CAIIA Status Report

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December 2018

Appraiser is Barred from Giving Evidence

Credit to Smith, Smith & Feeley, Newport Beach, CA

A party-appointed appraiser is an "arbitrator" and is barred from giving evidence about the appraisal proceeding, except for evidence that the award was procured by "corruption, fraud, or other undue means" or that the members of the panel "exceeded their powers." *(Khorsand v. Liberty Mutual Fire Ins. Co.* (2018) 20 Cal.App.5th 1028)

Facts

Liberty Mutual Fire Insurance Company issued a homeowner insurance policy to Arash Khorsand and Mahshid Fahandeza. Khorsand and Fahandeza submitted a claim for damage allegedly caused by a plumbing leak, but the parties had very different evaluations of the extent of covered damage and cost of repair. Specifically, Liberty Mutual determined the cost of repair was about $34,000, while Khorsand and Fahandeza determined the cost of repair was about $482,000.

Khorsand and Fahandeza then submitted a second claim for damage allegedly caused by rain, but the parties again had very different evaluations of the extent of covered damage and cost of repair. Specifically, Liberty Mutual determined the cost of repair was about $66,000, while Khorsand and Fahandeza determined the cost of repair was about $288,000.

Because of the dispute, Khorsand and Fahandeza demanded appraisal of the damage, and ultimately obtained a court order compelling Liberty Mutual to participate in the appraisal as to both claims. In ordering the appraisal, the court directed the appraisal panel to value separately items of loss about which Liberty Mutual disputed coverage.

Each side selected an appraiser, and the two appraisers appointed an umpire. Ultimately, the umpire and Liberty Mutual's selected appraiser signed the award, but Khorsand's and Fahandeza's selected appraiser did not. The award stated that the total amount of the two losses was $132,293.04 – which was only a fraction of what Khorsand and Fahandeza had sought. And, importantly, the $132,293.04 award included $96,530.37 for items about which Liberty Mutual disputed coverage.

Liberty Mutual filed a petition to confirm the award, but Khorsand and Fahandeza opposed that petition and filed their own petition to correct or vacate the award. In support of their petition to correct or vacate the award, the appraiser selected by Khorsand and Fahandeza submitted a declaration in which he provided an account of the appraisal proceedings, including his summary of the evidence presented and the appraisal panel's deliberations. His declaration also forth his reasons for declining to sign the award.

Liberty Mutual objected to the entire declaration as inadmissible. Specifically, Liberty Mutual asserted that, subject to some exceptions, Evidence Code section 703.5 bars an "arbitrator" from testifying about any statement, conduct, decision, or ruling, occurring at or

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Published Monthly by
California Association of
Independent Insurance Adjusters

An Employer Organization of Independent Insurance Adjusters

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by Email and Web Only.

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President's Message

Once again, I am having the surreal experience of preparing this Holiday message early, as our editor is heading out of town -- I want to say "Thanks" to Sterrett for all you do!

Whatever holiday you might celebrate during this month, I believe it is a season of reflection …

As I am preparing this message, California is burning! The Camp Fire has just devastated the town of Paradise and the surrounding areas; Southern California is trying to get control of the Hill and Woolsey fires. Once again, the circumstances of the job provide inspiration for my monthly message, as I take time to reflect about the importance of what we do as adjusters

John Ratto

CAIIA President

Of course, it is easy to get caught up in the adrenaline pumping pace of huge loss events such as the current fires. It is also easy to get caught in the daily juggling of multiple files, legislated time lines and carrier's expectations of information and answers as soon as possible. In all of this pumping adrenalin, juggling and time keeping, we adjusters often forget how deeply people's lives are affected by loss events and by our actions.

I think many of us get desensitized to the people and events of our lives. Admittedly, it can be very hard to focus on the events of the day and how people are affected by them when there is so much negativity and violence on television, in politics, and frankly in our everyday working world. Find me a loss adjuster who has been handling claims for over ten years who is not jaded about people and events. After a while, it can all come to seem nothing more than a job and a paycheck (Boy this is a positive President's message! ….).

However, in this season of reflection, I would like to suggest we take some time. Some of that windshield time in the car sitting in traffic, turn off the radio, don't make that phone call and whatever you do don't text! Take a few moments to not just remember what we are all grateful for at the holidays, but to remember what it is we do as adjusters.

WE HELP PEOPLE …

We adjust all kinds of losses - some more catastrophic than others. We handle residential property losses for families and we help commercial businesses get back on their feet. Do not forget those businesses employ people and those people have families who count on those checks. Liability adjusters help to fairly assess and adjust valid claims – yes, some claimants really do count on those checks to help them get their lives back in order and their families depend on them to get back on their feet. It is hard to be there for every insured/claimant and it can be taxing to deal with their claims, but believe me when I tell you that you really are helping to change someone's life. Sometimes nothing means more to me during the holiday season than getting a Christmas card every year from an insured whose claim I handled 10 years ago.

Now on a lighter note (yep, same cut-and-paste as last month)… Remember when I said "I have been doing my best to clear my desk so that I can be prepared for the winter season?" When I made that comment I was thinking of rain and certainly not fire. I've already received a number of new losses in Paradise. Should give me lots of windshield time to remember what's important.

Seasons Greetings to all of you! (yeah, yeah, I know I didn't just say Merry Christmas!… What? Is he trying to be "politically correct"? Naw! Just trying to help <u>all</u> people, like a good insurance adjuster does.)

John Ratto, President

CAIIA President

NEWS FROM AND FOR OUR MEMBERS

SAVE THE DATE

The CAIIA is proud to be exhibiting at or sponsoring the following upcoming events:

March 5 & 6, 2019 Combined Claims Conference, Hyatt Regency, Orange County

DOI Announcement

Insurance Commissioner issues emergency declaration to help fire survivors across the state

SACRAMENTO, Calif. - In the wake of the deadliest and most destructive wildfire in California's history, Insurance Commissioner Dave Jones today declared an emergency situation, which allows insurance companies to use out-of-state adjusters to help handle the large volume of claims resulting from the Camp and Woolsey Fires.

With more than 7,600 homes destroyed so far by the Camp Fire alone, Jones directed the California Department of Insurance to issue a formal notice to insurers, licensed public adjusters and admitted carriers to make sure all claims adjusters assigned to wildfire claims, including those not licensed in California but working under a California licensed adjuster, are properly trained on the California Unfair Practices Act, Fair Claims Settlement Practices Regulations, and all laws relating to property and casualty insurance claims handling.
"Wildfire survivors need all the help we can provide, as they begin the long road to recovery," said Insurance Commissioner Dave Jones. "We are taking action to make sure policyholders are protected as they begin navigating the claims process and rebuilding their homes. I am reminding all insurers and adjusters of their obligation to comply with all of the California laws and help wildfire survivors."

Following last year's wildfires, the commissioner received feedback from wildfire survivors, public officials, and others that some of the representations made by insurance adjusters conflicted with California laws. The formal notice issued today, reminds adjusters of California insurance laws and draws attention to several new laws enacted in the last legislative session as urgency bills and are effective for claims resulting from the recent wildfires in northern and southern California. Some of the new laws include:

- Policyholders now have 36 months after a declared disaster to collect full replacement cost to rebuild, replace at another location, or purchase an already built home at a new location.

Additional living expense coverage is available for 36 months but is subject to policy provisions.

Policyholders should contact their insurance company and insurance agent to begin the claims process. They may also contact the Department of Insurance Consumer hotline at 800-927-HELP (4357) to seek assistance or visit the Department's website for tips and advice.

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in conjunction with an arbitration. The trial judge overruled Liberty Mutuals objection, and held that Khorsand's and Fahandeza's appraiser was not an "arbitrator." But even after considering Khorsand's and Fahandeza's appraiser's declaration, the trial judge granted Liberty Mutual's petition to confirm the award. Khorsand and Fahandeza then appealed.

Holding

The Court of Appeal rejected the trial judge's ruling that Khorsand's and Fahandeza's appraiser was not an "arbitrator." The Court of Appeal held that each member of the appraisal panel was an "arbitrator," and that Evidence Code section 703.5 severely limited the extent to which an appraiser could give evidence about any statement, conduct, decision, or ruling occurring at or in conjunction with the appraisal proceeding. However, the Court of Appeal held that an appraiser could give evidence that the award was procured by "corruption, fraud, or other undue means" or that the members of the panel "exceeded their powers."

Thus, the Court of Appeal held the trial judge should not have admitted the entire declaration into evidence but, instead, should have admitted only that part of declaration that was intended to show the award was procured by "corruption, fraud, or other undue means" or that the members of the panel "exceeded their powers." Although the Court of Appeal held the trial judge should not have admitted the entire declaration into evidence, the Court of Appeal ultimately affirmed the trial judge's ruling confirming the appraisal award. In other words, the Court of Appeal ruled the trial judge improperly admitted the appraiser's entire declaration, but still reached the correct conclusion.

Comment

This case reinforces the concept that appraisers are arbitrators, albeit arbitrators with limited authority. Unlike other arbitrators, who typically decide all issues of law and fact, appraisers decide only a limited issue of fact, i.e., the amount of loss. Appraisers clearly have no authority to determine coverage issues, such as causation or policy interpretation.

This case also reinforces the concept that, if two of the three members of an appraisal panel sign an award, the award can be vacated or corrected only for extremely limited reasons. And, as illustrated in this case, a member of the appraisal panel is barred from giving evidence about any statement, conduct, decision, or ruling occurring at or in conjunction with the appraisal proceeding. Instead, a member of the appraisal panel is limited to giving evidence the award was procured by "corruption, fraud, or other undue means" or that the members of the panel "exceeded their powers."

HAPPY HOLIDAYS TO YOU AND YOURS!

Assumption of Risk
Credit to Tyson & Mendes, La Jolla, CA

Assumption of the risk is a concept which has a long and varied history. (Charles Warren, *Volenti Non Fit Injuria in Actions of Negligence* (1895) 8 Harv. L. Rev. 457.[1]) The concept embodied by Primary Assumption of the Risk was first adopted and applied in California using the nomenclature "Fireman's Rule[2]" by the Court of Appeal in the case of *Giorgi v. Pacific Gas & Elec. Co.* (1968) 266 Cal.App.2d 355, 357, 72 Cal.Rptr. 119, 120. It barred recovery by firefighters against members of the public who started the fire which made employment of the firefighters necessary. (*Neighbarger v. Irwin Industries, Inc.* (1994) 8 Cal.4th 532, 538–540, 34 Cal.Rptr.2d 630.) A primary element of the doctrine is the risk of injury is an inherent part of the firefighter's duties. Thus, the firefighter "assumes the risk" of injury. The firefighter's rule has since been extended to other occupations such as police, veterinarians and to in-home aids. (*Gregory v. Cott* (2014) 59 Cal.4th 996, 1002–1003, 176 Cal.Rptr.3d 1, 5.)

In 1975 The California Supreme Court rejected the doctrine of contributory negligence in favor of comparative negligence. (*Li v. Yellow Cab* (1975) 13 Cal.3d 804, 119 Cal.Rptr. 858, 532.) After *Li*, there arose a split in the Courts of Appeal as to whether *Li* abolished "assumption of the risk" as a complete defense to a claim of negligence.
In *Knight*, plaintiff sued another participant in a touch football game for negligence after suffering a serious hand injury which occurred during play. In addressing assumption of the risk in the context of recreational sports, the Court adopted the nomenclature "primary assumption of the risk" to describe the situation where defendant did not owe a duty of care to protect plaintiff from the particular risk of harm "by virtue of the nature of the activity and the parties' relationship to the activity." *Id.* at pp. 314-315.[3] The Court held a duty of care only exists to the extent a "participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport." *Id.* at p. 320.

Knight has since evolved from application to only coparticipants in a sport. One Court of Appeal decision characterized Primary Assumption of the Risk as defining the "duty owed between persons engaged in any activity involving inherent risks," such as between arena owner and hockey spectator, instructor and student, ski boat operator and inner tube rider, and even to a participant in the "Burning Man" effigy. (*Jimenez v. Roseville City School Dist.* (2016) 247 Cal.App.4th 594, 601, 202 Cal.Rptr.3d 536, 542.)[4] While the issue in *Knight* was the duty owed by co-participants in a sporting activity to one another, the Court also discussed the duty owed by the host of the activity to a participant by reference to the holding in *Ratcliff v. San Diego Baseball Club* (1938) 27 Cal.App.2d 733, 81 P.2d 625.

In *Ratcliff*, a spectator at a baseball game in the stands was struck by an accidently thrown bat. The jury found for the batter but against but the owner. The Court explained the outcome with approval by differentiating between the duties owed to the spectator by the player and the stadium owner. The *Knight* Court explained the player was a participant in a game where an accidently thrown bat was an inherent risk. The risk could not be eliminated without changing the game. The owner however had a duty to provide "a reasonably safe stadium" and "minimize the risks without altering the nature of the sport." *Knight, supra,* at p. 317.
Since *Knight,* a number of appellant decisions have determined there was sufficient evidence the defendant "hosting" an activity should face trial on negligence allegations of having breached the duty to not increase the risk of injury inherent in the activity. *Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113, 86 Cal.Rptr.3d 588, 596–597. The two recent decisions discussed below both determined in this context the duty owed by defendant was subject to application of the doctrine of primary assumption of the risk yet reached divergent results.

What Duty is Owed to the Injured Participant in a Recreational Activity Subsequent to the Injury

Hass v. RhodyCo Productions (2018) 26 Cal.App.5th 11, 236 Cal.Rptr.3d 682.

In *Hass* a participant in a half-marathon passed away after suffering a cardiac arrest almost immediately after crossing the finish line. The family sued the race organizer alleging it was negligent in organizing and managing the provision of emergency medical services[5]. The organizer argued the claim was barred by an express waiver and release signed by the decedent, and by primary assumption of the risk. Plaintiffs countered defendant's mishandling of emergency medical services constituted "gross negligence" in response to both defenses.[6] Procedurally, the trial court granted summary judgment but reversed the ruling in granting plaintiffs' motion for a new trial. Defendant appealed and plaintiffs cross appealed.

The First District Court of Appeal's decision, entered August 13, 2018, remanded the case back to the trial court, holding there was a triable issue of fact as to whether the defendant's alleged lack of care constituted gross negligence, thus making primary assumption of the risk inapplicable as the alleged misconduct applied to a risk extrinsic to the sport. *Id.* at p. 40. Both defendant and the Court of Appeal cited *Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 150 Cal.Rptr.3d 551, as supporting their respective positions. There, the Supreme Court upheld application of the doctrine of primary assumption of the risk to bar the negligence claims of a plaintiff who fractured her wrist against the operator of a bumper car ride. The *Hass* court interpreted *Nalwa* to hold:
[O]perators and organizers have two distinct duties: the limited duty not to increase the inherent risks of an activity under the primary assumption of the risk doctrine and the ordinary duty of due care with respect to the extrinsic risks of the activity, which should reasonably be minimized to the extent possible without altering the nature of the activity. *Id.* at p. 38. (Emphasis added.)
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It was undisputed cardiac arrest was an inherent risk in long distance running and defendant did nothing to increase the risk plaintiffs' decedent would have a heart attack. But, the organizer also had a duty to "reasonably minimize *extrinsic* risks so as not to unreasonably expose participants to an increased risk of harm." *Id.* at p. 38. The *Hass* court reasoned here the participants in the sport would benefit by holding the organizers to a duty to provide a reasonably safe event as that duty does not impair the sport. The Court also noted the organizers remain protected from liability for inherent risks and typically also avoid liability for ordinary negligence given participation is "almost always" contingent on signing a release. *Id.* at p. 41.

Martine v. Heavenly Valley Limited Partnership (Cal. Ct. App. 2018) 238 Cal.Rptr.3d 237

In *Martine* plaintiff injured her knee while skiing at a resort. A ski patrolman employed by the resort owner responded to her call for assistance. He splinted her leg, secured her in a rescue toboggan, and proceeded to ski down the slope while controlling the sled in order to reach an aid station. The toboggan rolled over before reaching the station. Plaintiff alleged the patrolman lost control, was going too fast and fell causing the toboggan to tumble out of a control and hit a tree, injuring her head and leg. Defendant contended a snowboarder clipped the patrolman's ski causing him to fall and the toboggan to roll over. Defendant successfully moved the court for summary judgment on the basis plaintiff's injury was a risk inherent in the sport of skiing. Plaintiff argued primary assumption of the risk did not apply to transportation of injured skiers and the ski patroller in transporting plaintiff was engaged in a common carrier activity which required the duty of utmost care[7].

The Third District's Court of Appeal decision, entered September 4, 2018, found plaintiff was still participating in the sport of skiing at the time of the accident. The Court noted both the initial knee injury requiring transport down the slope and the subsequent accident on the rescue toboggan were foreseeable risks inherent in skiing. *Id.* at p. 244. Plaintiff brought up the *Hass* case, decided two weeks earlier, during oral argument. The Court did not address the holding in *Hass* which determined the defendant owed an ordinary duty of care with regard to extrinsic risks, stating only the *Hass* decision did not apply because plaintiff did not contend in opposing the summary judgment defendant was grossly negligent.

Takeaway

The *Martine* decision's failure to address the holding in *Hass* regarding extrinsic duties of operators in providing aid to injured participants will likely limit the relevance of the decision to the unusual facts unique to the case. Even then, ski resort operators should not rely on the decision to shield them from all negligence claims arising from the management of emergency medical services to injured skiers. Organizers and hosts of sporting and recreational events should continue to rely on written express releases and waivers of liability obtained from participants as a contingency of their participation in to avoid liability for claims for injuries arising from risks inherent to the activity.

[1] It is a fundamental principle of the common law that Volenti non fit injuria—to one who is willing, no wrong is done." *Tavernier v. Maes* (1966) 242 Cal.App.2d 532, 552 [51 Cal.Rptr. 575, 587.]
[2] Since renamed as the "firefighter's rule."
[3] In cases involving "secondary assumption of the risk" the court has determined a duty of care is owed, leaving the jury to apportion fault, if any, between the parties. *Knight, supra*, at p. 315.
[4] In *Jimenez* the doctrine was not applied where a student, injured while engaged in "break dancing" in a classroom, sued the school district for negligent supervision.
[5] The negligence claim "highlighted use of chiropractors rather than medical doctors, the use of chiropractic students rather than EMTs, the lack of ambulance personnel at the finish line, inadequate communication and communication devices, and inadequate AEDs and ambulances." *Hass, supra,* at p. 687.
[6] The release was insufficient as a matter of public policy to preclude a claim for gross negligence. *Id.* at p. 31.
[7] The Court of Appeal found the ski resort was not a common carrier as it did not maintain a business for transporting skiers, advertise such a service to the general public and did not charge a standard fee for doing so, citing the relevant jury instruction, CACI 901. *Id.* at p. 245.

"Prevailing Party"
Credit to: Low, Ball & Lynch, San Francisco, CA

The Second Appellate District, Division Four, in Olive v. General Nutrition Centers (GNC), Inc., B279490 (11/02/18), was confronted with the question whether a plaintiff who was awarded in excess of $1 million on one claim, but did not prevail on significant other claims whereby he sought as much as $23 million, was the "prevailing party" under California's Right of Publicity Law (Code of Civil Procedure, section 3344). Section 3344 mandates an award of attorney's fees for "[t]he prevailing party in any action under this section." (§ 3344, subd. (a); Kirby v. Sega of America, Inc. (2006) 144 Cal.App.4th 47, 62.) However, the statute does not define the phrase "prevailing party."

Plaintiff-Appellant Jason Olive, an actor/model contracted with General Nutrition Centers, Inc. (GNC) to use his likeness in its advertising campaign, but sued when GNC continued to use his likeness beyond the terms of the contract. GNC admitted liability for the unauthorized use of Olive's likeness in violation of California Civil Code section 3344, but contested the amount of damages.

During closing argument, Olive argued he was entitled to actual damages of $500,000 to $1 million, a claw back of profits attributable to the unauthorized use up to $23 million. GNC impliedly recommended actual damages of no greater than $4,800, and argued there should be no award of emotional distress damages or profits attributable to the unauthorized use.

The jury found that Olive was entitled to $213,000 in actual damages and $910,000 in emotional distress damages. The jury also found that Olive failed to prove any of GNC's profits were attributable to the unauthorized use of his image, or that GNC acted with malice or fraud for the purpose of punitive damages. The trial court denied both parties' motions for prevailing party attorney fees and costs, and Olive and GNC separately appealed from the judgment and the order denying prevailing party attorney fees.

On appeal, Olive contended the court erred by (1) failing to provide his proposed special jury instruction concerning the burden of proof under section 3344, (2) excluding his expert witnesses who would have testified about the amount of GNC's profits from the unauthorized use of his likeness, and (3) determining he was not the prevailing party for purposes of awarding statutory attorney fees. In its cross-appeal, GNC contended it should have been deemed to be the prevailing party.

The Second Appellate District, Division Four, reversed, concluding the trial court abused its discretion by denying Olive's claim that he was the "prevailing party" because, despite not prevailing on all of his claims, and notwithstanding that he sought $23 million, he nonetheless recovered in excess of $1 million in damages. The court of appeal found error in the trial court's conclusion that neither party prevailed, because "the jury accepted neither party's recommendation but instead awarded a middling sum amounting to a tie." The court of appeal found the trial court placed undue emphasis on the fact both parties were "visibly dismayed" by the jury verdict, which Olive thought was too low and GNC thought was too high, and its analogy to a teeter-totter:

"Think of a teeter totter. Olive is in one seat. GNC is in the other. The pivot point is the jury verdict. The seesaw's pivot is far closer to GNC than to Olive…According to the goal Olive set for himself, one cannot say Olive prevailed. He lost, which is why he and his team thought he lost…GNC also thought it lost, and for good reason. In addition to an actual damage award that vastly exceeded GNC's assessment, the jury awarded Olive $910,000 in emotional distress damages. The GNC lawyers were plainly shocked by this pain and suffering sum."

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The Court of Appeal found Ajaxo, Inc. v. E*Trade Group, Inc. (2005) 135 Cal.App.4th 21 instructive in determining that Olive was the prevailing party. In Ajaxo, the plaintiff sought lost profits of $19.2 million, but ultimately received an award of $1.29 million in restitution. The trial court deemed Ajaxo to be the "prevailing party" despite the fact that four of its theories of liability were rejected, it failed to secure a permanent injunction, and it only received a fraction of the damages it sought. The Court of Appeal affirmed the prevailing party determination on the grounds that the victim company received a "simple, unqualified verdict on the breach of contract claim," along with damages in excess of $1 million. (Id. at p. 59.)

The court of appeal relied on the reasoning of contract-based fee decisions: "If the results in a case are lopsided in terms of one party obtaining 'greater relieaf' than the other in comparative terms, it may be an abuse of discretion for the trial court not to recognize that the party obtaining the 'greater' relief was indeed the prevailing party." The Court cited de la Cuesta v. Benham (2011) 193 Cal.App.4th 1287, 1295; accord, Silver Creek, LLC v. BlackRock Realty Advisors, Inc. (2009) 173 Cal.App.4th 1533, 1541 [prevailing party is the party who recovered "greater relief" on the contract] in holding that Olive clearly obtained the greater relief.

In de la Cuesta, supra, a landlord brought an unlawful detainer action and sought unpaid rent, and the tenant asserted she owed the landlord nothing because there were leaks in the premises. (Id. at p. 1290.) The day before the trial, the tenant vacated the premises, so the case proceeded to trial only as to the landlord's money claims. (Ibid.) The landlord recovered 70 percent of what he claimed was owing. Nevertheless, the trial court ruled that there was no "prevailing party." (Ibid.) The appellate court reversed, concluding "[t]he result was so lopsided that, even under an abuse of discretion standard, it was unreasonable to say the landlord was not the prevailing party." (Ibid.)

In Silver Creek, supra, 173 Cal.App.4th 1533, the parties executed agreements to purchase two commercial properties for $29.75 million, with $1.13 million deposited into escrow accounts. The deal fell through during escrow, and the seller sought a declaration that it validly terminated the agreements and was entitled to retain the deposit. (Id. at p. 1536.) The buyer cross-complained. (Ibid.) The trial court found in favor of the seller on the complaint and the cross-complaint, but concluded the buyer was entitled to a return of the deposit. (Id. at p. 1537.) It determined there was no prevailing party because each party won one of the claims. (Id. at p. 1540.) The Court of Appeal in Silver Creek reversed, concluding that the trial court's approach "oversimplified its duties by counting the number of contract claims presented and essentially declaring a tie because each party won one of the claims presented for resolution." (Silver Creek, supra, 173 Cal.App.4th at p. 1540.) The seller had achieved its main litigation objective in terms of monetary value—terminating the $29.75 million deal—even though the buyer retained the $1.13 million deposit. (Ibid.) Because the seller obtained the greater relief on the contract, the trial court abused its discretion by finding neither party achieved greater relief. (Id. at p. 1541.)

Comment:

The prevailing party is the one who obtains the "greater relief". Like the victim in Ajaxo, Olive recovered less than 10 percent of the maximum damages sought. And like the seller in Silver Creek, Olive clearly obtained the "greater relief" compared to GNC since he is walking away from the litigation with more than $1 million. Although the verdict was certainly lower than the amount sought by Olive and the percentage recovered by the landlord in de la Cuesta, it greatly exceeded GNC's damages recommendation of $4,800.

Editor's Note: Definitely not *on the lighter side* but in this season of giving, we thought we would share. This info was copied from the capradio.org website but has not been vetted:

How to help the victims of the Recent Wildfires

Updated Nov. 20, 3:17 p.m.

The Camp Fire in Butte County is the deadliest and most destructive fire in California history. Tens of thousands of people remain displaced.

Below is a selection of where you can donate to the victims. Remember that it's important to do research before deciding what organizations to give to (Charity Navigator is a good resource).

Chuck Smith, spokesman for Sutter County near where the fire is still burning, says monetary donations and gift cards are often more helpful than physical goods.

"What happens with used clothing and things like that is that they become a burden for folks at the shelter and emergency workers in terms of trying to coordinate the donations and they wind up in a warehouse somewhere," he said.

Smith said local shelters do sometimes have needs for things like diapers or blankets, but it's best to check in daily.

If you have a suggested addition to this list, please email us details at digiteam@capradio.org.

Organizations accepting donations for Camp Wildfire relief:

The Chico-based nonprofit **North Valley Community Foundation** is accepting online donations to an Evacuation Relief Fund that will support organizations that are sheltering Camp Fire evacuees.

The **Butte County Office of Education** has set up a Schools Relief Fund, administered online by the North Valley Community Foundation, to directly benefit Butte County schools. Donors can either specify a district or use for their money (such as textbooks or clothes) or make an open donation.

The **United Way of Northern California** has established a NorCal Fire Relief Fund to benefit Camp Fire relief efforts, including "direct cash assistance for survivors, assistance to partner agencies in their provision of direct services to survivors, and United Way operations that directly assist survivors." Donate online or by texting BUTTEFIRE to 91999. Businesses and organizations interested in helping contribute to the fund can call Jacob Peterson at 530-241-7521 or 916-218-5424. You can also email him at jpeterson@norcalunitedway.org.

The **Salvation Army** is accepting monetary donations to support their immediate response efforts. You can give online or by calling 1-800-SAL-ARMY (1-800-725-2769). The Chico-based **Enloe Medical Center Foundation** has set up a relief fund to help patients, families and caregivers who have lost their homes or been displaced due to the fire. You can donate online or text "CampFireRelief" to 91999.

Tri Counties Bank has set up a fund to help the victims of the Camp Fire. The bank made an initial deposit of $25,000 in the account, and the bank's GoFundMe page for the fire fund has raised more than $86,000 since it opened on Nov. 9. You can donate to the fund on GoFundMe, or at any Tri Counties Bank location.

GoFundMe created a page with verified campaigns raising money for victims of the Camp Fire and the Woolsey and Hill fires in Southern California. The page includes large campaigns like the Tri Counties Bank campaign, as well as campaigns for individual families who have lost their homes.

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The **American Red Cross** is accepting online donations to help people affected by the California wildfires (select the appropriate option from the dropdown menu). You can also donate by calling 1-800-733-2767 or texting "CAWILDFIRES" to 90999.

The **Veterans Resource Center** is accepting monetary donations online (designate "Camp Fire" in the comments field) and items that can be dropped off at the center in Chico (10 Amber Grove Drive, Ste 114, Chico). On Monday, they published a list of needed items — see it here.

The **California Community Foundation's Wildfire Relief Fund** supports intermediate and long-term recovery efforts for major California wildfires, as well as preparedness efforts.

The **Yuba/Sutter Habitat for Humanity** is accepting monetary donations (in person or online), gift cards, and donations of unused clothing, blankets, hygiene products, or non-perishable food items.

The **New Earth Market in Yuba City** has also been collecting gift cards to distribute to evacuees. Information on their efforts can be found on the market's Facebook page.

The **Presbytery of Sacramento** has established a Camp Fire Relief Fund to assist the Chico-based Bidwell Presbyterian Church in responding to families affected by the Camp Fire. **Bidwell Presbyterian** is also collaborating with the Salvation Army to distribute donated items and holding "pop-up shops" for evacuees. More information on their efforts can be found on their website and Facebook page.

CAIR-SV has joined with Islamic Centers and mosques to raise money for cash cards for victims, to be distributed by the Islamic Center of Chico. You can donate online to their LaunchGood fundraiser, which has raised more than $20,000 so far.

The **Colusa County Farm Bureau** has begun a children's book drive to benefit elementary schools and families in the Paradise area. How to help animals:

Sacramento-based nonprofit **RedRover** has a list of resources for helping animals affected by the California wildfires here.

The **Butte Humane Society** has opened a pet food and supply pantry at 2580 Fair Street in Chico. The **Butte County Farm Bureau and Butte Ag Foundation** have created a Camp Fire Animal Agriculture Assistance Fund.

UC Davis vets are helping rescue animals, treating them for burns and connecting them with their owners. People can make donations to the Veterinary Catastrophic Need Fund to help treat the animals or make a gift to the Veterinary Emergency Response Team to help their vets in the field.

Organizations accepting housing donations:

North Valley Property Owners Association in collaboration with other local nonprofit groups has created a resource to assist evacuees in locating long-term housing. Those who can offer long-term housing can be added to the database here.

Airbnb has activated its Open Homes feature for the Camp Fire, where people can make their homes available for free to displaced people and relief workers. Add your home or find shelter here.

If you have a suggested addition to this list, please email us details at digiteam@capradio.org.

CapRadio's Julia Mitric contributed to this report.