

RESOLUTION ON THE BRINK

MEDIATING HIGH-STAKES DISPUTES WHEN TIME IS RUNNING OUT

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PROGRAM OVERVIEW

→ **01** *What is a "High Stakes" Dispute?*

→ **02** THE UNEXPECTED CAN AND
DOES HAPPEN IN TRIAL

→ **03** REAL—LIFE CASE EXAMPLES

→ **04** JUDICIAL AND MEDIATION STRATEGIES
TO BREAK IMPASSE

→ **05** ATTORNEY FEE EXPECTATIONS

→ **06** LEGISLATIVE AND PROCEDURAL UPDATES

THE IMPORTANCE OF EARLY RESOLUTION



STAKES

Stakes increase after motions in limine, jury selection, verdict, appeal



EMOTIONAL TOLL

Financial and emotional tolls grow with time



EARLY SETTLEMENT

Trend toward early settlement — even pre-discovery

See Vilendrer, *The Sooner the Better* (Sept. 2024) Los Angeles Lawyer at p. 18; PAGA: Early Neutral Evaluation: Labor Code Section 2699.3(f); Code Civ. Proc., § 2016.090 [early exchange of discovery]

UNEXPECTED TURNS AT TRIAL

SOME CASE EXAMPLES



TRAUMATIC BRAIN INJURY

Costs high; award lower than Plaintiff hoped despite expert support; in another case, surprisingly high award given damages suffered



CONSTRUCTION DELAY

Subcontractor lost due to complex contract terms and 998 exposure



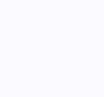
EMPLOYMENT DISCRIMINATION

High damages for failure to accommodate seating request; or on the other hand defense verdict for failure to promote in race claim



CONTRACT DISPUTES

High damages for failure to complete project; or on the other hand defense verdict for failure to complete project



PROPERTY DAMAGE

High damages for failure to complete project; or on the other hand defense verdict for failure to complete project



LANDLORD-TENANT

Rent ordinance violation led to significant liability despite short tenancy



AUTO ACCIDENT

3% liability but joint/several led to multimillion-dollar verdict

STRATEGIES FOR SETTLING ENTRENCHED CASES



CREATIVE OPTIONS

Appealing to the client's long-term goals



JUDGE-PARTY CONVERSATIONS (WITH COUNSEL'S PERMISSION)

Crucial need to make the client completely aware of what the experience of going to trial is like



SPEAKING THE PARTIES' LANGUAGE — CULTURAL AND EMOTIONAL NUANCE



STRATEGIES FOR SETTling ENTRENCHED CASES



→ **USE OF RECENT JURY VERDICTS TO
CREATE CONTEXT**



→ **JURY INSTRUCTIONS AS LEVERAGE
IN MEDIATION**



ATTORNEY FEE EXPECTATIONS IN MEDIATION

For Public policy reasons, there is an expanding scope of fee-shifting statutes (in addition to CCP 998: e.g., FEHA, PAGA, Lemon Law, Child Sex Abuse) Attorney fees may impact settlement. What is Reasonable? Courts analyze efficiency, over-litigation, success level.

California courts have long looked to lodestar analysis and related factors.

- ***PLCM Group v. Drexler*** (2000) 22 Cal.4th 1084, 1095-1096 [Lodestar amount should be reduced if more than what is “reasonable”]
- ***Morris v. Hyundai Motor America*** (2019) 41 Cal.App.5th 24, 38 [reductions proper for overstaffing, too much time spent on particular claims, and hours not reasonably expended]
- ***Chavez v. City of Los Angeles*** (2010) 47 Cal.4th 970, 990-991 [courts look to whether a party achieved only limited success; inflated fees may justify reduction or denial of fees altogether]

CIVILITY AND FEE REDUCTIONS: LEGAL TRENDS

Civility increases efficiency.

Courts are looking beyond the traditional standards to see how the litigation was conducted, if there were abuses or violation of the code of professional responsibility, etc. and reducing fees on that basis.



Judicial scrutiny of behavior in fee decisions is on the rise.

- *Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal.App.5th 908, 927 – fee cut for antagonistic conduct [“Excellent lawyers deserve higher fees, and excellent lawyers are civil.” [Citation.] Awarding the same amount of attorney fees to an uncivil lawyer as one who is civil thus would not constitute a reasonable fee.”]
- *Karton v. Ari Design & Construction, Inc* (2021) 62 Cal.App.5th 734, 747 – hostile tone reduced fee award [“Civility is an ethical component of professionalism. Civility is desirable in litigation, not only because it is ethically required for its own sake, but also because it is socially advantageous: it lowers the costs of dispute resolution.”]
- *Waste Experts, Inc. v. Arakelian Enterprises, Inc.* (2024) 103 Cal.App.5th 652, 667 [“Ad hominem attacks and other invective detract from counsel’s legal arguments . . . and indicate an inability to engage in the reasoned analysis the courts need and counsel’s clients deserve.”]
- *LCPFV, LLC v. Somatdary, Inc.* (2024) 106 Cal.App.5th 743
- State Bar civility oath: See California Rule of Court 9.7

UPCOMING LEGAL DEVELOPMENTS



JURY SELECTION ([CCP § 231.7](#))



A party shall not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups.

- Current exemption from CCP § 231.7 for civil cases ends Jan 1, 2026
- Passed Senate Judiciary Committee, set for Appropriations
- Implications for jury selection in civil cases

UPCOMING LEGAL DEVELOPMENTS

→ CLARIFYING TIMELINES – STATEMENT OF DECISION [\(AB 515\)](#)

- Delays can mislead attorneys and parties on trial risk
- Clarity needed to push toward timely resolution



THANK YOU

Any Questions?



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