

# atissue

A **STONE** | **DEAN** PUBLICATION

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# A Word from the Partners

## Happy Holidays to clients and friends of Stone | Dean!

We hope you enjoy the Winter 2021 Edition of At Issue. In this issue, we address the legal and practical challenges of running a business in a post-Covid world. We also explore the impact that Covid has had on new and novel claims being asserted against California premises owners.

As we transition to a new year, and relocate our firm to our very own building, we appreciate the opportunity to serve our clients with integrity and understanding, giving them exceptional value at every step of the way. Without our clients, we would not exist, so thank you for the loyalty and continued support. We hope you all have a safe, healthy and prosperous 2022!

Sincerely,

*Greg Stone and Kristi Dean*



## Our New Home

**It has long been a dream of Partners Greg Stone and Kristi Dean to house Stone | Dean in its very own building.**

After many months of looking, this dream has been realized. As of December 13, 2021, Stone | Dean has relocated to its very own and permanent home at 21052 Oxnard Street, Woodland Hills, California 91367. It is a single story building on the corner of Variel and Oxnard which is just blocks from our current location. The space is perfectly suited for Stone | Dean, with large conference rooms, spacious offices, and a large kitchen and will enable our firm to continue to grow and flourish in Warner Center.



# The Challenges of Running a Business in the Post-COVID World

By Kristi W. Dean, Managing Partner

As a person who relies upon planning all things, the last eighteen months have taught me that you cannot plan for everything. I still remember that fateful day in March 2020 when our government shut down virtually all businesses to safeguard our health and I spent the weekend obsessing over how to stay in business while protecting my work family. Since then, it has been a struggle to keep updated on the changing laws, take steps to guard against risk, and maintain productivity.

Not only has COVID changed employer policies and demanded new procedures, but employees' needs have also changed the workplace environment. Before COVID, we never imagined our employees would be working from home more than the office. What was once a rare phenomenon, intermittent accommodation for specific reasons, employees now demand the flexibility to work from home. This new phenomenon requires a mutual understanding regarding expectations and a compromise to ensure collaboration. It also requires employers to be mindful of the problems working from home, such as time management problems, avoiding distractions, digital miscommunication and lack of team collaboration.

Some of the COVID laws have been retired now the worst is over (knock on wood), such as Cal/Osha's Exclusion Pay under Emergency Temporary Standards and the end of Supplemental Paid Sick Leave which both expired September 30, 2021. However, other laws remain in force. Here is a sampling:

## **COVID Notifications:**

Employers must provide written notice within 24 hours to workers who might have been exposed to someone with COVID-19 and could face fines for violations. This law remains in effect until 2023.

## **Expanded Workers Compensation Benefits:**

A law has expanded workers' compensation help for those who might have contracted the virus on the job. This law remains in effect until 2023.

## **CFRA Expansion:**

Effective January 1, 2021, California expanded the California Family Rights Act ("CFRA"). It now applies to all employers with five or more employees, expands coverage to include

providing care to a broader span of family members for a serious health condition, and eliminates restrictions. An employee qualifies for CFRA leave if that employee worked for at least twelve months over a seven year period and worked at least 1,250 hours in the twelve month period prior to taking CFRA leave.

## **Written COVID Prevention Plan:**

Employers must develop a written COVID-19 prevention plan which may be incorporated in a broader injury and illness prevention program or can be kept in a separate document and must include criteria for returning to the workplace, testing obligations, requires documenting compliance efforts in writing.

While not legally mandated or required, employers should take further steps to manage the hybrid work-from-home revolution:

## **Telecommuting Agreements:**

Establish written document production requirements and expectations, with a clear understanding that failure to meet those production requirements might terminate the remote work benefit to the employee. In addition, a Telecommuting Agreement can be used to affirm work hours, meal/rest breaks and track equipment usage.

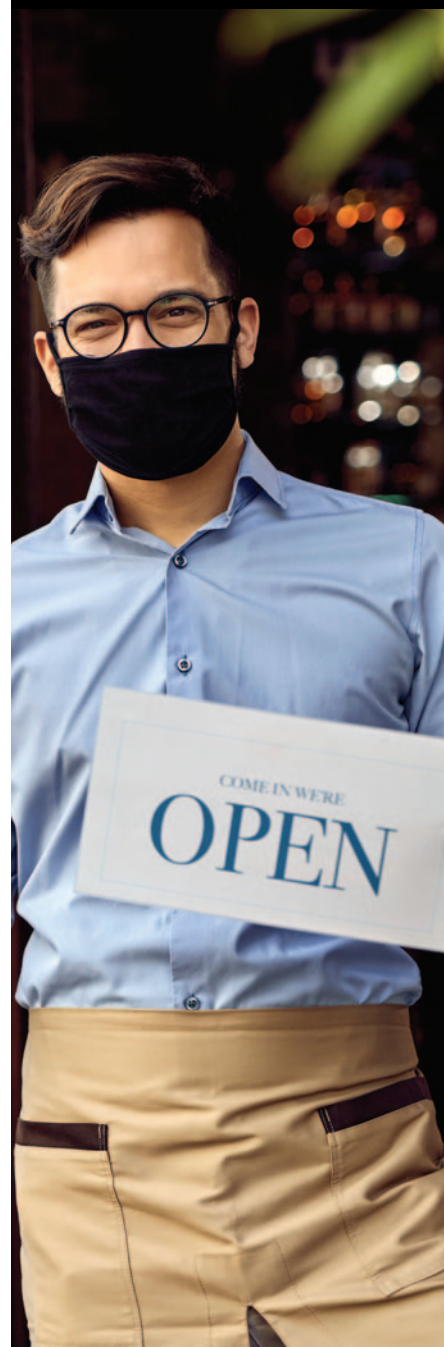
## **Regular Check-Ins and In Person Collaboration:**

The hybrid workplace requires management and teams hold regular meetings to take the pulse of employees and ensure effective communication on projects and deadline management. There is no substitute for periodic, safe in-person collaboration.

## **Reaffirm and Readjust Company Core Values:**

Core values provide direction while operating during the COVID-19 era. Why do you do what you do? What are our values? What are our priorities? Keep your employees focused by spotlighting your organization's mission and purpose (the "why") and your company's culture and values (the "how").

The spirit and principals of your business can carry it through times of uncertainty. Attention to your core values can help you maintain a culture of health even when the world is unsafe. Written procedures and legal compliance also require constant attention. Stone | Dean is here to help small businesses with those challenges.







## Welcome Aboard!

Stone | Dean is pleased to announce the addition of a number of skilled and seasoned litigators to our Woodland Hills, California office.



### David Breitburg

David Breitburg brings his 35 years experience as a civil litigator to our firm. During his career, he has handled a wide range of cases including major exposure cases, catastrophic injuries and complex personal injury defense and has a long history of successful trials and mediations. He will be a valued member of the Insurance Defense Practice Group at Stone | Dean. Mr. Breitburg was educated at the University of Cincinnati where he received a Bachelor of Arts. He received his Juris Doctor at Southwestern School of Law. He is admitted to all California state courts, and is admitted to the Central District of California and Ninth District Court of Appeals. When he is not practicing law, he spends his spare time with his family, including hiking and going to the beach.



### Joe Lara

Joe Lara brings his 6 years' experience as a civil litigator to our firm. During his career, he has handled a wide range of cases including trade secrets disputes, complex business litigation, and commercial real estate litigation and has a history of successful trials and mediations. He will be a valued member of the Complex Litigation, Trade Secrets, Employment Law, and Insurance Defense Practice Groups at Stone | Dean. Mr. Lara was educated at Hawai'i Pacific University where he received a Bachelor of Science while serving in the U.S. Navy. He received his Juris Doctor at Trinity Law School. He is admitted to all California state courts, and is admitted to the Southern District of California. When he is not practicing law, he spends his spare time with his family, including cooking and going to the beach.



### Alisa Morgenthaler

Alisa Morgenthaler brings over 30 years of experience as a civil litigator to our firm. During her career, she has handled a wide range of complex business and commercial litigation cases, including those in real estate, construction, debtor/creditor, banking and financial institutions, employment, copyright/trademark, insurance, class actions and securities litigation. Alisa also serves as an employment litigation arbitrator and has served as a Judge Pro Tem of the Los Angeles Superior Court. Ms. Morgenthaler was educated at Missouri University where she received a Bachelor of Arts and received her Juris Doctor from Cornell Law School. She is admitted to the state courts in New York, Washington, D.C. and California, the Central District of California, and Ninth District Court of Appeals. When Alisa is not practicing law, she serves on the Boards of several community organizations and charities. She is the President of the South Brentwood Residents Association.



### Will Johnson

Will Johnson has been a practicing civil litigator for 35 years in the greater Los Angeles area and during his storied career has skillfully handled an extensive assortment of complex personal injury cases covering a litany of areas of practice including premises liability, product liability, medical malpractice, animal attacks, defamation and fraud and has a history of success in his trials, arbitrations, settlement conferences and mediations. Will will be a valued member of the Insurance Defense Practice Group at Stone | Dean. Mr. Johnson is a native Californian and received a Bachelor of Arts from the University of Santa Barbara and his Juris Doctor from University of Southern California. Will has long been admitted to all of the California state courts as well as the Southern District of California. Will spends his time away from the office traveling to locales still on his Bucket List with his fiancée and enjoys hiking the local mountains with his dog and attending live music and sport events.



## Pandemic Pleadings

By Suzanne R. Feffer, Senior Associate

### **The pandemic has spawned a whole new branch of claims unimaginable two years ago.**

If we have learned anything in the recent past, it is that the pandemic, and the response to it, has proven to be quite fluid. With a thin line between fear and anger, issues were inevitable. Add a heaping dose of passionately held beliefs, perhaps we should not be surprised to see pandemic related claims and litigation. How those disputes will be received by juries will likely largely depend on the framework in which they ultimately come to trial. For example, healthcare and grocery employees who worked long hours and at risk when most businesses were closed were viewed as heroes. Over time, it seems that the public has grown tired of the accolades given these individuals. It is not uncommon that people are reluctant to revisit or re-experience trying times in their lives, but the defense of these claims may require that we ask jurors to do just that.

Below are just some of the pandemic related claims we have seen.

#### **Face Masks**

It was inevitable that claims would arise when customers otherwise disinclined were asked to wear face masks either to enter a store or purchase items. At first blush, these cases will likely be resolved based upon state or local requirements in effect. Even in the absence of formal regulations, a private business is free to set standards for those on its premises. No shirt. No shoes. No service.

Slightly more complicated issues arise when there is an encounter in the store between a customer and employee or even another customer. One would think merely asking that someone put on a mask (or wear it properly) should not pose a problem. But recent claims suggest otherwise.



## Lessons Learned

By Gregory E. Stone, Founding Partner

### **Often, attorneys are asked, "can you sue for that"?**

Usually, the answer is "yes." Anybody can sue anybody for anything and sometimes what might seem frivolous and something the court should throw out do not be so sure. The case might carry significant exposure if not handled appropriately. Here are couple of lessons recently learned by SD clients.

#### **If an employee appears to be under the influence or intoxicated, the Employer should not just send the person home but take steps to make sure the employee gets home safely.**

Imagine your employee shows up to work and within 10 minutes of clocking in, others comment the employee is "out of it", "messed up", or "smelling like Jack". Obviously, you need to send him/her home. What if that employee who was suspected to be intoxicated is sent home and while driving crosses the center divider and kills someone?

Even if that employee gets convicted for drunk driving and sent to prison, the employer could still face civil liability. Getting the court to throw it out is not a lock. At trial a jury can apportion liability meaning the jury will have to attribute something to the drunk driver but could

#### **In Store Safety Measures**

Though it seems like a lifetime ago, retailers were very recently left to quickly knit together some means by which to protect employees and other customers. While many grocery stores have offered sanitized carts wipes for years, liquid hand sanitizer was also made available to customers. In addition to the risks associated with cart wipes that fall to the floor, there is the potential of spills of liquid hand sanitizer (often a clear substance).

Early on in the pandemic, retailers struggled to keep product on the shelves and attend to the needs of customers. Under those emergency circumstances, floor maintenance procedures may have been modified. While at the time, it may have felt like a lucky break to get into a store, let alone to find toilet paper or paper towels, but three or four years later when claims from that time go to a jury, it will be hard to know how a jury will respond to claims arising during that time.

Many retailers also constructed some means by which to separate employees and workers. Whether by clear shower curtain or plastic dividers, retailers scrambled to erect some protections for employees. This has given rise to new problems. Over time, falling or broken dividers can pose a risk to customers and/or create a floor hazard.

#### **Customers Outdoors**

With store capacity limited, customers wishing to shop were invited to wait outside until other customers exit the store. Customers waiting outside have reported issues flowing from everything from the weather to dangerous drivers in the parking lot.

In the truest sense, we will not know the full breadth of the pandemic claims for another year or two. Defense of those claims will likely focus on efforts by the employer to protect customers and employees during this very unusual time.

apply some percentage to the employer. For example, if the jury finds the drunk driver is 80% responsible, the employer will be responsible for 20% of the total verdict as it relates to non-economic damages (such as grief and anxiety) and can still recover 100%, of the economic such as financial losses (loss of earnings etc) even if the jury only apportions 1% to the employer.

**Lesson Learned:** If you are an employer and one of your employees appears to be intoxicated, make sure that person gets home safely.

#### **Killing a neighbor's tree can sometimes expose you to more liability than harming a human being or a pet.**

California law protects trees. If you end up cutting your neighbor's tree(s) because you want to increase your view or it might be shedding leaves on your property, understand that doing so carries significant penalties and damages. If it's intentional you could be exposed to three times the value of replacing the tree(s). If it is a mature tree, replacing it could exceed six figures. If you are mistaken as to whether the tree was on your property line, negligently cutting a tree could still expose you to two times the tree(s)' value. The owner of the tree could sue for emotional distress damages and likely be able to recover attorney's fees in pursuing the lawsuit.

**Lesson Learned:** Make sure you know what you're doing before you just haphazardly cut your neighbor's tree(s) because if you are wrong, it could cost you big time.



# Jury Service in Time of Quarantine

By Leslie A. Blozan, Senior Associate

As the state and nation ease out of strict quarantine protocols, the California court system is once again in business. Jury trials are now taking place in the new landscape of social distancing and it is a strange landscape, indeed.

Throughout the pandemic, some courts closed completely. Others continued trials on a limited basis. In Los Angeles County, things ground to a near halt. Criminal trials proceeded on a limited basis. Probate and family law courtrooms worked a restricted schedule and unlawful detailers ceased entirely.

In the civil jury trial realm, everything stopped. All trial dates were extended. Statutory mandates on the time limit to bring cases to trial were eased, allowing a moratorium of the time calculations so cases that could not be tried would not be dismissed. Slowly, jury trials resumed, with new protocols of social distancing and mask wearing, moving a stressful experience into the surreal. Typically, an ordinary civil jury can be selected in one day. Jurors are called; a panel is seated; questions are asked; and jurors chosen. In the new reality, nothing is the same, with jury selection now taking days and extending the overall length of trial.

The first problem is that jurors simply stopped answering their summons. Perhaps they moved and left their old addresses. Perhaps their fears of covid exposure trumped their fears of legal consequences. Regardless of the reason, often the attendance rate was below 40% of those called.

Of those jurors who do appear, another 40% are often excused for a multitude of reasons. Up until recently, parents have been supervising their children's school attendance. Single parents were especially burdened by at-home schooling, rendering jury participation impossible. Many self-employed prospective jurors are just returning to work. Unavailability due to jury service is a serious economic hardship. Others have medical conditions that render them especially vulnerable to virus exposure. In a recent trial, a panel of 45 jurors was ordered up. Of that number, 19 appeared. Of that number, after excuses for cause, only 11 remained.

Jurors used to meet in assembly rooms. Those rooms are now closed. They cannot assemble in

the halls, so are now instructed to appear in the trial department. Wearing masks, they must space themselves throughout the courtroom, both in the jury box and in the gallery.

Courtrooms formerly open are now encased in plexiglass. There are shields around the clerk; the bench; the witness stand; the court attendant's and court reporter's desks; and in some instances, counsel tables. Between the cubicle segregation and wearing of masks, acoustics become impossible. Conversations are muffled and testimony is difficult to understand. Even with microphones, simple communication is difficult.

Courthouses usually have cafeterias of varying quality, offering coffee and snacks, or complete, cooked-to-order meals. Those amenities are now closed. Depending on the courthouse, this places jurors, litigants and counsel in a difficult position. Everyone may bring their own food, but no one may sit in the halls to eat it. Some courts are located in food wastelands, with no easily accessible lunch options within walking distance.

Once trial begins, strict distancing protocols are observed. Jurors are spaced out throughout the courtroom. Now, counsel questioning a witness may have their back to jurors, unable to see them or their reactions to testimony. The connection between attorneys, witnesses and jurors is impaired, as mask-wearing prevents the non-verbal communication essential to a juror's ability to evaluate a witness and their credibility.

Depending on the length of the trial, jurors may drop out. The longer the trial, the greater the risk. If a juror tests positive for covid, the entire panel could be quarantined. A mistrial could result, necessitating a fresh start with a new panel, repeating the entire process.

Remarkably, despite the new hurdles, the system continues to work thanks to the herculean efforts of court administration; the participants in each case tried; and especially the jurors who recognize the burden and privilege afforded to participate in the adventure of a jury trial. As time passes, things will likely ease up. Cafeterias and jury rooms will reopen and we may return to something resembling the way it was in the before time. For now, we soldier on.





# Alicia Gonzalez Showcases Her Talents on the Price is Right

In addition to being a RAVE Award Winner and Legal Assistant Extraordinaire, Stone | Dean's own Alicia Gonzalez was the winner of the "Showcase Showdown" on a recent episode of "The Price is Right." Alicia brought home a MacBook with laptop stand, a new 2019 Chevy Spark, and a trip to Florence, Italy. Alicia offered some sage advice for being picked to be a game show contestant. "If you want to hear them call you to 'Come on Down,' you need to have an outgoing personality and exude friendliness and energy. If you want a shot at being picked, make sure you smile, scream and jump around a lot!" Alicia is winner both on stage and off. Congratulations!



## Case In Focus

By Gregory E. Stone, Founding Partner

Congratulations to Greg Stone and Leslie Blozan on obtaining a defense verdict on a hotly contested slip and fall jury trial. It was one of the first, post-COVID jury trials in Los Angeles County.

"Jury trials are always a challenge. Whether we are trying a slip and fall, breach of contract, manslaughter hit and run, real estate, employment harassment, defamation, fraud, and embezzlement, etc., there is always an element of 'rolling the dice' when you reach that last resort and take your case to a jury"...said Greg.

This case presented some unique challenges due to COVID. Everyone without exception was required to socially distance and wear a mask. Normally, jury selection is completed in one day, sometimes carrying over to a second day. In this trial it took several days to complete jury selection, also known as "Voor Dire." Because of social distancing only a small panel of jurors would show up for selection at one time. The first day we had only 15 jurors to interview and 7 were released at the outset for hardship, leaving only 8. Usually the court orders a panel of close to 50. It took over three days and several panels until enough jurors were sworn to sit on the case. The participants were scattered throughout the courtroom and attendance was limited to socially distance.

This case should have settled, and trial avoided. SJD's client made a very generous offer, but Plaintiff rejected it. In fact, the parties informally entered into a deal at a virtual, Mandatory Settlement Conference held by a sitting judge at the Santa Monica courthouse. Before the deal was signed, Plaintiff changed her mind; replaced her attorney and insisted on a jury trial.

Although it was undisputed plaintiff suffered a fractured hip and a mild concussion, the Traumatic Brain Injury (TBI) allegation was contested. Specifically, plaintiff alleged when she fell and hit her head she sustained Hydrocephalus, or "water on the brain."

The defense felt plaintiff's settlement demand was not warranted and there was a strong probability the jury would side with it. They were correct. The jury found in favor of the defense. Because of the favorable defense verdict, plaintiff recovered zero and ended up owing the defendant its court costs and expert witness fees exceeding \$50,000.

It is almost always better to settle a case because one never knows how a jury will interpret the evidence. Another jury sitting on this case could have found the opposite way with the same facts.





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## NEWS & ANNOUNCEMENTS

→ The fourth quarter of a calendar year is always busy for mergers and acquisitions. This quarter Kristi Dean, our managing partner and team leader of the firm's M&A department, handled an eight figure sale for our wholesale insurance broker client, a seven figure purchase for another insurance wholesale client, and a six figure purchase for a moving and storage client.

→ Kudos to Greg Stone for settling over 50 cases through Zoom mediations. "Zoom mediations are very productive. One day I mediated a case in San Diego in the morning and then another in the afternoon in San Luis Obispo. Both Settled. No way I could have done that without Zoom. Shirt and Tie (and as far as you know) perfectly pressed pants."

→ Next stop, Hollywood, for partner Gregg S. Garfinkel who in the last month has been interviewed by a local CBS affiliate as well as a North Carolina ABC affiliate regarding the recent spike in mover fraud in our Post-Covid economy. Gregg offered valuable advice to the moving public on how to avoid unscrupulous movers (and brokers) who are preying upon customers seeking to relocate. Links to each broadcast will be provided upon request.

→ Kudos are also in order for Gregg for a series of pre-trial wins that he secured for two of his national transportation clients and a frozen food distributor. These were all hotly contested matters which were resolved via summary judgment.

→ Kristi Dean and Alisa Morgenthaler successfully obtained a judgment on behalf of its client, a wholesale insurance surplus lines broker, who was being sued by a policyholder who lost a home to the Woolsey fire and found the limits were allegedly insufficient to rebuild the home. Stone Dean filed a motion for summary judgment on the issue of the wholesaler's duty to the policyholder, and the court agreed with Stone Dean that its client owed no duty to the policyholder for adequate coverage. Stone Dean has a robust and experienced practice group focusing on insurance law and in particular, insurance agent and broker errors and omissions claims.

→ Greg Stone successfully defended a landlord/client and obtained a complete dismissal of all charges in a criminal case involving leasing retail space to a non-conforming Marijuana dispensary. Afterwards, Greg was interviewed by Fox Entertainment News as an expert regarding his opinion on the Lori Laughlin sentencing.

→ Congratulations to Amy Lewis on winning a motion for summary judgment earlier this year on behalf of Vons on a parking lot trip and fall case. The court's tentative ruling was to deny the motion but after oral argument, through impressive advocacy, Amy was able to convince the Judge to change his mind and the Judge reversed his original decision and granted the motion finding in favor of Vons and throwing out the case.

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