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To promote legal excellence, high ethical standards and professional conduct in the practice of law; to improve access to legal services for all people in Ventura County; and to work to improve the administration of justice.

# CITATIONS

JANUARY - TWO THOUSAND FIFTEEN



## LIVING ABROAD BUT WORKING IN VENTURA

PART ONE

*by Michael A. Strauss*

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*Santillana del Mar, Spain.*

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PRESIDENT'S COLUMN:

## “Try Now We Can Only Lose...”

*Light My Fire*, The DOORS, 1966

*or just maybe...*  
by Bill Grewe

**January 1777** There are people and moments that slip by without notice. Such a moment occurred on December 31, 1776. It would carry into January, and its reach affects us to this day.

There was no fanfare. The men involved were a sorry lot. Some with shoes. Some without. Hungry. Sick. Exhausted. Cold. Very cold. John Hancock described them as “broken by fatigue and ill-fortune.”

These were the fellows who crossed the Delaware days before with Washington. Their service was up at the stroke of midnight. Rightfully so. Weak and with little left, but alive, the Delaware crossing secured a high note as their commitment came to a close. Now, hungry and camped in the cold, they knew they had truly “seen it through.”

Washington called them together just hours before discharge. They had followed this man on what had been a steady path of retreat. They had worn out their boots from the heel forward behind a general who fought not to lose and not to win.

Like a puncher's chance in the later rounds, Washington was fighting, in his words, for a “lucky blow that would rouse the people.” He landed such a blow when he crossed the Delaware, but Washington knew the sting inflicted was slipping away as midnight neared.

What his men knew is that, for many, the cold, hunger and illness of the campaign would be passed to others.

Washington spoke to the men gathered before him and asked that they give him just another six months. He promised a sizable payment he did not have. Then, he waited for the men to step forward in acceptance. No one moved. Why would they? There comes a time when one must put his wellbeing first.

Washington, silently rebuffed, spoke once more from horseback in the cold winter air. He laid it out, this thing he saw, from the heart. His army was positioned like no one before them to strike for liberty and country.

What country? Where was it? These fellows had been running for their lives daily and all knew it. This wasn't Washington rallying the troops. He was salvaging the troops. Oh, to have heard it. If Washington was not persuasive enough, the cause was over. The enterprise lost, right there in the snow without one incoming shot.

Somehow, Washington, the one man who saw it, conveyed his vision. Then, he scaled back his request. Not six months. Would they fight with him for seven more days? Seven days.

The men spoke among themselves. Slowly, a few stepped forward. Then more. Nearly all. Could they have imagined what Washington saw at that moment, that they could win this thing? If they could, there is no way that they would have also imagined what Washington expected to do should they be victorious: return to his farm.

The Delaware crossing produced an ember. It was the voluntary decision to keep on by this sorry group that blew warmth on the opportunity allowing Washington to strike before the high point was snuffed. Right there. All things were possible going forward.

Washington proceeded to do what he always did: They broke camp, leaving just a few behind to keep fires going and make a bit of noise, to mislead the enemy who was certain to come. He went on the attack. Strike, strike, strike. And then retreat. Immediately, he stunned the enemy again, sending a message that this thing was not over. Just as important, the citizenry started to come around. As we all know, in time,

the man who fought not to lose, won it all and we, in warm shoes, live that prize.

**January 19, Martin Luther King Day** The “I've Been to the Mountaintop” speech and not the “I Have a Dream Speech” is my favorite. King would deliver it the night before his assassination.

It must have seemed like a time when everything was coming apart, but really, it was coming together. King had been to Memphis a week earlier to support a sanitation workers' strike. Trash men. Really hard work. Much more so than it is today.

The trash trucks were poorly maintained. Two workers were crushed inside one. The earlier trip to Memphis had not gone well. There was violence. King couldn't control things.

King was fighting not to lose. As long as the cause was nonviolent, there could be no justification for extinguishing it. Violence and lawlessness would unleash a crushing blow to the cause. Keep the cause alive, and a lucky blow could come.

King returned to Memphis to try again to lead peaceful support, but there was concern that the commitment to non-violence was slipping away, empowering the opposition.

King was not well. Exhausted. The weather, a storm watch in place, didn't help. He decided to stay behind in his hotel room while his assistant, Ralph Abernathy, went to the hall to speak.

A capacity gathering had defied the weather for the evening rally. The fervor in the hall was high. Abernathy returned to the hotel, woke King, and explained that he had to appear. King dragged himself out of bed and went to the hall. The speech he delivered was unprepared. It's just beautiful. There is

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*Continued from page 3*  
**“Try Now We Can Only Lose...”**

no ego. This is one man at a moment in time leading the struggle for a cause of the ages against insurmountable odds. There was no one else with his voice, humility or manner of leadership, and there would not be again.

The violence of the week before had given his critics fuel, but his dream was alive and he spoke of it, slowly, ref ectively.

In Memphis, King wed civil rights to working conditions. He extended his reach toward the gold standard of justice: equal rights in the workplace, coupling it to religious references. He would intellectually and morally splinter his opposition if time allowed. And before Milton Friedman said, “vote with your dollar,” a room full of striking Memphis sanitation workers heard the same message. King’s shoes remain unfilled. They are unfillable.

**Light My Fire.** The much maligned Jim Morrison should be embraced by his alma

mater, UCLA, as an example of what a liberal arts education can do for you.

In 1966, having lost a gig on Sunset Boulevard as well as a recording opportunity, the Doors were slipping toward irrelevance. Morrison, analyzing where they stood, told his bandmates that if they were going to make it, they needed original material. Robby Krieger had never written a song before, but he did as told and wrote *Light My Fire*, a song which would become one for the ages.

Morrison, the poet, would become a front man without peer. He would err on the side of art over quick money – ask *Ed Sullivan or Buick* – and drugs over life. He was imperfect. The other two men written about above were, like the rest of us, also imperfect.

**Whose voice does an aging Kobe Bryant hear in his head?** Kobe was recently asked to comment on Michael Jordan as a scorer. Certainly, he’d mention the fade-away jumper and the one-hand-stretched-above-

his-head jam, now the emblem for Jordan footwear. Nope. Kobe said this:

Aggression. It’s not one game or one play, in particular; it’s just his aggressiveness. It takes a lot of work, a lot of conditioning, skill and thought to be that aggressive and that assertive. He was relentless, man he just kept coming after you. He just kept attacking, attacking, attacking – and attacking in dif erent ways, from dif erent spots on the floor, with dif erent forms of footwork.... Posting, perimeter....(Kevin Ding, *Bleacherreport.com*, 12/08/2014).

Wow.



*Bill Grewe, is a member of Rose, Klein & Marias LLP, and represents individuals in personal injury and workers’ compensation claims. He is the 2014-2015 president of the Ventura County Bar Association.*

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# LIVING ABROAD BUT WORKING IN VENTURA - PART ONE

by Michael Strauss



A few years back, after watching too many episodes of *House Hunters International*, I made it one of my life goals to live out my dream of moving to Europe with my family. But I quickly realized that there was a huge stumbling block. I am a lawyer, licensed to practice in California, and my skills in California employment law, which I have honed over the last eight years, are not too relevant to a European client base. Then there was the problem of obtaining a visa. Could I live my dream?

Of course! And you can too, keeping your job back here in Ventura County to boot!

This past summer I took my family to Spain for two-and-a-half months, where I worked remotely. Of course, had I stayed in Ventura for the summer, I probably would have billed more hours, yet I was remarkably productive, and my family and I had an unforgettable experience that we may replicate each summer for years to come.

When I was eight years old, my parents took in a Spanish exchange student named Pablo. Despite being nine years my elder, Pablo

quickly became the brother I had never had. After his nine-month stay ended, I bawled for weeks. My parents stuck me on a plane to Spain a year later, and I spent two weeks with Pablo and his family in Gijon, a large port city in the beautiful-but-rainy northern part of the country. Since then, Pablo and I remained close, each visiting the other a few times over the years.

Fast forward to summer 2014. With a wife, **Jenna**, two sons, Miles and Henry, and a career as a lawyer, I thought my days of international travel were on hold. But Pablo and his wife Silvia made an amazing offer: my family could stay in their house for the summer (with Pablo's family moving to his parents' house next-door, as they were gone at a summer home in Bilbao). With two kids of his own (a boy and girl, ages 9 and 6, respectively), Pablo had everything we needed for our kids, like a crib, toys, knowledge of kid activities in the area, and (importantly) a trusted babysitter.

When you have an offer like that, you have to take it.

I booked our tickets and got passports for my boys. Rather than rent a car for the summer, I leased a brand new Renault Kangoo, which, despite looking like a bread van, was a common European family car.

Making the logistical arrangements was easy. What to do about work? Palay Law Firm, of which I am an owner, has four lawyers. We handle plaintiff's-side employment litigation. Our cases range from individual wrongful termination claims to statewide wage-and-hour class actions. I have my own caseload of between ten and fifteen cases and supervise two associates. I also manage the staff, which includes a receptionist, legal assistant, and bookkeeper.

Without question, I could not simply take the summer off. I had a lot of my own work to do. My plan was to find a quiet place to work in Gijon and treat it as an office, where I would work Monday through Friday each week, and I could travel on the weekends. My firm has all of its practice software and files on the cloud, and we often communicate by email or instant message using our smartphones or computers, so as long as I had an internet connection, I would be ok. Besides, the attorneys in my firm can and often do work from home, so I thought the only difference between working at home and working in Spain would be the nine hour time difference between Spain and Ventura.

Upon our arrival in Spain, we spent a few days exploring Madrid, then picked up the Kangoo and headed north five hours to Gijon. We moved into our home for the summer and quickly enrolled Henry (then age one and a half) in daily daycare and Miles (then nearly 5 years old) in a summer tennis camp. Jenna signed up for Spanish lessons and learned how to take the bus around town.

With my family situated, I turned my attention toward my work. I had counted on a solid internet connection because the infrastructure in Spain is top quality. Spain has been in the international news for a few years now because of its high unemployment rate and the bursting of its real estate bubble,

*Continued on page 9*

## THE RETURN OF THE VCBA IMMIGRATION SECTION

by Matt Bromund

As our economy has changed and our native-born labor force has aged, immigrants, both legal and illegal, have entered the country to work in occupations at all ends of the economic spectrum. Both political parties have raised millions of dollars debating the issue without agreeing on a path forward. On Nov. 20, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain undocumented parents of U.S. citizens and parents of lawful permanent residents (LPRs). The announcement also included details for expanding the protections for youth who came to the United States as children. For thousands of people in Ventura County, this creates an opportunity to normalize their status and

bring themselves into compliance with our laws. To make sure our legal community is prepared, the VCBA Immigration Section is back and better than ever.

We will be meeting monthly on the second Tuesday at noon to discuss, in round-table style, a topic of interest in immigration law. We will also be arranging a quarterly MCLE program to increase awareness of immigration procedures and practices. Finally, we will serve as a clearinghouse for inquiries and expertise in the field of immigration law. We are hoping to collaborate with other sections of the VCBA. We are interested in your input and participation, so please feel free to contact us with your thoughts.

Our first meeting of 2015 will be on Jan. 13 at noon in the banquet room of Pirates Grub & Grog in Oxnard. We will be focusing on the requirements and process for the new, expanded, deferred action programs. Our second meeting, on Feb. 10, will be our first evening quarterly MCLE program discussing the impact of California's Proposition 47 on Removal Defense for Aliens with criminal records. For more information, contact our chair **Matt Bromund**, 805.650.1100 and [mbromund@bromundlaw.com](mailto:mbromund@bromundlaw.com)



*Matt Bromund is the principal attorney for the Bromund Law Group, a Ventura firm focusing on immigration, criminal defense and family law. He was previously an Assistant County Counsel, Navy Judge Advocate and Special Assistant U.S. Attorney.*

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**LIVING ABROAD BUT WORKING IN VENTURA - PART ONE**

so I expected to see signs of a weak economy. On the contrary, everywhere we looked we saw new roads, railways, and busses. Northern Spain appeared to be booming. But they sure need to work on their internet coverage. Pablo's house had something a step above dial-up, and a strong Wi-Fi signal anywhere else was as common as a unicorn.

For a practice that depends on access to the cloud, I desperately needed a reliable internet connection. It turned out that my best option was to work at the tennis club down the street from Pablo's house. The internet was still spotty, but I got to watch some good clay-court tennis from my new office.

The time zone issue turned out to be problematic as well. My office in Ventura opens at 8:30 a.m., which is 5:30 p.m. in Spain. If I wanted to have direct communication with my staff or opposing counsel, I needed to work well into the evening. So I shifted my work hours from my traditional 8:30 a.m. to 5:30 p.m. to

11:00 a.m. to 6:00 p.m. or 7:00 p.m., with the occasional two-hour Spanish lunch, of course.

We found a rhythm after about a month. We tried to adapt to the Spanish eating schedule (lunches at 2:00 p.m., afternoon snack at 5:00 p.m., dinner at 10:00 p.m.), but it did not work for my boys. Our hosts thought we were crazy for putting Henry and Miles down at 8:00 p.m. and going to sleep ourselves at 10:00 p.m., but we were not going to adapt to a drastically different eating and sleeping schedule so quickly. Even so, I was able to complete about 70 percent of my normal workload and still spend a good amount of time with my family.

Seventy percent efficiency may seem low, but in the scheme of things my reduced output is inconsequential. It has only been a few months since we have returned, but I remember very little about the work that I did while in Spain. I do, however, remember all of the adventures I had with my wife

and sons. We explored Moorish castles and palaces in southern Spanish cities like Sevilla and Trujillo. We took a week-long vacation to the Dordogne region of France, meeting up with a friend of mine from Ventura who has a French husband and two gorgeous French daughters roughly the same ages as Miles and Henry. While in France, my boys frolicked in the idyllic French countryside while Jenna and I ate more than our fair share of pastries. My boys even stepped up their gourmet game, trying new foods like blood sausage with chunks of tongue (delicious, by the way) and devouring fresh foie gras. Jenna made major progress in picking up the Spanish language, while Miles and Henry, who were both immersed in Spanish every day, came to understand and use the foreign words and phrases they heard.

There were downsides, like the fact that Henry rarely let us eat a restaurant meal without screaming, throwing at least half of his food on the ground, and then making us chase him around the restaurant or down the street. (Thank goodness for the abundance of playgrounds in every Spanish city!) Or the inevitable homesickness that kicks in after an extended stay abroad, when every time you go out in public requires you to speak a foreign language. By the end of the trip, we were ready to return and get back to our lives in California.

Despite the difficulties, I am so thankful that we made the trip. And I will strive to do it again, maybe in a few years, when Henry is a bit older and actually eats the food given him at a restaurant. For now, there's always *House Hunters International*.

Stay tuned for the second part of this article, which will appear in the next issue of CITATIONS. I will explain how you can make your own extended trip abroad and keep your day job back home.



*Mike Strauss handles plaintiffs'-side employment litigation at the Palay Law Firm in Ventura. His email is [mike@palaylaw.com](mailto:mike@palaylaw.com).*

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## CYBER INSURANCE: WHAT YOUR CORPORATE CLIENT NEEDS TO KNOW

by David A. Shaneyfelt



It's not *if*, it's *when*. *When* your corporate client gets hacked, will it have insurance available to cover ensuing losses? You don't have to be Sony to be hacked or to face huge losses. Companies large and small, urban and remote, are equally vulnerable. The threat from foreign espionage, malicious insiders, unsafe devices, and cloud storage is omnipresent. And the Dark Market for stolen personal information is growing. Experts agree that technology can only minimize current risks; it cannot eliminate them.

With this bad news comes this good news – the insurance market has responded and now more than twenty companies are writing insurance policies for it. Policy terms vary widely and need to be tailored to the specific needs of individual companies. But it's worth advising your corporate clients about the issues now, before harm arises.

Chief among issues to address is whether your client is a *data vendor* or a *data owner*. A *data vendor* possesses confidential information of others (referred to as “personally identifying information” or “PII”). In that case, the client faces risk of claims by third parties when the data breach occurs. A *data owner* possesses confidential information valuable to it – such as internal financial information, patent information or customer lists. In that case, the client faces risk of damage by loss or leak of that information.

Consideration of these kinds of risks will determine a client's needs in obtaining coverage. Data vendors generally need protection for defense and indemnity of third-party claims; data owners generally need protection for the loss and restoration of property. Insurance can focus on one or the other or both, if needed.

Coverage options vary widely regarding expenses your client may or may not incur in responding to a breach. Will it need to repair a data system or restore data? Will it need to notify customers or others whose data has been accessed? Will it need to set up call centers? Will it need to provide identify theft services or credit monitoring for affected individuals? Will it need to retain a security forensics firm or a public relations firm?

Other damages for losses must also be considered – costs for “e-extortion” paid to hackers to get data back, for loss of use and business interruption, for disclosure of information to a competitor or for recreating intellectual property. Other potential costs include investigation expenses and time and legal expense involved in responding to government administrative inquiries. Indeed, while general liability policies typically exclude coverage for fines or administrative hearings, cyber insurance is allowing for coverage of such costs.

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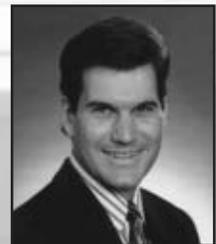
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## FILM REVIEWS

by William E. Paterson

### Whiplash

I expect “Whiplash” to be on virtually every 2014 Top Ten film list. It has everything you would expect from a great film: an engrossing story; acting of the first caliber; great music and outstanding cinematography. Even better, it has something to say about the price one may have to pay for an obsessive pursuit of one’s dreams.

Andrew Neyman (Miles Teller) is a shy 19 year-old who has been playing drums since he was eight years old. He idolizes such jazz legends as Buddy Rich and is now a freshman at a premier music conservatory. One day, while he is practicing, he has a chance meeting with Terence Fletcher (J.K. Simmons), the musical director of the school’s award-winning jazz ensemble. It is a disaster, but, surprisingly, Fletcher later gives him a chance as an alternate drummer. An honor, to be sure, but Fletcher is a tyrant of the first order.

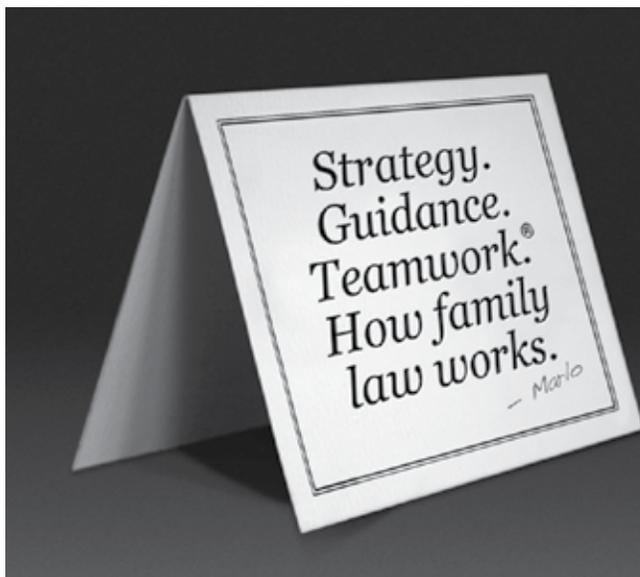
Always dressed in black, Fletcher is a master of creatively profane invective that would befit a Marine Corps drill instructor to shame. The slightest mistake is met with a torrent of scorn designed for the maximum humiliation of any band member who offends his sense of almost unattainable perfection. Within a few minutes of Andrew’s first set, Fletcher eviscerates his performance and reduces him to a quivering wreck. But, through a chance happening a short time later, Andrew gets another shot. However, there is no pleasing a man like Fletcher and throughout the film these two seemingly very different characters ricochet off one another.

Where to begin praising the virtues of this film? It starts with two very different performances. Miles Teller (“The Spectacular Now”) is timid and withdrawn (watching him ask a young woman out on a date is painful reminder of some of our own best forgotten youthful memories). He gives a beautifully nuanced performance as

he travels from being the shy outsider to someone who will later risk everything for his dream of being a jazz great. Although Andrew has none of Fletcher’s flamboyant disregard of human feelings, in his own quiet way he is equally indifferent to those around him, reserving all his passion for his music.

By contrast, Simmons can best be described as caged fury in human form. Reflexively cruel, he seems devoid of a scintilla of humanity. Yet, later in the film, as he is describing the death of one of his students who went on to play for Wynton Marsalis, he chokes up. But the reason he displays this first apparent spark of humanity is not what it seems. Like World War I generals who squandered the lives of their troops on the battlefield, Fletcher is so focused on the goal of musical perfection that he is indifferent to any human wreckage left in his wake. He is the last person you would

*Continued on page 16*



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**CYBER INSURANCE: WHAT YOUR CORPORATE CLIENT NEEDS TO KNOW***Continued from page 11*

Cyber coverage is also allowing for broader coverage of third-party claims. Not only can it offer defense costs for attorneys' fees and expert witness fees, but it can also cover losses for fines and penalties assessed under privacy statutes or regulations, as well as losses a third party incurs through its inability to access data.

As noted, coverage terms vary, and a client will need to decide whether it wishes the freedom to pick its own data breach consultant or use that of the insurer's; whether it wants coverage for losses going forward for one year or for longer; whether it wants coverage for loss of business income to begin immediately on breach, after some period of time or for only a set period of time; and whether it wants coverage for responding to government enforcement of privacy laws (in addition to private claims).

As with any insurance policy, pay attention to the exclusions. Find out what is *not* covered. Pick a policy with a broad definition of "Personally Identifying Information." You don't want to fight over what's covered and what's not covered. Watch out for exclusions based on contractual liability. Many third-party claims are based on contract and those claims should not be excluded from coverage. Many policies limit coverage for criminal conduct, but many criminal laws related to privacy have broad application. Get broad defense coverage. Policies often exclude damage caused by terrorism or acts of foreign enemies. Make sure your cyber policy drops these exclusions – your data breach is more likely to come from Russia than from Las Vegas. Another common exclusion is for unauthorized data collection. But that is precisely a risk a company needs protection against if it is in the business of data collection.

Perhaps the most practical advice you can give when your client first discovers a data breach is this: give notice to the insurance company. You do not want to fight with an insurance company about whether it got

notice of a claim late or was prejudiced in handling the claim because of it. *When in doubt, give notice out.*

Further, give careful consideration to whether any data breach might occur through your client's use of a contractor. A chain is only as strong as its weakest link, and hackers often make inroads through outside parties who have legitimate access to company systems. Make sure your client's contractors have at least as much cyber insurance coverage as your client has, with coverage terms your client needs. Having

your client become an additional insured on those policies will help shift risk of loss, too.

In short, you can do your corporate client a world of service by nagging about whether it is prepared for the inevitable data breach. Your knowledge of its business operations will help streamline that process greatly.



**David A. Shaneyfelt** represents companies in disputes against insurance companies. He practices with the Alvarez Firm, with offices in Camarillo and Calabasas.

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FILM REVIEWS

ever want to be around, but it is impossible to take your eyes off him when he is on screen. It is as mesmerizing a performance as you are likely to see on screen this year.

And then there is the music and the demanding work that goes into creating the perfect sound. As to be expected, much of it focuses on drumming, and one marvels watching a drummer's hands move with the apparent speed of light. The signature musical number, "Whiplash", has a driving beat that one cannot get enough of, and a sequence of close ups of the band members as they play their hearts out is a scene you do not want to end.

The final scene of the film is a frenzied musical duel between Andrew and Fletcher that perfectly captures their shared obsession. For Captain Ahab, it was the Great White Whale. For Andrew and Fletcher, it is the music that has trumped everything else in their lives.



Bill Paterson is Of Counsel at Ferguson Case Orr Paterson in Ventura, where he is a founding partner.

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## NEW LAWS COVER INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS ON LEASED PROPERTY

by Kevin R. Nimmons



Governor Brown recently signed two additions to the Civil Code governing lessees' rights to install electric vehicle ("EV") charging stations. Section 1947.6 applies to residential properties; section 1952.7 applies to commercial properties. Lessors and lessees, and their attorneys, should consider these laws in lease negotiations to avoid disputes when a lessee desires to install a charging station.

### A. Commercial Lease EV Charging Stations

Section 1952.7 prohibits terms in commercial leases executed, renewed, or extended on or after January 1, 2015, that either prohibit or unreasonably restrict the installation or use of an electric vehicle charging station in a parking space associated with the commercial property. Section 1952.7 does not apply to:

- (1) A commercial property where charging stations already exist for use by tenants in a ratio that is equal to or greater than two available parking spaces for every 100 parking spaces at the commercial property.
- (2) A commercial property where there are less than 50 parking spaces.

Lessors are permitted to impose "reasonable restrictions" or "reasonable standards," statutorily defined terms, on the installation of charging stations. (§1952.7(a)(2).)

A commercial lessee may only install the same number of charging stations as it is allotted parking spaces under the lease. If no parking is allotted, the lessee is still permitted to install some EV charging stations based on a formula in section 1952.7(a)(3).

Lessors will be relieved to know that the lessee must pay all costs of installation and the lessee's installation must meet applicable health and safety, zoning, land use, permitting and other state and local requirements. (§1952.7(d).) In addition, the lessee is responsible for all costs for damage to property and the charging station resulting from its installation, maintenance, repair, removal, or replacement, as well as the cost of electricity associated with the charging station. (§1952.7(f)(2).)

If the installation of a charging station has the effect of granting the leaseholder reserved parking not allotted to the leaseholder in the lease, the owner may charge a reasonable monthly rental amount for the parking space. (§1952.7(a)(4).) This provision may have the effect of granting a lessee an exclusive parking space even if the lease does not.

Section 1952.7 implies that, unless the lease requires lessor's prior approval to install a charging station, the lessee may install one if it meets minimum statutory requirements. (§1952.7(e).) Therefore, it is imperative for lessors to ensure that the lease (1) requires approval by the lessor of any installation

or modification of the property for a charging station and (2) imposes reasonable conditions for installation consistent with section 1952.7. If not, the lessee may have the right to install a charging station so long as it meets only the minimum statutory requirements, even if the lease does not provide the lessee a right to park.

### B. Residential Lease EV Charging Stations

Section 1947.6 is similar to section 1952.7 requiring that lessors under leases executed, extended, or renewed on and after July 1, 2015, approve a lessee's written request to install an EV charging station that meets the requirements of this section and complies with the lessor's procedural approval process for modification to the property. The law does not apply where there already are a minimum number of EV charging stations; parking is not provided as part of the lease; the property has fewer than five parking spaces; the dwelling is subject to a residential rent control ordinance.

A lessor is not obligated to provide an additional parking space to accommodate an EV charging station, so if the charging station has that effect, the lessor may charge rent for the additional space the charging station necessitates. (§1947.6(d), (e).) A residential EV charging station and all modifications and improvements to the property must comply with federal, state and local law, and all applicable zoning requirements, land use requirements and covenants, conditions and restrictions. (§1947.6(f).)

The lessee must request in writing the lessor's consent to install an EV charging station. Section 1947.6 (g) suggests that the lessor may condition consent on the lessee satisfying reasonable conditions in addition to those specified in section 1947.6: "A lessee's written request to make a modification to the property in order to install and use an electric vehicle charging station shall include, but is not limited to, his or her consent to enter into a written agreement that includes, but is not limited to, five minimum requirements.

*Continued on page 19*

## REVIEW OF JOHN GRISHAM'S SYCAMORE ROW

by *Cristian R. Arrieta*

As a huge Grisham fan and practicing probate attorney, I felt a rush of excitement when I read the inside jacket of Grisham's latest legal thriller, *Sycamore Row*. It's about a tremendous and high stakes will contest! Set in late-eighties Clanton, Mississippi, it stars trial attorney, Jake Brigance, hero of Grisham's first novel, *A Time to Kill*.

The recipe for the legal thrill-ride is all there: White, millionaire recluse, Seth Hubbard, suffering terminal cancer, decides to hang himself from a sycamore tree. But before he commits the act, he leaves a handwritten will giving 90% of his estate to his black maid/caretaker, to the express exclusion of his children or grandchildren: "they get nothing." He then mails it to Brigance along with a letter instructing Brigance to defend his will "to the bitter end."

The characters seem a bit off the shelf. Money-driven lawyers, greedy children, and crotchety judges. Unfortunately, this novel, for me, was not a page-turner despite the enticing premise. Where I had lost sleep devouring Grisham's earlier works (a favorite of mine is *Runaway Jury*), *Sycamore Row* was rather sleep-inducing. However, the climactic trial and plot resolution had virtue, and by final curtain Grisham's talent as a story-teller remains intact.

Now for some detailed observation (non-lawyers can skip to the bottom).

In his holographic will, Seth Hubbard directs the executor to retain Brigance, "to provide all necessary representation." So who does Brigance represent? Grisham's answer, vis-a-vis the fictional legal community of Clanton, Mississippi, is that Brigance represents "the estate," and occupies the role of advocate for Seth's will. In effect, Brigance seems to represent Seth.

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**NEW LAWS COVER INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS ON LEASED PROPERTY**

**C. Considerations in the Lease Negotiation Process**

Lessors and lessees would be wise to confront various issues in the lease negotiation process. For example, section 1947.6 does not apply where parking is not provided as part of a residential lease agreement. A lessor may consider entering into separate parking contracts with its lessees to avoid application of section 1947.6. Lessors may want to specify in the lease the location of any future EV charging station so it does not disrupt business or other tenants and is near existing infrastructure, such as electricity.

Sections 1947.6 and 1952.7 each provide that if the EV charging station has the effect of providing the lessee a reserved parking space, the lessor may charge a monthly rental for that space. The parties should consider including in the lease either a predetermined monthly rental amount or a mechanism to calculate it.

Lessors should also consider specifying:

- Reasonable standards for consent that do not contravene state policy “to promote, encourage and remove obstacles to the use of electric vehicle charging stations” and do not significantly increase the cost or decrease the efficiency of the charging station. (§ 1952.7(2).)
- Reserving the right to make future rules governing the installation, use, maintenance and removal of any charging station and infrastructure for the charging station.
- Provisions in the event the lessee does not complete the modifications or does not pay the modification contractors. The lease guaranty, if any, should include the tenant’s obligations to cover all costs of the EV charging station.

- Whether at the termination of the lease the lessee is obligated to remove the EV charging station, and if so, who pays the cost of removal. A standard provision that the lessee must remove all improvements to the property may require the lessee to remove any installed EV charging station, but it may not cover improvements to parking spaces that are not exclusively for the tenant’s use and are located in common areas.



*Kevin Nimmons is a shareholder attorney at Hollister & Brace, PC in Santa Barbara. Kevin practices real estate and business law. He represents commercial and residential lessors and lessees in Southern California. [krnimmons@hbsb.com](mailto:krnimmons@hbsb.com)*



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## LETTER TO THE EDITOR

Learning of Don Holt Jr.'s death via the December CITATIONS brought back wonderful memories, including my own difficult but successful efforts to retain enough sobriety to safely navigate our MG Midget home to Santa Paula via Highway 150 after the annual barbecues.

As I begin my 40th year as an attorney, I find myself looking back fondly at so many who were not only like giants to those of us just starting out, but were also wonderful mentors, even when fighting hard for the opposing side. Today I'm impressed by the intellectual brilliance and professional and community involvement of so many attorneys who are just starting out. While their road won't be paved with the same prevalence of cigars and alcoholic beverages as the path I stepped onto back in 1975, they'll create their own legends that future lawyers (who are just now starting kindergarten) will someday marvel about.

Even though there's sadness upon the passing of Don and so many of his contemporaries, it should be a joy to those of us in our generation that we got to cross paths with them, and we should honor them by being both caring mentors and colorful characters to those in the next generation.

Rob Sawyer

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# Exec's Dot...Dot...Dot...

by Steve Henderson, Executive Director, M.A., CAE



Eleven new attorneys were sworn-in during ceremonies held in Courtroom #22 Tuesday afternoon, Dec. 2. The event was presided over by **Justice Steven Perren** and capably assisted by Judges **Brian Back** and **Donald Coleman**. Program logistics managed well by Victoria Borgesson and Bailiff Greg Ramirez. Thanks too for nifty presentations by **Bill Grewe**, **Rachel Coleman**, **Katie Clunen**, **Kathryn Hause** and **Kathleen Smith**.



... Tweet of the Week: "No idea why Sarah Palin is courtside for #heat #Pacers. Couldn't she just see the game from her backyard in Alaska? #NBAPlayoffs." Gustavo E. Lavayen and Pauline Maxwell have been appointed to judgeships in the Santa Barbara County Superior Court, Gov. Jerry Brown announced Dec. 12...

Every holiday season for the past several years, A to Z Law has "adopted" a family at the RAIN Transitional Living Center in



Camarillo. RAIN helps the firm identify a family to adopt, and each family member prepares a "wish"

list of the items they would like as Christmas or holiday gifts. The staff and attorneys all donate money toward the effort as a way to give back to the community...The Kansas Supreme Court has suspended a Kansas City Lawyer as a result of a Facebook message deemed tantamount to "emotional blackmail". The lawyer, Eric Michael Campbell, had represented a biological father opposed to the adoption of his daughter. Gamble's FB message to the 18-year-old mother, who was not represented by counsel, urged her to "get rid of the guilt and stand up and do what is right" by revoking consent to the adoption. He attached a form for



the woman to sign and notarize to revoke the adoption...The Law Office of **Chris Gray** pleased to announce **Claudia E. Barba** has joined the practice...

Mark your calendars! The Ventura County Bar Alliance in conjunction with MABA, VCAABA, WLVC, VCBA and the VCLGTBA are hosting a Three Year Anniversary Celebration at the Safire Restaurant in Camarillo Jan. 21, beginning at 5:30 p.m. They will additionally be honoring Ventura County's newest Court Commissioner, **Michele Castillo**. See flyer inside this addition...

VERBATIM from *callawyer.com*—"A jury of Matthew Weaving's peers sat in a courtroom for four days. They found that Weaving was disabled and that the City of Hillsboro fired him because of his disability. Now on appeal, the majority decides that it knows better. It reweighs the evidence on a cold record and issues its own diagnosis: Weaving isn't disabled, he's just a jerk."—Ninth Circuit Judge Consuelo M. Callahan, dissenting in *Weaving v. City of Hillsboro* (Ore.), 763 F.3d 1106-1114 (9th Cir. 2014)...Excellent opportunity to score a last minute Ethics

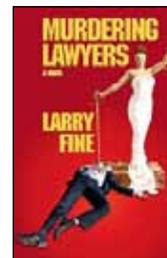
CLE—The Employment Law Section and the Diversity Bar Alliance invite you all to Diversity Policies, Civility Codes and Bias: Political Correctness Gone Awry or Necessary for a Community of Inclusion? Jan. 28 at noon and a flyer is inside this edition...

The California Bar exam taken in July and results announced Nov. 21 had one of its lowest pass rates. The Los Angeles Times notes that the pass rate represents nearly a 7 percent dip from the July's 2013 pass rate. There was at least one extremely colorful character who was able to pass the exam,



though, and she just so happens to work in the adult entertainment industry. Meet Heather Swift. She's a 2013 graduate of Western State University College of Law. She passed the first time. "For those of you who snicker at women in the adult industry and who couldn't pass the exam, stop laughing because a stripper porn star is apparently smarter than you..."

Recommended Book of the Month:



*Murdering Lawyers...A Novel*, by Larry Fine, is a legal thriller with murder, international intrigue and diabolical evil involving many of the most powerful lawyers and Judges in NYC.

**Steve Henderson** has been the executive director and chief executive officer of the Ventura County Bar Association and its affiliated organizations since November 1990. He's already purchased his Ducks and Patriots t-shirts. He desires the membership to know that January 8 is Elvis Presley's birthday and January 30, 1969 was the Beatles' last concert in London. Henderson is now a Becky Hammon fan and Robin Williams was the #1 Google search in 2014. Henderson may be reached at [steve@vcba.org](mailto:steve@vcba.org), [Twitter at stevehendo1](https://twitter.com/stevehendo1), [LinkedIn](https://www.linkedin.com/in/stevehendo1), [FB](https://www.facebook.com/stevehendo1), or better yet, 650.7599.

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**Merry Christmas and thanks for another great year!**

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