

# CRANDALL, WADE & LOWE

A PROFESSIONAL CORPORATION



## THE CHRONICLE



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A Summary Of Recent Developments In The Law

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### COMPLIMENTARY SEMINARS

Free Seminars are available covering topics including:

- Premises Liability (i.e. Slip-and-Fall)
- Wrongful Death
- Accident Reconstruction
- Bad Faith
- Workers' Compensation

For a list of additional topics, please visit our Website at [www.cwllaw.com](http://www.cwllaw.com). Please note we will present the seminar in your office, in one of our offices, or we will reserve a conference room in the geographical area that you want the seminar presented. To schedule a free seminar, please contact James A. Rossi at (818) 871-9900 ext. 304 or [Rossij@cwllaw.com](mailto:Rossij@cwllaw.com).

### RECENT FIRM HIGHLIGHTS



We are pleased to announce that William F. Zulch (pictured above), a senior partner in our Irvine office, has been elected as the new president of Crandall, Wade & Lowe.

### RECENT TRIALS/APPEALS

William Zulch and Patrick Flannery, of our Irvine office, successfully tried a case involving specific performance. Their client entered into a contract with the defendant whereby their client would pay defendant \$889,000 in exchange for a piece of land and a house to be built on that land at the defendant's cost. Defendant started building the house. However, he later stopped building arguing that it was costing too much to build the house due to a very large amount of newly discovered rock that needed to be removed. From the date that the contract was entered into until the defendant stopped building, the house went up in value to \$1,400,000. Bill and Patrick's client filed suit seeking specific performance of the contract. Ultimately, defendant was ordered to complete the home, reduce the price to \$859,000 to pay for incidental damages, and to pay \$80,000 in attorneys fees.



### 2005 SUPER LAWYERS

In the February 2005 issue of Los Angeles Magazine, Brad Bush and Rick Koep, partners in the our los angeles county office, were each honored with the title of "Super Lawyer." This identifies them as being among the "top 5%" and the "creme de la creme" of the Southern California Bar.

### CASE SUMMARIES - LEGAL ANALYSIS

Pursuant to California Code of Civil Procedure section 2033(o), it is within the discretion of the Court to order attorney's fees incurred to prove a matter an adverse party failed to admit when requested to do so. This can be achieved through the discovery device of Requests for Admissions.

A Court shall make this order unless it finds that (1) an objection to the request was sustained; (2) the admission sought was of no substantial importance; (3) the party failing to make the admission had grounds to believe that the party would prevail on the matter; or (4) there was other good reasons for the failure to admit.

The determination of whether of there are good reasons for the denial is within the sole discretion of the Court. *Brooks v. Amer. Broadcasting Co.* (1986) 179 Cal.App.3d 500, 512. Section 2033(o) vests in the trial judge the authority to determine whether the party propounding the admission thereafter proved the truth of the matter which was denied. *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 735.

According to California case law, a party's statements, even immediately prior to trial, that they will not contest the issue of liability in a personal injury action, thereby obviates the need for proof on the issue. It is the Court's rationale that the party requesting the admissions did not prove such issues and is precluded from recovering attorney's fees incurred in proving the matter not admitted. *Stull v. Sparrow* (2001) 92 Cal.App.4th 860.

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