

Q&A with the Hon. Frederick P. Horn



[Editor's Note: Our judicial interview this time is with Presiding Judge Frederick P. Horn. Our editor caught up with Judge Horn recently in his chambers at the Central Justice Center courthouse to talk about life as Presiding Judge and the status of the Orange County Superior Court. Judge Horn was elected Presiding Judge with his term commencing January 1, 2002. Judge Horn was

Assistant Presiding Judge in 2001, has served on the Orange County Superior Court since 1993, and for three years prior sat on the Orange County Municipal Court. A Los Angeles County Deputy District Attorney for 17 years (with 5 years in the Hard-Core Gang Unit), Judge Horn had his start in law enforcement as a Police Officer and Sergeant in Lompoc and Santa Monica for over ten years and as a Los Angeles County District Attorney's Office investigator for 3 years.]

Q: Although it is early in your term as Presiding Judge, when it's over and you look back, what would you most like to have accomplished?

A: Well, overall, what I would like to see accomplished is that we have in some form or another a better Court than we had when we started. I'm not saying there is anything particularly wrong with

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The Public Law Center-Helping Orange County's Poor

by Kenneth W. Babcock

At this year's ABTL June dinner/wine-tasting event, business trial lawyers from around Orange County will come together, as they have for three years now, to support the Public Law Center. In addition to spending an enjoyable evening with colleagues over food and wine (and earning some MCLE credit), the evening allows the business trial bar to show its concern for helping those in our community who can't afford a lawyer by helping the Public Law Center.

As most readers of this newsletter know, the Public Law Center is Orange County's pro bono, public interest law firm. The Public Law Center-or PLC as we are commonly known-has devoted over twenty years to achieving the goal of equal justice under law for Orange County's poor and under-represented. PLC's mission is to provide pro bono legal services to the poor by placing individual clients with volunteer attorneys in the private bar and by challenging systemic injustices through litigation and other forms of advocacy. PLC is sponsored by the Orange County Bar Association and is supported by lawyers throughout the county.



In the year 2001 alone, PLC staff and volunteers handled over 1,700 cases on behalf of Orange County's poor. PLC's pool of nearly 1,000 volunteer attorneys donated over 17,000 hours of free legal services last year, conservatively valued in excess of three million

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## President's Message: Why ABTL?

by Jeffrey W. Shields, President



When you join and participate in the Association of Business Trial Lawyers ("ABTL"), you are becoming a part of the only statewide bar organization in California which focuses exclusively on the interests and needs of business trial lawyers. Although there are other organizations

which address litigation in general, no other group brings together business litigators and judges from across the state who share the common interest of the commercial trial lawyer.

Of course, the hallmark of ABTL since its inception approximately 30 years ago has been the inclusion and active participation of members of the federal and state judiciary along with our practitioners. Indeed, our Orange County Chapter Board is currently comprised of nine active and retired judicial officers, and anyone need only attend one of our events in order to personally view the solid support and strong attendance that our local judiciary regularly provides to our Chapter.

What are some of the specific reasons for you to be an active participant in ABTL? There are many – for example:

1. Five outstanding dinner programs a year in Orange County – each featuring accomplished and renowned presenters, and each providing MCLE accreditation in areas unique to the concerns of the business trial lawyer;

2. The statewide Annual Seminar which is held over a several day span each Fall, and is held every other year in Hawaii;

3. The ongoing opportunity to rub shoulders and network with some of the best and brightest business trial lawyers and judges in California at all of these programs and seminars;

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## The Surprising Uses of Prior Settlement Negotiations Under FRE 408

by Sheila N. Swaroop

Federal Rule of Evidence 408 excludes evidence of settlement offers, statements, and conduct during settlement negotiations, if offered to show validity of a claim or its amount. The common perception of FRE 408 is that it provides a broad umbrella of protection to settlement offers and conduct. As a result, counsel participate in settlement discussions with the expectation that this rule prevents these discussions from being admitted in a subsequent lawsuit. The Advisory Committee Notes to FRE 408 bolsters this expectation by explaining that parties should be able to speak freely during negotiations without fear of their statements being offered against them.



Yet FRE 408 has far more exceptions than one might expect. At least some courts have found that evidence of settlement negotiations with one party can be admissible in subsequent lawsuits with that party. This evidence is also admissible in suits that involve a completely different litigant.

The following discussion contrasts the stated policies of FRE 408 with a survey of some exceptions to this rule. For example, courts have admitted evidence of settlement negotiations concerning disputes different than the one currently being litigated. Prior negotiations have been admitted to provide courts with background information to understand a dispute, or to allow a litigant to present a claim or defense based upon the negotiations. Courts have also admitted discussions that occur before an “actual dispute” has arisen.

These decisions point to an apparent gap in the umbrella of protection offered by FRE 408.

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## ABTL April Dinner Program When It Pays To Talk To The Feds: Your Corporate Client As The Victim of Criminal Fraud

by Randall A. Smith

The ABTL’s April dinner program provided civil litigators with insights into how the U. S. Attorney’s office can assist corporations victimized by fraud in possibly obtaining monetary recoveries. The program entitled, “When It Pays To Talk To The Feds: Your Corporate Client as the Victim of Criminal Fraud” was presented by John Hueston, Chief, Orange County U.S. Attorney’s Office, Thomas H. Bienert, Jr., Esq. of the Law Offices of Thomas H. Bienert, Jr. and Phillip R. Kaplan, Esq. of O’Melveny & Myers, LLP. These distinguished panelists shared many of their hands on experiences with the audience.

The panelists explained that the powers of the federal prosecutor could be utilized, in appropriate circumstances, to obtain discovery and restitutionary remedies much broader and speedier than would be available through the “normal” civil litigation process. The panelists also explained, however, that there are many potential pitfalls and risks that a corporate fraud victim must consider before seeking the assistance of the federal prosecutor.

The program was both informative and entertaining. One lesson that most of the civil litigators took from the program was that corporate clients would be well advised to retain a specialist in white-collar crime to assist in a dialogue with the U.S. Attorney’s Office as the risks and complexities of the process do not make it a learn on the job proposition for the typical civil litigator.



• **Randall A. Smith, Rus, Miliband & Smith, A Professional Corporation.**

*(Interview: Continued from page 1)*

the Court at the moment, but it's always nice to think that you have made some improvements; that you've made a contribution; and that whatever you have done had some impact and it has ultimately made it a better Court. In fact, we had a meeting with over 40 judges to get their input on building a better Court. We came up with a general overall list of issues that were important to the bench, and when all is said and done, I'd like to have addressed a lot of those issues.

Q: What were the top three issues?

A: We had broken the discussions down into four general categories. They involved Court facilities; administration issues, for example, the relationship between the bench and the administration and the roles of the Executive Committee and the internal committees of the Court; judicial support issues involving technology, clerks, computers, staff, really everything that has to do with judicial support; and lastly, a category called "judging." In other words, issues that dealt with the decision-making process. Out of those four main categories, it turns out providing the judges with the opportunity to participate in decisions about courthouse facilities was a primary concern. The judges wanted to be involved in that process and they were concerned because it had been on everybody's issue plate for a while. Mainly because we were just bursting at the seams from some of our facilities. We have dire need for new court facilities in South County. So I think that's one of the reasons facilities became a priority issue.

Q: What is the status of a new South County courthouse?

A: Hopefully by the time this article is published, it will be old news. I've actually been working very hard with Supervisor Wilson, Dr. Schumaker, Alan Slater and Sheriff Carona. We've met I think four times since the first of the year, the most recently last week. I hope to have progress to report, and the issue before the Board of Supervisors, in May to hire an architect to go forward with a courthouse in South County.

Q: How are the renovations coming along at the Central Justice Center?

A: We're about finished with the 11<sup>th</sup> floor. The plan is to continue the process floor by floor, renovating the infrastructure such as the air-conditioning system, the duct work, ceiling tiles, and dealing with some asbestos issues. Fortunately, this process started about the same time the Complex Litigation Center was completed so we were able to take over that facility. We have five judges over there now. It will take several years to finish the main courthouse building. Once the 11<sup>th</sup> floor is completed, the judges on the 10<sup>th</sup> floor will move to the 11<sup>th</sup> floor, and then they'll start working on the 10<sup>th</sup> floor, and so on until the project is completed.

Q: Are the renovations primarily to retrofit or will there be some remodeling?

A: A little bit. Unfortunately there will not be a lot of cosmetic change or upgrades in the courtrooms. Although, we do plan to put in some new furnishings, new furniture for the jury room and the judicial benches. The courtrooms will also comply with the requirements of the Americans with Disabilities Act. They are renovating the jury boxes and the witness stands so they will be accessible for people with disabilities. We are also trying to find the funding right now to install wiring to take those courtrooms into the 21<sup>st</sup> century.

Q: Talking about technology, any update on the e-filing program?

A: No, there's no update on that. The State has given us directions that it wants to have a more efficient use of technology throughout the State. In other words, rather than have 58 counties develop 58 different systems, the State wants to have a different approach. Although, there is real progress in Southern California. Last Friday an agreement was signed by the presiding judges of Orange, San Diego, Ventura and Los Angeles Counties. It's quite innovative actually. In the initial stages, there will be a distribution of something over \$20 million from the State to develop case management

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dollars. Since many of our cases involve assistance to children and families, the individuals who actually receive the benefit of PLC's services each year number nearly four thousand.

PLC's twelve person staff (which includes six full time lawyers) works to make certain that volunteers have the tools necessary to properly represent their clients. PLC carefully screens new cases to ensure that the matters are appropriate for placement with a volunteer attorney. PLC staff monitors all cases from the client's first contact with PLC until the case closes. PLC provides training in a variety of areas of importance for our volunteers, as well as substantive backup from the expert advocates on our staff. Recent trainings have included subjects such as wills and powers of attorney, consumer law, family law and guardianships, all of which are approved for MCLE credit. Since many PLC clients have limited English proficiency, PLC staff assists with interpretation for non-English speaking clients who do not have their own interpreters or for volunteers who do not have foreign language capabilities in their office. Not that we hope it's ever needed, but PLC also provides primary malpractice insurance to cover its volunteers.

PLC offers a variety of different types of pro bono work for potential volunteers, whether they are in large firms or small firms, sole practitioners, litigators or transactional lawyers, or law students. Volunteers learn about new PLC cases through e-mails distributed by PLC every two to three weeks. In the near future, PLC will advertise case opportunities through its web site ([www. publiclawcenter. org](http://www.publiclawcenter.org)). PLC staff also regularly speaks to groups of lawyers (e.g., law firms, bar associations) to talk about PLC's work and encourage pro bono involvement. PLC's work includes:

Private Attorney Referral--PLC has a longstanding relationship with the Legal Aid Society of Orange County by which Legal Aid refers indigent clients to PLC and we place those clients with volunteer attorneys in the private bar. These clients' cases encompass a wide array of

different substantive matters including family law (e.g., dissolution, child custody, paternity, child support), children's issues (e.g., guardianship, adoptions, special education, disability benefits), consumer fraud (e.g., auto purchase, lease or repair, trade school student loans, home improvement contractor fraud), bankruptcy, wills, uninsured tort defense and non-profit incorporations. PLC also has referral relationships with several Orange County domestic violence shelters through which we place cases for survivors of domestic violence by finding volunteers to address family law related issues.

Attorneys Representing Children (ARC) Project --A joint project between PLC and the Orange County Bar Association developed in 1998, the ARC Project is designed to bring stability into the fragile lives of battered, abused and neglected indigent children in Orange County by providing much needed legal services in the areas of guardianship, adoption, special education and disability benefits eligibility.

Southeast Asian Legal Outreach Project (SEALOP)--Orange County is home to the largest Vietnamese community in the world outside of Vietnam. Because more than 40% of this population lives below federal poverty guidelines, it is also among the poorest communities in the county. Begun in 1993 by Vietnamese-speaking law students and PLC staff, SEALOP conducts bi-monthly clinics in the Vietnamese community where clients receive linguistically and culturally sensitive legal information and, if necessary, direct representation by PLC staff (which includes a bilingual Vietnamese American attorney) or by volunteer attorneys.

AIDS Legal Assistance Project --PLC provides civil legal services to indigent individuals living with HIV or AIDS. We are Orange County's only AIDS legal services provider. We work closely with the AIDS Services Foundation of Orange County, various community groups and the Orange County Health Care Agency in our efforts to assist clients. Our services to clients involve areas such as wills and estate planning, advance

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### **1. The policy behind FRE 408 is to encourage open communication during settlement**

The Advisory Committee Notes to FRE 408 emphasize the public policy favoring compromise and settlement of disputes. The Notes state explicitly that this rule should include settlement offers as well as completed settlements when they are offered against a party.

Despite this stated policy of shielding statements, conducts, and offers made during settlement, courts have admitted evidence of prior negotiations, relying upon a wide variety of exceptions to FRE 408.

### **2. Evidence of disputes different from the one at issue have been admitted**

In some instances, courts have allowed testimony on prior settlement negotiations of a dispute different than the one currently being litigated. In *Broadcort Capital Corp. v. Summa Medical Corp.*, 972 F.2d 1183 (10<sup>th</sup> Cir. 1992), a securities firm filed suit against a corporation for the corporation's refusal to register and transfer a stock certificate. The district court allowed a witness at trial to be questioned regarding settlement discussions of a prior claim related to another, separate loan transaction between the corporation and the company that held its stock certificates. The Tenth Circuit affirmed the district court, explaining that

Rule 408 only bars admission of evidence relating to settlement discussions if that evidence is offered to prove "liability for or invalidity of the claim or its amount." Here, the evidence related to an entirely different claim – the evidence was not admitted to prove the validity or amount of the "claim under negotiation." *Vulcan Hart Corp. v. NLRB*, 718 F.2d 269, 277 (8<sup>th</sup> Cir. 1983); *see also* 2 Jack Weinstein & Margaret Berger, *Weinstein's Evidence* ¶ 40, at 408-32 to 33 (1991) ("Where the settlement negotiations and terms explain and are part of another dispute they must often be admitted if the trier is to understand the case."). Thus, Rule 408 did not

bar this evidence because it related to settlement discussions that involved a different claim than the one at issue in the current trial.

972 F.2d at 1194. The Court also noted that even if FRE 408 applied, the evidence would still be admissible because it was offered to show the workings of the defendant's loan scheme. *Id.* at n. 16.

Similarly, in *Union Carbide Corp. v. Montell N.V.*, 28 F.Supp.2d 833 (S.D.N.Y. 1998), the plaintiff moved in limine to preclude evidence of its negotiations with third parties. The defendant contended that these negotiations were relevant to show that any alleged injury to the plaintiff was caused by its own conduct in these third-party negotiations. The district court admitted the evidence, finding that the negotiations were not being introduced for proving the invalidity of the asserted claim or the amount of damages, but "rather to provide the jury with the context and information necessary to understand the case and because it [was] relevant to the issue of causation." 28 F.Supp.2d at 841.

These cases show that completed settlements and negotiation discussions can be revisited in subsequent lawsuits that involve an entirely different dispute.

### **3. Settlement evidence has been admitted to evaluate the claim currently in dispute**

In addition to admitting evidence of prior settlements for "background" purposes, some courts have also allowed this evidence as directly relevant to the claim in dispute.

In *Starter Corp. v. Converse, Inc.*, 170 F.3d 286 (2d Cir. 1999), the Second Circuit upheld the district court's admission of a prior settlement agreement and settlement negotiations between litigants in a trademark infringement action. During the negotiations, the accused infringer had executed a settlement agreement with the mark owner and had also represented in written correspondence that it would not use the mark on its footwear. In a subsequent litigation between the two parties, the plaintiff was allowed to introduce both the settle-

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health care directives, family law, consumer issues, bankruptcy, discrimination, employment, health care access and landlord/tenant issues.

Clinic Outreach Project--PLC conducts clinics at various sites around Orange County designed to provide brief counsel and advice to indigent clients, particularly those who are homeless or at risk of becoming homeless. Bi-monthly clinics are conducted at Share Our Selves (SOS) in Costa Mesa and Corbin Community Center in Santa Ana. In addition, during the winter months, we conduct weekly clinics at Orange County's two armory based cold and wet weather homeless shelters. PLC also works with the Orange County Bar Association to co-sponsor domestic violence clinics at various locations throughout the county and a courthouse based bankruptcy clinic.

Affordable Housing--Cutting across all of PLC's various projects is the critical lack of affordable, quality housing in Orange County. Many of Orange County's working poor find it impossible to live in Orange County because housing is too expensive. Working with other housing advocates, PLC has embarked on an effort to develop solutions through the legal system to this systemic problem.

Major Litigation--PLC's full time litigation director is involved in litigation efforts designed to achieve broader societal goals or secure remedies for larger groups of individuals. PLC's major litigation efforts have included consumer scams, such as private trade school fraud, zoning issues affecting non-profit social service providers and redevelopment issues involving construction of affordable housing. PLC is available to co-counsel with pro bono counsel in appropriate cases.

Most importantly, PLC provides Orange County attorneys with the opportunity to help make sure that access to civil justice in Orange County is available to all-rich and poor alike. Through our work with our many colleagues in the private bar, PLC helps to make Orange County a better place to live for everyone.

For more information about PLC or to receive our current case list, contact PLC's Executive Director, Ken Babcock, at 714/541-1010 or [kbabcock@publiclawcenter.org](mailto:kbabcock@publiclawcenter.org).

- **Kenneth W. Babcock is the Executive Director and General Counsel of the Public Law Center. Prior to joining PLC, he was a public interest litigator at Public Counsel in Los Angeles and a business litigator in private practice.**

## SAVE THE DATES

The ABTL has the following meetings planned for bar year 2002. Please mark your calendar with these important dates and plan to join us for every event.

**Wednesday, June 5, 2002**

**Public Law Center Fundraiser**

"HIGH STAKES ARBITRATION IN THE SPORTS WORLD - GET REALISTIC OR COME SECOND; LESSONS FOR ALL COMPLEX ARBITRATIONS"

**Wednesday, September 4, 2002**

"DISCOVERY OF ELECTRONIC DATA - SHOULD THIS BE THE FIRST RATHER THAN THE LAST SOURCE TO COMPEL"

**Wednesday, December 4, 2002**

**RULES vs. REALITY - EMERGING ISSUES WITH A PROACTIVE JUDICIARY (DISCOVERY, JURY SELECTION, JURY PARTICIPATION, TIME LIMITS AND OTHER ISSUES)**

Westin South Coast Plaza

6 p.m. Reception

7 p.m. Dinner & Program

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systems. The basic premise is that Los Angeles is going to develop the framework for all the systems and work in conjunction with the other counties. Orange and Ventura Counties are working together on a criminal system called Vision. The other counties are going to develop other components that work off the same structure being developed by Los Angeles. This is a huge step. Not only just for California – but the nation as well. Orange County is going to be a real leader in the area of technology.

Q: What do the business trial lawyers need to know about the Court's mediation program?

A: At this point, the Court hasn't actually endorsed a policy regarding mediation. Judge Watson, as the head of our civil division, is working with Judge Thrasher, who has developed an in-house pilot project to conduct mediation at a very early stage in the proceedings. Cases are being sent to Judge Thrasher on a voluntary basis at this point, just to see how it works. Judge Thrasher indicates that so far the program has been very successful – he estimates he is resolving 80 to 85 percent of the cases. Judge Watson has decided to wait until July 1<sup>st</sup> so we have six months to take a look and then make a determination of where we'll go with it from there, but at this point it looks like it is working so well that we might expand it. I believe we are going to have some type of mediation program in place from the looks of things.

Q: What is the best part about being Presiding Judge?

A: The best part about being Presiding Judge is the ability to address issues which have been on your mind since you've been on the bench. In other words, I have been on the bench for about 10, 11 years and I've seen things occur during that period of time that have interested, or concerned me – but as Presiding Judge I'm in a position to positively impact the way the Court does business. Working with the other judges, and we have a tremendous bench, we can work towards building a better Court. That's a satisfying feeling.

Q: What's the most difficult part?

A: Well the difficult part of it so far is trying to find time for all the meetings and functions which I would like to attend. I've always enjoyed attending Bar functions, attending different events and different luncheons. I think those avenues of communication are important. The most difficult part is scheduling everything. You find that you have to make hard choices and eliminate certain events. There just isn't time in the day to do everything.

Q: Finally, what is life like off the bench?

A: To me, it is delightful. I enjoy meetings, believe it or not, where people have the opportunity to express their ideas and opinions. I travel to San Francisco a great deal because that is where the Court's administrative offices are located. I always come away with fresh ideas to implement in our Court. I haven't been off the bench [hearing cases] long enough yet to say that I miss it.

Q: What is life like away from the Court?

A: Away from the Court? It is again a pleasant experience. Because of the different roles that I have, I do a lot of traveling, and I enjoy that. I enjoy meeting people from different courts, different backgrounds and different venues to discuss technology issues and administrative issues. I get to meet with presiding judges from all the other 57 counties and it's a delightful experience. Talking to people about how they do business in Siskiyou and Shasta and Trinity counties. A lot different than how we do business in Orange County. Different issues and different problems. It's a real experience. A lot of the time I'm off the bench that's what I'm doing and it's a pleasure. I'm glad I have the opportunity to do that.

Q: So do you ever get time for yourself?

A: Oh yeah. Oh yeah. Certainly I do. I've carved out a nice bit of time this summer to go to Italy. I like to travel through Europe when I get the opportunity and at this point, it looks like we'll be able to go for a couple of weeks in June.

• **Joel S. Miliband, Rus, Miliband & Smith, A Professional Corporation.**



(Settlement: Continued from page 6)

ment agreement and the written correspondence in order to prove its assertions that the defendant was contractually and equitably estopped from using the plaintiff's mark.

In *Towerridge Inc. v. T.A.O. Inc.*, 111 F.3d 758 (10<sup>th</sup> Cir. 1997), the Tenth Circuit upheld the district court's admission of evidence of the defendant's prior settlement with the government. In this case, the plaintiff-subcontractor brought suit against the defendant-contractor to recover payment for work done by the plaintiff under a government contract. The defendant claimed that the plaintiff's performance was inadequate because it was untimely.

The district court allowed the plaintiff to present evidence that the defendant had submitted prior claims to the government for damages caused by governmental delay and disruption to the project, and that the government had paid the defendant to settle these claims. The Tenth Circuit affirmed, finding that evidence of the prior settlement was relevant to show that the alleged delay in performance was attributable to the government rather than the plaintiff and to show that the defendant had acted in bad faith.

These decisions show that settlement evidence that is directly relevant to the claim being litigated can be admissible.

#### **4. Settlement evidence can form the factual basis of a distinct claim or defense**

Rule 408 also does not prevent the admissibility of settlement discussions when used to prove a claim or defense arising from the discussions. In *Ecrix Corp. v. Exabyte Corp.*, 191 F.R.D. 611 (D. Colo. 2000), the court explained that evidence of negotiations between the parties that had occurred prior to the filing of a patent infringement complaint could be used to prove the plaintiff's independent claims of antitrust and unfair competition based upon the negotiations. There, the plaintiff had contended that the negotiations showed the patentee was using its patent to violate state and federal antitrust laws.

In *Key Pharmaceuticals v. ESI-Lederle, Inc.*, 1997 WL 560131, the court allowed discovery of a settlement agreement that a patentee had previously negotiated with another competitor. In that case, the plaintiff Key Pharmaceuticals filed and then settled an infringement suit against a competing pharmaceutical company. The parties did not file the settlement agreement with the court. Key then brought a second infringement suit against another competitor. During the second suit, the competitor moved to compel discovery from Key relating to the first settlement agreement, arguing that the settlement agreement could constitute misuse and violate the federal antitrust laws if its terms delayed the entry of competition into the relevant market. The court agreed and allowed discovery of the first settlement agreement as relevant to prove misuse.

These decisions show that settlement negotiations can become the factual basis for their own claim or defense.

#### **5. Rule 408 requires an actual dispute**

Courts have also allowed evidence of communications that occur before an actual dispute has arisen between the parties. In *Big O Tire Dealers v. Goodyear Tire & Rubber Co.*, 561 F.2d 1365 (10<sup>th</sup> Cir. 1977), the court upheld the district court's admission of communications between the plaintiff and defendant that had occurred prior to the filing of the plaintiff's trademark infringement complaint. In these communications, the mark owner and accused infringer had discussed the infringer's use of the mark and whether the infringer would cease using the mark.<sup>1</sup>

The district court ruled that the communications were relevant and material to the defendant's knowledge, willful infringement, and misconduct and reasoned that FRE 408 did not apply to the discussions because they were business communications rather than settlement negotiations. The Tenth Circuit affirmed, finding that "[t]he discussions had not crystallized to the point of threatened litigation, a clear cut off point," until after the communications at issue had taken place. 561 F.2d at 1373.

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This distinction between “business communications” and “settlement negotiations” is an important one for the purposes of FRE 408. Under the reasoning of *Big O Tires*, discussions are not protectable until an actual dispute has arisen between the parties.

## 6. Conclusion

While evidence of settlement negotiations can be excluded under FRE 408, the decisions summarized above show that courts have admitted and considered settlement offers, statements, and conduct in a variety of contexts. As a result, counsel should be aware that settlement discussions have the potential to resurface in subsequent lawsuits. These discussions may be admitted to show a particular practice during negotiations, to provide evidence relevant to the disputed claim, or to provide the basis for a distinct claim or defense.

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1. While the court admitted the communications, it did not admit evidence of the defendant’s offer to pay money to the plaintiff or the amount offered by the defendant.

- **Sheila N. Swaroop is a litigation attorney in the Newport Beach office of Knobbe, Martens, Olson & Bear, LLP**

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4. Your subscription to this ABTL Report, with its substantive articles and judicial interviews, as well as its updates and information; and

5. The opportunity to become even more directly involved in ABTL if you wish, e.g., as a member of the Orange County Chapter Board, as one of the editors/writers in the ABTL Report, as a member of the annual seminar committee, as a financial sponsor, etc.

This year’s Annual Seminar in Hawaii is particularly noteworthy, and well worth attending. It will be held for the first time on the Big Island of Hawaii at the spectacular Mauna Lani Bay Hotel and Bungalows on the Kohala Coast. The dates to circle in bright red ink on your calendar are September 18-22, 2002. Not only will the Annual Seminar feature a fascinating and educational program, including 7 hours of demonstrative presentations by some of the best business litigators in the state, but the financial package we have negotiated with the resort is unbeatable. For example, ocean view rooms are only \$220 a night, and attendees are welcome to extend that incredible rate if they wish for 4 days prior to and/or after the event as well.

We are off to a great year for ABTL again, and look forward to your active participation and supporting enthusiasm throughout 2002!

- **Jeffrey W. Shields, Shields Law Offices**

## **DO YOU HAVE SOMETHING TO SAY?**

**If you are interested in submitting material for publication in any upcoming issues of the ABTL Orange County Report, please contact the ABTL’s Executive Director at 323.939.1999 or submit your material directly to [abtl@attbi.com](mailto:abtl@attbi.com).**



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