



COMPLIMENTARY SEMINAR

Crandall, Wade & Lowe invites you to attend a seminar on July 23, 2004, entitled "What An Adjustor Needs To Know About Accident Reconstruction."

The featured speaker will be certified accident reconstructionist, Bill C. Sommers. Bill will discuss ways to impose liability on claimants in tire failure cases, the mistakes commonly made in police reports, and the forensics of accident reconstruction.

The seminar will be presented at the Marriott Hotel, at 15433 Ventura Blvd., Sherman Oaks, CA 91403.

Registration will begin at 8:45 a.m. and the seminar will begin at 9:15 a.m. The expected length of the seminar is approximately 1.5 to 2 hours

A complimentary breakfast will be served.

To **RSVP**, please contact James Rossi at 818-591-2285 x 304 or rossij@cwllaw.com, by July 19, 2004.

RECENT HIGHLIGHTS

- Firm President, Brad Bush, defended an insured in a binding arbitration arising out of a car accident in which the insured rear-ended the claimant. The claimant had \$60k in medical bills. Brad argued the doctors did not specifically indicate the accident caused the need for the treatment. The arbitrator returned a defense verdict in favor of Brad's client, entitling his client to defense fees.
- In April 2004, Michelle McCliman represented Plaintiff Jackson National Life Insurance in a declaratory relief trial. Her client asked the court to determine whether it had to escheat funds to the State of California which remained unclaimed by two beneficiaries that could not be located. The two other beneficiaries made claims for the unclaimed proceeds for the missing beneficiaries. The Court ordered the unclaimed proceeds go to the two beneficiaries and not escheat to the State, which protected Michelle's client from potential liability.
- Michelle McCliman's article entitled "Do You Adequately Protect Your Proprietary Information in Today's Competitive World?" was published in the June 2004 issue (Vol. 46 No. 6) of the Orange County Lawyer, the Orange County Bar Association magazine.

TRIAL ATTORNEY PROFILE: RICK



Rick Koep is a managing partner in our Los Angeles County office and has been with the firm since 1982. Rick recently litigated his 74th jury trial. He defended a claim for personal injuries

that arose from an automobile accident wherein the plaintiff was rear-ended. Rick argued the plaintiff fraudulently caused the accident by purposely slamming on his brakes. The jury returned a defense verdict against the plaintiff in favor of Rick's client, and required the plaintiff to pay the property damage sustained by his client in the accident. The plaintiff was also required to pay his client's defense costs.

Rick has now beaten his pre-trial statutory offer (a feat that entitles his clients to certain defense costs) in 70 of his 74 jury trials. Further, he has obtained defense verdicts for his clients in 52 of his 74 jury trials.

CASE SUMMARIES - LEGAL ANALYSIS

COMPARATIVE FAULT IN CALIFORNIA

California is a comparative fault state. Thus, in any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount. It is important to note that the limitation only applies to non-economic damages, which are subjective, non-monetary losses, such as pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship,

loss of consortium, and injury to reputation. On the other hand, economic damages are objectively verifiable monetary losses such as medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, loss of employment and loss of business or employment opportunities.

WRONGFUL DEATH DAMAGES - LIMITATIONS

The damages available to wrongful death claimants have two particularly important limitations. First, claimants are not entitled to recovery for their personal grief, sorrow or mental suffering. *Krouse v. Graham*, 19 Cal.3d 59, 72. In other words, the mental suffering which naturally results from the death of a loved one is not recoverable. However, it is important to note that a wrongful death claimant may be entitled to emotional distress damages if the claimant is a direct victim (i.e., witnessed the death causing event). *Budavari v. Barry*, 176 Cal.App.3d 849, 852-854.

Second, wrongful death claimants are generally not entitled to punitive damages no matter how horrible the defendant's conduct was. *Tarasoff v.*

Regents of University of CA, 17 Cal.3d 425, 450. However, there is a statutory exception to the rule. If the death resulted from a felony homicide for which the defendant was convicted, the wrongful death claimant may be entitled to recover punitive damages. Civil Code section 3294(d). Additionally, punitive damages are recoverable in a survival action, which is an action by the decedent's estate for the claim the decedent was entitled to before passing away. If the decedent would have been entitled to punitive damages had he/she lived through the completion of his/her lawsuit, then the estate, which may include the wrongful death claimants, can recover punitive damages. Civil Code section 377.34.

The Chronicle is prepared by James A. Rossi, Esq. of our Calabasas Office. For questions regarding The Chronicle, please contact James A. Rossi, Esq., at 818-591-2285 or Rossij@cwllaw.com. Upon request, copies of any legal authority cited in The Chronicle are available.

The Chronicle Newsletter

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