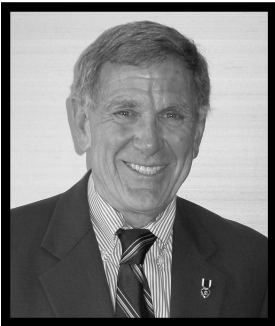


Q&A with the Hon. David O. Carter (Part II) By Christina Von der Ahe



[Editorial Note: Judge David O. Carter is a United States District Judge in the Central District of California, Southern Division. He is a "Double Bruin," having received both his B.A. and J.D. from UCLA. He served in Vietnam in the United States Marine Corps where he received both a Bronze Star and a Purple Heart. Judge Carter started his legal career as an Assistant Dis-

trict Attorney with the Orange County District Attorney's Office until he joined the Orange County Superior Court bench in 1981. President Clinton nominated Judge Carter to the District Court in 1998. The Senate quickly confirmed. The first part of Judge Carter's interview ran in the ABTL Report Spring issue.]

Q: You are known as one of the hardest working judges. How do you make time for your caseload? Do you sleep?

A: When I joined the bench, I thought that there were three things I could be as a judge. I could be stupid and lazy, which is an extraordinarily bad combination. I could be bright and hardworking,

-Continued on page 4-

Telling a Winning Story at Trial By Gerald A. Klein

INTRODUCTION

Everyone loves a good story – especially juries. A good story transcends age, race, economic condition, and gender. If you think your jury trial is just about the facts or the law, then you will probably lose. A winning case is *always* about a winning story. It is your job as a trial attorney to find the story of your case and bring it to life in a way ordinary people will understand.



THE IMPORTANCE OF FINDING YOUR STORY

From the first day you open your file, you should be thinking about the story you want to tell. A winning case is not about the theft of trade secrets. Your case will never be about a breach of contract, a securities violation, or an overburdened easement. Your jurors do not care whether the pork bellies arrived in Chicago on time. Instead, the story may be about trusted employees who cheated and took shortcuts by stealing business their former employer spent millions of dollars building over many years. You *must* find the story that keeps jurors interested in your case and motivated to give your client a verdict.

FINDING YOUR THEME

Your story should include a compelling theme. A theme is the simple "hook" that people will hopefully remember during the case presentation and throughout deliberations. A good theme is your story distilled down to a single sentence and, sometimes, a single word. In a

-Continued on page 6-

- IN THIS ISSUE -

- ◆ Q&A with Hon. David O. Carter (Part II)..... Pg. 1
- ◆ Telling a Winning Story at Trial..... Pg. 1
- ◆ President's Message Pg. 2
- ◆ Mediation — Joint Session or No
Joint Session? That is the Question Pg. 3
- ◆ A Matter of Consequence Pg. 3
- ◆ Habitat for Humanity Pg. 4
- ◆ Thank You PLC Contributors! Pg. 6

The President's Message

By Mark D. Erickson



As I write my last President's message for ABTL, I wanted to thank the membership for the chance to serve and for all of the support you have provided to the Orange County chapter of ABTL and its events this year. We would not have been able to provide the programs and benefits without your participation.

Likewise, the behind-the-scenes planning and efforts of the other officers (Vice President Jeff Reeves, Treasurer Michele Johnson, and Secretary Scott Garner, as well as our Executive Director Linda Sampson) ensure that our programs come off without a hitch. We are likewise in debt to the rest of the Board of Governors and the Judicial Advisory Council for their collective wisdom and guidance.

As we head into Fall, let's put a bow on our June Wine Tasting Fundraiser for the Public Law Center. Thanks to your contributions from reserving tables, purchasing wine tickets, and making donations, as well as the contributions of our sponsors, ABTL was able to donate a record \$31,200 to the noble mission of PLC. But let's not stop there as a membership—go to the PLC website and look at the available pro bono cases. Take a pro bono case and you will not regret the time that you give back in the process.

Thank you for also supporting our mid-year events. We had a tremendous showing of younger lawyers from around the county at the Young Lawyer Division Persuasive Legal Writing Workshop on July 16th. Certified Appellate Specialist Daniel Smith led a great program that was sponsored by Advanced Discovery. On September 11th, in keeping with the meaning of this day of remembrance, ABTL welcomed Alice Hill, the Senior Counselor to the Secretary of the US Department of Homeland Security. In a program moderated by Justice Richard Fybel, Ms. Hill gave the audience a broad overview of the extensive reach of her department and a new appreciation for the complexity of her job and the mission of that department.

-Continued on page 9-

ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl
ORANGE COUNTY

8502 E. Chapman Avenue, #443

Orange, CA 92869

Phone: 714.516.8106 E-mail: abtloc@abtl.org

www.abtl.org

MARK D. ERICKSON, President

JEFFREY H. REEVES, Vice President

MICHELE D. JOHNSON, Treasurer

SCOTT B. GARNER, Secretary

BOARD OF GOVERNORS:

Hon. Gail A. Andler • Hon. Andrew P. Banks
James P. Carter • Hon. James Di Cesare
Hon. Kim G. Dunning • Mark A. Finkelstein
Todd G. Friedland • Hon. Richard D. Fybel
Paul L. Gale • Alan A. Greenberg
John W. Holcomb • Karla J. Kraft
Charles S. Krolkowski • Daniel M. Livingston
Thomas S. McConville • Elizabeth C. McKeen
Hon. Steven L. Perk • Hon. Peter J. Polos (Ret.)
Daniel A. Sasse • Maria Z. Stearns
Hon. Nancy Wieben Stock • Adina W. Stowell

JUDICIAL ADVISORY COUNCIL:

Hon. Theodor C. Albert • Hon. Richard M. Aronson
Hon. Thomas J. Borris • Hon. Thierry P. Colaw
Hon. James Di Cesare • Richard D. Fybel
Hon. Andrew J. Guilford • Hon. Charles A. Margines
Hon. Linda S. Marks • Hon. Gregory Munoz
Hon. Kirk H. Nakamura • Hon. Kathleen E. O'Leary
Hon. Glenda Sanders • Hon. James V. Selna
Hon. Josephine L. Staton

PAST PRESIDENTS:

Donald L. Morrow • Thomas R. Malcolm
Robert E. Palmer • Hon. Andrew J. Guilford
Jeffrey W. Shields • Michael G. Yoder • Dean J. Zipser
Hon. Sheila B. Fell • Gary A. Waldron • James G. Bohm
Martha K. Gooding • Richard J. Grabowski
Sean P. O'Connor • Darren O. Aitken
Melissa R. McCormick

EXECUTIVE DIRECTOR

Linda A. Sampson

ABTL EDITORIAL COMMITTEE

Editor — William C. O'Neill

Assistant Editor — Atticus N. Wegman

The statements and opinions in the ABTL-Orange County Report are those of the contributors and not necessarily those of the editors or the Association of Business Trial Lawyers of Orange County. All rights reserved.

Mediation — Joint Session or No Joint Session? That is the Question.

By William J. Caplan



Some mediators favor beginning mediations without a joint session that includes discussion of the issues, facts and law involved in the dispute. Mediators and mediation advocates sometimes take the position that because mediation briefs have been supplied (often confidentially), the disputed issues

are addressed and a joint session is either a waste of time, or “counter-productive” to a successful mediation.

I hold the contrary view. I believe that the usual course should be to hold a joint session including a discussion on the merits. Mediating a business case without a joint session may rob the mediator of important information to be effective and prevent mediation advocates (trial lawyers) from reaching their real intended audience: the decision-maker on the other side. Lawyers representing clients in mediation should think carefully before jettisoning the joint session as a matter of course, and, instead, elect to use it or not on a case-by-case basis.

Particularly in a business case, the benefits of a joint session can be substantial. Mediation is a time when the attentions of the lawyer and client are focused on the dispute to the exclusion of everything else. This means that the lawyer can focus his or her client on the dispute and give the client the opportunity to really assess the strengths and weaknesses of the litigation. While this kind of focus can happen in private caucus, the information flow in private caucus is decidedly one-sided and therefore can be incomplete.

Joint session is an opportunity to have the client evaluate both the lawyer and the decision-maker on the other side of the dispute. A lawyer and his or her client may also have the opportunity to assess the potential trial credibility of a primary adverse witness and get better insight into the positions, needs and

-Continued on page 9-

A Matter of Consequence

By Trevor O. Resurreccion

Introduction

One of the most important contract provisions from the standpoint of affecting a plaintiff's scope of damages recovery is a waiver of consequential damages provision. In construction cases, for example, an enforceable waiver of consequential damages provision can effectively eliminate all claims for damages other than the cost of repair. In practical terms, a plaintiff's settlement analysis can be greatly affected by the waiver provision's ability to bar the recovery of damages for alleged lost profits, delay damages, loss of goodwill and other consequential damages. For this reason, litigators should identify any waiver of consequential damages provision at the onset of the litigation and posture the case for a judicial determination of the provision's enforceability.



This article examines a recent construction case to demonstrate how a standard construction industry form contract was effectively used to limit the majority of an owner's claimed damages in a construction defect lawsuit where the owner sought to recover \$88 million in consequential damages.

Factual Background

The owner of a mid-rise apartment building in Los Angeles sued the general contractor, the subcontractors, the design professionals and many of the material suppliers alleging a host of construction defects, including leaks in the below grade parking garage, cracks in the concrete garage and upper level floors of the apartment, among other claims. The owner asserted the following damages claims: costs of repair; future lost rents; loss of goodwill and reputation; loss of revenue due to lost storage areas because of water intrusion; diminution in value of the premises; liquidated (delay) damages; interest; costs related to hiring experts to investigate the claimed damages and develop repair protocols; interference with the owner's relationship with its construction lender; loss of right to convert the apartments into condominiums;

-Continued on page 12-

ABTL Volunteers: Habitat for Humanity

Habitat for Humanity welcomed the ABTL this year to new heights ... literally. Many volunteers spent their time on the roof of two buildings while painting the new siding. There was plenty of work for volunteers who did not enjoy heights. By the end of the day, the homes on South Cypress in Santa Ana were certainly better than they started that morning. More importantly, the homes were one step closer to welcoming families.



Coordinated by Tom McConville, this marked the third time that ABTL has joined Habitat for Humanity's cause. Readers who are curious about what the house looks like will enjoy special treats at the Habitat for Humanity OC website (www.habitatoc.org), including pictures of the work in progress.

We thank the following firms for their time and financial contributions: *Orrick, Herrington & Sutcliffe LLP, Crowell & Moring, LLP, Haynes and Boone, LLP, Latham & Watkins, LLP, Gibson, Dunn & Crutcher, LLP, and Shields Law Offices.*

-Q&A: Continued from page 1-

but you'll always find someone much more intelligent than you are. Or third, I could devote all of my energy to the bar and give them my best effort. Nothing takes the place of that except time, especially while carrying four hundred cases. So when you say extraordinarily hardworking, I think that it's just an effort to make certain that I'm trying to match the wisdom and knowledge of what counsel already knows. They are already better prepared because they are focused on their case, whereas I have four hundred.

But once we are in trial, I better catch up so I make decent decisions. The hours are extraordinary and it is hard on me personally. I don't choose those hours, but those hours seem to be necessary if I want to have what I call a "wide-open court" for litigation. I think that some of the stories about my courtroom, though, have grown disproportionately. Yes, we've been on the record at 1:30AM, but those were extraordinary cases quite frankly. Like the *Bratz* case or the *Aryan Brotherhood*, cases of that magnitude. But, from those stories people believe that you're here every night till midnight, which is not true. We're only here till 11:00PM. (*Editor's note, Judge Carter assures us he is joking.*)

Q: How do you handle the clerkship process?

A: My clerks typically serve only one year. My hours can put too much pressure on a clerk to last more than one year, or maybe two years. But also I think that these positions were created for wonderful, bright, young people coming out of these wonderful law schools or firms. The transition each year is tough. We receive about 2,000 applications per year. It's hard, it takes a lot of time, but I think it's worth it. I keep pictures of all the clerks up on my wall because they are like a second family and I am extraordinarily proud of them. And I hope they are proud of me.

Q: What is your process when you are making a decision?

A: I have discussed how important putting the time in is. Sometimes I have to read things three and four times or have the fifth or sixth draft. Other times it is

-Continued on page 5-

very easy. I think that 20 percent of the decisions or so that we make are extraordinarily difficult. I want to demonstrate to the circuit that it is not easy to reverse my decision when reversal is called upon. I have always told my clerks to make sure that the circuit and the parties understand that we understand the facts. Second, that we have the right standard. If we don't, we deserve to be reversed. And third, to write the opinion so that it can be segmented. We may be right in a portion of that opinion, but we may be wrong in another portion. That might stop a total reversal. And write in a way that it makes the decision easy to read and understand the reasoning.

I have also told my clerks (and they agree) that we never criticize the circuit and we never will. The circuit does an outstanding job. It is not my place as a District Court Judge, regardless of what I may privately think on occasion, whether they were right or wrong. We have a great circuit in the Ninth Circuit. I'm very proud of them.

Q: What are your thoughts on specialized judges for patent law at the trial court level, like the Patent Pilot Program in the Central District?

A: I support judges who specialize in patents, like Judge Guilford. I think that's exemplary. Not copy-right, not trademark, just patent law. I think that the district court in a sense humanizes patent law. Anecdotally, district courts are oftentimes a buffer to what I call the obviousness of a patent long before the Supreme Court said obviousness is something that we should pay more attention to. I think that Judge Rader got it right in his dissent [*Cybor Corp v. FAS Technologies, Inc.* 138 F.3d 1448 (Fed. Cir. 1998)] when he said there has to be a higher standard than a de novo standard of review. With no higher standard, what we do is we kind of just pass through to the Federal Circuit. So it has to be our pride and our ego and our willingness to do a good job that makes us strive for that perfection. And so I really agree with Judge Rader. I don't know what the higher standard should be — clear and convincing — whatever, but there should be a little higher standard in the Federal Circuit so that the district courts' decisions mean something.

Q: What are some of the best qualities of oral advocacy you have seen?

A: Really good attorneys have picked the key points at oral argument. They haven't lost me in what I call the minutia. And they know the four or five cliffhangers that really make a difference. Oftentimes attorneys get involved in what I call volume. And by the time they hit the key points, something has been lost. At that point, attorneys lose a lot of attention, if not a little bit of credibility.

I find there is a difference between litigation counsel at oral argument and trial counsel. Coming back to patent law, arguing a patent case to a jury can be baffling. The jury is often dazed when trial counsel needs to craft an approach that makes the average juror pay attention and understand it. That's an art. Patent motions can make for extraordinarily difficult work because discussing a Markman claim construction can be absolutely intricate. But it requires a very good trial attorney to then take that claim construction intricacy into the trial arena and get them on the common ground that the average American can understand.

Q: Do you have a preference between seeing, in oral argument, the older partner arguing (with the young associate supporting) or the young associate arguing (with the older partner supporting)?

A: That is a great question. I respect the wisdom of the older partner, and probably the client came to the older partner because there was an established relationship. But I oftentimes think about who really did the work. That young associate probably wrote the brief that the partner edited. Every bit as involved. And I really enjoy the younger attorneys. They are on the way up. They are extraordinarily well prepared. They are enthusiastic. They're banging the table, which I find hilarious. It's refreshing.

I just worry in this day and age that trials are fading. In the federal courts about ten years ago, we used to try a little over five cases for every 100 cases filed. We're down to less than two cases for every 100 cases filed. Why wouldn't we be? We were told by Congress to adopt all sorts of alternative programs, which have worked. And, frankly, we put a lot of pressure

-Continued on page 6-

-Q&A: Continued from page 5-

on the attorneys to settle. Or the process does. So back to your question, I would encourage young associates to get involved in pro bono work. Go do some work for free to get you to the courtroom. Basically, get into court where you can.

The ABTL thanks Judge Carter for his time.

♦ *Christina Von der Ahe is an associate at Orrick, Herrington & Sutcliffe LLP.*

Thank You to Our PLC Contributors!



- | | |
|-----------------------------|---------------------------------------|
| * Darren O. Aitken | * O'Melveny & Myers |
| * Aitken Aitken Cohn | * Thomas S. McConville |
| * James G. Bohm | * Melissa R. McCormick |
| * Bohm Matsen LLP | * Elizabeth C. McKeen |
| * Hon. Thierry Colaw | * Morgan, Lewis & Bockius |
| * Crowell & Moring | * Hon. Greg Munoz |
| * Mark D. Erickson | * Newmeyer & Dillion |
| * Hon. Kim G. Dunning | * Sean P. O'Connor |
| * Mark A. Finkelstein | * Hon. Kathleen E. O'Leary |
| * Todd G. Friedland | * William C. O'Neill |
| * Paul L. Gale | * Robert E. Palmer |
| * Scott B. Garner | * Michael Penn |
| * Gibson, Dunn & Crutcher | * Panish, Shea & Boyle |
| * Martha K. Gooding | * Payne & Fears LLP |
| * Richard J. Grabowski | * Jeffrey H. Reeves |
| * Alan A. Greenberg | * Rutan & Tucker LLP |
| * Greenberg Gross LLP | * Hon. Glenda Sanders |
| * Hon. Andrew J. Guilford | * Daniel A. Sasse |
| * Haynes and Boone | * Sheppard, Mullin, Richter & Hampton |
| * Hodel Briggs Winter | * Maria Z. Stearns |
| * Irell & Manella | * Stephens Friedland LLP |
| * Jones Day | * Adina W. Stowell |
| * Michele D. Johnson | * Troutman Sanders LLP |
| * Karla J. Kraft | * Gary A. Waldron |
| * Charles S. Krolkowski | * Hon. Nancy Wieben Stock |
| * Latham & Watkins | * Waldron & Bragg |
| * Daniel M. Livingston | * Michael G. Yoder |
| * Manatt, Phelps & Phillips | * Dean J. Zipser |
| * Hon. Charles Margines | |

-Telling a Winning Story: Continued from page 1-

trade secrets case, the theme might be “cheaters should never prosper.” In personal injury cases, the theme may be “Acme Corporation valued corporate profits more than the lives of families who bought Acme’s products.”

The importance of a winning case theme is almost as important as a winning story. Many years ago, I was involved in a dispute over how to calculate “gross sales” for a celebrity pitch man who was offered three percent of “gross sales.” The contract was convoluted and the circumstances surrounding his compensation made the term “gross sales” far from clear – at least to lawyers. The plaintiff’s theme throughout the case was “gross means gross.” Although the defense attorney did a fantastic job explaining the convoluted nature of the contract and that the reference to “gross sales” was not really “gross sales,” **none** of the mock trial panels in four different presentations were persuaded. Instead, juror after juror parroted back plaintiff’s themes “gross means gross.” This anecdote explains how powerful an effective theme can be.

CONSTRUCTING A STORY PEOPLE WANT TO BELIEVE

Stories cannot be constructed in a vacuum. Clients are horrified when I tell them that truth alone is not enough to win a case. More important than truth itself is making sure the story you tell is a story ordinary people are likely to believe. By way of example, Anna Nicole Smith, a beautiful young woman, married a 90 year old billionaire. Supposedly, she married him because “he was the only real man she ever met.” That may have been true. But no juror would **ever** believe this story.

A lawyer who sets out to prove Anna Nicole Smith married a 90 year old billionaire for true love rather than money is doomed to fail. Accordingly, the first step in finding your story is to find a story people are **going to believe**. If you do not understand this critical distinction, then you will lose cases you should win.

The next step is to find a story with universal appeal that people **want to believe**. In conceiving this

-Continued on page 7-

-Telling a Winning Story: Continued from page 6-

story, you should recognize that most jurors do not think like attorneys. They do not have your education. They do not have your life experience. They do not live your lifestyle. In short, they probably do not think like you. Equally important, there will be broad diversity among your jurors in terms of age, ethnicity, education, and points of view. A “Rush Limbaugh Republican” is not going to view a set of facts the same way as a “George Clooney Democrat.” Yet there are certain universal themes and generally accepted truths each of these potential jurors could embrace. For example, most people believe that hard work should be rewarded. Most people believe it is wrong to steal property belonging to others. In developing your story, you need to find some of these unifying principles which most people hold dear. These principles must be tied to your theme and built into your story.

KEEP YOUR STORY SIMPLE AND FOCUSED

It seems like every business litigator specializes in “handling complex business litigation.” What separates the business trial lawyer from the “complex business litigator” is taking complex cases and turning them into simple stories which ordinary people can understand.

An effective trial presentation consists of a story people want to believe, with a compelling theme that people naturally embrace, seasoned with interesting characters your jurors care about. These simple ingredients are all you need to win your case. Focus on these ingredients, rather than “complex” things that will only be distractions to the story you want to tell.

Unfortunately, most lawyers cannot resist responding to every argument opposing counsel makes and answering every conceivable question a jury might have, even if presenting these details detracts from the main story. There is no need to fight fire with fire. Just because your adversary brings up 50 issues does not mean you need to respond to every allegation, accusation, or footnote. Stay focused on your own compelling story and do not get sidetracked by opposing counsel’s tactics. It will only

interfere with the story you want to tell. By responding to your adversary’s points, you risk telling your adversary’s story rather than your own story. If you have a great story to tell, and you are telling it properly, the jury is probably not listening to opposing counsel anyway.

MAKE THE STORY ABOUT THE ADVERSE PARTY

For many years, I typically made my case about my client – who was the hero of my story (even when my client was less than heroic). But that changed at an ABTL seminar I attended where actors gave a presentation on how to tell a trial story in the new millennium. I was fascinated by what I heard and it created a paradigm shift for me in how I view case presentations.

When I was growing up, politicians, sports figures, and television characters were heroes to admire. We cared about what John F. Kennedy did in the Oval Office, not in the Lincoln Bedroom. We cared about Mickey Mantle’s exploits on the field, not in the Manhattan bars. The heroes on television made the right decisions, did the right thing, and they always won. Nowadays, one politician or another is on the defensive, explaining some indiscretion; our sports heroes are on steroids; and the general public is consumed in watching *Mad Men* and *The Real Housewives of Orange County*. Today’s “heroes” are hopelessly flawed. Even if we root for them, we are cynical about their motives and actions.

The actors giving the seminar explained to a surprised audience of lawyers that if your case is about your client, you are more likely to lose. The actors explained that today’s jurors are looking for the defects and failures of the main character. The lesson learned – tell a story about the bad decisions the opposing party made, instead of focusing on your own client.

**TELLING YOUR STORY EFFECTIVELY IN
OPENING STATEMENT**

Few things are as tedious as listening to a boring teacher, clergyman, or a lawyer droning on and on and on. Most trial lawyers believe they are much more interesting than they really are. Only a few extraordinarily gifted lawyers can hold people spellbound while they chatter for an hour or more.

-Continued on page 8-

Jurors want to hear the case, decide it, and go home. You may have a great story, but if no one is listening, it will not matter. In presenting an opening statement, your job is to hook people into listening to your story. From the moment you rise to give your opening statement, launch into your story. Do not waste time gushing with thankfulness about jury service, introducing yourself, etc. The jurors will never have their attention as focused upon you as closely as when you step up for the first time to tell your story. Do not waste that opportunity.

Make opening statement dramatic. Set the stage. It could be at a desk where one of the key characters is formulating a decision that will ruin the lives of good people. It may be in a board room where the board is about to make a decision that they know will kill children. Tell your story as chronologically as possible, with dramatic effect, so jurors can watch events unfold. More than any other point in the case, this is your opportunity to tell the story of your case and get jurors thinking about your key themes. It is the rare opening statement that requires more than one and one-half hours of time – even in the most complicated cases. Many effective opening statements can be presented in a half hour or less. Opening statement is not the time to go into every detail about the case.

FINISHING THE STORY AT FINAL ARGUMENT

Unlike opening statement, which is pure storytelling, closing argument is a mixture of storytelling and teaching about the law. Your job in closing argument is not to retell the story jurors have already heard, but to explain why your story (and not the other side's) is the one jurors should believe and why the facts you proved require a jury to find in your client's favor. Wherever possible, you must let jurors know their decision is not only important to the parties, but that an incorrect verdict (*i.e.*, a verdict for your adversary) would undermine the moral fabric of everything we hold dear.

Use props. It is inconceivable to me that someone would present final argument without heavy reliance upon video, computer graphics, and/or animations. While your spouse and children may hang on your every word, most people do not find you nearly as in-

teresting. Multimedia trial presentations help jurors focus on something other than you. If done properly, multimedia trial presentations help jurors remember themes and key story points. Find dramatic video deposition clips where someone makes a devastating admission or the adverse party looks as guilty as can be. Introduce these clips with style and dramatic flair. Often jurors stare at these videos and are more influenced by how a witness testifies than by what the witness said. When presented properly, much of the story can be told through playing an adverse party's video clips in final argument. When depositions are taken properly and presented in final argument, the adverse party will admit everything you need to win your case.

For those of us not as gifted as some of the great story tellers we have in Orange County, multimedia presentations are the great equalizer. Computer graphics, including simple animations, PowerPoints, and video usually perk jurors up. Face it, we are all big kids who still like a cartoon or a movie now and then. Animations can now be created at very low cost. Consider preparing an animation to help illustrate concepts. Twenty years ago, I handled a sophisticated fraud and accounting case which would put most accountants to sleep. Rather than go through the various convoluted transactions, I played a simple animation showing two balance sheets. A block of assets (depicted as a rectangle) moved from the plaintiff's balance sheet to the defendant's. That was the easiest way to show the theft of assets. No one would have stayed awake to follow the accounting had I not used pictures.

While a final argument will have to address key exhibits, contract provisions, jury instructions, etc., never forget that your case is about the story, not individual pieces of evidence or jury instructions. Tie the evidence and the instructions into the story you are telling.

CONCLUSION

Winning trials comes down to telling winning stories. You can have the facts. You can have the law. But if you do not have a winning story, you will probably lose. Find a winning story and everything else will fall into place.

♦ *Gerald A. Klein is a trial lawyer at Klein & Wilson.*

-President's Message: Continued from page 2-

More recently, on September 24th, ABTL sponsored a lunch hour program in Judge Gail Andler's courtroom on "The Lost Art of Mentoring". The panel for the program was not only well-known and accomplished in the practice of law, but also respected for their mentoring skills: Judge Andrew Guilford, John Hurlbut, Dean Zipser, and Michele Johnson. The program was well-attended with a number of senior lawyers in the audience who also contributed their perspectives to the presentation.

In October, Orange County was the location of this year's ABTL Annual Seminar at the Ritz-Carlton Laguna Niguel. Orange County chapter attorneys and judges figured prominently in the program "The Art of Storytelling" including Wylie Aitken, Hon. Kim Dunning, Gerald Klein, Mark Robinson, Jr., and Hon. Josephine Tucker. Mark your calendar now for next year's Annual Seminar which will be hosted by the Orange County chapter at the JW Marriott Ihilani Ko Olina Resort on the island of Oahu, October 15-19, 2014.

We conclude our dinner programs for 2013 with a program about preserving your trial record for appeal entitled "When Error Occurs—Preserving the Record for Appeal, Tales from Bench and Bar". Justice Raymond Ikola, Judge Franz Miller, Jennifer Keller, and M.C. Sungaila will share their opinions and experiences to attendees. We will also collect monetary donations and stuffed animals for the Orange County Superior Court adoption program, as well as donations to the Armed Services YMCA for bikes destined for children of enlisted service members serving overseas.

♦*Mark D. Erickson is a litigation partner at Haynes and Boone LLP in Irvine.*

-Mediation: Continued from page 3-

interests that will form the basis of negotiations. The advocates and clients can also assess the emotional attachment the other side may have to particular issues, deal points and interests. This can lead to creative trading during the negotiation process.

One experienced litigator interviewed for this article pointed out what should be obvious. Not only is a mediation an opportunity for the mediation advocate to influence the other side, but it is an excellent time to *listen* to the other side and evaluate whether the adversary might actually be right on some issues, and, in that case, re-assess your own position. Evaluation can be more complete than just comparing the mediation briefs because a good joint session not only compares opening positions, but the responses to the positions, and counter-responses. This permits a sifting down of the positions of the parties and can result in a focus on the kernels of important issues that will make the difference in the case. Negotiations in light of these more clearly identified issues can produce an agreement that might otherwise have been missed. Moreover, in cases that involve more than a zero-sum negotiation, the parties can choose to engage in problem solving, rather than fighting, in order to come up with a solution to the dispute.

There is no litigation moment other than a joint session where such give-and-take happens. In a deposition, the questioning is one-sided and the other client, if they are present, usually sits silently. If the deponent asks a question, the questioning attorney generally says, "this is not my deposition." At trial, each side puts on evidence and closing arguments are made; but these are long monologues - there is no opportunity for give-and-take. In a joint mediation session major issues can be discussed with give-and-take from both sides. This leads to new insights, and, potentially, to creative solutions that would not otherwise have been developed. It also permits more meaningful negotiations because the give and take can help in formulating offers and counter-offers that include reasons for the concessions generated by the information learned in the give and take (sometimes referred to as "principled negotiations"). (Fisher, R., Ury, W. and Patton, B. (1991). *Getting to Yes: Negoti-*

-Continued on page 10-

ating Agreement Without Giving In. Second Edition. New York: Penguin Books.)

A competent litigator should have no difficulty advocating his or her position and responding to the challenges made by the other side. Mediation participants generally waste time trying to persuade the mediator of the virtue of their position. In reality, the audience that means something is the client on the other side. A mediation advocate should not quickly or easily discard the opportunity to make the case in front of the other side.

Joint session is the best way to focus the case on the disputed issues that matter. Without a joint session where the mediation advocates debate the issues, the mediator is placed in a position of advocating the positions of each of the sides to the other in private caucus. No matter how good the mediator is, the mediator has generally lived with the case for only a day or so. There is no way the mediator knows the case as well as the advocate lawyer, and therefore, the mediator cannot be as persuasive on the issues as that lawyer can be. If you rely on the mediator to present your case in private caucus, the mediator will generally be able to make the first level of argument, but the mediator does not have the deep background on the issues or evidence to respond to a series of challenges. This results in the mediator inefficiently moving back and forth between the parties - first marshalling the response, then communicating it, just to be met with another challenge from the adverse advocate. This is a most inefficient use of mediation time.

There is a second downside to having the mediator make the advocates' arguments. It puts the mediator in the role of a quasi-advocate, detracting from the mediator's ability to develop the rapport necessary to be an effective advocate for settlement, which is what both sides generally want. The mediator works best when perceived as truly neutral, and is most successful in being persuasive when the mediator can build friendly rapport with the parties. People are more likely to be influenced in negotiations by people they like, rather than someone who they see as an adversary. (Dr. Robert Cialdini, *Influence, Science and Practice* (4th Ed., Allyn & Ba-

con). Forcing the mediator to make your arguments for you detracts from the mediator's ability to develop the proper rapport.

The joint session is even more useful to the mediator than it is for the parties. The mediator is trained to watch the parties during joint session, and look for the reactions from the parties and their lawyers. A mediator can assess the conviction a lawyer has on a particular issue in a way that will not show up on paper. The mediator can think along with the parties and develop counters to the positions taken during joint session. This will help the mediator engage in effective reality testing during private caucus. The give-and-take in joint session can help the mediator devise creative ways of satisfying the underlying interests that come out in joint session. The dialogue provides the mediator with clues on how to build consensus. It also gives the mediator the opportunity to demonstrate the mediator's preparedness on the issues which can add to the mediator's credibility. A skilled mediator can guide ("referee") the parties through the joint session process in a way that reduces discord and demonstrates neutrality, which can help engender the trust necessary to help the parties to the settlement finish line.

A joint session also lends an element of "due process" formality to the proceeding. The joint session dialogue will be the parties' only equivalent of a day in court (before their actual day in court). A party's opportunity to be heard can add an element of satisfaction that aids in getting the case resolved. This also leads to satisfaction with the mediation process and the resulting settlement. As the presider at the joint session, the mediator is placed in the position of "authority figure" during joint session. Studies show that parties are more willing to make concessions to an authority figure than they would otherwise. (Robert B. Cialdini, *Influence: The Psychology of Persuasion* (1993) Harper Business p. 213.)

Moreover, there are ways to overcome most of the objections to the joint session:

1. Objection: *Joint session is a waste of time.*
The parties have already submitted mediation briefs so the issues are already in play.

-Continued on page 11-

Response: In comparison to the time spent in the rest of litigation, and in relation to the amount in controversy, spending an extra hour or so hashing out the issues and assessing the other side is a grain of sand on the beach of the lawsuit. As previously noted, mediation briefing is frequently confidential - not shared. Mediation briefing does not generally include a back-and-forth discussion of the issues that brings the key facts or arguments that are going to matter into focus. The briefs generally contain the same competing monologues that the parties have been exchanging in court. The time that is saved by avoiding an hour or so of joint session dialogue is frequently used up with the mediator trying to support the arguments of both sides in private caucus when there has been no joint session. The mediator has to shuttle back and forth with counter arguments, then the counter to the counter, and so forth. Also, time wasting does not seem to be a big concern in many mediations. Much more time is wasted in exchanging tiny settlement concessions during mediation without worrying about that time than is wasted in joint session. The benefits of the dialogue and exchange usually outweigh this negative by a wide margin.

2. Objection: *Joint session just revs up antagonism.*

Response: The parties in a business dispute already know that they disagree, and that there are differences in recollection of the issues. Experienced negotiator-clients frequently deal with disagreeable parties and know how to handle them. If the parties cannot bear to hear these disagreements in mediation, imagine how they will deal with them at deposition or trial when it counts. If nothing else, hearing things the client does not like to hear will prepare the client for the more stressful times in the litigation. Hearing the other side make statements with which clients disagree might produce some short term negative reactions, but this can be minimized by having the mediator ask that the statements be directed to the mediator rather than to each other. The mediation advocate can also take some of the sting out of joint session by explaining the process to the client in advance, preparing the client for the things the client will not like and explaining the benefits to their side of joint session.

In cases where clients might have difficulty listening to the other side without getting upset, it may be a good idea to have a pre-mediation telephone call or meeting with the mediator. The mediator can explain the benefits of the joint session and advocate considering and evaluating what the other side has to say. The mediator can also explain how the joint session helps the mediator do the mediator's job, so that the client gets the most "bang" for the mediation buck.

During the joint session a capable mediator can reframe the arguments made to remove the "blame" or "insult" out of them, so that the stated issue remains and the characterization is discarded. (Fisher & Ury, *"Getting to Yes: Negotiating Agreement Without Giving In."* (2d ed. Penguin Press, 1991).) Further, the mediator can take the blame for the airing of the issues by saying that the mediator has asked for the exchange, thus taking some of the sting out of it. Revving up antagonism is a valid reason not to have a joint session. However, it must always be compared with the benefits of a joint session in a particular case. This element alone rarely justifies elimination of a joint session.

3. Objection: *Lawyers do not like the extra preparation required to get ready for a joint session.*

Response: This objection is theoretical only. In order to evaluate their positions for settlement, lawyers necessarily prepare their cases with or without a joint session. Mediation advocates generally come fully prepared, and need very little additional preparation for a joint session. However, one local litigator confided that when that lawyer knows there will be a joint session, he is more careful in preparing for the mediation, which, in his experience has always resulted in a more productive mediation.

4. Objection: *My client may say something harmful to our case in the joint session.*

Response: It is the client's case. If the client has been counseled against free communication during the mediation, and still chooses to speak, the client's wishes should generally be honored. However, there is nothing wrong with the lawyer saying, "let me do all the talking in joint session" and instructing the mediator not to ask questions directly to the client. One local attorney

-Mediation: Continued from page 11-

suggested that if a litigation advocate has a concern about client control during the joint session, the parties could agree that only the lawyers would participate in the dialogue, allowing the mediator to control that situation. The mediation advocate can thus get much of the benefit of the joint session without any detriment. In the rare case where it is the lawyer's judgment that the client will "give away the store" in joint session, the lawyer can hold a joint session without the client present or with another client representative present while keeping the problem client waiting in the private caucus room.

5. Objection: *Joint session will cause my client to have to relive the emotional harm caused to the client by the other side.*

Response: A mediation should not be a time or place where anyone suffers harm. If there is a risk of harm, joint session should be eliminated. There are certain cases such as sexual harassment or abuse cases where there should never be a joint session. Sometimes family or partnership disputes are so emotional that a joint session will never be productive and will likely devolve into a shouting match. In those cases, a joint session including both/all clients may be eliminated. This is one reason why having joint session or not should be determined on a case by case basis.

6. Objection: *The weak case will be exposed in joint session.*

Response: In rare instances, a litigation advocate should avoid joint session where his or her side is so weak (or the client will perform so poorly) that the weakness will be exposed during joint session, and result in the other party taking a settlement position that will make settlement impossible. In such a case, the dispute is unlikely to settle in any event, unless the other side has mis-evaluated its position. Nevertheless, eschewing joint session in this context would be rational, because you *might* be able to settle the case without it.

The real negotiating work usually begins in private caucus with the mediator shuttling between conference rooms to deliver offers and counter-offers,

and the justifications for them. In private caucus the mediator can allow a party to vent," develop personal rapport with the parties, and, if needed, engage in "reality testing." The mediator can also assist in developing effective negotiating positions that place the parties on a better path to agreement. However, in most cases the most effective private caucuses should generally take place after a complete joint session. Think twice before eliminating the joint session.

♦ *William J. Caplan is a full-time mediator operating out of the offices of Rutan & Tucker, LLP in Costa Mesa and serves as an adjunct professor at Chapman University School of Law.*

-Consequential Damages: Continued from page 3-

and disgorgement of monies paid to the contractor.

The contract between the owner and general contractor was a standard form American Institute of Architects (AIA) form contract that had been heavily modified by the parties and their respective counsel during the negotiation of the contract. However, the parties did not alter the waiver of consequential damage provision, which provided:

§4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit

-Continued on page 13-

arising directly from the Work.

This mutual waiver, is applicable, ***without limitation***, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

(Emphasis added.)

The contracts between the general contractor and subcontractors included "flow down" provisions which incorporated the terms of the prime contract. These provisions were particularly important because the owner sued the subcontractors for breach of contract as an intended third-party beneficiary, among other causes of action.

The Procedural Mechanism to Enforce the Waiver of Consequential Damages Provision

Code of Civil Procedure section 437c permits a trial court to adjudicate "a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty." (Code of Civ. Proc., § 437c(s).) However, in order to invoke this provision of section 437c, the parties *must stipulate* to the motion and the court must issue an order finding that, "the motion will further the interests of judicial economy, by reducing the time to be consumed in trial, or significantly increase the ability of the parties to resolve the case by settlement." (§ 437c(s)(2).) Notably, many other states and the federal courts do not require a stipulation by the parties or a prior court determination regarding the interests of judicial economy as a prerequisite to filing a motion for determination as to the enforceability of a waiver of consequential damages provision or other limitation of liability provisions.

In the case at issue, plaintiff's counsel refused to stipulate to the filing of a motion for summary adjudication pursuant to section 437c(s). Therefore, on behalf of our subcontractor clients we filed a cross-complaint against the plaintiff for declaratory relief as

to the enforceability of the waiver of consequential damages provision. The plaintiff owner filed a demurrer to the cross-complaint, which the trial court overruled, thus setting the stage for a standard motion for summary adjudication which sought to adjudicate an entire cause of action for declaratory relief and not simply a legal issue or claim for damages. By way of a motion for summary adjudication, we sought the following determinations from the trial court: (1) the waiver of consequential damages provision in the owner / general contractor prime contract was enforceable; (2) the waiver of consequential damages provision applied to our subcontractor clients; and (3) the owner was precluded from recovering any consequential damages against our clients, including all damages other than the costs associated with the repairs of any construction defects.

The Enforceability of Waivers of Consequential Damages Provisions

As a threshold issue, the trial court first had to determine whether waivers of consequential damages provisions in contracts are enforceable. Fortunately, contractual provisions whereby parties waive recovery of consequential damages are enforceable in California. (*See CAZA Drilling (California), Inc. v. TEG Oil & Gas U.S.A., Inc.* (2006) 142 Cal.App.4th 453, 466.) In the *CAZA Drilling* case, the Court of Appeal held that, "When the parties knowingly bargain for the protection at issue, the protection should be afforded." (*Id.* at 467.) In the majority of commercial situations, courts have upheld contractual limitations on liability, even against claims that the breaching party violated a law or regulation. (*Id.* at 472.) By analogy, contractual modification or limitation of remedy in sales agreements, including claims for consequential damages, is allowed by statute. (Cal. Com. Code, § 2719.) Contractual exclusion of consequential damages as a remedy has been held to be enforceable under Section 2719. (*See AMF Inc. v. Computer Automation, Inc.* (1983) 573 F. Supp. 924, 930.) Courts in other jurisdictions have similarly held that waiver of consequential damages provisions in construction contracts are enforceable.

Consequential Damages Defined

Contractual damages are of two types – general damages (sometimes called direct damages) and special damages (sometimes called consequential damages). (*Lewis*

-Continued on page 14-

-Consequential Damages: Continued from page 13-

Jorge Construction Management, Inc. v. Pomona Unified School Dist. (2004) 34 Cal.4th 960, 968.) General damages are often characterized as those that flow “directly and necessarily from a breach of contract, or that are a natural result of a breach.” (*Id.* at 968; Civ. Code, § 3300.) Unlike general damages, consequential or “special” damages are those losses that do not arise directly and inevitably from any similar breach of any similar agreement. Instead, they are secondary or derivative losses arising from circumstances that are particular to the contract or to the parties. (*Id.* at 968-969.)

As mentioned above, the owner of the apartment building claimed numerous categories of damages, including costs of repair and consequential damages.

The Owner’s General Damages -- Costs of Repair

The damages which the owner sought for costs of repair for construction defects are properly characterized as general damages because they are costs for repair of alleged defective construction. Therefore, costs of repair are not precluded by the waiver of consequential damages provision.

The Owner’s Consequential Damages

The remaining categories of the owner’s alleged damages are consequential damages and thus precluded by the waiver of consequential damages provision. We argued consequential damages included lost rents, loss of goodwill and reputation, loss of revenues, diminution in value, delay damages, and interest thereon. First, these categories of damages are specifically identified as consequential as set forth in the consequential damages waiver provision (see above). Therefore, pursuant to the express contractual language, those categories of damages are consequential damages and are not recoverable.

Second, the case law establishes that these categories of damages are consequential and therefore unrecoverable. The case of *Bartram, LLC v. C.B. Contractors, LLC* involved the exact same waiver of consequential damages provision as that in the prime contract. (*Bartram, LLC v. C.B. Contractors, LLC* (N.D. Fla., Mar. 31, 2011, 1:09-CV-00254-SPM) 2011 WL 1299856 certificate of appealability denied, see also *Wal-Mart Stores, Inc. v. S.C. Nestel, Inc.*, 1:07-cv-0470-LJM-JMS, 2010 WL 1190534 (S.D.Ind. Mar. 23, 2010).) In *Bartram*, the plaintiff argued that the waiver of consequential damag-

es provision applied by its terms only to “losses of financing” as opposed to the increased costs of financing. (*Id.*) The U.S. District Court in *Bartram*, however, noted that despite plaintiff’s argument, the list of consequential damages in the waiver is “non-exhaustive.” (*Id.*) The court went on to hold that under “generally recognized canons of construction, increased financing costs are included in the waiver because they are substantially similar to losses of financing.” (*Id.*) Further, the court recognized that interest and finance costs are generally considered to be consequential damages. (*Id.*) Likewise, diminution of value was deemed to be a consequential damage. (*Id.*) The court noted that because loss of use, income, and profit are included in the consequential damages waiver, calculating the diminution of value poses “extreme difficulties” even if not specifically included in the value. (*Id.*) Accordingly, the Court in *Bartram* granted the defendant’s motion for partial summary judgment to enforce the waiver of consequential damages provision and held that plaintiff was precluded by the waiver of consequential damages from recovering lost revenue, increased finance costs, and diminution of value. (*Id.*)

A similar result was reached by the New York Supreme Court in *400 15th Street, LLC v. Promo-Pro, Ltd.* (N.Y. Sup. Ct. 2010) 28 Misc.3d 1233(A). In *400 15th Street*, the plaintiff owner sought to recover damages for its losses due to alleged delays resulting in the necessity to re-zone the project, including (i) its delay damages, (ii) its payment of attorneys’ fees to appeal the zoning change, and (iii) its payment of additional interest, insurance, and other carrying charges. (*Id.* at 10.) The owner entered into a construction contract with the exact same waiver of consequential damages provision in the prime contract. (*Id.* at 2.) The New York Supreme Court held that plaintiff could not recover upon these claims, “because they constitute consequential damages, which plaintiff specifically waived pursuant to section 4.3.10 of the General Conditions.” (*Id.* at 10.) Even though the plaintiff in *400 15th Street* contended that the exclusion in section 4.3.10 of the General Conditions was specifically limited to damages incurred for “rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons,” the New York Supreme Court made a ruling

(Continued on page 15)

-Consequential Damages: Continued from page 14-

similar to that made by the U.S. District Court in *Bartram*, that, “such contention is without merit as a plain reading of the section reveals that it applied to all ‘consequential damages arising out of or relating to this Contract.’” (*Id.* at 10.) The New York Supreme Court further held that, “Plaintiff’s claim for the two point extension loan fee and additional interest, which resulted from its refinancing of its construction loan, also constitutes a claim for consequential damages expressly excluded by section 4.3.10 of the General Conditions,” noting that all of these claims are for “consequential damages which fall within the exclusion of section 4.3.10 of the General Conditions since such claim seeks ‘[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act.’” (*Id.* at 10 (citation omitted).)

Lost profits have also been held to fall under the category of consequential damages. (*See Perini Corp. v. Greate Bay Hotel & Casino, Inc.* (1992) 129 N.J. 479, 498 [610 A.2d 364, 374] *abrogated on other grounds by Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc.* (1994) 135 N.J. 349, 358-59 [640 A.2d 788, 793]; see also *Seaman v. U. S. Steel Corp.* (N.J. Super. Ct. App. Div. 1979) 166 N.J. Super. 467, 471 [400 A.2d 90, 93].) In addition, alleged delay costs are a secondary or derivative loss and are thus consequential damages rather than direct (or general) damages. (*California Commercial v. Amedeo Vegas I, Inc.* (Nev. 2003) 119 Nev. 143, 146, fn. 5; see also *Clark County Sch. Dist. v. Rolling Plains*, 117 Nev. 101, 106 (Nev. 2001).)

As to the apartment owner’s remaining damages categories in the instant case, we argued these were also barred by the waiver of consequential damages provision and the applicable case law. For example, as to the damages related to the general contractor’s alleged interference with the owner’s relationship with the construction lender, any such resulting carrying costs sought by the owner are consequential damages. (*Davis v. Beling* (Nev. 2012) 278 P.3d 501, 514.) This category is further precluded by the express language within the waiver of consequential damages provision itself.

In sum, the categories of the owner’s alleged damages, except damages related to the cost of repair,

are all consequential in nature, and therefore unrecoverable pursuant to the consequential damages waiver provision.

The Court’s Order Granting the Motion for Summary Adjudication

In a detailed and lengthy Order granting our Motion for Summary Adjudication, the trial court noted that the prime contract in which the waiver of consequential damages was set forth was negotiated between two sophisticated parties and their attorneys. The court emphasized that parties to a private contract are entitled to limit potential future damages to reduce risk and uncertainty, which was exactly what the owner and general contractor did when they entered into the prime contract. The court further found that the subcontracts incorporated the terms of the prime contract and thus the owner’s consequential damages claims against the subcontractors were barred by the waiver of consequential damages provision. The court ruled that all of the owner’s damages other than the costs of repair were barred by the waiver of consequential damages provision.

Conclusion

As demonstrated by the foregoing discussion of the importance of a waiver of consequential damages provision in a construction defect lawsuit, every construction litigator and those who litigate cases involving consequential damages claims should keep the following in mind: (1) when negotiating a contract on behalf of your client, include the broadest possible waiver of consequential damages provision; (2) at the outset of a lawsuit in which consequential damages are claimed, read the entire contract to see whether it contains a similar consequential damages waiver or other limitation of liability provision; (3) include an appropriate affirmative defense in the answer to the complaint; and (4) posture the case for a motion for summary adjudication by way of stipulation or a cross-complaint for declaratory relief as to the enforceability of the provision. Even if the trial court denies your motion for summary adjudication, the matter is preserved on appeal should the case proceed to trial.

♦ *Trevor O. Resurreccion is a partner with the law firm Weil & Drage, APC in Laguna Hills.*

ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl
ORANGE COUNTY

PRESORTED STD
U.S. POSTAGE
PAID
IRVINE, CA
PERMIT NO. 426

8502 E. CHAPMAN AVENUE
ORANGE, CA 92869

Or Current Occupant

**Numbers You Can
Count On
Combined With
Reliable Courtroom Testimony**

SKORHEIM & ASSOCIATES

AN ACCOUNTANCY CORPORATION

ACCOUNTING, TAX AND BUSINESS ADVISORS

Proud Sponsor of the ABTL - Orange County

(949) 365-5680

www.skorheim.com