



BarNotes

A Publication of the
San Fernando Valley Bar Association

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VCLF Honors Urban Search and Rescue Team at Law Day Dinner

The dust was a shroud covering everyone and everything. The rubble was burning. They watched in horror and shock. They knew that if this had happened in a different city, it could have been them. They then pulled themselves together and did what they are trained to do.

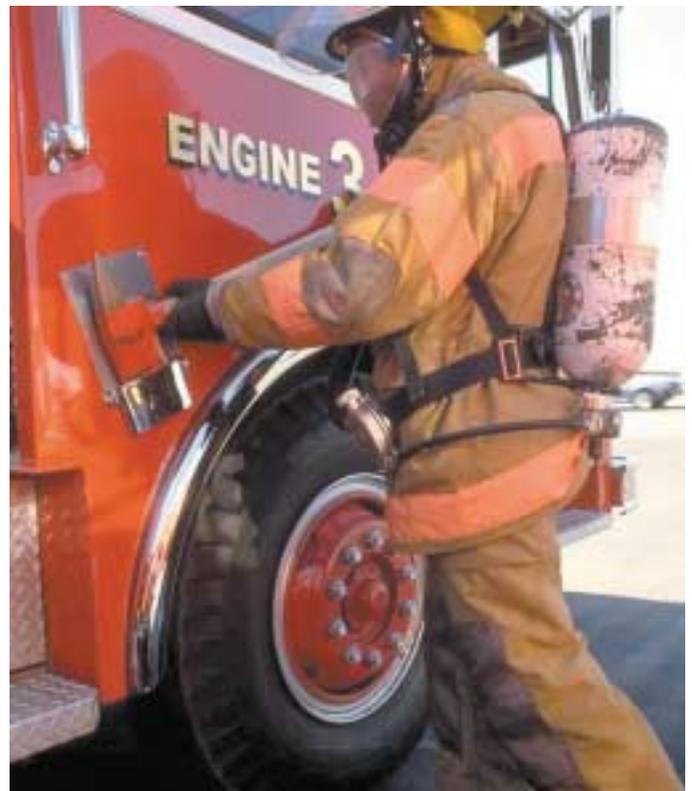
The attack on the World Trade Center was the worst disaster in this nation's history. The New York City Fire Department had lost more than 300 of their members. To help their comrades 3000 miles away and to ease the pain of those waiting for word of their loved ones, the Los Angeles Fire Department's Urban Search and Rescue Team One went to New York City to search for survivors of the attack on the New York Trade Center Towers. Ground Zero was the center of their universe for one week, working 17-hour days in the hopes of finding a life.

They sorted through the debris by hand, debris that was not much more than bits, shards, dust and parts of wire and concrete. The debris was placed into buckets and the buckets passed hand to hand out of the pile of rubble, all the while hoping to find someone. Searching each bucket for a part of a person. Faced with bucket after bucket, their hope of finding a life at the bottom of the debris dwindled.

They went because they wanted to help. Sean Conway, Battalion Chief Staff Assistant assigned to South Central Los Angeles, said "we wanted to let them know that although they're on the other ocean, we feel the same about them as if it was our own. That's just what we do."

They did their job under the worst imaginable circumstances. The Valley Community Legal Foundation of the San Fernando Valley Bar Association will honor these heroic fire fighters at the Law Day Dinner on May 10. The Law Day dinner honors fire fighters, peace officers and public safety personnel who have gone above and beyond the call of duty.

SFVBA Members can pay tribute to our local heroes and show support for the work of the VCLF by attending our Law Day Dinner at the Warner Center Marriott. The event will feature awards and scholarships, a silent auction, celebrities and outstanding entertainment. In addition to honoring Urban Search and Rescue Team members, we will honor members from the Los Angeles County Sheriff's Department who have been instrumental in the VIDA program, a community based anti-gang program. Details on the Law Day Dinner are on page 16. 🐾



Calendar of Events Page 23

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President's Message

Lyle F. Greenberg

Succession Planning: Our Second Volunteer Leadership Conference: April 15, 2002

Volunteer leaders are the lifeblood of any volunteer organization, and that is particularly true for a bar association made up of attorneys who are busy with their professional and personal lives. We have grown from 600 members in 1993 to over 2100 at this time. Our Bar Association needs members to step forward to lead committees, sections, and other activities, as well as seek to be elected to positions on the Board of Trustees and Officers positions.

As we approach the halfway point for our 2001-2002 term, I want to take a moment to share with you the opportunities that exist for leadership in our organization in the hope that this information will perhaps plant the seeds for your increased involvement.

We are an organization of attorneys who have come together to "advance the science of jurisprudence, to promote the administration of justice, to encourage a thorough and continuing legal education, to maintain the honor and integrity of the legal profession; to promote high ethical standards and professional conduct; and to cultivate social fellowship among its members". (SFVBA By-Laws, Art. II, Sec. 1: "Purpose")

In September 2001, we had our first Leadership Conference, which was well attended and resulted in our setting a Second Volunteer Leadership Conference on April 15, 2002. This second Conference coincides with our Nominating Committee's efforts (SFVBA By-Laws, Art. VI, Sec. 2: "Nominating Committee") to identify and nominate the future leaders of our organization so that their names may be placed on the ballot for the September election. (SFVBA By-Laws, Art. VI, Sec. 1: "Election Day")

continued on page 16



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Stopping Unfairness, Fairly or Not? Claims and Defenses Under Business & Professions Code Section 17200

BY DAVID GURNICK



David Gurnick is managing partner of the Woodland Hills office of Arter & Hadden.

All cases have at least two sides. This is true for a statute as well; in particular, California's Unfair Competition Law, starting with Business & Professions Code Section 17200. Enacted in its current form in 1977 to provide a state equivalent to the Federal Trade Commission Act, the law purports only to outlaw unfair competition. For those with claims against a business, the statute is revered because of its wide scope. The same characteristic makes it fearful to defendants.

Section 17200 defines unfair competition as any act or practice that is unlawful, unfair or fraudulent, and any advertising that is unfair, deceptive, untrue or misleading. Because of the disjunctive structure (use of the word "or") the statute's coverage is broad. South Bay Chevrolet v. GMAC 72 CA4 861 (1999). Its use of alternative phrases, such as "deceptive" and "unfair," means the statute extends beyond matters of competition. It prohibits acts that can be viewed as "unfair" even if they would not by themselves be considered unlawful. Schnall v. Hertz Corp. 78 CA4th 1144 (2000). The Act has been held to cover anything that offends public policy or that is immoral, unethical, oppressive, unscrupulous or substantially harmful to consumers. People v. Casa Blanca Convalescent Homes 159 CA3d 509 (1984).

A 1992 amendment expanded the law further, to apply to even a single act. Therefore a lone instance of unfairness or deception can be the basis for a 17200 action. Moreover, the statute can be the basis for a remedy even without an unfair or unlawful act. It authorizes actions against anyone who proposes to engage in unfair competition. (Section 17203).

California courts, when asked to apply the statute, opt to further expand, rather than limit its reach. For example, in Stop Youth Addiction v. Lucky Stores 17 Cal4th 553 (1998) the Supreme Court authorized claims under the Act law for violating another statute, even if the other law prohibits a private right of action. Section 17200 thus creates an action on statutory claims that do not allow action themselves. See also, Cel-Tech Communication v. L.A. Cellular 20 Cal4th 163 (1999).

The statute is also broad with regard to who may bring a claim. Normally, standing rules limit who may sue on a claim, to someone aggrieved, or involved in an actual controversy. In contrast, an unfair competition claim may be brought by anyone acting on their own

behalf, an organization on behalf of its members, or any person acting on behalf of the general public. Sec. 17204; Stop Youth Addiction v. Lucky Stores 17Cal.4th 558 (1998).

Defendants naturally fear unfair competition actions, more so because the law imposes strict liability. Liability may exist without intent to harm or mislead the public. Cel-Tech, supra.; Hewlett v. Squaw Valley 54 CA4th 499 (1997). Another reason the statute strikes fear in defendants is that its focus on practices lets plaintiffs seek discovery and introduce evidence of acts and practices involving others who are not parties to the action. Cisneros v. U.D. Registry, Inc. 39 CA4th 548 (1995).

Despite the law's wide scope, a business sued under the Act is not entirely defenseless. There are a number of strategic steps defendants can take in response to a 17200 claim:

- One of the first lines of defense is to assess the merits of the claim itself. As a factual matter, an effective defense may be that the alleged acts are simply not unlawful or unfair. Kentmaster v. Jarvis Products 164 F.2d 1243 (9Cir. 1998). For example, in a franchise law decision, the ninth circuit held there was nothing unfair under the Act, for a franchisor to grant overlapping service areas to franchisees. Eichman v. Fotomat 880 F.2d 149 (9th Cir. 1989).

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- Where a claim is based on violation of an underlying law, defenses to the underlying offense are also defenses under Section 17200. People v. Duz-Mor Diagnostic Lab 68 CA4th 654 (1998). This principle gives rise to a potential range of defenses that are unique to each particular claim, though none of the defenses would be apparent from Section 17200 itself.
- In an unfair competition claim based on another statute, the claim may also be defeated if the other statute does not prohibit the alleged act. Carter v. Veriflex 101 FS2d 1261 (2000). Stated differently, an act or practice cannot be "unfair" if it is permitted by law. Lazar v. Hertz Corp. 69 CA4th 1494 (1999).
- Attempting to apply the unfair competition law to acts alleged to have occurred in other states has been held itself to be unfair and to violate due process. Norwest Mortgage v. Superior Court 72 CA4th 214 (1999).
- Public entities are immune from claims under the Act. Trinkle v. State Lottery 71 CA4th 1198 (1999). A private entity affiliated or related to a public entity, could assess whether it could receive the benefit of government immunity. Even without governmental immunity, liability may be avoided if a government agency or official approved the allegedly unfair act or practice. Walker v. Allstate Indem. 77 CA4th 750 (2000)
- In a false advertising claim, a court has stated that inferential or anecdotal evidence is insufficient, and that a plaintiff must show by actual intrinsic evidence (such as a consumer survey) the subject ad is misleading. Haskell v. Time Inc. 965 FS 1398 (1997).
- Though the statute prohibits acts that are unfair, a court must apply established standards, and cannot rely on subjective notions of fairness. Cel-tech, supra.
- Though a defendant's intent is not relevant, a defendant may raise equitable defenses, such as unclean hands. Newman v. Checkwrite 912 FS 1354 (E.D.Ca. 1995); Cortez v. Purolator Air Filter Prod. Co. 23 Cal4th 163 (2000). With regard to intent, the court of appeal rejected a 17200 claim where the underlying activity was accidental, and the defendant took affirmative steps to inform the public of the problem and correct it. Klein v. Earth Elements 59 CA4th 965 (1997)
- A claim that is either based on or mirrors elements of a federal law, could be preempted. Kodadek v MTV Networks 152 F.2d 1209 (9th Cir. 1998) (copyright); Rogens v. Nations Credit 233 B.R. 98 (N.D.Cal. 1999) (bankruptcy); Ball v. GTE 81 CA4th 1204(2000) (FCC Act); but see Ed. Testing Service v. Simon 95 FS2d 1081 (C.D.Cal. 1999) (unfair competition claim that has extra elements beyond federal action and protects different rights is not preempted).
- In a case involving issues within the scope of an administrative agency, the doctrine of primary jurisdiction may compel a court not to rule until the administrative agency can consider the matter. Samura v. Kaiser Foundation 17 Cal4th 1284 (1993).

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While plaintiffs often seek recovery of damages for unfair competition, the law is settled that damages may not be recovered. Independent Housing Services of S.F. v. Fillmore Center Associates, 840 F.Supp. 1328 (N.D. Cal. 1993); Brown v. Allstate 17 F.S.2d 1134 (1998). Similarly, punitive damages are not available. State Farm v. Superior Court, 45 CA4th 1093 (1996).

However, there is still exposure to equitable remedies such as disgorgement of unjust enrichment, and restitution. Bank of the West v. Superior Court 2 Cal4th 1254 (1992); Reese v. Walmart Stores 73 CA4th 1225 (1999).

A private plaintiff generally cannot recover attorneys' fees for an unfair practices claim Pachmayr Gun Works v. Olin Mathieson 502 F.2d 802 (9th Cir. 1974); Kelley Blue Book v. Car-Smarts 802 F.Supp. 278 (C.D. Cal. 1992); though fees may be available under the private attorney general provision in Code of Civil Procedure Section 1021.5.

While unfair competition claims and the wide latitude they permit plaintiffs are particularly fearful to businesses, being an unfair competition defendant is not synonymous with being defenseless. Review of the statutes and cases indicates there are meaningful defense strategies that a defendant can use in an unfair competition claim. ⚡

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THE PRACTICE

a series of essays on practice of law and life

On Letterhead

BY DAVID R. HAGEN



Dave Hagen is a principal at Merritt & Hagen. The firm's practice focuses on representing individuals and small businesses in bankruptcy. He speaks to attorneys often on the areas of bankruptcy, the marketing of legal services, and the practice of law. He welcomes your comments to this series of essays.

Law firm letterhead is interesting stuff. It tells you a lot about the firm and the history of the firm.

I have seen some very interesting letterhead over the years. I remember seeing letterhead from the largest law firm in the world at that time, Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey. It was impressive stuff. The partners were all well-known lawyers; they listed as many names on the letterhead as they could. Of course, this meant that only half of the first page of a letter contained text! Unfortunately, they filed bankruptcy some years ago. Superior Court judges have nice letterhead. It is simple and understated considering their power. I have also seen letterhead from the White House which is surprisingly understated considering it is probably one of the most powerful places on earth.

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I have seen letterhead change over the years. It used to be that almost every law firm had engraved letterhead. The name of the firm and its lawyers were printed with ink that actually raised up the letters. This was very impressive but was costly. Many firms continue to use engraved letterhead to this day. It makes a statement about the firm. I keep some around but only use it for the kind of letter that starts out "Please be advised..." Lately, I don't see as much engraved letterhead. Most firms are now printing their letter-

head from the laser printer at the same time as the letter itself. It does not have raised letters, but is a much more cost-effective and efficient method of getting day-to-day correspondence out the door.

I remember years ago it was popular to list all of the names of the attorneys in the firm on the letterhead. Partners went first, then associates. This eventually got out of hand. Some firms even listed all of the legal assistants. This got a bit confusing, especially at firms that also listed multiple locations. Our bar association's letterhead has evolved in interesting ways recently. It used to be that the past presidents' names were listed in the left hand margin. My ego especially liked this when I was immediate past president because my name was at the very top of a list of some very distinguished individuals. Lately, I notice that the letterhead has been redesigned and given a more modern look. This new look does not contain the names of all the past presidents. The new letterhead looks great, but my ego sorely misses my name being listed.

I've even seen some letterhead from law firms that were in color. This is still fairly rare because most law firms don't have color printers in the office. I notice that some firms' letterhead even contains information about their firm. I have a bankruptcy attorney friend whose letterhead says "Practice Limited to Bankruptcy." This is smart in that it frames his practice to opposing counsel and his clients.

Because letterhead is a reflection of a law firm, it is also a highly effective marketing tool. Think about the letterhead I have already mentioned; most conveyed a message about the firm. What does your letterhead say about your firm? If it is like mine, it is pretty standard looking and printed on off-white paper. What message does it tell about your firm? Does it show that your firm is "old guard" or "cutting edge"? What message would you like it to convey as a marketing tool?

I have a CPA friend who lists different aspects of his practice on his letterhead. He indicates all of his memberships and affiliations and then lists all the different types of things he does down the left hand margin. Most interestingly, at the bottom of this margin he has a number of phrases which he wants his clients to remember, such as "Direct Access to the Owner," "On Site Visits," "Calls returned within 24 hours", and "affordable fees." All this text tends to

make the letterhead a bit busy for my taste. However, there is a lesson to be learned here.

At Merritt & Hagen, we decided to recently modernize our letterhead. This is due in large part to my personal reflections, which lead up to the writing of this column. We now list the email address for our attorneys. (I remember when the “modern” thing to do was put a fax number on the letterhead!) We also list our website as part of our address we see that as one of our premier marketing tools in the current business environment. We have also put a phrase under the name of the firm, which attempts to sum up what we do. We chose the phrase “Attorneys and Financial Counselors.” We think that this describes what we do best. We print this letterhead on our laser printer. It isn’t fancy, but it works for us. (And, yes, I will still have some engraved stationary made up for those “special” letters we need to send out from time to time.)

We have put together a template in WordPerfect which has the letterhead built into it. It puts the letterhead on header A which appears on the first page and is suppressed on subsequent pages. The subsequent pages have a second page title, which is contained in header B, which correspondingly, has been suppressed on the first page. This allows every page to be custom printed with the information that we want on the page. This took a long time to figure out, but it works great. If you’d like a copy of this template, which you can then modify with your firm name for your use, send me an email (drh@for-bankruptcy.com) and I will be happy to send it to you.

What does your letterhead say about your firm? Does it convey the essence of your firm? Does it reflect the “one good thing” about your firm which I have spoken about in earlier columns? Do an experiment by picking up a piece of your letterhead and looking at it as though you were opposing attorney or a potential client. What message does it send? ↕

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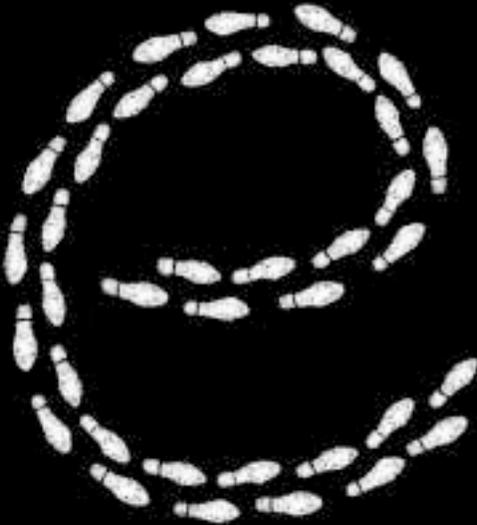
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Message From LRIS Coordinator

Michele C. Morley

The LRIS staff would like to thank Anne Adams, Adrienne Krikorian, Neill Levy and the Law Firm of Lewitt, Hackman, Shapiro, Marshall & Harlan for taking time to make presentations to LRIS staff. We learned useful information to help increase our effectiveness in the areas of business law, consumer law, condominium law, and copyright and trademark law. We would also like to thank all of the panel members who were so patient while we fixed our computer problem and then immediately returned their status reports when we were finally able to print and send them.

Recently I have again asked for assistance from panel members for situations that LRIS has been asked to solve. I want to thank Charlie Hamel who has provided pro bono help with a matter involving an error in a criminal sentence. Christine Lyden has donated her time to give me guidance on a difficult matter involving legal procedure and practice. Donna Laurent volunteered to speak at a continuation high school. The experience was mutually rewarding and she has graciously agreed to return to the school on a regular basis.

Mental health professionals said that after 9/11 there would be a noticeable increase in anxiety in the population about six months after that event. From the conversations we have had and the comments we have received from callers, it is apparent that many people are very sensitive to what they perceive as poor service from attorneys. I am talking about individuals who have actual legal problems, but feel even more stressed and anxious about these problems.

Clients are unusually sensitive to how they are treated and spoken to by attorneys and their staff. They want to be told in a way they understand what is happening or could happen in their legal situation. They may want to hear it more than once. They want their telephone calls returned. In some instances they are just asking for what is usually defined as professional service. In some instances it might be argued that they are unreasonable in their expectations.

Lawyers are members of a very stressful and demanding profession. Attorneys, their families and their associates also experienced 9/11. Lawyers are also experiencing the six-month delayed aftermath of feeling. It is not easy in the best of times for them to manage the burdens and the workloads placed upon them by their chosen profession. To ask attorneys to also handle the increased sensitivities and anxieties of their clients is adding to an already heavily burdened profession. However, as professionals we are required to meet and manage the challenges presented. In stressful times as in successful times our service must be exemplary.

In some of the future columns I am going to ask attorneys to share how they practice law and what they believe is necessary to provide professional service. I have already contacted some members who will be sharing their thoughts. Contact me if you are interested in this topic and would like to write a column or share your comments and insight. ↗

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Mediator's Notebook

Think Smart: Hire A Wimp

BY CHARLES B. PARSELLE



A graduate of Oxford's Honor School of Jurisprudence, Charles Parselle was called to the English bar in 1966 by the Honorable Society of the Middle Temple, and has practiced law in California since 1983. An experienced litigator, his practice is now devoted to mediation and arbitration.

A mediator is someone you hire to do a job you cannot do yourself. Technically she/he is an independent contractor, therefore no FICA, health benefits, sick leave, or any other headaches. They are strictly temporary, and half their wages are paid by someone else!

But what is this job you cannot do yourself? You settle cases regularly, don't you? In fact, you are probably an excellent negotiator. That is half of what we lawyers do for a living. We advocate, and we negotiate. What's not to know?

The answer is that the mediator is hired to settle your case while simultaneously working for the other side. The mediator is impartial: you cannot be. You derive huge advantages from having an impartial third party in the midst of a negotiation. The cost of that "employee" is trivial compared with the advantages.

Why is your hired pro tem mediator so valuable and yet so cheap at the price? It is because the roles of trial advocate and settlement negotiator are, though not mutually exclusive when performed consecutively, difficult if not impossible to perform simultaneously.

The posture of the advocate is **ATTACKING TO WIN THE WHOLE ENCHILADA**. The risk the advocate accepts is that they will not win any part of the enchilada and, worse, may lose a whole lot in the way of costs, fees and unpaid bills. Statistically, one in twenty cases goes to trial, so evidently the potential reward is judged worth the risk 5% of the time.

On the other hand, the role of the negotiator is one of artful concessions, which is a friendly way of saying negotiating is a matter of **RETREATING** from an initial position. True, the purpose of those carefully orchestrated retreats is to **WIN AS MUCH OF THE ENCHILADA AS FEASIBLE IN THE CIRCUMSTANCES**, but there is a problem.

The problem is that a settlement negotiation is always conducted against a backdrop of continued or threatened litigation. The attitude of the attorney is, and must be: "Take this offer.....or else you'll be killed at trial." The attorney must strenuously advocate the unbeatable strength of her case, but in a negotiation she must also retreat again and again from her initial stated demand.

The strain that this imposes on an attorney is one reason why settlement discussions are fitful, stressful, and often unfruitful until a late stage in the litigation.

Therefore, many time negotiations are not even begun until both sides are over-committed relative to the value of the case. Since the primary duty of an attorney is one of strenuous advocacy, the attorney must adopt and maintain the necessary mind-set. It is easy to overlook weaknesses and exaggerate strengths. It is hard to pick up the phone and call the other side. Many times, demands and counter-offers bear no relationship to reality. And then there's the client.....

All this heartache and expense can be avoided by hiring a mediator, temporarily, cheaply, without commitment, and best of all without compromising your posture as a winning trial lawyer. The mediator is not a hired gun, but a hired wimp. Even if he is not a true wimp, the mediator will do all the wimping that has to be done, for both sides, while you maintain your confident and controlled attitude. The mediator is the one who communicates the concessions. The mediator takes the strain. The mediator takes the heat off you, and out of the negotiation, by the simple technique of caucusing. And then there's the client.....(but that's a topic for another day.)

If you know how to **USE** a mediator, you can settle cases in half a day of concentrated negotiation, instead of having matters drag with intermittent phone calls and unfruitful overtures for weeks and months. In the long run, and even the short run, it's a cheap way of putting money in your client's and your own pocket. 🐘

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Non-Recourse Litigation Funding: Lower Risk/Higher Reward

BY ERIC ALDEN, CPA

Eric Alden, CPA, is President and CEO of Encino-based Case Financial, Inc. (www.casefinancial.com), a leader in providing non-recourse, pre-settlement funding solutions to plaintiffs and plaintiffs' law firms. Mr. Alden can be contacted at (800) 822-9172 or by e-mail at ealden@casefinancial.com.

When facing powerful corporate defendants, capital resources rather than the merits of a case can sometimes weight the scales of justice. Personal injury attorneys who work on a contingent fee basis may labor for months or years without compensation. In response, the defendant's strategy too often becomes one of attrition. For example, expecting a plaintiff to accept an inadequate offer out of immediate financial need or waiting for plaintiff's counsel to falter if funds are required to build the case.

Non-recourse litigation funding provides a financial partner to attorneys or plaintiffs to help level the playing field. This funding partner takes an identical contingent fee risk, while leaving the case entirely in the attorney's hands. With the focus returned to the merits of the claim, the client ultimately benefits.

Dispelling Misconceptions

To describe non-recourse litigation funding, first it is useful to consider what it is not. It isn't a loan. Payment to the funding partner is due only if there is a settlement or judgment. Just as an attorney working on a contingent fee basis isn't "loaning" time to a client, the non-recourse funder isn't "loaning" funds. The non-recourse funder is investing in the plaintiff's cause just as the attorney is investing time on the plaintiff's behalf. If the plaintiff fails to win or settle, both the contingent fee attorney and the non-recourse funder share in that loss.

While the non-recourse funder can be considered an ally in furthering the client's interests, the funder has no influence in the handling of the case beyond the decision to provide funds. No control of the case is relinquished. Influence on the case is neither desired nor sought. The combination of capital resources, without any loss of control, makes non-recourse funding attractive to plaintiff attorneys.

Ethical Considerations

The ethical foundation of non-recourse funding has been repeatedly confirmed. The Los Angeles County Bar

Association, in its Ethics Opinion 500, attested that non-recourse funders conform to the standards of California legal ethics. Likewise, the American Bar Association's Committee on Ethics and Professional Responsibility has rendered an opinion that such arrangements are permitted under the ABA Code of Professional Responsibility, and California allows for the assignability of legal claims.

In a larger sense, the ethics of non-recourse funding can be gauged by its value in serving the needs of plaintiffs who too often are outmatched by wealthy corporate defendants. By equalizing resources, non-recourse litigation funding returns the merits of a case to the foreground.

Criteria for Non-Recourse Funding

When is non-recourse funding appropriate? The non-recourse funder takes a financial risk and is rewarded if and only if the plaintiff's counsel settles a claim or receives a judgment. The case review process considers the basic risk versus return factors of funding a case. Is liability clear-cut? If it is, can a favorable judgment or settlement be expected?

Assuming a favorable judgment is likely, can the fairness of that judgment or settlement be increased substantially with well-placed funds? For example, would \$10,000 spent for an additional top expert witness or for an accident reconstruction expert potentially increase a judgment from \$50,000 to \$100,000? Is the client directing counsel to accept an unfair settlement out of immediate financial need? Would payment of their living expenses for three months allow counsel to achieve a higher settlement? "Yes" answers to these questions are the criteria non-recourse funders seek.

The non-recourse funder considers the merits of the case, the track record of the attorney and the timing of the needed funds. Preference is given to well-developed cases in a later phase, where additional litigation funds may be crucial to the outcome. The goal is to identify cases that will win across the board for the attorney, the plaintiff and the funding partner.

Benefits to Counsel

Benefits for the plaintiff's counsel are manifold. Contingent fee payments can be larger, and cases that might otherwise be referred to a better-funded law firm or associate can be retained. Working capital is preserved, allowing for better allocation to other areas in a practice. Even if ready capital is not



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an issue, the non-recourse funder can provide a plaintiff directly with living expenses. This avoids a potential conflict of interest resulting from lending a client money while maintaining the integrity of the attorney/client relationship. The participation of a non-recourse funder can also contribute to a stronger negotiating position. How is this so? Most plaintiff attorneys/firms are evaluated by insurance carriers on the depth of their financial ability to litigate. A plaintiff attorney known to have depth of funding and an ability to use it effectively might consistently expect fairer settlements. Real strength, including financial strength, doesn't always need to be used in order to be felt. Perhaps most importantly, risk can be shared with the non-recourse funder, allowing an attorney to be more confident and aggressive in pursuing client settlements.

Attorneys and Plaintiffs Better Served

Striking examples illustrate the value of non-recourse funding. John, a 22 year-old auto accident victim, needed \$5,000 for surgery. Without the surgery, which would help to identify further physical damage and the full extent of the defendant's liability, his case was expected to settle for only \$7,000. With the surgery, a settlement of \$40,000 was anticipated. A non-recourse funder advanced the funds for the surgery. The case settled for \$40,000, and John received two-thirds of \$40,000 rather than two thirds of \$7,000.

One married couple, James and Annette, were driving on the interstate near Santa Barbara when a construction vehicle pulled out of the center median directly into their path. The impact sent their compact car across several lanes of traffic and into a light pole. James' knee was seriously injured when it was crushed into the dashboard, and Annette received facial lacerations. Nine months after the incident, with the insurer playing hardball, the couple was in dire financial straits and pressed their attorney to advance them money or to immediately settle the claim. The attorney, who felt the insurers' offer was inadequate for the damages sustained, approached a non-recourse funder. An advance was provided to the couple, which enabled the case to go forward. Four months later, the parties reached a six-figure settlement.

In another case, an Orange County attorney represented a mother and son who were injured in an auto accident. The attorney needed an additional \$5,000 to hire an expert witness who would attest to psychological damages sustained by the son. With funds in hand to hire this expert, the case was adjudicated for over \$75,000 - more than three times the initial sum offered.

A Creative Solution

When facing powerful corporate defendants, the scales of justice are occasionally weighted by capital resources rather than by the merits of a case. Without ready capital, a plaintiff attorney can easily be at a disadvantage serving clients. Even winning attorneys with strong cases can find themselves involved in simple tests of financial resources.

In recent years, fewer personal injury claims are being settled out of court. Instead, many just claims are now challenged simply as a matter of corporate policy. Non-recourse litigation funding can help attorneys "swim the length and the depth of the pool" by offering a creative alternative to truly deserving plaintiffs.

In today's climate, plaintiff attorneys need this financial edge. Non-recourse litigation funding, properly used, can help attorneys to maximize returns while minimizing risks. ♣

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Opposing counsel cites a case you're unfamiliar with during the morning argument, and you want to research it before it's your turn this afternoon.



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President's Message continued from page 3

The Nominating Committee meets prior to June 25th of each year to nominate members of the Association for Officers and Trustees positions. After the meetings, the names of the nominees are forwarded by the Nominating Committee to the Secretary of our Bar in a report. Additional nominations for any Officer or Trustee position, except President, may be made by filing a written nomination signed by at least 20 active members of the Association in good standing. (SFVBA By-Laws, Art. VI, Sec. 3: "Additional Nominations")

Our bar is on the cutting edge of technological advances, has experienced a growth that is unparalleled among bar associations across the country, and experiences camaraderie amongst the lawyers and the judiciary that we cherish and is at the core of the success we have achieved. Members of our organization also hold positions on the Los Angeles County Bar Association Board, and with our growth we now hold a seat in the American Bar Association's House of Delegates. We are working on being an integral part of the education and employment process that exists between law schools, law students, and potential employers (our members). We are developing a relationship with the business community, its organizations and publications, which will be mutually beneficial. Our Board of Trustees, Officers, and our members generally hold leadership positions in politics, religious organizations, chambers of commerce, trade organizations, sports programs, and a wide variety of other organizations. While all of this activity is taking place, we need to expand our supply lines of volunteer leaders to our sections and committees.

At the ABA Leadership Conference last spring, interesting discussions took place amongst bar leaders about the role of a bar association in offering opportunities to lead, and the role of the nominating committee in selecting leaders. Depending upon the strength and vision of the association, different opinions were shared. It was clear, however, that the goal of most bar associations was to offer and in fact encourage their membership to participate and lead at a section and committee level. Most of the bar associations that were present, expressed through their Presidents and soon to be Presidents, as well as their Executive Directors, that the responsibility of the nominating committee was the most important activity of the year because of its long term impact on the organization. Some expressed that it has a difficult, sensitive, and sometimes uncomfortable task of guiding the bar association in search of and selecting future leaders.

Our Nominating Committee (SFVBA By-Laws, Art. VI, Sec. 2: "Nominating Committee") is made up seven people, five members in good standing who are elected by the Board of Trustees as well as the President and the Immediate Past President. The Immediate Past-President is the Chair of the Nominating Committee. Frequently, several Past-Presidents occupy positions on the nominating committee

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because of the wisdom they can provide and the significant responsibility that the committee has undertaken.

This year, as with seventy-five preceding years for our organization, we are asking our members to step forward to contribute and participate in leadership positions including sections, committees, Trustees and Officers positions. Involvement in our Bar is most often begun by joining a section or committee, attending the events, and joining with other members in planning, organizing and running events. Over the past decade, election to the Board and to an Officer's position is not guaranteed; frequently, individuals have had to run for the position on several occasions. Fortunately, even in a system that provides for and frequently has contested elections, we have maintained the warmth and good relations that our Bar has encouraged amongst its members.

One of the goals that I had at the outset this year was to make known to our members that we need your participation, assistance, contribution and leadership. This year, I have spent a good deal of time responding to telephone calls and e-mails from members who were seeking opportunities to participate. I hope in some measure I have been able to satisfy both the members' desire to participate and our organization's need to have our members contribute.

Another goal was to expose our members to the responsibilities that leading a section or committee entailed as well as publicizing to our membership the duties of Trustees and Officers (See SFVBA By-Laws, Art. IX). Our Leadership Conferences are also part of that process. Efforts by Committee and Section Chairs to advise their membership about these opportunities and responsibilities help in communicating to our members that their participation is encouraged and needed for our Bar Association to continue its successful efforts on behalf of the membership.

Therefore, as we near the halfway point for our 2001-2002 term and the selection of a Nominating Committee, I want to extend a hearty "thank you" to our Board and Officers, and to our Section and Committee Chairs, without whom the successes we have achieved this year would not exist. I also want to extend an invitation to all of you who are interested in learning more about leadership opportunities to attend our April 15 Leadership Conference. I will see you there! ☞

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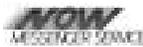
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Notice To Attorneys

In Van Nuys, the Probate calendar will be heard on Fridays instead of Thursdays commencing April 12, 2002. The courtroom, Department NW H, will remain the same. Effective April 8, 2002, the Probate Attorney's office hours will be Thursdays from 8 a.m. to noon, and Fridays from 8 a.m. to 11 a.m.

Reminder: non-urgent ex-parte matters are heard ONLY on Fridays between 8 a.m. and 9:15 a.m.

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Sexual Harassment Discrimination, Wrongful Termination, Qui Tam/Whistleblower, Overtime Violations, etc. 25% Referral Fee paid to attorneys per State Bar Rules. Law Offices of Jill B. Shigut (818) 708-6655.

STATE BAR CERT. WORKERS COMP SPECIALIST

Over 25 years experience-quality practice. 20% Referral fee paid to attorneys per State Bar rules. Jack Goodchild, PLC (818) 380-1600.

WORKERS' COMP & SOCIAL SECURITY DISABILITY SPECIALIST

Over 20 Years Experience. 20% Referral Fee paid to Attorneys per State Bar Rules. State Bar Certified. Robert Lee Finestone (818) 879-9950 • (805) 496-3477.

WRONGFUL TERMINATION

25% Referral Fee paid to attorneys per State Bar Rules on Wrongful Termination, Sexual Harassment, Discrimination, and Federal False Claim Cases. 20+ years experience; Heavy Jury Trial Experience. Danz & Gerber (818) 783-7300.

TAX LAW SPECIALIST

Income and Estate Planning, Tax Controversy Representation at IRS and Tax Court by Certified Tax Specialist, California State Bar Board of Legal Specialization. Richard A. Block, Esq. (818) 716-1585.

CIVIL/WORKERS COMPENSATION

Workers' Comp claims with construction, product liability, and other third party actions: Workers' Compensation Claims and/or UEF Claims Referral Fee, 20 years Exp. Edward J. Howell, ALC. (818) 906-1976.

EXPERT...

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Legal Malpractice Expert, Preventative Law. Brd. Cert. Specialist Prof Negligence Legal ABPLA/ABA. Former State Bar Prosecutor, former Judge Pro Tem. B.S., M.B.A., J.D., C.A.O.C., A.S.C.D.C. 33 years exp., fmr. Chair SFVBA Ethics: Litigation. Law Offices of Phillip Feldman (818) 986-9890. www.legalmalexpert.com

SPACE AVAILABLE...

CANOGA PARK

Congenial office space. Amenities, possible overflow (wills, trust, estate planning). Contact Ron at (818) 340-3116.

One 14'x16' window office and/or one 10'x11' interior office available. Amenities, possible overflow, free parking. Call Garry Williams at (818) 715-9212.

ENCINO

View office with secretarial area in congenial attorney suite. A-rated building, receptionist, DSL, digital copier, conference room, kitchen, storage. Available immediately. (818) 905-6088.

Office and secretarial space located in the ENCINO LAW CENTER. Law libraries and conference rooms on each floor. One parking space included with lease. Contact George at (818) 788-3651.

SHERMAN OAKS

Ventura/Sepulveda. Single, large window office space to sublet, in Estate Planning, Probate & Trust firm. Will consider time for space. Contact Maurine (818) 789-7079.

Two offices for rent. Remodeled Penthouse - Receptionist, Great Location - High-speed access available. Call (818) 995-1120.

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Unique and professional office setting. Offices available or sections of the suite. Temporary office space also available incl. conference room. Call (818) 593-6300, ext. 207.

Executive offices with secretarial area, common reception, conference, library, free client parking. Ventura Blvd. at Winnetka. Contact Mike Booser (818) 610-8787.

2 Large Warner Center window offices in 4 attorney suite. Secretarial, conference, free parking. Shared amenities. Available 11/01. Call Stan or Larry (818) 719-9000.

Ventura Blvd. Window office in 4 office lawyers' suite, includes secretary bay, phone system. 2nd office with 2nd secretary bay possible. (818) 884-9994

Window office on Ventura Blvd. near Warner Center in estate planning attorney's office. Available furnished. \$575/mo. Contact Jackie at (818) 225-1760.

VAN NUYS

Possible space for attorney time arrangement. Two window office(s) in attorney suite, CA library, conference room, breakroom, reception. Telephone ans., copy and fax available. Free parking. Art (818) 895-8234.

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3 Windowed Offices with adjacent secretarial bays available.

Size (17X12) (14X12) (11X14). Offices rented together or individually. CAL-FED Bank Building in Sherman Oaks. Use of conference room, library, photocopy, kitchen and reception area.

**Contact Steven S. Loeb
at (818) 783-6473 for details.**

Is A Malpractice Insurance Crisis Looming In Your Horizon?

Are You Ready?

11 carriers have withdrawn from the California market. Will your carrier be next? The changes in the marketplace are troubling. It is an unknown future. Non-renewals are commonplace. Some carriers can't secure sufficient reinsurance to operate their professional liability programs. A major carrier was recently declared insolvent. Other carriers have been downgraded by A.M. Best. Severe underwriting restrictions are now being imposed. Dramatic rate increases are certain.

It's all very unsettling.

Be Prepared. Be Informed. Lawyers' Mutual Policyholders Are.

CHECKLIST

You owe it to yourself to find the answers to these critical questions!

- ✓ *Will your carrier* still be writing professional liability policies in California at your next renewal?
- ✓ *Will your carrier* impose a substantial rate increase at your next renewal due to unstable market conditions?
- ✓ *Will your carrier* continue to insure "your type" of practice at your next renewal?
- ✓ *Will your carrier* leave the marketplace because they can't secure sufficient reinsurance for their professional liability program?
- ✓ *Will your carrier* offer you a tail of unlimited duration if they decide to leave the market?

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JUDGES' NIGHT



Over 300 members and judges attended the San Fernando Valley Bar Association Annual Judges' Night on February 21 at the Warner Center Marriott. Superior Court Judge Howard Schwab was honored as the SFVBA Judge of the Year, and Commissioner Manly Calof and Judge John Gunn were recognized on their retirements. Special guests included California Supreme Court Associate Justice Carlos Moreno, Congressman Brad Sherman, and Councilmembers Hal Bernson, Jack Weiss, and Dennis Zine.





April Events

calendar and MCLE event listings

Probate and Estate Planning Section

Topic: **Effective Mediation in Probate Code Litigated Matters**
Speakers: Gary Ruttenberg, Esq. and Paul Santon, Esq.
Date: April 9
Time: 12:00 Noon
Place: Radisson Hotel, Sherman Oaks
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
MCLE: 1 Hour

Small Firm and Sole Practitioner Section

Topic: **How To Bill So You Get Paid**
Speaker: Ed Poll
Date: April 12
Time: 12:00 Noon Lunch and Program
Place: SFVBA Conference Room, Woodland Hills
Cost: \$15 members prepaid; \$20 at the door
 \$20 non-members prepaid; \$25 at the door
MCLE: 1 Hour

Healthcare Law Section

Topic: **Check out sfvba.org for details!**
Date: April 16
Time: 6:00 p.m. Dinner and program
Place: SFVBA Conference Room, Woodland Hills
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
MCLE: 1 Hour

Workers' Compensation Section

Topic: **Check out sfvba.org for details!**
Date: April 17
Time: 12:00 Noon
Place: Encino Glen Restaurant, Encino
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$40 at the door
MCLE: 1 Hour

Women Lawyers Association of Los Angeles

8th Annual Litigator' Forum Co-sponsored by SFVBA

Date: April 26
Time: 8:30 a.m. to 2:00 p.m.
Place: Omni Hotel, Los Angeles
 Call (213) 892-8982 for further details and registration.

Barristers and Litigation Section

Topic: **State of the Courts: Fast Track Comes to the Valley**
 Implementation of fast track and direct calendars in Van Nuys. Learn how the Valley judges are applying the rules on a courtroom-by-courtroom basis.
Speakers: Supervising Judge William MacLaughlin, Supervising Judge Paul Gutman, Judge Bert Glennon, and Judge Stephen Petersen
Date: April 18
Time: 6:00 p.m.
Place: Sportsmen's Lodge, Studio City
Cost: \$30 Barristers prepaid
 \$35 members prepaid; \$40 at the door
 \$40 non-members prepaid; \$45 at the door
MCLE: 2 Hours

Intellectual Property and Internet Law Section, Entertainment Law Section, and Barrister Section

Topic: **Clearance Issues in TV and Motion Picture Production**
Speaker: Jody Zucker, VP of Legal Affairs, Warner Brothers
Date: April 19
Time: 11:30 a.m.
Place: Sportsmen's Lodge, Studio City
Cost: \$25 members prepaid; \$30 at the door
 \$30 non-members prepaid; \$35 at the door
MCLE: 1.5 Hour

Family Law Section

Topic: **Meet The Judges**
Speakers: Family Law Court Bench Officers
Date: April 22
Time: 5:30 p.m.
Place: Encino Glen Restaurant, Encino
Cost: \$35 members prepaid; \$40 at the door
 \$40 non-members prepaid; \$45 at the door
MCLE: 1 Hour

Information & Reservations 818•227•0490

SIGN ME UP!

SECTION _____
 NAME _____
 STATE BAR # _____
 TELEPHONE # _____
 CHARGE IT! CC # _____ EXP. DATE _____
 SIGNATURE _____

FOR MORE INFORMATION
 CALL (818) 227-0490

Food and beverages served at every MCLE event!
 * Please note that no credit will be given unless notice of cancellation is provided 48 hours before scheduled event

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