Los Angeles lawyers Justin M. Goldstein (left) and Noah Pérez-Silverman discuss the inherent powers of courts to address litigation abuse page 18
CONFIRMED SPEAKERS FOR 2010-2011:

June Rose Carbone  ―  Monday, October 4, 2010
Edward A. Smith/Missouri Chair in Law, the Constitution and Society
University of Missouri-Kansas City School of Law
“What Does Bristol Palin Have To Do With Same-Sex Marriage?”

Dean Spade  ―  Thursday, October 28, 2010
Assistant Professor of Law
Seattle University School of Law
“The End of G(LBT?) Rights Politics”

Katherine M. Franke  ―  Wednesday, January 12, 2011
Professor of Law, Director of Center for Gender and Sexuality Law
Columbia Law School
“Dignifying Rights: Reflections on the Same-Sex Marriage Litigation”

Catherine E. Smith  ―  Spring 2011
Associate Dean of Institutional Diversity and Inclusiveness, Associate Professor
University of Denver Sturm College of Law
Topic: TBA

MISSION STATEMENT
The mission of the Global Project for LGBTQ Rights and Feminism is to bring leading scholars and policymakers to Chapman University to discuss a wide range of issues related to family law, marriage equality, discrimination based on sex and sexual orientation, international human rights, and the profound impact that gender and sexual orientation have on law and society; to address the complex questions evoked by feminist theory and LGBTQ rights through an interdisciplinary approach; and to provide an important forum for international dialogue about gender and sexual orientation.

VISION STATEMENT
The vision of the Global Project for LGBTQ Rights and Feminism is a world safe for all persons, regardless of gender, gender identification or sexual orientation.
Walzer & Melcher LLP is known for its expertise in handling complex divorce cases and premarital agreements. The firm is committed to resolving contested cases by settlement. Where that cannot be achieved, the firm provides strong and effective representation in litigation.
Endorsed Protection

AHERN INSURANCE BROKERAGE
LAW FIRM INSURANCE SPECIALISTS

- 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.
FEATURES

18 Super Powers
BY JUSTIN M. GOLDSTEIN AND NOAH PÉREZ-SILVERMAN
Recent court decisions confirm that a trial court’s inherent powers extend to termination of litigation

25 Location Location Location
BY JULIE J. BISCEGLIA
California law, in contrast to federal rules, leaves little time at the initiation of a lawsuit for enforcing a forum-selection clause
Plus: Earn MCLE credit. MCLE Test No. 197 appears on page 27.

32 Death of Copyright
BY STEVEN T. LOWE
Has an unbroken string of federal court decisions effectively denied screenwriters protection against infringement by studios?

42 Special Section
Semiannual Guide to Expert Witnesses

DEPARTMENTS

9 Barristers Tips
How to prepare for direct examination of a witness
BY DEVON MYERS

10 Practice Tips
The limits on employer deductions from pay in California
BY STEVEN G. PEARL

15 Practice Tips
The immigration status of plaintiffs in personal injury actions
BY CEDRIC M. SHEN AND HUMBERTO R. GRAY

72 By the Book
The Essential Guide to California Restaurant Law
REVIEWED BY GORDON ENG

76 Closing Argument
Leveraging justice with the Justice Gap Fund
BY ASSEMBLYMEMBER MIKE FEUER, HOLLY J. FUJIE, AND REX S. HEINKE

73 Classifieds

74 Index to Advertisers

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.

STEVEN L. GLEITMAN, ESQ.
310-553-5080
Biography available at lawyers.com or by request.
Does your financial partner see your business from every angle?

You want a financial partner with a clear perspective of your firm’s business. An award-winning bank that can help you streamline your financial operations with top-rated treasury management services.¹ A bank that can provide access to a wide range of customized products tailored to your industry. Let the Legal Specialty Group from Union Bank® put their expertise to work for you today.

Mary Platt, SVP, The Private Bank Treasury Services, 213-236-5051
David Jochim, SVP & Regional Director, The Private Bank, 949-553-2520

¹Source: Greenwich Associates’ 2009 Excellence Awards in Middle Market Banking and Phoenix-Hecht 2010 Treasury Management Monitor™
Sell for the “Most Admired,”
and you’ll be the “Most Likely to Succeed.”

A career as a financial representative with Northwestern Mutual is a career with the only company to be named FORTUNE® magazine’s “Most Admired” in its industry 25 times. It’s the kind of reputation that helps professionals like you build successful careers.

The Beer Financial Group
Woodland Hills - Encino
Santa Barbara - Bakersfield
(818) 887 - 9191
www.northwesternmutual.com
www.beerfinancialgroup.com

LOS ANGELES LAWYER is the official publication of THE LOS ANGELES COUNTY BAR ASSOCIATION
2035 West 7th Street, Suite 2700, Los Angeles CA 90017-2548
Telephone 213.627.2727 / www.lacba.org

ASSOCIATION OFFICERS
President
ALAN K. STEINBRECHER
President-Elect
ERIC A. WEBBER
Senior Vice President
RICHARD J. BURDGE JR.
Vice President
PATRICIA EGAN DAENHKE
Treasurer
MARGARET P. STEVENS
Assistant Vice President
PAUL R. KIESEL
Assistant Vice President
HELEN B. KIM
Assistant Vice President
ELLEN A. PANSKY
Immediate Past President
DON MIKE ANTHONY
Executive Director
SALLY SUCHIL
Associate Executive Director/Chief Financial Officer
BRUCE BERRA
Associate Executive Director/General Counsel
W. CLARK BROWN

BOARD OF TRUSTEES
CHRISTOPHER C. CHANEY
MARRIAN S. CHANG
BRIAN S. CURREY
LINDA L. CURTIS
JEFFERY J. DAAR
ANTHONY PAUL DIAZ
LOUIS R. DIENES
BEATRIZ D. DIERINGER
DANA M. DOUGLAS
MIGUEL T. ESPINOZA
TANYA L. FORSHET
JOSHUA G. HAMILTON
JACQUELINE J. HARDING
ANGELA S. HASKINS
BRIAN D. HUBEN
TAMIA C. JENSEN
DIANE L. KARPMAN
MICHAEL K. LINDSEY
SARAH E. LUPPEN
HON. RICHARD C. NEAL (RET.)
ANNALUISA PADILLA
ANN I. PARK
THOM H. PETERS
DAVID K. REINERT
JAMES R. ROBIE
ALEC S. ROSE
DEBORAH C. SAXE
JULIE K. XANDERS
STEVEN R. YEE

AFFILIATED BAR ASSOCIATIONS
BEVERLY HILLS BAR ASSOCIATION
BLACK WOMEN LAWYERS ASSOCIATION OF LOS ANGELES, INC.
CENTURY CITY BAR ASSOCIATION
CULVER-MARINA BAR ASSOCIATION
EASTERN BAR ASSOCIATION OF LOS ANGELES COUNTY
GLENDALE BAR ASSOCIATION
IRANIAN AMERICAN LAWYERS ASSOCIATION
ITALIAN AMERICAN LAWYERS ASSOCIATION
JAPANESE AMERICAN BAR ASSOCIATION OF GREATER LOS ANGELES
KOREAN AMERICAN BAR ASSOCIATION OF SOUTHERN CALIFORNIA
LESBIAN AND GAY LAWYERS ASSOCIATION OF LOS ANGELES
MEXICAN AMERICAN BAR ASSOCIATION
PASADENA BAR ASSOCIATION
SAN FERNANDO VALLEY BAR ASSOCIATION
SAN GABRIEL VALLEY BAR ASSOCIATION
SANTA CLARA BAR ASSOCIATION
SANTA MONICA BAR ASSOCIATION
SOUTH ASIAN BAR ASSOCIATION OF SOUTHERN CALIFORNIA
SOUTH BAY BAR ASSOCIATION OF LOS ANGELES COUNTY, INC.
SOUTHEAST DISTRICT BAR ASSOCIATION
SOUTHERN CALIFORNIA CHINESE LAWYERS ASSOCIATION
WHITTIER BAR ASSOCIATION
WOMEN LAWYERS ASSOCIATION OF LOS ANGELES

LEE JAY BERMAN, Mediator

EXPERT WITNESS — Claims Consultant

OVER 45 YEARS EXPERIENCE as a claims adjuster, licensed in three states and qualified in state and federal courts. Expert in good faith/bad faith, standards and practices and standard in the industry. Specialties in property/casualty construction defect, fire/water, uninsured/uninsured motorist, warehouse and cargo claims. Failure to defend and/or indemnify. Litigation support, case review and evaluation claim consultation, coverage review and valuations. Appraisal, Arbitration and Claims Rep. at MSC & MMC.

Contact Gene Evans at E. L. Evans Associates
Phone (310) 559-4005 / Fax (310) 559-4236 / E-mail elevans66@yahoo.com

3310 AIRPORT AVENUE, SUITE 7, SANTA MONICA, CALIFORNIA  90405

Lee Jay Berman

There is no substitute for experience.

- Daily Journal Top Neutral 2008 & 2009
- Over 1,400 successful mediations
- 16 years as a full-time mediator
- Director, Pepperdine’s “Mediating the Litigated Case” program 2002-2009

Los Angeles Lawyer November 2010
LMIC has set exceptional standards for the industry for stability, customer service, continuing education and performance... standards by which other legal malpractice providers in California must be measured.

We are proud of those policyholders who see the value of membership in LMIC.

Financial Stability
A.M. Best “Excellent”
Expertise
50+ HOURS “FREE” ONLINE MCLE
Free One-On-One Loss Prevention Hotline
Longevity Credits
Preferred Policyholder Discounts
Easy Renewal Process
Dividends*
Even More Benefits at LMIC.com

Visit us at: www.lmic.com or call (800) 252-2045

LAWYERS’ MUTUAL INSURANCE COMPANY
3110 West Empire Avenue, Burbank, CA 91504

* Dividends are paid at the sole discretion of the Company’s Board of Directors and past dividends do not guarantee the payment or amount of future dividends.
Now, common sense often requires confirmation via a quick Internet search. Still we often quip with irony that “it’s on the Internet, so it must be true” and joke about receiving “official request[s]” from Nigerian royalty to transfer money.

Notwithstanding the scams, the availability of information on the Internet has entered our communal psyche. As a result, the vast majority of us now second-guess, or at least feel more comfortable in confirming with an Internet search, what we simply knew via common sense in years past. For example, 20 years ago, who would have questioned whether there were different designs of yellow hats? At a minimum, there’s the Gorton’s fish stick guy, Dick Tracy, the San Diego Padres, and the Man with the Yellow Hat from the Curious George books. (I must confess that, despite reading the Curious George books as a child and to my children ad nauseam, I conducted an Internet search to confirm that the Man with the Yellow Hat had no proper name. This was so until 1998, according to Wikipedia, when he was “Ted” in the book *See the Circus* and “Ted Shackleford” in the 2006 movie *Curious George*.)

Finally, there is “precedent stating the obvious”—an Internet search may suffice to confirm (or demonstrate) common sense. In *United States v. Bari*, 599 F. 3d 176 (2d Cir. 2010), the U.S. Court of Appeals considered, and confirmed in a limited context, the propriety of a district court taking judicial notice of Internet search results. After his imprisonment for bank robbery, Bari commenced his supervised release. At a supervised release revocation hearing the court found Bari guilty of a bank robbery violation and a firearms violation “on the cumulative effect of multiple items of evidence.” The judge noted that the “strongest piece of evidence” was a yellow hat worn by the perpetrator (as seen on the bank’s surveillance video footage)—the same type found in Bari’s landlord’s garage. “To emphasize the similarity between the hats, [the district judge] stated that ‘there are clearly lots of yellow hats out there,’” and that “[o]ne can Google yellow rain hats and find lots of different yellow rain hats.”

After noting that the Federal Rules of Evidence, except those governing privileges, do not apply in revocation proceedings, the court concluded, “Common sense leads one to suppose that there is not only one type of yellow rain hat for sale. Instead, one would imagine that there are many types of yellow rain hats, with one sufficient to suit nearly any taste in brim-width or shade. The District Court’s independent Internet search served only to confirm this common sense supposition.”

Moreover, continued the *Bari* court, “As the cost of confirming one’s intuition decreases, we would expect to see more judges doing just that. More generally, with so much information at our fingertips (almost literally), we all likely confirm hunches with a brief visit to our favorite search engine that in the not-so-distant past would have gone unconfirmed.” The observations by the court foreshadow the impending merger of the so far distinct subparts of Federal Rule of Evidence 201 on judicial notice that address what is “(1) generally known within the territorial jurisdiction of the trial court,” and “(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Perhaps the same fate awaits California Evidence Code Sections 451(f) and 452(g) and (h).

Michael A. Geibelson is a business trial lawyer with Robins, Kaplan, Miller & Ciresi L.L.P., where he handles unfair competition, trade secret, and class actions. He is the 2010-11 chair of the Los Angeles Lawyer Editorial Board.
How to Prepare for Direct Examination of a Witness

WHILE NO SINGLE LIST CAN ENCOMPASS all the fine points of preparing and questioning a witness at trial, the following list highlights the important ones. The first step is to conduct a comprehensive review of the evidence that relates to the witness. Collect and review all documents related to the witness—including declarations, depositions, and exhibits—to construct a narrative, through questioning, for the jury. Review documents, if any, that are not part of discovery.

Once you have reviewed what you know about the witness, consider what you do not know and what you want to avoid. Cross-examination cannot exceed the bounds of direct examination, so unless absolutely necessary, avoid topics that may be problematic. Next, talk to the witness about the information you do not have that may add useful detail to the testimony. Ask about any potential problems that the witness may not have disclosed, so you know exactly what weaknesses exist. Ask the hard questions too, which may involve facts that the witness may not want to discuss.

When the review is complete, it is time to create an outline of your questions. A witness declaration, if you have one, is a good place to start to structure your outline. Use the declaration to create a list of witness questions and answers. Direct examination questions cannot be leading. Writing the expected answers is important in case your witness gives an incomplete answer to a question. When this happens, you will know what follow-up questions are needed to obtain the full answer. When drafting your questions and answers, keep them short. You want to help your witness move through the testimony in bite-sized pieces, not long narratives.

After writing an outline of the questions and answers, review it for any questions that are not included but that could provide useful testimony. Review these potential questions with your witness. Do not include any question in your outline to which you do not know the answer.

Consider possible objections to each question and how to handle them. You can include these notations in the margins for quick reference. Include in appropriate places in the outline those documents that you want to introduce into evidence. Note in your outline next to the document what you intend to rely on to pass hearsay and relevance objections. Review your outline again for any gaps or subjects to flesh out. If you get sidetracked during questioning, a short checklist of crucial points that you want to elicit can help.

Create a binder for each witness that includes the outline and exhibits. Number tabs so that they match the exhibit number. For example, if you have three exhibits, do not use exhibit tabs 1, 2, and 3. Instead, use the tab number that matches the exhibit list. Be sure to include a cheat sheet—a bare-bones list of all the hearsay exceptions, legal principles to support your relevance arguments, and objections you can make when your witness is being cross-examined. The cheat sheet should not be more than a page long, although you can put the objections on the back and flip the page over when your witness is being cross-examined.

Once the outline is fully prepared, it is time to practice with your witness. You do not want your witness’s testimony to sound rehearsed, so review your questions as needed, probably no more than once. Or you can describe the order in which you plan to ask questions and the important points that need to be covered. For questions that have emotional impact, steer clear of them in preparation so that the witness’s answers will be fresher for testimony. For example, I recently had the opportunity to question witnesses during trial in the challenge led by Log Cabin Republicans to the Don’t Ask, Don’t Tell policy. My first witness had an excellent answer to why he spent a lot of his time speaking out against the policy. He did so because his best friend, who was an excellent soldier, left the military because he could not bear the burden of having to lie about his sexual orientation all the time. The witness, who was also an excellent soldier, spoke of how it was not the country he loved that applied such a policy. It was an emotional answer because of how passionately he felt for his friend and all the other people who want to serve their country but cannot. The first time I asked him that question was about two weeks before trial. I did not ask it again when we prepared for trial. When I asked him that question at trial, his answer was so powerful that it felt like everyone else in the courtroom stopped breathing.

Hold your preparation session in an informal place, but where you will not be overheard. Take time to help the witness become more comfortable with you and the examination. Get to know the witness apart from his or her testimony if you can; it will help you to elicit the story on direct. You may also develop new questions from informal discussions. Tell your witness to remain calm and composed during cross-examination and to give you time to object, if necessary, before answering. Conduct a mock cross-examination of your witness or, even better, have a colleague that the witness does not know do it. You want your practice cross-examination to be more difficult than the one the witness will likely face. Remind your witness to always be truthful and to answer the question asked. Lastly, explain to your witness where he or she will sit and how the courtroom is situated. If you can, let the witness see the courtroom ahead of time.

At trial, bring your binder and cheat sheet to the lectern, along with a blank piece of paper for notes, particularly for points you may need to circle back to in your examination. Bring a few sticky tabs too so you can hold a place in your outline if you are interrupted and have to finish your examination later. If your witness gets off track, ask a leading question. You will probably get an objection, but it will remind your witness what testimony you need. For exhibits, lay the foundation first before you move to admit the document into evidence. You cannot put the document on a projector until it is admitted. Once cross-examination begins, only object when necessary. Make your redact short as you can, and direct it to any points that require clarification or explanation from cross-examination.

Devon Myers is an associate at White & Case LLP and practices in its litigation department.
BUSINESSES IN CALIFORNIA currently employ almost 14 million non-farm payroll employees—most of them hourly wage earners. With such a large number of workers, it is a safe bet that each workday, some California employees experience cash shortages, broken merchandise and equipment, and product theft. Equally inevitable is that many employers who have lost money or merchandise look to their employees to make up for shortages, breakage, and loss with deductions from employee paychecks. These deductions are not necessarily legal.

Are employers legally justified in docking employee pay for the losses employees cause by negligence or suspected theft? California law does not give a clear answer. On the one hand, the Labor Code requires employers—not employees—to bear the cost of doing business; further, the code expressly prohibits employers from making deductions from pay except under very limited circumstances. In addition, the due process clause of the Fourteenth Amendment to the U.S. Constitution requires employers, like all other creditors, to provide notice and an opportunity to be heard before depriving a person of a property right, such as an employee’s pay for work already performed.

On the other hand, the administrative regulations—specifically, the Industrial Welfare Commission (IWC) wage orders that implement the Labor Code—explicitly allow deductions under certain circumstances. The IWC regulates all California employees with a system of 17 wage orders that constitute comprehensive statements of employee rights and employer responsibilities. Section 8 of all but two of the 17 wage orders covers shortages, breakages, and loss. The section states, “No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.”

Because this provision appears to conflict with the Labor Code and the U.S. Constitution, a strong argument can be made that payroll deductions for lost money or merchandise are not lawful. However, no court has decided whether the administrative regulations that permit deductions from an employee’s pay lawfully regulate the standard conditions of employment in California, unlawfully exceed the administrative agency’s mandate, or violate the constitutional due process rights of employees.

The history of employee rights in California goes back almost 100 years. After the Triangle Shirtwaist garment factory fire in 1911, a wave of legislation intended to protect women and children workers swept the nation. California passed its first minimum wage law in 1913. The law created the IWC and empowered it to establish a minimum wage, a maximum on hours of work, and standard conditions of labor demanded by the health and welfare of employees. The legislature also initiated a voter-approved constitutional amendment to confirm its new authority. With some exceptions, the laws defining the IWC’s powers remain unchanged. The Labor Code still empowers the IWC to adopt a series of wage orders prescribing the minimum wages, maximum hours, and standard conditions of employment for all employees in California.

The IWC’s wage orders have general support in case law. In *Martinez v. Combs*, the California Supreme Court strongly emphasized the importance of the IWC’s wage orders, holding that the wage orders, rather than common law, define the employment relationship for purposes of California’s wage and hour laws. The court held that “the IWC Wage Orders are entitled to extraordinary deference.”

Section 8 of most of those orders, however, does not explain what procedures should be used to show whether a shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee. The use of the passive voice—“unless it can be shown”—raises questions about the burden of proof. There is no designation of the tribunal that is charged with determining whether the burden of proof has been met or whether the aggrieved party has a right to review of that decision. However, employers may understandably believe that, under Section 8 of the wage orders, they

Steven G. Pearl is a mediator and attorney in Los Angeles whose practice focuses on wage and hour matters. He is a coauthor of *California Wage and Hour Law and Litigation* (CEB).

**The Limits on Employer Deductions from Pay in California**
Crowe Horwath LLP takes pride in the relationships we have with our clients. In a recent client survey, our clients said we do a better job than our competitors of providing innovative solutions to meet their business needs.

To learn more about our commitment to building lasting relationships, visit crowehorwath.com/clients, or contact Marc Shaffer at 312.857.7512 or marc.shaffer@crowehorwath.com.
have the right to deduct for shortages, breakage, or loss from employee paychecks.

Kerr’s Catering Service

Kerr’s Catering Service v. Department of Industrial Relations,3 a 1962 loss deductions case, dealt with an employer that operated lunch trucks. It paid its “salesgirls” minimum wage plus a commission based on sales. The commission was “subject to reduction in the amount of any cash shortage attributable to the salesgirl during the month.”9

The employer sued to have Section 8 of the applicable wage order declared unconstitutional on grounds that it improperly regulated matters beyond the minimum wage and maximum hours of work.10 In other words, the employer argued that, as long as it paid its employees minimum wage and overtime compensation, the IWC could not regulate its deductions from sales-based commissions on account of cash shortages.

The California Supreme Court rejected the employer’s challenge. First, it held that the IWC has “general power” to regulate “the standard conditions of labor” beyond just the minimum wages and maximum hours of work.11 Second, the court held that the IWC had authority to prohibit deductions that are not caused by dishonest, willful, or negligent employee conduct. The court held that such deductions affect the “standard conditions of labor” and therefore fall within the IWC’s broad power.12

However, despite 1) the broad constitutional and statutory authority given to the IWC, 2) the supreme court’s holding in Kerr’s that the IWC can protect employees from certain deductions, and 3) the supreme court’s strong endorsement of the wage orders, there are limits on what the IWC may do in its wage orders. The orders are regulations, and the law is clear that “no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”13 This strongly suggests that Section 8 of the wage orders, by allowing employers to deduct from employee wages under even limited circumstances, conflicts with the Labor Code and exceeds the authority given to the IWC. Sections 221 to 223 of the Labor Code clearly prohibit employers from collecting or receiving earned wages from their employees and from forcing employees to bear the employer’s costs of doing business.

The only statutory exception to the prohibition against payroll deductions can be found in Section 224, which allows employers to withhold wages for the standard deductions with which most wage earners are familiar: taxes, healthcare, and union dues.14 In particular, Section 224 allows deductions only when one of the following three circumstances applies: 1) the employer is required or empowered to do so by state or federal law, or 2) the employee expressly authorizes the deduction in writing and the deduction is to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or 3) a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

The compensation protected from payroll deductions by Sections 221 to 223 includes forms of compensation beyond what most employees would recognize as wages. The terms used in the Labor Code are given broad meaning to effectuate the code’s purpose of protecting workers. Thus, as used in the Labor Code, the term “wages” includes “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”15

An employee’s wages or earnings are the amount the employer has offered or promised to pay, or has paid pursuant to such an offer or promise, as compensation for that employee’s labor. The employer takes a deduction or contribution from an employee’s wages or earnings when it subtracts, withholds, sets off, or requires the employee to return a portion of the compensation offered, promised, or paid as offered or promised, so that the employee, having performed the labor, actually receives or retains less than the paid, offered, or promised compensation, and effectively makes a forced “contribution” of the difference.16

Sections 221 to 223 are designed to protect employees from fraud and deceit perpetrated by employers, who typically enjoy a superior economic and bargaining position relative to their employees.17 These sections were enacted to prevent the utilization of secret deductions, or kickbacks, to make it appear that the employer paid wages provided by a collective bargaining contract or by statute.18

Other Labor Code provisions support the view that employers cannot deduct from wages for shortages, breakage, or loss, even if caused by employee misconduct. Sections 400 to 410, sometimes referred to as the Employee’s Bond Law, prohibit an employer from requiring an employee to provide a bond unless certain conditions are satisfied.19

Finally, Section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” The employer’s rights under Section 2802 are considered so important that the law prohibits their waiver.20

Case Law

Arguably, statutory law offers no support for the wage orders allowing deductions from wages for shortages, breakage, or loss. Case law, however, is less clear. In the nearly 50 years since Kerr’s, California courts have considered several additional cases in which employees have alleged that their employers illegally deducted from their wages, with mixed results.

In Quillian v. Lion Oil Company,21 the manager of a gas station challenged her employer’s policy of calculating bonus compensation by deducting cash and merchandise shortages from the gas station’s sales to arrive at a net profit figure from which it calculated the bonus.22 This is similar to the issue raised in Kerr’s, but it involved bonus compensation rather than commissions. Following Kerr’s, the court of appeal held that because both commissions and bonuses are wages, the employer’s bonus policy constituted an unlawful deduction from those wages. There was no allegation or evidence that any shortage was caused by the plaintiff’s misconduct. The court did not consider whether the wage order contravenes the Labor Code but did hold that “the bonus...is in contravention of the public policy expressed in sections 400 to 410 of the Labor Code.”23

In another case, Hudgins v. Neiman Marcus Group, Inc.,24 the court of appeal held that an employer’s policy of deducting from its employees’ wages for “unidentified returns”—that is, merchandise returns for which the particular salesperson could not be identified—violated Labor Code Sections 221 and 400 through 410.25 The court held that the policy allowed for unlawful deductions from wages.

The Hudgins court also held that the employer had “numerous other tools for dealing with the problem of unidentified returns,” including careful training and supervision of its employees and investigation of employees reasonably believed to be engaging in abuse of its policies.26 “The one tool that is not available to Neiman Marcus, however, is an employment agreement by which Neiman Marcus requires its employees to consent to unlawful deductions from their wages.”27

In Ralphs Grocery Company v. Superior Court,28 the court of appeal again considered whether an employer may deduct certain items when calculating bonus compensation. After considering Kerr’s, Quillian, and Hudgins, the court held that the wage order prohibited Ralphs from deducting cash and merchandise losses from profits in calculating bonus compensation, but only for nonex-
The relevant statutes, regulations, and decisions suggest that an employer violates Section 8 of the wage order for the store where they worked.37

However, the court departed from earlier authority in holding that the Labor Code itself does not prohibit deductions from employee compensation: “Nothing in the Labor Code itself, unlike the wage orders applicable to non-exempt employees, expressly prohibits deductions from wages for cash or merchandise shortages.”31

On the other hand, the Kerr’s court specifically held it was not “unjust” for inevitable business losses, such as cash shortages, breakage, and loss of equipment, to be borne as “expenses of management.”32 As the court reasoned in Ralphs Grocery, “By using the term ‘management,’ the supreme court suggested the legitimacy of requiring exempt employees to bear some burden of business losses and expenses.”33 It would require a significant extension of the supreme court’s dicta regarding the underlying spirit of the Labor Code provisions protecting workers’ wages to conclude an incentive compensation plan that determines an exempt employee’s bonus amounts were deducted. In addition, Ralphs would otherwise be entitled to retain for itself.34

Section 8 and Due Process

Upholding the Ralphs plan, however, is arguably quite different from upholding Section 8 of the wage orders. Section 8 allows an employer to do precisely what the Labor Code prohibits: deduct for breakage, short-age, and loss, provided that “it can be shown” that the cash shortage, breakage, or loss was “caused by a dishonest or willful act, or by the gross negligence of the employee.” This provision conflicts directly with the Labor Code, and in case of conflict, the Labor Code governs. The wage orders present a procedural as well as a substantive difficulty. The taking of an employee’s wages, without notice and an opportunity to be heard, is a violation of the employee’s due process rights.

More than 40 years ago, the U.S. Supreme Court held that extrajudicial deductions from wages—like the deductions apparently permitted under the wage orders—”provide creditors with a substantive difficulty. The taking of an employee’s wages, without notice and an opportunity to be heard, is a violation of the employee’s due process rights.

In 1970, the California Legislature changed California law to conform to Sniadach.40 As one California appellate court narrates, “In McCallop v. Carberry…and Cline v. Credit Bureau of Santa Clara Valley…we examined the California wage garnishment statutes in light of Sniadach and, although the California provisions differed from the Wisconsin statute in several respects…we concluded that the California procedure exhibited the same fundamental, constitutional vice as the statute invalidated in Sniadach.”41

In Barnhill v. Robert Saunders & Company,42 the First District Court of Appeal rejected an employer’s efforts to set off an employee’s earned wages against debts allegedly owed to the employer by the employee. The court held that the setoffs violate due process: “[F]undamental due process considerations underlie the prejudgment attachment exemption. Permitting [an employer] to reach [the employee’s] wages by setoff would let it accomplish what neither it nor any other creditor could do by attachment and would defeat the legislative policy underlying that exemption. We conclude that an employer is not entitled to a setoff of debts owing it by an employee against any wages due that employee.”43

In California State Employees’ Association v. State of California,44 the First District held that the state of California, as an employer, could not deduct amounts from its employees’ paychecks to repay alleged salary overpayments. Although Government Code Section 17051 explicitly allowed the government to deduct amounts owed to the government from “any warrant drawn in favor of a payee,” the court recognized that Section 17051, when applied to wages, conflicted with the post-Sniadach wage garnishment and attachment laws.

The court held that the wage garnishment law and the attachment law protect wages from creditors. The wage garnishment law provides the exclusive judicial procedure by which a judgment creditor can execute against the wages of a judgment debtor, except for cases of judgments or orders for support. It limits the amount of earnings that may be garnished in satisfaction of a judgment and establishes certain exemptions from earnings that may not be garnished. The attachment law expressly prohibits any prejudgment attachment or levy of execution against wages.45

Citing Barnhill, the California State Employees’ Association court held that “the specific provisions of the attachment and wage garnishment laws take precedence over the general provisions of Government Code section 17051.”46 The court concluded, “[T]his general language is superseded by the specific provisions of the attachment and wage garnishment laws protecting earnings from such extra-judicial seizures.”47

To date, no California appellate court has considered an employee’s challenge to Section 8 of the IWC’s wage orders as contradicting the Labor Code or violating constitutional due process rights. However, given the ongoing focus on wage and hour cases in the appellate courts, it can only be a matter of time before a challenge arises. The weight of authority strongly suggests that employers that deduct money from their payrolls for shortages, breakage, or loss are treading on thin ice. Employers should carefully consider the risks compared to the rewards of following what may ultimately be deemed an unenforceable provision of the IWC’s wage orders.

---

§6, at 634-35); see Martinez v. Combs, 49 Cal. 4th 35, slip op. at 12 (2010).

5 See Martinez, 49 Cal. 4th 35, slip op. at 18.

6 LAB. CODE §§70-74, 1171-1204; Industrial Welfare Comm’n v. Superior Court (California Hotel and Motel Ass’n), 27 Cal. 3d 690, 698 (1980).

7 Martinez, 49 Cal. 4th 35, slip op. at 28-29.


9 Id. at 322.

10 IWC Wage Order No. 5-57 §§, 8 CAL. ADMIN. CODE §11380 (1962).

11 Kerr’s, 57 Cal. 2d at 325; LAB. CODE §1182.

12 Kerr’s, 57 Cal. 2d at 328.


14 LAB. CODE §224.

15 LAB. CODE §200(a).


19 Id. at 328.

20 LAB. CODE §2804; Gattuso v. Harte-Hanks Shoppers, Inc., 42 Cal. 4th 554, 570 (2007) (Any agreement made by the employee is null and void insofar as it waives the employee’s rights to full expense reimbursement under LAB. CODE §2802.).


22 Id. at 158-59.

23 Id. at 163.


25 Id. at 1111-24 (citing Quillian, 96 Cal. App. 3d at 156).

26 Id. at 1124.

27 Id.


29 Id. at 1102.

30 See, e.g., IWC Wage Order No. 1-2001 §1A (“Provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities.”).

31 Hudgins, 34 Cal. App. 4h 1119.


33 See CAL. CODE REGS. tit. 8, §11070, subdiv. 1(A) (Exempt employees “manage” the enterprise for which they are employed.).

34 Ralphs Grocery Co., 112 Cal. App. 4h 1105-06 (citations omitted).


36 Id. at 217.

37 Id. at 223.

38 Id. at 228.


40 See CODE CIV. PROC. §§487.020(c).


43 Id. at 6.


45 Id. at 377 (1988) (notes omitted); CODE CIV. PROC. §§487.020(c), 706.020, 706.050-706.052.

46 California State Employees’ Ass’n, 198 Cal. App. 3d at 378.

47 Id.
The Immigration Status of Plaintiffs in Personal Injury Actions

**If the plaintiff cannot demonstrate that he or she is legally allowed to work for compensation in the United States, he or she will not be entitled to future earnings based on U.S. wages.**

There are several forms of damages a plaintiff may seek in a civil personal injury action. Some, such as medical expenses, are readily quantifiable. Other damages, such as emotional distress or loss of future earnings, are not as easily measured. In cases involving sizeable claims for loss of future earnings, battles are often fought concerning the plaintiff's education and employment history. Given the speculative nature of future income claims, attorneys for both sides will often retain economists and experts to inflate or deflate the amount of future earnings to which a plaintiff may be entitled.

However, attorneys often overlook the importance of immigration status in civil personal injury actions as it relates to a plaintiff's loss of future earnings. In an action involving a plaintiff who is undocumented in the United States, immigration status may play a significant role in the amount of future earnings he or she may be awarded. Recovery for loss of future earnings is limited for plaintiffs who are in the United States illegally to what they would make in their country of citizenship. This could mean the difference of tens—if not hundreds—of thousands of dollars in a jury verdict.

For example, consider a 30-year-old plaintiff of Mexican citizenship who is severely injured and permanently disabled. Assume that at the time of his injury he was earning $10 per hour doing manufacturing work. He files a negligence lawsuit seeking, among other things, loss of future earnings. The plaintiff's expert places his loss of future earnings at $624,000 in U.S. wages ($10 per hour at 40 hours per week for the next 30 years). However, if the plaintiff's future earnings are calculated according to Mexican wages (roughly 13 percent of U.S. wages), it would decrease the value to $81,120—a reduction of more than $540,000. This hypothetical example illustrates the importance in determining the loss of future earnings in the early stages of discovery. A recent California case, Rodriguez v. Kline, offers practitioners a guide.

In Rodriguez, plaintiff Jesus Rodriguez, who was illegally present in the United States, brought an action against defendant Samuel Kline for injuries he sustained in a traffic accident. The trial court concluded that the defendant had the burden of demonstrating the plaintiff's current illegal status as well as the possibility of his eventual deportation. The trial court also allowed evidence of the plaintiff's projected earnings in the United States and Mexico, and then instructed the jury to determine whether the plaintiff was subject to deportation and whether he was entitled to future loss of earnings. The plaintiff was awarded a judgment of $99,000, which the defendant appealed.

The court of appeal decided whether a person who is in the United States illegally is entitled to be compensated for personal injuries based upon projected earning capacity in the United States or in the country of lawful citizenship. In doing so, the court of appeal reversed the trial court’s decision and determined that “whenever a plaintiff whose citizenship is challenged seeks to recover for loss of future earnings, his status in this country shall be decided by the trial court as a preliminary question of law” pursuant to Evidence Code Section 310. The court acknowledged that evidence relating to citizenship and deportation would be prejudicial to the party whose status was at issue. Thus, the court of appeal held that the issue could be resolved by treating any question regarding a plaintiff's citizenship or lawful place of residence as one of law, to be decided exclusively by the trial court outside of the presence of a jury. During this hearing, the defendant has the initial burden of producing proof that the plaintiff is undocumented and subject to deportation. If the defendant is successful, the burden shifts to the plaintiff to demonstrate that he or she has “taken steps” to correct his or her deportable condition.

If the plaintiff cannot demonstrate that he or she is legally allowed to work for compensation in the United States, he or she will not be entitled to future earnings based on U.S. wages. If the judge finds in favor of the plaintiff, all evidence relating to his or her illegal status “shall be excluded and his projected earning capacity may be computed upon the basis of his past and projected future income in the United States.” If the judge finds in favor of the defendant, then evidence of the plaintiff’s future earnings is “limited to those he could anticipate receiving in his country of lawful citizenship.”

In applying this reasoning to the plaintiff in Rodriguez, the court of appeal held that he may have been able to meet his burden in a pretrial hearing. The plaintiff had been in the country for nearly 20 years and had been a hardworking person with high moral character. While it was clear that the plaintiff was subject to deportation, it was not clear whether the verdict of $99,000 compensated him for his loss of future earnings and, if so, whether the award was based on his earning capacity in the United States or Mexico. Since the jury was improperly instructed, the judgment was reversed and remanded. Upon remand, the trial court was ordered “to conduct

Cedric M. Shen and Humberto R. Gray practice immigration law in Los Angeles. The authors wish to thank Courtney A. Morgan for her contributions to this article.
a hearing that would afford plaintiff an opportunity to present proof regarding his legal status.” 17

**Rodriguez and Civil Discovery**

Attorneys should apply Rodriguez to civil actions in California by ascertaining early in discovery whether the plaintiff may not be entitled to future earnings in U.S. wages. Presumably, a plaintiff’s attorney knows prior to filing a lawsuit whether his or her client is entitled to future earnings damages—as this would have an impact on the amount of any potential verdict. Whether a plaintiff is entitled to future earnings in U.S. wages may not be readily apparent to a defense attorney, especially if the plaintiff is undocumented and his or her attorney attempts to withhold this information.

The simplest way for a defense attorney to determine a plaintiff’s immigration status via formal discovery is to propound California Judicial Form Interrogatories to the plaintiff shortly after the commencement of litigation. Form Interrogatories 2.2 and 8.0 ask for the plaintiff’s date and place of birth and information about loss of income or earning capacity. From these two interrogatories, a defense attorney will get an idea as to whether the plaintiff’s immigration status will play a role in any future lost earnings claim. Obviously, if the plaintiff was born in the United States, there would not likely be an issue. However, if the plaintiff was born in Mexico, for example, and is making a loss of future earnings claim, it is important to determine his or her immigration status in the United States.

After receiving these responses, defense counsel should propound further interrogatories regarding the plaintiff’s immigration status. Is he or she a U.S. citizen? A permanent resident? When did he or she first come to the United States? Did he or she enter with a visa? If so, what type? Has he or she maintained that visa? Has he or she been convicted of a crime anywhere in the world? Does he or she have any immediate family members who are residents or citizens of the United States? Has he or she applied for an immigration benefit in the United States? While these may certainly be asked at deposition, it would help the defense attorney to know the answers beforehand in order to prepare for the deposition.

The plaintiff’s attorney may object to any questions involving the plaintiff’s immigration status—especially if the plaintiff is undocumented. In fact, the plaintiff’s attorney should object to these questions—not only to protect the loss of future earnings claim but to demonstrate that the attorney has taken steps to protect the plaintiff from admitting undocumented status. If the plaintiff’s counsel objects to interrogatories regarding citizenship or legal status in the United States, the defense attorney should be sure to lay the foundation in a meet and confer letter to compel responses.

After the written discovery is complete, the defense attorney will have a good idea as to whether the plaintiff is undocumented. At this point, the defense attorney should take the plaintiff’s deposition. Prior to doing so, it is important to outline the proposed deposition examination to ensure the proper questions are asked regarding the plaintiff’s immigration status. While the value of every case is different, it would be prudent to consult with an immigration attorney to determine what questions to ask in order to assess the viability and legitimacy of the plaintiff’s loss of future earnings claim.

Questions framed for the deposition will vary depending on the specific facts of each case and will require different inquiries relating to specific immigration issues. The first question to ask a plaintiff is whether he or she is a U.S. citizen or a lawful permanent resident. If he or she is not, the defense attorney should ask the plaintiff whether he or she is illegally present in the United States. The plaintiff’s counsel will probably object to this question and instruct the client not to respond. Understandably, the plaintiff’s counsel will not want a client to admit to violating federal law. However, the defense attorney should not back down from inquiring into a plaintiff’s immigration status—citing Rodriguez and its relevance in determining the plaintiff’s loss of future earnings. If the plaintiff’s attorney instructs the client not to answer the question, defense counsel should file a timely motion to compel.

Regardless of whether or not the plaintiff’s counsel objects to questions regarding the plaintiff’s immigration status, it is important for a defense attorney to ask several additional questions at the deposition. A party cannot be deposed more than once absent a court order based on a showing of good cause. 18 Thus, if counsel objects to questions regarding the plaintiff’s immigration status, defense counsel should operate on the presumption that the plaintiff is undocumented or deportable.

It is important to understand the term “deportable.” A person can be deportable for various reasons, even if he or she is a permanent resident of the United States. Formal grounds for deportability may be found in the Immigration and Naturalization Act. 19 Some grounds for deportability include entering the United States illegally, failing to maintain legal status, and convictions for certain crimes.

**Correcting a Deportable Condition**

A key term in Rodriguez is whether the plaintiff has “taken steps” to correct the deportable or removable condition. What constitutes steps that would be sufficient to meet the burden? No case law defines the standard. Merely seeking counsel is probably insufficient, while filing an application for immigration benefits may be sufficient where the application is still pending.

Taking steps to be placed in removal proceedings would certainly constitute sufficient steps but is not an easy task. Usually, if an undocumented person is convicted of a crime, Immigration and Naturalization and Enforcement (ICE) will initiate removal proceedings. However, if the undocumented person presents himself or herself to ICE, it has discretion to commence removal proceedings. Immigration courts are currently backlogged, and ICE is usually reluctant to place people in removal proceedings.

Even if the plaintiff demonstrates steps taken to correct the deportable condition, the defense attorney can ask questions to determine if the plaintiff has a realistic hope of correcting his or her deportable status. There are several legal ways that an undocumented individual can correct a deportable condition. One is to immigrate through immediate family members. These include parents, children, or siblings who are permanent residents or citizens of the United States. 20 Another way to correct a deportable condition is through employment. There are five categories under which a foreigner can seek immigration benefits. 21 Even if an undocumented individual has a family- or employment-based option to immigrate, he or she must also be eligible to adjust status. 22

There are also avenues in deportation proceedings by which an undocumented individual can correct his or her deportable condition. These proceedings are held in front of an immigration judge in federal immigration court. Avenues of relief include asylum, withholding of removal, protection under the Convention of torture, and the two types of cancellation of removal. However, all types of relief are difficult to secure. For example, under one cancellation of removal provision, the person in removal proceedings must prove that he or she has been in the United States for 10 years and is a person of good moral character (no criminal convictions). In addition, those in removal proceedings must show...
that if they are deported, a family member (spouse, parent or child) who is a resident or citizen of the United States faces exceptional and extremely unusual hardship. The standard for hardship is difficult. It may be satisfied if a qualifying family member has a serious illness.

Finally, it is also important to ask the plaintiff if he or her educational level, what type of work he or she did in the native country, and most importantly, what his or her wages were there. If the judge finds that the plaintiff has not met his or her burden, then future earnings will be decided based on the wages in the native country.

Rodriguez was issued more than 20 years ago and remains good law. Given that California courts have not further explored the issue of undocumented individuals and future earnings claims, the term “taken steps” remains murky. What steps must a plaintiff take to meet the Rodriguez burden? Is it sufficient that a plaintiff merely consulted with an immigration attorney? Should the plaintiff voluntarily place himself or herself into removal proceedings so that he or she can seek a cancellation of removal? Is filing an application for immigration benefits, or being placed in deportation proceedings without the ability to correct the deportable condition, enough to satisfy the standard of Rodriguez in taking steps to correct the deportable condition? While there is no definitive answer, it is safe to conclude that the more actions that the plaintiff shows he or she has taken, the better chance he or she has of prevailing under the test in Rodriguez.

Rodriguez also poses a dilemma for attorneys who represent undocumented plaintiffs. Should the attorney proceed with a loss of future earnings claim, knowing that a client is illegally present in the United States? Doing so may subject the plaintiff to admit—in deposition or written discovery responses—that he or she is in the country illegally. Or should the plaintiff’s attorney waive the claim, thereby protecting his or her client’s privacy but foregoing the potential for a larger verdict? Before commencing litigation, a plaintiff’s attorney should confer with the client about the client’s immigration status and whether he or she wishes to make a claim for future earnings. In doing so, the attorney should also advise the client that he or she may be entitled to future earnings in U.S. wages, but that doing so may require him or her to divulge his or her illegal immigration status.

It is also interesting to see whether the test in Rodriguez will be expanded to include non-U.S. citizen plaintiffs in different immigration categories. For example, should plaintiffs in nonimmigrant temporary status who verify their intent to return to their home country upon expiration of their visas be entitled to future earnings in U.S. wages? An argument can certainly be made that these plaintiffs should not be entitled to lost U.S. earnings.

On balance, it is important to remember that assessing a loss of future earnings claim in a civil action must be considered by attorneys for both sides from the inception of litigation. In personal injury actions, attorneys often focus on the most common forms of damages, such as hospital bills, future medical care, pain and suffering, and emotional distress. Details of a loss of future earnings claim may often be overlooked until the parties reach the expert discovery phase of litigation. At this time, proving these damages may reveal—possibly for the first time—that the plaintiff is not entitled to future earnings in U.S. dollars. If a defense attorney has not presented the case with the plaintiff’s immigration status in mind, it may be difficult to meet the burden of proof established in Rodriguez. This error may substantially increase a jury award. Conversely, a plaintiff’s attorney who does not make a preliminary consideration of the viability of a loss of future earnings claim may later be put in the uncomfortable position of asking a client to either admit his or her illegal status or to waive the claim altogether.

1 Statistical Abstract of the United States tbl. 1318.
3 Id.
4 Id. at 1149.
5 Id. at 1149-50.
6 Id. at 1147.
7 Id.
8 Id. at 1149.
9 Id. at 1148.
10 Id.
11 Deportation is also known as removal. The court of appeal in Rodriguez uses the term “deportable.” However, “deportable” and “removable” are interchangeable. “Removable” is a broadly used term that encompasses certain grounds of inadmissibility and deportability found in Immigration and Naturalization Act §212, 8 U.S.C. §1182, and Immigration and Naturalization Act §237, 8 U.S.C. §1227. The term “removable” encompasses §212(a) grounds of inadmissibility and §237(a) grounds of deportability, and it may ordinarily be used in place of either term. See Rodriguez, 186 Cal. App. 3d at 1149.
12 Rodriguez, 186 Cal. App. 3d at 1149.
13 Id.
14 Id.
15 Id.
16 Id. at 1150.
17 Id.
19 See 8 U.S.C. §§11227 et seq.
22 See 8 U.S.C. §1255i. To qualify, the individual should be the beneficiary of an application filed before April 30, 2001.
23 8 U.S.C. §1229a(b).
CIVIL LITIGATION is not always civil. Nevertheless, there is a line between fighting hard and cheating.

Imagine a party materially altering or fabricating evidence and presenting it as authentic, or surreptitiously reviewing and copying documents from the opposing party’s briefcase, or threatening witnesses. These scenarios may seem far-fetched, but each was raised and addressed in a published decision.¹

Litigation abuses undermine the fairness of the judicial system for the participants, and more broadly, do the same for the public’s perception of the courts as a fair venue for resolving disputes. It is therefore no surprise that legislatures have empowered courts to redress misconduct.

Remedies for misconduct are often found in procedural discovery rules. California is no exception. Chapter 7 of the Civil Discovery Act identifies categories of conduct that can justify sanctions and sets forth specific measures a court can impose against “any party engaging in the misuse of the discovery process.”²

But what of litigation misconduct that cannot be categorized as a “misuse of the discovery process”? As one court has observed, “[I]t is impossible to establish a rule of law for every conceivable situation which could arise in the course of a trial...[or] in the discovery process.”³ It seems inconceivable that there would be no remedy for a party issuing death threats to witnesses, wiretapping the opposition’s attorneys, or the like.

The U.S. Supreme Court has affirmed that courts possess certain inherent powers that “necessarily result...from the nature of their institution, powers that cannot be dispensed with...because they are necessary to the exercise of all others.”⁴ These powers are “not confined by or dependent on statute”⁵ and include the power to “fashion[] procedures and remedies as necessary to protect litigants’ rights.”⁶

California courts agree and have found occasion to flex their inherent powers when confronted with litigation abuses. The inherent powers of California courts include not only precluding evidence and issues but also, as confirmed recently, the power to terminate.

Justin M. Goldstein, a counsel in the litigation department of O’Melveny & Myers, specializes in entertainment, intellectual property, and complex business disputes. He was a member of the O’Melveny defense team led by Daniel M. Petrocelli in Stephen Slesinger, Inc. v. Walt Disney Company.

Noah Pérez-Silverman is an associate in the litigation department.
cases to redress litigation misconduct when justice requires.

The notion that courts possess inherent powers—powers separate and apart from those specifically granted to courts by legislatures—is rooted in English tradition.7 Norman monarchs possessed absolute sovereignty, which they used to assign administrative and judicial tasks to personal ministers and advisers: “Through these councils, the king exercised his vast prerogative authority, which included guaranteeing justice and preserving the peace.”8 As these councilors evolved into more formal judges and courts, they were entrusted with judicial duties and given certain powers essential to the efficient functioning of the courts. However, these early English judges were merely the king’s representatives; all their powers stemmed from the king’s absolute authority.

The Magna Carta affirmed for the first time that there existed laws even the king must obey. Over the next several centuries the notion of a constrained monarch became more potent. As judges gradually became more independent, a shift took place from allegiance to a particular king to allegiance to the impersonal concept of “the Crown” and, ultimately, to “the law.”9 As a result, judicial powers once merely derivative of the monarch’s supreme power became viewed as the “inherent powers” of the court.10

The U.S. Constitution established the American judiciary as a separate branch of government with even greater autonomy. As early as 1812, the U.S. Supreme Court acknowledged that Article III federal courts possessed inherent powers: “Certain implied powers must necessarily result to our Courts of justice from the nature of their institution.…[O]ur Courts no doubt possess powers not immediately derived from statute.” The Court described those powers as ones that “cannot be dispensed with in a Court, because they are necessary to the exercise of all others.”11

The same is true of California courts. They were created by the California Constitution12 and are deemed to have inherent powers “not confined by or dependent on statute.”13 Moreover, the California Legislature has expressly recognized these powers. For example, in addressing the issue of dismissing cases for failure to prosecute, the legislature stated its clear intention not to interfere with the courts’ inherent powers: “This chapter does not limit or affect the authority of a court to dismiss an action or impose other sanctions…under inherent authority of the court.”14 The legislature was similarly cautious in its general guidelines for handling the dismissal of cases: “The provisions of this section shall not be deemed to be an exclusive enumeration of the court’s power to dismiss an action or dismiss a complaint as to a defendant.”15

The California Supreme Court has recognized two types of inherent powers: 1) “courts’ equitable power derived from the historic power of equity courts,” and 2) “supervisory or administrative powers which all courts possess to enable them to carry out their duties.”16 The latter powers, in particular, enable a court to “control litigation before it, to prevent abuse of its process, and to create a remedy for a wrong even in the absence of specific statutory authority.”17

Redressing Litigation Misconduct

Over the last century, there has been no shortage of reported decisions describing a court’s exercise of inherent powers to redress litigation misconduct. For approximately the last 20 of those 100 years, arguably the most important decision in California on the inherent authority of courts was Peat, Marwick, Mitchell & Co. v. Superior Court.18 In Peat, Marwick, the state of California sued accounting firm Peat, Marwick for having negligently performed an audit. The state retained the accounting firm Main Hurdman as an expert. Shortly after its retention, however, Main Hurdman began secretly negotiating with Peat, Marwick over a potential merger. Neither Main Hurdman nor Peat, Marwick informed the state of the intended merger. In fact, when news of the merger prematurely leaked to the press, Main Hurdman assured the state that there was no truth to the “rumors.” Formal announcement of the merger came almost a year later.

The court exercised its inherent power to sanction Peat, Marwick for having interfered with the state’s expert relationship—conduct that the court deemed an “abuse of the litigation process.”19 To “prevent the compromise of confidential information and to preserve the integrity of the judicial process,” the court precluded Peat, Marwick from presenting any evidence controverting certain elements of the plaintiff’s case.20 Beyond its core holding, what made the Peat, Marwick decision so influential was its thorough treatment of the reach of courts’ inherent powers. The Peat, Marwick court recognized that inherent powers “have been flexibly applied in response to the many vagaries of the litigation process” and reasoned that there is no “intrinsic limitation” that would justify restricting their application to redressing only specific types of litigation abuse.21 Invading or damaging a party’s unique relationship with its expert, the court found, is fundamentally different from disadvantaging a party by destroying evidence.22 Nor did the court find due process considerations to be an insurmountable obstacle to the exercise of inherent powers: “We cannot accept the notion that due process of law entitles a litigant to present certain evidence after it has compromised its opponent’s ability to counter that evidence with the sort of litigation abuse found in this case.”23 When a party seeks to take unfair advantage or “the integrity of the judicial system” is at risk, the Peat, Marwick court affirmed that judges are empowered to act.24

The Peat, Marwick decision drew heavily from prior California decisions addressing California courts’ inherent powers to respond to “the many vagaries of the litigation process.” These include Conn v. Superior Court, in which a court exercised its inherent powers to require the return of documents wrongfully taken by an employee from his former employer’s office.25 The Peat, Marwick decision has been cited on numerous occasions by courts assessing whether and how to apply their inherent powers to redress litigation abuses.26 However, until recently, no published decision had directly tackled the question of whether the arsenal of inherent powers includes the authority to terminate a case for litigation misconduct. Enter the long-standing Stephen Slesinger, Inc. v. Walt Disney Company royalty dispute concerning the Winnie the Pooh children’s stories.27

In 2004, the trial court imposed a terminating sanction against Stephen Slesinger, Inc., based on its finding that SSI engaged in severe and irredeemable litigation misconduct.28 Among its findings, the court concluded that SSI had 1) hired an investigator who wrongfully obtained Disney documents, 2) reviewed privileged and confidential Disney papers, and 3) materially altered evidence in an effort to conceal its possession of confidential Disney documents.29 In granting the terminating sanction, the trial court made clear that it was “exercising its inherent powers to preserve and protect the integrity of the judicial process.”30 This gave the court of appeal an opportunity to address whether trial courts have the inherent power to dismiss litigation based on misconduct—a question the court described as one of “first impression.”31

Although no published California decision had affirmed a court’s exercise of inherent power to grant a terminating sanction to redress litigation abuses, California courts have long-recognized inherent powers to terminate cases for other reasons. If a litigant unreasonably delays in prosecuting its case, or pursues a “sham, frivolous or wholly vexatious” claim or defense, California courts have the inherent power to dismiss the entire action.32

California courts also have given strong indications that the inherent power to dismiss should be extended to redressing litigation misconduct. For example, one court of appeal
upheld the exercise of inherent authority by a peer review panel to terminate an administrative proceeding based on findings of discovery delays, violations of orders, and disruptive behavior. The court likened the inherent powers of administrative officers to those of judges, and found that “hearing officers must have the power to control the parties and prevent deliberately disruptive and delaying tactics. The power to dismiss an action and terminate the proceeding is an important tool that should not be denied them.” During the pendency of the Slesinger appeal, another division of the California Court of Appeal affirmed that trial courts “have inherent authority to dismiss an action,” even though the dismissal in that case was based on statutory authority.

Courts from other jurisdictions have also found that their inherent powers extend to termination. Federal courts have regularly exercised inherent powers to terminate cases for all manner of litigation misconduct, including the manufacturing of evidence, perjury in discovery responses, and bad faith delay. The same is true of state courts around the country.

**Three-Part Standard**

In the end, the Slesinger court concluded that California courts necessarily must have the power to dismiss cases for pervasive litigation abuse. The court established a three-part standard for determining when a court may exercise its inherent power to terminate. A party’s misconduct during the course of litigation must:

1) Be “deliberate.”
2) Be “egregious.”
3) Render “any remedy short of dismissal inadequate to preserve the fairness of the trial.”

In Slesinger, the court found thatSSI’s abuses were sufficiently deliberate and egregious, and no remedy short of dismissal could preserve the fairness of trial. Thus, the court concluded that dismissal was warranted under its new standard.

The standard is notable for several reasons. First, it sets the bar. No prior court in California had articulated what conditions would justify exercising the court’s inherent power to dismiss a case for misconduct. Until Slesinger, no appellate court had reason to do so.

Second, the Slesinger court did not expressly adopt a standard articulated by courts from other jurisdictions. For example, Florida courts have ruled that dismissal is appropriate when the conduct of the litigant shows “[a] deliberate and contumacious disregard of the court’s authority,...bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness.” In Maryland, a dismissal for litigation misconduct is “warranted only in cases of egregious misconduct such as willful or contemptuous behavior, a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims, or stalling in revealing one’s own weak claim or defense.” The Ninth Circuit has stated that federal courts “have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.” Had the court explicitly adopted another jurisdiction’s standard, decisions from that jurisdiction would have become more relevant.

Finally, the Slesinger court explicitly made dismissal an appropriate remedy only when no lesser remedy would guarantee fairness. This criterion sets California apart from many jurisdictions—including federal courts—which seem to allow room for courts to exercise the inherent power to dismiss even when it is not absolutely necessary to do so. Dismissals for misconduct in other jurisdictions may explicitly serve as a form of punishment or deterrence. According to the U.S. Supreme Court, for example, “The most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.”

Slesinger is the only published California state court appellate decision upholding the invocation of inherent powers to dismiss a case based on litigation abuses. Still, California courts have recognized and applied the three-part standard.

One court even intimated that the standard may apply to any exercise of inherent power to sanction based on litigation misconduct. In *New Albertsons, Inc. v. Superior Court*, the trial court imposed an evidentiary sanction after finding the defendant destroyed security camera footage despite having received a request for its production. The court of appeal reversed because the destruction of video footage was deemed not to constitute “egregious misconduct.” The court
also did not consider the sanctions to be “necessary to ensure a fair trial.” Based on those findings, and relying on Slesinger, the court reversed the lower court’s use of inherent powers to sanction. Only time will tell whether the three-part standard will emerge as the yardstick for California courts to assess all nonmonetary sanctions for litigation abuse.

**Limitations on Inherent Judicial Powers**

Although broad, courts’ inherent powers are not limitless. They can, for example, be circumscribed by legislation. In McMahon v. Superior Court, the court of appeal reversed a trial court’s exercise of inherent authority to shorten the statutory notice period for a summary judgment motion. The court held that even when legislative acts bear directly on inherent judicial powers, lawmakers may exercise “a reasonable degree of regulation” of the judiciary—so long as the statutes do not “materially impair the constitutional functions of the courts.”

This ruling is consistent with the California Supreme Court’s general caution that “inherent powers should never be exercised in such a manner as to nullify existing legislation or frustrate legitimate legislative policy.”

The inherent power of federal courts are subject to even greater legislative control. That is because the U.S. Supreme Court is the only constitutionally created federal court. All other federal courts are “ordained and established” by Congress. Thus, for example, even though the power of contempt is considered “inherent in all courts [and] essential to the preservation of order in judicial proceedings,” the Supreme Court held that Congress could nevertheless regulate that power’s application in circuit and district courts because those courts’ “powers and duties depend upon [Congress] calling them into existence.”

The judiciary itself also can set limits on its inherent powers. California courts have imposed one important doctrinal limitation with implications for parties confronted with litigation misconduct. In Bauguess v. Paine, the California Supreme Court ruled that trial courts lack the inherent power to award attorneys’ fees based on misconduct. The supreme court recognized the American Rule, which makes each party responsible for its own fees, absent an agreement or statutory basis. But that point did not prove dispositive. The court observed that even when no agreement or statute exists, a trial judge has inherent supervisory power to “take appropriate action to secure compliance with its orders, to punish contempt, and to control its proceedings.” However, the court concluded, “It would be both unnecessary and unwise to permit trial courts to use fee awards as sanctions apart from those situations authorized by statute.”

Driving this determination were due process concerns about fee awards without statutory safeguards, as well as the prospect of a chilling effect on attorneys’ zealous advocacy. According to the court, “The use of courts’ inherent power to punish misconduct by awarding attorneys’ fees may imperil the independence of the bar and thereby undermine the adversary system.” Tempered by procedural safeguards, courts already have “ample power to punish the misconduct by contempt.”

That the Bauguess court spoke of monetary awards as a way to “punish” misconduct helps reconcile this decision with other decisions giving trial courts broad inherent powers to dismiss and impose evidentiary sanctions to redress litigation abuse. In California, courts have the inherent power to impose nonmonetary sanctions to remedy threats to the judicial system and rebalance the process when one party takes unfair advantage. It makes sense to exclude monetary sanctions from the court’s inherent powers to the extent they are viewed solely as a form of punishment. This analysis helps explain why California courts do not have the inherent power to impose monetary sanctions to redress misconduct but federal courts do. Federal courts are permitted to use their inherent power to impose sanctions to punish or deter.

Nevertheless, this analysis is not entirely satisfying because courts could conceivably award nonpunitive monetary sanctions—for example, if the sanction were designed merely to compensate a party for fees incurred as a direct consequence of misconduct by the opposing party. California courts have not carved out an exception to permit the exercise of inherent powers to grant purely restorative monetary sanctions.

At least three explanations for this inaction seem to emerge from California decisions. The first is a concern about abuse, absent statutory safeguards. The Bauguess court commented that if it “were to hold that trial courts have the inherent power to impose sanctions in the form of attorneys’ fees for alleged misconduct, trial courts would be given a power without procedural limits and potentially subject to abuse.” Second, courts seem to view the inherent power to impose nonmonetary sanctions to redress misconduct as more “necessary.” The Slesinger court observed that the Bauguess decision described the inherent power to impose monetary sanctions as “unnecessary” in light of courts’ contempt power. In contrast, the court described the inherent power to terminate litigation when deliberate and egregious misconduct renders any lesser sanction inadequate to be “essential for the court to preserve...
the integrity of its proceedings.” This power, according to the court, “restores balance to the adversary system when the misconduct of one party has destroyed it.”65 Finally, the California Legislature has “expressly acknowledged the inherent power of courts to dismiss,” but has not done so with respect to monetary sanctions.66

In fact, since the Bauguess decision, the legislature took a number of steps to ensure that trial courts have statutory authority to impose monetary sanctions for different forms of misconduct. For example, the legislature enacted Code of Civil Procedure Section 128.5, giving courts broad authority to impose monetary sanctions for “bad faith actions or tactics.” The legislature specifically observed that this power was “now not presently authorized by the interpretation of the law in Bauguess v. Paine.”67 Section 128.5 was later superseded by Section 128.7, which was modeled after Rule 11 of the Federal Rules of Civil Procedure and remains in place today. Section 128.7 grants more limited authority to impose monetary sanctions than Section 128.5 and also provides greater procedural safeguards by allowing an offending filing to be withdrawn without consequence. This and other authorities like Section 177.5 and Rule 2.30 of the California Rules of Court (formerly Rule 227), which authorize imposition of monetary sanctions for certain forms of litigation impropriety, further underscore “the Legislature’s acceptance of [the Bauguess court’s] core holding that trial courts may not award attorney fees as a sanction for misconduct absent statutory authority (or an agreement of the parties).”68

The inherent powers of California courts provide an important check on litigation abuses. Recent decisions underscore this fundamental fact, even as the contours of the courts’ inherent powers continue to evolve.

---

3 Mercer v. Raine, 443 So. 2d 944, 946 (Fla. 1983).
6 Slesinger, 155 Cal. App. 4th at 762.
of courts’ inherent powers).
8 Id. at 800.
9 Id. at 806.
10 Id. at 810.
12 CAL. CONST. art. VI, §1.
14 CODE CIV. PROC. §$83.150.
15 CODE CIV. PROC. §$81(m).
17 Western Steel & Ship Repair, Inc. v. RMI, Inc., 176 Cal. App. 3d 1108, 1116-17 (1986).
18 Peat, Marwick, 200 Cal. App. 3d 272. For the factual background of the case, see generally id. at 276-83.
19 Id. at 289.
20 Id. at 275.
21 Id. at 287-89.
22 Id. at 289.
23 Id. at 290.
24 Id. at 289.
28 Id. at 755-56.
29 Id. at 741-56.
30 Id. at 756.
31 Id. at 740.

24 Los Angeles Lawyer November 2010
A WELL-WROUGHT forum-selection clause, with or without a companion choice-of-law clause, can have a profound impact on a lawsuit. Because California law requires—and federal law permits—a defendant seeking a change of forum to do so early in litigation, a forum-selection clause can make an action grind to a halt before it even gets underway. As these clauses become more commonplace in commercial contracts, counsel need to be familiar with the governing law. Indeed, searching for and evaluating a forum-selection clause should be one of the top items on a litigation checklist—right alongside insurance coverage.

A forum-selection clause represents an agreement between contracting parties about where a dispute that arises between them will be litigated. Such a clause is usually, though not always, paired with a choice-of-law clause that specifies which law will govern their dispute.1

In simpler times, courts often refused to enforce forum-selection clauses, perceiving them as attempts by private parties to “oust” the court’s jurisdiction and also as contrary to public policy.2 In 1972, however, the U.S. Supreme Court, in The Bremen v. Zapata Off-Shore Company,3 took a decidedly more hospitable view. The case concerned a contract to tow an oil rig. A clause within the contract appointed the London Court of Justice as the forum for any dispute. When the oil rig was damaged in the Gulf of Mexico, the owner sued the towing company in Florida. The Florida district court and the Fifth Circuit refused to enforce the forum-selection clause, on the usual “ousting” and public policy grounds. The appellate court added that the plaintiff’s choice of forum should rarely be disturbed. Applying a straight inconvenient-forum analysis—one that would be applied in the absence of a forum-selection clause—the appellate court found that the crucial events took place in U.S. waters, potential witnesses

Julie J. Bisceglia is a research attorney for California Court of Appeal Justice William Bedsworth, Fourth District. She wrote this article as a civil litigator practicing at the Los Angeles office of Payne & Fears, LLP.
California hopped on the forum-selection-clause bandwagon in 1976 when the California Supreme Court decided *Smith, Valentino & Smith v. Superior Court*. The *Smith* court cited *The Bremen* and the “modern trend” of enforcing these clauses, concluding that “forum selection clauses are valid and may be given effect, in the court’s discretion and in the absence of a showing [that] enforcement of such a clause would be unreasonable.”

...
1. Under federal and California law, the nonmoving party bears the burden of showing why a forum-selection clause should not be enforced.  
   True.  
   False.

2. Smith, Valentino & Smith v. Superior Court—the only California Supreme Court decision addressing forum-selection clauses—refers in passing to the distinction between mandatory and permissive clauses.  
   True.  
   False.

3. When the U.S. Supreme Court decided The Bremen v. Zapata Off-Shore Company in 1972, it was following the “modern trend” of enforcing forum-selection clauses.  
   True.  
   False.

4. Under California law, proper forum is jurisdictional and cannot be waived.  
   True.  
   False.

5. Federal law provides several procedures for enforcing a forum-selection clause; California law provides only one procedure.  
   True.  
   False.

6. Which of these findings is not one that would preclude enforcement of a forum-selection clause in the Ninth Circuit?  
   A. The clause was obtained by fraud or overreaching.  
   B. The clause is contained in a contract of adhesion.  
   C. The clause deprives the nonmoving party of a day in court.  
   D. The clause contravenes a strong public policy of the forum.  
   True.  
   False.

7. A federal court sitting in diversity applies the law of the state in which it sits when deciding whether to enforce a forum-selection clause.  
   True.  
   False.

8. If the out-of-state forum’s law is unfavorable to the California plaintiff, a California court will not enforce an out-of-state forum-selection clause.  
   True.  
   False.

9. A properly drafted forum-selection clause can preclude removal to federal court.  
   True.  
   False.

10. A California statute that prohibits out-of-state forum-selection clauses precludes enforcement of such a clause.  
    True.  
    False.

11. The fact that a forum-selection clause is accessible only by a link on the defendant’s Web site does not render the clause unenforceable.  
    True.  
    False.

12. A service-of-suit clause expressly allows a defendant to be sued in more than one jurisdiction.  
    True.  
    False.

13. If a federal court finds that a forum-selection clause is permissive, it will determine the correct forum using the standard forum non conveniens analysis employed in the absence of a forum-selection clause.  
    True.  
    False.

14. A California court will enforce a forum-selection clause that selects a particular California county or city only if venue is otherwise proper under California’s venue statutes.  
    True.  
    False.

15. An order denying a motion to enforce a forum-selection clause is an appealable order.  
    True.  
    False.

16. The standard of review for an order enforcing a forum-selection clause is de novo.  
    True.  
    False.

17. A forum-selection clause that specifies a federal district court is not enforceable unless the parties also meet federal subject-matter jurisdiction requirements.  
    True.  
    False.

18. Under California law, a forum-selection clause is deemed unreasonable if the forum is unavailable.  
    True.  
    False.

19. Under California law, a motion to enforce a forum-selection clause may be made by summary judgment, so long as the defendant pleads improper forum as an affirmative defense.  
    True.  
    False.

20. Under the Ninth Circuit test for forum-selection clauses, the district court must resolve all factual conflicts in favor of the nonmoving party.  
    True.  
    False.
a motion under 28 USC Section 1404 for a change of venue “in the interest of justice,”33 a motion to dismiss or transfer under 28 USC Section 1406, or, in some circuits (including the Ninth Circuit), a motion to dismiss under Rule 12(b)(3) of the Federal Rules of Civil Procedure.34 Federal law, rather than the law of the state in which the district court sits, governs whether the motion is granted.35 It is also possible to enforce a forum-selection clause through summary judgment, as the cruise line did in *Shute*.36 A plea of improper forum must, however, be asserted as an affirmative defense.37 If the opposing party has already launched a lawsuit in another forum, the party seeking to enforce the clause may move for an antisuit injunction.38

**Terminology and Enforcement**

Counsel in both state and federal courts must confront the vexed question of what kind of forum-selection clause they are dealing with—mandatory or permissive. Mandatory clauses usually will be enforced in both California and federal courts. In federal court, however, permissive clauses face an uphill battle. To complicate matters further, forum-selection clauses are sometimes expressed in terms of jurisdiction or venue instead of court location and type. All these refinements have generated voluminous and confusing case law. Minute changes in terminology are deemed sufficient to differentiate two clauses that look indistinguishable to the untutored eye.

Ideally, a mandatory forum-selection clause addresses court location and type (state, federal, or both) and jurisdiction separately and in unmistakably exclusive terms: “Exhibitor…expressly agrees that any and all disputes arising out of or in connection with this Agreement shall be litigated only in the Superior Court for Los Angeles, California (and in no other), and Exhibitor hereby consents to the jurisdiction of said court.”39 In reality, however, many clauses are not drafted so tidily.

The most troublesome clauses are those phrased in terms of jurisdiction rather than court location and type. Although a permissive forum-selection clause hardly seems worth the trouble to print, a permissive jurisdiction clause makes sense. For example, a buyer agrees to be subject to the jurisdiction of the seller’s home state, with no arguments about minimum contacts, although other states may also have jurisdiction over the buyer. Agreeing to be subject to the home state’s jurisdiction, however, is not necessarily the same as agreeing to litigate disputes in the home state’s courts.40 When faced with this kind of ambiguity—does “jurisdiction” mean “jurisdiction” or does it mean “forum”?—courts will do what they can to give effect to the parties’ intentions, while remaining mindful of other issues that may bear on the choice of forum. Thus, in one case, the disputed clause stated, “For the purpose of resolving disputes regarding this Agreement…the Government [of Guyana], ATN and GT&T shall submit themselves to the jurisdiction of the courts of Guyana.”41 The court combined this clause with a waiver of sovereign immunity by the government of Guyana and a choice of Guyana law and held that litigation had to take place in Guyana’s courts.42 In another case, however, the clause “The courts of California, County of Orange, shall have jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this contract” was held not to require litigation in Orange County.43

If a federal court decides that the clause is mandatory, it will enforce it unless the plaintiff can show that enforcement would be unreasonable or unjust.44 In the Ninth Circuit, the court has identified three circumstances under which a forum-selection clause would not be enforced: fraud or overreaching, depriving nonmoving parties of their day in court, or contravening a strong public policy of the forum.45 The court has further held that if a motion to dismiss is based on controverted facts, “the trial court must draw all reasonable inferences in favor of the non-moving party and resolve all factual conflicts in favor of the non-moving party.” 46 Even under this test, however, the nonmoving party still carries a heavy burden to establish that the clause is unreasonable or unjust. Inconvenience, even a substantial amount of it, is not enough to “deprive” the nonmoving party of a day in court.47

If the clause is permissive, one of two results can occur. Either the court will ignore the clause and proceed with a standard analysis based on forum non conveniens,48 or the court will take the clause into account as one factor in a standard forum non conveniens analysis.49 This latter alternative is much more likely if the defendant has moved for a transfer rather than for outright dismissal. Here too, courts differ. Some courts give “substantial” weight to a permissive clause,50 while others simply regard it as one of the interests reviewed as part of the standard forum non conveniens analysis.51

**California’s Legal Wrinkle**

The published California state court opinions on forum-selection clauses are mercifully fewer than the federal cases and far more uniform. California, however, has its own legal wrinkle that makes the distinction between mandatory and permissive troublesome.

The California Supreme Court has not issued an opinion on forum-selection clauses since 1976, when it decided the *Smith* case.52 The *Smith* court did not address, or even mention, mandatory and permissive clauses.

The California Court of Appeal introduced the concept of mandatory and permissive forum-selection clauses into California law in *Berg v. MTC Electronics Technologies Company, Ltd.*53—a case that abounds in difficulties. *Berg* involved a series of shareholder class action lawsuits, most of which were consolidated or coordinated in the Eastern District of New York. After these cases were safely berthed in New York, the *Berg* plaintiffs filed another shareholder action in Los Angeles, alleging substantially the same theories as those alleged in the New York cases. Not surprisingly, the California court granted the defendants a stay.54 The *Berg* plaintiffs argued that a statement in the MTC prospectus—not in any agreement—required the defendants to litigate in Los Angeles. According to the sentence in the prospectus, “The company [MTC] has expressly submitted to the jurisdiction of the State of California and United States Federal courts sitting in the City of Los Angeles, California, for the purpose of any suit, action, or proceedings arising out of this Offering.”55

The *Berg* court identified this sentence as a “service of suit clause,” a particular type of clause developed for insurance policies.56 A service-of-suit clause provides that an insurer “will submit to the jurisdiction of any court of competent jurisdiction and will comply with all requirements necessary to give such Court jurisdiction….”57 The court observed that service-of-suit clauses operate to “confer personal jurisdiction on the selected forum, but not to mandate resolution of the dispute in that forum regardless of other considerations.”58 While this is true enough, it is irrelevant to the analysis of a forum-selection clause. By definition, service-of-suit clauses do not “select” a particular forum. In an earlier case, the court in *Appalachian Insurance Company v. Superior Court* identified the key difference between the two kinds of clauses:

The difference between *The Bremen* and the case at bench [which dealt with a service of suit clause] lies in the type of forum selection clause involved. In *The Bremen* selection of the specific forum in London was “clearly a reasonable effort to bring vital certainty to this international transaction and to provide a neutral forum….” Given the strong evidence that the clause was an important part of the agreement, the parties must have conducted their negotiations with the clause prominently in mind…59 By contrast, the service-of-suit clauses
served an entirely different purpose. Lloyd’s used them to make its products more attractive to American businesses, which might otherwise have hesitated to contract with an insurer that could not be sued in the United States. Rather than providing “vital certainty” or protection “from being confronted by a myriad of different state, provincial, and national forums” afforded by The Bremen-type forum-selection clauses, a typical service-of-suit clause invites lawsuits in multiple jurisdictions.

Having confused two types of clauses with very different purposes, Berg launches into a discussion of mandatory and permissive forum-selection clauses, a discussion that has no bearing on service-of-suit clauses. The cases cited in Berg regarding mandatory and permissive clauses are, without exception, federal cases applying federal law.

Since Berg, the fate of a permissive forum-selection clause has been extremely murky under California law. On the one hand, Berg states that the clause is to be given substantial weight. On the other hand, Berg says that the “traditional” forum non conveniens analysis, such as that set forth in Stangvik v. Shiley, applies. The Stangvik analysis, however, was developed for torts. It makes no allowance for a forum-selection clause, just like any other clause would compromise some important problems.73

Still other statutory schemes have been interpreted to forbid enforcement of an out-of-state forum-selection clause indirectly. In America Online, Inc., v. Superior Court,74 the court of appeal interpreted the nonwaiver provision of California’s Consumer Legal Remedies Act to prohibit enforcement of a Virginia forum-selection clause. Because Virginia did not afford consumers the same rights that they would have under the CLRA, the court reasoned that enforcement of the forum-selection clause would be tantamount to a waiver of the CLRA’s provisions.75

Realtistically, a successful motion to dismiss or stay for forum non conveniens in state court or to dismiss or transfer in federal court often signals the end of a lawsuit. In many cases, litigation in a distant forum is simply impractical for one reason or another.

Counsel for defendants in state court must be particularly alert to the presence and nature of a forum-selection clause because of the short time period provided by California law for asserting it. When defense counsel receive a lawsuit based on a contract, especially a commercial or boilerplate contract, the terms should be checked immediately for an out-of-state forum-selection clause. If the complaint involves e-commerce, counsel should review the terms and conditions posted on the defendant’s Web site. These terms and conditions have been held enforceable, even if they are only accessible by a link.76 If the contract includes a forum-selection clause and the client wishes to enforce it, counsel should then determine as best they can whether a court is likely to regard it as mandatory or permissive. A decision must be made quickly whether to move for dismissal or stay for forum non conveniens. Finally, counsel should become famil-

### Mandatory or Permissive?

Counsel for clients faced with a forum-selection clause must predict whether a court will find the clause mandatory or permissive. Each of the following clauses appeared in a federal case. The endnotes reveal how the clauses were categorized.

1. “I agree and consent to the jurisdiction of the courts of the State of Vermont, with venue in Windham County, Vermont or the United States District Court for the District of Vermont for the resolution of all legal matters concerning this agreement.”
2. “This Agreement shall be construed and enforced in accordance with the laws of the State of California and the parties agree that in any dispute jurisdiction and venue shall be in California.”
3. “A decision of the Board of Adjustment...or the decision of a permanent arbitrator shall be enforceable by a petition to confirm an arbitration award filed in the Superior Court of the City and County of San Francisco, State of California.”
4. “The parties hereunto consent to jurisdiction in the State of Nevada and the terms of this agreement to be interpreted pursuant to the laws of said State.”
5. “Jurisdiction: Each party expressly submits to the jurisdiction of the State of New York, U.S.A. and the federal courts situated in New York City and to service of process by registered mail.”
6. “The undersigned further acknowledges and agrees...that Michigan is a mutually reasonable convenient place for any trial concerning disputes arising from this Agreement and further agrees to submit to the jurisdiction of the Courts of Michigan with respect to claims arising out of the agreement.”
7. “The undersigned further acknowledges and agrees...that Michigan is a mutually reasonable convenient place for any trial concerning disputes arising from this Agreement and further agrees to submit to the jurisdiction of the Courts of Michigan with respect to claims arising out of the agreement.”

---


See, e.g., Carbon Black Export v. The SS Monroesa, 234 F. 2d 297, 300-01 (3rd Cir. 1958).


Id. at 6, 7.

Id. at 8.

Id. at 10.

Id. at 11.

Id. at 14 n.15.

Id. at 15.

Id. at 12.

Id. at 10.


The Bremen, 407 U.S. at 9, 10.


Id. at 587-88.

Id. at 593-94.

Id. at 595.

Smith, Valentino & Smith v. Superior Court, 17 Cal. 3d 491 (1976).

Id. at 494-95. In his dissent, Justice Mosk wrote in favor of the traditional view. Id. at 497-98.

Id. at 496.

Id. at 494.

Id.; see also Benefit Ass’n Int’l, Inc. v. Superior Court, 46 Cal. App. 4th 827, 835 (1996). An inconvenient-forum analysis operating in the absence of a forum-selection clause places the burden on the party advocating dismissal or stay (usually the defendant) to show that the chosen forum is not the right one. Century Indem. Co. v. Bank of Am., 58 Cal. App. 4th 408, 411 (1997).


Smith, 17 Cal. 3d at 496.


States differ, however, in their acceptance of forum-selection clauses. For example, the U.S. Supreme Court in Stewart Organization, Inc. v. Ricoh Corporation alluded to the hostility of Alabama state courts toward these clauses. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 24, 30 (1988).


CDE CV. PROC. §418.10(a).

CDE CV. PROC. §418.10(c).

Stewart, 487 U.S. at 29. If there is no enforceable choice-of-law provision, the law of the state in which the original court will still apply—even if the motion is granted and the case is moved. Van Dusen v. Barrack, 376 U.S. 612, 619 (1964).

Argueta v. Banco Mexicano, S.A., 87 F. 3d 320, 324 (9th Cir. 1996). It is important to check the law of the circuit in which the motion is made. In the Sixth Circuit, for example, a FED. R. CIV. P. 12(b)(3) motion will be denied if the suit was originally filed in a court in which venue would be proper. Keroabo v. Southwestern Clean Fuels Corp., 285 F. 3d 531, 536 (6th Cir. 2002). If the case is transferred for improper venue under 28 U.S.C. §1406, the law of the new forum will apply in the absence of an enforceable choice-of-law provision. Nelson v. International Paint Co., 716 F. 2d 640, 643 (9th Cir. 1983).

Stewart, 487 U.S. at 32. Although the court has discretion to dismiss the action pursuant to 28 U.S.C. §1406(a), it will usually transfer the case if the selected forum is domestic and if it perceives that a dismissal may cause limitation problems. See, e.g., Roberson v. Norwegian Cruise Line, 897 F. Supp. 1285, 1289 (C.D. Cal. 1995).


Applied Med. Distribs. Corp. v. The Surgical Co., 387 F. 3d 909 (9th Cir. 2003); E. & J. Gallo Winery, Inc. v. Andina Licores S. A., 446 F. 3d 964 (9th Cir. 2006). This procedure is also available in state court, but an injunction is granted only in exceptional circumstances. Advanced Biocems Corp. v. Medtronic, Inc., 29 Cal. 4th 697, 707-08 (2002).

Pelpettee Investments, Inc., v. Budco Quality Theaters, Inc., 741 F. 2d 273, 275 (9th Cir. 1984), disapproved on other grounds by Powervex Corp. v. Reliant Energy Servs., 551 U.S. 224 (2007). The court held that this clause defeated removal to federal court. Pelpettee, 741 F. 2d at 280. Parties may not, however, “contract” themselves into federal court. They must still satisfy the subject-matter jurisdictional requirements of federal question or diversity. A clause that specifies a federal district court as the exclusive forum will be unenforceable if the jurisdictional requirements are not met.
enough evidence to establish that requiring them to lit-
igate in London would deprive them of their day in
court.


See, e.g., Kachal, 738 F. Supp. at 374.


Id. at 355.

Id. at 357.

Id. at 352-53.

Ford Motor Co. v. Insurance Co. of N. Am., 35 Cal. App. 4th 604, 608-09 (1995). These clauses were inserted into insurance policies for marketing purposes. As one insurance company executive explained, the clause “was voluntarily developed by Lloyd’s of London many years ago, as a response to competitor’s arguments that Lloyd’s was not amenable to process in the United States and that the potential customer should therefore place its business with a domestic company that was subject to service of process.”


Id. at 432.


Id. at 359.


The trial court in TSMC North America v. Semiconductor Manufacturing International Corporation found that a forum clause was permissive, following Berg, but this was only one factor in the court’s analysis of whether to grant an antisuit injunction prohibiting litigation in China. TSMC N. Am. v. Semiconductor Mfg. Int’l Corp., 161 Cal. App. 4th 581, 588-89 (2008). TSMC was not a forum non conveniens case.

Federal courts do not need to be concerned about enforcing clauses that specify a particular location within a state. In addition, the terms “venue” and “forum” are often used interchangeably in federal practice. See Sterling Forest Assoc’s., v. Barnett-Range Corp., 840 F. 2d 249, 251 (4th Cir. 1988).

CIV. CODE §§1750 et seq.


CIV. CODE §§1750 et seq.


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

CDRB

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
Copyright infringement may be the only remaining area of law in which courts seem increasingly willing to decide material facts on summary judgment.

COPYRIGHT INFRINGEMENT claims against motion picture studios and television networks, for all intents and purposes, are dead. Of the 48 copyright infringement cases against studios or networks that resulted in a final judgment within the Second and Ninth Circuits (and the district courts within those circuits) in the last two decades, the studios and networks prevailed in all of them—and nearly always on motions for summary judgment. (See “Perfect Storm,” at 34.) In fact, in the last 20 years, only two publicly available copyright infringement cases (published or unpublished) against studios or networks proceeded to jury trial—with verdicts for the defendants.

Were all these cases without merit, or did the studios and networks simply have far superior counsel in each case? These suppositions are very unlikely. The case law governing these actions simply has become so amorphous that for almost every principle of law favorable to creators, the courts have endorsed and applied an opposite principle. As a result, the determination of each case now rests almost entirely in the unfettered discretion of trial judges, who have consistently dismissed plaintiffs’ claims. Unless the current trend changes, longstanding principles once favorable to creators may be eclipsed by an evolving body of law so unfavorable to them that the studios and networks are essentially immunized from liability except in cases of identical copying and conceded access to the plaintiff’s work.

Since direct evidence of copying rarely is available in a copyright infringement suit, plaintiffs typically must establish that the defendant had access to the plaintiff’s work and that the two works are substantially similar. Proof of access requires only a “reasonable possibility” to view or copy the plaintiff’s work. However, courts commonly cite to the countervailing principle that “mere speculation or conjecture” is insufficient. Because the analysis of a reasonable possibility necessarily includes some conjecture and speculation, the “line between a ‘bare’ possibility and a ‘reasonable’ possibility of access is difficult to draw.” If the work has not been widely disseminated—which is usually the case for unpublished screenplays—“a particular chain of events” must be established between the plaintiff’s work and the defendant’s access to that work.

Early cases outside of the Ninth Circuit found access even when the plaintiff could not actually place the work in the hands of the defendant. For example, in the First Circuit case of Morrissey v. Procter & Gamble Company, the plaintiff offered evidence that he had mailed his copyrighted work to the defendant’s principal office. The court held that this mailing created “an inference that the letter reached its proper destination,” and to require the plaintiff to show that the letter reached its proper destination, and to require the plaintiff to show that the letter reached its proper destination, and to require the plaintiff to show that the letter reached its proper destination, and to require the plaintiff to show that the letter reached its proper destination.

Steven T. Lowe is a principal of Lowe Law, a boutique entertainment litigation firm in Los Angeles. He wishes to thank Daniel Lifschitz, Chris Johnson, and Michael Salvatore for their assistance in the preparation of this article.
Perfect Storm

In the last 20 years, in the Second and Ninth Circuits and the lower courts within those circuits, 48 copyright infringement cases against studios or networks were litigated to final judgment. In all 48 cases, the victors were the studio and network defendants. Most of the cases were determined by a grant of summary judgment.


In the last 20 years, in the Second and Ninth Circuits and the lower courts within those circuits, 48 copyright infringement cases against studios or networks were litigated to final judgment. In all 48 cases, the victors were the studio and network defendants. Most of the cases were determined by a grant of summary judgment.

a plaintiff’s work was appropriated. This comports with basic principles of copyright law and is known as the “selection and arrangement” test. In the seminal 1991 case Feist Publications Inc. v. Rural Telephone Services Company, the U.S. Supreme Court held that when dealing with works largely (or even entirely) composed of unprotected elements, “choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original.” Transposed to the literary arts, the test provides that although copyright law does not generally protect basic plot premises in literary works or commonly used expressions that flow naturally from those premises (“scenes a faire”), the original selection and arrangement of these elements can constitute a protectable work in and of itself. Therefore, the wholesale exclusion of all “unprotectable” elements improperly limits the scope of copyright protection. The Ninth Circuit has recognized this principle on numerous occasions but has spent the better part of the past decade aggressively denying its use to plaintiffs in copyright infringement cases against studios and networks.

Metcalf v. Bochco, decided in 2002, is one of only two copyright infringement cases against a studio or network in the last 20 years that proceeded to trial. (The other is Shaw v. Lindheim.) In Metcalf, the plaintiff offered evidence that the defendant had misappropriated many elements of the plaintiff’s screenplay to create a television series for NBC. The court recognized that “the similarities proffered by [the plaintiff] are not protectable when considered individually; they are either too generic or constitute ‘scenes a faire.’” However, “the presence of so many generic similarities and the common patterns in which they arise help satisfy the extrinsic test.” The court memorably compared the elements of literary works to those of musical compositions:

The particular sequence in which an author strings a significant number of unprotectable elements can itself be a protectable element. Each note in a scale, for example, is not protectable, but a pattern of notes in a tune may earn copyright protection.

The court did not strip the works of their unprotected elements before diving into an extrinsic analysis of substantial similarity, consistent with the general purpose of the selection and arrangement test (that is, to protect in combination that which cannot be protected separately). In the years since its publication, however, the analysis of Metcalf has proven to be the exception and not the rule.

The 2003 case of Rice v. Fox Broadcasting Company may have played the heaviest hand against the use of the selection and arrangement test. The Rice court stated that “similarities derived from the use of common ideas cannot be protected.” This assertion ignored the holdings and rationales of the cases that the court cited, including Metcalf, but the Rice court attempted to distinguish Metcalf by stating that it was “based on a form of inverse ratio rule analysis” (i.e., the rule whereby more access requires less substantial similarity and vice versa) and seemed to imply that the selection and arrangement test is only applicable when access is conceded. This implication, which limits Metcalf to its facts, overlooks that nowhere in Metcalf (or any case prior to it) is the inverse ratio rule required for the application of the selection and arrangement test. Nevertheless, Rice’s misinterpretation of Metcalf has been repeatedly followed by the Ninth Circuit in subsequent opinions.

Indeed, in the 2006 case of Funky Films, Inc. v. Time Warner Entertainment Company, L.P., the Ninth Circuit once again ignored the

---

*Kouf v. Walt Disney Pictures and Television*, 16 F. 3d 1042 (9th Cir. 1994) (summary judgment for defendant affirmed) (*Honey, I Shrink the Kids*).


*Lassiter v. Twentieth Century Fox Film Corporation*, 238 Fed. Appx. 194 (9th Cir. 2007) (summary judgment for defendant affirmed) (*Drumline*).


*Metcalf v. Bochco*, 294 F. 3d 1069 (9th Cir. 2002) (jury verdict in favor of defendant studio), aff’d, Metcalf v. Bochco, 200 Fed. Appx. 635 (9th Cir. 2006) (*City of Angels*).


*Rice v. Fox Broadcasting Company*, 330 F. 3d 1170 (9th Cir. 2003) (summary judgment for defendant affirmed) (*The Mystery Magician*).


*Thomas v. Walt Disney Company*, 337 Fed. Appx. 694 (9th Cir. 2009) (defendant’s motion to dismiss affirmed) (*Finding Nemo*).


*Williams v. Crichton*, 84 F. 3d 581 (2d Cir. 1996) (summary judgment for defendant) (*Jurassic Park*).


selection and arrangement test, holding that: [Courts] must take care to inquire only whether the protectable elements, standing alone, are substantially similar. In so doing, [courts] filter out and disregard the non-protectable elements in making [their] substantial similarity determination.39

Moreover, in one flourish of its pen, the Funky Films court created a whole new defense for alleged infringers where none previously existed and which has been heavily relied upon in subsequent court opinions. The court stated that a “reading of the two works reveal[ed] greater, more significant differences” than similarities.40 In essence, the court constructed a brand new test of “substantial dissimilarity” in the context of copyright infringement, one that completely contravenes the well-established principle that dissimilarity is irrelevant as long as the plaintiff makes a showing of the defendant work’s similarity to a substantial element of the plaintiff’s work.41

It appears that the old Learned Hand chestnut that “no plagiarist can excuse the wrong by showing how much of his work he did not pirate” may no longer be true.42 The result of this shift in copyright law is that third parties now have the freedom to steal from screenplays with impunity, provided they cover their tracks by creating sufficient dissimilarities in what is, in reality, a “derivative work.”43 The recent case of Benay v. Warner Bros. illustrates this point.44

In Benay, decided in June 2010, the plaintiffs’ agent pitched and provided a copy of their screenplay The Last Samurai to the president of production at Warner Bros.45 The studio declined to proceed further with the screenplay but later produced and released a film with the exact same title and premise as the plaintiffs’ work.46 Despite compelling evidence that actual copying of the plaintiff’s screenplay occurred,47 the court deemed it “insufficient to overcome the overall lack of similarities between protected elements of the works.”48 The Ninth Circuit’s extrinsic analysis once again ignored the selection and arrangement test, comfortably stripping all unprotected elements from the works and ultimately using the new Funky Films dissimilarity analysis as a basis to rule against the plaintiffs on their copyright claim.49

In the end, the Benay plaintiffs only were able to continue to pursue their state law claim of breach of implied contract.50 Though this claim can be satisfied when copying does not rise to a level of substantial similarity, it requires a higher level of access to establish an implied contract, as well as privity between the parties.51 Furthermore, even if established, the remedies available in a breach of implied contract claim are not as broad as those for copyright claims.52 Overall, the state claim is a poor substitute for the once preemptive effect of federal copyright law—the very law creators hoped it would supplement.53

Phasing Out Experts and Juries

The outcome in Benay is emblematic of just how far copyright decisions have strayed from maintaining a balance between the interests of creators and the interests of producers. Not only has the ad hoc use of substantial dissimilarity and the refusal to acknowledge selection and arrangement stripped creators of the doctrines that once protected them, but it also effectively endorses creative theft whenever the elements of an implied contract are not satisfied.54

Moreover, in one flourish of its pen, the Funky Films court created a whole new defense for alleged infringers where none previously existed and which has been heavily relied upon in subsequent court opinions. The court stated that a “reading of the two works reveal[ed] greater, more significant differences” than similarities.40 In essence, the court constructed a brand new test of “substantial dissimilarity” in the context of copyright infringement, one that completely contravenes the well-established principle that dissimilarity is irrelevant as long as the plaintiff makes a showing of the defendant work’s similarity to a substantial element of the plaintiff’s work.41

It appears that the old Learned Hand chestnut that “no plagiarist can excuse the wrong by showing how much of his work he did not pirate” may no longer be true.42 The result of this shift in copyright law is that third parties now have the freedom to steal from screenplays with impunity, provided they cover their tracks by creating sufficient dissimilarities in what is, in reality, a “derivative work.”43 The recent case of Benay v. Warner Bros. illustrates this point.44

In Benay, decided in June 2010, the plaintiffs’ agent pitched and provided a copy of their screenplay The Last Samurai to the president of production at Warner Bros.45 The studio declined to proceed further with the screenplay but later produced and released a film with the exact same title and premise as the plaintiffs’ work.46 Despite compelling evidence that actual copying of the plaintiff’s screenplay occurred,47 the court deemed it “insufficient to overcome the overall lack of similarities between protected elements of the works.”48 The Ninth Circuit’s extrinsic analysis once again ignored the selection and arrangement test, comfortably stripping all unprotected elements from the works and ultimately using the new Funky Films dissimilarity analysis as a basis to rule against the plaintiffs on their copyright claim.49

In the end, the Benay plaintiffs only were able to continue to pursue their state law claim of breach of implied contract.50 Though this claim can be satisfied when copying does not rise to a level of substantial similarity, it requires a higher level of access to establish an implied contract, as well as privity between the parties.51 Furthermore, even if established, the remedies available in a breach of implied contract claim are not as broad as those for copyright claims.52 Overall, the state claim is a poor substitute for the once preemptive effect of federal copyright law—the very law creators hoped it would supplement.53

Phasing Out Experts and Juries

The outcome in Benay is emblematic of just how far copyright decisions have strayed from maintaining a balance between the interests of creators and the interests of producers. Not only has the ad hoc use of substantial dissimilarity and the refusal to acknowledge selection and arrangement stripped creators of the doctrines that once protected them, but it also effectively endorses creative theft whenever the elements of an implied contract are not satisfied.54

In 2001, the Central District of California stated in Fleener v. Trinity Broadcasting Network (a case that was not against a major studio), “There is abundant case-law establishing that expert testimony is particularly appropriate in summary judgment motions under the copyright ‘extrinsic test.’”55 However, judges have become comfortable with favoring the type of testimony when they believe they can do their own comparison, regardless of how it comports with well-established legal standards.56

Many troubling questions arise from this trend. Why do judges believe they can perform the extrinsic analysis of literary works better than plaintiffs’ experts?260 An extrinsic analysis is no easy feat. A judge who dissposes an expert witness, believing the subject matter within his or her grasp, effectively acts as a self-appointed expert. This is a disservice to the creators of literary works. It implies that writing a screenplay is a less complex and involved undertaking than writing a song or a software program. Moreover, the judge essentially deprives plaintiffs of their constitutional right to a jury trial. Nevertheless, this is the current state of copyright law for literary works, with no signs of rebalancing anytime soon.

In copyright infringement cases, judges are supposed to play the role of gatekeeper to the jury. Their task in analyzing substantial similarity is supposed to be extrinsic—that is, objective.61 If a plaintiff can show objective
The Los Angeles County Bar Foundation (LACBF) is a California Nonprofit Public Benefit Corporation and is recognized by the Internal Revenue Service as a Tax-Exempt organization under Section 501(c)(3) of the Internal Revenue Code. Contributions to the Foundation are tax-deductible to the fullest extent of the law.

www.lacbf.org

MAILING: P. O. Box 55020, Los Angeles, CA 90055-2020
OFFICES: 1055 W. 7th Street, Suite 2700, Los Angeles, CA 90017
PHONE: (213) 896-6409    FAX: (213) 833-6718
Ivan Price, Executive Director   E-mail: iprice@lacba.org

The Bar Foundation is the fundraising partner of the Los Angeles County 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. A valuable community resource, the Bar Foundation cannot exist without you!

4th Annual Theatre Show Fundraiser
Disney's Beauty and the Beast
at the Pantages Theatre
Sunday, March 13, 2011
Reception at 4:30 p.m.
Show at 6:30 p.m.

2nd Annual Golf Outing Fundraiser
At the Beautiful Tournament Players Club (TPC)
Valencia, CA
Monday, June 13, 2011
Registration begins at 9:30 a.m.
Shotgun start at Noon
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 is the California Chapter of the National Academy of Distinguished Neutrals, a nationwide association of mediators and arbitrators who have substantial experience in the resolution of commercial and civil disputes. All members have been recognized for their accomplishments through the Academy’s peer nomination system and extensive attorney-client review process. Membership is by invitation only and is limited to individuals who devote substantially all of their professional efforts to ADR practice.

To access our National Directory, please visit www.NADN.org/directory.html and select your preferred state.
The California Chapter of
The National Academy of Distinguished Neutrals - www.NADN.org

User Has Never Been Easier”
Neutrals & Arbitrators Profiled Online
Neutrals across Southern California, including...

Viggo Boserup
(310) 309-6205
Kenneth Calkins
(310) 392-3044
R.A. Carrington
(805) 565-1487
Hon. Eli Chernow
(818) 995-3584
Steven Cohen
(310) 315-5404

William Fitzgerald
(310) 440-9090
Linda C. Fritz
(619) 236-1848
Kenneth C. Gibbs
(310) 309-6205
Reginald Holmes
(626) 432-7222
Robert Holtzman
(310) 282-2200
Laurel Kaufer
(818) 888-4840

Deborah Rothman
(310) 452-9891
Steve Rottman
(310) 751-0114
Myer Sankary
(818) 231-2965
Ivan K. Stevenson
(310) 540-2138
John Wagner
(800) 488-8805
Kenneth Weinman
(310) 444-3030

To find the best neutral for your case, please visit our complete member roster at
www.CaliforniaNeutrals.org
similarity, a jury is brought in to determine whether the total concept and feel—the intrinsic test—of the plaintiff's and defendant's works are substantially similar. In practice, however, the extrinsic test has been devoured by an intrinsic test performed by the judge. Simply put, with judges able to substitute their opinions for those of experts and juries on issues of material fact, all other witnesses to the case become effectively redundant.

Case law has provided defendants with an impenetrable shield of confusing and often contradictory principles that thwart plaintiffs in nearly every instance, with only tiny cracks in that shield providing a mere glimpse of hope. Unless the Ninth Circuit seriously reexamines where courts have taken the law of copyright infringement, the cards will remain completely stacked in favor of the studios and networks.

---

3 One case arguably did not result in a clear-cut victory for the defendant studio. See Miller v. Miramax Film Corp., 2001 U.S. Dist. LEXIS 25967, at *28 (2001). However, the case achieved no final judgment on the merits. The court denied summary judgment to the defendant on the plaintiff's copyright infringement claim (much like two other cases discussed infra) before the case disappeared from the docket entirely.


5 See 4 Id.

6 See 4 Id.

7 See 3M Company v. Bracco Diagnostics, Inc., 285 F. 3d 1361, 1364 (Fed. Cir. 2002) (affirming Mestre v. Vivendi Universal S.U., 273 Fed. Appx. 631, 632 (9th Cir. 2008) (“Moreover, even if [the particular sequence in which the plaintiff strings a significant number of protectable elements can itself be a protected element] in certain contexts, Mestre has not demonstrated sufficient similarities in sequence to qualify for such protection.”) (citations omitted)).

8 While the plaintiff's case in Metcalf was “strengthened considerably” by the defendant's concession of access, the Metcalf court never actually invoked the inverse ratio rule, nor did it hold that finding substantial similarity through selection and arrangement was contingent on access being admitted.


10 Id. at 1078.


12 See Benay v. Warner Bros. Entm't, Inc., 607 F. 3d 620 (9th Cir. 2010) (“Defendants copied plaintiffs' work right down to the historical inaccuracies of composing new when in fact cannons date back to the fourteenth century.”).

13 Benay, 607 F. 3d at 629.

14 4 Id. at 622-23.

15 Benay v. Warner Bros. Entm't, 2008 U.S. 9th Cir. Briefs 35719 (9th Cir. June 9, 2009) (“Defendants copied plaintiffs' works right down to the historical inaccuracies of cannons being new when in fact cannons date back to the fourteenth century.”).

16 See 4 Id. at 625 (“We agree with the district court that [while on cursory review, these similarities may appear substantial, a closer examination of the protectable elements including plot, themes, dialogue, sound, setting, pace, characters, and sequence of events, exposes many more differences than similarities between Plaintiffs' Screenplay and Defendants' film.”)

17 4 Id. at 629, 633.

18 See Rokos v. Peck, 182 Cal. App. 3d. 604, 617-18 (1986) (holding that an implied-in-fact contract between the plaintiff and the writer was effective only between them).

19 While copyright law allows for recovery of actual damages and profits resulting from the infringement, a breach of contract allows recovery of damages only for the amount the plaintiff would have received under the contract. See 17 U.S.C.A. § 504; RESTATEMENT
In Montz v. Pilgrim Films & TV, Inc., decided less than a week before Benay, the court affirmed the defendant's motion to dismiss on the grounds that the plaintiff's implied-in-fact contract claim was "merely derivative" of the plaintiff's rights under 17 U.S.C. §106 and was thus preempted by federal copyright law. Montz v. Pilgrim Films & TV, Inc., 606 F. 3d 1153, 1159 (9th Cir. 2010). Montz thus stands as another major blow for creators, who saw a chance to protect their works through implied contract claims based on earlier Ninth Circuit cases. See Grosso v. Miramax Film Corp., 2004 U.S. App. LEXIS 28043 (holding that the implied promise to pay constituted an extra element for preemption purposes that transformed the action into a derivative "of the plaintiff's rights under 17 U.S.C. §106 and was thus preempted by federal copyright law.

The extrinsic test now objectively considers structure and expression, whereas the intrinsic test continues to consider, in part, the subjective intent of the creators.

See Funky Films, Inc. v. Time Warner Entm't Co., L.P., 462 F. 3d 1072, 1076 (9th Cir. 2006); Berkic v. Crichton, 761 F. 2d 1289, 1292 (9th Cir. 1985); Latchfield v. Spielberg, 736 F. 2d 1332, 1335 (9th Cir. 1984); Shaw v. Lindheim, 809 F. Supp. 1393, 1355 (C.D. Cal. 1992).

But see Swirsky v. Carey, 376 F. 3d 841, 846 (9th Cir. 2004) (The district court's dismissal of expert testimony supports the nonmoving party's case.);

Wyler Summit P'ship v. Turner Broad. Sys., Inc., 235 F. 3d 1184, 1192 (9th Cir. 2000) ("Weighing the credibility of conflicting expert witness testimony is the province of the jury.");

See Rice v. Fox Broad. Co., 330 F. 3d 1170 (2003) (holding that district court did not abuse its discretion in disregarding the testimony of plaintiff's expert);

Bethea v. Burnett, 2005 WL 1720631, at *12 (C.D. Cal. 2005) (ignoring plaintiff's expert's testimony, finding it unhelpful to the court's own analytic dissection);

Shaw v. Lindheim, 809 F. Supp. 1393 (C.D. Cal. 1992) (disregarding plaintiff's expert's testimony in overturning jury verdict in favor of plaintiff);

Funky Films, 462 F. 3d at 1076 ("[T]he district court conducted an independent analysis of [the works].");

Gable v. NBC, 376 F. 3d 841, 846 (9th Cir. 2004) (The district court's dismissal of expert testimony and use of its own substantial similarity analysis to discount similarities between the two works as a faire was erroneous.)

See Brown Bag Software v. Symantec Corp., 960 F. 2d 1465, 1472 (9th Cir. 1992)).

See Brown Bag Software, 960 F. 2d at 1473-74 (relying on expert testimony in order to identify the objective points of comparison among different computer software programs); Swirsky, 376 F. 3d at 847-48 (relying on expert testimony comparing the objective elements—pitch, melodies, baselines, tempo, chords, structure, and harmonic rhythm—of musical works).

In re Apple Sec. Litig., 886 F. 2d 1109, 1142, 1147 (C.D. Cal. 2001) (denying defendants' requests for reconsideration and summary adjudication based on substantial similarities between the two works).

But see Swirsky v. Carey, 376 F. 3d 841, 846 (9th Cir. 2004) (The district court's dismissal of expert testimony and use of its own substantial similarity analysis to discount similarities between the two works as scenes a faire was erroneous.)

(Second) of Contracts §345; Benay, 607 F. 3d 620.

When your client needs a foreclosure done professionally and at the lowest possible cost, please call us at: 1-800-950-6522.

We have always offered free advice to all attorneys.

& WITKIN EISINGER, LLC
RICHARD G. WITKIN, ESQ. ♦ CAROLE EISINGER

Anita Rae Shapiro
SUPERIOR COURT COMMISSIONER, RET.

PRIVATE DISPUTE RESOLUTION
PROBATE, CIVIL, FAMILY LAW
PROBATE EXPERT WITNESS

TEL/FAX: (714) 529-0415 CELL/PAGER: (714) 606-2649
E-MAIL: PrivateJudge@adr-shapiro.com http://adr-shapiro.com

INVESTIGATIONS
— DISCRETION AND CONFIDENTIALITY —
Locates Asset Investigations Rush & Difficult Service of Process Surveillance

SHORELINE INVESTIGATIONS
The Power of Knowledge.

23 Years of Experience
818.344.2193 tel | 818.344.9883 fax | ken@shorelinepi.com
www.shorelinepi.com
800.807.5440

INVESTIGATIONS
ACCIDENT ANALYSIS/RECONSTRUCTION

ACCIDENT RECONSTRUCTION SPECIALISTS

CALIFORNIA TECHNOLOGY ASSOCIATES
17410 Mayerling Street, Granada Hills, CA 91344, (800) 342-4699. Web site: www.tecassoc.com. Contact Dr. Ojalvo, chairman. Over 1,700 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, occupant and pedestrian biomechanics, rollover, visibility issues, golf cart, 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
1111 Town and Country #4, Orange, CA 92868, (714) 973-8383, fax (714) 973-8821, e-mail: william@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 a pedestrian accident case against Los Angeles Unified School District. Largest settlement: $2,000,000 solo vehicle 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 controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCI, graduate work—UCLA. 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.

CAPSTONE ADVISORY GROUP, LLC
555 South Flower Street, Suite 3200, Los Angeles, CA 90071, (213) 542-7121, fax (213) 542-7110, e-mail: msq@capstoneag.com. Web site: www.capstoneag.com. Contact Michael Spindler. Capstone’s typical litigation and forensic services include expert testimony in complex commercial litigation, arbitration, mediation, and other dispute resolution forums, damages claims preparation and assessment, analysis of the relationship between events and damages, construction damages analysis, project reconstitution, and job history analysis, internal investigations, SEC matters, purchase price disputes, critique of reports by other experts, business fraud investigations, and third-party inspections.

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 area 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) 891-1200, e-mail: dnote@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 unprecedented 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, compute forensics, electronic discovery, and analysis of computerized data. Degrees/licenses: CPAs, CFAs, ASAs, MBAs, and MBAs in accounting, finance, economics, and related subjects. See display ad inside back cover.

GLENN M. GELMAN & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
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 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 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. Our comprehensive case list is available upon request. See display ad on page 63.

GURSEY/SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, e-mail: gcurycky@gurseki.com. Web site: www.gursey.com. Contact Roseann Purzycki, Forensic accounting and litigation support services in the areas of marital dissolution, civil litigation, business valuation and appraisal, goodwill, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profit assessments, insurance claims, court accounting, tracing, and entertainment industry litigation. See display ad on page 51.

HARGRAVE & 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 CPAs’ 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 46.

DIANA G. LESGART, CPA, CFE, CVA, CFF, 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, CFF, 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 20 years litigation support specialization. Appointed as Section 730 accounting expert. Ms. Lesgart’s profile can be found at http://www.jurispro.com/DianaLesgartCPA. Expert is English/Spanish bilingual. See display ad on page 49.
We are experts in damages, accounting and valuation. 

Don’t settle for less.

White Zuckerman Warsavsky Luna Wolf Hunt LLP

- 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 and Orange County

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

818-981-4226 or 949-219-9816 www.wzwlw.com expert@wzwlw.com
compensation, lender liability and reorganization plan feasibility. Professional staff of five with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 67.

**ASSET INVESTIGATIONS**

**BENCHMARK INVESTIGATIONS**

32158 Camino Capistrano, # A-415, San Juan Capistrano, CA 92675, (830) 248-7721, fax (949) 248 0208, e-mail: bimark@law Firm.net. Web site: www.Benchmarkinvestigations.com. Contact Jim Zimmer, CPI. National agency. Professional investigations with emphasis on accuracy, detail, and experience. Asset/financ- 

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

Contact Michael Kylker

PHONE (818) 995-1040

FAX (818) 995-4124

E-MAIL MIKE@KETW.COM

VISIT US @ www.KETW.COM

15303 Ventura Boulevard, Suite 1040

Sherman Oaks, California 91403

---

**ATTORNEY FEES**

**LAW OFFICES OF PHILLIP FELDMAN**

14401 Sylvan Street, Suite 208, Van Nuys, CA 91401, (818) 986-8850, fax (818) 986-1757, e-mail: LegaMapExpert@aol .com; StateBarDefense@aol.com; PreventativeLaw@aol.com. Web site: www.LegalMalpracticeExperts.com; www.LegalEthicsExperts.com. Contact Phillip Feldman. B.S. Accounting, former accountant CPA firm and industry. M.B.A.—USC. Fee dispute arbitrator 31 years. Judge Pro 

**AUDIO/VIDEO FORENSIC**

**AUDIO ENGINEERING ASSOCIATES**

1029 North Allen Avenue, Pasadena, CA 91104, (826) 798-9128, fax (626) 798-2378, e-mail: stereoms@aol.com. Web site: www.AEAForensics.com. Contact Wes Dooley. Enhancement and authentication fixed price intelligibility evaluations. Audio and video evidence analysis. KGR VIDEO IMAGE AND AUDIO EVALUATION

**LA PANEL OF EXPERT WITNESSES**

4576 Delancy Drive, Yorba Linda, CA 92886, (714) 926-0606, fax (714) 946-1033, e-mail: info@kgrproductions.com or rongoz@hotmail.com. Web site: www.kgrproductions.com. Contact Ron Guezek. Since 1995, I have worked extracting usable information from poor quality video/audio and provide clear presentations of these findings. My history includes expert testimony, defense, prosecution, and inves- 

**AVIATION**

**AEROPACIFIC CONSULTING**

3858 Canon Street, Suite 120, Torrance, CA 90503, (310) 503-4350, fax (819) 500-8788, e-mail: doug.moss@aeropacific.net. Web site: www.aeropacific.net. Contact Doug Moss. Aircraft accident investigation, causal analysis, determination of pilot error, failure analysis, design defect, etc. Qualifications BS and MS in engineering. Engineering test pilot, airline pilot, aircraft owner, instructor pilot, CF-II and ME-L.

**ARGOS ENGINEERING**

44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5972, 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 92621, (949) 283-8700, fax (949) 283-0770, e-mail: experts@mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate con- 

**BANKRUPTCY**

**FULCRUM INQUIRY**

888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dchole @fulcrum.com. Web site: www.fulcrum.com. Contact 

**BANKRUPTCY/TAX**

**ADVISORS/EXPERTS @ MCS ASSOCIATES**

18881 Von Karman, Suite 1175, Irvine, CA 92621, (949) 283-8700, fax (949) 283-0770, e-mail: experts@mcsassociates.com. Web site: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate con- 

**BIOMECHANICS/ RECONSTRUCTION / HUMAN FACTORS**

**INSTITUTE OF RISK & SAFETY ANALYSES**

5324 Canoga Avenue, Woodland Hills, CA 91364, (818)
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 law 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; LLM, Harvard Law School. More than 37 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 43.

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.

BRIAN LEWIS & COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268, e-mail: brian@brianlewis-cpa.com. Web site: www.10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268, e-mail: brian@brianlewis-cpa.com. Web site: www.10900 wilshireblvd.com. 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 48.

CORNERSTONE RESEARCH

Dispute Resolution & Forensic Analysis
Design/Construction Claims
Environmental Claims
Bid/Cost/Damage Analysis
Construction Defect Analysis
Delay/Acceleration/Disruption Analysis
Expert Witness Testimony
Insurance/Bond Claims

Technical Expertise
Architecture
Engineering
Scheduling
Construction Management
Cost Estimating & Auditing
Environmental
Geotechnical

URS is the nation’s largest engineering, consulting and construction services firm. URS specializes in the resolution of construction disputes.
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 200, Los Angeles, CA 90017, (213) 787-4103, fax (213) 891-1300, e-mail: dottie@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 methodologies, 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 inside back cover.

**GURSEY/SCHNEIDER LLP**
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 567-3469, e-mail: rwwatts@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 related subjects. See display ad on page 51.

**HAYNIE & COMPANY, CPAS**
4910 Campus Drive, Newport Beach, CA 92660, (949) 724-1880, fax (949) 724-1889, e-mail: sgabrielson@hayniecpa.com. Web site: www.hayniecpa.com. Contact Steven C. Gabrielson. Consulting and expert witness testimony in a variety of practice areas: commercial damages, ownership disputes, economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, professional liability, and expert cross examination. Extensive public speaking background assists in courtroom presentations.

**HIGGINS, MARCUS AND LOVETT, INC.**
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, e-mail: info@hmnlc.com. Web site: www.hmnlc.com. Contact Mark C. Higgins, ASA, president. The firm has 30 years of litigation support and expert testimony experience in matters involving business valuation, economic disputes, economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, professional liability, and expert cross examination. Extensive public speaking background assists in courtroom presentations.

**MAYER HOFFMAN MCCANN PC**

**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@schulzechaynes.com. Web site: www.schulzechaynes.com. Contact Karl J. Schulze, principal. Specializes: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, construction claims, corporate recovery, forensic 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 53.

**THOMAS NECHES & COMPANY LLP**

**WHITE, ZUCKERMAN, VARSKY, LUNA, WOLF & HUNT**
14455 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91423, (818) 981-4226, fax (818) 981-4278; 383 San Miguel Drive, Suite 130, Newport Beach, CA 92660, (949) 219-9816, fax (949) 219-9906, e-mail: expertswzlw@hotmail.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony for complex litigation involving damages of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, marital dissolutions, and tax planning and preparation. Excellent communications with extensive testimony experience. Prior Big Four accounting professionals. Specialize in 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 45.

**ZIVETZ, SCHWARTZ & SALTSMAN, CPAS**

**CHEMISTRY**

**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 90503, (310) 370-6122, fax (310) 370-6188, e-mail: rwwatts@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 accounting, fraud investigations, accounting malpractice, intellectual property, construction, government accounting and entertainment litigation. Gursey/Schneider has over 30 years of experience as expert witnesses in related matters. See display ad on page 51.

**COMPUTER EVIDENCE DISCOVERY**

**ROBERT J. ABEND, PE**

**COSGROVE COMPUTER SYSTEMS, INC.**
7417 Earlham Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4021, e-mail: pcgosgrove@computer.org. Web site: www.cosgrovecos.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 schools. 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 BSSEE from Loyola University and a master of engineering from UCLA.

**COMPUTER FORENSICS**

**ROBERT J. ABEND, PE**
DATACHASERS, INC.
P.O. Box 2861, Riverside, CA 92516-2861, (877) DataExam, (877) 328-2392, (951) 780-7892, e-mail: Admin@datachasers.com. Web site: www.DataChasers.com. E-Discovery: Full e-discovery services. You give us the mountain, we give you the mole hill: TIFF production, de-duplication, redaction, bates stamped data, and electronically stored information (ESI) production. Computer forensic: full forensic computer lab. Recovering deleted text files (documents), graphics (pictures), date codes on all files, e-mail, and tracing Internet activity. Intellectual property cases; family law; employment law; probate resolution; asset verification; criminal law (prosecution or defense); etc. Litigation support, trial preparation, experienced expert witnesses, and professional courtroom displays. See display ad on page 49.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 757-4100, 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 computized data. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad inside back cover.

SETEC INVESTIGATIONS
8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90036, (800) 748-5440, fax (323) 939-5481, e-mail: tstefan@setecinvestigations.com. Web site: www.setecinvestigations.com. Contact Todd Stefan. Setec Investigations offers unparalleled expertise in computer forensics and enterprise investigations providing personalized, case-specific forensic analysis and litigation support services for law firms and corporations. Setec Investigations possesses the necessary combination of technical expertise, understanding of the legal system, and specialized tools and processes enabling the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes or misuse. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.

COMPUTERS/INFORMATION SCIENCES
ROBERT J. ABEND, PE

COSGROVE COMPUTER SYSTEMS, INC.
7411 Earldom 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 schools. He provided an invited article, “Software

DIANA G. LESGART, CPA, CFE, CVA, CFF
An Accountancy Corporation
TEL 818.886.7140  •  FAX 818.886.7146  •  E-MAIL Lesgart3@msn.com
22024 LASSEN STREET, SUITE 106, CHATSWORTH, CA 91311
www.jurispro.com/DianaLesgartCPA
Certified Public Accountant
Certified Fraud Examiner
Certified Valuation Analyst
Certified in Financial Forensics

CARPE DATUM™.....SEIZE THE DATA
COMPUTER FORENSICS
• Recover Critical Data
• E-Mail Recovery
• Dates on All Files
• Websites Visited

E-DISCOVERY
• De-Duplication
• Redaction
• Bates Stamped Data
• Electronic (ESI) Production

Results!
Defining the firm of Cohen, Miskei & Mowrey
• Economic Damages
• Fraud Investigations
• Expert Witness Services
• Bankruptcy and Reorganization Services
• Business and Professional Practice Valuations
• Family Law including:
  • Asset Tracing
  • Cash Flow Available for Support
  • Post-Separation Accounting
  • Lifestyle Analysis

5760 CANOGA AVENUE
SUITE 300
WOODLAND HILLS
CALIFORNIA 91367
TEL: 818.986.5070
FAX: 818.986.5034
www.emanepaz.com

Los Angeles Lawyer November 2010
Engineering and Litigation,” for the Encyclopedia of Software Engineering. He is a Certified Forensic Consultant (CFC), holds the CDP, is a member of ACM, ACFEI, 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 B.S. degree from Loyola University and a master of engineering from UCLA.

CONSTRUCTION

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.brozo@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/disposition assistance, cause-effect-impact analysis, contractor financial audits, merit analysis, document database development/manage- ment, and performance audits.

CAPSTONE ADVISORY GROUP, LLC

555 South Flower Street, Suite 3200, Los Angeles, CA 90071, (213) 542-7121, fax (213) 542-7102, e-mail: mspiender@capstoneeq.com; Web site: www.capstoneeq.com. Contact Michael Spinder. Capstone’s typical litigation and forensic services include expert testimony in complex commercial litigation, arbitration, mediation, and other dispute resolution forums, damages claims preparation and assessment, analysis of the relationship between events and damages, construction damages analysis, project reconstruction, and job history analysis, internal investigations, SEC matters, purchase price disputes, critique of reports by other experts, business fraud investigations, and third-party inspections.

COOK CONSTRUCTION COMPANY

7131 Owensmouth Avenue, Canoga Park, CA 91303, (818) 438-4535, fax (818) 595-0028, e-mail: scook16121@acsaltd.com. Contact Stephen M. Cook. Specialties: Litigation preparation, residential construction, single and multifamily, hillside, foundations, concrete floors, retaining walls, stairs, excavation, waterproofing, water damages, roofing, 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 55.

DONLEY CONSTRUCTION CONSULTANTS

1099 D Street, San Rafael, CA 94901, (415) 456-9242, fax (415) 456-9865, e-mail: john@donleycc.com; Web site: www.donleycc.com. John Donley. Litigation support services; technical analysis and consulting, expert witness testimony, claims management in complex litigation, forensic accounting and architecture. Document management systems. Construction claims expertise: construction defects, remediation scope and cost, and change orders, such as unforeseen conditions, claims, delays and productivity, labor inefficiency, total cost claims, contract termination claims, real estate claims, leasehold and disclosure claims, injury claims, and construction accidents.

FORENSISGROUP, INC

EXPERT WITNESS SERVICES

3452 East Foothill Boulevard, Suite 1160, Pasadena, CA 91107, (800) 555-5422 (808) 756-6003, fax (808) 756-1950, e-mail: experts@forensisgroup.com; Web site: www.forensisgroup.com. Contact Mercy T. Steenwyk. ForensisGroup is an expert witness services and consulting company, providing expert court witnesses, consultants and litigation support specialists to law firms, private-practice attorneys, and insurance professionals and other firms since 1991! Our experts have been retained in over 10,000 cases nationwide. Our highly experienced staff will connect you with top engineering consultants, medical expert witnesses, forensic accountant experts, construction expert witnesses, securities specialists, and others representing hundreds of technical and scientific disciplines. Thousands have gained the TECHNICAL ADVANTAGE and the COMPETITIVE EDGE in their cases. 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 43.

GLENN M. GELMAN & ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS

1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2626, e-mail: rsgar@mgmca.com; Web site: www.mgmca.com. Contact Richard M. Squar, Exclusive LA 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 six firms in all of California that 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 accounting, and trial exhibit preparation. Our areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits, tax consequences of settlements, reconstruction of accounting records, embezzlement and fraud, contract costs, losses, construction claims, and damage computations cases. Chosen by publishers of Accounting Today as one of 2003 “Best Accounting Firms to Work For.” 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. Our comprehensive case list is available upon request. See display ad on page 63.

KGA, INC.


MATHEW SEARS LINNEKT & JAIME LLP

P.O. Box 13711, Sacramento, CA 95853, 4711, (916) 978-3434, fax (916) 978-3430, e-mail: rmineran@mathewsears.com; Web site: www.mathewsears.com. Contact Robert Bennett. Specialties: Contractor licensing issues; proper license classification to perform work; B & P section 7031 issues; California Contractors Board (CCB) investigations and disciplinary proceedings; obtaining licenses or documents from CSLB. Also violations of subletting and subcontracting Fair Practice Act. Expert witness at trial/mediation. Degrees/licenses: BA, JD; Commercial Pilot; SEL; MEL.

NOLTA CONSULTING

6115 Syracuse Lane, San Diego, CA 92122, (858) 232-9299, e-mail: FredNoltaConsulting@gmail.com; Contact L. Frederick C. (Fred) Nolta. California licensed engineering, general building, and concrete contractor with 30+ years of continuous experience. Expertise covers all aspects including contracts, estimates, schedules, submittals/shops, cost control, quality control, change orders, claims and warranty matters. Product type experience in office, retail, residential, multimillion high-rise, healthcare, Indian gaming, hospitality, education, parking, tilt-up and high-rise concrete, power generation, waste treatment, site development, Forensic analysis, opinion, testimony, and claim preparation assistance services regarding construction defect, contract dispute, personal injury, warranty, etc. Nolta is an impressive construction expert, detailed analyst, communicator, and presenter.

URS

915 Wilshire Boulevard, Suite 800, Los Angeles, CA 90017, 213 996-2549, fax 213 996-2521, e-mail: matthew.larkenau@urscorp.com. Expert witness for entitlement, causation damages on design, construction, and geotechnical environmental disputes. Experienced in all types of construction projects. See display ad on page 47.

CONSTRUCTION DEFECT

M.A. CALABRESE ASSOCIATES

P.O. Box 50534, Pasadena, CA 91115, (862) 825-5444, fax (909) 297-9670, e-mail: forenguy@earthlink.net; Web site: www.mcalabresecoassociates.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. Among his specialty areas is tracking the cause and origin of water intrusion resulting in mold growth and collateral damage, 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 repairs and remodeling, cost comparisons and analyses, property damage assessment and indoor air quality surveys and inspections. See display ad on page 52.

CONSULTING

PLUMBING INSPECTION PIPE EVALUATION SERVICES (PIPES)

43141 Business Center Parkway, Suite 201, Lancaster, CA 93535, (661) 949-8811, fax (661) 942-7318. Contact Arnold A. Rodio. Specialties include evaluation of plumbing systems and installation in housing, apartment, condo-minium, and commercial. Expert on uniform plumbing codes and installation standards. Thirty-two years of experience, 8,000+ residential units and assorted commercial projects. Active plumbing contractor. Call for CV.

CONTRACTORS LICENSING (CSLB)

DAVID KALB

1225 8th Street, Suite 580, Sacramento, CA 95814, (866) 443-0657, fax (916) 443-1908, e-mail: david@cutreutapce.com; Web site: www.Cutreutapce.com. Contact David at Capitol Services Inc. Declarations and expert testimony regarding B&P code 7031, substantial compliance, classification determination, contractor license requirements for a construction project, plus CSLB policies, rules and regulations. Based in Sacramento, David has been helping lawyers, contractors, and the construction industry since 1982. Author, What Every Contractor Should Know: Answers to Real World Licensing Questions in CA, NV and AZ. David’s construction industry column, Kalb’s Capitol Services Inc., appears regularly in over 30 industry publications.

COPYRIGHT

A PHOTOGRAPHY EXPERT WITNESS

PO Box 6339, Altadena, CA 91003, (626) 836-0000, e-mail: expert@sedlick.com; Web site: www.photographyexpertwitness.com. Contact Professor Jeff Sedlick. The leading consultant and testifying forensic expert witness on all issues related to photography: copyright, licensing, contracts, business practices, industry standards, stock photography, model releases, rights of privacy/publicity, evaluation of lost or damaged photographs and film, evaluation of photogra- phy assets, technical matters, forensic digital analysis, forensic photography, and litigation support.
CORPORATE INVESTIGATIONS

CAPSTONE ADVISORY GROUP, LLC
555 South Flower Street, Suite 3200, Los Angeles, CA 90071, (213) 542-7121, fax (213) 542-7102, e-mail: mspindler@capstoneag.com. Web site: www.capstoneag.com. Contact Michael Spindler. Capstone’s typical litigation and forensic services include expert testimony in complex commercial litigation, arbitration, mediation, and other dispute resolution forums, damages claims preparation and assessment, analysis of the relationship between events and damages, construction damages analysis, project reconstruction, and job history analysis, internal investigations, SEC matters, purchase price disputes, critique of reports by other experts, business fraud investigations, and third-party inspections.

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. Degree/licences: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad inside back cover.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & 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) 219-9095, 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 45.

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: homewoodp2@sclobal.net. 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 fingerprinting 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 Grenola Street, Pacific Palisades, CA 90272, (310) 573-9615, fax (310) 573-1304, e-mail: jillkessler@mac.com. Web site: www.jillkessler.com. Opinion, consultation, reports, evaluations in dog bites, aggression, behavior, training, showing, breed tendencies, and rescued dogs. Specializing in Rottweilers and pit-bull type dogs. See display ad on page 59.

ECONOMIC ANALYSIS

MAYER HOFFMAN MCCANN PC

ECONOMIC DAMAGES

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.

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 provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, lease dispute, property value, enterprise value, partnership interest and closely-held share value, fair compensation, lender liability and reorganization plan feasibility. Professional staff of five with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 67.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & 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) 219-9818, fax (949) 219-9095, e-mail: experts@wzhw.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 45.

ZIVETZ, SCHWARTZ & SALTSMAN, CPAs

ECONOMICS
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, covenants and bond faith, real estate brokerage, appraisal, escrow, and construction defects/disputes, and title insurance.

Business litigation is increasingly complex. That is why we believe valuation issues must be addressed with the same meticulous care as legal issues. Analysis must be clear. Opinions must be defensible. Expert testimony must be thorough and articulate. HML has extensive trial experience and can provide legal counsel with a powerful resource for expert testimony and litigation support.

For More Information Call 213-617-7775
Or visit us on the web at www.hmlinc.com

Confidence At The Courthouse.
Mr. Truck, Inc.

Accident Reconstruction and Truck Safety

Accident Reconstruction Services:
- Car vs. Car
- Truck vs. Car
- Truck vs. Bicycle
- Truck vs. Truck
- Solid Waste Vehicles

Low Speed Accident Analysis

William M. Jones

www.mrtrucker.com
william@mrtrucker.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, CFAs, MBAs. See display ad on page 49.

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, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad inside back cover.

ELECTRICAL

ROBERT J. ABEND, PE


ELECTRICAL ENGINEERING

CTG FORENSICS, INC.

16 Technology Drive, Suite 109, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: jflynn@ctgforensics.com. Web site: www.CTGforensics.com. Contact John Flynn, managing director. Construction-related engineering, plumbing, mechanical heating, ventilating, A/C and electrical (power, lighting), energy systems, residential and nonresidential buildings, construction defects and delay analysis, cost to repair, construction claims, mold, and green/LEED buildings.

ELECTRONIC DISCOVERY

SETEC INVESTIGATIONS

8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90036, (800) 748-5440, fax (323) 939-5481, e-mail: tstefan@setecinvestigations.com. Web site: www.setecinvestigations.com. Contact Todd Stefan. Setec Investigations offers unparalleled expertise in computer forensics and enterprise investigations providing personalized, case-specific forensic analysis and litigation support services for law firms and corporations. Setec Investigations possesses the necessary combination of technical expertise, understanding of the legal system, and specialized tools and processes enabling the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes or misuse. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.
EMBEZZLEMENT AND FRAUD
GLEN M. GELMAN & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Suite 201
Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: rtsqaur@gmgcpa.com.
Glen M. Gelman and Associates provides 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: embezzle-
ment and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, compu-
tation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduci-
ciary accounting, 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: con-
struction, 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 testi-
fied over 30 times. Our comprehensive case list is available upon request. See display ad on page 63.

EMPLOYMENT/DISCRIMINATION/HARASS-
MENT
BRIAN H. KLEINER, PhD, MBA
Professor of Human Resources Management, California State University, 551 Santa Barbara Avenue, Fullerton, CA 92835, (714) 879-9705, fax (714) 879-5600. Contact Brian H. Kleinier, PhD. Specializations include wrongful termination, discrimination, sexual harassment, ADA, evaluation of pol-
cies and practices, reasonable care, progressive discipline, conducting third-party workplace investigations, retalia-
tion, RIFs, statistics, negligent hiring, promotion selections, CRR/FRM compensation, wage and hours, ERISA, work-
place violence, and OSHA. Consultant to over 100 organiza-
tions. Over 500 publications, five-time winner of CSUF Meri-
torous Performance Award. Testified at trial over 55 times.

EMPLOYMENT LAW
HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90222, (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/ability discrimination, other Title VII and FEHA dis-
crimination and harassment, retaliation, FMLA/CFRA, safety, and wrongful termination. Courtroom testimony and disposi-
tion experience. Retained 60 percent by defense, 40 per-
cent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for sound-
ness, for comparison to prevailing practices, and for compli-
cance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

EMPLOYMENT/WAGE EARNING CAPACITY
CALIFORNIA CAREER SERVICES
6024 Wilshire Boulevard, Los Angeles, CA 90036, (323) 933-2903, fax (323) 933-9929, e-mail: susan@californiacareer services.com. Web site: www .californiacareerservices.com. Contact Susan Wise Miller, MA. Career counselor, vocational expert vocational exami-
nations, labor market research, and testimony on employa-

personnel systems associates, Inc.
P.O. Box 28597, Anaheim, CA 92809, (714) 281-8337, fax (714) 281-2949, e-mail: mdi@personnelsystems.com. Web site: www.personnelsystems.com. Contact Mae Lon Dimg, MBA, CCP. Expert witness in employment, business dispute, disability, and divorce cases involving issues of employee or owner compensation, discrimination, wrongful termination, exemption from overtime, labor market/employ-
ability, lost wages/benefits, employee performance, and evaluation of personnel policies and practices. Nationally recognized human resource management and compensa-
tion consultant, speaker, author of book and articles, univer-
sity instructor. Quoted in Los Angeles Times, Orange County Register, Business Week, Workforce, and Working Woman. Over 19 years of testifying in cases involving major national organizations in a large variety of industries involving multiple plaintiffs, MBA, Certified Compensation Professional.

ENGINEER/TRAFFIC
WILLIAM KUNZMAN, PE
1111 Town and Country #34, 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 railroad accidents. Largest verdict: $10,300,000 in pedestrian accident case against Los Angeles Unified School District. Largest settlement: $2,000,000 solo vehicle accident case against Caltrans. Before becoming expert wit-
nesses, employed by Los Angeles County Road Depart-
ment, Riverside County Road Department, City of In-
glewood, and Federal Highway Administration. Knowledge of governmen-
tal agency procedures, design, geometrics, signs, traffic controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA; graduate work—Yale University.

ENGINEERING
FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronica@fallbrook eng.com. Web site: www.fallbrookeng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringe-
ment, invalidity, claim construction and trade dress), per-
sonal injury, product liability, and product failure analysis.
Our professionals have represented both plaintiff and defen-
dant. We have done analysis, prepared declarations, been deposed, and testified in court. We have years of design and development experience making us effective expert wit-

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: experts@forensisgroup.com. Web site: www .forensisgroup.com. Contact Mercy T. Steenwyk. Foren-
sisGroup is an expert witness services and consulting com-
pany, providing expert court witnesses, consultants and liti-
gation support specialists to law firms, private-practice attorneys, and insurance professionals and other firms since 1991! Our experts have been retained in over 10,000 cases nationwide. Our highly experienced staff will connect you with top engineering consultants, medical expert witnesses, forensic accountants, construction expert witnesses, securi-
ties specialists, and others representing hundreds of techni-
cal and scientific disciplines. Thousands have gained the TECH-NICAL ADVANTAGE and the COMPETITIVE EDGE in their cases. 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 43.
**ENGINEERING/GEOTECHNICAL**

**COTTON, SHIRES AND ASSOCIATES, INC.**
3201 Corte Malpaso, Suite 301, Camarillo, CA 93012-8074, (805) 484-5500, fax (805) 484-5530, e-mail: mphipps@cottonshires.com. Web site: www.cottonshires.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 Andreas, 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 crawlspace), pavement and slabs (cracking and separating), retaining walls (movement, cracking and failures), pipelines, flooding and hydrology, design and construction deficiencies, expert testimony at over 77+ trials (municipal, superior and federal); 237+ depositions; 206+ settlement conferences in southern and northern California and Hawai'i.

**ENVIRONMENTAL**

**KG&A, INC.**

**PACIFIC HEALTH AND SAFETY CONSULTING, INC.**

**THE REYNOLDS GROUP**

**ENVIRONMENTAL ENGINEER**

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

**ESCROW**

**ADVISORS/EXPERTS @ MCS ASSOCIATES**
18881 Von Karman, Suite 1175, Irvine, CA 92621, (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.

**LAW OFFICE OF LORE HILBURG**
1625 South Cimarron Street, Los Angeles, CA 90019, (323) 737-4444, fax (323) 737-4411, e-mail: lore@hilburglaw.com or Richard@hilburglaw.com. Contact Richard Reinhardt. Lore Hilburg Esq. is a seasoned professional who has served as an expert witness as to escrow issues, and real property title disputes such as easements, constructive notice and grantor/grantee index searches. Ms. Hilburg also serves as a consultant on these issues whether they arise in litigation involving a tort claim, legal malpractice, or breach of contract or a transactional setting.

**EXPERT REFERRAL SERVICE**

**FORENSIC EXPERT WITNESS ASSOCIATION**
10820 Beverly Boulevard, Suite A5 PMB 310, Whittier, CA 90601, (562) 695-4600, fax (562) 692-3425 or (714) 459-7198, e-mail: info@forensic.org or rsvp@forensic.org. Web site: www.forensic.org. Contact Lynn Gilbert or Don Gilbert, ED. Expert Witness Directory—call today for your free annual print copy or visit www.forensic.org to find an expert in a wide range of disciplines to contact your expert direct! Recently upgraded Web sites include dynamic search capabilities for attorneys and the public to find an expert by expertise categories or by keyword searches. National Association of professional consultants providing forensic services: in California, Arizona, Texas and Illinois. Annual Expert Witness Conference April 29-30, 2011 in Las Vegas. See display ad on page 54.

**PRO/CONSULT**

**TECHNICAL AND MEDICAL EXPERTS**
1945 Palo Verde Avenue, Suite 200, Long Beach, CA 90815, (800) 392-1119, fax (562) 799-8821, e-mail: experts@msn.com. Web site: www.expertinfo.com. Contact Rebecca deBatts. Right expert right away! We are listed and recommended by the A.M. Best Company. We welcome your rush cases! 15,000 medical and technical experts in over 3,000 fields enables Pro/Consult to provide the best experts at a reasonable cost, including: reconstruction, accounting, engineering, biomechanical, business valuation, construction, economics, electoral, human factors, insurance, lighting, marine, metallurgy, mechanical, roof, safety, security, SOC, toxicology, medmal, MDs, RNs, etc. Free resume binder.

**TASA (TECHNICAL ADVISORY SERVICE FOR ATTORNEYS) EXPERTS IN ALL CATEGORIES**
Contact Heather Williamson, (800) 523-2319, fax (800) 329-8272, e-mail: experts@tasanet.com. Web site: www.TASAnet.com. The TASA Group is your timesaving, cost-effective source for superior, independent Testifying and Consulting Experts in all fields and locations. We offer 11,000+ diverse categories of expertise and hard-to-find specialties in technology, business, the arts, and sciences, including 1000+ medical areas. Our experienced Referral Advisors target your specific criteria and connect you with experts available to discuss your case. There is NO CHARGE for our search and referral services unless you designate or engage an expert we refer. Plaintiff/Defense. Visit TASAnet.com where you can search archived webinars for attorneys. To receive invitations to our free, expert-led webinars for attorneys, register at www.TASAnet.com/knowledgecenterregistration.aspx. Benefit from 54 years of TASA Group experience. See insert in this issue and display ad on page 42.
EXPERT WITNESS
AMFS MEDICAL EXPERTS NATIONWIDE
6425 Christie Avenue, Suite 260, Emeryville, CA 94608,
(800) 275-8903. Web site: www.AMFS.com. Medical experts for malpractice 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. For over 20 years, AMFS has provided board-certified experts in over 10,000 malpractice and personal injury cases. • Board-Certified experts in all medical specialties • Practicing physicians with legal experience • No cost attorney consultations • Record review and testimony • Independent Medical Examinations (IME) and autopsies • Essential affidavits and reporting. Discuss your case at no charge with one of our Medical Directors who will identify and clarify your case issues to ensure you retain the appropriate specialists. Cost-effective Initial Case reviews for merit. Have your case reviewed for merit by members of our 50+ member multi-specialty Physician Advisory Panel. Review and select expert CVs. Our experience, resources, and large proprietary database enable us to quickly identify and interview a large number of potential medical experts on your behalf and provide you with the CVs of those who are best suited to your case. See display ad on page 46.

EXPERT WITNESS WEB SITES
EXPERT4LAW—THE LEGAL MARKETPLACE
(213) 896-6661; fax (213) 613-1909, e-mail: forensics
@acba.org. Web site: www.expert4law.org. Contact Melissa Algaze. Still haven’t found who you’re looking for? Click here! expert4law—The legal Marketplace is the best online directory for finding expert witnesses, legal consultants, litigation support, lawyer-to-lawyer networking, dispute resolution professionals, and law office technology. This comprehensive directory is the one-stop site for your legal support needs. Available 24/7/365! Brought to you by the Los Angeles County Bar Association.

FAILURE ANALYSIS
KARS ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: info@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 30-plus years in metallurgical/forensic/structural failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are fellows of American Society for Metals and board-certified diplomates, American Board of Forensic Examiners. See display ad on page 67.

KGA, INC.

FAMILY LAW
BRIAN LEWIS & COMPANY
10060 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268, e-mail: brian@lewiscpa.com. Contact Brian Lewis, CPA, CVA. Forensic accounting; business valuations; cash spendable reports; estate, trust, and income tax services.

COHEN, MISKEY & MOWREY LLP
5700 Canoga Avenue, Suite 300, Woodland Hills, CA 91367, (818) 986-5070, fax (818) 986-5034, e-mail: smowrey@cmcpas.com. Web site: www.cmcpas.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 49.

GURSEY/SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0980, fax (310) 557-3468. 20555 Hawthorne Boulevard, First Floor, Torrance, CA 90503, (310) 370-6122, fax (310) 370-6188, e-mail: nvatts@gursey.com or katz@gursey.com. Web site: www.gursey.com. Contact Robert Watts or Tracy Katz. Forensic accounting and litigation support services in all areas relating to marital dissolution; including, business valuation, tracing and apportionment 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 & 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 CPAs’ Family Law Section, business valuation consultant 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.

ACCOUNTING EXPERTS FOR BUSINESS LITIGATION

THOMAS NECHES
Certified Public Accountant
Accredited in Business Valuation
Certified Valuation Analyst
Certified Fraud Examiner
Certified in Financial Forensics

Thomas Neches & Company LLP
609 South Grand Avenue, Suite 1106
Los Angeles, California 90017-3848

voice: (213) 624-8150
e-mail: tmn@thomasneches.com

www.thomasneches.com
investigation, investigative analysis of liability, marital dissolution, earnings, lost value of business, forensic accounting, fraud. Money for complex litigation involving damage analyses of tracing, property allocation, reimbursements, stock options and related allocations issues. I have vast expertise in not only marital dissolution matters. My expertise expands to trust and probate accountings, fraud, and other litigation related matters.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & 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) 219-9095, e-mail: expert@wzwlv.com. Contact Barbara Luna or Bill Wolf. (949) 724-1880, fax (949) 724-1889, e-mail: sgabrielson@lawreview.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 expertise not only in marital dissolution matters. My expertise expands to trust and probate accountings, fraud, and other litigation related matters.

JOHN M. GABRIELSON
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 995-1040, fax (818) 996-4124. Web site: www.info@ketw.com. Contact Michael J. Gabrielson. Litigation support, including forensic accounting, business appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Kryc, Ervin, Taubman and Walheim is a full-service accounting firm serving the legal community for more than 20 years. See display ad on page 46.

PAMELA WAX-SEMUS, CFE
107 North Reino Road, #402, Newbury Park, CA 91320, 20 years. Accounting firm serving the legal community for more than 20 years. Accounting experts in forensic accounting, business interruption, business dissolution, construction, consumer/credit card), banking operations/administration. Extensive experience 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 expertise not only in marital dissolution matters. My expertise expands to trust and probate accountings, fraud, and other litigation related matters.

EDWARD LEAR

JOEL MARK
NORDMANN CORMANY HAIR & COMPTON LLP
1000 Town Center Drive, 6th Floor, Ontario, CA 91761, (909) 988-8300, fax (909) 988-7700, e-mail: jmark@hhmc.com. Web site: www.hhmc.com. Contact Joel Mark. Mr. Mark has had in excess of 35 matters as an expert witness in attorney malpractice cases, attorneys’ fee disputes and cases involving issues of attorney ethics. He served 12 years on the State Bar Committee on Mandatory Fee Arbitration, a term on the State Bar Committee on Professional Responsibility and Conduct, and has been appointed as an expert consultant by the Los Angeles Superior Court.

FINANCIAL

ADVISORS/EXPERTS & MCS ASSOCIATES

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 experts in intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FUSILIER INCUM
888 South Figueroa Street, Suite 200, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: choicethefuluminum.com. Web site: www.fusilierinc.com. Contact David Nolte. Gus Fusilier compares computers and information technology. Extensive experience in metallurgy, corrosion, and failure analysis. Expert witness testimony and declarations regarding computerized data. Degrees/license: CPAs, OFAs, MBAs, 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 discover-
tion and forensic services include expert testimony in complex commercial litigation, arbitration, mediation, and other dispute resolution forums, damages claims preparation and assessment, analysis of the relationship between events and damages, construction damages analysis, project reconstruction, and job history analysis, internal investigations, SEC matters, purchase price disputes, critique of reports by other experts, business fraud investigations, and third-party inspections.

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 Hanwood, 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 3000, 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 inside back cover.

GLENN M. GELMAN & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS CONSULTANTS
1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: rjsquar@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, embezzlement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, 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 inside back cover.

RGL FORENSICS
Los Angeles Office: 660 South Figueroa Street, Suite 980, Los Angeles, CA 90017, (213) 996-0900. Contact Alan Lurie, a@lurie@us.rgl.com or Bob Jones, bjones@us.rgl.com. Orange County Office: 265 City Drive South, Suite 290, Orange, CA 92868, (714) 740-2100. Contact Hank Kahrs, hkahrs@us.rgl.com. RGL Forensics is an international firm of forensic financial experts exclusively dedicated to damage analysis, fraud investigation, and valuation. Services include expert testimony in complex commercial litigation, arbitration, mediation, and other dispute resolution forums, damages claims preparation and assessment, analysis of the relationship between events and damages, construction damages analysis, project reconstruction, and job history analysis, internal investigations, SEC matters, purchase price disputes, critique of reports by other experts, business fraud investigations, and third-party inspections.
ing the legal, insurance, and business communities for more than 30 years, the firm is unique in its ability to combine investigative accounting, business valuation, fraud, and forensic technology expertise. For attorneys, we discover and define financial value in transactions and civil and criminal disputes, and when necessary provide expert witness testimony in court and arbitration proceedings. For more information about RGL and its 23 offices worldwide, please visit www.rgl.com. See display ad on page 65.

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 accountings, fraud, and other litigation related matters.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA, WOLF & 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) 219-9035, e-mail: expert@wzwlw.com. Contact Barbara Luna or Bill Wolf. Expert witness testimony preparation, settlement negotiations, and consultations. See display ad on page 65.

ZIVETZ, SCHWARTZ & SALTMANS, CPAS

FORENSIC ANALYSIS
BRIAN LEWIS & COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5628, e-mail: brian@brianlewis-cpa.com. Contact Brian Lewis, CPA, CVA. Forensic accounting; business valuations; cash spendable reports; estate, trust, and income tax services.

FRANCHISING
LEON GOTTLIEB
USA-INT’L RESTAURANT, HOTEL FRANCHISE CONSULTANT & EXPERT WITNESS
4601 Sendero Place, Tarzana, CA 91356, (818) 757-1131, fax (818) 757-1816, e-mail: gottlieb@icloud.com. Web site: http://flashjordan.com/leongottlieb.htm. Over 45 years of hands-on experience; all types of restaurants, fast foods, hotels, operations, training, manuals, franchisor-franchisee relationships, personal injury, product liability, real estate, tax planning, and franchise disputes. Experienced expert testimony and tax controversy representation.

GEOTECHNICAL ENGINEERING
SHEPARDSON ENGINEERING GROUP, INC.
10035 Prospect Avenue, Suite 101, Santee, CA 92071-4398, (619) 449-9830, fax (619) 449-5824, e-mail: des@shepardson.com. Contact Don Shepardson. Over 45 years as a Geotechnical Engineer of Record on residential, commercial, and governmental projects. Projects range from 6,000 AC subdivisions to multi-storied commercial buildings. Over 40 years of experience as a designated expert with extensive court experience, including electronic data presentations. Professional engineer license in 10 states, prior contractor license in engineering, concrete, and grading (inactive).

HANDWRITING
SANDRA L. HOMWOOD, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homwoodcde@sbcglobal.net. Contact Sandra L. Homwood. 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 media 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.

INSURANCE
DIVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassoci-
the permitting and construction process and understanding drainage cases is determining why the damage occurred. The entitlements and processing. The fundamental element in particular expertise in boundary disputes, drainage issues, experience designing and building land developments withesses, and wrongful termination. See display ad on page 45.

INVESTIGATIVE SERVICES

SPECIALIZED INVESTIGATIONS
9255 Corbin Avenue, Suite 200, Northridge, CA 91324, (818) 909-9607, fax (868) 792-3012, e-mail: stl@speciali .com. Web site: www.speciali.com. Contact Richard Harer. Specialized Investigations was established in 1982. Through the years, Specialized Investigations has expanded to provide a full range of investigative services, including, but not limited to: employment law investigations, insurance fraud and claims investigations; disability claims investigations; surveillance; workers’ compensation investigations; background checks; skip tracing/locates; asset searches; medical clinic investigations; and other services. Our primary territory includes California and Arizona, with three offices in California and investigators throughout each state. We have Spanish speaking investigators in all major metropolitan areas.

LAND SURVEYING

O’MALLEY ENGINEERING CORPORATION
660 East Chase Drive, Corona, CA 92881, (951) 734-0633, fax (951) 737-9487, Web site: www.omalleyengineering .com. Contact James O’Malley. Mr. James O’Malley PE, LS, JD—a civil engineer and land surveyor, has 40 years experience designing and building land developments with particular expertise in boundary disputes, drainage issues, entitlements and processing. The fundamental element in drainage cases is determining why the damage occurred and knowing who is responsible for that. His knowledge of the permitting and construction process and understanding of legal issues is helpful when putting a case together.

LEGAL ETHICS

LAW OFFICES OF PHILLIP FELDMAN
14401 Sylvan Street, Suite 208, Van Nuys, CA 91401, (818) 986-9890, fax (818) 986-1757, e-mail: LegMalpractice@aol .com; StateBarDefense@aol.com; PreventativeLaw@aol .com. Web sites: www.LegalMalpracticeExperts.com; www.LegalEthicsExperts.com. Contact Phillip Feldman. Designated, consulting & testifying expert—30 years. Certified specialist legal malpractice ABPLA/ABA. Forty-two years litigating and testifying regarding standard of care, causation, fiduciary duties, time bars, ethics, standard of conduct, professional responsibility, and fee disputes. Any underlying case—litigation, transaction, real property, contracts, trusts & probate, family, administrative, criminal, tort (was board certified med-mal specialist). State or federal. Former accountant. Degrees: BS, MBA. Former managing partner plaintiff firm. Experience: State Bar Defense Counsel and preventative law. Judge pro tem—25 years, and attorney/client arbitrator—31 years.

LAWRENCE H. JACOBSON, ESQ.

EDWARD LEAR

JOEL MARK
NORDMANN CORMANY HAIR & COMP LLP
1000 Town Center Drive, 6th Floor, Oxnard, CA 93036, (805) 988-8300, fax (805) 988-7700, e-mail: jmark@nchc .com. Web site: www.nchc.com. Contact Joel Mark. Mr. Mark has had in excess of 35 matters as an expert witness in attorney malpractice cases, attorneys’ fee disputes and cases involving issues of attorney ethics. He served 12 years on the State Bar Committee on Mandatory Fee Arbitration, a term on the State Bar Committee on Professional Responsibility and Conduct, and has been appointed as an expert consultant by the Los Angeles Superior Court.

LAW OFFICES OF CHRISTOPHER ROLIN
5707 Corsa Avenue, Suite 106, Westlake Village, CA 91362, (818) 707-7065, fax (818) 735-9992, e-mail: crolin @chrrolin.com. Web site: www.chrrolin.com. Contact Christopher Rolin. After more than 40 years as a trial attorney, Christopher Rolin is now focusing on advising litigants and transactional attorneys as a consultant and expert witness. His area of emphasis is attorney malpractice, focusing on the applicable community standard of care for practicing attorneys in the litigation and business arena. His trial experience has resulted in numerous assignments as an expert witness on trial and standard of care issues. He has been retained as an expert by both plaintiff and defendants in malpractice cases. He is also an expert in fee dispute cases including cases before State Bar Arbitration Panels.

LEGAL PRACTICE

JOEL MARK
NORDMANN CORMANY HAIR & COMP LLP
1000 Town Center Drive, 6th Floor, Oxnard, CA 93036, (805) 988-8300, fax (805) 988-7700, e-mail: jmark@nchc .com. Web site: www.nchc.com. Contact Joel Mark. Mr. Mark has had in excess of 35 matters as an expert witness in attorney malpractice cases, attorneys’ fee disputes and cases involving issues of attorney ethics. He served 12 years on the State Bar Committee on Mandatory Fee Arbitration, a term on the State Bar Committee on Professional Responsibility and Conduct, and has been appointed as an expert consultant by the Los Angeles Superior Court.

LEGISLATIVE INTENT

WILLIAM H. KELLER
1219 Morningside Drive, Manhattan Beach, CA 90266, (310) 343-9863, fax (805) 856-9866, e-mail: billkellerlaw@ gmail.com. Web site: www.calcoodes.com. Contact Bill Keller. Consultation on statutory construction problems. Expert witness testimony. Written opinion declarations on legislative history and legislative intent. Qualified as an expert over 45 times in state, federal and administrative actions.

LITIGATION

LAW OFFICES OF CHARLES PEREYRA-SUAREZ
445 South Figueroa Street, Suite 3200, Los Angeles, CA 90071, (213) 623-5823, fax (213) 623-1890, e-mail: cpereyra @cpslawfirm.com. Web site: www.cpslawfirm.com. Contact Charles Pereyra-Suarez. Acted as an expert witness for the plaintiffs in a legal malpractice case that resulted in a $38 million jury verdict in favor of the plaintiffs against a prominent international law firm. This was the fifth largest jury verdict in California in 2005. See display ad on page 59.

MARINE AND MARITIME BOATING

CAPTAIN TOM CARNEY
980 Oma Drive, San Diego, CA 92106, (619) 417-6766, fax (619) 225-8141, e-mail: captcarney@cox.net. Web site: www .sandleigovachtidyachten.de. Contact Tom Carney. Experienced consultant & expert witness in the marine industry representing plaintiff or defendant, testimony for recreational or commercial boats, power and sail, accident reconstruction, damage analysis, collision causes, rules of the road, insurance investigation, fraud, proper seamanship, navigation, marine propulsion, mechanical and electrical systems on vessels, proper boat handling, liability analysis and weather analysis. Degrees/license: BA, Captain, US Merchant Marine; 3000 Ton International—all oceans, any waters.

MARKETING AND SURVEY RESEARCH

MARYLANDER MARKETING RESEARCH
MNR STRATEGY GROUP
16501 Ventura Blvd, Suite 601, Encino, CA 91367, (818) 464-2400, fax (818) 464-2399, e-mail: cjaffe @mmrstrategy.com. Web site: www.mmrstrategy.com. Contact Cheryl Jaffe. MNR Strategy Group (MNR) provides trial ready surveys, rebuttals, and expert witness services in marketing for intellectual property litigation. Our studies measure consumer attitudes and behaviors for matters involving topics such as confusion, secondary meaning, deceptive advertising, dilution, and claim substantiation. We work on matters involving trademarks, copyrights, advertising, pricing, and other intellectual property issues. MNR principals have extensive experience and top-tier credentials, and the firm has been in business for more than 35 years.

MECHANICAL ENGINEERING

ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 936-8205, fax (949) 429-5972, e-mail: johnpratt@cox.net. Web site: www .argos-engineering.com. Contact John Pratt, PhD, PE. Litigation consulting, inspections, expert reports, patent infringement and validity analysis, deposition, and trial testimony.

CTG FORENSICS, INC.
16 Technology Drive, Suite 109, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: flynn@ctgforensics .com. Web site: www.CTGforensics.com. Contact John Flynn. managing director. Construction-related engineering, plumbing, mechanical (heating, ventilating, A/C) and electrical (power, lighting), energy systems, residential and commercial electrical, energistics, HVAC, and control system investigations. 10 years experience representing plaintiff and defendant in pipeline and property damage disputes, and mechanical and electrical system failures and failures. Certified Mechanical Engineer. 10 years experience representing plaintiff and defendant in pipeline and property damage disputes, and mechanical and electrical system failures and failures. Certified Mechanical Engineer.
nonresidential buildings, construction defects and delay
analysis, cost to repair, construction claims, mold, and
green/LEED buildings.

MEDICAL

AMFS MEDICAL EXPERTS NATIONWIDE
6425 Christie Avenue, Suite 260, Emeryville, CA 94608,
(800) 275-8903. Web site: www.AMFS.com. Medical
experts for malpractice 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.
For over 20 years, AMFS has provided board-certified
experts in over 10,000 malpractice and personal injury
cases. • Board-Certified experts in all medical specialties •
Practicing physicians with legal experience. • No cost attorney
consultations; • Record review and testimony; • Inde-
pendent Medical Examinations (IME) and autopsies; •
Essential affidavits and reporting. Discuss your case at no
charge with one of our Medical Directors who will identify
and clarify your case issues to ensure you retain the appro-
appropriate specialists. Cost-effective Initial Case reviews for
merit. Have your case reviewed for merit by members of our
50+ member multi-specialty Physician Advisory Panel.
Review and select expert CVs. Our experience, resources,
and large proprietary database enable us to quickly identify
and interview a large number of potential medical experts on
your behalf and provide you with the CVs of those who
are best suited to your case. See display ad on page 46.

TASAMED LOCAL AND NATIONAL MEDICAL
EXPERTS (A DIVISION OF THE TASA GROUP,
INC.)
Customized Expert Referrals in all Medical Practice Areas.
(800) 659-8464, fax (800) 850-8722, e-mail: tasaned
@tasanet.com. Web site: www.tasanet.com. Contact
Linda Bartorillo. FIND THE TESTIFYING OR CONSULT-
ING MEDICAL EXPERT YOU NEED quickly with one call or
click to TASAmEd. We refer superior, independent, experi-
enced medical experts—including hard-to-find-specialists—
for case merit reviews, testimony at deposition or trial,
research, IME’s, and more in • 1,000+ medical fields. Our
skilled Referral Advisors • target your criteria, • forward
resumes for your review, and • help arrange your initial tele-
phone screening interviews with experts. • No charge unless
you designate or engage an expert we refer • Plaintiff or
defense • Local, regional, national referrals. • Exceptional
personal service. Sample categories include anesthesiology,
cardiology, dentistry, emergency medicine, forensic patho-
logy, general surgery, hospital administration, neurology,
nursing homes, OB/GYN, oncology, orthopedics, pediatrics,
pharmacology, plastic surgery, psychiatry, radiology, and
more. Visit TASAnet.com, where you can search expert pro-
files by expertise keyword, request a Challenge History
Report on an expert’s past testimony, and request an expert
on our online form. Please see our insert in this issue
and display ad on page 42.

MEDICAL/CARDIO-MUSCULAR DISEASES

HARRY FEE, MD
14911 National Avenue, #, Los Gatos, CA 95032, (408)
358-8771, fax (408) 358-8621. Contact Harry Fee, MD.
Graduated Harvard Medical School. Residency Johns Hop-
kins and UCLA. Expert witness in adult heart and lung
surgery for the defendant or the plaintiff. Twenty-five years of
experience in medical legal field. Full-time surgical practice in
private hospital.

MEDICAL/CARDIOVASCULAR DISEASES

HAROLD L. KARPMAN, MD, FACC, FACP
Cardiovascular Medical Group of Southern California, Inc.
414 North Camden Drive #1100, Beverly Hills, CA 90210,
(310) 278-3400, fax (310) 887-2979. Contact Harold L.
Karpman, MD, FACC, FACP. Cardiovascular diseases (car-
diology and medical vascular problems), and internal medi-
cine. Special expertise in coronary disease, valvular heart dis-
ease, arrhythmias, devices, hypertension, drug studies,
product liability, bacterial endocarditis, angioplasty, CABG, etc. Expert and reviewer with 40+ years of experience.

MEDICAL/DERMATOLOGY

BIERMANN FORENSIC DERMATOLOGY

2080 Century Park East, #1008, Los Angeles, CA 90067, (310) 553-3536, fax (310) 553-4538, e-mail: sbiermannmd@aol.com. Web site: www.biermanndermatology.com. Contact Stanley Biermann, MD. Dr. Biermann is an expert witness in matters relating to diagnosis and treatment of skin cancers including melanoma. He is an acknowledged expert in legal matters relating to sexually transmitted diseases. Dr. Biermann is honorary associate professor of medicine and past president of Los Angeles Dermatologic Society.

MEDICAL/EMERGENCY MEDICINE

RYAN O’CONNOR, MD

P.O. Box 26381, Los Angeles, CA 90026, (310) 990-9979, e-mail: roconnormd@gmail.com. Contact Ryan O’Connor, MD. Board certified emergency medical physician. Los Angeles County Superior Court list of expert witnesses. Acknowledged wound expert for the Los Angeles County Public Defenders’ office. Available for medical record review and interpretation, consultation, and testimony.

BRUCE WAPEN, MD

EMERGENCY MEDICINE EXPERT

969-G Edgewater Boulevard, Suite 807, Foster City, CA 94404-3780, (650) 577-8635, fax (650) 577-0191, e-mail: ExpertWitnessDrWapen.com. Web site: www.DrWapen.com. Contact Bruce Wapen, MD. Board certified emergency physician and experienced teacher/public speaker offers consultation, chart review, and testimony as an expert witness for defense or plaintiff involving litigation arising from the emergency department.

MEDICAL/NEUROLOGY/PERSONAL INJURY

ANDREW WOO, MD, PHD


MEDICAL/PLASTIC AND COSMETIC RECONSTRUCTIVE SURGERY

JOHN M. SHAMOUN, MD, FACS, INC.

360 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicaw @fallbrook-eng.com. Contact Richard P. Meyst. Fallbrook Engineering provides expert witness services in the areas of IP (patent infringement, validity, 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/LITIGATION

ROUGHAN & ASSOCIATES AT LINC, INC.

114 West Colorado Boulevard, Monrovia, CA 91016, (626) 303-3333, fax (626) 303-8060, e-mail: jann@linc.biz. 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) Expert Witness for Deposition/Cross Examination, 9) Medical/Psychiatric Case Management. See display ad on page 47.

MEDICAL MALPRACTICE

GRAHAM A. PURCELL, MD, LLC

Assistant Clinical Professor Orthopedic Surgery, UCLA 3600 Wightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: gpurcelmd@gmail.com. Web site: gpurcelmd.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-cameras, 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 65.

MERSERS/ACQUISITIONS

BENCHMARK INVESTIGATIONS

32168 Camino Capistrano, # A-415, San Juan Capistrano, CA 92675, (949) 249-7221, fax (949) 249-2028, e-mail: zimmerp@oacbell.net. Web site: www.BenchmarkInvestigations.com. Contact Jim Zimmer, CPI. National agency. Professional investigations with emphasis on accuracy, detail, and expediency. Asset/financial searches; background investigation; DMV searches; domestic/martial cases; due diligence investigations; mergers/acquisitions specialist; process service; surveillance/photograph; witness location/interviews; workplace investigations—thief, harassment, and drugs. Bilingual agents. Fully insured. Correspondents nationwide: CA Private Investigator license # PI 12651. See display ad on page 56.

METALLURGICAL AND CORROSION ENGINEER

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.

9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (800) 645-3866, e-mail: service@chemaxx.com. Web site: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigations—specializing in complex industrial chemical accidents and chemical-related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warnings, labels, MSDSs, disposal, safety, EPA, OSHA, DOT, propane, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants), DOT certified (hazardous materials ship-ment), certified fire and explosion investigator, OSHA process hazard analysis team leader, PhD Physical Chemist. Extensive experience in metallurgy, corrosion, and failure analysis.

KARS ADVANCED MATERIALS, INC.

Testing and Research Labs, 2528 West Woodland Avenue, Anaheim, CA 92801-2636, (714) 527-7110, fax (714) 527-7169, e-mail: info@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh J. Kar or Naresh J. Kar. Southern California’s premier material sciences/mechanical/metallurgical/structural/forensics laboratory. Registered professional engineers with 30-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 Engineers. See display ad on page 67.

METALLURGY

KARS ADVANCED MATERIALS, INC.

Testing and Research Labs, 2528 West Woodland Avenue, Anaheim, CA 92801-2636, (714) 527-7110, fax (714) 527-7169, e-mail: info@karslab.com. Web site: www.karslab.com. Contact Drs. Ramesh J. Kar or Naresh J. Kar. Southern California’s premier material sciences/mechanical/metallurgical/structural/forensics laboratory. Registered professional engineers with 30-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 Engineers. See display ad on page 67.

METEOROLOGY

AIR, WEATHER, AND SEA CONDITIONS, INC.

P.O. Box 512, Pacific Palisades, CA 90272, (818) 645-8632, fax (310) 454-7569, e-mail: AW Weather@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 fall, construction, mould issues, homeland security application, weather prediction, airspace, and risk identification. Movie industry applications, cinemagraphy, and visual effects. Determining unusualness,
normalcy, and foreseeability. Official data, site visits, clear and convincing testimony. See display ad on page 55.

NURSING/SURGERY/MEDSURG

MED-LINK CONSULTATION
3362 Budleigh Drive, Hacienda Heights, CA 91745, (626) 333-5110, fax (626) 968-0064, e-mail: dorotheypollock @roadrunner.com. Contact Dorothy Pollock, LNC/NC. 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 experience both plaintiff and defense.

OBSTETRICS & GYNECOLOGY

ANTON L AMBROSE, MD, FACOG
18350 Roscoe Boulevard, Suite 504, Northridge, CA 91325, (818) 341-3111, fax (818) 886-6925, e-mail: antonambrose@aco.com. Contact Anton L. Ambrose, MD, FACOG. Specialties: OB/GYN. Diplomate, American Board of OB/GYN; Fellow, American College of OB/GYN; member, American Medical Association, Los Angeles County Medical Association, Sri Lanka Medical Association of North America; Assistant clinical professor, UCLA School of Medicine; OB/GYN Coordinator Family Practice Residency Program, Northridge Hospital; private practice OB/GYN, Northridge California. Experienced expert witness.

ORTHOPEDIC SURGEON

MARC J. FRIEDMAN, MD

RICHARD C. ROSENBERG, MD

WILLIAM B. STETSON, MD
191 South Buena Vista Street, Suite 470, Burbank, CA 91505, (818) 848-3030, fax (818) 848-2228, e-mail: wstet96263@aol.com. Web site: www.sportsmedicinedr.com. Contact W. Stetson, MD. Dr. Stetson is fellowship trained in arthroscopic surgery of the shoulder, knee, elbow, and ankle. He is an Associate Clinical Professor of orthopedic surgery at the USC Keck School of Medicine. He also has extensive experience in sports medicine and orthopedic trauma.

PATENTS

ARGOS ENGINEERING
44 Argos, Laguna Niguel, CA 92677, (949) 363-8205, fax (949) 429-5972, 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.

FALLBROOK ENGINEERING
355 West Grand Avenue, Suite 4, Escondido, CA 92025, (760) 489-5400, fax (760) 489-5412, e-mail: veronicavatfallbrook-eng.com. Web site: www.fallbrook-eng.com. Contact Richard P. Steffenson. 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 defen-

Others get too wrapped up in the numbers. We discover and define financial value.

RGL Forensics is an international firm of accounting, valuation and technology professionals who are specially trained to sort through the details and make sense of the data. We specialize in litigation support services: pre-trial preparation, economic damage analysis, investigative accounting and embezzlement, business valuation, fraud, business interruption, loss of earnings calculations, e-discovery, and expert witness testimony.

Graham A. Purcell, MD
(818) 985-3051
www.gpurcellmd.com email: gpurcellmd@gmail.com

ORTHOPEDIC SPINAL SURGEON
PLUMBING

CTG FORENSICS, INC.
16 Technology Drive, Suite 109, Irvine, CA 92618, (949) 790-0010, fax (949) 790-0020, e-mail: flynn@ctgforensics.com. Web site: www.CTGforensics.com. Contact John Flynn, managing director. Construction-related engineer- ing, plumbing, mechanical (heating, ventilating, A/C) and electrical (power, lighting). Energy systems, residential and nonresidential buildings, construction defects and delay analysis; cost to repair, construction claims, mold, and green LED buildings.

POLICE

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

PRIVATE INVESTIGATIONS

BENCHMARK INVESTIGATIONS
32158 Camino Capistrano, # A-415, San Juan Capistrano, CA 92675, (949) 248-7721, fax (949) 248-0208, e-mail: zimmerp@pacbell.net. Web site: www.BenchmarkInvestigations.com. Contact Jim Zimmer, CPI. National agency. Professional investigations with emphasis on accuracy, detail, and experience. Asset/financial searches; back- ground investigation; DMV searches; domestic/marital cases; due diligence investigations; mergers/acquisitions specialist; process service; surveillance/photography; witness location/interviews; workplace investigations—theft, harassment, and drugs. Bilingual agents. Fully insured. Correspondents nationwide. CA Private Investigator license # PI 12651. See display ad on page 56.

PROBATE LAW

HONORABLE ANITA RAE SHAPIRO
Superior Court Commissioner (Retired), P.O. Box 1508, Brea, CA 92822-1508, e-mail: privatejudge@adr-shapiro.com. Web site: http://adr-shapiro.com. Retired Los Angeles Superior Court commissioner (15 years) available to serve as a probate expert witness in cases involving wills and trust issues. Presided in Long Beach Probate Depart- ment five years. See display ad on page 41.

PROCESS SERVER

BENCHMARK INVESTIGATIONS
32158 Camino Capistrano, # A-415, San Juan Capistrano, CA 92675, (949) 248-7721, fax (949) 248-0208, e-mail: zimmerp@pacbell.net. Web site: www.BenchmarkInvestigations.com. Contact Jim Zimmer, CPI. National agency. Professional investigations with emphasis on accuracy, detail, and experience. Asset/financial searches; background investigation; DMV searches; domestic/marital cases; due diligence investigations; mergers/acquisitions specialist; process service; surveillance/photography; witness location/interviews; workplace investigations—theft, harassment, and drugs. Bilingual agents. Fully insured. Correspondents nationwide. CA Private Investigator license # PI 12651. See display ad on page 56.

PRODUCT LIABILITY

CALIFORNIA TECHNOLOGY ASSOCIATES
17410 Maylering Street, Granada Hills, CA 91344, (800) 358-9099. Web site: www.technology-sassoc.com. Contact Dr. Ojalvo, 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 of vehicle issues such as crash and precrash tests, seatbelt usage, airbag deployment, component failure, roadway design, low speed rear-end impacts, occupant and pedestrian biomechanics, rollover, visibility issues, golf car, and low speed vehicle safety. Computer animation and simul- ation services, scene inspections, crash measurements, tire skid testing and calculations are also provided. Free phone consultation or visit our Web site for more information.

QUESTIONED DOCUMENTS

RILE & HICKS, FORENSIC DOCUMENT EXAMINERS
HOWARD C. RILE, JR. AND A. FRANK HICKS
100 Oceangate, Suite 670, Long Beach, CA 90802-4312, (562) 901-3376, e-mail: info@rilehicks.com. Web site: www.rilehicks.com. Diplomates, American Board of Forensic Document Examiners. Mem- bers, ASQED, SFAWE, SADFÉ. Fellow AAFS. Combined 66+ years’ experience in examination and evaluation of dis- puted documents, including handwriting and signatures (wills, deeds, checks, etc.) medical records, business records, typewriting, printing, and/or other business machine processes, alterations, indentations, obliterations, and ink and paper questions. Fully equipped darkroom and laboratory, including VSC-4C and ESDA. Testified more than 600 times.

SANDRA L. HOMewood, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 201-2529, (760) 510-5812, e-mail: home- wooddsjk@bcsglobal.net. 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 corpora- te 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. Cur- rently in private, criminal, and civil practice.

REAL ESTATE

ADVISORS/EXPERTS & MCS ASSOCIATES

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

HOWARD N. GOULD
FINESTONE & RICHER
1875 Century Park East, Suite 1500, Los Angeles, CA 90067, (310) 575-0800, ext. 249 fax (310) 575-0710, e-mail: hgoold@fineswaco.com. Web site: www.fineswaco.com. Attorney malpractice in residential real estate, residential...
brokerage issues including standard of care, agent/broker employment issues, broker and finder issues, corporate, LLC, partnership and shareholder disputes.

**LAW OFFICE OF LORE HILBURG**

1625 South Cimarron Street, Los Angeles, CA 90019, (323) 737-4444, fax (323) 737-4411, e-mail: lore@hilburglaw.com

Contact Richard Reinhardt.

Lore Hilburg Esq. is a seasoned professional who has served as an expert witness as to escrow issues, and real property title disputes such as easements, constructive notice and grantor/grantee index searches. Ms. Hilburg also serves as a consultant on these issues whether they arise in litigation involving a tort claim, legal malpractice, or breach of contract or a transactional setting.

**LAWRENCE H. JACOBSON, ESQ.**

9401 Wilshire Boulevard, Suite 1250, Beverly Hills, CA 90212, (310) 271-0747, fax (310) 271-0757, e-mail: law.jac@lhjpc.com


**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


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 franchisee-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.

**ALAN D. WALLACE, ESQ.**

14011 Ventura Boulevard, Suite 406, Sherman Oaks, CA 91423, (818) 501-0133, fax (818) 905-6091, 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 61.

**WARONZOF ASSOCIATES, INC.**


Contact Timothy R. Lowe, MAI, CRE.

Waronzof provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, lease dispute, property value, enterprise value, partnership interest and closely-held share value, fair compensation, lender liability and reorganization plan feasibility. Professional staff of five with advanced degrees and training in real estate, finance, urban planning and accounting. See display ad on page 67.

**REAL ESTATE APPRAISAL**

**ADELMAN APPRAISALS, INC.**

14431 Ventura Boulevard, Suite 288, Sherman Oaks, CA 91423, (818) 995-0648, fax (818) 990-0326, e-mail: adelman@adelmanappraisals.com


Contact Chris Adelman. Specialties: 20+ years of experience in residential real estate appraisals, high-

RECEIVER

SALTZBURG, RAY & WEISSMAN, LLP
12121 Wilshire Boulevard, Suite 600, Los Angeles, CA 90025, (310) 481-6780, fax (310) 481-6707, e-mail: dLr@srblaw.com; rweissman@weceiver.com. Web site: www.srblaw.com. Contact David L. Ray, Esq., or Richard Weissman, Esq. Specializes in handling complex receiver matters, such as partnership and corporate dissolutions, including law firm dissolutions, and government enforcement receivership actions, including actions brought by the California Department of Corporations, Department of Real Estate, Commodities Future Trading Commission, and Federal Trade Commission. Nationally recognized in both the lender and litigation communities as qualified to assist in complicated and commercially sophisticated liquidations, reorganizations, and ongoing business operations. See display ad on page 60.

RESTAURANT/HOTEL

LEON GOTTLIEB
USA-INT’L RESTAURANT, HOTEL FRANCHISE CONSULTANT & EXPERT WITNESS
4601 Sendero Place, Tarzana, CA 91356, (818) 757-1131, fax (818) 757-1816, e-mail: gottlieb@aol.com. Web site: http://leangottlieb.com. Over 45 years hands-on experience; all types of restaurants, fast foods, hotels, operations, training, manuals, franchisee-franchisee disputes, industry standards/practices, safety, and security. Former partner, V.P. IHOP, president, Cooper Penny chain, author, director, and expert witness.

RETAILATION

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2998, 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 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 counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

ROOFING AND WATERPROOFING

KGA, INC.

VAN DIJK & 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, Caryn Irvin 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 distinct 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.

MARKET CONSULTING CORPORATION

ROBERT C. ROSEN
Weile Fargo Center, 323 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 law 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; LLM, Harvard Law School. More than 37 years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, DC. Published author/editor of securities regulations; authoring and updating multivolume treatises. See display ad on page 43.

SECURITY

DR. STEVE ALBRECHT, PHR, CPP

CONFIDENTIAL BUSINESS CONSULTANTS
1049 Linda Glen Drive, Pasadena, CA 91105, (626) 419-0092, fax (626) 792-9859, e-mail: broder@raceconsult.com. Contact James F. Broder, CFE, CPP, FACFE. Author of “Risk Analysis and the Security Survey,” (4th edition), premises liability, adequate versus inadequate security pro- cedures 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 US.” CA PI Lic. 00210703.

SEXUAL HARASSMENT/DISCRIMINATION
HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2998, 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 counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

SPINAL CORD INJURY

GRAHAM A. PURCELL, MD, INC.
Assistant Clinical Professor Orthopedic Surgery, UCLA 3600 Wrightwood Drive, Studio City, CA 91604, (818) 985-3051, fax (818) 985-3049, e-mail: gpurcellmd@gmail.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, spondylosis, 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.

TAXATION

KAJAN MATER 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/reputation matters.

TRAFFIC ENGINEERING

ACCIDENT RECONSTRUCTION SPECIALISTS
TRAVEL AND TOURISM

ALEXANDER ANOLIK, ESQ.

280 Round Hill Road, Tiburon, CA 94920, (415) 673-3333, fax (415) 673-3348, e-mail: anolik@travellaw.com. Web site: www.travellaw.com.

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 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.
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, 2009, and ending June 30, 2010. 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 & Jankos LP, 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.
The Foundation would also like to give special recognition to the following individuals whose participation in various pledge programs (as of 6/30/10) reflects a firm commitment to the Foundation’s goals.

HONOR ROLL
Participants have contributed, or pledged to contribute, the amounts shown each category in annual minimum installments of at least $1,000. (List includes participants as of 6/30/10.)

Founder ($50,000 or more)
Hyman J. Bratfusd
Thomas V. Girard
Hutto Patterson Charitable Foundation
J.W. & Ida M. Jameson Foundation
Hon. Richard A. & Ruth J. Lavine
Donald C. Mitchell
Ralph J. Shapiro
Benefactor ($25,000 - $49,999)
Roy H. Aaron
Jules & Doris Stein Foundation
Lloyd & Susan Stockel
Patron ($25,000-$24,999)
Don Mike Anthony
Joseph R. Austin
William J. Boggard
Robert E. Carlson
Richard Chemnick
Glen B. Collyer
Knoss C. Gideon III
Stephen R. English & Molly Munger
Farrar T. Farrar
Robert K. Johnson
Margaret Levy
Robin Meadow
Gavin Miller
In Honor of David Pascale
John J. Quinn
In Honor of Richard Walsh
Robert S. Warren
Daniel J. Woods
Sponsor ($10,000-$14,999)
Joseph W. Addin
John Carson
Gerald L. Chaifetz
John J. Collins
Brian K. Condon
Robert W. Dickerson
Charles R. English
Richard E. Garcia
Marcia L. Farnsworth
John J. Quinn
Robert S. Warren
Lloyd & Susan Stockel
Roy H. Aaron
John D. Taylor
Hon. Charles S. Vogel
Robert S. Warren
Justice Laurie D. Zeron

PRESIDENTS CLUB
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 6/30/10.)
Roy R. Aaron
Don Mike Anthony
Joseph R. Austin
Donald P. Baker
Robert E. Carlson
John Carson
Gerald Chaifetz
Richard Chemnick
John J. Collins
Glen B. Collyer
Knoss C. Gideon III
Brian K. Condon
Robert E. Carlson
Kataes Charles Davis
Hon. Lee Smalley Edmon
Charles R. English
Stephen R. English
Larry R. Feldman
David E. Gordon & Mary D. Laine
Noah Graff & Audrey Mori
Hon. William P. Gray
Sarah Heck Griffin
James S. Ham
Amos E. Harrison
Richard E. Hauser
Mark L. Heath
Sandra R. King
John J. Quinn
Robert S. Warren
John D. Taylor
Hon. Charles S. Vogel

MITCHELL C. REGENTREIFF
Kenneth O. Rhodes
Douglas R. Ring
Reed H. Dulan, Jr.
Harvey L. Silber
Sheldon H. Sloan
Linda J. Smith
Alan K. Steinbrenner
Linda M. Stade
Susanne H. Stuve
Robert W. Warren
John S. Welch
Francis M. Wheat
Kenneth P. White
In Memory of Arnold V. Winthrop
Hon. Paul Wylor

LIFE FELLOWS
A Life Fellow has contributed, or pledged to contribute, $2,500 to the Foundation. Annual installments must be at least $500. (List includes participants as of 6/30/10 who have made a contribution in the last 10 years.)
James N. Adler
Patricia Ambrosini
Justice Ovijile A. Armstrong
Jane H. Barrett
Comm. Lori Behar
Mollie F. Benedict
Jennifer A. Berisch
Ivy Kagan Bierman
Michael I. Blaylock
Merrick J. Bobb
Phillip L. Boot
Kappy K. Bristol
Jamie Broder
Michael K. Brown
Carolyn B. Burger
John M. Byrne
Paul S. Chan
Tyone R. Childress
Morgan Chu
Brett J. Cohen
Jordan S. Cohen
Arlene Colman-Schwimmer
Louis J. Combs
Maria Louise Cousineau
Mark T. Cramer
Hon. Warren C. Criss
Justice Walter Croskey
Patricia Evan Daehne
Grace M. Danziger
Albert F. Davis
Bryant S. Delgadillo
Alexandra Dennam
Gregory Evans
Laura V. Faber
Gregg A. Farley
Hon. Macklin Fleming
Sara A. Forsyth
Gloria Franklin-Shut
Jeffrey C. Freedman
James J. Gallagher
Seth J. Gerber
Russell T. Ginse
John A. Girardi
Richard B. Goetz
Hon. Arnold H. Gold
In-Won A. Grace
Felis M. Greenberger
Alan N. Halkett
Christopher I. Heek
Brian L. Holman
Peter Hisao
Patrick O. Himmels
David C. Hunter
Andrew C. Hurwitz
Bernard S. Kaminer
Jason B. Komrosky
Linda M. Lawson
James D. Layden
Jana I. Luber
Michael S. Luey
Kerry Lynn Grossman
Rick C. Madden
Leonne E. Maillian
Justice Nora M. Manella

Eric R. McDonough
Saratella C. McDoung
Kathleen M. McDowell
Charles E. Michael
Mark A. Neuhauser
Frederick M. Nicholas
W. Stuart Ogg
Comm. Stefan Podlesnik
Avicia A. Patel
Lee R. Petillon
Kaila C. Petney
Ivan P. Phillips
Douglas C. Rawles
Thomas V. Reichert
Denis D. Reish
David K. Robinson
Deborah J. Ruesch
Harvey L. Safetiesen
Nicholas P. Sfogli
Mark L. Sallus
Alice A. Salvo
Laura A. Seigle
Marc M. Selzer
Patricia L. Shanks
Jeffrey C. Soza
Sherry E. Stein
Alan K. Steinbrenner
David R. Stepp
David W. Steuber
Margaret P. Stevens
Kimberly M. Talley
William E. Thompson
Eugene L. Trope
Rhonda R. Trupper
Patric M. Verrone
Caroline C. Vincent
Richard Walsh
Michael J. Wise
Karen B. Wong & Scott W. Lee
Rosayln S. Zalheim

2009-10 FELLOWS
Individuals who contributed a minimum of $500 between 7/1/09-6/30/10 and are not Barristers Fellows, Life Fellows or Honor Roll participants.
Laura W. Brill
Joanne E. Caruso
Meryl K. Chao
Christopher C. Chaney
F. Milton Condon
Lawrence A. Cox
Julia J. De Beers
David A. Didier
Eric C. Egawa
William J. Glickman
Robert A. Goddard
Seth J. Gerber
Shirley Hayton
Edward C. Ho
Malcolm S. Mcniff
Henry E. Orren
Daianne Basset Quimby
Richard K. Smith, Jr.
Shonelle M. Spiegel
Joel D. Whitely

BARRISTERS FELLOWS
A Barristers Fellow has contributed, or pledged to contribute, over a five-year period, $500 to the Foundation.
Barristers Fellows 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 6/30/10.)
Randee Barak
Jonathan L. Brophy

Kimberly H. Clancy
Anthony Paul Diaz
Cameron W. Fox
Alexander S. Gareeb
James W. Gilliam, Jr.
Ritu M. Hasan
Mark Kachner
Princeton H. Kin
Mark A. Kressel
Ryan S. LeVine
Seth D. Levy
Emma L. Leverett
Bonita Moore
Andrea Schoor
Michelle Indyo Schultz
Allison N. Shue
Michael G. Soutar
Courtney L. Stuart-Alban
David W. Swift
Arianna S. Uchida
Victor G. Uzcategui

SUPPORTING MEMBERS
Individuals who have pledged to contribute a minimum of $100 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 6/30/10.)
Don Mike Anthony***
Hon. Helen L. Bendix
Michael H. Bierman
George F. Bird Jr.
Brad D. Brian
Kappy K. Bristol
William Clark Brown
Elizabeth M. Cacalino***
John L. Carlton
Alan B. Clark
Justice Walter Croksby***
Brian L. Daviddoff
Jeffrey W. Erdman
Jack I. Ersenstein
Amy J. Fink
Michele E. Flurer*
Thomas A. Freiberg, Jr.
Robert S. Gerstein
Ethan P. Green
Brian D. Huben
Shirley M. Hufstedler
Joan R. Isaacs***
Loris M. Jacobs
Hon. Samantha Phillips
Jessner
Henry J. Joesselberg
Marcia L. Krauth
Miriam A. Krinisky
Hon. Robert N. Kwan
Edward A. Landry
Thomas J. Leasine
LeAnne E. Maillian
Frederick L. McKnight
Ralph B. Perry III
Hon. Robert N. Kwan
Edward A. Landry
Thomas J. Leasine
LeAnne E. Maillian
Frederick L. McKnight
Ralph B. Perry III
Hon. John J. Quinn***
Toby J. Rothschild
Michael & Lara Schwartz*
Paul D. Supnik
John D. VanDevelde
Caroline C. Vincent
Richard Walsh**
Earl P. Wilkins
Roxanne M. Wilson
Rosalyn S. Zalheim***
Michael C. Zellers

Fundraising for the current fiscal year (7/1/2010-6/30/2011) 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’s endeavors. To tax-deductible contribution to: Los Angeles County Bar Foundation, PO Box 50040, Los Angeles, CA 90055-0401. Donations may also be made online via credit card at www.lacbf.org by clicking on the DONATE NOW button.
The Essential Guide to California Restaurant Law

The Essential Guide to California Restaurant Law provides an overview of the surprisingly broad range of legal issues that a California restaurant owner may expect to address. The authors, Paul Tour-Sarkissian and Tonia Tour-Sarkissian, offer valuable general discussions of the many areas of concern to restaurant operators, including food handling and health inspections, labor laws, federal and state regulations, service of alcoholic beverages, and theories of liability to customers.

The authors discuss the California Retail Food Code, which has revamped the previous California Uniform Retail Food Facilities Law. The Food Code covers the core issues of restaurant operation with comprehensive regulation of restaurant health and sanitation. The Food Code introduced the framework for municipalities to adopt restaurant grading systems like the A, B, and C system used in Los Angeles.

The authors provide overviews, with references for more detailed inquiry. For example, the labor law issues discussed in the book include Cal/OSHA safety requirements and the handling of tip income. Slip-and-fall injuries in the kitchen are a major concern, and the authors suggest establishing a policy to encourage the use of footwear that is more likely to help prevent injuries. A number of treaties will overlap these topics, but this book focuses on how these issues are likely to be pertinent to a restaurant operator. A reader with less familiarity with an area of law that is the book’s concern will have a starting point that is grounded in the restaurant world.

Comprehensiveness

When the book’s coverage is not sufficiently detailed, the authors have often provided links to other resources. This is not to say that the book lacks detail. The discussion of liabilities, for example, is interesting. Regarding customer illness or injury resulting from food the restaurant serves, the authors discuss common theories of liability—strict liability, negligence, and breach of the implied warranty of merchantability. If the food contains a foreign object, liability may be imposed under all three.

Foreign objects can include food-borne diseases such as salmonella. It may be surprising to learn that there is no common law duty in California for the restaurant to come to the aid of a customer who may be choking on food that the restaurant has served. The authors note, however, that in such cases it is a good idea to call 911 for an ambulance.

The authors also cover a number of discrete legal issues related to restaurant operations, including automobile valet and coat check liability, use of surveillance cameras, emergency preparedness for fire and natural dangers like earthquakes, accepting payment by credit card, menu labeling, healthy lifestyle laws, and entertainment in a restaurant.

The sale of alcoholic beverages is a major source of restaurant revenues and liabilities. Alcohol sales are subject to state licensing requirements. The authors devote a chapter to the types of licenses used by restaurants, obtaining a license, and the rules for record keeping and sales. The authors’ coverage in this area is a very helpful distillation of the regulations, but the reader would benefit further from some practical advice and tips. A discussion of service providers—including who they are and what they do—in this aspect of the restaurant business could be very helpful.

The FDA and the Menu

Federal Food and Drug Administration regulations reach into the statements made in a restaurant’s menus. “Lite menu” or “heart healthy” selections and other health claims need only be backed by a reasonable basis understanding and not by actual laboratory testing of the food the restaurant serves. However, California has gone a step further than federal law and requires restaurants that have 19 or more locations serving common menu items to provide nutritional labeling similar to the nutritional content information found on food products sold at a grocery store.

Some aspects of restaurant operation are not addressed. For example, there is no discussion about the alternative structures available for the formation of the restaurant business—sole proprietorship, partnership (general and limited), corporation (or limited liability company)—and the benefits of each structure. Attorneys who are taking on clients in this area need to have a basic understanding of how to advise clients on the relationship between partners, owners, and investors in a restaurant.

The ownership structure of the restaurant affects potential liability and taxes, and this book could offer more guidance on how to guide clients toward ownership structures that correctly cut the tax liability pie. Franchises are another topic that would help to round out the book as a more comprehensive resource for potential restaurant owners. The franchise method of operation is significant in the restaurant business. Some insights into how franchises work in the restaurant business could be very useful.

A number of the topics, such as labor laws and prohibitions against using trans fats in cooking, are developing rapidly at the local, state, and federal level. It remains to be seen if the authors will update the book on a regular basis so that it continues to be a timely resource on restaurant-related laws. As it stands, this book is a great start for any lawyer or restaurant owner or operator who needs a ready reference on the legal aspects of running a restaurant.

Gordon Eng is a business lawyer who focuses on small business, financing, and real estate issues.
WANT TO PURCHASE MINERALS and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201.

THE LOS ANGELES COUNTY MEDICAL ASSOCIATION, a professional association representing over 6,000 physicians from every medical specialty and mode of practice, is seeking candidates for the position of chief executive officer. Qualified candidates should be able to demonstrate innovative thinking in this period of accelerated change in the health care system. They should possess exceptional communication skills with the ability to formulate strategies, to accurately convey the vision and mission of LACMA, and to demonstrate the value of membership to physicians throughout the region. Also, they should have had 3 to 5 years of leadership experience in a regulatory environment with a proven record of producing results. Candidates must have a bachelor’s degree; a master’s degree is preferred. A competitive salary is offered. Please forward your résumé and salary requirements for consideration to facsimile (213) 226-0350 or email evam@lacmanet.org; attention: Robert Bitonte, MD, JD, Chairman of the CEO Search Committee.


SERVING THE DEFENSE COMMUNITY SINCE 1946. Interviews, statements, sub rosa, service of process, and jury polls. MCLE classes available. Stein Investigation Agency, 2705 Media Center Drive, Los Angeles, CA 90065. Contact Gary Fradis, gfradis@steininvestigations.com or Clifford Mosby, cmosby@steininvestigations.com. Call (323) 275-2170.

$2 MILLION ESTABLISHED Orange County law firm specializing in estate planning, estate administration and related trust/estate litigation. Experienced attorneys, paralegals/legal assistants. Representing individuals and fiduciaries. Strong referral base. Call (800) 837-5880.

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.

Make Employment Law a Profit Center
- The best referral program in the State! Highest referral fees paid in accordance with State Bar rules!
- 30 Years Experience
- You are “kept in the loop” with regular written reports
- You and your client will always speak to one of our 14 attorneys—never pushed off to a legal assistant

LAW OFFICES OF
STEPHEN DANZ & ASSOCIATES
877.789.9707 • www.employmentattorneyca.com

Offices Statewide: Los Angeles (4 offices) • Sacramento (2 offices) • San Francisco/Bay Area • Inland Empire • Fresno • Irvine/Orange County • San Diego
MAIN OFFICE: 1161 San Vicente Blvd., Suite 500, Los Angeles, CA 90049

— We are proud members of CAALA, CAOC, CELA, NELA, CAAA, and numerous County trial lawyer associations —

Let’s talk about your employment-law cases

Termination
Discrimination
Retaliation
Harassment
Labor Code Violations
Class-Action Claims
Unfair Business Practices
Whistle Blower Claims
Wage & Hour Disputes
**Ninth Annual Environmental Law Fall Symposium**

ON WEDNESDAY, NOVEMBER 10, the Environmental Law Section will host the Ninth Annual Environmental Law Fall Symposium, featuring panels on managing media and public relations in high-profile environmental cases, an overview of recent Ninth Circuit decisions under CERCLA, and a postelection perspective of the Global Warming Solutions Act. The lunch keynote speaker will be Thomas Girardi, giving his perspective as one of the best-known plaintiff attorneys in the environmental arena. The symposium will take place at the Sheraton Delfina Santa Monica, 530 West Pico Boulevard. Hotel valet parking is complimentary. On-site registration will begin at 11:30 A.M., with the program continuing from noon to 4:35 P.M. The registration code number is 010992. The prices below include the meal.

- $50—government/public interest attorney who is an Environmental Law Section member
- $80—government/public interest attorney who is not a section member
- $85—CLE+ PLUS member
- $150—Environmental Law Section member
- $160—Real Property Section member
- $180—LACBA member
- $220—at-the-door

4 CLE hours

**Complex Court Symposium**

ON TUESDAY, NOVEMBER 16, the Los Angeles County Bar Association Litigation Section and Labor and Employment Law Section, the Los Angeles Chapter of the Association of Business Trial Lawyers, the Association of Southern California Defense Counsel, and the Consumer Attorneys Association of Los Angeles will host a seminar on the complex courts in California. Many of the 18 judges from the complex courts in California, including all six Los Angeles complex court judges, are scheduled to attend and participate. The program will provide insight into all aspects of complex court litigation, including e-discovery, class certifications, ICCP matters, maintaining and approving settlements, and conduct at trial. The seminar will take place at the Omni Los Angeles Hotel, 251 South Olive Street, Downtown.

Valet parking costs $12. On-site registration will begin at 3 P.M., with the program continuing from 3:30 to 7:30. Dinner will be served toward the end of the program. The registration code number is 011046. The prices below include dinner.

- $80—CLE+ PLUS member
- $160—Litigation Section member
- $160—ABTL, CAALA, and SCDC member
- $180—LACBA member
- $225—all others

2.5 CLE hours

The Los Angeles County Bar Association is a State Bar of California MCLE approved provider. To register for the programs listed on this page, please call the Member Service Department at (213) 896-6560 or visit the Association Web site at http://calendar.lacba.org/where you will find a full listing of this month’s Association programs.
Leveraging Justice with the Justice Gap Fund

MORE THAN SIX MILLION INDIGENT CALIFORNIANS face serious legal problems. There’s the domestic violence survivor who is afraid to go to her minimum wage job without the protection of a restraining order. There’s the slumlord’s tenant who cannot get rid of the roaches and rats that threaten his children’s health and safety. And there’s the family struggling to care for an incapacitated grandparent whose medical care and daily needs have exhausted its energies and its savings. These are true stories, and there are many more like them. The people behind these stories desperately need legal help, and they will never be able to afford it on their own.

Pro bono service provides a key lifeline for some people, and legal volunteers serve a crucial role in our justice system. But there is another way to assist every indigent Californian in legal need, from Del Norte to El Centro, with a simple, sweeping gesture of immeasurable impact: contributing to the Justice Gap Fund.

The Justice Gap Fund supports critical services to those most in need, helping them to resolve their legal issues directly through self-help and community education, as well as through advice and counsel, courtroom representation, and even impact advocacy. These services enhance independence and stability for every person they touch, and they bring new vitality to depressed communities.

Across California, nearly 100 nonprofit legal aid organizations work tirelessly to help the disenfranchised, powerless, and poor. They participate in every aspect of the legal process, from intakes to appeals. Their wages do not begin to compete with the private sector, and they have about 8,000 potential clients for every attorney on the payroll, but the job does have one great compensation: The attorneys know they truly make a difference in their clients’ lives. They are protecting families, livelihoods, and communities—as well as conserving judicial and social service resources that are stretched to the breaking point. Put plainly, legal aid saves money and lives.

Legal aid in California is largely supported by private contributions, government grants, and IOLTA (Interest on Lawyers’ Trust Accounts) funding. Since 1982, the IOLTA program has leveraged the tiny bits of interest earned on small and short-term client trust deposits into millions of dollars of legal aid funding. In the last three years, however, interest rates on these accounts have dropped lower than we have ever seen them, greatly reducing the flow of funding. Despite the key efforts of “leadership banks” that voluntarily pay higher rates, this revenue has plummeted almost 70 percent since 2008.

At the same time, the economic crisis is putting unprecedented pressure on legal aid organizations. Requests for assistance have skyrocketed, while funding reductions have forced service providers to furlough or lay off staff. These are conditions that just cannot be sustained. The resources are inadequate for the work that must be done. And that is where you come in.

The Justice Gap Fund was enacted to create a new way to enhance funding for legal aid programs. It authorizes the State Bar to “facilitate the professional responsibilities of members by collecting…voluntary financial support for nonprofit organizations that provide free legal services to persons of limited means.” Programs qualify for funding through detailed annual applications and on-site monitoring visits every three years that ensure that operations are efficient, services are effective, and priorities reflect community concerns. By piggybacking on the existing IOLTA infrastructure, every penny donated through the Justice Gap Fund goes directly to nonprofit legal aid organizations. The catch is, it only works if you contribute to it.

Requests for assistance have skyrocketed, while funding reductions have forced service providers to furlough or lay off staff.

Sadly, that is where this great system has yet to reach its full potential. Due to the recession, last year only a small percentage of California attorneys donated to the Justice Gap Fund. We need your help to reverse this trend. The Justice Gap Fund allows us all to stand behind our justice system. Only through the engagement and participation of individual attorneys can the fund achieve its goal of improving access to justice throughout California.

California attorneys enjoy unrivaled resources and opportunities. The Justice Gap Fund is one opportunity that California’s entire legal community can embrace and that brings resources to every one of our 58 counties. Skilled legal guidance is desperately needed to defend the rights and protect the health and well-being of the voiceless among us. Your contribution will advance the administration of justice while relieving the logjams clogging our courthouses.

We urge you to make a generous contribution to the Justice Gap Fund. Contributions can be made as an add-on to your annual State Bar dues by completing the appropriate line on the statement (either in hard copy or online). The new State Bar Web site is also equipped to accept online donations apart from the dues payment process, at http://calbar.org/justicegapfund. You may also send a check payable to the State Bar of California to the attention of the Justice Gap Fund at 180 Howard Street, San Francisco, California 94105. Staff are ready to answer your questions at (415) 538-2098.

Assemblymember Mike Feuer is majority policy leader of the California State Assembly and chair of the Assembly Judiciary Committee. Holly J. Fujie, 2008-09 president of the State Bar of California, is a litigation shareholder in the Los Angeles office of Buchalter Nemer APC. Rex S. Heinke, head of the national appellate practice at Akin, Gump, Strauss, Hauer & Feld LLP, is a former member of the State Bar Board of Governors and chair of its Committee on Legal Services, Pro Bono, and Equal Access.
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

Call us when you need:

▲ Damage analysis & related testimony
▲ Bankruptcy & restructuring analysis
▲ Business & asset valuations
▲ Electronic discovery & computer forensics

▲ Economic & market studies
▲ Fraud & other investigations
▲ Forensic accounting & audits
▲ Statistics & econometric modeling

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.
ORGANIZE • ANALYZE • COLLABORATE

**West Case Notebook**® helps you organize, analyze, and collaborate on your cases with unprecedented efficiency and thoroughness. Accessible anytime, anywhere – so that team members can easily gather, annotate, search and review:

- Key facts
- Documents
- Transcripts
- Pleadings
- Legal research
- And more!

To learn more about how **West Case Notebook** can benefit your practice, call 1-800-762-5272 or visit [west.thomson.com/casenotebook](http://west.thomson.com/casenotebook).