

Don't Be an Ostrich: Dealing with California's Onslaught of Litigation

Presented by:

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Ryan Nell, Esq.

Shareholder

Ryan H. Nell is an employment attorney responsible for representing California employers statewide in both counseling and comprehensive litigation support. With the ever-changing landscape of California and federal employment law, Ryan prides himself on assisting clients in staying ahead of the curve in an effort to avoid legal trouble before it arises. He has extensive experience representing clients in harassment, retaliation, and discrimination matters, as well as large-scale wage and hour lawsuits.

Ryan speaks regularly on a wide range of topics aimed at assisting California employers in the avoidance of legal trouble before it arises, and his work in the field has led to his recognition as a San Diego Rising Star by Super Lawyers in 2018-2024 and his inclusion in the Best Lawyers: Ones to Watch list in 2021-2024.



Heather Rogers

Associate Attorney

Heather A. Rogers is a member of PKILD's Retail team and represents clients across California in a broad range of cases including intentional torts, premises liability, products liability, and personal injury.

She focuses her practice around helping clients strategically and efficiently navigate complex legal issues. Heather works to provide practical guidance tailored to each client's unique needs and proactively manage exposure to achieve favorable results.

Heather is a San Diego native where she is actively involved in the legal community and charitable organizations, including Junior League of San Diego.



Melissa Solomon

General Counsel

Melissa Solomon is General Counsel of Oakmont Management Group and Heartford Hospice. Oakmont is the largest assisted living and memory care operator in the state of California with over 9,000 employees serving thousands of seniors each day. Prior to joining Oakmont in 2023, Melissa spent the majority of her career as in-house counsel to senior housing and pharmaceutical companies. She relocated to Southern California from the East Coast twelve years ago and resides in Irvine, CA with her husband two teenaged daughters.



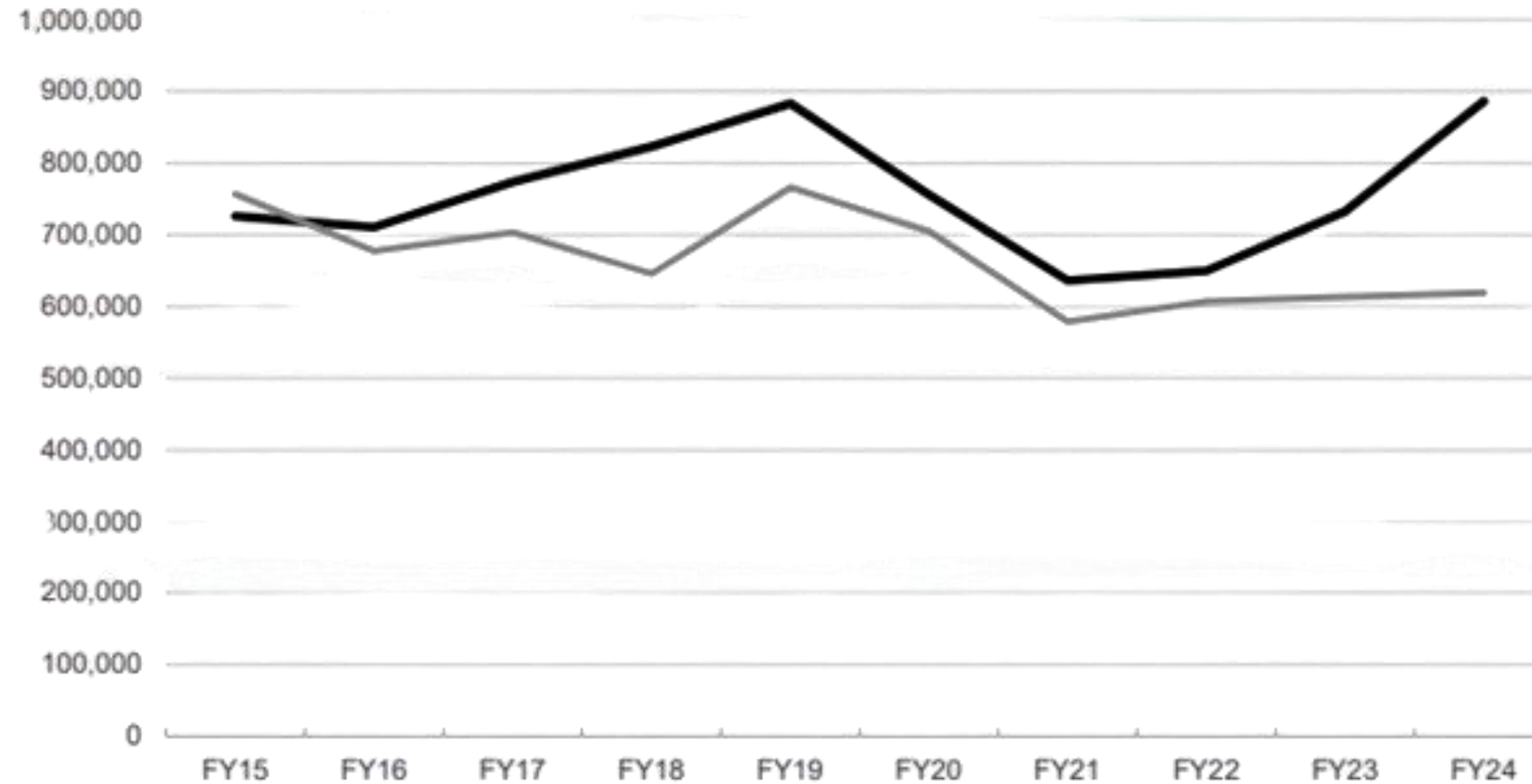
What is the Goal?

- To take the right cases to trial and settle the right cases.
- If the case is being evaluated accurately throughout the life of the case, then you're in the best position to either resolve or prepare for trial early on.
 - Accurate evaluation affects how to conduct discovery, depositions, expert retention, etc.

CA Litigation Trends

2023-2024 CA Trends

Figure 3: Total Civil Filings and Dispositions



Get this data

Filings



Dispositions

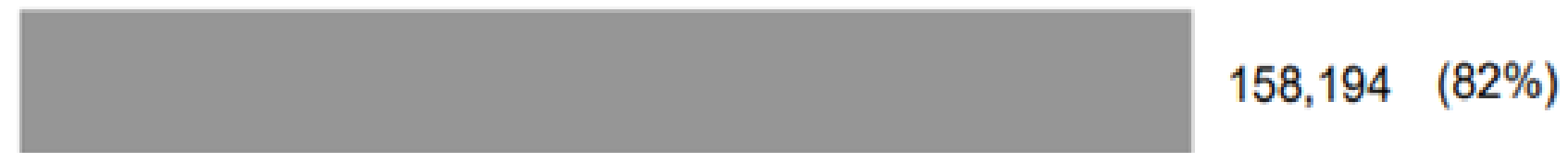


[Source, Judicial Counsel of California, 2025 Court Statistics Report](#)

2023-2024 CA Trends

Civil Unlimited

Number disposed before trial



Number disposed after trial



[Source, Judicial Counsel of California, 2025 Court Statistics Report](#)

Nuclear Verdicts

- California hosted the most reported nuclear verdicts in the US between 2013 and 2022, with a total of 199 verdicts amounting to \$9 billion in jury awards.
 - Florida rivals California for nuclear verdicts, with 197 reported cases totaling \$33 billion in awards. With a population roughly half that of California, Florida hosts the most nuclear verdicts per capita by far. Source: U.S. Chamber of Commerce, Institute for Legal Reform, [*Which States Have the Most “Nuclear” Verdicts? - ILR*](#)

Value Drivers In General Liability Cases

Types of Injuries

- LOC
- Surgeries vs. Surgical Recommendations
 - Once the plaintiff has surgery, its difficult to show unreasonableness.
- CRPS
 - Proliferation of spinal cord stimulators
 - Pltf will blackboard \$500k between the tests, the implantation (temporary/permanent)
 - Things to look for:
 - Absence or insufficiency of psychological testing
 - Skipping conservative treatment

Types of Damages

- Cases driven by special damages –
 - Statutory lien vs. lien treater
 - Statutory lien: VA, Tricare, Medicare, Medical, etc. Not significantly inflated vs. lien treater which is typically very inflated.
 - Lien doctor - Plaintiff's counsel will negotiate the lien treater's bills down by at least 20% but probably more of the amounts charged.
- Case driven by general damages –
 - Cases with low special damages can still be high value
 - Example: Pregnant driver who claimed her pregnancy was made extremely uncomfortable as a result of the MVA. She didn't receive much treatment so her specials were low.
 - Other factors driving potential value: Plaintiff was already the mother to a down syndrome child.

Types of Damages

- Another example: Sexual assault in a strip mall parking lot. While Plaintiff past specials are relatively low, at ~\$38,000, her attorney may make the strategic move to simply wave special damages at trial based on the horrific nature of the incident knowing the high likelihood that it will garner significant general damages.
 - Other factors driving potential value: Plaintiff has cerebral palsy and makes a particularly compelling and sympathetic witness. She was at Sam's Club buying water for a church picnic when she was raped in the parking lot.

Other Damages

- Derivative claims –
 - Loss of Consortium
 - *Dillon v. Legg*. In *Dillon*, the California Supreme Court devised a three-pronged test which bystanders claims for emotional distress may be afforded damages by a jury. The test requires that the individual: (1) was physically present at the scene when the cause of action occurred; (2) contemporaneously observed the action and they were aware of the potential for injury or death; and (3) was closely related to the victim who was injured.
 - Example: *Adair v. Walmart* – Two 12-year-olds watched their mother get strangled by a stranger.
- Punitive Damages –
 - Properly plead?
 - Attack with a Motion to Strike, or in a later MSJ?

Other Damages

- Joint and Several liability –
 - Under California negligence laws, multiple wrongdoers can be held jointly responsible for economic damages. Each defendant is separately responsible for their share of non-economic damages.
 - What does that mean in when valuing a case?
 - Example:
 - Plaintiff gets an award for \$5 mil made up of \$2mil in special damages and \$3mil in general damages. Your client is found 1% liable. Co-defendant is 99% liable. Your client's exposure is \$2,030,000 as they are fully liable for specials and proportionally liable for the generals. If co-defendant is insolvent (ie. assailant in sexual assault case) then your exposure is significant.

Liability Considerations

Theme

- What evidence supports the theme?
- Will it be admitted?
- Argument is not evidence.

Third Party Liability

- Tender considerations
- Nondelegable duties

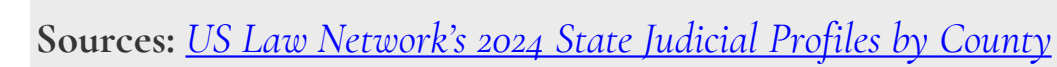
Witness Qualifications

- Who is the jury going to believe?
 - Credibility considerations
 - Expert vs. Expert

MSJ Potential?

- Evaluate early and promptly prepare
 - Effective Jan. 1, 2025, Assembly Bill No. 2049 introduced a new deadline for MSJ's. Moving papers must be filed at least 81 days before the hearing date.

Venue



What are the venue demographics?

- The US Census Bureau is a good resource for most current demographics.
 - Use the following links for quick access to quick facts and reports by the US Census Bureau on the counties we most often serve:
 - San Diego County –
 - [Quick Facts](#)
 - [Census Reporter](#)
 - Orange County –
 - [Quick Facts](#)
 - [Census Reporter](#)
 - Los Angeles County –
 - [Quick Facts](#)
 - [Census Reporter](#)
 - San Bernardino County –
 - [Quick Facts](#)
 - [Census Reporter](#)
 - Riverside County –
 - [Quick Facts](#)
 - [Census Reporter](#)

Who is the judge?

- Is the judge plaintiff oriented or defense oriented?
 - The following websites are good resources for an overview of judge's backgrounds, experience, and inclinations:
 - The Robing Room
 - Ballotepedia
 - Trellis
- How has the judge ruled on past motions?
 - Lexis – Litigation Analytics

What do we know about Opposing Counsel?

- The State Bar of California Attorney Search
 - When were they admitted?
 - Any record of discipline?
 - LinkedIn
- PC's firm's website
 - What do they practice?
 - Do they take cases to trial?
- Lexis – Litigation Analytics
 - Attorney/firm past verdicts & settlement
 - Call defense counsel.
- Other Considerations:
 - Is PC they calling Panish in the 11th hour to come in and save the case?

What's the takeaway?

- Be flexible and check bias
- Reevaluate trial potential/settlement value throughout discovery

Thank You!