WINTER 2013

# atissue

A **STONE CHA & DEAN** PUBLICATION

This year has been filled with positive changes, dynamic growth, and unique opportunities!

To all of our friends and clients, we wish you a very happy holiday season and we look forward to working with you in 2014!

## inside this issue:

# Q&A with John S. Cha

**Founding Partner John Cha is a skilled attorney with a wide range of experiences and interests. In this Q&A article, he shares details on his career in law and reflects on Stone Cha & Dean's first year in operations.**

**What inspired you to pursue a legal career?**

I quickly found out in college that I was terrible with math and science (even though I excelled at both in high school) and that I was much better at analyzing and writing. So, I changed my college major from chemistry to a dual-major in political science and history and developed my own major in comparative political history. Well, a comparative political historian's post-college track is rather grim, so law school seemed the obvious choice.

**If you didn't become an attorney, what career path would you have taken?**

Had I been able to do well in organic chemistry and cell biology, I'm sure I would have been a doctor. But, my brain was not built to understand those rigorous courses, so medical school was out of the question. If not law school, I probably would have tried business school.

**Please describe the most outrageous trial you have been a part of.**

I don't know that "outrageous" is the first adjective that comes to mind, but I was involved in a 3-month jury trial in Riverside County, Indio branch, for which I had to rent a condominium on a golf course in Palm Desert and never stepped foot on the beautiful green grass! I drove out to Indio every Sunday evening and drove back Friday afternoon after 5 days of trial for 3 straight months. I guess that can be "outrageous!"

**What was the most important lesson you learned in law school?**

It certainly wasn't about "law," but the most important aspect of law school for me was making friends, keeping those friends, and developing business relationships with those friends since 1986. As I've always said, one never knows from where the next client is coming, and I've been fortunate to have had many clients referred to me from my law school friends. One friend in particular became Associate General Counsel at Anheuser-Busch, and I was handling products liability cases for Anheuser-Busch for many years until my friend decided to return to private practice. Still, we maintain a cross-referral relationship between Los Angeles and St. Louis.

**Describe your most rewarding moment as an attorney.**

There have been many, and it's difficult to say there's one that stands out, but being asked to apply for a judgeship from several sitting judges has to rank higher than several other rewarding moments.

**Who is you favorite fictional attorney?**

My formative years were the early 1970s, so Perry Mason was the singular TV character that influenced my interest in law.

**Do you have any superstitions you strictly adhere to while in trial?**

No, not really. Trials to me are dynamic events with each day taking on new personalities and characteristics. I always try to have a hearty breakfast, but that's about it.

**What are your favorite pastimes?**

I carry a 9.2 golf handicap (was at one point 6.3), so I try to keep my golf game sharp almost every weekend. I also sit on the board of directors of my golf club and also with the Bowers Museum of Cultural Arts in Santa Ana, so I invariably spend a great deal of time at both places.

**As 2013 comes to a close, please share your thoughts on SCD's first year.**

I am thankful, first and foremost, for the people at SCD and how much each devotes his/her energies to the teamwork that goes into each day. It's been a challenging but fulfilling year, with new office space, new clients, and several difficult cases that culminated in trials. Challenging because it took a concerted effort from many people to get SCD to where it is today, and fulfilling because we've accomplished almost everything we set out to achieve. Fulfilling, also, because I've had friends and clients supporting SCD through all challenges, and we've been able to deliver premium legal services through our teamwork and great effort throughout the year.

# New Year, New Employment Laws

By Robyn M. McKibbin, Esq.

***New employment laws become effective on January 1, 2014. Here are some of the changes that may impact your business.***

## Minimum Wage

**California's minimum wage** increases to $9.00/hour. In 2016, it increases again to $10.00/hour.

In addition, if the Labor Commissioner issues a citation for failing to pay minimum wages, it can also impose liquidated damages on the employer, in addition to the existing penalties.

## Rights under the Labor Code

**The Labor Commissioner may record a lien** on an employer's real property for any final order, decision, or award.

**Employers who win unpaid wage claim lawsuits** may recover attorney's fees and costs from the employee if a trial court finds the employee filed the lawsuit in bad faith.

**An employer who fails to deduct withholdings** required by state, local, or federal law from an employee's wages can be subject to a criminal penalty.

## Discrimination and Retaliation Protections

**Military and veteran statuses** have been added to the categories protected from employment discrimination under the Fair Employment and Housing Act.

**Whistleblower protections** are expanded to include reports alleging a violation of a local rule or regulation. It also protects employees who disclose, or may disclose, information regarding alleged violations "to a person with authority over the employee or another employee who has authority to investigate, discover and correct the violation."

**The definition of sexual harassment** includes clarification that the conduct does not need to be motivated by sexual desire.

## Leaves and Benefits

**Unpaid time off for victims of domestic violence or sexual assault** is extended to victims of stalking. Time may be taken to appear for legal proceedings and to seek medical/psychological treatment, including safety planning.

**Paid Family Leave** benefits are extended to time taken off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law.

## Immigrant Protections

**Employers are prohibited from engaging in "unfair immigration-related practices"** when an employee asserts protected rights under the Labor Code, i.e., an employer may not threaten to contact or contact immigration authorities because an employee complained that he or she was not paid at least minimum wage or for overtime.

**If a person threatens to report the immigration status or suspected immigration of an individual**, he or she may be found guilty of criminal extortion. Also, an employer's business license may be revoked for threatening to report an individual's immigration status.

# Beware of Fraud Surrounding the Affordable Care Act

By Leslie A. Blozan, Esq.

On October 1, 2013, the Affordable Care Act went online, allowing uninsured individuals and families to purchase medical insurance through health insurance exchanges. States exchanges offer policies that are preapproved by the state's insurance commissioner. There is also a federal government exchange available to those without access to an exchange in their state.

Criminals are now taking advantage of the unsuspecting, seeking to get personal and financial information from prospective insureds, and to sell useless products and services.

A common fraud is initiated by a telephone call. Callers often ask to "verify" personal information for coverage, or claim that new insurance or Medicare cards must be issued, sometimes for a fee. These callers are aggressive, often intimidating their victims. Callers sometimes falsely claim that failure to buy insurance will result in criminal prosecution and jail. The new law does impose penalties upon the uninsured, but those are only fines. The fines do not go into effect until 2014.

There are also fake websites that are traps for the unwary. The most benign websites direct consumers to private insurance agencies who will try to sell policies. The criminal sites seek personal information and sell non-existent products and services.

Another fraud is a call from an insurance "navigator" who offers to assist a customer in applying for health care coverage through an exchange. Victims of this fraud are often convinced to wire money or send funds via pre-paid debit cards for non-existent policies. Other navigators simply charge a fee for a process that is supposed to be free. There are exchange-related workers who can provide all of the help that a consumer requires.

**To remain safe from health care scammers, remember the following tips:**

- Approved insurance exchanges do not engage in any form of cold calling, by mail, e-mail, telephone, text, or other means and do not call to update or confirm information;
- There is no health card associated with the Affordable Care Act and no need for a new Medicare card;
- Insurance exchange policy rates are pre-approved and will not change until March, 2014 at the earliest. There is no need to rush into a purchase;
- Beware of Internet searches for "insurance exchanges." The only legitimate exchange is that offered by the state or the U.S. government.

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***For accurate information about the federal program, visit www.healthcare.gov or call 800-318-2596. In California, the health insurance exchange is operated by the Department of Insurance, at www.CoveredCA.com, and can be reached at 800-300-1506.***


# The 20th Anniversary of Greg Stone's CourtTV Jury Trial Victory

By Gregory E. Stone, Esq.

It is hard to imagine that the year 2014 will mark the 20th anniversary of my Court TV- broadcasted jury trial victory. The case was tried in the Los Angeles Superior Court, Central Civil West (CCW), court house, ironically known as "Plaintiff's Alley" and "The Bank" for its many significantly high jury verdict awards.

The plaintiff alleged excessive force, false imprisonment, battery and civil rights violations stemming from his arrest for suspected shoplifting at a retail store. I was retained to defend the retailer and the security guard. The plaintiff was never criminally prosecuted.

"What a crazy coincidence," I thought. Back in the 80s, while a University of Arizona undergrad, I wrote a report for my media class on a concept I called "The Law Channel." My report opened with, "Imagine if you had the

# Business Owners: Beware of the Miniature Horse

By Amy W. Lewis, Esq.

The Americans with Disabilities Act (ADA) became effective in 1991 and is designed to ensure that businesses accommodate people with disabilities. Unfortunately, there are a few attorneys who take advantage of the law and file hundreds, if not thousands, of frivolous lawsuits each year in an effort to collect quick settlements from business owners.

An apparent new trend involves a person bringing in a miniature horse to a business and hoping to be asked to leave. We know of at least one attorney with a disabled plaintiff/client who allegedly uses a miniature horse to cash in on a new service animal regulation. He has filed several lawsuits against several large retail establishments over the last year for the alleged refusal to accommodate plaintiff and his miniature horse.

As of March 15, 2012 a miniature horse, if it meets certain criteria, is considered a "service animal" not unlike a seeing-eye dog. This means that a disabled individual cannot be denied access to a business where the business is able to accommodate a miniature horse.

The attorneys and their clients count on business owners not knowing this new regulation. The clients show up at businesses, presumably hoping to get thrown out, so they can file an ADA claim alleging discrimination. We recently became familiar with these new revisions, as one of our retail clients was sued for allegedly refusing access to a miniature horse.

While normally a violation of the ADA only allows a plaintiff injunctive relief, under the Unruh Civil Rights Act in California, a disabled plaintiff who is denied access under the ADA may tack on money damages of up to $4,000.00 per violation as well as recover attorneys' fees.

**The criteria to be considered are:**

1) The type, size and weight of the horse
2) The handler's ability to control the horse
3) Whether the horse is housebroken
4) Whether the horse's presence compromises any legitimate safety requirements.

A business can only inquire about whether the horse is required because of a disability and what work or task the horse has been trained to perform. As such, absent clear evidence, a business needs to weigh carefully whether to refuse access to a disabled individual who is claiming that his/her miniature horse is, in fact, trained to perform some task to assist that individual.

Lizzie Borden or the Scopes trial on live TV?"

Several years later, in law school, my friend, a renowned Emmy-winning television producer and director, and I pitched the concept to one of his contacts. We were told that it was a difficult concept to protect - we either had to move forward with it or not. I decided to focus my energy on completing law school.

Eight years later, the CourtTV channel came to Los Angeles. The plaintiff's counsel contacted the station and enticed them to broadcast his "prosecution of a civil rights case against a billion-dollar corporation."

During closing of the three-week trial, the plaintiff asked the jury for $10,000,000. Prior to trial plaintiff rejected defendant's six figure offer. As the jury entered its third day of deliberation, I figured we were toast because 1) I was in one of the most liberal venues in the country and 2) In most civil cases, when a jury deliberates that long, it usually means they are talking about money. I started thinking to myself, "I guess I'll get my real estate license."

In the end, the jury returned with an outright defense verdict.

After the verdict, the plaintiff's counsel argued there should be another phase to the trial for negligent hiring and retention. I was able to get that claim bifurcated at the start of the trial. At first, the judge agreed to hear the second phase and was going to hold the jury over for another week while the judge went on vacation. I pleaded with the judge and quipped, "let my people go!" The judge laughed and then permanently released the jury. Plaintiff appealed and the Court of Appeals affirmed the defense verdict.

# Could You Be Liable for What Happens on Your Employees' Breaks?

By Suzanne R. Feffer, Esq.

Perhaps you have heard it said that one is so confused that they don't know whether they are coming or going. Two recent decisions from the California Court of Appeal may leave you similarly confused.

An employer may be liable for the negligent actions of its employees committed within the scope of employment, including acts incidental to the employee's duties and even reasonably foreseeable employee misconduct. The "going and coming" rule stands for the proposition that an employee travelling to and from work is ordinarily considered acting outside the scope of employment (such that no employer liability attaches) unless the employer furnishes or requires a vehicle for transportation on the job and the negligence occurs en route to or from that employment.

In *Majid Moradi v. Marsh USA, Inc.* (2013) 219 Cal.App.4th 886, an employee of an insurance broker drove her personal vehicle to work each day, but was required to use that vehicle during the workday for various work-related activities. While driving home from work, the employee decided to stop for yogurt and a yoga class. As she did, she struck a motorcyclist.

The trial court found that the employee was not acting within the course and scope of her employment when she stopped for yogurt. The Second Appellant District reversed, holding that the employee was required to use her car for work and the exception to the going and coming rule applied. The "stop for yogurt and yoga" was a foreseeable, minor deviation leaving the employer liable.

Conversely, just two weeks later, the Fifth Appellate District came to a different conclusion. In *Halliburton Energy Services, Inc. v. Department of Transportation* (2013) 220 Cal.App.4th 87, an employee was assigned a company car to drive to get to and from work and run errands. The employee lived within 40-50 miles outside of Bakersfield where he worked about 50% of the time, spending the other 50% of his work hours at various locations around California. The employee was assigned to work on an oil rig in Seal Beach for 2-3 weeks. After his shift ended, he got in the company pickup truck, drove 140 miles back to Bakersfield where he met this wife to purchase a personal vehicle. On the way back to his hotel room, he was involved in an automobile accident.

Rejecting the claim that the employer enjoyed a benefit from the employee's use of the truck, the Halliburton court concluded that while the employer did provide the vehicle for the employee, there was no nexus between the activity of driving back to Bakersfield to purchase a vehicle for his wife and the employee's duties in Seal Beach. As a purely personal activity, the employer could not be held liable.

The decisions are difficult to reconcile, though the *Halliburton* court distinguished the *Moradi* decision by offering that in Moradi, the deviation from the trip home was minor. Proximity to the route taken to and from work may be the key.

# Latest Legalities

By Kristi W. Dean, Esq.

## *Once Again The Rules have Changed for California Businesses (this time for LLCs)*


This past September, Governor Jerry Brown signed into law the California Revised Uniform Limited Liability Company Act ("RULLCA") which entirely replaces the Beverly-Killea Limited Liability Company Act pertaining to the formation and operation of California limited liability companies. So far, the law seems to have created a number of questions and confusion in what was a mainstay (albeit imperfect) 20 year-old law. While the RULLCA is subject to change between now and the inception date of January 1, 2014, it bears attention to those who are forming LLCs after the first of the year because it includes a number of substantive changes. Some folks compare this new law to Athens' decision to invade Sicily, and describe its implementation as a looming catastrophe, and a catalyst for the eviction of even more businesses from our state. While many laws are predicted as such, the focused criticism has resulted in a veritable potpourri of amendments to the bill. In any event, it will likely mean businesses will need to increase their budget for legal fees.

RULLCA states it applies to contracts entered into on or after January 1, 2014, which means that operating agreements executed after that date will certainly be affected. However, there is some ambiguity within the subsections as to whether or not a minor amendment to an operating agreement, in existence prior to January 1, 2014, would cause the entire operating agreement to be subject to RULLCA.

In comparison to the current law, RULLCA expands the actions that require the consent of all members in a manager-managed LLCs. The law also provides that fiduciary duties of a manager and members may be modified in a written operating agreement by listing types or categories of activities that are not "manifestly unreasonable;" but the law does not define what that means. The rules regarding indemnification will be different as well, mandating indemnification of only members and managers conditional upon compliance with certain specified duties, and making no mention of officers, employees or agents unlike the current law.

The new rules also define the conditions for disassociation of a member from the LLC, identifies the circumstances in which a member may withdraw from an LLC, and the resulting impacts on the members and the LLC itself. It provides for a default scenario in the event the LLC members have not expressly agreed on an issue, but it is unclear whether some provisions can be superseded by written agreement.

***Those who do business through an LLC should be sure to have their intentions properly documented and have their operating agreements reviewed and revised, if needed, to ensure compliance with RULLCA.***

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# NEWS & ANNOUNCEMENTS

➔ Leslie Blozan successfully collected substantial attorney's fees for a client on a cross-complaint based on contractual indemnity. The client was a wholesale insurance broker and the fees were collected from a producer who misrepresented coverage to an insured.

➔ John Cha and Robyn McKibbin presented Discrimination, Harassment and Retaliation Prevention Training for an SCD client. The mandatory two-hour training was lively and described as "informative and entertaining."

➔ Greg Stone and Greg Miller attended a national conference for one of SCD's large retail clients attended by attorneys from around the country. Greg Stone presented at the conference on the topic of cross examining expert witnesses.

➔ Kristi Dean prevailed on an arbitrated matter to enforce a settlement agreement related to a trade secrets dispute. Earlier this month, Kristi also spoke at an IBA-SFV breakfast meeting regarding business competition and trade secrets law.

➔ Several attorneys at the firm will be participating in a continuing education course in La Jolla on January 10, 2014 at the California Insurance Wholesalers Association Industry Days. The mock trial script, written by Kristi Dean, offers CIWA attendees an opportunity to participate in an abbreviated sexual harassment trial. Robyn McKibbin and Leslie Blozan will both be attending and participating.

➔ Reminder: Under the Affordable Care Act, employers were required to inform its employees of the existence of the new health insurance marketplace (or "exchange"), a description of services, and how to contact the marketplace by October 1. Also, each new hire must receive the notice within 14 days of their start date. Please contact SCD for the requisite forms

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