CALIFORNIA CASELAW HIGHLIGHTS

ARBITRATION

Courts generally cannot review arbitration awards for errors of fact or law, even when those errors appear on the face of the award or cause substantial injustice to the parties. ***Richey v. Autonation, Inc***., 60 Cal.4th 909 (2015).

The more substantively oppressive the contract term in an arbitration agreement, the less evidence of procedural unconscionability is required to conclude that the term is unenforceable, and vice versa. ***Sanchez v. Valencia Holding Company***, 61 Cal.4th 899 (2015).

Although arbitration agreements generally must be in writing in order to be enforceable, a signed agreement is not necessary if a party's acceptance may be implied in fact or effectuated by delegated consent. ***Marenco v. DirecTV LLC***, 233 Cal.App.4th 1409 (2015).

A party opposing a motion to compel arbitration generally is not entitled to an evidentiary hearing. ***Ashburn v. AIG Financial Advisors, Inc.***, 234 Cal.App.4th 79 (2015).

In ruling on a motion to compel arbitration, courts are guided by general principles of California law and must determine whether the parties actually agreed to arbitrate the dispute. ***Garcia v. Superior Court***, 236 Cal.App.4th 1138 (2015).

Mere participation in litigation and discovery does not compel a necessary finding that a party has waived its right to arbitration. ***Oregel v. PacPizza, LLC***, 237 Cal.App.4th 342 (2015).

An arbitration agreement lacks basic fairness and mutuality if it requires one contracting party, but not the other, to arbitrate all claims arising out of the same transaction or occurrences. ***Carlson v. Home Team Pest Defense, Inc.***, 239 Cal.App.4th 619 (2015).

ATTORNEY FEES

Attorney fee awards to the prevailing party are reciprocal under the Davis-Stirling Common Interest Development Act (California Civil Code Section 1354(c).). ***Tract 19051 Homeowners Association v. Kemp***, 60 Cal.4th 1135 (2015).

Ordinarily the party awarded even nominal damages may be considered the “prevailing party” for purposes of a statute or agreement awarding attorney fees to the prevailing party. ***Belle Terre Ranch, Inc. v. Wilson***, 232 Cal.App.4th 1468 (2015).

An otherwise unilateral right to attorney fees in a contract is reciprocally binding upon all parties to actions to enforce the contract. ***Calvo, Fischer & Jacob, LLP v. Lujan***, 234 Cal.App.4th 608 (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***, 236 Cal.App.4th 329 (2015).

When a jury awards damages for losses not suffered by the plaintiff or for damages not allowed by law, those damages must be excluded when determining whether the defendant failed "to obtain a more favorable judgment or award" for purposes of the cost-shifting provisions of a statutory offer to compromise. ***Lee v. Silveira***, 236 Cal.App.4th 1208 (2015).

Under the cost-shifting provisions of a statutory offer to compromise, a losing defendant whose settlement offer exceeds the judgment is treated for purposes of post-offer costs as if it were the prevailing party. ***Litt v. Eisenhower Medical Center***, 237 Cal.App.4th 1217 (2015).

The prevailing party in a "lemon law" action brought under the Song-Beverly Consumer Warranty Act is required to show both that the attorney fees it incurred were reasonably necessary to conduct the litigation, and that the amount was reasonable too. ***McKenzie v. Ford Motor Co***., 238 Cal.App.4th 695 (2015).

Out-of-state attorneys litigating a case in California without being admitted pro hac vice are not entitled to receive an award of attorney fees following a class action settlement in California. ***Golba v. Dick's Sporting Goods, Inc.,*** 238 Cal.App.4th 1251 (2015).

A cost award that is incidental to a judgment may be challenged on an appeal from the judgment even though the amount of costs was filled in on the judgment form after the notice of appeal was filed. ***Green v. County of Riverside***, 238 Cal.App.4th 1363 (2015).

In some cases a party may obtain a result that is so minimal or insignificant as to justify a finding that no prevailing party attorney fees should be awarded pursuant to statute. ***James L. Harris Painting & Decorating, Inc. v. West Bay Builders, Inc.***, 239 Cal.App.4th 1214 (2015).

BUSINESS

An omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty. ***State Ready Mix, Inc. v. Moffatt & Nichol***, 232 Cal.App.4th 1227 (2015).

An automobile dealership is not required to furnish a Spanish translation of an English language car purchase agreement to Spanish-speaking buyers if the transaction was not negotiated primarily in Spanish, the buyers spoke with a Spanish-speaking salesman during their first visit to the dealership, and the buyers' son negotiated the purchase of the vehicle in English with a salesman and a finance manager who did not speak Spanish. ***Lopez v. Asbury Fresno Imports, LLC***, 234 Cal.App.4th 71 (2015).

A grocery store licensed to sell alcohol may request and record a customer's date of birth when the customer purchases alcohol with a credit card without violating the privacy protections afforded by the Song-Beverly Credit Card Act. ***Lewis v. Safeway, Inc***., 235 Cal.App.4th 385 (2015).

Any cash that a business owner receives from the business's operations after bankruptcy is an asset subject to an equitable lien on the business's assets and profits. ***McCready v. Whorf***, 235 Cal.App.4th 478 (2015).

The sale of consumer debt to entities that are not licensed finance lenders or institutional investors does not violate the Finance Lenders Law provision which states that a person licensed to make consumer loans may sell notes "to institutional investors." ***Montgomery v. GCFS, Inc***., 237 Cal.App.4th 724 (2015).

When the weaker party to an adhesion contract can show the contract is unconscionable under California law, a contractual provision requiring the application of a different state's law to enforce the contract is itself unenforceable. ***Pinela v. Neiman Marcus Group, Inc***., 238 Cal.App.4th 227 (2015).

A claim for fraudulent business practices under California's Unfair Competition Law focuses on a defendant's conduct, and not the plaintiff's damages, in order to protect the general public from unscrupulous business practices. ***Rutledge v. Hewlett-Packard Co***., 238 Cal.App.4th 1164 (2015).

CIVIL PROCEDURE

Under the provision of the Uniform Foreign-Country Money Judgment Recognition Act stating that a foreign-country money judgment is enforceable "in the same manner and to the same extent as a judgment rendered in this state," the rate of postjudgment interest on a California judgment enforcing a Korean judgment is the 10% annual rate provided by California law, not the 20% rate imposed by the underlying Korean judgment. ***Hyundai Securities Co., Ltd. v. Lee***, 232 Cal.App.4th 1379 (2015).

In a matter of first impression, a stipulation by a driver's attorney to admission of his client's written responses of requests for admission was not voluntary and thus not a waiver of his objections to the admission of the responses, where the attorney made the stipulation only after the court had overruled its objections to use of the responses during the examinations of driver and after the court appeared unpersuaded by counsel's arguments that the written responses were not admissible evidence. ***Gonsalves v. Li***, 232 Cal.App.4th 1406 (2015).

An Illinois defendant's act of posting negative comments on Facebook While in Illinois about a California plaintiff are insufficient to create minimum contacts for the plaintiff to sue the defendant in California. ***Burdick v. Superior Court***, 233 Cal.App.4th 8 (2015).

A trial court's error in denying a plaintiff's motion to compel two defense depositions is not prejudicial when liability is admitted, and most of the discovery was only peripherally related to the key issue of whether the defendant had acted intentionally. ***Macquiddy v. Mercedes-Benz USA, LLC***, 233 Cal.App.4th 1036 (2015).

Where a defendant is the prevailing party against multiple plaintiffs who sued jointly on a single liability theory, there is little need to apportion the cost award as between or among the plaintiffs because the costs are joint and several. ***Ducoing Management, Inc. v. Superior Court***, 234 Cal.App.4th 306 (2015).

Mandatory relief under Code of Civil Procedure Section 473(b), authorizing relief from default judgment for any "dismissal entered," encompasses dismissals entered as a terminating sanction for discovery abuse. ***Rodriguez v. Brill***, 234 Cal.App.4th 715 (2015).

Recovery of litigation costs is not considered part of an award of damages, but is an incident of the judgment. ***Bean v. Pacific Coast Elevator Corporation***, 234 Cal.App.4th 1423 (2015).

Pretrial discovery of a defendant's financial condition in connection with a claim for punitive damages is prohibited absent a court order permitting such discovery. ***I-CA Enterprises, Inc. v. Palram Americas, Inc***., 235 Cal.App.4th 257 (2015).

The presumption of invalidity of service by mail when the postal cancellation date is more than one day after the date of deposit must be affirmatively invoked, and the presumption is rebuttable. ***Simplon Ballpark, LLC v. Scull***, 235 Cal.App.4th 660 (2015).

A malicious prosecution action is deemed premature while an appeal from the judgment in the underlying action is pending. ***Pasternack v. McCullough***, 235 Cal.App.4th 1347 (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***., 236 Cal.App.4th 243 (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***, 236 Cal.App.4th 361 (2015).

Vacating a default judgment has no necessary effect on the underlying default and simply returns the defendant to the default status prior to entry of judgment. ***Rodriguez v. Cho***, 236 Cal.App.4th 742 (2015).

When a cause of action involves both protected and unprotected activity, the court looks to the gravamen of the claim to determine if the claim is a strategic lawsuit against public participation ("SLAPP"), which requires examination of the specific acts of alleged wrongdoing and not just the form of the claim. ***Bergstein v. Stroock & Stroock & Lavan LLP***, 236 Cal.App.4th 793 (2015).

When a jury's verdict awards damages for losses not suffered by the plaintiff or for damages not allowed by law, those damages must be excluded when determining whether the defendant failed "to obtain a more favorable judgment or award" for purposes of the cost-shifting offer of judgment statute. ***Lee v. Silveira***, 236 Cal.App.4th 1208 (2015).

While a court may interpret the terms of the parties' settlement agreement, nothing in the statute authorizing a judgment enforcing a settlement agreement authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon. ***Leeman v. Adams Extract & Spice, LLC***, 236 Cal.App.4th 1367 (2015).

A limited jurisdiction action (claiming less than $25,000) should be reclassified as an unlimited action (claiming more than $25,000) when a trial court approves the filing of an amended cross-complaint alleging

damages "in excess of the jurisdictional limit of $25,000." ***Leonard v. Superior Court***, 237 Cal.App.4th 34 (2015).

A trial court lacks jurisdiction to enter an order purportedly granting a new trial to a personal injury plaintiff conditioned upon the plaintiff securing an appellate determination that the trial court erred in concluding the motion for new trial was untimely. ***Maroney v. Iacobsohn***, 237 Cal.App.4th 473 (2015).

If a defendant moves to dismiss a multi-defendant action in California for *forum non conveniens*, but the new forum cannot exercise jurisdiction over all the defendants, the action should be severed so that the new forum has jurisdiction over all the applicable defendants and the California action remains as to the remaining defendant(s). ***David v. Medtronic, Inc.***, 237 Cal.App.4th 734 (2015).

An injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial. ***Bermudez v. Ciolek***, 237 Cal.App.4th 1311 (2015).

The filing of a class action normally does not toll a limitations period for class members who file subsequent actions unless two policy considerations are met: the class action promotes efficiency in litigation, and the statute of limitations protects a defendant from unfair claims. ***Falk v. Children's Hospital Los Angeles***, 237 Cal.App.4th 1454 (2015).

A written stipulation extending the time for trial to a date certain beyond the statutory five-year deadline to bring a case to trial acts as a waiver to the right to seek dismissal upon the five-year anniversary date. ***Munoz v. City of Tracy***, 238 Cal.App.4th 354 (2015).

A defense attorney commits misconduct by attempting to besmirch a plaintiff's character in the presence of a jury, and attorneys may not mount personal attacks on the opposing party even by insinuation, except that impeachment of an opposing party's credibility is allowed when relevant. ***Martinez v. State of California, Department of Transportation***, 238 Cal.App.4th 559 (2015).

The interest charged on borrowing funds for an appellate bond is a recoverable cost following a successful appeal. ***Siry Investments, L.P. v. Saeed Farkhondehpour***, 238 Cal.App.4th 725 (2015).

Although defendants generally are not entitled to a determination on the merits when the court rules on a motion for class certification, such determination may be proper either when defendants cannot attack claim by demurrer or summary judgment following certification, or else when the parties jointly request an early determination on the merits. ***Safeway, Inc. v. Superior Court***, 238 Cal.App.4th 1138 (2015).

An expert's opinion that something could be true if certain assumed facts are true, without laying any foundation for concluding that those assumed facts exist in the case before the jury, does not assist a jury which is charged with determining what occurred in the case before it, not hypothetical possibilities. ***Cooper v. Takeda Pharmaceuticals America, Inc.***, 239 Cal.App.4th 555 (2015).

In a contractual indemnity action in which the indemnitee settled the underlying liability without trial, the indemnitee must prove that liability is covered by the contract, that liability existed, and the extent thereof. ***First American Title Ins. Co. v. Spanish Inn, Inc***., 239 Cal.App.4th 598 (2015).

Evidence of a settlement agreement between a plaintiff and one or more joint tortfeasors is not admissible to prove the liability of the settling tortfeasor at trial. ***Diamond v. Reshko***, 239 Cal.App.4th 828 (2015).

An exception to the general rule of accrual for statutes of limitation is the "discovery rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. ***WA Southwest 2, LLC v. First American Title Insurance Company***, 240 Cal.App.4th 148 (2015).

In a personal injury case involving 20 defendants and claims of joint and several liability, a court cannot evaluate the reasonableness of a joint pretrial settlement offer by 14 of the defendants absent a final judgment as to the remaining six defendants. ***Kahn v. The Dewey Group***, 240 Cal.App.4th 227 (2015).

The classification of a case as a limited or unlimited civil action does not go to subject matter jurisdiction, and the court may award damages in excess of the limited action amount. ***AP-Colton LLC v. Ohaeri***, 240 Cal.App.4th 500 (2015).

Since requests for admissions are not limited to matters within the personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his or her personal knowledge. ***Grace v. Mansourian***, 240 Cal.App.4th 523 (2015).

A default judgment entered with a damages award higher than the amount either enumerated in the complaint or stated in a notice of punitive damages is void, even if the default is entered as a terminating sanction for misuse of the discovery process. ***Behm v. Clear View Technologies***, 241 Cal.App.4th 1 (2015).

A trial court is not required to provide a court reporter for a prisoner's personal injury lawsuit, even though the prisoner obtains a fee waiver. ***Jameson v. Desta***, 241 Cal.App.4th 491 (2015).

The statute limiting attorney fee awards in small claims court appeals to $150 supersedes any contractual attorney fee provision which allows recovery of reasonable attorney fees in excess of $150. ***Dorsey v. Superior Court***, 241 Cal.App.4th 583 (2015).

A default judgment damages is void, even when the plaintiff serves the defendant with a statement of damages, where the complaint does not state the amount of damages being sought and does claim a prayer for punitive damages but the judgment does not include any punitive damages. ***Dhawan v. Biring***, 241 Cal.App.4th 963 (2015).

A trial court may not find a waiver of the attorney-client privilege and work product doctrine in a Motion to Compel when the objecting party submits an inadequate privilege log that fails to provide sufficient information to evaluate the merits of the objections. ***Catalina Island Yacht Club v. Superior Court***, 2015 WL 7951258 (Cal.App. 2015).

An attorney representing himself faces terminating sanctions when he threatens opposing counsel with pepper spray and a stun gun at a deposition, and then opposes a defense motion for terminating sanctions with a brief that is openly contemptuous of the trial court. ***Crawford v. JPMorgan Chase Bank, NA***, 2015 WL 8355515 (Cal.App. 2015).

CONSTRUCTION

A homeowner is entitled to a jury trial regarding whether and when there was actual and appreciable harm to her property when the facts are disputed, since accrual issues are related to substantive issues the jury are asked to decide when it considers whether the homeowner has proved her claims. ***Stofer v. Shapell Industries, Inc.***, 233 Cal.App.4th 176 (2015).

When a homeowner alleges in his unverified complaint for construction defects that a general contractor is licensed, the contractor is not required to produce a verified certificate from the Contractors' State License Board in order to maintain a cross-complaint against the homeowner for unpaid work. ***Womack v. Lovell***, 237 Cal.App.4th 772 (2015).

The statute of limitations for a general contractor's express indemnity claim against its subcontractor for breach of the subcontract begins when the general contractor tenders its defense to the subcontractor, not when the subcontractor's work was substantially completed. ***Valley Crest Landscape Development, Inc., v. Mission Pools of Escondido, Inc***., 238 Cal.App.4th 468 (2015).

Where a project owner sues a general contractor for disgorgement based on the general contractor's alleged failure to maintain a professional license, the general contractor is entitled to a jury trial on the issue of licensure. ***Jeff Tracy, Inc. v. City of Pico Rivera***, 240 Cal.App.4th 510 (2015).

A "pay if paid" provision that makes payment by a project owner to the general contractor a condition precedent to the general contractor's obligation to pay the subcontractor for work the subcontractor has performed is unenforceable in California as a violation of public policy. ***Vita Planning and Landscape Architecture, Inc. v. HKS Architects, Inc.***, 240 Cal.App.4th 763 (2015).

EMPLOYMENT

A security guard's readiness to serve may be hired as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer, and thus as hours worked for pay. ***Mendiola v. CPS Security Solutions, Inc***., 60 Cal.4th 833 (2015).

When an employer sues his employer for employment discrimination under the Fair Employment and Housing Act ("FEHA"), the costs provision in FEHA allows trial courts discretion to award both attorney fees and costs to the prevailing party. ***Williams v. Chino Valley Independent Fire Department***, 61 Cal.4th 97 (2015).

An employee is entitled to workers' compensation benefits if a new or aggravated injury results from medical or surgical treatment for an industrial injury. ***South Coast Framing, Inc. v. Workers' Compensation Appeals Bd***., 61 Cal.4th 291 (2015).

Elimination of an essential function of an employee's position is not a reasonable accommodation for the employee's disability under the Fair Employment and Housing Act. ***Nealy v. City of Santa Monica***, 234 Cal.App.4th 359 (2015).

Even though employers often treat all workers within a job position as either exempt or nonexempt, in reality exemptions from wage and hour requirements frequently depend on how individual employees perform their jobs. ***Miles v. Sephora U.S.A., Inc***., 234 Cal.App.4th 967 (2015).

An employer is strictly liable under the Fair Employment and Housing Act for acts of sexual harassment by a supervisor against an employee. ***Dickson v. Burke Williams, Inc.,*** 234 Cal.App.4th 1307 (2015).

Generally, an employer has the right to unilaterally alter the terms of employment, provided that the alteration does not violate a statute or breach either an implied or express contractual agreement. ***Serafin v. Balco Properties, Ltd., LLC***, 235 Cal.App.4th 165 (2015).

A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. ***Protect Our Benefits v. City and County of San Francisco***, 235 Cal.App.4th 619 (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***, 236 Cal.App.4th 236 (2015).

Labor Code penalties are generally not recoverable as a form of restitution in a lawsuit alleging Unfair Competition. ***Noe v. Superior Court***, 237 Cal.App.4th 316 (2015).

The goals of the Prevailing Wage Law are to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas, and to permit union contractors to compete with nonunion contractors. ***Henson v. C. Overaa & Co***., 238 Cal.App.4th 184 (2015).

Paying workers weekly or by the hour, instead of by the job, suggests an employment relationship rather than an independent contractor relationship. ***Garcia v. Seacon Logix, Inc***., 238 Cal.App.4th 1476 (2015).

General Liability

An injured party may sue all joint tortfeasors either together in the same action or in separate actions, and may proceed to judgment against any or all of them until fully compensated for the injury. ***DKN Holdings LLC v. Faerber***, 61 Cal.4th 813 (2015).

A public entity is not liable under the Government Tort Claims Act for the harmful conduct of third parties on its property containing a dangerous condition, but if a condition of public property creates a substantial risk of injury even when the property is used with due care, a public entity gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury. ***Cordova v. City of Los Angeles***, 61 Cal.4th 1099 (2015).

A public official's approval of a design that results in an injury constitutes an "exercise of discretionary authority" if, when the design was approved, the official did not realize the design deviated from governing standards. ***Hampton v. County of San Diego***, 2015 WL 8460616 (Cal. 2015).

A factual question exists whether a first responder has exercised due care in treating an accident victim when the victim alleges that his medical condition worsened because the first responder did not act quickly enough. ***Harb v. City of Bakersfield***, 233 Cal.App.4th 606 (2015).

Because a wrongful death claim is not derivative of the decedent's claims, an agreement by the decedent to release or waive liability for her death does not necessarily bar a subsequent wrongful death cause of action by her heirs. ***Eriksson v. Nunnik***, 233 Cal.App.4th 708 (2015).

Falling off stage is an inherent risk for all stage performers, but the premises owner must not do anything to increase the likelihood of injury. ***Fazio v. Fairbanks Ranch Country Club***, 233 Cal.App.4th 1053 (2015).

A plaintiff's immigration status has no tendency in reason to prove or disprove any fact material to issues of liability of damages in the garden-variety personal injury case. ***Velasquez v. Centrome, Inc***., 233 Cal.App.4th 1191 (2015).

The workers compensation exclusive remedy rule does not preclude a civil lawsuit for injuries sustained on the employer's premises, when the injured employee also lives on the premises. ***Wright v. State of California***, 233 Cal.App.4th 1218 (2015).

A defendant who is sued for defamation cannot, through his or her own conduct, create a defense by making the plaintiff a public figure, and private information is not turned into a matter of public interest simply by its communication to a large number of people. ***Grenier v. Taylor***, 234 Cal.App.4th 471 (2015).

A release signed by a fitness center customer which addresses use of the fitness center's equipment generally does not impair the public interest, and thus generally is not prohibited. ***Grebing v. 24 Hour Fitness, Inc.***, 234 Cal.App.4th 631 (2015).

A plaintiff who opposes enforcement of a general release by a third party may offer extrinsic evidence of the circumstances surrounding the negotiation and signing of the release in an attempt to show that releasing "any other person," meaning everyone, did not comport with the parties' intent. ***Cline v. Homuth***, 235 Cal.App.4th 699 (2015).

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).

When a reasonable person would not necessarily suspect wrongdoing, it is not a plaintiff's burden to begin an investigation, in order to forestall the running of the statute of limitations on a claim, until the objective facts establish a reason to investigate. ***Rosas v. BASF Corp***., 236 Cal.App.4th 1378 (2015).

A church is obligated to disclose immediately an employee's suspected molestation of a child at the church's summer camp to the child's parents because, as a day care provider, the church is in a special relationship with both the child and the parents. ***Doe v. Superior Court***, 237 Cal.App.4th 239 (2015).

A vehicle with an allegedly defective transmission which a dealer sells "as is" and without a warranty is not new for purposes of the Song–Beverly Consumer Warranty Act even though the manufacturer's warranty has not expired and allegedly is transferable. ***Leber v. DKD of Davis, Inc***., 237 Cal.App.4th 402 (2015).

A liability release, to the extent it purports to release liability for future gross negligence, violates public policy and is unenforceable; whether conduct constitutes gross negligence is generally a question of fact, depending on the nature of the act and the surrounding circumstances shown by the evidence. ***Jimenez v. 24 Hour Fitness USA, Inc.***, 237 Cal.App.4th 546 (2015).

A duty to warn is imposed on a product's manufacturer when the intended use of a product inevitably creates a hazardous situation, but not when that situation is merely foreseeable and is due solely to another product. ***Sherman v. Hennessy Industries, Inc***., 237 Cal.App.4th 1133 (2015).

The "concert of action" theory of group liability may be used to impose liability on a person who does not personally cause harm to a plaintiff, but whose advice or encouragement to act operates as a moral support to the tortfeasor, thereby rendering the non-actor a joint tortfeasor. ***Navarrete v. Meyer***, 237 Cal.App.4th 1276 (2015).

A settlement agreement's integration clause declaring it to be "the final expression of the parties' agreement" does not preclude admission of extrinsic evidence to explain or interpret ambiguous language in the agreement. ***Epic Communications, Inc. v. Richwave Technology, Inc***., 237 Cal.App.4th 1342 (2015).

A consumer claim that a sunscreen manufacturer's package labeling is false and misleading under California law is preempted by federal law when the state law claim seeks to interfere with the FDA's regulatory responsibilities. ***Eckler v. Neutrogena Corp***., 238 Cal.App.4th 433 (2015).

Gross negligence is pleaded by alleging the traditional elements of negligence, plus conduct by the defendant that involves either want of even scant care or an extreme departure from the ordinary standards of conduct. ***Chavez v. 24 Hour Fitness USA, Inc***., 238 Cal.App.4th 632 (2015).

The Song–Beverly Consumer Warranty Act applies when the auto seller is a retail seller engaged in the business of vehicle selling, but not when the seller is a private party, even if the buyer purchases the remaining written warranty rights. ***Dagher v. Ford Motor Co***., 238 Cal.App.4th 905 (2015).

Virtually any disabled person can request an injunction to compel compliance with the Disabled Persons Act (California Civil Code Section 55) without needing to prove that a violation actually denied him or her equal access to some facility. ***Flowers v. Prasad***, 238 Cal.App.4th 930 (2015).

A claim for fraudulent business practices reflects the Unfair Competition Law's focus on the defendant's conduct, rather than on the plaintiff's damages, to further the statute's larger purpose of protecting the general public against unscrupulous business practices. ***Rutledge v. Hewlett-Packard Co***., 238 Cal.App.4th 1164 (2015).

The wealthier the wrongdoing defendant, the larger an award of exemplary damages need be in order to accomplish the statutory objectives to punish the defendant for the conduct that harmed the plaintiff and deter the commission of future wrongful acts. ***Soto v. Borgwarner Morse Tec, Inc***., 239 Cal.App.4th 165 (2015).

A plaintiff claiming breach of contract may seek specific performance as an alternative to damages, but a plaintiff may not receive both remedies to the extent such an award would constitute a double recovery. ***Darbun Enterprises, Inc. v. San Fernando Community Hospital***, 239 Cal.App.4th 399 (2015).

The Structured Settlement Protection Act provides that the issuer of an annuity is not required to divide a structured settlement payment between the designated payee and any assignee of the payee. ***RSL Funding, LLC v. Alford***, 239 Cal.App.4th 741 (2015).

Evidence of a settlement agreement between a plaintiff and one or more joint tortfeasors is not admissible to prove the liability of the settling tortfeasor. ***Diamond v. Reshko***, 239 Cal.App.4th 828 (2015).

Plaintiffs cannot prevail in an asbestos personal injury case without evidence of exposure to asbestos-containing materials manufactured or furnished by a defendant with enough frequency and regularity as to show a reasonable medical probability that this exposure was a factor in causing the claimed injuries. ***Shiffer v. CBS Corporation***, 240 Cal.App.4th 246 (2015).

It is only when negligence amounts to a reckless or wanton disregard for the truth, so as to reasonably imply a willful disregard for or avoidance of accuracy, that malice is shown sufficient to defeat the common interest privilege in a defamation action. ***Barker v. Fox & Associates***, 240 Cal.App.4th 333 (2015).

The legal theory supporting the exclusive remedy provision of the Workers' Compensation Act is a presumed compensation bargain, pursuant to which an employer assumes liability for industrial personal injury or death without regard to fault, in exchange for limitations on the amount of that liability; an employee is afforded relatively swift and certain payment of benefits to cure or relieve effects of industrial injury without having to prove fault while giving up the wider range of damages potentially available in tort. ***Melendrez v. Ameron International***, 240 Cal.App.4th 632 (2015).

A court cannot, under the equitable powers of the restitution provision of the California Unfair Competition Law, award whatever form of monetary relief it believes might deter unfair practice. ***In re Tobacco Cases II***, 240 Cal.App.4th 779 (2015).

A plaintiff cannot recover as economic damages any costs of medical treatment which exceed the amount that he or she either paid or incurred, even if the reasonable value of those services might be a greater sum. ***Uspenskaya v. Meline***, 241 Cal.App.4th 996 (2015).

HEALTHCARE

The MICRA cap of $250,000 on damages for noneconomic losses is limited to a patient's recovery at trial and is not subject to a setoff for amounts of other parties' pretrial settlements. ***Rashidi v. Moser***, 60 Cal.4th 718 (2014).

The one-year statute of limitations for a medical malpractice action is tolled when an advance or partial insurance payment is made to an injured and unrepresented person without notifying him of the applicable limitations period. ***Blevin v. Coastal Surgical Institute***, 232 Cal.App.4th 1321 (2014).

Where regulations directly involve the quality of patient health care, they involve rights that patients may enforce by suing skilled nursing facilities. ***Lemaire v. Covenant Care California, LLC***, 234 Cal.App.4th 860 (2015).

A negligent infliction of emotional distress claim may arise when a patient's relatives witness caregivers failing to respond significantly to symptoms obviously requiring immediate medical attention. ***Keys v. Alta Bates Summit Medical Center***, 235 Cal.App.4th 484 (2015).

The statutes and regulations governing recovery by the Department of Health Care Services from a special needs trust after the beneficiary's death do not exempt beneficiaries under age 55, either directly or by making them subject to the estate recovery provisions. ***Herting v. California Department of Health Care Services***, 235 Cal.App.4th 607 (2015).

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).

A patient's claim that a hospital did not separately and specifically disclose and explain facilities fees to him under an agreement the patient signed when he sought treatment from a physician, who was an independent contractor at the hospital, was insufficient to state a claim against the hospital for unfair business practices and fraud under California's Unfair Competition Law. ***Nolte v. Cedars Sinai Medical Center***, 236 Cal.App.4th 1401 (2015).

Reducing a non-economic damage award to $250,000 under MICRA does not deprive a plaintiff of due process rights despite the contention that the MICRA cap discourages many plaintiff lawyers from agreeing to sue for medical malpractice on a contingency basis. ***Chan v. Curran***, 237 Cal.App.4th 601 (2015).

A genuine issue of material fact exists as to whether a patient's signing of hospital admission forms or the existence of signs posted around an emergency room can put a patient on notice that the emergency room physician is an independent contractor rather than an employee of the hospital, thus precluding summary judgment for the hospital on a wrongful death claim based on vicarious liability for the physician's alleged negligence. ***Whitlow v. Rideout Memorial Hospital***, 237 Cal.App.4th 631 (2015).

A board-certified surgeon may be competent in a wrongful death action to opine on the standard of care for similarly-situated physicians or surgeons but not on the standard of care for hospitals or any hospital employees other than physicians or surgeons. ***Lattimore v. Dickey***, 239 Cal.App.4th 959 (2015).

A pharmacist-in-charge is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy, regardless of his personal knowledge of licensing violations by employees. ***Sternberg v. California State Board of Pharmacy***, 239 Cal.App.4th 1159 (2015).

The California Department of Health Care Services may require exhaustion of other health coverage under policies that charge copayments exceeding the allowable copayments for Medicaid. ***Marquez v. Department of Health Care Services***, 240 Cal.App.4th 87 (2015).

INSURANCE

An insurer may sue Cumis counsel, but not the insured, to recover excessive sums which the attorney billed the insurer for defense of the insured. ***Hartford Casualty Insurance Company v. J.R. Marketing, L.L.C***., 61 Cal.4th 988 (2015).

A liability insurer's obligation to actually "cut a check" and transfer indemnity funds to a third-party claimant does not arise until there is a judgment or approved settlement for a sum of money due. ***Fluor Corporation v. Superior Court***, 61 Cal.4th 1175 (2015).

In a general contractor's action against its subcontractor's insurer for breach of contract and bad faith, offsets from the general contractor's settlements with its subcontractors' other insurers would affect only the general contractor's right to recover the full amount of damages awarded at trial, but would not affect the general contractor's ability to establish the damages elements of its causes of action. ***McMillan Companies, LLC v. American Safety Indemnity Company***, 233 Cal.App.4th 518 (2015).

A Michigan-based property insurer may not be sued in California by a California policyholder over the handling of a claim arising in Arkansas if the insurer does not conduct business in California, does not solicit insurance business in California, and the loss did not arise in California. ***Greenwell v. Auto-Owners Insurance Company***, 233 Cal.App.4th 783 (2015).

An excess insurer may recover against a primary insurer for wrongfully refusing to accept an underlying settlement offer within primary policy limits where, prior to trial, there was a substantial likelihood of recovery in excess of primary limits. ***National Union Fire Insurance Company of Pittsburgh, PA v. Tokio Marine and Nichido Fire Insurance Company***, 233 Cal.App.4th 1348 (2015).

An insurance company will be deemed to waive any ground which would otherwise entitle it to rescind a policy or treat it as forfeited when, despite knowledge of facts giving it the option, the insurer impliedly recognizes the continuing effect of the policy. ***DuBeck v. California Physicians' Service***, 234 Cal.App.4th 1254 (2015).

The intellectual property exclusion in a liability policy may preclude coverage for a claim of misappropriation of likeness. ***Alterra Excess and Surplus Insurance Co. v. Snyder***, 234 Cal.App.4th 1390 (2015).

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 (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).

An "accident" is never present for purposes of evaluating a defense obligation under a liability policy when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage. ***Albert v. Mid-Century Ins. Co***., 236 Cal.App.4th 1281 (2015).

Where an insurer asserts a reimbursement claim against its insured for defense costs, the potential for conflict requires a careful analysis of the parties' respective interests to determine whether they can be reconciled or whether an actual conflict of interest precludes insurer-appointed defense counsel from presenting a quality defense for the insured. ***Centex Homes v. St. Paul Fire and Marine Ins. Co***., 237 Cal.App.4th 23 (2015).

An insurance appraiser has authority to determine only a question of fact, namely the actual cash value or amount of loss of a given item. ***Lee v. California Capital Ins. Co***., 237 Cal.App.4th 1154 (2015).

Where an insurer makes a partial payment of a pre-suit claim, but fails to inform an unrepresented claimant of the applicable statute of limitations, the statute is tolled until notice is given or the insured retains counsel, whichever comes first. ***Doe v. San Diego-Imperial Council***, 239 Cal.App.4th 81 (2015).

If a liability insurer refuses to defend an underlying third-party lawsuit, the insured is free to enter into a non-collusive settlement with the claimant and then maintain or assign an action against the insurer for breach of the duty to defend, and in the subsequent action the amount of the settlement will be presumptive evidence of the amount of the insured's liability. ***21st Century Insurance Company v. Superior Court***, 240 Cal.App.4th 322 (2015).

A homeowner's property insurance policy that expressly defines the term "collapse" as "sudden and complete breaking down or falling in or crumbling into pieces or into a heap of rubble or into a flattened mass" does not include coverage for decaying conditions that threatened imminent collapse of the structure. ***Grebow v. Mercury Insurance Company***, 241 Cal.App.4th 564 (2015).

Escape clauses are discouraged and generally not given effect in inter-insurer contribution actions where the insurance company who paid the liability is seeking equitable contribution from the carrier who wants to avoid the risk which it received premium dollars to cover. ***Underwriters of Interest etc. v. ProBuilders Specialty Insurance Company***, 241 Cal.App.4th 721 (2015).

Non-owned auto insurance coverage is meant to allow an insured to be covered for occasional use of a non-owned automobile, while the exclusion for regular use is meant to prevent an insured from regularly using a non-owned vehicle without paying insurance premiums for that vehicle. ***Nationwide Mutual Insurance Company v. Shimoun***, 2015 WL 9275518 (Cal.App. 2015).

LANDLORD - TENANT

The term "occupant" in a rent control ordinance stating that a landlord may set the initial rental rate for a dwelling "if the original occupant or occupants who took possession of the dwelling . . . pursuant to the rental agreement with the owner no longer permanently reside there" is not limited to a party to the rental agreement, but applies to any individual who has resided in the dwelling from the start of the tenancy with the landlord's permission. ***Mosser Companies v. San Francisco Rent Stabilization and Arbitration Board***, 233 Cal.App.4th 505 (2015).

A 26-year old apartment dweller, who moved into a rent-controlled apartment as a six-year-old child when his parents took possession, and he remained in possession after his parents vacated the apartment, is deemed an original occupant even though his name was not on the lease, and so his continued occupation without his parents does not begin a new tenancy which allows the landlord to raise rent. ***T & A Drolapas & Sons, LP v. San Francisco Residential Rent Stabilization and Arbitration Board***, 238 Cal.App.4th 646 (2015).

A lease provision which allows the landlord to terminate a tenant's possession based on any breach of the lease is not invalid as against public policy and city ordinance where the tenant fails to acquire renter's insurance, the failure is not incurable, and the tenant is given a three-day notice to perform or quit. ***Boston LLC v. Juarez***, 240 Cal.App.4th Supp. 28 (2015).

An attorney fees provision in a lease which limits prevailing party attorney fees to $750 is an unambiguous cap on the amount of awardable attorney fees even if a higher amount could be deemed reasonable. ***511 S. Park View, Inc. v. Tsantis***, 240 Cal.App.4th Supp. 44 (2015).

Premises Liability

A middle school student's cause of action against the school district for negligent supervision based on a teacher's sexual abuse does not require proof that the teacher committed prior acts of sexual misconduct or that the district should have known he had a "dangerous propensity" to sexually abuse minors, so long as the district should have known that the teacher had the potential for sexually abusing minors. ***S.M. v. Los Angeles Unified School District***, 240 Cal.App.4th 543 (2015).

A state university does not owe a legal duty to protect an adult student from a third-party criminal conduct caused by a mentally ill fellow student whose illness is a societal problem not limited to the university setting even if the conduct might be foreseeable in some cases. ***Regents of the University of California v. Superior Court***, 240 Cal.App.4th 1296 (2015).

Privacy Law

The Song–Beverly Credit Card Act's prohibition against the recording of personal identifying information does not apply to the date of birth of a customer buying alcohol, since that information is required for a special purpose which is incidental but related to the individual credit card transaction. **Lewis v. Jinon Corporation**, 232 Cal.App.4th 1369 (2015).

A credit cardholder's ZIP code is personal information for purposes of the Song-Beverly Credit Card Act which may not be requested and recorded as part of a credit card sales transaction. ***Aguirre v. Amscan Holdings, Inc.***, 234 Cal.App.4th 1290 (2015).

The Song-Beverly Credit Card Act's restriction on retailers' collection of personal identifying information does not apply to online purchases of alcohol that a customer picks up at a retail store, when website terms and conditions provide that title to the alcohol passes to the customer immediately upon completion of the online transaction when the customer's credit card is charged, even though the retailer requires that customers present proof of identity and the credit card used to complete the online purchase as a condition to receiving the purchased merchandise at the store. ***Ambers v. Beverages & More, Inc***., 236 Cal.App.4th 508 (2015).

While the Song–Beverly Credit Card Act of 1971 is intended to protect consumer privacy and to prohibit merchants from obtaining personal identification information under the mistaken impression the information is required to process a credit card transaction, the Act is not intended to forbid merchants from obtaining such information voluntarily, if the customer understands that the information need not be disclosed in order to use a credit card. ***Harrold v. Levi Strauss & Co***., 236 Cal.App.4th 1259 (2015).

PRODUCT LIABILITY

The component parts doctrine does not preclude strict products liability against the product's manufacturer for creating a safety hazard, because the overall product cannot reasonably be regarded as a single component over which the product's manufacturer lacks control. ***Sherman v. Hennessy Industries, Inc***., 237 Cal.App.4th 1133 (2015).

Mineral spirits used to manufacture an industrial cleaning solvent that allegedly causes its users to suffer leukemia are not within the component parts doctrine exception to products liability, even if the mineral spirits are not contaminated, and even if the mineral spirits are defectively designed, absent evidence that the mineral spirits are not inherently dangerous due to their benzene content. ***Brady v. Calsol, Inc.***, 241 Cal.App.4th 1212 (2015).

PROFESSIONAL LIABILITY

The purpose of granting relief from default based on attorney fault is to relieve an innocent client of the burden of their attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits. ***Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC***, 61 Cal.4th 830 (2015).

The one-year statute of limitations for a malpractice claims against an attorney does not apply when a client sues their attorney to recover unused funds because the claim does not arise out of the attorney's professional skills. ***Lee v. Hanley***, 61 Cal.4th 1225 (2015).

In a lawsuit between an attorney and a client based on an alleged breach of a duty arising from the attorney-client relationship, attorney-client communications relevant to the breach are not protected by the attorney-client privilege. ***Anten v. Superior Court***, 233 Cal.App.4th 1254 (2015).

In assessing whether an attorney should be disqualified from representing a current client against a former client based on substantial relationship between the two representations, courts focus on the similarities between the two factual situations, legal questions posed, and the nature and extent of the attorney's involvement with both cases. ***Acacia Patent Acquisitions, LLC v. Superior Court***, 234 Cal.App.4th 1091 (2015).

The mediation privilege precludes a client from proving that his attorneys' acts or omissions caused his damages by entering into a settlement agreement where any communications that the client had with his attorneys regarding the settlement agreement occurred in the course of the mediation. ***Amis v. Greenberg Traurig, LLP***, 235 Cal.App.4th 331 (2015).

A former client must give an unqualified, written waiver before an attorney can ethically act in a capacity that is adverse to his or her former client. ***Kim v. True Church Members of Holy Hill Community Church***, 236 Cal.App.4th 1435 (2015).

Where the pleaded facts in a legal malpractice action do not naturally give rise to an inference of causation, the client alleging that poor legal advice led to otherwise avoidable litigation must plead specific facts affording such an inference. ***Kumaraperu v. Feldsted***, 237 Cal.App.4th 60 (2015).

An attorney acting as a court-appointed settlement officer who receives confidential information from one party during a mandatory settlement conference may not thereafter allow his law firm to represent an opposing party in the same underlying action, regardless of ethical walls within the law firm. ***Castaneda v. Superior Court***, 237 Cal.App.4th 1434 (2015).

An Arizona attorney who contacts a California attorney to broker a sales transaction between their respective clients in California subjects himself to the jurisdiction of the California courts if he is sued in California over the transaction. ***Moncrief v. Clark***, 238 Cal.App.4th 1000 (2015).

For purposes of triggering a legal malpractice statute of limitations, actual injury occurs when the client suffers any loss or injury legally cognizable as damages based on their attorney's asserted errors or omissions, regardless of the amount of damage. ***Shaoxing City Maolong Wuzhong Down Products, Ltd. v. Keehn & Associates, APC***, 238 Cal.App.4th 1031 (2015).

The purpose of California Civil Code Section 1714.10, providing that a plaintiff must obtain a prior court order before filing an action against an attorney that includes a claim for civil conspiracy with the attorney's client, arising from any attempt to contest or settle a claim while representing the client is to discourage frivolous claims that an attorney conspired with his or her client to harm another. ***Klotz v. Milbank, Tweed, Hadley & McCloy***, 238 Cal.App.4th 1339 (2015).

A retiring attorney with only a 50% ownership interest in his firm who sues his firm and other partner in connection with dissolving the firm does not create a conflict an interest sufficient to disqualify the firm's defense counsel. ***Coldren v. Hart, King & Coldren***, 239 Cal.App.4th 237 (2015).

TRANSPORTATION

Tow truck drivers hired by the California Highway Patrol to assist stranded motorists are not considered special employees of the CHP for purposes of suing the CHP for third-party accidents caused by the tow truck drivers. ***State of California v. Superior Court***, 60 Cal.4th 1002 (2015).

A motor carrier which hires independent contractors to drive its tractor trailer may not delegate its duty under the Motor Carrier Act to safely operate vehicles on public highways. ***Vargas v. FMI, Inc***., 233 Cal.App.4th 638 (2015).

TRIBAL LAW

A provision of an Indian tribe's compact with the State of California under the Indian Gaming Regulatory Act (25 U.S.C. Section 2701, et seq.), barring the tribe from recovering damages from the State for the State's alleged breach of the compact, is not unconscionable where the compact was crafted initially by a tribal

coalition, the final version resulted from months of negotiations, and the provision was bilateral, imposing mutual rights and obligations on both the tribe and the State. ***San Pasqual Band of Mission Indians v. State of California***, 241 Cal.App.4th 746 (2015).

NEVADA CASELAW HIGHLIGHTS

ARBITRATION

The party seeking extraordinary writ relief from an order compelling arbitration should show why an eventual appeal does not afford a plain, speedy and adequate remedy in the ordinary course of law, and that the matter meets the other criteria for extraordinary writ relief. ***Tallman v. Eighth Judicial District Court***, 359 P.3d 113 (Nev. 2015).

BUSINESS

The sale of 100% of the membership interest in a limited liability company does not prevent enforcement of an employee's employment contract with the LLC because the sale does not create a new entity. ***Excellence Community Management, LLC v. Gilmore***, 351 P.3d 720 (Nev. 2015).

CIVIL PROCEDURE

A Texas-based law firm's representation of a Nevada client in a Texas matter does not, by itself, provide a basis for specific personal jurisdiction in Nevada. ***Fulbright & Jaworski, LLP v. Eighth Judicial District Court***, 342 P.3d 997 (Nev. 2015).

An attorney's voluntary dismissal of a writ petition in an action against his client for payment of legal fees does not entitle his client to recover costs from the attorney in absence of a bill of costs filed with the Nevada Supreme Court. ***Breeden v. Eighth Judicial District Court***, 343 P.3d 1242 (Nev. 2015).

An attorney who confers with a non-client witness during a break in the witness's deposition may not claim the communication was privileged unless counsel states immediately afterwards on the deposition record that the conference took place, the subject of the conference, and the result of the conference. ***Coyote Springs Investment, LLC v. Eighth Judicial District Court***, 347 P.3d 267 (Nev. 2015).

Nevada courts do not have jurisdiction over a Catholic diocese in Wisconsin for failing to warn about a priest who ministered in Nevada when his religious authorities in Wisconsin have no control over his day-to-day work in Nevada. ***Catholic Diocese of Green Bay, Inc. v. John Doe 119***, 349 P.3d 518 (Nev. 2015).

An electronic court notice to counsel is deemed effective even if counsel has problems with his email account and claims that he never received the notice. ***Fulbrook v. Allstate Insurance Company***, 350 P.3d 88 (Nev. 2015).

A Nevada court may dismiss a foreign government's lawsuit in Nevada against a non-Nevadan business even though the business waives its defenses of no personal jurisdiction, statute of limitations, and *forum*

non conveniens, when no parties or witnesses reside in Nevada and a judgment can be entered against the business in its home jurisdiction. ***Provincial Government of Marinduque v. Placer Dome, Inc***., 350 P.3d 392 (Nev. 2015).

As a matter of first impression, filing a post-trial Motion for Judgment notwithstanding the Verdict or Motion for New Trial tolls the 20-day limitations period governing motions for attorney fees. ***Barbara Ann Hollier Trust v. Shack***, 356 P.3d 1085 (Nev. 2015).

In a matter of first impression, a forum selection clause is permissive and not mandatory if the other forum is not specified as the only, exclusive forum for litigated matters between the parties. ***American First Federal Credit Union v. Soro***, 359 P.3d 105 (Nev. 2015).

EMPLOYMENT

As a matter of first impression, 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.***, 348 P.3d 1002 (Nev. 2015).

The "normal work" test for determining whether an injured worker should be classified as an employee, for purposes of whether the employer should be considered a statutory employee entitled to immunity under the Nevada Industrial Insurance Act, is whether the worker was injured while performing an indispensable activity which normally is carried out through employees and not independent contractors. ***D&D Tire, Inc. v. Ouellette***, 352 P.3d 32 (Nev. 2015).

The court may not set aside a judgment solely based on a new addition to, or recent change in, the law. ***Ford v. Branch Banking and Trust Company***, 353 P.3d 1200 (Nev. 2015).

The 90-day statutory notice requirement in NRS 116.3105(2), which allows a homeowners' association to terminate unconscionable contracts, does not act as a statute of limitations for a notice recipient to commence litigation. ***Double Diamond Ranch Master Association v. Second Judicial District Court***, 354 P.3d 641 (Nev. 2015).

GENERAL LIABILITY

One defense to a negligence claim is the sudden emergency doctrine, which allows a defendant to argue he was not negligent if he was confronted with a sudden emergency that did not arise due to his own negligence and he acted as a reasonably prudent person would upon being confronted with that emergency. ***Frazier v. Drake***, 357 P.3d 365 (Nev. 2015).

HEALTHCARE

As a matter of first impression, a plaintiff may state a cause of action for negligence with medical monitoring as the remedy without asserting that he or she has suffered a present physical injury. ***Sadler v. Pacificare of Nevada***, 340 P.3d 1264 (Nev. 2015).

The venue for a petition for contempt against a party who fails to comply with an administrative subpoena issued by the Nevada State Board of Medical Examiners, or to otherwise properly participate in a proceeding before the Board, is the county where the work of the Board takes place, and not the county where the conduct being investigated occurred. ***Jones v. Nevada State Board of Medical Examiners***, 342 P.3d 50 (Nev. 2015).

As a matter of first impression, the patient-litigant exception does not apply to a physician's doctor-patient privilege in medical records relating to his own alleged substance abuse. ***Mitchell v. Eighth Judicial District Court***, 359 P.3d 1096 (Nev. 2015).

INSURANCE

Courts inquire on a case-by-case basis whether an actual conflict of interest exists that requires the appointment of independent counsel for an insured, because issuance of a reservation of rights letter does not create a per se conflict of interest. ***State Farm Mutual Automobile Insurance Company v. Hansen***, 357 P.3d 338 (Nev. 2015).

PREMISES LIABILITY

Whether a hotel employee's act of assaulting a guest is reasonably foreseeable to create vicarious liability for the hotel as his employer is a factual question sufficient to defeat a defense Motion for Summary Judgment. ***Anderson v. Mandalay Corporation***, 358 P.3d 242 (2015).