SPRING 2013

atissue

A **STONE CHA & DEAN** PUBLICATION

inside this issue:

SCD Client is Vindicated by California Supreme Court Ruling | 3

Welcome!

STONE CHA & DEAN is honored to share our Spring 2013 **atissue**. For our regular readers, you'll notice our fresh new look along with informative and entertaining articles that update you on the latest laws, court cases and trends, and how they impact your world. You'll also find recurring features, such as:

- Latest Legalities – Current entertaining stories and cases in the world of law.
- Q&A with SCD – Read about a member of the SCD team who will answer "hard-hitting" questions, such as "What was your most horrifying moment as a young lawyer" or "What are your superstitions while in trial?"
- News & Announcements – Our lawyers and staff taut accomplishments, activities, and results.

We also feature our newsletter in digital format that you can find on our new website, and we will keep you updated with our interactive blog. We thank you for your continued patronage!

– Greg, John, and Kristi

NEWS & ANNOUNCEMENTS

SCD promotes Robyn McKibbin to Partner and chair of the Employment Law practice group.

➔ After obtaining a $1.6M award against a corporation and forcing the defendant into bankruptcy, Kristi Dean and Leslie Blozan successfully obtained post-judgment court approval to add the company's two corporate officers as defendants on an alter ego theory. SCD's client can now collect against the individuals.

➔ Congratulations to John Cha and Robyn McKibbin for settling at mediation an employment case that contained a panoply of allegations, from wage & hour to race discrimination, harassment, and wrongful termination. After an initial $1.5-million demand, plaintiff accepted our clients' final and best offer of a fraction of the demand.

➔ John was also involved in separate commercial real estate transactions where the properties' aggregate value exceeded $25-million. In each transaction, John represented the sellers.

➔ Congratulations to Venessa Martinez and Greg Stone for settling a very difficult, multi-party wrongful death case to the satisfaction and well within the budget of one of SCD's long standing clients.

CONTINUED ON BACK COVER

Stack 'Em High: The New Law on Stacking Insurance Policy Limits

By Leslie A. Blozan, Esq.

Until August 2012, California law did not allow aggregating, or "stacking," of insurance policy limits in cases of continuing property losses. A single policy limit applied to a covered risk despite multiple policies issued over multiple years, often leaving defendants underinsured.

In *State of California v. Continental Ins. Co.*, California's highest Court overturned existing law. For several years Continental and other carriers insured a toxic waste site that operated between 1956 and 1972. Each policy had similar language. After a court ordered cleanup of the site, the insured demanded indemnity for damage that occurred over many years, with indivisible injuries and no identifiable cause. The Court required each insurer to pay "all sums" up to the limits of each policy, to comport with the parties' "reasonable expectations" of coverage, noting that insureds pay and carriers receive premiums for each year and they should receive the benefit of the coverage. Now, all policy limits are applied to form an "uber policy" with coverage limits equal to the sum of all available policies.

Insurance carriers are justifiably concerned about this ruling, as it complicates underwriting for many risks. Carriers are free to alter the language of their policies to prohibit the stacking of policy limits and consumers should be mindful of new policy limitations in future policy forms.

SCD Client is Vindicated by a California Supreme Court Ruling

By Robyn M. McKibbin, Esq.

The Fair Employment & Housing Act ("FEHA") prohibits an employer from taking an employment action "because of" a protected characteristic. A plaintiff alleging discrimination must prove a causal link between protected status (sex, race, disability, etc.) and the defendant's employment decisions. Sometimes evidence establishes that there were "mixed motives" for an employment action — both lawful and unlawful factors contributed to the termination decision. Under the mixed-motive defense, cases have held if the employer's action was motivated by both discriminatory and non-discriminatory reasons, the employer is not liable if the legitimate reason alone would have led to the same decision.

Standardized jury instructions do not address the mixed-motive defense. We recently defended a national-origin discrimination trial in San Bernardino and were denied a special jury instruction describing the mixed-motive defense. Shortly thereafter, the California Supreme Court ruled that denial of a special jury instruction was reversible error in *Harris v. The City of Santa Monica*, resurrecting the mixed-motive defense for employers.

In *Harris*, a bus driver alleged that she was fired because of her pregnancy. The City claimed she was terminated

CONTINUED ON NEXT PAGE

CONTINUED FROM PAGE 3

due to poor performance, including two "preventable" accidents. The performance issues were already documented when Harris told her manager she was pregnant. Shortly thereafter a list was distributed of probationary drivers who were not meeting standards for continued employment, including Harris. Harris was terminated. The City requested and the court refused to adopt a jury instruction pertaining to its mixed-motive defense. The jury found the City liable and awarded $177,905 in damages and $401,187 in attorney's fees.

The City appealed and the Supreme Court reversed, holding that plaintiff must prove that discrimination was a *substantial motivating factor*, not simply *a* factor. If an employer proves legitimate, nondiscriminatory reasons would have led to the employee's firing, a plaintiff is not entitled to damages, backpay, or an order of reinstatement. Additionally, the Court held the amount of "reasonable" attorney's fees and costs must not encourage "unnecessary litigation of claims that serve no public purpose either because they have no broad public impact or because they are factually or legally weak."

The day the *Harris* opinion was issued, plaintiff's counsel in our case initiated settlement discussions.

Plan for Elder Care. Protect Your Family.

By Leslie A. Blozan, Esq.

California is one of 30 states with filial responsibility law that requires an adult child to support a needy parent. Parents and counties providing support to parents can sue for support or reimbursement. (*Family Code sec. 4400*) Other states have statutes that allow for different types of enforcement. Some, like California, allow for a civil suit to be filed for support or cost recovery. Some impose a criminal penalty. Some states allow both.

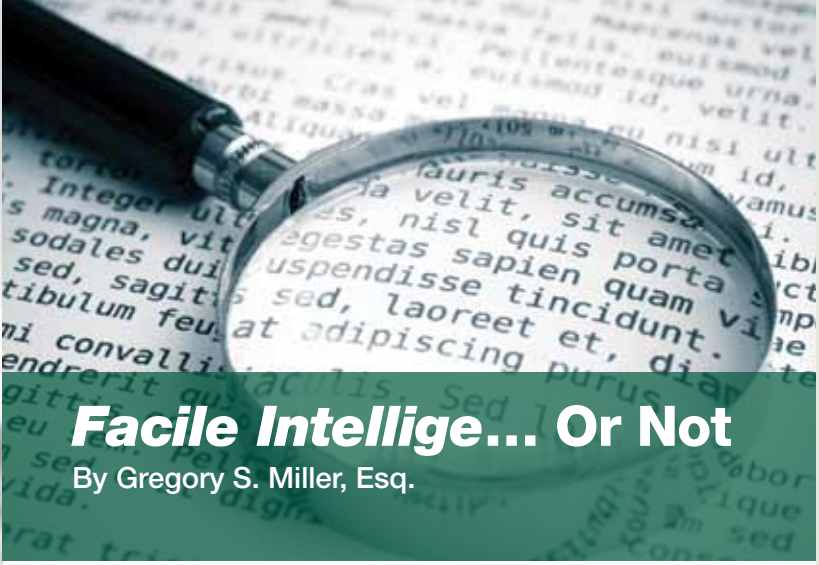
Enforcement of these laws used to be reserved for instances where adult children defrauded their elderly parents and looted family wealth. The last California case that addressed the filial responsibility statute was in 1973. Confronted with the new reality of shrinking public resources and growing needs, enforcement may step up.

Pennsylvania, South Dakota, and North Dakota have enacted laws that allow third parties to recover the costs of care given to indigent parents if the adult children have the means to pay. Nursing homes and care facilities can now seek reimbursement from an adult child for the costs of services rendered to a parent.

"In states without third party remedies, care facilities use contract rights and 60 days' notice in order to move out without penalty, even if the resident dies. Surviving family members can find themselves responsible for the costs. In *Health Care Corporation of America v. Pittas* (May 17, 2012), the Pennsylvania Court of Appeal upheld a judgment for $93,000 entered against an adult son for care given to his indignant mother. Now, observers ask whether *Pittas* reflects a new trend wherein family members are sued to pay the elders' debts.

Skilled nursing home costs in Los Angeles County can easily exceed $7,000 per month. Assisted living and residential care facilities

CONTINUED ON NEXT PAGE 6



Facile Intellige... Or Not

By Gregory S. Miller, Esq.

A number of Latin terms are still used in legal terminology and legal maxims. This is a partial list of these terms, which are wholly or substantially drawn from Latin. Perhaps you have encountered some of these terms and have wondered what their literal definitions are.

Legal Term	Definition
Pro tem	Something, such as an office held, that is temporary. Generally used in the Los Angeles superior court to designate a temporarily appointed hearing officer. The parties must generally stipulate to allow a judge pro tem to hear issues that are before the court.
Subpoena	A writ by a government agency, most often a court, that has the authority to compel testimony by a witness or production of evidence under a penalty for failure to comply.
Respondeat superior	A legal doctrine that, in many circumstances, holds an employer responsible for the actions of employees performed within the course of their employment.
Pro Bono	Professional work undertaken voluntarily and without payment or at a reduced fee as a public service. It is common in the legal profession and is increasingly seen in marketing, technology, and strategy consulting firms. Pro bono service, unlike traditional volunteerism, uses the specific skills of professionals to provide services to those who are unable to afford them.
Prima facie	A matter that appears to be sufficiently based in the evidence as to be considered true.
Pro per	Pro se legal representation means advocating on one's own behalf before a court, rather than being represented by a lawyer. This may occur in any court proceeding, whether one is the defendant or plaintiff in civil cases, and when one is a defendant in criminal cases.

Recent Significant Changes to the Los Angeles Superior Court

By Gregory Stone, Esq.

No more court-ordered mediations

Most cases litigated in Los Angeles County are ordered to mediation before trial. Historically, court-ordered mediations have been a very effective means to resolving lawsuits. Of the cases ordered to mediation, most are assigned to mediation through the court's Alternative Dispute Resolution (ADR) Department. The ADR department recently announced it is scheduled to close by June 28, 2013. According to the ADR Committee Chair the closure is due to the court's "devastating budget crisis." Statistically, approximately 95% of all lawsuits are terminated before trial. Some are dismissed by dispositive motions such as summary judgment; others are just abandoned, but most get resolved by settlement. Ironically, the closure will probably result in more costs being expended for cases that simply will not go away.

I have been a court-appointed mediator for the Los Angeles Superior Court for over 10 years and found it to be a rewarding experience. I am proud that I have played a part in assisting the court in resolving cases and getting those cases off the court's docket. I intend to continue mediating cases privately.

All personal injury cases valued at over $25,000 must be filed in the Downtown Los Angeles Courthouse

This change is also being made for budget reasons and will become effective as of March 18, 2013. Prior to this change all personal injury cases were required to be filed in the branch court where the alleged injury occurred (i.e. Santa Monica, Van Nuys, Pomona, Chatsworth, etc.). Now the cases must be filed downtown in the Central District regardless of where the injury occurred. Although nobody ever really knows how a jury will receive or interpret any fact or piece of evidence, a particular branch court assignment gave the litigants some predictability as to the make-up of the jury pool and also allowed witnesses and parties to usually have their case litigated in the venue where he/she works or lives. It is unclear where these cases will ultimately find a home for trial and how this will affect jury summonses and the length of time it will take to get a case to trial.

Also due to budgetary constraints, many Los Angeles County branch courts will be closed. At this point it is not clear which branches will survive the budget crisis.

CONTINUED FROM PAGE 4

can cost $5,000 or more per month. Sub-acute care can cost up to $35,000 per month. Social Security and Medicare only pay for specific services, over limited periods of time, and do not include long term care of the aged or infirm in residential care or assisted living homes. Medicaid may pay for such care, but at a daily rate far below the cost of a desirable residence. Often the choices are stark: depletion of personal wealth to the point of poverty to qualify for public assistance, or payment of enormous amounts for care, leading to poverty for a surviving spouse.

Adult children of elderly parents must take care as to what obligations and debts they assume if they identify themselves as the "responsible party" on medical or care records. At the same time, care facilities may discover a new source of income from the pockets of well-meaning family members.

California Expands Protections for Religious Dress and Grooming and Social Media Privacy Law

By Robyn M. McKibbin, Esq.

Your Dress. Your Grooming. Your Business.

The religious discrimination portion of the Fair Employment and Housing Act ("FEHA") has been expanded to include religious dress and grooming practices. The wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts and other items are now protected activities. "Religious grooming practice" includes all forms of head, facial and body hair that are part of the observance by an individual of his or her religious creed.

When an employee requests an accommodation for a religious observance, the employer must engage in good faith efforts to accommodate the request or determine that no accommodation is possible without producing undue hardship, e.g. "significant difficulty or expense," to the company. The reasonableness of the employer's efforts to accommodate is determined on a case-by-case basis.

The law is in response to several lawsuits alleging failure to accommodate a religious belief. Segregating an employee who wears a hijab (headscarf) from coworkers and the public is not a reasonable accommodation. Also, an employer who refused to hire a Sikh male applicant for refusing to shave his beard due to purported safety reasons, failed to show an undue hardship because the employer failed to explore potential alternatives to accommodate his religious proscription against shaving his beard.

Password Protected

Employers cannot request passwords or login credentials or demand access to any content of employees' "personal" social media accounts. Employers can request personal social media information reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

Employers should review their current policies and practices and ensure managers and supervisors are properly trained on accommodation and privacy issues to avoid potential disputes.

Latest Legalities

By Kristi W. Dean, Esq.

For your entertainment, here is a savory sampling of interesting and topical litigation across the country.

Consumer Surprised to Learn that "Fruit" Roll-Ups are Not Healthful

The U.S. District Court in California considered a class action lawsuit brought by a consumer who complained about the allegedly misleading qualities of General Mills snacks, Fruit Roll-Ups and Fruit by the Foot. Class representative Annie Lam claims she purchased snacks for her family and was "surprised" to discover that over half of each serving comprised of trans fats, added sugars, artificial food dyes and no dietary fiber. The Court noted the ingredients were fully listed on the product (though in small print) and Federal regulations permit labeling a product as "natural strawberry flavored," even if that product contains no strawberries. The Court also rejected the argument that the snacks' labeling was deceptive just because the products' ingredients, not their flavors, are unnatural. However, the Court allowed the case to proceed on the potentially misleading statement that the snack was "made with real fruit." An unsuspecting consumer might be "lulled" into thinking the snacks are healthful when they are an amalgamation of artificial ingredients. The Court distinguished the defendant's reliance on *Werbel v. Pepsico* decided in 2010 which dealt with Froot Loops. In *Werbel*, the Court found that no reasonable consumer could mistake "cereal balls with a rough, textured surface in hues of deep purple, teal, chartreuse green and bright red" for natural fruit. The fruity consumers continue to prosecute their claims.

A Golden Nugget of a Products Liability Lawsuit

In August, an Atlantic City casino sued fourteen Chinese gamblers who won more than $1.5 million in baccarat. Apparently the playing cards, purchased from a card manufacturer, were supposed to be pre-shuffled, but they were not. The gamblers easily detected a pattern in the dealt cards which, over 41 hands, allowed them to increase their bets from $10 to $5,000 while the dealer continued to deal even though the cards were obviously in the same order. The gamblers sued on claims of racism, battery (one patron was put in a headlock) and false imprisonment (detained by the casino's security guards) when they attempted to cash in their winnings and the casino refused to pay. The casino claimed the unshuffled cards violated state gambling regulations that mandate fair odds. The Court rejected the casino's arguments and told the casino to pay the winners. The casino has sued the card maker to recoup the money, claiming the cards were "defective."

Sex Addict Makes Bad Business Partner

An investor is suing her former paramour and business partner for fraud and breach of fiduciary duty after lending him $225,000 for his Manhattan spa "Body Evolutions." According to the complaint, the spa's founder is a "self-admitted sex addict" who seduced his trainers and customers and then rudely broke up with them by posting messages on Facebook . Plaintiff, a 39 year-old Buddhist monk, claims she was "fraudulently induced" (or is that "seduced") into investing in the business, while her partner took "regular naps to preserve his energy." Defendant retorts his accuser is "romantically obsessed" with him and is bitter because he refused to have sex with her after they formed the "partnership."

Anheuser-Busch

Anheuser-Busch is in hot water due to a class-action suit that claims they are watering down their products. Consumers believe that the labels on the alcohol are misleading, or incorrect. Anheuser-Busch has denied this claim.

"Tanning Mom"

Patricia Krentcil, the "Tanning Mom," *will not* be convicted of child endangerment. It was alleged that her five year-old daughter developed a sunburn because Mrs. Krentcil took her to a tanning salon, which is illegal for anyone under the age of fourteen. The Court concluded that she was sunburnt after spending time outside, not due to the ultraviolet rays of a tanning bed. Perhaps in an effort to set a better example for her daughter, Mrs. Krentcil has since stopped tanning and her skin has returned from its pumpkin-like shade to its natural color.

STONE CHA & DEAN
A LIMITED LIABILITY PARTNERSHIP

21550 Oxnard Street
Main Plaza, Suite 200
Woodland Hills, CA 91367

NEWS & ANNOUNCEMENTS

➔ Congratulations to all of our **Super Lawyers** partners who have been consistently recognized since 2005 and to Venessa Martinez for being recognized by Super Lawyers as a **2013 "Rising Star."**

➔ Kudos to Suzanne Feffer for obtaining a court order prior to a jury trial in Van Nuys Court eliminating a substantial claim by plaintiff in a personal injury lawsuit. That claim alone exposed SCD's client to over $500,000 in monetary damages. The court order was instrumental in Greg Stone obtaining an outright defense verdict in that jury trial with the jury deliberating for just over an hour.

➔ Amy Lewis successfully obtained a dismissal of a complex litigation matter, and then on appeal, persuaded the higher court to affirm the trial court's dismissal; our client was also awarded costs.

➔ Recognition to Suzanne Feffer for her over 20 years of tireless pro bono work for the County of Los Angeles courts.

➔ Congratulations to Greg Stone and John Cha who received Certificates of Appreciation from the Los Angeles Superior Court after 10 years of service on the court-appointed mediation panel. This past quarter both Greg and John successfully settled several cases and now serve as private mediators as part of SCD's practice.

STONE CHA & DEAN LLP
21550 Oxnard Street
Main Plaza, Suite 200
Woodland Hills, CA 91367
T: (818) 999-2232
F: (818) 999-2269

Questions or Comments:
Michelle Macias – Editor
mmacias@scdlawllp.com

Contributions By:
Marleigh Green

VISIT US ONLINE:
www.scdlawllp.com

STONE CHA & DEAN is a business law firm specializing in business transactions and litigation. We represent businesses and their owners in the areas of Litigation, Business Transactions, and Employment.

atissue is the newsletter of STONE CHA & DEAN and is comprised entirely of material researched, developed, and written by the attorneys, clerks, staff, and friends of the firm.