Murchison & Cumming
-Lawyers-

M&C IN BRIEF Fall 2006

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M&C's Year in Review Seminar

For more information please contact: Iris Falk, Director of Marketing at (213) 630-1017 or ifalk@murchisonlaw.com.

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FIVE NAMED SOUTHERN CALIFORNIA SUPER LAWYERS®

Murchison & Cumming is proud to announce that Friedrich W. Seitz, Michael B. Lawler, Jean M. Lawler, Edmund G. Farrell, III, and Scott L. Hengesbach have been named Southern California Super Lawyers for 2006. Produced by Law & Politics, the list of Super Lawyers is based on surveys of more than 60,000 lawyers across nine counties, and reflects both peer recognition and professional achievement. Only the top 5% of attorneys practicing in Southern California are selected as Super Lawyers.

Friedrich W. Seitz is Managing Senior Partner and Chair of the firm's Product Liability Practice Group. A prominent trial attorney and litigator in both domestic and international matters, Mr. Seitz also serves on the Special Arbitration Panel of the Los Angeles Superior Court.

Michael B. Lawler is a Senior Partner, Chair of the Employment Practice Group and Co-Chair of the Employment Law Practice Group. Mr. Lawler has successfully tried over one hundred jury trials in the federal and state courts.

Jean M. Lawler is a Senior Partner and Chair of the Insurance Law and Business Transactions Practice Groups. Immediate Past President of the Federation of Defense & Corporate Counsel, Ms. Lawler was awarded the 2006 Service Award by the Defense Research Institute for her years of leadership and service to that organization.

Edmund G. Farrell III is a Senior Partner and Chair of the firm's Law and Appellate Practice Group. Mr. Farrell concentrates his professional activities in the area of law and motion and appellate practice, and has effectively managed the handling of over one hundred appeals and writ petitions.

Scott L. Hengesbach is a Partner and Chair of the Toxic Tort and Environmental Law Practice Group. A seasoned trial attorney, Mr. Hengesbach focuses his practice in the areas of toxic tort and environmental litigation, including litigation involving benzene, hard metals, silica, welding rods and asbestos.

M&C CASE REVIEW

COURT RULING IN FAVOR OF HOMEOWNERS ASSOCIATION

Bear Creek Master Association v. Edwards

Plaintiff owned several undeveloped lots within the Bear Creek residential community. He refused to pay assessments on his lots, claiming that no assessments were owed until the structures were built. The Bear Creek Association filed a foreclosure action against him. Plaintiff sued the Association on various causes of action in which he essentially claimed that the Association's efforts in assessing and collecting the unpaid assessments were illegal, in violation of the CC&R's as well as tortious, and sought both compensatory and punitive damages.

Murchison & Cumming answered the complaint on behalf of the Association and propounded a detailed set of contention interrogatories and a request for production. Plaintiff objected to all of the interrogatories and production requests. Following several rounds of law and motion proceedings, the Court ordered the complaint dismissed as a discovery sanction based on plaintiff's willful violation of court orders to provide discovery. The court also awarded monetary sanctions and, subsequently, granted our motion for contractual attorneys fees as the prevailing party.

Plaintiff appealed on numerous grounds. The court of appeal heard oral arguments and on July 13, 2005 issued a non-published opinion affirming the dismissal of the complaint. The court also affirmed the awards of sanctions and attorneys fees in full.

Dan L. Longo, Michelle Hancock and Richard Newman
Orange County, CA

SUB-CONTRACTOR'S LIABILITY INSURER WINS SUMMARY JUDGMENT

National Union Insurance et. al v. Employers Fire Insurance, et. al.

Employers Fire Insurance insured a HVAC sub-contractor whose employee was seriously injured in a fall from a construction site ladder. The employee settled his liability case for $2.1 million.

The insurers who funded the settlement, including Evanston Insurance, then brought claims for implied indemnity and contribution against Employers and others for reimbursement of the settlement monies. The theories advance by the insurers included claims that the general contractor was an additional insured under Employers' policy. Murchison & Cumming filed a motion for summary judgment on behalf of Employers asserting that the additional certificate and endorsement sited by the insurers was issued the day after the accident, thereby providing no coverage for the additional insured or standing for Evanston against Employers.

Following a hotly contested hearing, the court granted our motion for summary judgment finding as a matter of law that the general contractor was not an insured under the policy at the time of the accident, barring any coverage under the HVAC sub-contractor's liability policy.

Todd A. Chamberlain and Daniel J. Pezold
Los Angeles, CA

M&C JOINS CALIFORNIA ASSOCIATION OF HEALTH FACILITIES

Murchison & Cumming has joined the California Association of Health Facilities (CAHF). CAHF is a statewide, non-profit professional organization, formed in 1950, to serve and educate long-term healthcare providers. The firm is pleased to join the Association's 1,400 members in their dedication to improving the quality of long-term care in California through educational programs and proactive advocacy in the State Legislature and administrative agencies.

As an Associate Member of CAHF, M&C is an approved provider of legal services to long-term care facilities, including skilled nursing facilities, sub-acute care facilities, intermediate care facilities, institutes for mental health, and care facilities for the developmentally disabled.

To learn how M&C can assist you with long term care issues, please contact Michelle A. Hancock or Dan L. Longo at (714) 972-9977.

M&C CASE REVIEW

PLAINTIFF DISMISSES ACTION WITH PREJUDICE

Plaintiff filed suit against the operators of a restaurant and bar for premises liability and negligence arising from an alleged assault and battery in which plaintiff suffered a broken leg. The insurer denied coverage based upon an assault and battery exclusion contained in the policy. The insured demanded judgment and assigned all rights against insurer arising from the coverage denial. Based upon the assignment, plaintiff filed suit against insurer for breach of contract and bad faith.

Murchison & Cumming filed a demurrer and motion to strike, and plaintiff filed a notice of intent to amend. The First Amended Complaint contained contradictions to the original allegations. A demurrer and motion to strike the amended pleading were filed, along with a motion for monetary sanctions. Prior to the hearing, plaintiff agreed to dismiss the action, with prejudice, in exchange for a mutual waiver of costs.

Jean M. Lawler and Daniel G. Pezold
Los Angeles, CA

DEFENSE VERDICTS UPHELD ON APPEALS

The Law & Appellate Practice Group won two separate appeals on behalf of Century Surety Company. Plaintiff claimed to be an additional insured under the Century Surety insurance policy. However, due to a clerical error unknown to Century Surety, the wrong entity was named on the additional insured endorsement. Plaintiff sought to have the policy reformed so as to name the correct entity as an additional insured. The trial court ruled in favor of Century Surety, denying Plaintiff's claim, and the Court of Appeal affirmed the decision.

Plaintiff filed a second appeal based on the trial court's award of costs to Century Surety following the judgment in its favor. Century Surety made a CCP Section 998 offer in the amount of $100 plus a waiver of costs. Plaintiff argued that it was not a "good faith" settlement offer and that costs should not have been awarded. The trial court again ruled in favor of Century Surety and was affirmed on appeal.

Edmund G. Farrell and Bryan M. Weiss
Los Angeles, CA

M&C Provides CA Employers With Required Sexual Harassment Training

Government Code section 12950.1 requires California employers with 50 or more employees to provide at least two hours of training and education regarding sexual harassment to all supervisors employed as of July 1, 2005. New hires and individuals promoted to a supervisory position must be trained within six months of assuming their position. Follow-up training is required once every two years.

The Employment Law group at Murchison & Cumming offers an interactive sexual harassment training seminar for California employers that fulfills this requirement and provides:

- Information regarding the statutory provisions prohibiting sexual harassment and discrimination in the workplace;
- Practical guidance concerning the prevention and correction of sexual harassment and discrimination; and
- Effective examples aimed at instructing supervisors in the prevention of harassment, discrimination and retaliation.

To schedule a Sexual Harassment Training seminar, or for more information regarding employment practices, please contact Pamela J. Marantz at (213) 630-1070 or at pmarantz@murchisonlaw.com.

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- Health Law
- Insurance Law
- International Law
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- Professional Liability
- Toxic Tort & Environmental Law
- Transportation Law

M&C CASE REVIEW

LEGISLATIVE UPDATE: MINIMUM WAGE INCREASE AND REQUIRED EMPLOYER POSTERS

As you may be aware, Governor Schwarzenegger recently signed SB1835, which makes California's minimum wage one of the highest in the United States. On January 1, 2007, the first increase will take effect, increasing the minimum wage for California's non-exempt employees from $6.75 per hour to $7.50 per hour. Further, on January 1, 2008, the minimum wage for California's non-exempt employees will increase to $8.00 per hour.

This increase will also affect exempt employees whose minimum salaries are connected to California's minimum wage. On January 1, 2007 and on January 1, 2008, the minimum salary for exempt employees will increase from $2,340 per month to $2,600 per month and from $2,600 per month to $2,773.33 per month, respectively.

Note that as of January 1, 2007, California employers are required to post a new state minimum wage poster and wage order. California employers must also post information regarding other employment issues including, but not limited to the following: workers' compensation benefits, pay schedule and emergency contacts. You can access and download such posters at www.dir.ca.gov/wp.asp.

If you have any questions regarding this legislative update, please contact Alyson A. Leichtner at 213-630-1009.

SUCCESSFUL MOTIONS IN ELDER ABUSE CASE

SNF Management v. Caradine

The deceased was a resident of the Windsor Gardens skilled nursing facility on and off during 2001 and the first half of 2002. In early December 2002, he died at an acute care hospital nearly six months after leaving Windsor Gardens. At the time of his death, he was 92 and had experienced numerous serious pre-existing medical conditions.

The Plaintiffs are the decedent's widow and two of his adult children who sued Windsor Gardens alleging that elder care abuse contributed to his death. Murchison & Cumming propounded contention interrogatories to the Plaintiff to determine the exact nature and basis of the allegations against Windsor Gardens. Based on the lack of supporting evidence revealed in the discovery responses, we filed a Motion for Summary Judgment on behalf of SNF Management, and a Motion for Summary Judgment/Adjudication on behalf of Windsor Gardens.

The Court granted the SNF Management Motion for Summary Judgment, freeing it from the case, and awarded costs of suit to SNF Management. The Court dismissed all but one cause of action against Windsor Gardens, resulting in a significant reduction in the damages Plaintiff can recover, assuming they can meet the burden of proof at trial. The Medical Injury Compensation Reform Act (MICRA) limits now take effect, capping the possible damages at $250,000. This ruling, affirmed by the Court of Appeal, puts our client in an excellent bargaining position for settlement negotiations.

Dan L. Longo and Michelle A. Hancock
Orange County, CA

TRUCK MANUFACTURERS NOT LIABLE

Bradfield v. China Shipping Holding Co., Ltd.

The plaintiffs are residents of the San Pedro area, near the Port of Los Angeles, who alleged that they suffered various personal injuries and a decrease in value of their property because of increased air pollution in their neighborhood as a result of recent expansion of the Port. The plaintiffs named as defendants numerous shipping operations, cruise lines, port operators, trucking companies and diesel truck and engine manufacturers, among other entities.

Murchison & Cumming represented Freightliner, LLC, a manufacturer of large diesel trucks, in this matter. M&C took the lead in preparing and filing a demurrer which attacked the entirety of the Complaint on the grounds that diesel truck manufacturers could not be held liable to the plaintiffs for their alleged exposure to diesel exhaust. The essence of the demurrer was that truck manufacturers could not be held liable for unspecified exposures of the plaintiffs to unidentified vehicles allegedly traveling near the plaintiffs' residence. Other truck manufacturers, such as Mack and Volvo, joined the demurrer and/or filed similar demurrers.

Rather than attempt to oppose these demurrers, plaintiffs elected to dismiss its claims against all diesel truck and engine manufacturers and proceed against the balance of the defendants.

Scott L. Hengesbach and Adrian J. Barrio
Los Angeles, CA

HOW TO AVOID BEING SUED By William T. DelHagen

Death, taxes, and litigation have become certainties in the modern business world, yet a surprising number of otherwise successful enterprises are unprepared and ill-equipped to handle the uncertainties of litigation. Every day, foolish verdicts and outrageous dollar awards are reported in the media, while successfully defended lawsuits and trials resulting in small awards rarely get press attention. In this climate, one would think that every business would be prepared for litigation.

Unfortunately, most small businesses and many mid-sized companies are unprepared for the onset of litigation. Without a legal staff that is familiar with the many aspects of litigation, most of these companies have no plan whatsoever to deal with the next summons and complaint that may come their way. However, they can become prepared, easily and affordably. Here are some philosophies and practices that can minimize the possibility that your company will be sued, or alternatively prepare the company to defend any litigation in which it may find itself.

Pick The Right Business Partners - A surprising amount of business litigation happens because companies have picked the wrong business partners. This is particularly true with franchise agreements and with component suppliers. In each case, the performance of the business depends upon the good faith and performance of the contracting partner. The closer your enterprise is to the consuming public, the wider the net of your responsibility. Under-performing subcontractors can set you up for personal injury, wrongful death and warranty actions against which there may be no factual defenses. Therefore, it is important that the subcontractors have adequate resources and adequate insurance. Contracts should always have indemnity, hold harmless and defense agreements. It is also wise to become an Additional Insured on a liability policy purchased by your contracting partners.

Hire and Keep The Right People - It is almost too obvious to state, but it is the long-term, highly responsible employees who are most likely to minimize the possibility that you will be sued. If you are sued, it is these experienced and qualified employees who will number among your key defense witnesses. Every business needs employees who remember what happened and why.

Deliver a Quality Product or Service – Although delivering a quality product or service is another seemingly obvious preventive for litigation, often it is not enough to prevent a lawsuit when persons are badly injured. Nevertheless, the money and effort that is put into design and quality control often will pale in comparison to the expense of defending a major suit or to the cost of increased insurance premiums.

Keep Your Promises - A lot of business litigation comes about because people are either unwilling or unable to keep the promises that they made in their zeal to make the deal or close the sale. It can be a very expensive mistake to promise what really will never be delivered.

Know Your Regulations - Over-regulation of the U.S. economy, and the business community in particular, has become routine. In 2003, 13,000 separate bills were introduced into the California State Legislature, most of them seeking to regulate conduct in one form or another. Violations of regulations often energize litigation. For example, a violation of a safety regulation is considered negligence per se under the law, and could result in a finding of liability irrespective of good intentions and best efforts. It is important, therefore, to stay current with regulations that affect your business by joining trade associations, subscribing to clipping services, and regularly consulting with legal experts in your field of endeavor.

Address Complaints ASAP - No one likes to receive complaints about their services or products, but it is imperative that there is a system in place to deal with critical feedback. If you do not evaluate complaints, you often will miss an opportunity to improve the product or stave off litigation. In various surveys, a number of plaintiffs have complained that they were ignored and not treated properly by the company that they eventually sued. An example of this is in the automotive field, where quick and appropriate response to customer complaints often eliminates any motivation to seek legal help or file a "Lemon Law" lawsuit. In addition, recognizing and evaluating complaints may provide useful feedback to the persons in your organization responsible for the quality of products or services.

Proof of customer complaints that have been ignored can become powerful evidence against your company at trial. Plaintiffs' counsel often will use online networks to identify and link together consumers from across the country with similar problems to provide testimony against a common defendant. Evidence that a common complaint was ignored over a period of time will tend to breed high verdicts and even punitive damages.

Get Legal Assistance Up Front - Getting legal help as soon as a problem is identified is undoubtedly going to save money in the long run. Corrective action can be taken, problems can be avoided and amicable resolutions may be hammered out with the correct legal advice. Remember, if the law is not your field of expertise, seek professional help from qualified attorneys.

Be Litigation-Savvy - Warnings are the last desperate refuge of the plaintiffs' bar. When there is really nothing wrong with the design, and when the product has been made pursuant to that design, then the only actionable theory left is inadequate warnings. Warnings are a very subjective and qualitative field in which there seems to be no real science. Still, the legal system has forced companies to issue elaborate and sometimes ludicrous warnings to cover even the most improbable scenario. Anyone who has purchased a ladder, power mower, bottle of medicine or electrical appliance has seen just how far manufacturers and sellers have had to go to try to ward off the spurious claim of inadequate warnings. The best defense is a design that has been evaluated and found to be adequate in accordance with existing (though arguably flimsy) standards in the field.

Businesses of all sizes have the ability to avoid, minimize or win litigation. A good attitude, basic planning and proper legal advice are all that is needed to optimize the results.

William DelHagen is a partner in the Los Angeles office of Murchison & Cumming where he concentrates his practice in the area of product liability. Bill may be reached at 213-630-1006, or at wdelhagen@murchisonlaw.com.

ETHICAL ISSUES IN THE USE OF TRIAL CONSULTANTS

By Guy R. Gruppie and Gilbert Perez, III

The Role of Trial Consultants

Civil trial attorneys today increasingly turn to an empirically-based approach to jury selection as opposed to intuiting or speculating about a juror's personal biases and attitudes. Though it is difficult to measure the results of this approach with any precision, the consensus of both plaintiff and defense trial attorneys is that use of trial consultants can yield successful results.

Trial consultants offer a variety of services that are directed at anticipating or shaping a trial result. Such services include opening statement consultation, community attitude surveys, damage award assessment, jury instruction review, and the following:

A. *Mock Trials* – Mock trials are rehearsals of the actual trial. Although time-consuming and expensive, mock trials have the potential to shape the selection of jurors as well as determine effective trial strategies. The most comprehensive approach, it allows attorneys to assess potential pitfalls prior to the actual trial, and may enable attorneys to witness jury deliberations. The value of jury science in the context of mock trials is the scientific analysis of the data gathered during the "trial before the trial," and the expert application of that data to the specific problems faced by the litigant.

B. *Focus Groups* – A focus group, drawn from the area where the case is pending, is given one or two issues to consider in order to assess the response. For example, a closing statement may be simulated for participants who will then be divided into response groups and questioned in detail as to factors shaping their decision. More flexible and less expensive than a mock trial, a focus group will segregate relevant from irrelevant facts. Here again, jury science allows for scientific analysis of the data gathered and the expert application of that data.

C. *Jury Questionnaires* – While voir dire is an excellent tool, it is limited in its ability to obtain underlying, probing information. Since questionnaires are often lengthy and detailed in contextual relation to the trial issues, they garner invaluable insight into the profile of prospective jurors. In this circumstance, jury science will provide its greatest benefit in drafting and interpreting the responses, as well as framing strategic follow-up questions to elicit the most relevant information.

D. *Jury Selection* – Jury selection presents the most traditional venue for the trial consultant. Even if attorneys choose to rely on their own beliefs and biases, these are only probative if they are scientifically confirmed. In jury selection, it is impossible to know which jurors should be rejected unless a party is first aware of the people to seek. While demographics play a role in creating the profile of a prospective juror, other scientifically-based factors may be more important, depending on the issues to be litigated.

E. *Juror Surveillance* – Despite its intrusive nature and high price, juror surveillance can allow the attorney to independently verify the truth of voir dire responses. Surveillance can also provide valuable information that cannot be gleaned from other practices in arriving at a jury profile. Unlike voir dire, the subject is unencumbered by the cloak of appearance or a socially acceptable façade that masks reality during surveillance.

Do Trial Consultants Really Work?

A significant benefit offered by jury science is its ability to help attorneys filter dishonest answers by potential jurors during voir dire. Many studies have shown that people tend to provide socially acceptable answers when questioned before an authority figure, like a judge or trial counsel, in an effort to conceal or deny their inherent prejudices. By demographically correlating attitudes related to the trial, obtained from questionnaires and in-person interviews, attorneys can remove potential jurors during the voir dire process whom they believe are masking their true biases.

While no significant empirical evidence validates a correlation between juror characteristics and a consistent bias favoring one party, jury science employs tools that reach into the mindset of jurors using scientific analyses of gathered information. The outcome will depend on the nature and extent of litigation, but the tools can help to formulate a plan from voir dire through closing arguments. Trial consultants are able to examine the courtroom demeanor of prospective jurors during the entire selection process and apply psychological theory to physical cues, both verbal and non-verbal. Armed with this interpretive information, pinpoint accuracy replaces guesswork, and persuasive representation replaces speculation. Such expertly wielded tools can make the difference in high stakes litigation.

Ethical Concerns

Some detractors have argued that unequal access to consulting services poses an ethical concern. The challenge that jury science and its high cost runs afoul of the United States Constitution's impartiality mandate when only one side can afford access to consultant services merits some consideration.

In effect, however, what is unfair about trial consulting is a metaphor for what is unfair about the adversarial system itself. If this argument is accepted, the impartiality mandate would necessarily apply to hiring the best legal counsel, expert witnesses, conducting sub rosa investigations, employing the use of pricey visual graphics, etc. The challenge of a level playing field could be lodged against any and all trial-related services. While the task of the trial consultant is providing research and advice, the jury has the final word.

Fortunately, the internet offers on-line research services, such as virtual focus groups, at a fraction of the cost. On-line research can yield large sample sizes consisting of demographics that truly mirror the actual jury pool. In addition to being cost-effective, the trial consultant or attorney who uses internet technology can compile data from a wide variety of cross-sections or areas across the world, eliminating the need for travel to different geographic locations. Thus, trial consulting may be accessible to a wider pool of litigants than simply those who are most affluent.

A second argument offers that if trial consulting is so effective as to significantly impact jury composition, it may violate the constitutional right to an impartial jury. If jury science is able to dictate the outcome of a trial by facilitating the choice of a perfect jury, it tramples upon constitutional principles that should be immediately addressed. To date, no court has heard such challenges.

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M&C WELCOMES

Murchison & Cumming is pleased to acquaint you with our newest additions to the firm:

Heidi C. Quan is an associate in our Northern California office where she focuses her practice on general litigation, premises liability, personal injury and construction defect litigation. Ms. Quan is a graduate of San Diego State University (B.S.) and Golden Gate University School of Law (J.D.).

Robert L. Davis is an associate in our Northern California office where his practice deals primarily with construction defect litigation. Mr. Davis is a graduate of Southwest Texas State University (B.B.A.) and Golden Gate University School of Law (J.D.; LL.M., Taxation).

Elizabeth S. Seitz is an associate in our Northern California office where she focuses on construction defect and general liability cases. Ms. Seitz is a graduate of Dickinson College (B.A.) and the University of San Francisco School of Law (J.D.).

Michael D. McEvoy is an associate in our Los Angeles office and a member of the firm's Product Liability, General Liability and Toxic Tort & Environmental Law Practice Groups. Mr. McEvoy is a graduate of the University of California, Berkeley (B.A.) and the University of the Pacific, McGeorge School of Law (J.D.).

Bruce P. Osmond is Of Counsel in our Nevada office where he handles complex multi-party litigation as well as product liability, construction defect, insurance coverage and personal injury litigation. Mr. Osmond is a graduate of Portland State University (B.A.; *Phi Delta Alpha*) and Pepperdine University School of Law (J.D., *Law Review*).

Mhare O. Mouradian is an associate in our Los Angeles office and a member of the Product Liability and Toxic Tort & Environmental Law Practice Groups. Mr. Mouradian is also experienced in the areas of general liability, business litigation, professional liability and premises liability. He is a graduate of the University of San Francisco (B.A.) and the University of the Pacific, McGeorge School of Law (J.D.).

Bradley R. Kohler, II is an associate in our Nevada office where he focuses his practice in the areas of construction defect, construction delay and construction surety ship litigation. Mr. Kohler is a graduate of the University of California, Berkeley (B.A.) and Whittier Law School (J.D.).

Alexander J. Hubert is an associate in our Nevada office where he concentrates his practice in the areas of general liability and construction defect litigation. Mr. Hubert is a graduate of the University of Arizona (B.A., *Cum Laude*) and Arizona State University School of Law (J.D.).

Nanette Reed is an associate in our Los Angeles office where she maintains a general litigation practice. Ms. Reed served as Law Clerk to the Honorable Gary Hastings of the California Court of Appeals, and graduated from Cornell University (B.A.) and Southwestern University School of Law (J.D., *Magna Cum Laude*, *Law Review*).

Samuel S. Crano is an associate in our Nevada office where he is a member of the firm's General Liability and Construction Law Practice Groups. A former Deputy Public Defender, Mr. Crano also served as Law Clerk to the Honorable James Hardesty, Second Judicial District Court, State of Nevada. He is a graduate of the University of Arizona, (B.A., J.D.).

Rhett Francisco is an associate in our Los Angeles office and a member of the firm's General Liability Practice Group, handling all aspects of litigation pertaining to commercial and product liability disputes. Mr. Francisco is a graduate of Claremont McKenna College (B.A.) and Loyola Law School (J.D., Law Review).

Sepand Akhavanhaidary is an associate in our Orange County office where his practice focuses on medical malpractice, long term care facilities for the elderly, product liability and personal injury litigation. Mr. Akhavanhaidary is a graduate of the University of California, Los Angeles (B.A., *Mortar Board*) and Whittier Law School (J.D.).

ETHICAL ISSUES IN THE USE OF TRIAL CONSULTANTS

(Continued from Page 6)

Some opponents of jury science have argued that when selecting jurors, employing invidious stereotypes is inherently part of the trial consultant's business. Even more disturbing, consultants add scientific validity to these harmful stereotypes. On the other hand, jury science causes some attorneys to abandon the use of antiquated stereotypes in selecting a jury. For example, detailed research of one particular community revealed that education level or books read were more relevant to the defense than membership in a particular class or race.

Moreover, the trial consulting industry is presently unregulated. Any individual or group can enter the field and identify themselves as trial consultants. To require the licensing and regulation of trial consultants would necessitate a regulatory body that would, inevitably, drive up the price of services. Yet it is difficult to assess the level at which the industry should be regulated when there is still conjecture about the extent to which jury science has any impact on trial outcomes.

Conclusion

On the one hand, jury science assumes that jurors are incapable of drawing conclusions based upon evidence that they process at trial. Use of jury science addresses that concern by working to select a jury with a certain predisposition, or to instill that disposition at trial. On the other hand, jury science preserves impartiality by ensuring that hidden biases and prejudices are exposed so that they will not dictate the outcome of trial proceedings. In that regard, jury science counters archaic stereotypes and replaces them with scientific demographic analyses. Society benefits by having racist and often malevolent stereotypes removed from the trial. Ultimately, it is a litigant's right and a lawyer's duty to enlist all legal means to bring a favorable result at trial. Any restrictions to the hiring of trial consultants, therefore, should be prohibited.

Guy R. Gruppie, Senior Partner in the Los Angeles office, Chairs the firm's General Liability Practice Group. Gilbert Perez, III is a law clerk in the Los Angeles office who focuses his practice on general liability litigation. For more information, contact Guy at

MURCHISON & CUMMING, LLP
OFFICE LOCATIONS

LOS ANGELES
801 South Grand Avenue, 9th Floor
Los Angeles, California 90017
(213) 623-7400

ORANGE COUNTY
801 Park Tower
200 West Santa Ana Boulevard
Santa Ana, California 92701
(714) 972-9977

NORTHERN CALIFORNIA
2010 Crow Canyon Place, Suite 380
San Ramon, CA 94583
(925) 365-3170

SAN DIEGO
Symphony Towers
750 B Street, Suite 2550
San Diego, California 92101
(619) 544-6838

NEVADA
2965 S. Jones Boulevard, Suite B
Las Vegas, Nevada 89146-5606
(702) 920-2300

www.murchisonlaw.com

Murchison & Cumming, LLP
801 South Grand Avenue, 9th Floor
Los Angeles, California 90017