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Melvin Marcia, Esq.
CCP § 2035.020 Petitions
Using the petition to perpetuate testimony and preserve evidence under Code of Civil Procedure § 2035.020, as a tool for early evaluation of claims

Page 2

Ronald Q. Tran, Esq.
Summary Judgement Verdict
Landowner Has No Duty to Protect Against the Open and Obvious

Page 5

Colin H. Jewell, Esq.
Summary Judgement Verdict
Cholakian Lawyers Win Summary Adjudication of Plaintiff's Various Complicated Disability Claims

Page 7

CHOLAKIAN & ASSOCIATES CELEBRATES ITS 20TH ANNIVERSARY!

Page 10

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CCP § 2035.020 Petitions

Using the petition to perpetuate testimony and preserve evidence under Code Civ. Proc. § 2035.020, as a tool for early evaluation of claims

MELVIN MARCIA, ESQ.

Claims personnel and defense counsel are familiar with Claimant attorneys sending pre-litigation demand letters, often times seeking policy limits, which lack vital information about the extent of damages, as well as many details as to medical care provided. Depending on the Claimant attorney, the demand may include some information as to the basis for liability, but generally, pre-litigation demand letters fail to include vital information which will assist the insurer in adequately evaluating the merits and value of the claim.

The motivation behind these policy limit demands early on appears to be an attempt to "open up the policy," a topic which this article will not discuss in detail. An adequate response to these letters is to inform Claimant's counsel that "based on the information currently available to us, we are unable to either accept or reject your demand at this time," and demand the additional information needed to evaluate the claim. It is not uncommon for Claimant attorneys to agree to pre-litigation discovery by way of stipulation, which would allow the defense to obtain basic discovery responses, take Claimant's deposition, and have an independent medical examination ("IME") of Claimant.

However, when Claimant attorneys refuse to provide information, or agree to pre-litigation discovery which will allow insurers and defense counsel to adequately evaluate claims, the mechanisms described in Code Civ. Proc. § 2035.020 can help. We have used this mechanism to take depositions of vital witnesses and to inspect vehicles which may otherwise not be available if we waited until claimants filed suit, the case was at issue, and subpoenas could be served.

Code Civ. Proc. § 2035.020 states in pertinent part:

> (a) One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of **perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.**
>
> (b) One shall not employ the procedures of this chapter for purposes of either ascertaining the possible existence of a cause of action or a defense to it, or of identifying those who might be made parties to an action not yet filed.
>
> Petitions can also be used to obtain pre-litigation oral and written depositions, inspections of documents, things, and places, and physical and mental examinations. Code Civ. Proc. § 2035.020. This means you could elicit sworn testimony or have an expert conduct a critical examination before a suit is filed. The discovery obtained can be used in any subsequent action involving the same subject matter that is brought in a California court against any party, or expected adverse party, named in the petition. Code Civ. Proc. § 2035.060.

The California Code of Civil Procedure affords courts broad discretion in granting this pre-litigation discovery: "If the court determines that all or part of the discovery requested under this chapter **may prevent a failure or delay of justice, it shall make an order authorizing that discovery."** Code Civ. Proc. § 2035.050. "Failure or delay of justice" is not defined, leaving great room for argument. Despite the flexible standard, the Code also includes strict requirements for the petition.

The petition is to be filed in the superior court of the county of the residence of at least one expected adverse party. Code Civ. Proc. § 2035.030. The Petition is an initial filing, meaning a first appearance fee must be paid and many of the requirements for filing a Complaint satisfied, including a Civil Case Cover Sheet and personal service of the Petition and a Summons. Code Civ. Proc. § 2035.040(a). We will need to check the local rules in the adverse party's county to determine what other documents may be required when initiating a case. All Petitions to Preserve Evidence must also be verified. Code Civ. Proc. §§ 446, 2015.5, 2035.030(a).

Code of Civil Procedure section 2035.030 requires that significant information be included in the Petition to justify the pre-litigation discovery. A petitioner must include: the expectation that the petitioner will be a party to an action cognizable in California; the present inability to bring an action or cause an action to be brought; the subject matter of the expected action and petitioner's involvement; particular discovery methods requested; the facts petitioner desires to establish by the proposed discovery; the reasons for the discovery before an action is filed; name of expected adverse parties; the name and address of those from whom the discovery is to be sought; and the substance of the information expected to be elicited from the discovery. Code Civ. Proc. § 2035.030(b). The Petition must also request a court order and must include a proposed order identifying the witness whose deposition may be taken, the documents, things, or places that may be inspected, or the person to be examined. Code Civ. Proc. §§ 2035.030, 2035.050(b). Demonstrating previous unsuccessful attempts at voluntarily obtaining the discovery will support the granting of the petition. (*Block v. Superior Court* (1963) 219 Cal.App.2d 469, 472.)

Despite the broad discretion given to courts in granting Petitions, both Plaintiffs and Defendants have multiple valid bases to successfully defeat a Petition to Preserve Evidence. Opponents can argue that not all of **the many the specific requirements were complied with. The most effective argument would be that the discovery is not actually required before a lawsuit is filed**, as this will be the petitioner's most difficult showing.

Petitions can also be opposed on the basis that the requested discovery is merely a "fishing expedition," a search for something that may not exist. Additionally, pursuant to the Code of Civil Procedure, a Petitioner may not use the procedures for ascertaining the possible existence of a cause of action or a defense to it, or to identify those who might be made parties to an action not yet filed. 2035.010(b). This language also leaves abundant room for the opponent to argue the Petition is improper. A party opposing a Petition may counterpetition for a protective order.

A petition under Code Civ. Proc. § 2035.020 requires parties to deal with some procedural hurdles and to have some information as to the parties one wishes to depose or obtain discovery from, as it is necessary to personally serve notice of the petition. Often times, that information can be obtained from the demand letters themselves, but additional work may be necessary. This pre-litigation discovery tool will allow the insurer and defense counsel to obtain information which may no longer be available when claimants finally file a lawsuit. It also allows for early evaluation of claims, and it may even prevent claimants from undergoing unnecessary medical intervention, if an early IME pinpoints Claimant's injuries or lack thereof. Furthermore, as a general rule, the duty of good faith and fair dealing requires a third- party liability insurer to settle a lawsuit against its insured when there is a clear and unequivocal offer to settle within policy limits and liability is reasonably clear. (*Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654; *DeWitt v. Monterey Ins. Co.* (2012) 204 Cal.App.4th 233.) Even if the court doesn't grant the petition, the effort to obtain additional information to determine the reasonableness of the

policy limit demand would be evidence of the insurance carrier's good faith in any attempt to "open up the policy." Similarly, opposition from Plaintiff/Claimant to such discovery, would undermine any subsequent claim of bad faith on the part of the insurer.

Melvin Marcia received his Juris Doctor degree from Santa Clara University School of Law, where he obtained CALI Awards, an award given to the student with the highest grade in the class, for Labor Law-Public Sector and for Constitutional Law. While attending law school, Mr. Marcia honed his legal and analytical skills while employed in Safeway, Inc.'s Risk Management Department as a Claims Examiner; he gained extensive hands-on experience with product liability, premises liability, as well as subrogation matters. Mr. Marcia also volunteered at The Katharine and George Alexander Community Law Center's worker's rights clinic, providing free legal services to low-income individuals who have experienced unfair and illegal treatment at their place of employment.

Mr. Marcia earned his Bachelor of Arts degree in Political Science from San Jose State University, graduating with honors *Cum Laude*, and being inducted to Pi Sigma Alpha (Political Science Honor Society), and was on the Dean's List. Mr. Marcia also served as treasurer for the Epsilon Iota, the local SJSU chapter of Pi Sigma Alpha.

Before joining Cholakian & Associates, Mr. Marcia was a Law Clerk at the San Jose City Attorney's Office (Litigation Team) where he had the opportunity to litigate cases enforcing city ordinances and also arguing Pitchess motions. He participated in various projects which dealt with identifying business in violation of public nuisance ordinances, as well as violators of the City's rent ordinances. He held an associate attorney position at the Law Office of Katherine R. Moore, where he worked in the areas of premises liability, commercial litigation, catastrophic personal injury, construction defect, and ADA litigation, Mr. Marcia is admitted to practice law in California state courts, and the U.S. District Court, Northern District of California. He is a member of the Santa Clara County Bar Association and the San Mateo County Bar Association. His areas of practice include catastrophic personal injury, wrongful death, premises liability, commercial litigation, and construction defect.

Cholakian & Associates Wins at Summary Judgment: Landowner Has No Duty to Protect Against the Open and Obvious

RONALD Q. TRAN, ESQ.

Defendant is an owner of a standalone cottage in Salinas, California, which Defendant had rented out to guests through Vacation Rentals by Owner ("VRBO") since 2012. The main floor of the cottage had two bedrooms, one bathroom, a kitchen, and a living room. Below the main floor is a finished basement used for a third bedroom. To access the finished basement, one must take a flight of stairs, which is located in the living room and between the two bedrooms on the main floor of the cottage. Above the staircase was a ceiling-mounted light fixture. The light switch to the staircase light, as well as to the living room, was directly to the left of the staircase. Defendant also plugged a nightlight in an outlet located near the baseboards at the top of the staircase to further illuminate the staircase.

Plaintiffs, a married couple from Orange County, rented Defendant's cottage for a three-day vacation. Defendant left a key out for Plaintiffs, as well as binders throughout the house with instructions pertaining to the use of the cottage. Defendant never did a walkthrough with Plaintiffs, however, at deposition, Plaintiff, the husband, testified he saw the entrance to the staircase between the two bedrooms. He even went down the staircase to inspect the premises upon his arrival to the VRBO location. Plaintiffs stayed in the master bedroom, which was the bedroom to the left of the staircase.

On the third night of Plaintiffs' stay, the husband awoke in the middle of the night, exited the master bedroom, and intended on going into the second bedroom to his left. He planned to sleep in the second bedroom because he was suffering from restless leg syndrome and did not want to disturb his wife. He did not turn on any of the lights. Instead of going into the second bedroom, however, Plaintiff turned immediately to the left into the staircase before the bedroom. At the time, he believed this was actually the second bedroom because the living room baseboards transitioned through into the landing area of the staircase, which made it appear initially like he was entering a bedroom. The husband successfully took two steps towards the flat landing area, which further made him believe he was stepping onto the floor of the second bedroom. When the husband took another step forward, he stumbled down the stairs and ultimately crashed his arm into a window at the bottom of the stairs. Plaintiff suffered an acute fracture of the fifth metatarsal bone on the left foot, as well as lacerations requiring multiple sutures on his left arm. He underwent an open reduction and internal fixation surgery on his foot in October of 2015. The following year, Plaintiff had a second surgery to replace a failed screw in his foot, which required a bone graft.

Plaintiffs sued Defendant in Monterey County Superior Court for negligence and premises liability. Plaintiffs also alleged Defendant violated a number of statutes, sections, and regulations of the California Building Code, thus subjecting Defendant to the evidentiary presumption of *negligence per se*. During negotiations, Plaintiffs demanded the primary policy's limits of $300,000.

Defendant filed a Motion for Summary Judgment, claiming Defendant acted as a reasonably prudent landowner and did not breach any duty of care to warn for an open and obvious condition such as the staircase. In the Summary Judgment Motion, Defendant also argued that the VRBO contract entered between the parties contained a waiver of liability clause, which relieved Defendant of any duty owed to Plaintiffs. However, the Court, in ruling on the Motion, chose not to decide on the contractual interpretation issue because of its ultimate ruling, as discussed below.

In their Opposition, Plaintiffs claimed Defendant was aware of the safety hazards posed by an unlit stairwell and had a duty to warn all guests of and take reasonable precautions to guard against such hazards. Plaintiffs stressed that Defendant plugged in a nightlight at the top of the staircase specifically because Defendant knew of the hazards of an unlit staircase and knew she required the night light to warn renters of such hazards. Although it was Defendant's custom and practice to turn on the nightlight prior to her guests' arrival to the premises, Defendant admitted at her deposition that she did not specifically recall turning on the nightlight prior to Plaintiffs' stay. Indeed, Plaintiffs submitted a declaration in opposition to Defendant's summary judgment motion and claimed the night light was never on during their stay. Further, Plaintiffs alleged that Defendant never performed a walkthrough of the home upon Plaintiffs' arrival and never instructed them as to the importance of keeping on the night light.

Generally, whether one's actions were reasonable and whether there was a breach of a duty of care are questions of fact for the jury that cannot be decided as a matter of law at the summary judgment stage. In fact, Plaintiffs argued this very point in their opposition. However, as Plaintiffs valued this as a policy-limits case, it was important to gather intel, as early on in the lawsuit as possible, on the evidence Plaintiffs were expected to introduce at trial. As summary judgment motions can be filed much earlier than the deadline for expert disclosures, these motions may sometimes be utilized for the secondary purpose of learning what opposing experts would say far in advance of the expert discovery deadlines, and even farther in advance of trial.

This strategy worked perfectly. As expected, Plaintiffs provided a declaration from their human factors and engineering expert, who opined about the various dangers of the staircase *if not illuminated by light fixtures*. From this, Defendant successfully gained a preview of Plaintiffs' evidence and now had the declaration on hand as potential ammunition that could be used for cross-examination at future depositions and at trial.

Luckily, there was no dispute that Plaintiffs had the ability to turn on the lights and simply did not do so. Thus, the Court granted Defendant's Motion for Summary Judgment, thereby disposing of Plaintiffs case in its entirety. In its ruling, the Court held as a matter of law that Defendant owed no duty to Plaintiffs to provide anything more than the ceiling-mounted light fixture for the stairwell. Further, the Court held "[i]t was not reasonably foreseeable to the landowner that a tenant would walk around in the dark near an open and obvious stairwell without turning on any light fixtures."

Ultimately, the issues surrounding the night light, on which Plaintiffs focused both at the summary judgment stage and throughout the litigation, was nothing more than a red herring. Sometimes, the answer to a defense victory is simply "open and obvious."

Ronald Q. Tran joined Cholakian & Associates with extensive litigation and trial experience. He began his legal career as a criminal prosecutor, where he first chaired over 50 jury and bench trials, as well as hundreds of pretrial hearings and motions. Thereafter, Mr. Tran worked at a large defense firm in San Francisco, where he focused on complex litigation disputes involving products liability, mass tort, construction defect, class action, and commercial matters. Mr. Tran additionally served as national, local, and trial counsel for two large companies in the defense of their personal injury cases throughout the United States. Mr. Tran has experience in all aspects of litigation, including taking and defending fact and expert depositions, preparing dispositive and evidentiary motions, negotiating settlements, and participating in trial and arbitration preparations. Mr. Tran graduated cum laude at the University of San Francisco School of Law. While in law school, Mr. Tran served on the Board of Editors and is a published author at the USF Law Review. He also joined the USF Maritime Law Journal, participated in the ABA Labor and Employment Law Trial Advocacy Competition, and received CALI Excellence for the Future Awards in Wills and Trusts and Information Privacy. Mr. Tran rounded out his law school experience with judicial externships at both the state and federal courts. Mr. Tran received his Bachelor's Degree in Political Science from the University of California, San Diego.

Cholakian Lawyers Win Summary Adjudication of Plaintiff's Various Complicated Disability Claims

COLIN H. JEWELL, ESQ.

The Yolo County Superior Court recently granted Cholakian clients' motion for summary adjudication of Plaintiff's causes of action for violation of the California Disabled Persons Act and Unruh Civil Rights Act on the ground that Plaintiff could not establish that she was disabled, an essential element of these causes of action. This was a significant victory because the ruling eliminated Plaintiff's claim for statutory penalties and mid six-figure attorney's fees under these disability access statutes, leaving her with a defensible single negligence/premises liability cause of action. Moreover, because Plaintiff sought injunctive relief in addition to damages in her failed causes of action for denial of access to disabled persons, Defendants are now entitled to their attorney's fees if found to be prevailing parties based on an expired CCP 998 offer. (See *Jankey v. Lee* (2012) 55 Cal.4th 1038.)

Plaintiff maintained she is "legally blind" and "physically disabled," as defined by all applicable California and United States laws. Her lawyer held himself out to be successful on this type of case in numerous other court rooms, exacting significant six figure settlements along the way. Plaintiff tripped and fell on an unmarked ledge adjacent to the ramp while attending a continuing education training there as a social worker for the County of Butte. She suffered muscle and nerve damage in her right hand and a shoulder injury requiring surgery, claiming she was permanently unable to work, and was seeking high six figure damages.

The Cholakian clients owned the property and leased the building to the Regents of the University of California. Plaintiff alleged that the slope of the ramp contains an abrupt change in level of the continuous common surface, in violation of section 1133B.7.1 of title 24 of the California Code of Regulations, and the slope of the flared sides exceeds the ADA maximum of 10 percent. Plaintiff claimed that Defendants were required to modify the slope of the walkway entrance to the building and the slope of the flared sides, thereby removing architectural barriers that deny access to persons with disabilities where such removal is readily achievable.

Defendants established that when Plaintiff tripped and fell while walking to the front entrance along the accessible route to the building, she was neither blind nor visually impaired, as defined by the California Disabled Persons Act (Civil Code § 54.6) and within the meaning and intent of the Unruh Civil Rights Act, Civil Code § 51, et seq., which incorporates the definitions of disability in the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12102, and the Fair Employment and Housing Act ("FEHA"), Government Code section 12926. To the contrary, according to Defendants' ophthalmology expert, Plaintiff had central visual acuity of 20/20 in the right eye (the better eye), with corrected lenses, full peripheral vision, and no significant ocular pathology.

In 1968, the California Legislature passed the Disabled Persons Act ("DPA") (Civ. Code, § 54 et seq.) prohibiting discrimination on the basis of disability in public accommodations. The same year, Congress passed the federal Fair Housing Act (42 U.S.C. §§ 3601 et seq.), but that legislation did not cover disability discrimination for another 20 years In 1987, the California Legislature added disability as a protected category under the Unruh Act which "'must be construed liberally in order to carry out its purpose.'" (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 661, quoting *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167.)

Two years after the passage of the federal Americans with Disabilities Act of 1990 ("ADA"), the Legislature further amended the Unruh Act and other laws prohibiting discrimination on the basis of disability "to strengthen California law in areas where it is weaker than the [ADA] and to retain California law when it provides more protection for individuals with disabilities than the [ADA]." (Stats. 1992, ch. 913, § 1.)

The DPA provides protection for individuals with disabilities, including blindness and "visual impairment," with respect to the right to "full and free use" of walkways and public buildings and "full and equal access" to "other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. (Civil Code §§ 54, 54.1, subd. (a)(1).)

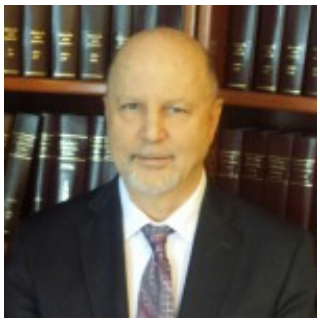
Civil Code § 54.6 specifically provides the definition of "visually impaired" as used in the DPA: "As used in this part, "visually impaired" includes blindness and means having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 20 degrees."

Plaintiff asserted that, despite the clear definition of "visual impairment" in the DPA itself (Civil Code § 54.6), her corrected vision with the contacts she was wearing should **not** be taken into account in determining whether she was an individual with a disability due to visual impairment at the time of her trip-and-fall accident. The starting point for this proposition is § 54, subdivision (b), which provides that the definition of "disability" in the DPA is the same as used in the Fair Employment and Housing Act ("FEHA"), Government Code § 12926. (See also 2 Cal. Code Regs. § 11065(d).) The definition of "disability" under the FEHA is broader than the comparable ADA definition of disability under the FEHA, in that for a physical or mental condition to qualify as a FEHA disability, it must limit a major life activity (Gov. Code § 12926, subd. (m)), not **substantially** limit a major life activity, as required by the ADA (42 U.S.C. § 12102(1)(A)). Moreover, Government Code § 12926, subdivision (m)(1)(B)(i), provides that "limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations unless the mitigating measure itself limits a major life activity.

In this case, however, the DPA contains specific provisions regarding people who are blind or have visual impairments and is an exception to the definition of disability in the FEHA.

The DPA is now consistent with the ADA in considering the positive effects of the use of ordinary eyeglasses or contact lenses in determining whether an individual is disabled. A person may meet the definition of disability under state law by meeting the definition of "disability" used in the ADA. This latter definition is incorporated into state law to the extent that it provides broader coverage than the § 12926 definition. (Gov. Code §§ 12926, subd. (m) and 12926.1, subd. (a); see also 2 Cal. Code Regs. § 11065(d)(8).) As a result of the Americans with Disabilities Act Amendments Act of 2008 (Public Law 110325) ("ADAAA"), mitigating measures are not to be regarded when considering whether an impairment substantially limits a major life activity **except in the case of ordinary eyeglasses and contact lenses.** (29 C.F.R. § 1630.2(j)(1)(vi).)

Whereas in some disability access cases, the courts have held that a prevailing defendant will only be allowed attorney's fees if the defendant proves that plaintiff's suit was "frivolous, unreasonable, or without foundation," in *Jankey v. Lee*, the California Supreme Court held that the Unruh Act makes an award of fees to the prevailing party mandatory where an injunction is sought in a disability access suit, and the ADA does not preempt this part of the state's attorney fee scheme. And that is exactly the situation in this case. Plaintiff now is left with a standard trip and fall case with all the defenses available to the defense in such cases. There are no ADA considerations or compliance issues involved, which makes the defense much stronger, and now plaintiff has hanging over this lawsuit the threat that the defense may have a better fee case than Plaintiff's PI case!



Colin H. Jewell attended Department of Defense high schools in London, England, and Okinawa, Japan. He received his B.A. in History from the University of California, Berkeley, in 1980 and his J.D. from the University of San Francisco in 1985.

Mr. Jewell began his legal career as a medical malpractice and catastrophic personal injury lawyer in San Francisco, practicing on the plaintiff side with Bostwick & Tehin (1986-1989) and as a defense attorney with Glynn & Harvey (1989-1993). He defended an officer of Technical Equities Corporation in state and federal securities fraud litigation and successfully represented Point Tiburon condominium owners and commercial tenants in construction defect litigation. He had his own litigation practice in Hayward (1993-2000), where he also was of counsel to Spile & Siegal, an Encino insurance defense firm specializing in defense of real estate agents and brokers (1997-2000).

Mr. Jewell joined the law firm of Cholakian & Associates in 2002, where he specializes in complex litigation, high exposure personal injury cases, defense of property owners, employment discrimination, construction defect, subrogation, insurance coverage, and defense of San Francisco Bay Area Public Housing Authorities. He was a Senior Associate Attorney in the general litigation group of Walsworth, Franklin, Bevins & McCall's San Francisco office (2006-2010), before returning in 2010 to Cholakian & Associates, where he is Senior Counsel.

Mr. Jewell is an experienced trial attorney and excellent writer and has briefed and argued a number of published appellate decisions, including *Demps v. San Francisco Housing Authority* (2007) 149 Cal.App.4th 564; *Martinez v. Scott Specialty Gases, Inc.* (2000) 83 Cal.App.4th 1236; *Hejmadi v. Amfac, Inc.* (1988) 202 Cal.App.3d 525; and *Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692. He is admitted to practice in the U.S. District Court, Northern District of California and Central District of California.

CHOLAKIAN & ASSOCIATES CELEBRATES ITS 20TH ANNIVERSARY!

Cholakian & Associates was established on January 9, 2000. This year, the firm is proud to announce 20 years of operation in civil defense. Since its inception, the firm has established itself as one of the premier go-to boutique insurance defense firms in Northern and Central California. Defense verdicts in high exposure catastrophic cases in 16 Northern and Central California Counties have led more importantly to favorable pretrial resolutions, advantageous to our clients. We enjoy having partnership with our clients to bring cost-conscious resolutions either by trial, summary judgment, or favorable mediated settlements.

Kevin K. Cholakian, MANAGING PARTNER

Kevin K. Cholakian was born and raised on his family's farm in Central San Joaquin Valley, attending public schools in the Tulare and Fresno counties until his senior year in high school when he was awarded a full scholarship for Music Performance (French Horn) to North Carolina School of the Arts (a prestigious boarding school for the performing arts), in Winston-Salem, North Carolina. Mr. Cholakian then attended San Francisco Conservatory of Music on a Ford Foundation Scholarship from 1972-1973. After deciding on changing his career objectives, he graduated magna-cum laude with a B.A. in Philosophy in 1977 from CSUF (Fresno). From 1976 to 1978, he served as Chief Administrative Assistant to California State Senator Rose Ann Vuich (the first woman ever elected to the California State Senate) where he was responsible for the Central California field offices (covering Modesto to Bakersfield) and Fresno Field office and Sacramento legislative office.

He received his law degree from the University of California, Hastings College of the Law in 1981. At Hastings, he was Executive Editor of the Hastings Communications and Entertainment Law Journal and was a Law Review Scholarship recipient.

Mr. Cholakian began his legal career as an employment and product liability defense lawyer practicing with the litigation sections of the management employment law firm of Littler, Mendelson, Fastiff & Tichy and the product liability section of McCutchen, Doyle, Brown & Enersen (now McCutchen Bingham) both in San Francisco, and subsequently managed the defense practice at Kinder, Wuerfel & Cholakian (1988 through 1999) 25 attorney insurance defense firm in San Francisco.

Mr. Cholakian has successfully defended approximately 55 major jury trials, the majority of which had exposures in excess of $1,000,000.00 and is regularly asked to defend cases that have exposures in excess of $1,000,000.00. His record is 54-2 in disputed liability/disputed causation jury trials. He has "defensed" cases in 16 Northern and Central California counties. His first trial as an attorney in 1989, venued in Santa Clara County, in the case of LSI Logic v Ultratch Stepper, resulted in a collected $1.1 million dollar verdict in favor of his client LSI and its carrier AIG (product liability theory).

Mr. Cholakian's practice specializes primarily in high exposure personal injury/truck defense, uninsured/underinsured motorist product liability/fire subrogation matters, construction defect, insurance coverage and employment/housing discrimination matters. Mr. Cholakian has tried 8 major wrongful death cases to defense verdict. He defended major TBI claimed lawsuits where 8-figure damages were sought. Mr. Cholakian also specializes in the defense of environmental, governmental entity defense and ADA litigation. He has successfully

defended Clint Eastwood the Mission Ranch, the San Francisco, San Mateo, Santa Clara and Marin Housing Authorities, and other well-established restaurants and businesses in the San Francisco Bay Area against ADA accessibility claims. He regularly defends and has successfully defended at trial 6 habitability/mold cases brought against small building owners, (4 in San Francisco Superior Court) recovering in 4 instances large fee awards back to his clients.

Although almost exclusively representing defendants in civil litigation over the years, he tried, at the request of a colleague in 1994, Crow v. State of California, a 9 week Alameda Superior Court trial in which the jury awarded his client, Mr. Crow, a $9.5 million dollar verdict, thought at that time to be the largest personal injury verdict in Alameda County by a non plaintiff attorney in the last 20 years.

Cholakian and Associates also serves as lead defense trial counsel for San Francisco, San Mateo, Oakland, and Santa Clara Housing Authorities and also through their National carrier HAI, defending these governmental entities in their catastrophic premises, employment and ADA cases.

Mr. Cholakian also regularly defends high exposure UM/UIM matters with a 90% success rate at binding Arbitration, including defense of a $5,000,000 excess UM claim for State Farm that resulted in a reconstruction of the accident 4 hours outside of Calcutta that he personally supervised, on what was then known as the “Highway of Death” and which included depositions in India’s High Court in Calcutta, India.

Mr. Cholakian has also defended major construction site accident cases, has defended Great America Amusement Park in a highly publicized wrongful death case, and has taken expert and lay witness depositions in Europe, Asia, and South America. These include high exposure UM motor vehicle case (Prince Diana’s former surgeon was video deposed in London); 8 witness depositions in Calcutta, India; (catastrophic San Francisco Superior Court construction site accident trial) 3 medical expert depositions in Cork, Ireland; (Military accident case) 2 witnesses Hamburg, Germany; and (major San Francisco cable car catastrophic injury case) Schweinfurt, Germany (2 separate occasions 5 witnesses); (defended French wine cork manufacturer, litigation involving 7 major wineries) in U.S and Canada; and (5 fatality case) took 8 depositions San Salvador, Dominican Republic, and more recently defended a landlord client in Schaffhausen, Switzerland.

In 2006, Mr. Cholakian was the recipient of Farmers/Zurich Commercial Claims “Gladiator of the Year” award. The Gladiator of the Year award is presented annually by Farmers/Zurich in recognition of outstanding trial results in defense of individuals and small businesses. For the 2ndtime, he received the 2009 Farmers/Zurich Gladiator of the Year Award for trial work in 2009. In 2008, Mr. Cholakian received from Farmer/Zurich, Director of Commercial Claims, the Zurich Values and Visions Medallion for epitomizing core values of Respect, Integrity, Achievement and Social Responsibility.

He has twice been a panelist speaker at the NASP National Subrogation Convention, speaking on product and fire liability issues affecting subrogation recoveries in significant cases. He also has been designated by his peers 14 consecutive years as a Northern California “Super Lawyer”, a designation received by only 5% of 10,000 Bay Area Lawyers. He was asked to be on a Blue Ribbon Panel by Super Lawyers providing input on potential nominees. Only 13 lawyers in Northern and Central California were designated in the “Personal Injury Defense” category. He has also been selected by Martindale-Hubbard as part of a Blue Ribbon panel that assists in the A.V. rating process. He has been A.V. rated for more than 20 years.

Mr. Cholakian is a member of the following organizations: Defense Research Institute (DRI) 1988 – Present, the International Association of Defense Counsel (IADC) 1990 – 2003, the Northern California Association of Defense Counsel, the American Bar Association, the San Mateo Bar Association, the Bar Association of San Francisco, the San Francisco Trial Lawyers Association, the California Trial Lawyers Association, Co-Chair of the Northern California Chapter of National Association of Subrogation Professionals 2004-2006 (NASP), and Trucking Industry Defense Association (TIDA) 1998 – Present, Armenian-American and Italian American Bar Associations.

Mr. Cholakian is in his 18th year as President of the San Francisco Defense Association, San Francisco oldest Bay Area civil defense attorney organization comprised of civil defense litigators. Eight State Supreme Court Justices have been guest speakers in the past three years. Mr. Cholakian also sits on the Executive Committee of the Board of Governors of the City Club of San Francisco and previously on the Parish Counsel of St. John's Armenian Orthodox Church in San Francisco. Mr. Cholakian also recently completed a three-year term on the Hastings College of Law (UCSF) Board of Trustees.