

Contact Richard P. Meyst.
Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, invalidity, claim construction and trade dress), personal injury, product liability, and product failure analysis. Our professionals have represented both plaintiff and defendant. We have done analysis, prepared declarations, been deposed and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

Forensic Insights Corporation (CIC) specializes in evaluating all aspects of concrete, cement, and cement-containing materials, including constructed work, plans and specifications, deliveries, installation, workmanship, material conformance, and material properties. CIC examines the work and responsibilities of various parties in disputes, including owners, developers, general concrete and specialty contractors, materials suppliers, and related entities on projects during construction through the warranty period, and through the service life of the work. Whether working directly for them, their insurers and/or attorneys, and often working in response to claims of construction defects, consequential damage, or other construction and payment disputes, the consultation of CIC evaluates design, installation, and performance of the many varieties of concrete and related materials, including cement, aggregates, admixtures, supplementary cementing materials, plaster, grout, masonry, integral colors, and related ingredients. Frequently provided services also include the assessment of distress or damage to such construction, whether due to poor performance, overloading, earthquakes, fires, floods, soil conditions, or improper maintenance. CIC also reviews contracts, specifications, construction documents, and testing and inspection work records for comparison with industry standards.

Robert C. Rosen
AV Rated, Former Chair, LACBA Business & Corporations Law Section LLM, Harvard Law School. 36 years practicing Securities Law, 12 years with the U.S. Securities and Exchange Commission, Washington D.C. Published Author of Securities Regulations, including eight volume treatise.

Rosen & Associates, PC
LAW OFFICES
Wells Fargo Center • 333 S. Grand Avenue, Suite 1925 • Los Angeles, CA 90071
Tel 213/362-1000 Fax 213/362-1001
Web site: Rosen-law.com E-mail: robertrosen@Rosen-Law.com

Los Angeles Lawyer November 2009 53
 accountants, construction experts, securities specialists and hundreds of additional specialists and professionals covering a comprehensive field of technical and scientific disciplines. Referrals and searches are free. Call us now at (800) 555-5422 for your free initial telephone consultations with our experts. See display ad on page 41.

HICHBORN CONSULTING GROUP
1040 East Howell Avenue, Anaheim, CA 92805, (714) 637-7410, fax (714) 637-7488, e-mail: info@hibborn.com. Web site: www.hibborn.com. Contact Geoffrey Hibborn Sr, PE. General civil design with specialties featuring forensic investigations of concrete work and concrete products, concrete, cement and related materials expertise, construction practices and materials evaluation, repair recommendations, construction observation, public works/residential/commercial/industrial, and specially designed tests of distressed materials.

ENVIRONMENTAL
HARGIS ASSOCIATES, INC.
2365 Northside Drive, Suite C-100, San Diego, CA 92108, (803) 564-2744, (819) 521-0165, fax (819) 521-8580, e-mail: hargis@hargis.com. Web site: www.hargis.com. Contact David R. Hargis, PhD, PG. Expert witness testimony, technical consultation, and litigation support concerning hydrogeologic assessments to evaluate groundwater supply, beam studies, nature/extent of soil/groundwater contamination, source identification, identification of poten- tially responsible parties, cost allocation studies, and negotiations with USEPA and state regulatory agencies involving cleanup levels and approval of RI/FS/DRA documents for various state and federal Superfund sites. See display ad on page 57.

PACIFIC HEALTH AND SAFETY CONSULTING, INC.

WZI INC (ENVIRONMENTAL ENGINEERS)
1717 28th Street, Bakersfield, CA 93301, (661) 326-1112, fax (661) 326-6480, e-mail: rvi@wzinc.com. Web site: www.wzinc.com. Contact Mary Jane Wilson, BS, professional engineering assessing expert (000350). Specialties include regulatory compliance, petroleum, and power generation.

ESCRROW
ADVISORS/EXPERTS @ MCS ASSOCIATES

cial/industrial, and specially designed tests of distressed ma- terials.

ENERGY
www.hichborn.com. Contact Geoffrey Hibborn Sr, PE. General civil design with specialties featuring forensic inves- tigations of concrete work and concrete products, concrete, cement and related materials expertise, construction practices and materials evaluation, repair recommendations, construction observation, public works/residential/commer- cial/industrial, and specially designed tests of distressed mate-

virtually all professions. We offer more than 10,000 cate-
gories of expertise, including 900+ medical specialties through the TASAmed division. Your request receives our prompt, personal attention. TASA targets referrals, forwards resumes, and helps arrange your initial expert interview calls. And if you don't ultimately designate or engage an expert we refer, there is NO CHARGE at all. Plaintiffs/defendants, civil/criminal cases. Experts can assist you at any stage of your case from early case merit assessment to deposition and testimony. Sample expertise categories include acci- dent reconstruction, banking, computers, construction, eco-
homics, electronics, engineering, forensic accounting, healthcare, intellectual property, machine design, medical devices, mold, OSHA, personal injury, product liability, safety, security, toxicology, much more. Serving California law and insurance firms of all sizes. Benefit from over 50 years of TASA Group experience. Please see display ad on page 62.

EXPERT WITNESS
AMFS MEDICAL EXPERTS NATIONALWIDE
2000 Powell Street, Suite 520, Emeryville, CA 94608, (800) 275-8903. Web site: www.amfs.com. Medical experts for manipulation and personal injury cases. AMFS is America’s premier medical expert witness and consulting company. We are a trusted partner with the legal community and provide a superior method of retaining medical experts. Since 1990, we have provided board-certified experts in over 10,000 manipulation and personal injury cases with a 92% win-rate compared to the industry average of 28%. 8,500+ experts in 250+ specialties. • Practicing Physicians with Legal Experience. • No cost attorney consultations. • Record Review and Testimony. • Independent Medical Exami-

failure to perform, overloading, earth- quakes, fires, floods, soil conditions, or improper mainte-
nance. CIC also reviews contracts, specifications, construc-
tion documents, and testing and inspection work records for comparison with industry standards.

KARS ADVANCED MATERIALS, INC.
10236 Hasley Road, El Cajon, CA 92021, (619) 988-9533, (819) 521-9531, fax (819) 521-8580, e-mail: info@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh K. Kar, Southern California’s premier materials/mechanical/metallur-
gical/structural/forensics laboratory. Registered professional engineers with 20-plus years in metallurgical/forensic/struc-
tural 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). Princip- al fellows of American Society for Metals and board-
certified diplomats, American Board of Forensic Examiners. See display ad on page 59.

DR. WILLIAM D. GUENTZLER FORENSICS INTERNATIONAL
10960 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5269. Contact Brian Lewis, CPA, CVA. Forensic accounting; business valuations; cash spendable reports; estate, trust, and income tax services.

COHEN, MISKEI AND MOWRY LLP
15303 Ventura Boulevard, Suite 1150, Sherman Oaks, CA 91403, (818) 988-5070, fax (818) 988-5034, e-mail: smowrey@cmcppas.com. Web site: www.cmmcppas.com. Contact Scott Mowrey. Specialties: consultants who pro-
viding extensive experience, litigation support, and expert test-
imony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bank-
ruptcy, and reorganization. Degree/license: CPAs, CFEs, MBAs. See display ad on page 41.

GURSEY/SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3486, 33535 Hawthorne Boulevard, Suite 105, Torrance, CA 90503, (310) 570-6122, fax (310) 370-6198, e-mail: nwatts@gursey.com or fozat @gursey.com. Web site: www.gursey.com. Contact Robert Watts or Tracy Katz. Forensic accounting and litiga-
tion support services in all areas relating to matrimonial dis-
putes: divorce, business valuation, tracing and apportion-
ment of real property and assets, net spendable evaluations, determination of gross cash flow available for support and analysis of reimbursement claims and marital standards of living. See display ad on page 51.

HARGRAVE AND HARGRAVE, AN ACCOUNTANCY CORPORATION
520 Broadway, Suite 680, Santa Monica, CA 90401, (310) 576-1090, fax (310) 576-1080, e-mail: terry@taxward .com. Web site: www.taxward.com. Contact Terry M. Hargrave, CPA/ABV/CIFF, CFE. Litigation services for
family law and civil cases. Past chair of California Society of CPA's Family Law Section, business valuation instructor for California CPA Education Foundation. 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.

KRYCLR, ERVIN, TAUBMAN, AND WALHEIM
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 988-1040, fax (818) 988-4124; Web site: www.info@ketw.com. Contact Michael J. Krycier. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Krycier, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 50.

PAMELA WAX-SEMUS, CFE
107 North Reino Road, #402, Newbury Park, CA 91320, (805) 499-3035, fax (805) 498-0468, e-mail: tracing.queen@verizon.net. Web site: www.tracingqueen.net. Contact Pamela Wax-Semus, CFE. I am experienced in most areas of litigation support services with a particular emphasis in tracing, property allocation, reimbursements, stock options and related allocations issues. I have vast experience not only in marital dissolution matters. My expertise expands to trust and probate accounting, fraud, and other litigation related matters.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF AND HUNT
14465 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278, 833 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-9816, fax (949) 219-9085; 831 State Street, Suite 291, Santa Barbara, CA 93101, (805) 648-4088, fax (805) 963-4088, e-mail: expert@wzwlw.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property including trademark, patent, and copyright infringement, and trade secrets, malpractice, marital dissolution, personal injury, product liability, real estate, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 47.

ZIVETZ, SCHWARTZ AND SALTSMAN, CPAS

FEES AND ETHICS
NORDMANN COMANAY HAIR AND COMPTON
1000 Town Center Drive, 6th Floor, Oxnard, CA 93036, (805) 988-8300, fax (805) 988-7770, e-mail: mark@nchc.com. Web site: www.nchc.com. Contact Joel Mark. Mr. Mark has had in excess of 30 matters as an expert witness in attorney malpractice cases, attorneys’ fees disputes and cases involving issues of attorney ethics. He served 11 years on the State Bar Committee on Mandatory Fee Arbitration, a term on the State Bar Committee on Professional Responsi-
bility and Conduct, and has been appointed as an expert consultant by the Los Angeles Superior Court.

FASTENERS/LATCHES
ARGOS ENGINEERING
44 Args, Laguna Niguel, CA 92677, (949) 383-8205, fax (949) 429-5972, e-mail: johnpratt@cox.net. Web site: www.argosengineering.com. John D. Pratt, PE. Arthur D. Lewis, CPA. Forensic engineering, inspection, product liability, litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

FINANCIAL
CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071- 2005, (213) 553-2500, fax (213) 553-2699. Web site: www. cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Carlyn Irwin or Elisabeth Browne. 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 INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dmoire @fulcrum.com. Web site: www.fulcrum.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, loss profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, 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 1.

HANDWRITING
THE McMULLEN COMPANY, INC.
1260 Lake Boulevard, Suite 250, Davis, CA 95616, (916) 477-8857, fax (930) 757-1293, e-mail: tmcmullen@fulcrum.com. Contact James F. McMullen, California State Fire Marshal (Retired). Senior associates available throughout California (including Los Angeles County). Fire/building code analysis and development, code compliance inspections, fire origin/cause/spread investigation, fire services management/operations, fire safety related product analysis/evaluation, and forensic expert.

FOOD SAFETY/HACCP
FOOD SAFETY AND HACCP COMPLIANCE

FORENSIC ACCOUNTING
CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071- 2005, (213) 553-2500, fax (213) 553-2699. Web site: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Carlyn Irwin or Elisabeth Browne. 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 INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dmoire@fulcrum.com. Web site: www.fulcrum.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, loss profit studies, business and intangible asset valuations, appraisals, fraud investigations, troubled company consultation, 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 1.

GLENN M. GELMAN AND ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667- 2600, fax (714) 667-2696, e-mail: rsquar@gmgcpa.com. Web site: www.gmgcpa.com. Contact Richard M. Squar. Since 1983, our firm has specialized in delivering forensic accounting and litigation support services that give our clients an edge. We provide the quality and depth traditionally associated with Big Four firms with the personal attention and fee structure of a local firm. Our litigation support services include: forensic accounting, investigative auditing, embasslement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, rebuttal testimony; fiduciary accounts, and trial exhibit preparation and reconstruction of accounting records. Winner of Inside Public Accounting’s 2008 “Best of the Best” award given to only 25 firms across the country. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services Glenn M. Gelman has been appointed and served as Special Master in Litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 57.

PAMELA WAX-SEMUS, CFE
107 North Reino Road, #402, Newport Beach, CA 92660, (949) 498-3035, fax (949) 498-0468, e-mail: tracing.queen@verizon.net. Web site: www.tracingqueen.net. Contact Pamela Wax-Semus, CFE. I am experienced in most areas of litigation support services with a particular emphasis in tracing, property allocation, reimbursements, stock options and related allocations issues. I have vast experience not only in marital dissolution matters. My expertise expands to trust and probate accounting, fraud, and other litigation related matters.

ZIVETZ, SCHWARTZ AND SALTMAN, CPAs

FORENSIC ENGINEERING
CONCRETE INSIGHTS CORPORATION
1040 East Howell Avenue, Anaheim, CA 92805, (714) 231- 1020, fax (714) 634-4983, e-mail: info@concreteinsights.com. Concrete Insights Corp. (CIC) specializes in evaluating all aspects of concrete, cement, and cement-containing materials, including constructed work plans, components, deliverables, installation, workmanship, material conformance, and material properties. CIC examines the work and responsibilities of various parties in disputes, including owners, developers, general concrete and specialty contractors, material suppliers, and related entities on projects during construction through the warranty period, and through the service life of the work. Whether working directly for their, their insurers and/or attorneys, and often working in response to claims of construction defects, consequential damage, or other construction and payment disputes, the consultation of CIC evaluates design, installation, and performance of the many varieties of concrete and related materials, including cement, aggregates, admixtures, supplemental cementing materials, plastic, guns, masonry, integral colors, and related ingredients. Frequently provided services also include the assessment of distress or damage to such construction, whether due to poor performance, overloading, earthquakes, fires, floods, soil conditions, or improper maintenance. CIC also reviews contractor specifications, construction documents, and testing and inspection work records for comparison with industry standards.

FRANCHISING/LICENSING
ANDERSON ECONOMIC GROUP, LLC
238 Pasadena Avenue, Suite 200, South Pasadena, CA, 91030-2920, (626) 441-2014, fax (626) 441-1107, e-mail: MHoldis@AndersonEconomicGroup.com. Web site: www.AndersonEconomicGroup.com. Contact Michael R. Hollis. The economists, CPAs, and senior consultants at Anderson Economic Group provide expert testimony in each of their practice areas: public policy, market and industry analysis, and finance and business valuation. Our services include business and asset assessments, intellectual property, breach of contract, antitrust economics, and strategic acquisition advice. With specialized industry expertise in alcoholic beverages, automotive, economic development, franchised businesses, real estate, technology, energy, patents and intellectual property, our experts have credibility and are recognized nationwide.

HANDWRITING
SANDRA L. HOMERWOOD, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homerwoodogl@boglobal.net. Contact Sandra L. Home- wood. Highly skilled and experienced document examiner and expert witness in many complex and high profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and handwriting identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory including specialized training by the FBI and Secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime
lab, and San Diego County District Attorney’s office. Currently in private, criminal, and civil practice.

HOTEL

MAURICE ROBINSON AND ASSOCIATES LLC
880 Apollo Street, Suite 125, El Segundo, CA 90245, (310) 640-9636, fax (310) 640-9278, e-mail: maurice@mauricerobinson.com. Web site: www.mauricerobinson.com. Contact R. 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 franchisor-franchisee. 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. 30 years of experience.

HUMAN FACTORS

AEROPACIFIC CONSULTING
3858 Carson Street, Suite 120, Torrance, CA 90503, (310) 503-4350, fax (815) 550-8766, e-mail: doug.moss@aeropacific.net. Web site: www.aeropacific.net. Contact Douglas Moss. Aircraft accident analysis. Apply engineering, human factors, and operational experience to aviation accidents. Additional capabilities include aviation and airline safety, operational risk management, human factors, and engineering design. Professional experience includes over 32 years as professional military, corporate, and airline pilot. Former USAF and McDonnell Douglas test pilot. Current airline pilot. Current faculty instructor in Aviation Human Factors at USC’s Viterbi School of Engineering. Education includes graduate degrees in both engineering and business management.

INSURANCE

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, subprime, 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.

E.L. EVANS ASSOCIATES
3310 Airport Avenue, Box # 2, Santa Monica, CA 90405, (310) 559-4005, fax (310) 390-9669, e-mail: elevans66@yahoo.com. Contact Gene Evans. Good faith/bad faith. Over 45 years’ experience—claims adjuster. Standards and practices in the industry, litigation support, claims consultation, case review and evaluation, property/casualty claims, construction claims, uninsured/underinsured motorist claims, general liability, fire/water/mold claims, damage assessment, professional liability claims, appraisal under policy, arbitration, duty to defend, advertising claims, coverage applications, and suspected fraud claims. CV available on request. See display ad on page 24.

HOWARD M. GARFIELD, ESQ
465 California Street, Suite 500, San Francisco, CA 94104, (415) 438-4545, fax (415) 397-6392, e-mail: hgarfield@longlevit.com. Contact Howard M. Garfield, Esq. Consultations and testimony re-

RICHARD M. SQUAR, CPA, MBA-Tax, CVA, ABV, CFF
Tax & Litigation Support Director
GLENN M. GELMAN & ASSOCIATES
Certified Public Accountants and Business Consultants

Finding innovative solutions to challenges that face our clients.

RESPECTED SPECIALISTS • STRONG CLIENT RELATIONSHIPS

Richard M. Squar
1940 East 17th Street
Santa Ana, CA 92705-8606
rsquare@gmgcpa.com
714-667-2600 tel
714-667-2636 fax
949-375-4388 cell

www.gmgcpa.com

HARGIS+ASSOCIATES, INC.
HYDROLOGY • ENGINEERING

Providing expert testimony and litigation support

50+ years of experience

Working To Protect Our Most Precious Resource

SAN DIEGO, CA
TUCSON, AZ
MESA, AZ

Los Angeles Lawyer November 2009 57
Assistance With Complex Business Transactions

**Kenneth S. August, Esq.**

**AUGUST LAW GROUP, P.C.**
19200 Von Karman, Irvine, CA 92612
949.752.7772 tel | 949.752.7776 fax

**DIANA G. LESGART, CPA, CFE, CVA**

**AN ACCOUNTING CORPORATION**

- Family Law Litigation Consulting
- Certified Public Accountant
- Certified Fraud Examiner
- Certified Valuation Analyst

**T**el 818-886-7140 • Fax 818-886-7146 • E-mail lesgart3@msn.com
22024 LASSEN STREET, SUITE 106, CHATSWORTH, CA 91311

http://www.jurispro.com/DianaLesgartCPACFEFCPA

---

**THE BEST LEGAL MINDS IN THE COUNTRY TALK TO US**

- Metallurgical Failures
- Corrosion & Welding Failures
- Glass & Ceramic Failures
- Chairs / Ladders / Tires
- Automotive/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

---

**KARS’ 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

---

Los Angeles Lawyer November 2009 59
MEDICAL/TOXICOLOGY

JONATHAN S. RUTCHIK, MD, MPH, QME
20 Sunnydale Avenue, Suite A-321, Mill Valley, CA 94941, (415) 381-3133, fax (415) 381-3131, e-mail: jrutchik@neoma.com. Web site: www.neoma.com. Jonathan S. Rutchik, 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 injuries or chemical exposure. Services include medical record and utilization review and consulting to industrial, legal, government, pharmaceutical, and academic institutions on topics such as metals and solvents, mold illness, Persian Gulf War syndrome, musicians’ injuries, and others. See display ad on this page 62.

MEDICAL/VASCULAR SURGERY

ROBERT WAGMEISTER, MD, FACS

MEDICAL DEVICES

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicav@fallbrook-eng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, invalidity, claim construction and trade dress), personal injury, product liability, and product failure analysis. Our professionals have represented both plaintiff and defendant. We have done analysis, prepared declarations, been deposed and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

MEDICAL LEGAL

ROUGHAN AND ASSOCIATES AT LINC, INC.
114 West Colorado Boulevard, Monrovia, CA 91016, (626) 333-8333, fax (626) 303-8280, e-mail: janr@linc.bz. Contact Jan Roughan at ext. 16. Specialties: Roughan and Associates at LINC is a case management and medical/legal consulting firm. Services/products offered include: 1) Expert Testimony, 2) Life Care Plan (LCP) Construction/LCP Critique, 3) Medical Record Organization/Summarization/Analysis, 4) Medical Bill Auditing, 5) Expert Witness Identification, 6) IME Attendance, 7) Video Services (e.g., Day In Life, Settlement Brief, IME Evaluation, NDT/PT Evaluation, etc.), 8) Questions for: Deposition/Cross Examination 9) Medical/Psychiatric Case Management. See display ad on page 55.

MEDICAL MALPRACTICE

GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR ORTHOPAEDIC SURGERY, UCLA
3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopaedic surgeon, subspecialty in spinal disorders affecting adults and children.

INSURANCE BAD FAITH EXPERT

Clinton E. Miller, J.D., BCPE
Author: How Insurance Companies Settle Cases
39 YEARS EXPERIENCE
Qualified Trial Insurance Expert in Civil & Criminal Cases Nationwide
Tel 408.279.1034 | Email cemcom@aol.com | Fax 408.279.3562
www.millerjd@aol.com

DepoSums
DEPOSITION SUMMARIES
➤ Experienced summarizers ➤ 3-step proof-reading process ➤ E-mailed direct to your computer

Los Angeles’ Finest Digeting Service
FOR MORE INFORMATION:
800.789.DEPO • www.deposums.biz

Zivetz, Schwartz & Saltsman CPA’s

With more than thirty years of experience as expert witnesses in testimony, pre-trial preparation, settlement negotiations, consultations and court appointed special master.

Some of our specialties consist of:
• Forensic Accounting • Marital Dissolutions
• Business Valuation and Appraisal • Lost Profits
• Economic Damages • Accounting Malpractice
• Employee Benefit Plans • Entertainment Entities
• Financial and Economic Analysis • Shareholder Disputes
• Wrongful Termination

Tel: (310) 826-1040
Fax: (310) 826-1065
E-mail: less@zss.com
www.zsscpa.com
11900 W. Olympic Blvd. Suite 650
Los Angeles, CA 90064-1199

Zivetz, Schwartz & Saltsman CPA’s

Lester I. Schwartz, CPA, CFF, DABFA, DABFE
Michael D. Saltsman, CPA, MBA
David L. BASS, CPA
Dave Dichner, CPA, ABV, CVA
Sandy Green, CPA

Los Angeles Lawyer November 2009 65
Examples of spinal disorders treated by Dr. Purcell include disc diseases, stenosis, infections, tumors, injuries, and deformities including scoliosis. He possesses 30 years of orthopedic and 22 years of med-legal experience, including defense, plaintiff, insurance carriers, CA Attorney General’s office and Public Defender’s office. Expert testimony pertains to medical, personal injury, and workers’ compensation cases. As a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC evals. See display ad on page 63.

METALLURGICAL AND CORROSION ENGINEER

KARS ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2838, (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 diplomas, American Board of Forensic Examiners. See display ad on page 59.

METEOROLOGY

AIR, WEATHER, AND SEA CONDITIONS, INC.
P.O. Box 512, Pacific Palisades, CA 90272, (818) 645-8632, fax (310) 454-7569, e-mail: AirWeather@aol.com. Web site: www.weatherman.org. Contact Jay Rosenthal, AMS Certified Consulting Meteorologist (CCM). Experienced and authoritative expert testimony, reports and analyses of wind, rain, storms, climatic conditions, flooding, waves; specialist in auto/boat/ship/aircraft accident reconstruction, property damage, slip and falls, construction, mold issues, homeland security applications, air pollution, transport, and risk identification. Movie industry applications, cinematography, and visual effects. Determining unusualness, normalcy, and foreseeability. Official data, site visits, clear and convincing testimony. See display ad on page 59.

NEGLECTING HIRING

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2868, fax (310) 454-4516. Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 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 investigations. Assist with preparation for initial case analysis, discovery strategy, examination of documents, and expert testimony.

MEDICAL/Legal CONSULTATION
3362 Budleigh Drive, Hacienda Heights, CA 91745, (626) 333-5110, fax (626) 968-0064, e-mail: drthotpyollock@sbcglobal.net. Registered nurse with over 40 years of clinical experience. Non-testifying services include case analysis/for merit, chronology, translation, written reports, medical record organization. DME/IME accompaniment including CD recording and written report. Expert witness and testifying services, including affidavit, arbitration, declaration, and trial. Courtroom experienced both plaintiff and defense.

OBSTETRICS and GYNECOLOGY

BERNARD WEISS, MD, FACOG, FAC
Department of OB/GYN, Harbor-UCLA, 1000 West Carson Street, Box 3, Torrance, CA 90059, (310) 771-7003, fax (310) 544-1171, e-mail: BWeiss@bgyn.hsc.ucla.edu. Contact Bernard Weiss, MD. Assistant clinical professor David Gefen School of Medicine at UCLA, department of OB/GYN at Harbor-UCLA Medical Center. Thirty-four years of private practice of OB/GYN, last 10 years in academic practice of OB/GYN, teaching residents, medical students and actively participating in the hands on care of patients with special interest in gynecology surgery and family planning, with both plaintiff and defense, civil and criminal experience.

OPHTHALMOLOGY

ALAN L SHABO, MD
Clinical Professor of Ophthalmology, UCLA and Chief of Ophthalmology, Cedars Sinai Medical Center, 10921 Wilshire Boulevard, Suite 1205, Los Angeles, CA 90024, (310) 824-8681, fax (310) 824-8687, e-mail: ashaol@hotmail.com. Contact Alan L. Shabo, MD. Specializes: comprehensive ophthalmology, cataract surgery, glaucoma, diabetic retinopathy, eye injuries, and eye diseases and treatments. Education: 1962-1966 BA, UCLA, individual field of concentration, Phi Beta Kappa; 1968 MS UCLA anatomy; 1965-1969 MD, UCLA School of Medicine, Alpha Omega Alpha certificates/licenses; American Board of Ophthalmology, certified, 1976. Previous positions/appointments: 1975-1985 Coprincipal investigator, NIH early treatment diabetic retinopathy study; 1985-1995 board of directors, Center for the Partially Sighted; 1995-1996, 1998 president, UCLA Dept. of Ophthalmology Association; 1986-present clinical Professor of ophthalmology, UCLA; Jules Stein Eye Institute; 2001-2008 Chief of Ophthalmology, Cedars Sinai Medical Center. Honors/Awards: Achievement Award for College Scientists; Manpower Award, Research to Prevent Blindness; Heilman Award, Association for Research in Vision and Ophthalmology; Upjohn Achievement Award for Scholarship and Research; Founder’s Award, Center for the Partially Sighted; Special proclamation/Commendation from County of Los Angeles for contributions to benefit its citizens; UCLA Irvine Prize for highest traditions of medical profession. Publications: author of over 50 research papers, scientific journal articles, book chapters, magazine and newspaper articles. Membership in professional societies: fellow, American Academy of Ophthalmology, Diplomate, American Board Ophthalmology, Examiner, American Board of Ophthalmology. Degrees/Lic: MD, MS, BA.

ORTHOPEDIC SURGEON

MARC J. FRIEDMAN, MD
6815 Noble Avenue, Van Nuys, CA 91405, (818) 901-6800, fax (818) 901-6886, e-mail: mfriedmanlachs@gmail.com. Web site:

STEVEN R. GRABOFF, MD
17752 Beach Boulevard, Suite 202, Huntington Beach, CA 92647, (714) 843-0319, fax (714) 841-1260, e-mail: Dr-Graboff@sbi.net. Web site: http://OrthopedicExpertWitness.com. Contact Laurie Rye or Sheri Haynes. Orthopedic expert witness, medical legal consulting services, independent medical exam, medical legal record review, forensic analysis and reporting, certificate of merit, expert witness testimony in personal injury, and medical malpractice.

RICHARD C. ROSENBERG, MD

WILLIAM B. STETSON, MD
191 South Buena Vista Street, Suite 470, Burbank, CA 91505, (818) 848-3030, fax (818) 848-2226, e-mail: wstet96263@aol.com. Web site: www.sportsmedicinedr.com. Contact W. Stetson, MD. Dr. William B. Stetson is a board certified orthopedic surgeon who is fellowship trained in sports medicine and arthroscopic and reconstructive treatment of complex shoulder, knee, elbow and ankle injuries.

PATENTS
ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5972, e-mail: johndpratt@cox.net. Web site: www.argos-engineering.com. Contact John D. Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicav@fallbrook-eng.com. Web site: www.fallbrook-eng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, invalidity, claim construction and trade dress), personal injury, product liability, and product failure analysis. Our professionals have represented plaintiffs and defendants. We have done analysis, prepared declarations, been deposed and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

PERSONAL INJURY
GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR
ORTHOPAEDIC SURGERY, UCLA
3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC eva’s. See display ad on page 62.

Graham A. Purcell, MD
(818) 985-3051
www.gpurcellmd.com Email expert@gpurcellmd.com

ORTHOPAEDIC SPINAL SURGEON

LAKEVILLE LAW FIRM
1108 W. Diagonal Hwy, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC eva’s. See display ad on page 62.

RELEVANT EXPERIENCE:
• Trial/Appellate Attorney, U.S. Justice Department Civil Rights Division
• Federal Prosecutor in Los Angeles
• Litigation Partner in Two National Law Firms
• Judge Pro Tem, Los Angeles County Superior Court
• Diverse ADR and Expert Witness Practice

445 S. FUERNO STREET, SUITE 3200, LOS ANGELES CA 90071
Tel 213.623.5923 Fax 213.623.1890 http://www.cpsarbitration.com

CHARLES PEREYRA-SUAREZ — ARBITRATOR AND MEDIATOR

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicav@fallbrook-eng.com. Web site: www.fallbrook-eng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, invalidity, claim construction and trade dress), personal injury, product liability, and product failure analysis. Our professionals have represented plaintiffs and defendants. We have done analysis, prepared declarations, been deposed and testified in court. We have years of design and development experience making us effective expert witnesses in all matters involving medical devices. Visit our Web site at www.fallbrook-eng.com.

CHARLES PEREYRA-SUAREZ — ARBITRATOR AND MEDIATOR

445 S. FUERNO STREET, SUITE 3200, LOS ANGELES CA 90071
Tel 213.623.5923 Fax 213.623.1890 http://www.cpsarbitration.com

ORTHOPAEDIC SPINAL SURGEON

GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR
ORTHOPAEDIC SURGERY, UCLA
3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC eva’s. See display ad on page 62.

Graham A. Purcell, MD
(818) 985-3051
www.gpurcellmd.com Email expert@gpurcellmd.com

ORTHOPAEDIC SPINAL SURGEON

GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR
ORTHOPAEDIC SURGERY, UCLA
3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC eva’s. See display ad on page 62.

Graham A. Purcell, MD
(818) 985-3051
www.gpurcellmd.com Email expert@gpurcellmd.com

ORTHOPAEDIC SPINAL SURGEON

GRAHAM A. PURCELL, MD, INC.
ASSISTANT CLINICAL PROFESSOR
ORTHOPAEDIC SURGERY, UCLA
3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert@gpurcellmd.com. Web site: gpurcellmd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC eva’s. See display ad on page 62.
Construction Claims

When you're handling a construction dispute, you'll be glad to know who we are.
Pacific Construction Consultants, Inc. will assist in uncovering and analyzing facts important to your case.

Our highly experienced staff will provide support from the first analysis to the last day in court—investigating, making the complex understandable, and presenting evidence through expert testimony and trial support graphics.

Pacific Construction Consultants, Inc. is responsive, factual, and results-oriented.
For more information, call 1-800-655-PCI.

PACIFIC CONSTRUCTION CONSULTANTS, INC.

REAL ESTATE/REAL PROPERTY MATTERS

Specializations:
- Customs & Standards of Practice
- Agency Relationships
- Material Disclosure in Residential Real Estate Sales

Temmy Walker, Realtor®
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate
Los Angeles Lawyer November 2009 65

Temmy Walker, Realtor®
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

Real Estate Matters—Real Estate Matters—

Specialists In:
- Broker duties;
- Standard of Care
- Disclosure Issues — Buyer/Seller
- Agency Obligations
- Real Estate Malpractice
- Mortgage Brokerage Law
- Residential & Commercial Transactions

Credentials:
- Supervising Broker
- Responsible for overseeing more than 7,500 RE transactions in major California-based real estate companies.
- General Counsel
- Legal adviser for two of nation’s largest real estate companies.
- Adjunct Professor
- Loyola Law School
- Hotline Attorney
- Supervising Senior Counsel at California Association of Realtors (CAR)
- DRE Master Instructor
- Author, DRE Disclosure Course.

Alan D. Wallace, Esq.
14011 Ventura Blvd., Suite 406
Sherman Oaks, CA 91423
818/501-0133 • FAX 818/905-6091
www.expertwitnesses.com
e-mail: awallace@covad.net

Temmy Walker, Realtor
Real Estate Consulting Expert Witnessing

Services Rendered:
- Litigation Consulting
- Expert Testimony
- Broker Practice
- Liability Audit
- Educational Services
- Industry Mediator

Certified Residential Broker Graduate

MAURICE ROBINSON AND 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 franchisor-franchisee. 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.

TEMMY WALKER, INC.
5026 Veloz Avenue, Tarzana, CA 91356, (818) 760-3355, e-mail: temmyvw@comcast.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 65.

ALAN D. WALLACE, ESQ.
1401 Victor Boulevard, Suite 406, Sherman Oaks, CA 91423, (818) 501-0133, fax (818) 905-6991, e-mail: awallace@covad.net. Contact Alan D. Wallace, Esq. Expert witness and litigation consulting for general real estate matters, including law, custom and practice, agency, disclosure, broker malpractice, standards of care for brokers, buyers and sellers. Broker and attorney. Involved as broker in more than 7,500 real estate transactions. Department of Real Estate master instructor and author, adjunct professor Loyola Law School, former CAR hotline attorney, university law professor in real estate. Successfully testified in dozens of cases. See display ad on page 65.

WARMONZ ASSOCIATES, INC.
2250 East Imperial Highway, Suite 120, El Segundo, CA 90245, (310) 322-7144, fax (310) 322-7175. Web site: www.waronz.com. Contact Timothy R. Lowell, CRE. Waronz Associates provides real estate and land use litigation support services including economic damage, 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 four with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 42.

REAL ESTATE APPRAISAL
CURTIS-ROSENTHAL, INC.
5959 West Century Boulevard, Suite 1010, Los Angeles, CA 90045, (310) 215-0482, fax (310) 215-3089, e-mail: drosenthal@curtisrosenthal.com. Web site: www.curtisrosenthal.com. 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, Commodity Futures 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 42.

RECEIVER
SALTZBURG, RAY AND BERGMAN, LLP
12121 Wilshire Boulevard, Suite 600, Los Angeles, CA 90025, (310) 481-6700, fax (310) 481-6707, e-mail: DRB@wrblaw.com. Web site: www.wrb-law.com. 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, Commodity Futures 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 42.

RETAILATION
HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516, Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializes in sexual harassment, ADA/discrimination, other Title VII and FEHA discrimination and harassment, retaliation, RMLA/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 investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

WATERPROOFING AND WATERPROOFING
VAJ DIJK AND ASSOCIATES, INC.

SECURITIES
CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699. Web site: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Carilyn Irwin or Elisabeth Browne. 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.

ROBERT C. ROSEN
Wells Fargo Center, 333 South Grand Avenue, Suite 1205, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Web site: www.rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, inside trading, NYSE, AMEX, NASDAQ disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, public and private offerings, Internet securities, and law firm liability. AV rated. Former chair, LACBA Business and Corporations Law Section; LL.M. Harvard Law School. More than 38 years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, DC. Published author/editor of securities regulations, including multivolume treats. See display ad on page 53.

SECURITY
CONFIDENTIAL BUSINESS CONSULTANTS, LLC
2710 Armdale Road, San Marino, CA 91010, (626) 419-0082, e-mail: jbroder@earthlink.net. Contact James F. Broder, CFE, CPP, FACFE. Author of “Risk Analysis and Security Surveys,” premises liability, adequate vs. inadequate security procedures and practices, expert case analysis and testimony, corporate procedures, training and operations, kidnap, ransom, extortion, and workplace violence issues. Thirty-five years of law enforcement and security experience, domestic and international. Listed in the Encyclopedia of Security Management as “One of the most highly recognized security authorities in the U.S.” CA PI Lic. 0201703.

SEXUAL HARASSMENT/DISCRIMINATION
EQUILAW
10061 Riverside Drive, #536, Toluca Lake, CA 91602, (818) 762-7767, fax (818) 762-8003, e-mail: yanow@equilaw.com. Web site: www.equilaw.com. Contact Julie B. Yanow, Principal. Over two decades of employment and labor law experience. Equilaw assists clients with workplace investigations of harassment, discrimination, retaliation, other misconduct; workplace training in harassment/discrimination prevention, HR practices, management skills, and executive coaching. Equilaw also offers expert consulting/testimony regarding the prevention, investigation, elimination of unlawful workplace harassment, discrimination, and retaliation. See display ad on page 45.

HAIGHT CONSULTING
1726-Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2989, fax (310) 454-4516, Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializes in sexual harassment, ADA/discrimination, other Title VII and FEHA discrimination and harassment, retaliation, RMLA/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 investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

SLIP, TRIP AND FALL
A R TECH FORENSIC EXPERTS, INC.
SPINAL CORD INJURY
Graham A. Purcell, MD, Inc. Assistant Clinical Professor Orthopaedic Surgery, UCLA
3620 Wrightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert4gparemd.com. Web site: gparemd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC evals. See display ad on page 63.

TAXATION
Kajan Mather and Barish
9777 Wilshire Boulevard, Suite 805, Beverly Hills, CA 90212, (310) 278-6080, fax (310) 278-4805, e-mail: KMBlaw@taxdisputes.com. Web site: www.taxdisputes.com. Contact Elliott H. Kajan. The firm’s practice is devoted to representation of taxpayers before the Internal Revenue Service, Franchise Tax Board, State Board of Equalization, and California Employment Development Department, involving tax audits, administrative appeals proceedings, tax collection matters, complex tax litigation, and criminal tax investigations and trials. The firm also represents and advises accountants and attorneys regarding tax penalties and professional responsibility matters.

TRAFFIC ENGINEERING
ACCIDENT RECONSTRUCTION SPECIALISTS
(™) 612.0x792.0
[44x138]work—UCLA; graduate work—Yale University. tection barriers. Hundreds of cases. Undergraduate signs, traffic controls, maintenance, and pedestrian pro-
[44x146]tection barriers. Hundreds of cases. Undergraduate signs, traffic controls, maintenance, and pedestrian pro-
[44x154]tection barriers. Hundreds of cases. Undergraduate signs, traffic controls, maintenance, and pedestrian pro-
[44x162]tection barriers. Hundreds of cases. Undergraduate signs, traffic controls, maintenance, and pedestrian pro-
[44x211]pedestrian accident case against Los Angeles Unified motorcycle accidents. Largest verdict: $10,300,000 in
[44x219]pedestrian accident case against Los Angeles Unified motorcycle accidents. Largest verdict: $10,300,000 in
[44x227]pedestrian accident case against Los Angeles Unified motorcycle accidents. Largest verdict: $10,300,000 in
[44x253]1111 Town and Country #34, Orange, CA 92660, (949) 644-1422, fax (949) 644-1424, e-mail: allergyasthma1.com. Contact: John T Chu, MD. Type of expert witness: Medical doctor. Services available: Expert evaluation on adverse health effects from water damage and/or mold exposure. Dr Chu has served as a medical expert witness in over 250 cases and has testified in over 6 trials related to these issues. We provide allergy skin testing, lung function test, tympanogram, and methacholine inhalation challenge tests. Common illnesses linked to water damage exposure include asthma, allergic rhinitis, headaches, sinusitis, hypersensitivity pneumonitis, and ABPA.

WASTEWATER
John Shaw Consulting, LLC
P.O. Box 4269, Truckee, CA 96160, (530) 550-1576, fax (530) 519-3398, e-mail: john@shaweng.com. Web site: www.shaweng.com. Contact John Shaw, PE. Water/wastewater/sewer industry—unique combination of operations and engineering background. Sanitary engineering including water (potable) and wastewater (industrial and domestic) treatment, conveyance, hydraulics, storage, reuse, master planning, operations, maintenance, and expert witness and forensic (mode of failure and standard of care analysis; engineering analysis; product suitability and construction defect issues). Wastewater treatment plants, disposal/reuse facilities, sewage lift station design, sewer collection systems and sludge treatment. Water treatment plants, pipelines, and swimming pools.

WORKERS’ COMPENSATION
Graham A. Purcell, MD, Inc. Assistant Clinical Professor Orthopaedic Surgery, UCLA
3620 Wrightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: expert4gparemd.com. Web site: gparemd.com. Contact Graham A. Purcell, MD. Dr. Purcell is a board certified orthopedic surgeon, subspecialty 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 30 years of orthopedic and 22 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 a qualified medical evaluator, Dr. Purcell has extensive experience in performing QMEs, AMEs, IMEs, WC evals. See display ad on page 63.

WRONGFUL TERMINATION
HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, 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 investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

For more information about expert4law.org, call 213.896.6470 or e-mail forensics@lacba.org

NEED AN EXPERT? FIND ONE HERE! www.expert4law.org

The Los Angeles County Bar Association’s official online referral service

www.expert4law.org

AVAILABLE 24 HOURS A DAY!
## Individual Contributions

<table>
<thead>
<tr>
<th>Amount</th>
<th>Contributors</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5,000-$9,999</td>
<td>Thomas A. Kramer, Peter A. Lasky, John D. Taylor, LINDA M. STUDE, Eric A. Webber, and Gerard C. Koaijievsky</td>
</tr>
<tr>
<td>$2,000-$4,999</td>
<td>Rick C. Madden, Larry &amp; Bobbie Liebenbaum, Byron C. Hibdon, Christopher J. Heck, and Amos E. Hartston</td>
</tr>
<tr>
<td>$1,000-$1,999</td>
<td>Michael W. Lofgren, Jennifer L. Bezemek, S. Mulligan, and Angela C. Brown</td>
</tr>
</tbody>
</table>

## Law Firm Contributions

<table>
<thead>
<tr>
<th>Amount</th>
<th>Law Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15,000 and above</td>
<td>Latham &amp; Watkins LLP</td>
</tr>
<tr>
<td>$10,000-$14,999</td>
<td>Bingham McCutchen LLP, Munger Tolles &amp; Olson LLP, and Reed Smith LLP</td>
</tr>
<tr>
<td>$5,000-$9,999</td>
<td>Kirkland &amp; Ellis LLP, Morrison &amp; Foerster Foundation O'Melveny &amp; Myers LLP, and Skadden, Arps, Slate, Meagher &amp; Flom LLP</td>
</tr>
<tr>
<td>$3,000-$4,999</td>
<td>Akin, Gump, Strauss, Hauer &amp; Feld LLP, Arnold &amp; Porter LLP, Bird, Marella, Boxer, Woltz, Nessim, Drosos &amp; Lincenberg APC, and Irell &amp; Manella LLP</td>
</tr>
</tbody>
</table>

## IN MEMORY OF...


**Charles R. English,** by Justice Judith M. Ashmann-Gerst and Charles E. Gessler. LA Lawyer

**Rosalyn S. Zakheim** and Lyle D. Washowich. LA Lawyer

**IN HONOR OF...**

**Joseph Ansis,** by Fredric W. Ansis. LA Lawyer

**Donald P. Baker,** by Alan B. Clark. LA Lawyer

**Gary Blasi,** by Michael Heinrichs. LA Lawyer

**SU-LYNN COMBS,** by Raymond S. Capoccia. LA Lawyer

**Tucker Ellis and West LLP**

**Munger Tolles & Olson LLP**

**Reed Smith LLP**

**Shook Hardy & Revens LLP**

**Sidley Austin LLP**

**Holland & Knight LLP**

**Holland & Knight LLP**

**Khorrami, Pollard & Abir LLP**

**Hughes, Hubbard & Reed LLP**

**LA Lawyer**

**LA Lawyer**

**LA Lawyer**

**LA Lawyer**

---

The Foundation wishes to express sincere thanks to all who contributed during the 2008-2009 campaign. As part of the procedures 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, and other organizations that contributed $1,000 or more during the period beginning July 1, 2008, and ending June 30, 2009. 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 independent certified public accountants, Green, Hasson & Janks LLP, by calling Tom Barry directly at (310) 873-1647. (Note: The Foundation records gifts made by check on the date of receipt, not the date written on the check.)

The Foundation regrets that space limitations prevent the listing of the names of all contributors.
**President's Club**

Former Bar Association or Bar Foundation presidents who have contributed or pledged to contribute a minimum of $5,000 to the Foundation. (List includes participants as of 6/30/09.)

- Roy H. Aaron
- Don Mike Anthony
- Joseph R. Austin
- Donald P. Baker
- Terresa E. Beaudet
- David J. Pasternak
- John F. O'Hara
- Greta Maillian
- James W. Gilliam, Jr.
- Alexandra Demman
- Marie Louise Cousineau
- Gregory Evans
- Laura V. Farber
- Gregg A. Farley
- Helen I. Bendix
- Jeffrey C. Freedman
- Alvin H. Harker
- James W. Loss
- Lois M. Jacobs
- Hon. Margaret M. Morrow
- Leonard H. Hartston
- Meryl K. Chae
- Michelle E. Flurer
- Amy J. Fink
- Richard E. Hodge
- Harry L. Hathaway
- Mark T. Cramer
- Grace M. Danziger
- Albert F. Davis
- Michael J. Cahill
- Seth M. Gerber
- Richard B. Goetz
- Hon. Arnold H. Gold
- Joan Ann W. Grace
- James G. Griswold
- Stirling S. Delgadillo
- Patricia E. Green
- Mary J. Fung
- Norma C. Chang
- Robert S. Gerstein
- Thomas J. Leanse
- Peter M. Hsiao
- Hon. Helen I. Bendix
- Jonathan L. Brophy
- Thomas J. Leanse
- William E. Thomson
- Richard Walch
- Karen B. Wong & Scott W. Lee
- Karen L. Wiese
- Robert E. Carlson
- Donald N. Nida
- Beth A. Benjamin
- Sarah W. Beverly
- Marjorie A. Basch
- Michael B. Blaskey
- John F. Ryan
- Benjamin A. Biskind
- Patrick M. Verrone
- Michael J. Cahill
- Fredric W. Ansis
- Rhonda R. Trotter
- Alvin H. Harker
- David C. Tseng
- William E. Thomson
- Karen B. Wong & Scott W. Lee
- Rosalyn S. Zakheim
- Andrew J. Nocas
- W. Stuart Ogg
- Avisha A. Leary
- Lee R. Petillon
- Kaila C. Petmekyan
- Barbara A. Reeves Neal
- Thomas V. Reichert
- Dennis P. Millard
- David K. Robinson
- Deborah J. Rouches
- Harvey J. Safesheet
- Nicholas P. Savage
- Marc L. Sallus
- Alice A. Salvo
- Laura A. Seteg
- Marc M. Seltzer
- Patricia L. Shanks
- Jeffrey C. Soza
- Sheryl E. Stein
- Alan K. Steinbrecher
- David W. Steuber
- Margaret P. Stevens
- Susan Koehler Sullivan
- Kimberly M. Talley
- William E. Thompson
- Eugene L. Trope
- Rhonda R. Trotter
- Susan J. Troy
- David C. Tong
- Patric M. Verrone
- Caroline C. Vincent
- Richard Walch
- Karen B. Wong & Scott W. Lee
- Rosalyn S. Zakheim
- 2009-09 Fellows

- Individuals who contributed a minimum of $500 during the fiscal year 7/1/08-6/30/09 and are not Barristers Fellows, Life Fellows, or Honor Roll participants.

<table>
<thead>
<tr>
<th>Name</th>
<th>Contribution Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fredric W. Ansis</td>
<td>$500</td>
</tr>
<tr>
<td>Michael B. Blaskey</td>
<td>$500</td>
</tr>
<tr>
<td>Mr. &amp; Mrs. Morgan Chu</td>
<td>$500</td>
</tr>
<tr>
<td>David A. Dillard</td>
<td>$500</td>
</tr>
<tr>
<td>Leonard L. Gumpert</td>
<td>$500</td>
</tr>
<tr>
<td>Syed A. Hasan</td>
<td>$500</td>
</tr>
<tr>
<td>Byron C. Hicken</td>
<td>$500</td>
</tr>
<tr>
<td>James W. Loss</td>
<td>$500</td>
</tr>
<tr>
<td>Albert B. Norris</td>
<td>$500</td>
</tr>
</tbody>
</table>

**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 6/30/09.)

- Randeep Balvinder Singh
- Shawn C. Chou
- Luci-Ellen M. Chun
- Kimberly H. Clancy
- Anthony Paul Diaz
- Cameron E. Fox
- Alexander S. Greene
- Jared W. Gill
- Robert S. Gerstein
- Lawrence D. Landy
- Mary J. Fung
- David C. Tseng
- William E. Thomson
- Karen B. Wong & Scott W. Lee
- Rosalyn S. Zakheim

**SUPPORTING MEMBERS**

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 Fellow, or Honor Roll level and have chosen to continue supporting the Foundation with an annual gift. (List includes participants as of 6/30/09.)

- Don Mike Anthony
- Hon. Helen I. Bendix
- Mollie F. Bennett
- Michael H. Bierman
- George F. Bird, Jr.
- Maxwell M. Blecher
- Brad D. Brian
- Lester D. Brown
- William Clark Brown
- Elizabeth M. Calicano
- John L. Carlton
- Alan B. Clark
- Justice H. Walter Croskey
- Brian L. Davido
- Jeffrey W. Edelman
- Jack I. Eisensten
- Amy J. Fink
- Michele E. Flurer
- Thomas A. Freberg, Jr.
- Robert S. Gerstein
- Ethan P. Greene
- Brian D. Huben
- Shirley M. Husband
- Joan R. Isaac
- Lois M. Jacobs
- Samantha Phillips Jessner
- Henry J. Jessensberg
- Marcia C. Kraft
- Miriam A. Kinsky
- Hon. Robert N. Kwan
- Edward A. Landry
- Thomas J. Leeanne
- Leoline E. Marra
- Elaine W. Mandel
- Frederick L. McKnight
- Ralph B. Petty
- John L. Quin
- Toby J. Rothschild
- Michael B. Sharcomb
- Rachael A. Shor
- Arthur F. Silberberg
- Paul D. Simpson
- Patricia F. Jan Dupee
- John D. Vandeveld
- Caroline C. Vincent
- Richard Walch
- Earl P. Wiens
- Rosanne M. Wilson
- Rosalyn S. Zakheim
- Michael C. Zellers

**Fundraising for the current fiscal year (7/1/2009-6/30/2010) is now underway. The Foundation makes grants to law-related projects serving Los Angeles County. Visit the LACBF Web page at www.lacbf.org to learn more about the Foundation and to see a list of its 2009 grant recipients. You may also contact the Foundation’s Executive Director, Ivan Price, at (213)896-6409 or e-mail him at iprice@lacba.org. To lend your support, send a tax-deductible contribution to: Los Angeles County Bar Foundation, PO Box 55202, Los Angeles, CA 90055-2020. Donations may also be made online via credit card at www.lacbf.org by clicking on the Donate Now button.**
Whether a Lawyer for Corporate Entity Engaged in Debt Collection Aids and Abets the Unauthorized Practice of Law or Violates the Rules of Professional Conduct for Failure to Supervise Employees and Seeking Attorney’s Fee Awards Based upon the Legal Work of the Entity’s Unlicensed Employees

**SUMMARY:** X Corporation (the Company) operates a collection business. It has a staff of employed paraprofessionals, such as researchers, collectors, and clerks, who prepare legal documents, including prejudgment pleadings (complaint, motions, discovery, etc.) and postjudgment pleadings, abstracts, writs, memorandum of costs, levy, etc. The Company hires a part-time attorney (Attorney) on an hourly contract basis to serve as the attorney of record on all legal filings. The Attorney reviews, approves, and signs various legal pleadings prepared on behalf of the Company by its employees. Attorney appears in court to represent Company in such legal proceedings.

In some instances, Company purchases debt originated in California and prosecutes collection claims in its own behalf. Wherever possible, by statute or contractual provision, the Company requests and obtains an award of attorney’s fees, including fees for the services of its paraprofessional staff. In other instances, Company receives an assignment from third parties of the right to sue for collection. In those instances, Company files lawsuits as the named plaintiff and receives a contingent fee from the principal amount collected. Company retains the awarded fees it collects from the debtor. Attorney treats the third-party assignment cases the same as Company-owned debts and does not communicate with the third parties who own the debt. In both contexts, Company retains all attorney’s fees awarded and does not share them with Attorney, who receives compensation only by the hour. What are the ethical obligations of the Attorney?

**TABLE OF AUTHORITIES:**


**FACTS AND ISSUES PRESENTED**

**Discussion:** The fact pattern presents areas of ethical concern regarding whether Attorney is aiding and abetting the employees of Company to engage in the unauthorized practice of law. It also raises issues with respect to Attorney’s duty of competence, the supervision of paraprofessional staff, and the duty of honesty as applied to seeking an award of fees.¹

---

¹ Citations in Los Angeles County Bar Association Ethics Opinions have been edited to conform to Los Angeles Lawyer style. The unedited original can be found online at www.lacba.org/ethicsopinions.
selection claims through the courts. Attorney, working only on a part-time basis, signs the collection action pleadings, including those seeking an award of attorney’s fees for the Company’s employed staff, and appears in court on these matters. Does Attorney aid and abet in the unauthorized practice of law?

To opine on the propriety of Attorney’s conduct, we must first assess whether Company itself is engaged in UPL. Rule 1-300 of the Rules of Professional Conduct (RPC) provides that a lawyer “shall not aid any person or entity in the unauthorized practice of law.” In addition, under RPC Rule 1-120, a lawyer “shall not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act.”

Section 6125 of the Business and Professions Code provides: “No person shall practice law in California unless he or she is an active member of the bar.” In Le Doux v. Credit Research Corporation, 52 Cal. App. 3d 451, 453-54 (1975), the court of appeal defined the practice of law as including “legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.”

California has long recognized that commercial necessity permits collection agencies to prosecute lawsuits where, without providing legal advice, the collectors merely take assignment for the purpose of collection and retain counsel to prosecute the claim. “The assignee for collection merely contracts to file suit in his own name, if necessary to make collection. But he does not agree to furnish any legal services whatsoever to the assignor. The assignee employs the attorney and controls his action. No legal services are performed for the assignor.” Id. at 454-56, citing to Cohn v. Thompson, 128 Cal. App. Supp 783, 788 (1932).

However, in court proceedings, with limited exceptions applicable only to small claims actions, the corporation must be represented by legal counsel. Merco Construction Engineers, Inc. v. Municipal Court, 21 Cal. 3d 724, 731-33 (1978). Thus, in order to prosecute a lawsuit, the Company must have a lawyer handling the proceedings.

Therefore, the Company does not engage in the practice of law if it 1) collects its own debt or merely undertakes to collect as the named plaintiff the claims assigned to it for collection by third parties, 2) uses the services of a lawyer to handle the litigation, and 3) does not directly provide legal advice or prepare legal instruments or contracts on behalf of the assignor of the debt.

II. Does Attorney Aid or Abet UPL by Allowing Company’s Use of Employed Researchers and Clerks to Draft Pleadings?

If Company does not engage in UPL by operating as a traditional collection agency, could Attorney nevertheless be aiding and abetting UPL by the Company’s employees? The answer is affirmative. The Company is required to be represented by legal counsel in litigation matters. Its employees draft pleadings, abstracts, and engage in collection activity. These are legal functions within the context of litigation. Even though it is permissible for the Company to assist in these functions, Attorney has a duty to supervise the activities of persons performing legal functions within the scope of his or her representation. Were Attorney to allow those functions to be performed without adequate supervision, the Company would effectively be representing itself in litigation, which is impermissible. Attorney must have an active role and may not act as merely a rubber stamp for the work done by the Company’s employees.

In Jacoby v. State Bar of California, 19 Cal. 3d 359, 363 (1977), the California Supreme Court observed that legal services may be less expensively delivered through the extensive use of paralegal assistants to gather information, conduct interviews, and fill out routine forms. Today, the use of paralegal staff is commonplace, and it is not unusual even for clients to have their own employed legal assistants. Nevertheless, the services of such legal assistants must be appropriately supervised by a lawyer.

Under Business and Professions Code Section 6105, an attorney may not lend his or her name to be used by an unlicensed person. (“Lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension.”) The power and privileges attendant to the right to practice law may not be delegated to a nonlicensed person. Townsend v. State Bar of California, 210 Cal. 362, 364-65 (1930). To facilitate or assist an unlicensed person such as a legal assistant to engage in the practice of law would constitute aiding and abetting UPL. Bluestein v. State Bar of California, 13 Cal. 3d 162 (1974).

The critical issue is whether there is adequate supervision and active participation by the Attorney to say that the services performed are those of the Attorney, rather than the assignor of the debt. To the extent that Attorney assists the client to pursue an award of fees for the services of the client’s employed legal assistants, Attorney may not misrepresent the role of these persons or their qualifications. It would be improper for Attorney to seek the recovery of attorney’s fees if no attorney was in fact involved in supervising the services of these nonlawyer personnel.

Attorney has a duty of honesty under Business and Professions Code Section 6105 by allowing an unsupervised lay employee to fix fees, interview clients, operate a collection agency, and sign letters in the lawyer’s name. When a lawyer allows a nonlawyer employee to accept clients, evaluate cases, negotiate and settle matters with minimal or no supervision, such conduct enables an unlicensed person to engage in UPL and violates Rule 1-300(A). Matter of Bragg, 3 Cal. St. Bar. Ct. Rptr. 615 (Rev. Dept 1997). Thus, the lawyer’s ethical duties necessitate that he or she exercise the proper degree of supervision. The actions of unlicensed employees performing legal tasks must be “so immediately under a lawyer’s supervision as to not run afoul of the underlying purpose of current Rule 1-300(A) or sections 6125 and 6126” [of the Business and Professions Code], Id.

The fact that the employees work for the client and are made available to the lawyer will make no difference in terms of the lawyer’s obligation to supervise their legal activities. In its Formal Opinion No. 1982-68, the Standing Committee on Professional Responsibility and Conduct of the State Bar of California (COPRAC) considered the propriety of a lawyer allowing the creditor-client’s employees to prepare and send dunning letters under the lawyer’s letterhead or name. COPRAC opined that the lawyer must take an active role in the matter and adequately supervise those employees to ensure they do not violate the law.

Attorney must have an active role in supervision and direction of the client’s employees. Attorney may not serve as a mere rubber stamp, showing up only to sign pleadings prepared by nonlicensed persons without his or her supervision. Proper supervision would require not only exercising due control over the preparation of legal pleadings and correspondence but also monitoring the client’s employee’s compliance with laws peculiar to collection agency practice.

With very limited exceptions, Attorney also may not advise the client in the violation of any law. Thus it would be improper for the Attorney to advise or permit a client’s staff under his or her supervision to establish or utilize procedures that violate the FDCPA. 10

III. May Attorney Ethically Appear and Argue for an Award of Attorney’s Fees for the Services of Company’s Employees?

In its collection litigation, Company applies for and retains court-awarded attorney’s fees. Since the focus of this opinion is only upon the Attorney’s professional conduct, the Committee offers no opinion as to whether Company’s actions in seeking to recover and retain such fees is proper.

To the extent that Attorney assists the client to pursue an award of fees for the services of the client’s employed legal assistants, Attorney may not misrepresent the role of these persons or their qualifications. It would be improper for Attorney to seek the recovery of attorney’s fees if no attorney was in fact involved in supervising the services of these nonlawyer personnel.
6106. Attorney also has a duty under RPC Rule 5-200 and Business and Professions Code Section 6068(d) to maintain those causes only as are consistent with truth, and to never mislead the Court. See Snyder v. State Bar of California, 18 Cal. 3d 286, 290-91 (1976) (attorney disbarred for moral turpitude at presenting false evidence, willfully altering documents and other acts involving dishonest in court proceedings); Rodgers v. State Bar of California, 48 Cal. 3d 300, 315-16 (1989) (attorney suspended for concealment in pro-bate court proceedings).

Consistent with the duty of honesty, when seeking an award of fees for the services of the Company’s employees, Attorney should be completely forthright when informing the court of their capacity as employees of the client, their qualifications, and the degree of supervision exercised by the Attorney over their services.

The Committee expresses no opinion as to whether or not Company is permitted to seek or recover attorney’s fees for its own employed staff under the fee schedules established by local courts for default awards in collection matters.

This opinion is advisory only. The committee acts on specific questions submitted ex parte, and its opinion is based on the facts set forth in the inquiry submitted.

The fact pattern presented to the Committee raised legal questions as to whether Company may retain the attorney’s fee awards it receives for the services of its employed clerks and paralegals. To the extent this seeks legal advice on such matter, the Committee declines to opine.

As an exception to Business and Professions Code §6125, California Rules of Court 9.43 through 9.48 do not permit non-California attorneys to practice law in California for limited purposes.

This opinion does not attempt to define adequate supervision or provide a comprehensive list of examples of what may or may not constitute adequate staff supervision in every instance.

Paralegals are regulated in California under Business and Professions Code §6450 et seq. The terms “para-legal” and “legal assistant” are virtually synonymous under Business and Professions Code §6454. To the extent that a law firm or client seeks to recover fees for services of a paralegal or legal assistant, the qualifications of that person may be subject to review and could impact the ability to recover such fees. See White v. GMRI, Inc., 504 F.3d 620 (9th Cir. 2005) (District Court denied recovery of fees for person characterized as paralegal where their qualifications were not established under Business and Professions Code §6450(c)(4)).

See American Bar Association, ABA Model Guidelines for the Utilization of Paralegal Services (2004), which provide: “A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer’s direction and should take reasonable measures to ensure that the paralegal’s conduct is consistent with the lawyer’s obligations under the rules of professional conduct of the jurisdiction in which the lawyer practices.” Id. at 12. The guidelines are not binding in California but may provide guidance on supervisory duties.

See Sanchez v. State Bar of Cal., 18 Cal. 3d 280, 284 (1976) (discipline warranted where unlicensed employee of lawyer prepared and filed complaint without supervision and signed lawyer’s name); Spindell v. State Bar of Cal., 13 Cal. 3d 253, 261 (1975) (discipline warranted where unlicensed employee of attorney conveyed incorrect legal advice to client); Vaughn v. State Bar of Cal., 6 Cal. 3d 847, 857 (1973) (discipline warranted where unlicensed employees of attorney routinely signed client’s name to pleadings); Moore v. State Bar of Cal., 62 Cal. 2d 74, 75, 80-81 (1964) (discipline warranted where lawyer entrusted client’s defense to a suspended lawyer and proven unreliable assistants); Trousd v. State Bar of Cal., 38 Cal. 3d 337, 342 (1983) (lawyer found incapable for failure to supervise secretarial assistant, which resulted in delay of settlement distribution).

The lawyer’s duty to supervise has also been applied in civil cases, such as Zamora v. Clayton Contracting Group, Inc., 28 Cal. 4th 249, 259 (2002) (typographical error of assistant held attributable to lawyer for purposes of evaluating motion for relief under Code of Civil Procedure §473); Alderman v. Jacobs, 128 Cal. App. 2d 273, 276 (1954) (competent advocate disposal of a pleading attributed to counsel).

While we agree with the 1982 COPRAC opinion, we caution that it cites to superseded provisions of California law and does not address relevant provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§1692 et seq., originally enacted in 1978. The opinion should be read with due consideration to more recent developments in the law.

See FDCPA §1692(e) and California Civil Code §1788.2(c). While the FDCPA does not normally apply to creditors trying to collect debts owed to them, it does apply to a creditor who, in the process of collecting its own debts uses a name other than its own, such as the suggestion that a lawyer is involved in the collection effort. Id. at §1692(a)(6). The FDCPA prohibits sending collection letters under a lawyer’s name unless the lawyer has been directly involved in making decisions and reviewing the file. Attorneys may not assist the creditor to prepare such forms or letters. See Martinez v. Albuquerque Collection Services, Inc., 867 F. Supp. 1493 (D.N.M. 1994) (debt collector violated the Act by assisting attorney, who did not supervise, in the preparation of documents and other acts involving dishonesty in court proceedings); Rodgers v. State Bar of California, 48 Cal. 3d 300, 315-16 (1989) (attorney suspended for concealment in probate court proceedings).

The California Supreme Court held that it was proper for a litigant to recover the reasonable value of the fees of in-house counsel, under a Civil Code §1717 recovery, as the prevailing party. The case did not address the recovery of fees for unlicensed, nonlawyer personnel who work only for the litigant, nor did it address fee awards for non-lawyer employees who do not work under the direct supervision of the in-house lawyer.

12 Section 6106 reads, in relevant part: “A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.”

10 Rule 3-210 provides: “A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.”
Appraisals and Valuations
COMMERCIAL, INDUSTRIAL, OFFICE, RESIDENTIAL, estate homes, apartments, land, eminent domain, special-use, easements, fractional interests, and expert witness. Twenty-five years of experience. All of Southern California, with emphasis in Los Angeles County and Orange County areas. First Metro Appraisals, Lee Walker, MAI, (714) 744-1074. Also see Web page: www.firstmetroappraisals.com.

Business Opportunities
WANT TO PURCHASE MINERALS and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201.

Document Services
OCR/FULL TEXT RETRIEVAL SOLUTION—Fastest and most cost effective means to find the smoking guns and to analyze evidence as presented in a huge volume of documents. Call John Chan, 1ST Consulting at (909) 786-1919.

Experts and Consultants

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.

SOLO PRACTICE SUCCESS. Want to start a solo practice or be more successful? I will teach you how to start, maintain, and/or market a family law, personal injury, business or real estate law practice. Franklin Radoff, Esq. FREE phone consultation: 805-522-1160. Visit california-divorce-attorney.com, california-realestate-lawyer.com. Credit cards accepted.

For Sale
LAW PRACTICE FOR SALE. Contingency litigation practice focuses on lucrative practice areas such as construction defects, personal injury, and complex business matters; practice includes hourly billing for business/corporate contracts and disputes, and construction defect matters. Significant growth history. Small office. See www.lawbiz.com or call (800) 837-5880 for more information.

DON’T COMPROMISE YOURSELF OR YOUR CLIENT
WORK WITH PROFESSIONALS WHO HAVE BEEN SERVING THE LEGAL COMMUNITY FOR MORE THAN 50 YEARS

EXPERIENCE YOU CAN COUNT ON
NORIEGA CHIROPRACTIC
CLINICA PARA LOS LATINOS SERVING THE LATIN COMMUNITY FOR 50 YEARS

MONTEBELLO WELLNESS CENTER
901 W. Whittier Boulevard, Montebello CA 90640
323.728.8268

POMONA HEALTH CENTER
1184 E. Holt Avenue, Pomona CA 91767
909.865.1945

1.800.624.2866
PERSONAL INJURY CASES ACCEPTED ON LIEN BASIS
WE SERVE ANYTHING, ANYWHERE
STATEWIDE · NATIONWIDE · WORLDWIDE
1-800 PROCESS
"If we don't serve it, you don't pay"
U.S.A. Only
(800) 672-1952 · Fax: (800) 236-2092
www.served.com/email: info@served.com
INTERNATIONAL
Call for cost · 1-800-PROCESS
TAP: Expert Witness Workshop

ON WEDNESDAY, NOVEMBER 11, the Trial Advocacy Program and the Litigation Section will host the Expert Witness Workshop, which provides introductory and advanced level instruction on how to use expert witnesses in civil and criminal actions, with special emphasis on expert testimony. Topics covered in the lecture portion of the program include evidentiary rules regarding expert opinions, taking and defending expert depositions, how experts can help and hurt a case, direct and cross-examination of expert witnesses, establishing and challenging expert qualifications, and advanced expert testimony techniques.

In the workshop portion of the program participants conduct direct and cross-examination of an expert witness. The program will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown. Parking is available at 1055 West 7th for $8 with LACBA parking validation before 9:30 A.M. and at nearby parking lots. On-site registration and the meal will begin at 8 A.M., with the program continuing from 8:30 A.M. to 12:30 P.M. The registration code number is 010318. The prices below include the meal.

$250—LACBA members
$350—all others
3.75 CLE hours

California’s New E-Discovery Law

ON THURSDAY, NOVEMBER 5, the Los Angeles County Bar Association and the Small and Solo Division will host a program on new e-discovery procedures in California. Speaker Paul R. Kiesel will discuss scope and frequency of allowable discovery, document preservation obligations, meet and confer obligations, form in which electronic evidence must be produced, and inadvertent production of privileged information. The program will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown. On-site registration and lunch will begin at 11:45 A.M., with the program continuing from 12:15 to 1:15 P.M. The registration code number is 010583. The prices below include the meal.

$20—CLE+Plus members
$45—Small and Solo Division members
$60—LACBA members
$70—LACBA members Webcast
$100—all others Webcast
1 CLE hour

Buying Distressed Debt

ON WEDNESDAY, NOVEMBER 18, the Real Property Section and the Real Estate Finance Subsection will host a program addressing opportunities for buying distressed debt. Panelists Susan J. Booth, Ian Schneider, and Adam B. Weissburg will discuss what things a purchaser of distressed debt needs to consider, including documentation and due diligence. In addition to the live presentation, Webinar and audio conference access will be available. Webinar registration for this program closes on November 16. Early registration is required. Login information will be forwarded to each Webinar registrant 24 hours before the event, so participants should make sure to provide their correct e-mail address. To receive full CLE credit for viewing the Webinar, registrants must log in individually, preferably five minutes early. The program will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown. Parking is available at that address and at nearby lots. On-site registration and lunch will be available at noon, with the program continuing from 12:30 to 1:30 P.M. The prices below include the meal.

Group rates are available for this event; please call (213) 896-6560 for more information. The registration code number is 010583.

$45—Real Property Section members
$55—other LACBA members
$65—all others
$75—audio conference, individual, LACBA members
$95—audio conference, individual, all others
$75—Webcast, LACBA members
1 CLE hour
We Need a Creative Solution to the Superior Court Funding Crisis

AS VIRTUALLY EVERY ATTORNEY KNOWS, the California court system is facing a severe financial shortfall sparked by the state’s budgetary crisis. The Los Angeles Superior Court—the largest trial court in the state and, indeed, in the entire nation—has been hit especially hard. Stakeholders in the court are now asking hard questions about not just the immediate impact of the budget cuts but also the long-term consequences of chronic underfunding.

How is the budget crisis impacting the Los Angeles Superior Court? The crisis is far more severe than just closing down the system one day per month as we now do. Current budget shortfalls, if not remedied, will force us to permanently close courtrooms and courthouses in the near future. As many as 100 courtrooms and 9 courthouses could be affected. The majority of closures will fall on the civil courts, given the public safety concerns associated with closing criminal courts.

What impact will closures have on the business of law in Los Angeles? In 1975, when I began practicing law, the time to trial in civil cases was at least five years and frequently longer. The legal business in Los Angeles has grown and prospered since the 1970s in part because cases now move reasonably quickly through the system. When business comes to lawyers, they need courts in which their clients’ business can get done. Closing courtrooms permanently will do more than harm the public, for whom justice delayed is justice denied. The rapidly growing case backlogs will greatly damage the business of law in Los Angeles.

How effective is cost-cutting as a tactic for dealing with this budget crisis? In the end, cost-cutting will not prove adequate. The shortages are so large that we cannot cut our way out of the crisis. Closing courts one day a month, as we now do, is a cost-cutting strategy. As the crisis grows worse, it may be tempting to think: “Let’s close two days a month and cut costs even more.” But closures do not permanently cut costs; they only postpone work that requires future cost to perform. Worse, clogging the courts with postponed work is not a linear trade-off. Large backlogs create new, costly inefficiencies as courts struggle with the added daily caseload.

Does the court possess reserves to mitigate the impact of the crisis? Yes. In the years following the 2002-03 recession, we built up reserves to use when California experienced its next downturn. The good news is we prudently saved up substantial reserves. The bad news is our vigilance in controlling costs and saving for a rainy day has left us with very little room to absorb new cuts. But we are cutting more anyway. Unfortunately, this time the cuts go not just to the bone but deep into the marrow. And that means potentially closing courtrooms and courthouses. So far we have forestalled substantial closures by spending down reserves, but they will soon be exhausted. Only long-term solutions, not short-term reserves, will bring the courts through the storm ahead.

What, if any, viable solutions do you see? The problem we face is big, and we must think big and think creatively to solve it. In 2008, the California Legislature passed SB 1407, a $5 billion bond measure for new courthouse construction. Because a new revenue stream in the form of added fines and fees was created to service the bonds, the bill required only a majority vote in the legislature. But the bonds have not yet been sold. In Los Angeles alone, SB 1407 collections add up to an annualized revenue stream of about $53 million per year. This would go a long way toward guarding the survival of court operations in the county.

That $53 million per year translates into nearly 1,000 jobs and 100 courtrooms that can be saved on an ongoing basis—and not just for one year. The budget bill recently passed in Sacramento diverted a relatively small portion of the SB 1407 stream as a partial solution for this fiscal year. I strongly believe we need to be willing, if necessary, to divert virtually all the SB 1407 revenue stream to save court operations. In this instance, saving court operations must take priority over building new courthouses. The sale of these bonds can be delayed a few years, and the revenue stream can be redirected to fully support the bonds when they are eventually sold. The building program can then proceed.

What will happen if the SB 1407 solution is not adopted? In all likelihood the trial courts will be trapped in an ever-increasing downward spiral of decline as they respond to the budget crisis incrementally with cut after cut in local operations. We cannot cut our way out of this crisis. Cutting not only damages the courts but will severely damage the business of law in Los Angeles. By setting our priorities correctly, I believe the damage can be largely avoided. Both court operations and new courthouse construction can be saved, with people and their legal problems receiving appropriate precedence over brick and mortar.

AS VIRTUALLY EVERY ATTORNEY KNOWS, the California court system is facing a severe financial shortfall sparked by the state’s budgetary crisis. The Los Angeles Superior Court—the largest trial court in the state and, indeed, in the entire nation—has been hit especially hard. Stakeholders in the court are now asking hard questions about not just the immediate impact of the budget cuts but also the long-term consequences of chronic underfunding.

How is the budget crisis impacting the Los Angeles Superior Court? The crisis is far more severe than just closing down the system one day per month as we now do. Current budget shortfalls, if not remedied, will force us to permanently close courtrooms and courthouses in the near future. As many as 100 courtrooms and 9 courthouses could be affected. The majority of closures will fall on the civil courts, given the public safety concerns associated with closing criminal courts.

What impact will closures have on the business of law in Los Angeles? In 1975, when I began practicing law, the time to trial in civil cases was at least five years and frequently longer. The legal business in Los Angeles has grown and prospered since the 1970s in part because cases now move reasonably quickly through the system. When business comes to lawyers, they need courts in which their clients’ business can get done. Closing courtrooms permanently will do more than harm the public, for whom justice delayed is justice denied. The rapidly growing case backlogs will greatly damage the business of law in Los Angeles.

How effective is cost-cutting as a tactic for dealing with this budget crisis? In the end, cost-cutting will not prove adequate. The shortages are so large that we cannot cut our way out of the crisis. Closing courts one day a month, as we now do, is a cost-cutting strategy. As the crisis grows worse, it may be tempting to think: “Let’s close two days a month and cut costs even more.” But closures do not permanently cut costs; they only postpone work that requires future cost to perform. Worse, clogging the courts with postponed work is not a linear trade-off. Large backlogs create new, costly inefficiencies as courts struggle with the added daily caseload.

Does the court possess reserves to mitigate the impact of the crisis? Yes. In the years following the 2002-03 recession, we built up reserves to use when California experienced its next downturn. The good news is we prudently saved up substantial reserves. The bad news is our vigilance in controlling costs and saving for a rainy day has left us with very little room to absorb new cuts. But we are cutting more anyway. Unfortunately, this time the cuts go not just to the bone but deep into the marrow. And that means potentially closing courtrooms and courthouses. So far we have forestalled substantial closures by spending down reserves, but they will soon be exhausted. Only long-term solutions, not short-term reserves, will bring the courts through the storm ahead.

What, if any, viable solutions do you see? The problem we face is big, and we must think big and think creatively to solve it. In 2008, the California Legislature passed SB 1407, a $5 billion bond measure for new courthouse construction. Because a new revenue stream in the form of added fines and fees was created to service the bonds, the bill required only a majority vote in the legislature. But the bonds have not yet been sold. In Los Angeles alone, SB 1407 collections add up to an annualized revenue stream of about $53 million per year. This

I strongly believe we need to be willing, if necessary, to divert virtually all the SB 1407 revenue stream to save court operations.

In this instance, saving court operations must take priority over building new courthouses.
This is Alan Blackman, Deputy City Attorney for Los Angeles and Class of 2001 graduate.

Read Alan’s story at
www.go2lavernelaw.com/alan

GREAT LAWYERS leave their mark on history.

The University of La Verne College of Law has been provisionally approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association since 2006. The Section of Legal Education may be contacted at 321 North Clark Street, Chicago, IL 60610 or by phone at (312) 988-6738.
JENNY SMITH DOESN’T SEEM WORTH SUING.

UNLESS YOU KNOW SHE’S ALSO JENNIFER KAMINSKI, THE REAL ESTATE HEIRESS.

NEW WESTLAW PEOPLEMAP

Need to know who’s who in a potential lawsuit? Westlaw® PeopleMap is the new tool that quickly helps you learn about people and their relationships to assets, public records, legal filings – and other people. Before you’ve even started your research, PeopleMap has made relevant connections between people from billions of records across the country. So you can find out what you need to know now. Westlaw PeopleMap: what’s in a name might surprise you.

To learn more, visit west.thomson.com/peoplemap or call 1-800-762-5272.