Celebrating Law Week 2017

By Cheryl Stengel, Esq., CLS-B

The San Diego Law Library (“SDLL”) is joining county law and public libraries throughout the country in celebrating Law Week, April 29 - May 5. Established in 1958 by President Dwight Eisenhower, Law Day is a day of national dedication to the principles of government under law. It is meant as a time to reflect on the role of law in the foundation of the country and to recognize its importance for society. Congress officially declared May 1 as Law Day in 1961. Law Week is an extended celebration of Law Day. In honor of Law Week, SDLL will host a series of events designed to increase access to justice. For more information on San Diego’s Law Week events, go to: http://sandiegolawlibrary.org/join-us/san-diego-law-library-celebrates-law-week-2017.

This year’s national Law Day theme is the 14th Amendment. The Amendment, ratified during the Reconstruction Era on July 9, 1868, has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, the 14th Amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. The 14th Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law. In honor of the theme, on Wednesday, May 3 from 12 p.m. to 1 p.m., the downtown law library will host a panel of local community experts on constitutional law, immigration and civil rights for a discussion of “The 14th Amendment: Transforming American Democracy.” This program qualifies for 1 general credit hour MCLE. You may register via the San Diego Law Library website.

The Foothills Bar Association has a long tradition of community service and pro bono representation to assist those in need of counsel. We appreciate the time and dedication of our members.
Attorneys’ Fees Denied Even After Successful Motion to Dismiss  
By Keith A. Jones, Esq.

Prevailing parties in contract cases are allowed to seek recovery of their attorneys' fees if the contract so provides. Under California Civil Code Section 1717, a party can file a motion for attorneys' fees which requires the court to first determine whether the moving party is the prevailing party. A prevailing party is the one who recovers the greater relief on the contract claim. If neither party achieves a complete victory, then the court must exercise its discretion to rule whether the party filing the motion is the prevailing party. The trial court then determines the amount of fees to be awarded if it concludes that there is a prevailing party.

The California Supreme Court recently grappled with a unique issue regarding whether a defendant was the prevailing party for purposes of recovering its attorneys' fees. The parties had agreed in their various agreements that certain disputes were subject to jurisdiction in Florida. The plaintiff filed a lawsuit in Los Angeles County.

The defendant filed a motion to dismiss based on the jurisdiction provisions in the contracts. The trial court agreed with the defendant on the motion to dismiss but stayed the dismissal to give the plaintiff time to file its lawsuit in Florida. The plaintiff filed a new lawsuit in Florida, and the California trial court ultimately dismissed the plaintiff's California lawsuit.

The defendant filed a motion with the California court seeking to recover over $84,000 in attorneys' fees. The trial court denied the motion, finding that the defendant was not a prevailing party because the plaintiff had filed the same lawsuit in Florida which resulted in the claims remaining unresolved. The court of appeal agreed with the trial court, ruling that the defendant had not prevailed with an "unqualified victory." Rather, it succeeded in enforcing only one contract clause which had not disposed of all of the plaintiff's claims.

The defendant appealed to the California Supreme Court, arguing that it had unqualifiedly prevailed in the California lawsuit since the plaintiff could no longer file the claims in California. The defendant further argued that the trial court did not have the discretion to determine whether the defendant was the prevailing party because dismissing the California lawsuit resulted in a complete victory in the California court.

The Supreme Court disagreed with the defendant, finding the trial court had the power to exercise discretion in deciding whether the defendant could recover attorneys' fees. In exercising this discretion, a trial court must compare the relief awarded as compared to the relief sought, and the parties' respective litigation objectives as disclosed by the pleadings, trial brief and conduct at trial. Furthermore, whether a party is a prevailing party can only be made upon the final resolution of the contract claims. Since the claims remained pending in the Florida litigation, the trial court had discretion to award attorneys' fees and properly exercised its discretion.

The defendant could not overcome the main hurdle of establishing an "unqualified victory" such as by an involuntary dismissal with prejudice or proving there was no likelihood of the plaintiff re-filing the same claims in a different forum. The Supreme Court indicated in a footnote that the defendant could possibly pursue its motion for attorneys' fees in the California case if it prevails in the Florida litigation.
Continued from Page 2…

I watched the oral arguments in this case via the California Supreme Court webcast. Counsel for both sides must have felt as if they faced a firing squad as the justices peppered them with questions throughout their respective presentations.

The Future Is Now – Autonomous (Self-Driving) Vehicles Are Here

By Mark Raftery, Esq.

On April 12, 2017, the Civil Litigation Section presented a lively program on autonomous (self-driving) vehicles called “Legal Potholes in the Road Ahead” at BJ’s Restaurant at Grossmont Center. Brett Schreiber, a litigation partner at Thorsnes Bartolotta McGuire in San Diego and the immediate Past President of Consumer Attorneys of San Diego, presented a timely and informative presentation on self-driving vehicles.

Self-driving vehicles are here in a big way. You see a number of vehicles driving themselves on California’s roads and freeways and more are coming. This is not limited to Tesla cars being operated in “auto pilot” mode. Within the past year, several large trucks driven entirely by computer safely drove from Colorado to California. Over the next decade, self-driving trucks could replace 1,700,000 American truckers. Even Apple, maker of the iPhone, iPad, iWatch, and “i just about everything else,” recently requested a permit from the State of California to test an autonomous vehicle.

Modern autonomous vehicles are the most sophisticated machines in Earth with over 100 million lines of computer code needed to operate them. Autonomous vehicles boast an impressive safety record, and some studies suggest that they can reduce car crashes by up to 85%. Self-driving vehicles, however, are not without risk as evidenced by a fatal accident that occurred recently in Arizona with a Tesla being operated solely by computer. In addition, some car computer systems have been successfully “hacked” where a third-party exploited flaws in a car computer system’s security system and took control of various components in a car.

As frequently happens, the law is trying to catch up with rapidly advancing technology as federal agencies, such as the National Highway Traffic Safety Agencies, state agencies, like California’s Department of Motor Vehicles, California, and Congress, grapple with proposed rules, regulations, and laws concerning who is ultimately responsible when the inevitable accidents, injuries, and deaths occur (for example, the “driver” of the vehicle? what if there is no driver? the manufacturer of the vehicle or one or more of its computer systems? the company (ies) that supplied the computer code used to operate the collision avoidance systems in the vehicle? someone else?) These issues will only become more important as additional autonomous cars and trucks operate on California’s streets, roads, and freeways.

If you missed the program but would like a copy of Mr. Schreiber’s PowerPoint presentation, send an email to our Civil Litigation Section Co-Chair, Mark Raftery, at mark@thelawcorp.com.
Save the Date!

On June 29, 2017, the Foothills Bar Association will hold its annual Membership Drive and Mixer beginning at approximately 5:00 p.m. in the Guinness Room at Hooley’s Irish Pub in Grossmont Center, La Mesa.

More information to follow...

The Criminal Law Litigation Section of the Foothills Bar Association Presents:

A meet and greet with our new El Cajon Criminal Court Judges, the Honorable Laura Duffy and the Honorable Frank Birchak.

Thursday, May 11, 2017 - Noon to 1:10 p.m.
East County Courthouse, Department 10
250 E. Main Street, El Cajon

The seminar is free for members of FBA and only $10.00, applied toward your membership for non-members. Bring your lunch. No RSVP is needed.

Please contact Andrea Schneider at andreaattorney@gmail.com with any questions.

The Foothills Bar Association certifies that this activity has been approved by the State Bar of California for 1.0 hour General MCLE credit.
Notices

Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at mark@markrafterylaw.com or Cheryl Stengel clstengel@outlook.com.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors generally meets on the third Tuesday of each month. The next meeting will be on May 16, 2017 at the Law & Mediation Firm of Klueck & Hoppes, APC. 7777 Alvarado Road, Suite 413, La Mesa, CA 91942, beginning at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.
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