TABLE OF CONTENTS

			Page
		RST STEPS IN HANDLING A PERSONAL INJURY	1–1
1.1	_	CLIENT INTERVIEW	
	1.1.1	INTRODUCTION – GOALS AND IMPORTANCE OF FIRST INTERVIEW	1–1
	1.1.2	RESPONSE TO INITIAL CLIENT CONTACT	1–2
	1.1.3	DETERMINE THE CLIENT'S GENERAL PURPOSE	1–2
	1.1.4	DETERMINE POTENTIAL "URGENCY" MATTERS	1–3
	1.1.5	AFTER THE FIRST CONTACT	1–4
	1.1.6	PRELIMINARY PHONE ADVICE	1–5
	1.1.7	WHAT TO ADVISE THE POTENTIAL CLIENT TO BRING TO THE FIRST MEETING	1–7
	1.1.8	DISCUSSING FEES	1–9
	1.1.9	FOLLOW UP WITH CONFIRMATION LETTER	1–9
	1.1.10	PREPARING FOR INITIAL MEETING	1–10
	1.1.11	CONDUCTING FIRST OFFICE CONSULTATION – GENERAL CONSIDERATIONS	1–11
	1.1.12	USE OF CLIENT "INFORMATION REPORT" (CHECKLIST)	1–12
	1.1.13	TAPE RECORDING MEETING	1–14
	1.1.14	OBTAINING DETAILS – INFORMATION TO ELICIT DURING INTERVIEW	1–14
1.2	AFTER	THE INITIAL INTERVIEW	1–19
	1.2.1	PROMPTLY CONFIRM REJECTION IN WRITING	1–21
	1.2.2	COMPARE – WITHDRAWAL AFTER ACCEPTING REPRESENTATION	1–22

	1.2.3		TITH CLEAR VALUE WARRANTING ACTION	1–23
	1.2.4	FACTOR	RS TO CONSIDER IN MAKING DECISION	1–24
		1.2.4.1	LIABILITY V. DAMAGES	1–24
		1.2.4.2	EXTENT OF DAMAGES	1–25
		1.2.4.3	LIABILITY RISKS FROM PURSUING MERITLESS SUIT	1–25
	1.2.5		RALEGALS LIABLE FOR ASSISTING	1–26
	1.2.6	FILING (RE – NO SANCTIONS FOR GOOD FAITH OF SUIT TO TOLL STATUTORY IRS	1–27
	1.2.7		OF PROP. 51	
	1.2.8	CLAIMAI	NT'S PERSONALITY	1–28
1.3	COMPLI	ICATIONS	OF CASE	1–28
	1.3.1	COSTS.		1–28
	1.3.2		TENCE; ASSOCIATING SPECIALISTS SE REFERRAL	1–28
	1.3.3	FEE SHA	ARING WITH SPECIALIST	1–29
	1.3.4	TIME BA	R PROBLEMS	1–30
	1.3.5	SUBRO	GATION RIGHTS AND LIENS	1–30
	1.3.6	ATTORN	NT'S CONSULTATIONS WITH OTHER IEYS IMPACTING EMPLOYMENT ON	1–32
			ELITIGATION INVESTIGATION AND ERTS	2–1
2.1	INTROD	UCTION -	- WHY THE "INFORMAL" INVESTIGATION	2–1
	2.1.1	FINANCI	IAL DISCOVERY DILEMMA	2–1
	2.1.2		SE OBLIGATION TO INVESTIGATE IN KE OF PROP. 51	2–2

2.2	GENERA	AL INVESTIGATION TACTICS	2–2
	2.2.1	WHEN TO COMMENCE INVESTIGATION	2–2
	2.2.2	WHAT ATTORNEYS (AND YOU) SHOULD INVESTIGATE	2–2
	2.2.3	FIRST NOTICE TO INSURANCE CARRIER WHERE CARRIER'S IDENTITY KNOWN	2–6
	2.2.4	FIRST NOTICE TO POTENTIAL DEFENDANT WHERE CARRIER IDENTITY UNKNOWN	2–7
	2.2.5	OTHER REASONS FOR PROMPT CONTACT WITH INSURER	2–7
	2.2.6	ASCERTAINING POLICY LIMITS	2–7
	2.2.7	COMPARE – FORMAL DISCOVERY RE DEFENDANT'S FINANCIAL CONDITION	2–8
	2.2.8	THE USE OF PROFESSIONAL INVESTIGATORS	2–8
	2.2.9	CLIENT AS INVESTIGATOR	2–9
	2.2.10	ASCERTAINING SCOPE OF INVESTIGATION	2–9
	2.2.11	OBTAINING "NEGATIVE STATEMENTS"	2–23
	2.2.12	LOCATING MISSING WITNESSES	2–23
	2.2.13	ENTERING PREMISES OPEN TO THE PUBLIC	2–24
	2.2.14	DEFENSE CONSIDERATION – PLAINTIFF'S SIMILAR CLAIMS	2–24
	2.2.15	STATUTORY LIMITATION ON DISCLOSURE TO PROTECT CLAIMANTS' PRIVACY RIGHTS	2–24
2.3		CONSIDERATIONS RE PRODUCT LIABILITY GATIONS	2–25
	2.3.1	INTRODUCTION	2–25
	2.3.2	OBTAIN PRODUCT OR ITS FACSIMILE	2–25
	2.3.3	OBTAIN REMNANTS IF PRODUCT DESTROYED	2–26

	2.3.4	SAFEGUARD PRODUCT FOR USE IN LITIGATION	2–26
	2.3.5	PRODUCT IN THIRD PERSON'S CUSTODY	2–26
	2.3.6	SPOLIATION OF EVIDENCE	2–26
	2.3.7	PRODUCT UNAVAILABLE	2–27
	2.3.8	RESEARCH PRODUCT HISTORY	2–28
	2.3.9	SPECIAL PROBLEM – IDENTIFYING RESPONSIBLE MANUFACTURER	2–29
		2.3.9.1 E-COMMERCE	2–29
	2.3.10	IDENTIFYING OTHER CLAIMANTS AND SIMILAR ACCIDENTS	2–30
	2.3.11	OBTAIN RELEVANT LITERATURE, WARNING AND USE INSTRUCTIONS	2–30
	2.3.12	DETERMINE IF MANUFACTURING COMPLIED WITH INDUSTRIAL STANDARDS	2–31
	2.3.13	EXAMINE SIMILAR PRODUCTS OF OTHER MANUFACTURERS	2–32
2.4	EMPLOY	MENT OF EXPERTS	2–32
	2.4.1	NEED FOR EXPERT TESTIMONY	2–32
	2.4.2	CAUSATION ISSUES	2–32
	2.4.3	DISMISSAL ABSENT EXPERT TESTIMONY	2–34
	2.4.4	DISTINGUISH – SUBJECT MATTER WITHIN COMMON LAY KNOWLEDGE	2–34
	2.4.5	WHEN EXPERT TESTIMONY PROHIBITED	2–34
	2.4.6	INNOVATIVE USE OF EXPERT TESTIMONY	2–35
	2.4.7	WHEN TO EMPLOY EXPERTS	2–36
	2.4.8	HOW TO LOCATE AND SELECT APPROPRIATE EXPERTS	2–37
	2.4.9	SELECTING MOST EFFECTIVE EXPERTS	2–40

	2.4.10	OTHER FACTORS TO CONSIDER IN SELECTING AN EXPERT	2–41
	2.4.11	INITIAL INTERVIEWS WITH POTENTIAL EXPERTS	2–42
	2.4.12	INFORMATION TO PROVIDE POTENTIAL EXPERT	2–42
	2.4.13	ASCERTAIN POTENTIAL CONFLICT OF INTEREST	2–42
	2.4.14	CAUTION – CONTACTING EXPERT PRESENTLY ENGAGED BY OPPOSING PARTY	2–43
	2.4.15	INITIAL "STRATEGY" MEETING WITH EXPERT CONSULTANT	2–43
	2.4.16	ELICIT EXPERT'S INITIAL ADVICE AND INPUT	2–45
	2.4.17	MAINTAINING CONTACT WITH EXPERTS; CONTROLLING COSTS	2–46
CHAPTI	ER 3 – DA	<u>MAGES</u>	3–1
3.1	INTROD	DUCTION	3–1
	3.1.1	REVIEW	3–1
	3.1.2	WHAT DAMAGES ARE RECOVERABLE IN GENERAL	3–2
	3.1.3	"GENERAL" AND "SPECIAL" DAMAGES	3–3
	3.1.4	PAST, PRESENT AND FUTURE DAMAGES	3–4
	3.1.5	ATTORNEY FEES	3–4
	3.1.6	INCOME TAX TREATMENT OF DAMAGES RECOVERY	3–5
	3.1.7	SOME DETAILS ABOUT COMPENSATORY DAMAGES	3–6
	3.1.8	MEDICAL EXPENSES	3–6
	3.1.9	EVIDENCE PARALEGALS NEED TO OBTAIN IN TO SUPPORT MEDICAL EXPENSES	3–8

	3.1.10	"COLLAT	SET FOR EXPENSES PAID BY TERAL SOURCES" – THE TERAL SOURCE RULE"	3–9
	3.1.11		MEDICAL EXPENSES – EMENTS AND PROOF	3–10
	3.1.12	LOSS OF	EARNINGS	3–12
	3.1.13	PROVING	G LOSS OF FUTURE EARNINGS	3–13
	3.1.14	DISCOU	NTING TO PRESENT VALUE	3–14
	3.1.15	INABILIT	Y TO PURSUE CAREER	3–15
	3.1.16	PAIN AN	D SUFFERING	3–15
		3.1.16.1	HOW TO PROVE PAST PAIN AND SUFFERING	3–16
		3.1.16.2	CLAIMANT'S PECULIAR SENSITIVITIES NO DEFENSE	3–17
		3.1.16.3	FAILURE TO MITIGATE PAIN AND SUFFERING WITH REMEDIAL TREATMENT	3–17
		3.1.16.4	CALCULATING PAIN AND SUFFERING DAMAGES	3–18
		3.1.16.5	COMPENSATION FOR MENTAL DISTRESS WHERE NO CONCURRENT PHYSICAL INJURY	3–19
		3.1.16.6	INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	3–19
		3.1.16.7	NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS	3–22
3.2	POTENT	TAL CLAIN	MANTS IN A PERSONAL INJURY CASE	3–23
	3.2.1	POTENT	IAL CLAIMANTS: OVERVIEW	3–23
	3.2.2	PHYSICA	ALLY INJURED PARTY	3–23
	3.2.3	SPOUSE	, DOMESTIC PARTNER OR PARENTS	3–23
		3.2.3.1	LOSS OF CONSORTIUM	3–23

		3.2.3.2	NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS FROM SHOCK OF WITNESSING INJURY	. 3–24
	3.2.4	INJURED ACTIONS	PARTY'S ESTATE ("SURVIVAL" S)	. 3–24
3.3	MITIGAT	ING FACT	ORS IN REDUCTION OF DAMAGES	. 3–25
	3.3.1	GENERA	L OBSERVATIONS	. 3–25
	3.3.2	COMPAR	RATIVE NEGLIGENCE	. 3–26
	3.3.3	ASSUMF	TION OF RISK	. 3–26
	3.3.4		Y ASSUMPTION OF RISK" A TE DEFENSE	. 3–27
	3.3.5	WHAT C	REATES A DUTY OF CARE?	. 3–27
		3.3.5.1	EXAMPLES	. 3–28
		3.3.5.2	INSTRUCTOR-INFLICTED INJURY IN SPORTING ACTIVITY	. 3–32
		3.3.5.3	INJURY TO SPECTATORS AT SPORTING EVENTS	. 3–34
	3.3.6	SUBSUM	DARY ASSUMPTION OF RISK" MED IN COMPARATIVE NEGLIGENCE	. 3–35
	3.3.7	EFFECT	OF A RELEASE	. 3–36
	3.3.8	GROSS I	NEGLIGENCE	. 3–38
	3.3.9	COMPAR	ORY "SEATBELT DEFENSE" AS RATIVE NEGLIGENCE OR PTION OF RISK	. 3–39
	3.3.10		ATING DAMAGES UNDER RATIVE NEGLIGENCE PRINCIPLES	. 3–40
	3.3.11		BROAD DISCRETION RE FAULT	. 3–40
	3.3.12		BLE CONSEQUENCES" –) MITIGATE DAMAGES	. 3–41

	DAMAGES	3–43
PUNITIV	/E DAMAGES	3–45
3.4.1	STATUTORY AUTHORITY FOR PUNITIVES AWARD	3–45
3.4.2	PRIMA FACIE PUNITIVES CASE MUST BE PROVED BY "CLEAR AND CONVINCING EVIDENCE"	3–46
3.4.3	DEFENDANT'S RIGHT TO BIFURCATE TRIAL ON "WEALTH EVIDENCE"	3–47
3.4.4	"ACTUAL DAMAGES" / "ACTUAL HARM" LIMITATION	3–48
3.4.5	CONSTITUTIONAL CHALLENGES	3–48
3.4.6	IMPACT ON CALIFORNIA PUNITIVE DAMAGES AWARDS	3–49
3.4.7	RESTRICTIONS ON PUNITIVES AWARDS TO CERTAIN PLAINTIFFS AND/OR AGAINST CERTAIN DEFENDANTS	3–49
3.4.8	TYPES OF CONDUCT SUPPORTING PUNITIVE DAMAGES	3–51
	3.4.8.1 "MALICE"	3–51
	3.4.8.2 "OPPRESSION"	3–53
	3.4.8.3 "FRAUD"	3–53
3.4.9	PUNITIVES RECOVERY AGAINST EMPLOYER FOR ACTS OF EMPLOYEE	3–54
3.4.10	"RATIFICATION"	3–55
3.4.11	EVIDENCE OF DEFENDANT'S WEALTH	3–58
R 4 – PE	RSONAL INJURY CLAIM SETTLEMENTS	4–1
GENER	AL CONSIDERATIONS	4–1
4.1.1	WHEN TO COMMENCE SETTLEMENT NEGOTIATIONS	4–4
	3.4.1 3.4.2 3.4.3 3.4.4 3.4.5 3.4.6 3.4.7 3.4.8 3.4.9 3.4.10 3.4.11 ER 4 – PE GENER	AWARD

	4.1.2	DISADVANTAGES TO EARLY FILING	4–6
	4.1.3	WHOM SHOULD EARLY SETTLEMENT TALKS BE DIRECTED TO	4–6
4.2	DETER	MINING SETTLEMENT VALUE	4–7
	4.2.1	FACTORS AFFECTING SETTLEMENT VALUE	4–7
		4.2.1.1 INJURY FACTORS	4–8
		4.2.1.2 OTHER RELEVANT FACTORS	4–8
	4.2.2	USE OF JURY VERDICT SUMMARIES TO EVALUATE CLAIM	4–9
4.3	EFFECT	IVE SETTLEMENT NEGOTIATIONS	4–10
	4.3.1	ADMONITION WITH RESPECT TO SETTLEMENT NEGOTIATIONS	4–10
	4.3.2	SETTLEMENT AUTHORITY	4–10
	4.3.3	STATUTORY DUTY TO KEEP CLIENT INFORMED	4–11
	4.3.4	THREATS AND MISREPRESENTATIONS IN SETTLEMENT PROCESS	4–11
	4.3.5	HOW NEGOTIATIONS WILL BEGIN FROM THE PLAINTIFF'S POINT OF VIEW	4–12
	4.3.6	HOW NEGOTIATIONS WILL BEGIN FROM THE DEFENSE POINT OF VIEW	4–12
	4.3.7	MAKING THE INITIAL DEMAND	4–14
	4.3.8	INVOLVING CLIENT IN THE NEGOTIATION PROCESS	4–15
	4.3.9	PREPARATION FOR NEGOTIATING WITH A CLAIMS REPRESENTATIVE	4–16
	4.3.10	SETTLEMENT NEGOTIATIONS AFTER SUIT IS FILED	4–17
4.4		QUES WHERE SETTLEMENT NOT	4–19

4.4.1	PLAINTIFF'S "POLICY LIMITS DEMAND" LETTER	4–19
4.4.2	CCP § 998 STATUTORY OFFER TO COMPROMISE	4–19
4.4.3	SERVING AN OFFER TO COMPROMISE	4–21
4.4.4	FORM AND TIMING OF ACCEPTANCE	4–23
4.4.5	WRITTEN ACCEPTANCE WITH ATTORNEY SIGNATURE REQUIRED	4–23
4.4.6	JUDGMENT ON STATUTORY COMPROMISE	4–24
4.4.7	RIGHT TO § 1033.5 COSTS	4–25
4.4.8	EFFECT OF CONTINUED NEGOTIATIONS OR COUNTEROFFER	4–26
4.4.9	EVIDENTIARY EFFECT OF TERMINATED § 998 OFFER	4–27
4.4.10	PENALTIES TO PLAINTIFF FOR REJECTION OF § 998 OFFER	4–27
4.4.11	PENALTIES FOR DEFENDANT'S FAILURE TO ACCEPT	4–28
4.4.12	MANDATORY APPLICATION	4–28
4.4.13	LIMITED TO PERSONAL INJURY DAMAGES ACTIONS	4–28
4.4.14	COURT COSTS	4–29
4.4.15	EXPERT WITNESS FEE RECOVERY	4–29
4.4.16	"PIECEMEAL SETTLEMENTS" IN MULTIDEFENDANT CASES	4–29
4.4.17	RISK OF "EMPTY CHAIR" ARGUMENT TO JURY	4–29
4.4.18	THE EFFECT OF RELEASING A DEFENDANT	4–30
4.4.19	THE "GOOD FAITH DETERMINATION" MOTION	4–30
4.4.20	EVIDENTIARY SHOWING TO JUSTIFY FAIRNESS OF ALLOCATION	4–30

	4.4.21	TECH-BILT "REASONABLE RANGE" / "BALLPARK" TEST FOR "GOOD FAITH" SETTLEMENTS	. 4–31
	4.4.22	DISTINGUISH – WHERE "GOOD FAITH" UNCONTESTED	. 4–32
	4.4.23	SETTLOR'S "PROPORTIONATE LIABILITY" INCLUDES INDEMNITY LIABILITY	. 4–33
	4.4.24	"GOOD FAITH" TESTED AS OF TIME OF SETTLEMENT	. 4–33
	4.4.25	FULL "MINI-TRIAL" NOT REQUIRED	. 4–33
	4.4.26	PROCEDURE FOR DETERMINING "GOOD FAITH"	. 4–34
	4.4.27	MINIMUM NOTICE	. 4–36
	4.4.28	PERSONS ENTITLED TO NOTICE	. 4–37
4.5		CONSIDERATIONS RE "STRUCTURED MENTS"	. 4–37
	4.5.1	NATURE OF "STRUCTURED SETTLEMENT"	. 4–37
	4.5.2	ADVANTAGES TO DEFENSE – INSURANCE COMPANY SAVINGS	. 4–38
	4.5.3	POTENTIAL DISADVANTAGES AND PITFALLS FOR CLAIMANT	. 4–39
4.6	COURT-0	CONDUCTED SETTLEMENT PROCEEDINGS	. 4–40
	4.6.1	MANDATORY SETTLEMENT CONFERENCE (MSC)	. 4–40
	4.6.2	BASIC PURPOSES OF COURT SETTLEMENT CONFERENCES	. 4–40
	4.6.3	MEDIATION	. 4–41
	4.6.4	THE PARALEGAL AND THE SETTLEMENT CONFERENCE	. 4–41
	4.6.5	TONE OF STATEMENT	. 4–45
	4.6.6	OTHER FACTS TO KNOW	. 4–45

	4.6.7	WHAT AND WHOM TO BRING TO THE CONFERENCE	4–46
	4.6.8	CONSULTATION WITH EXPERTS	4–47
	4.6.9	OBTAIN SETTLEMENT AUTHORITY FROM CLIENT/CARRIER	4–47
	4.6.10	BECOME FAMILIAR WITH THE JUDGE'S PRACTICES	4–49
	4.6.11	APPEARANCES AT MSC	4–49
	4.6.12	REMEMBER THE CLIENT DURING THE CONFERENCE	4–50
	4.6.13	MEDICARE LIEN	4–51
	4.6.14	SETTLEMENTS REQUIRING INSURED'S CONSENT	4–51
	4.6.15	TRIAL DATE SETTLEMENT CONFERENCE	4–52
4.7	CONCLU	JDING AND ENFORCING SETTLEMENT	4–52
	4.7.1	CONCLUDING SETTLEMENTS	4–52
	4.7.2	EXECUTION OF A "RELEASE"	4–53
	4.7.3	DRAFTING CONSIDERATIONS	4–53
	4.7.4	REVIEW RELEASE LANGUAGE WITH CARE	4–53
	4.7.5	LIMITATION – RELEASE OF "KNOWN AND UNKNOWN" CLAIMS	4–55
	4.7.6	MUTUAL RELEASE	4–55
	4.7.7	ISSUES AFFECTING ENFORCEABILITY	4–55
	4.7.8	COMPARE – NO RESCISSION BASED ON ATTORNEY'S PRESSURING CLIENT TO SETTLE	4–56
	4.7.9	SETTLEMENTS REACHED AFTER SUIT FILED – REQUEST FOR DISMISSAL	4–56
	4.7.10	CONFIDENTIALITY PROVISION	4–56

	4.7.11	WHEN CONFIDENTIALITY ENFORCEABLE	4–56
	4.7.12	SETTLEMENTS CONCLUDED AT IN-COURT CONFERENCE – PUTTING SETTLEMENT "ON THE RECORD"	4–57
	4.7.13	WRITTEN "MEMORIAL" OF ORAL SETTLEMENT	4–58
	4.7.14	SPECIAL RULES FOR CONCLUDING SETTLEMENT WHERE CLAIMANT IS A MINOR OR DISABLED ADULT	4–59
	4.7.15	DUTY TO NOTIFY COURT AND REQUEST DISMISSAL WHEN SETTLEMENT REACHED	4–63
	4.7.16	ENFORCING SETTLEMENT AGREEMENTS	4–64
	4.7.17	OTHER ENFORCEMENT PROCEDURES (SETTLEMENTS NOT SUBJECT TO CCP § 664.6)	4–68
	4.7.18	PAYMENT OF LIENS	4–69
<u>CHAPTI</u>	ER 5 – CL	AIM – PLEADING REQUIREMENTS	5–1
5.1	IN GENI	ERAL	5–1
5.2	WHEN	TO SUE – STATUTE OF LIMITATIONS	5–1
	5.2.1	GENERAL TWO-YEAR STATUTE FOR INJURY OR DEATH ACTIONS	5–2
	5.2.2	TIME RUNS FROM ACCRUAL OF CAUSE OF ACTION	5–2
	5.2.3	GENERAL "ACCRUAL" RULE	5–2
	5.2.4	"DELAYED DISCOVERY RULE" POSTPONING ACCRUAL	5–2
	5.2.5	"KNOWLEDGE" TRIGGERING ACCRUAL	5–3
	5.2.6	MEDICAL MALPRACTICE ACTIONS	5–3
	5.2.7	CHILDHOOD SEXUAL ABUSE	5–3
	5.2.8	PLEADING AND PROOF LIMITATIONS	5–4

	5.2.9			L BASED ON FRAUDULENT FACTS	5–4	
	5.2.10	COMPUT	TING TIME.		5–4	
	5.2.11			E-YEAR LIMITATIONS PERTY DAMAGE	5–5	
	5.2.12	GENERA	AL TOLLING	PROVISIONS	5–5	
		5.2.12.1	ABSENCE	OF DEFENDANT	5–5	
	5.2.13	SPECIAL	STATUTE	S OF LIMITATIONS	5–5	
		5.2.13.1	MEDICAL	MALPRACTICE ACTIONS	5–5	
		5.2.13.2		EAR STATUTE COMMENCES NIFESTATION OF "INJURY"	5–6	
		5.2.13.3		S'S AWARENESS OF INJURY	5–6	
		5.2.13.4		ON – CLAIMS SUBJECT TO CT ARBITRATION	5–7	
	5.2.14	WAIVER	OF STATU	TE OF LIMITATIONS	5–7	
	5.2.15	DEFEND	ANT'S BUF	DEN ON DEMURRER	5–7	
5.3	WHO CAN SUE – REAL PARTY IN INTEREST REQUIREMENT					
	5.3.1	EXCEPTION – CLAIMS BASED ON SUBROGATION				
	5.3.2			TIONS RE WHO CAN	5–8	
		5.3.2.1	MINORS A	AND INCOMPETENTS	5–8	
			5.3.2.1.1	APPOINTMENT OF GUARDIAN	5–8	
		5.3.2.2	ESTATES		5–9	
5.4	WHO MU	JST SUE A	AND BE SU	ED – PARTY JOINDER	5–10	
	5.4.1	COMPUL	SORY JOI	NDER	5–10	

		5.4.1.1	JOINDER ORDERED IF FEASIBLE	5–10	
	5.4.2	PERMIS	SIVE JOINDER	5–11	
		5.4.2.1	PERSONS CLAIMING INTEREST IN CONTROVERSY	5–11	
		5.4.2.2	PERSONS INVOLVED IN TRANSACTION SUED UPON	5–11	
			5.4.2.2.1 EXAMPLES	5–11	
		5.4.2.3	UNRELATED CLAIMS MAY BE JOINED	5–11	
5.5	INTERVE	ENTION		5–12	
	5.5.1	INTERVE	ENTION AS OF RIGHT	5–12	
		5.5.1.1	EXAMPLES	5–12	
		5.5.1.2	CONTRAST – NONPARTY'S INTEREST ADEQUATELY REPRESENTED	5–14	
	5.5.2	PERMIS	SIVE INTERVENTION	5–14	
		5.5.2.1	REQUIREMENTS	5–14	
		5.5.2.2	EXAMPLE – INSURANCE CARRIER SUBROGEE MAY INTERVENE	5–14	
		5.5.2.3	COMPARE – NO INTERVENTION BY INSURER IF COVERAGE DISPUTED	5–14	
	5.5.3	EFFECT	OF INTERVENTION	5–15	
		5.5.3.1	INTERVENOR HAS SAME RIGHTS AS ANY PARTY	5–15	
		5.5.3.2	"RELATION BACK" FOR STATUTE OF LIMITATIONS PURPOSES	5–15	
5.6	SUING GOVERNMENT ENTITIES – FORMAL CLAIM PREREQUISITE UNDER GOVERNMENT CLAIMS ACT				
	5.6.1		AINT SUBJECT TO GENERAL RER FOR NONCOMPLIANCE	5–17	
	5.6.2	FORM A	ND CONTENT OF CLAIM	5–18	

	5.6.3	PRESENTATION OF CLAIM: TIME FOR PRESENTMENT – SIX-MONTH LIMIT FOR PERSONAL INJURY OR PROPERTY DAMAGE	5–20		
CHAPTI	ER 6 – GC	OVERNMENT CLAIMS	6–1		
6.1	IN GEN	ERAL	6–1		
	6.1.1	CLAIMS AGAINST STATE	6–1		
	6.1.2	CLAIMS AGAINST LOCAL ENTITY	6–1		
	6.1.3	PRESENTMENT TO SUBORDINATE EMPLOYEE NOT SUFFICIENT	6–2		
	6.1.4	TIME LIMITS	6–3		
	6.1.5	OTHER CONSIDERATIONS	6–3		
6.2	GOVEF	RNMENT RESPONSE TO CLAIM	6–4		
	6.2.1	APPROVAL OF CLAIM	6–4		
	6.2.2	NOTICE OF DEFECTIVE CLAIM	6–4		
	6.2.3	EXPRESS REJECTION OF CLAIM			
	6.2.4	REEXAMINATION OF REJECTED CLAIM	6–5		
	6.2.5	DEEMED REJECTION BY FAILURE TO ACT WITHIN 45 DAYS	6–5		
		6.2.5.1 EXCEPTION – EXTENSION BY STIPULATION	6–5		
	6.2.6	MANNER OF DELIVERY	6–5		
		6.2.6.1 PROOF OF DELIVERY BY MAIL	6–5		
	6.2.7	TWO-YEAR LIMITATIONS PERIOD IF REJECTION NOTICE DEFICIENT	6–6		
	6.2.8	COMPARE – NO EFFECT ON ACCRUAL OR STATUTE OF LIMITATIONS	6–6		
6.3	_	SUIT AFTER REJECTION OF CLAIM – ONTH TIME LIMIT	6–6		
	6.3.1	SUIT MUST BE BASED ON CLAIM FILED	6–7		

	6.3.2	MEASU	RING SIX-M	ONTH PERIOD	6–7
		6.3.2.1	NO EXTE	NSION FOR MAIL SERVICE	6–7
	6.3.3			ATIONS EXTENDED BY CEDURES	6–7
	6.3.4	SIX-MOI TWO-YE	NTH TIME L EAR STATU	IMIT SUPERSEDES CCP § 335.1 TE OF LIMITATIONS	6–8
<u>CHAPTI</u>	ER 7 – DIS	SCOVERY			7–1
7.1	INTROE	OUCTION			7–1
7.2	DISCOV	/ERY PLAI	N		7–1
	7.2.1	_		ECTED DISCOVERY	7–2
		7.2.1.1	INITIAL D	ISCLOSURES	7–2
	7.2.2	WHAT IS	S DISCOVE	RABLE	7–5
		7.2.2.1	"RELEVAI	NCY" TEST APPLIED	7–7
			7.2.2.1.1	TANGIBLE EVIDENCE	7–7
			7.2.2.1.2	EXPERT WITNESSES	7–7
			7.2.2.1.3	OTHER SIMILAR CLAIMS	7–7
			7.2.2.1.4	DEFENDANT'S INSURANCE COVERAGE	7–8
			7.2.2.1.5	PLAINTIFF'S PHYSICAL/MENTA HEALTH CONDITIONS RELATED TO INJURY IN CONTROVERSY DISCOVERABLE	D
			7.2.2.1.6	RECORDS OF "UNRELATED" CONDITIONS DISCOVERABLE RE CAUSE OF ACCIDENT	7–9
			7.2.2.1.7	SETTLEMENT OFFERS, TERMS AND CONDITIONS	

		7.2.2.2	"CONFIDE	E AND STATUTORY :NTIALITY" LIMITATIONS :VERY	7–10
			7.2.2.2.1	APPLICABLE PRIVILEGES, GENERALLY	7–10
	7.2.3			FFECT PRIVILEGE	7–11
		7.2.3.1		ES COMMON TO AL INJURY LITIGATION	7–12
	7.2.4	PHYSIC	AL OR MEN	TAL EXAMINATIONS	7–24
		7.2.4.1		_ EXAMINATION BY DEMAND NAL INJURY CASES	7–24
		7.2.4.2	EXAMINA ⁻	TION UPON COURT ORDER	7–27
		7.2.4.3	EXCHANG	SE OF MEDICAL REPORTS	7–28
	7.2.5	EXPERT	S AND EXF	PERT WITNESS DISCLOSURE	7–28
		7.2.5.1	WHAT IS	AN EXPERT?	7–28
		7.2.5.2		FOR EXCHANGE OF	7–29
		7.2.5.3		GE OF EXPERT	7–30
				; UNINSURED MOTORIST	8–1
8.1	INTROD	UCTION			8–1
8.2	THE CAI	LIFORNIA	JUDICIAL A	ARBITRATION LAW	8–1
	8.2.1			E NOVO AFTER	8–2
	8.2.2	MEDIAT	ION		8–2
		8.2.2.1	MEDIATIC	N PROGRAM	8–2
		8.2.2.2	SELECTIO	ON OF MEDIATOR	8–3

	8.2.2.3	IMPACT OF MEDIATION ON DISCOVERY PROCEEDINGS8-3
	8.2.2.4	MEDIATION STATEMENTS 8–4
	8.2.2.5	PARTIES' AND ATTORNEYS' ATTENDANCE REQUIRED
	8.2.2.6	DEADLINE FOR COMPLETION 8–5
	8.2.2.7	CONFIDENTIALITY8-5
	8.2.2.8	"DERIVATIVE" MATERIALS PROTECTED
	8.2.2.9	EXCEPTIONS8-7
8.2.3		AL CONSIDERATIONS – PROS AND CONS CIAL ARBITRATION8–7
	8.2.3.1	PLAINTIFF'S CONSIDERATION8-7
	8.2.3.2	COMPARE – POTENTIAL RISKS 8–8
	8.2.3.3	DEFENSE CONSIDERATIONS 8–9
8.2.4	ACTION	S SUBJECT TO JUDICIAL ARBITRATION 8–9
	8.2.4.1	CASES EXEMPT FROM ARBITRATION 8–10
	8.2.4.2	CASES SUBJECT TO MANDATORY TRIAL PREFERENCE8-10
	8.2.4.3	TACTICAL CONSIDERATIONS – ELECTION TO ARBITRATE V. STIPULATION TO ARBITRATE V. MANDATED ARBITRATION
	8.2.4.4	PROS AND CONS OF ELECTION TO ARBITRATE 8–11
	8.2.4.5	MANDATORY (COURT-ORDERED) ARBITRATION8–12
8.2.5		NING CASES FOR JUDICIAL ATION8–12
	8.2.5.1	DETERMINATION WHETHER "AMOUNT IN CONTROVERSY" WITHIN \$50,000 8–12

	8.2.5.2		CT ON AMOUNT OF RY	8–13
	8.2.5.3	RELIEF C	NATION WHETHER EQUITABLE LAIM EXEMPTS CASE FROM TION	
	8.2.5.4	SELECTION	ON OF ARBITRATOR	8–13
		8.2.5.4.1	BY STIPULATION	8–13
		8.2.5.4.2	BY LOCAL PROCEDURE	8–14
		8.2.5.4.3	BY COURT APPOINTMENT – "RANDOM SELECTION"	8–14
	8.2.5.5	PEREMP	TORY CHALLENGE	8–15
	8.2.5.6		ED EX PARTE IICATIONS	8–15
8.2.6			ARBITRATION – NECESSITY N	8–15
	8.2.6.1	MOST FU	ANDATED ARBITRATION, RTHER DISCOVERY MAY LUDED	8–16
	8.2.6.2	COSTS A	ND SANCTIONS RISKS	8–17
	8.2.6.3	SCOPE O	F PREPARATION	8–17
8.2.7	ARBITR	ATION HEA	RING	8–19
	8.2.7.1	_	TO BE COMPLETED WITHIN	8–19
	8.2.7.2	CONDUC	T OF HEARING	8–20
	8.2.7.3	SPECIAL	EVIDENTIARY RULES APPLY	8–20
	8.2.7.4	CLOSING	ARGUMENTS	8–23
8.2.8	ARBITR	ATION AWA	ARD AND JUDGMENT	8–23
	8.2.8.1	NOTICE T	O PARTIES	8–23
	8.2.8.2	JUDGMEN	NT ON AWARD	8–23

	8.2.9	TRIAL D	E NOVO AFTER ARBITRATION AWARD	8–24
		8.2.9.1	30-DAY JURISDICTIONAL DEADLINE FOR REQUESTING TRIAL DE NOVO	8–24
		8.2.9.2	FORM OF REQUEST	8–25
		8.2.9.3	POTENTIAL MONETARY CONSEQUENCES FOR REQUESTING TRIAL DE NOVO	8–25
		8.2.9.4	CERTAIN LIMITATIONS ON COSTS	8–26
	8.2.10	TRIAL S	ETTING AND TRIAL	8–26
8.3	ARBITRA	ATION OF	UNINSURED MOTORIST CLAIMS	8–27
	8.3.1	UNINSU	RED MOTORIST LAW – IN GENERAL	8–27
	8.3.2	COVERA	AGE RULES	8–27
		8.3.2.1	DISTINGUISH – HIGHER NEGOTIATED UM COVERAGE	8–28
		8.3.2.2	STATUTORY EXCLUSIONS FROM COVERAGE	8–28
		8.3.2.3	COVERAGE MAY BE WAIVED OR MODIFIED BY WRITTEN AGREEMENT	8–28
		8.3.2.4	AUTOMATIC MINIMUM COVERAGE ABSENT WRITTEN WAIVER	8–28
		8.3.2.5	VEHICLE OWNER OR OPERATOR "UNKNOWN" – PHYSICAL CONTACT PREREQUISITE	8–29
		8.3.2.6	PERSONS INSURED	8–29
	8.3.3		IAKES THE INSURANCE COMPANY	8–29
	8.3.4	NO PUN	ITIVE DAMAGES	8–30
	8.3.5	TWO-YE	AR STATUTE OF LIMITATIONS	8–30
		8.3.5.1	HOW STATUTE TOLLED	8–30
	8.3.6	SCOPE	OF ARBITRABLE ISSUES	8–31

		8.3.7	INITIATII	NG ARBITRATION	8–32
			8.3.7.1	FORM OF ARBITRATION	8–32
		8.3.8		N TO COMPEL ARBITRATION OR T ARBITRATOR	8–33
			8.3.8.1	FOUR-YEAR STATUTE OF LIMITATIONS	8–33
		8.3.9	ARBITRA	ATION PREPARATION AND DISCOVERY	8–33
			8.3.9.1	COURT JURISDICTION TO RESOLVE DISCOVERY DISPUTES	8–34
		8.3.10	ARBITRA	ATION HEARING	8–35
		8.3.11	POSTHE	ARING PROCEDURES	8–35
			8.3.11.1	EFFECT OF AWARD	8–35
			8.3.11.2	CONFIRMING AND CORRECTING AN AWARD	8–38
<u>Cl</u>	HAPTE	<u> R 9 – TRI</u>	<u>AL</u>		9–1
	9.1	INTROD	UCTION		9–1
	9.2	CASE M	ANAGEME	ENT	9–1
		9.2.1	EXCEPT	ED CASES	9–3
		9.2.2	TIME ES SCHEDU	TIMATES, COMMITMENTS, JLING ISSUES	9–3
	9.3	TRIAL S	ETTING P	REFERENCE	9–4
	9.4	NOTICE	OF TRIAL		9–4
	9.5	MOTION	FOR CO	NTINUANCE OF TRIAL	9–5
	9.6	FINAL D	ISCOVER'	Y	9–7
	9.7	PRETRIA	AL MOTIO	NS	9–8
	9.8	EVIDEN	CE		9–8
	9.9	WITNES	SES AND	RECORDS NEEDED AT TRIAL	9–8
	9.10	EXHIBIT	S		9–9

9.11	DEMONSTRATIVE EVIDENCE						
9.12	NOTEBOOK FOR FINAL STATUS CONFERENCE 9-11						
9.13	WITNES	S FOLDER	₹	9–12			
9.14	STATEV	VIDE AND	LOCAL RULES OF COURT	9–12			
9.15	EXPEDI	TED JURY	TRIALS ACT	9–12			
9.16	DEMAN	DING JUR'	Y TRIAL	9–18			
9.17	WHAT C	CONSTITU	TES JURY TRIAL	9–20			
	9.17.1	"JURY" D	DEFINED	9–20			
	9.17.2	STIPULA	TION TO FEWER THAN 12	9–20			
		9.17.2.1	STIPULATION IN CHAMBERS.	9–20			
		9.17.2.2	QUESTIONABLE NEED FOR CLIENT CONSENT	9–20			
9.18	THE FU	NCTION O	F A JURY – TRIER OF FACT	9–21			
9.19	IMPORT	ANCE OF	DEVELOPING A "CASE THEME	" 9–21			
9.20	GATHER	RING EVID	ENCE	9–22			
9.21	COMPE	LLING ATT	ENDANCE OF WITNESSES	9–24			
9.22	OBTAIN	ING DOCL	IMENTS AND RECORDS	9–25			
9.23	RETAIN	ING EXPE	RT WITNESSES	9–32			
9.24	PREPAR	RING WITN	IESSES TO TESTIFY	9–35			
	9.24.1	HOSTILE	OR RELUCTANT WITNESSES	9–39			
	9.24.2	PREPAR	ING EXPERTS	9–39			
	9.24.3	WITNES	S FOLDER	9–40			
9.25	TRIAL NOTEBOOK9-4						
9.26	TRIAL BRIEF9-43						
9.27	TRIAL BRIEFCASE 9-44						
9.28	REMOTE OR IN-PERSON TRIAL9-44						

TABLE OF AUTHORITIES

INDEX