

CALIFORNIA CASELAW HIGHLIGHTS

ATTORNEY FEES

Under the reciprocal contractual attorney fee statute, when a defendant obtains an interim procedural victory that results only in transferring a lawsuit from one forum to another, there has been no final resolution of the contract claims and therefore it would be premature to make a prevailing party determination. **DisputeSuite.Com, LLC v. Scoreinc.Com**, 235 Cal.App.4th 1261 (2015).

A provision in an escrow agreement whereby purchasers agree to defend the escrow company “against any claims whatsoever arising from and any attorney’s fee, expenses or costs incident” to any loss or damage sustained by reason of the disbursement instruction is not a reciprocal attorney fee provision. **Rideau v. Stewart Title of California, Inc.**, 235 Cal.App.4th 1286 (2015).

An attorney's “charging lien” upon the fund or judgment which he has recovered may be used to secure either an hourly fee or a contingency fee, and creates a security interest in the litigation’s proceeds. **Novak v. Fay**, 2015 WL 1910419 (Cal.App. 2015).

CIVIL PROCEDURE

A malicious prosecution action is deemed premature while an appeal from the judgment in the underlying action is pending. **Pasternack v. McCullough**, 2015 WL 1743711 (Cal.App. 2015).

An allegation that something “apparently” happened is speculative on its face, and it has no place in a pleading, as it is pregnant with the admission that it may not have happened at all. **Cypress Semiconductor Corporation v. Maxim Integrated Products, Inc.**, 2015 WL 1911121 (Cal.App. 2015).

In a multi-defendant case, an answer must be filed by all defendants before the court may consider opposition to a motion to transfer venue, except for any defendants that are not properly joined. **Cholakian & Associates v. Superior Court**, 2015 WL 1939380 (Cal.App. 2015).

EMPLOYMENT

A trial court may not award prejudgment interest on retroactive disability benefits for a period before an employee proves his or her right to the benefits. **Flethez v. San Bernardino County Employees Retirement Assn.**, 2015 WL 1825778 (Cal.App. 2015).

Under a county charter requiring the civil service commission to adopt rules providing for administrative appeals of discharges and reductions of permanent employees, where a claim for backpay can be resolved only by restoring an employee to service, an employee’s death deprives the commission of jurisdiction over his appeal even though his widow uses the appeal to rectify workplace conditions. **Monsivaiz v. Los Angeles County Civil Service Commission**, 2015 WL 1910254 (Cal.App. 2015).

GENERAL LIABILITY

A religious congregation's leadership does not have a legally-recognized special relationship with its membership which establishes a duty to warn the congregation, including a child church member, that one member previously had molested another child. **Conti v. Watchtower Bible & Tract Society of New York, Inc.**, 235 Cal.App.4th 1214 (2015).

HEALTHCARE

When the State has a Medi-Cal lien on a patient's tort settlement, judgment, or award, an allocation must be made that indicates what portion is for past medical expenses as distinct from other damages, and the State's recovery is limited to that portion of the settlement which was allocated to past medical expenses. **Aguilera v. Loma Linda University Medical Center**, 235 Cal.App.4th 821 (2015).

INSURANCE

Fire damage from a warming fire started by a transient that spreads to other parts of the insured property does not result from vandalism or malicious mischief, within the meaning of a vacancy exclusion in the landlord's insurance policy, if the fire is intentionally set, but it is not intended to burn down a residence. **Ong v. Fire Ins. Exchange**, 235 Cal.App.4th 901 (Cal.App. 2015).

The Insurance Commissioner lacks authority under the Unfair Insurance Practices Act to promulgate content and format requirements for replacement cost estimates in homeowners insurance. **Association of California Ins. Companies v. Jones**, 235 Cal.App.4th 1009 (Cal.App. 2015).

The term "arising from" or "arising out of" in an insurance policy's exclusion from coverage is ordinarily understood to mean "originating from, having its origin in, growing out of, or flowing from, or in short, incident to, or having connection with," but it does not import any particular standard of causation or theory of liability into an insurance policy; it broadly links a factual situation with the event creating liability, and it connotes only a minimal causal connection or incidental relationship. **Crown Capital Securities, L.P. v. Endurance American Specialty Ins. Co.**, 235 Cal.App.4th 1122 (2015).

NEVADA CASELAW HIGHLIGHTS

EMPLOYMENT

As a matter of first impression in Nevada, an at-will employee may generally be discharged without cause at the will of the employer, and tortious discharge actions are severely limited to those rare and exceptional cases where the employer's conduct violates strong and compelling public policy. **Brown v. Eddie World, Inc.**, 2015 WL 1843635 (Nev. 2015).

HEALTHCARE

As a matter of first impression in Nevada, the patient-litigant exception does not apply to a physician's doctor-patient privilege in medical records relating to his alleged substance abuse. ***Mitchell v. Eighth Judicial District Court***, 2015 WL 2085557 (Nev. 2015).

CAVEAT: THE FOREGOING DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING INDIVIDUAL SITUATIONS.