SUMMARY OF CALIFORNIA LAW ON TRANSPORTATION CASES

I. THEORIES OF POTENTIAL LIABILITY

A. Negligence

The elements of a cause of action for negligence are well established. They are (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.[i]

California uses the "substantial factors" test for causation. Under the substantial factors test liability will be found if a reasonable person would consider the defendant's conduct to have contributed to causing the harm.[ii]

California has adopted the pure form of comparative negligence which apportions liability in direct proportion to fault in all cases. The last clear chance doctrine and the assumption of risk defense are subsumed under the general process of assessing liability in proportion to fault.

Where there is a reasonable safe alternative open, the plaintiff's free choice of a more dangerous way is an unreasonable act and amounts to both contributory negligence and assumption of risk. To that extent, the doctrines are merged into the doctrine of comparative negligence.[iii]

B. Negligence Defenses

California law requires that affirmative defenses be specifically pled.[iv] One exception is that specificity is not required when pleading a statute of limitations defense. However, when pleading statute of limitations, the section number and subdivision of the applicable statute of limitations code section must be cited.[v] The statute of limitations may bar plaintiff's suit, and must be raised as an affirmative defense.

California is a comparative negligence jurisdiction. Many defenses, such as the last clear chance rule and assumption of risk, are subsumed under comparative negligence.[vi] Additionally, plaintiffs have a duty to mitigate their damages.[vii] Defendant may argue that there was an intervening cause.[viii]

In 1996, California enacted Proposition 213 which limits the recovery of non-economic damages arising out of a motor vehicle accident in certain circumstances. Specifically, plaintiff is precluded from recovering non-economic losses if plaintiff: (1) is convicted of driving while under the influence of drugs or alcohol; (2) was the owner of a vehicle involved in the accident

and the vehicle was not insured as required by California law; or (3) was the operator of a vehicle involved in the accident and plaintiff cannot establish his/her financial responsibility as required by California law.[ix] An exception is carved into this rule if the injured person was the owner of an uninsured vehicle and was injured by an individual who was driving under the influence of drugs or alcohol.[x]

Plaintiff is precluded from recovering any damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of a felony, or immediate flight from the commission of a felony, and the plaintiff has been convicted of that felony.[xi]

Additionally, Proposition 51 provides that, in any action for personal injury, property damage, or wrongful death based upon principles of comparative fault, the liability of each defendant shall be several only and shall not be joint. Of course, each defendant is liable for the proportionate share of non-economic damages based upon fault.[xii]

Failure to wear a seat belt may constitute negligence, thereby reducing liability under comparative negligence.[xiii] Moreover, failure to wear a safety restraint while sleeping in the sleeper portion of a truck may constitute negligence.[xiv]

C. Gross Negligence, Recklessness, Willful and Wanton Conduct

California recognizes gross negligence, which the California Supreme Court defines as either a want of even scant care or an extreme departure from the ordinary standard of conduct.[xv] However, California does not recognize a distinct cause of action for gross negligence independent of a statutory basis.[xvi]

In contrast to gross negligence, "wanton" or "reckless" misconduct (or "willful and wanton negligence") describes conduct by a person who may have no intent to cause harm, but who intentionally performs an act so unreasonable and dangerous that he or she knows or should know it is highly probable that harm will result.[xvii]

D. Negligent Hiring and Retention

An employer may be liable to a third party for the employer's negligence in hiring or retaining someone the employer knew or should have known placed an undue risk of harm to others.[xviii]

To be liable, the employer must, prior to hiring, have known or had reasons to believe the employee is unfit, or failed to use reasonable care to discover the employee's unfitness.[xix] This rule applies equally to employees and independent contractors.[xx]

An employer may also be liable for negligent failure to supervise employees adequately,[xxi] and may be liable for negligently supervising an employee who is otherwise trustworthy if the employer knows, or should know, that the employee cannot be trusted to perform a certain activity without supervision.[xxii]

E. Negligent Entrustment

A vehicle owner who places or entrusts a motor vehicle in the hands of a driver whom he or she knows, or should know, is incompetent or unfit to drive, may be held liable for an injury caused by that driver.[xxiii]

Liability for the negligence of the incompetent driver does not arise out of the relationship of the parties, but from the act of entrustment of the motor vehicle with permission to operate the same, to one whose incompetency, inexperience, or recklessness is known, or should have been known, by the owner.[xxiv]

In addition, an entruster has a duty to make a reasonable inspection of the vehicle for defects. This duty is a corollary to the duty to refrain from putting on the highway an instrumentality that might reasonably be expected to cause harm to the operator or third person.[xxv]

California Evidence Code Section 1104 prohibits the introduction of evidence of a trait of a person's character with respect to care or skill to prove the quality of his conduct on a specified occasion. Once an employer admits, before trial, to vicarious liability for its employee's negligence, if proven, the exclusionary rule of Evidence Code Section 1104 operates to protect the employer from being exposed to prejudicial evidence that would be used to show the employer's prior knowledge of an employee's prior accidents, for purposes of imposing direct and separate liability on the employer.[xxvi]

California Vehicle Code Section 12515 prohibits permitting an employee under 18 years of age to operate a Motor Vehicle on the highways. That section also prohibits individuals under age 21from being employed to drive motor vehicles in interstate commerce or to drive any truck, trailer or bus engaged in interstate or intrastate transportation of hazardous material. Vehicle Code Section 14606 prohibits employment of a person not licensed to drive the class of vehicle in question. Violation of any of these provisions creates a rebuttable presumption that the violator failed to exercise due care in entrusting the vehicle.[xxvii]

F. Dram Shop Laws

A vendor who sells, or otherwise furnishes any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor. However, that

vendor is not civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.[xxviii]

There is an exception to this rule. A vendor may be civilly liable where the vendor sells, or otherwise furnishes any alcoholic beverage to any obviously intoxicated minor, where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.[xxix]

G. Joint and Several Liability

In personal injury, property damage and wrongful death claims, the defendants are jointly and severally liable for the full amount of economic damages but are only severally liable for noneconomic damages in direct proportion to their percentage of fault in causing the injury. The doctrine of joint and several liability has not been abolished in non-tort actions.[xxx]

The doctrine of joint and several liability has not been abolished by the adoption of comparative negligence. Under the doctrine of comparative negligence, the tortfeasor whose negligence is the proximate cause of an indivisible injury remains liable for the total amount of damages, diminished only in proportion to the amount of negligence attributable to the person recovering.[xxxi] However, in any action for personal injury, property damage, or wrongful death based upon principles of comparative fault, liability for economic damages remains joint and several, but the liability for non-economic damages shall be several only. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment must be rendered against that defendant for that amount.[xxxii]

H. Special Issue: Effect of Settlement.

A party entering into a settlement with a co-defendant in California will usually seek an order of the court determining that the settlement is in good faith. An order adjudicating the good faith of a settlement discharges the settling defendant from contribution or equitable indemnity to any other joint tortfeasors,[xxxiii] and reduces the claims against the remaining tortfeasors in the amount of the settlement.[xxxiv] The amount a non-settling defendant must pay the plaintiff subsequent to the settlement with a co-defendant is affected by the Fair Responsibility Act of 1986 (Proposition 51), which retains joint and several liability for economic damages, but makes liability for non-economic damages several in any action for personal injury, property damage or wrongful death, based upon principles of comparative fault.[xxxv]

Applying Proposition 51 to a settlement with a co-defendant, the amount of economic damages a non-settling tortfeasor must pay to plaintiff is established by determining what percentage of plaintiff's total damages (economic plus non-economic) are economic, and then applying the

percentage of plaintiff's economic damages to the amount of the settlement to determine the economic portion of the settlement. The non-settling defendant is responsible for the amount of plaintiff's economic damages after its reduction by the amount of the economic portion of the settlement.[xxxvi]

A non-settling defendant receives no credit for the non-economic portion of the settling defendant's contribution to plaintiff's recovery.[xxxvii] A non-settling defendant is no longer liable for any amount of the plaintiff's non-economic damages which exceeds the percentage of those non-economic damages attributable to the defendant.[xxxviii]

I. Wrongful Death and/or Survival Actions

An action for wrongful death may be based upon an intentional tort, negligence or strict product liability.[xxxix]

Persons who may sue for wrongful death are broken down into the following categories: (1) the decedent's surviving spouse, children, issue of deceased children, domestic partner (as defined in California Family Code § 297(b)), or alternatively, those persons entitled to the decedent's property by intestate succession; (2) the putative spouse of the decedent, children of the putative spouse, stepchildren or parents, provided they were dependent on the decedent; (3) a minor, whether or not qualified under (1) or (2), if the minor, at the time of the decedent's death resided with the decedent for the last 180 days and was dependent on the decedent for at least half of the minor's support.[xl]

J. Vicarious Liability

An employer is liable for the acts of an employee committed while acting within the scope of employment, even if the employee exceeds his or her authority or acts contrary to instructions.[xli]

An act committed during a substantial deviation or departure from his duties is considered outside the employee's scope of employment. An employee going to or coming from work, or to and from meals, is generally considered outside the scope of his employment under the "going and coming" rule.[xlii] However, those circumstances may be considered within the scope of employment where the "going and coming" has an additional business purpose,[xliii] or where the employer compensates the employee for travel time.[xliv]

California's rule for placard liability is the "non-delegable duty rule" under which a carrier is liable for the negligence of its independent contractor.[xlv] Recently, an intermediate appellate court held that a private carrier, which hauls only its own property, is not liable for the negligence of its independent contractor carrier under the non-delegable duty rule.[xlvi]

Operating without the required permits will not absolve a carrier from placard liability. In fact, not only would the carrier be held liable, additional penalties may be imposed for failure to comply with motor carrier regulations.[xlvii]

K. Exclusivity of Workers' Compensation

A motor vehicle policy may be limited to exclude from the policy medical and disability benefits obtainable through workers compensation. It is irrelevant whether the insured actually seeks benefits. The mere availability of workers compensation benefits is the determinative factor.[xlviii] As noted above, a policy may specifically exclude benefits obtainable through worker's compensation. However, this does not impact the ability of an owner or driver to purchase uninsured motorist coverage.[xlix]

In general, when a worker is entitled to workers' compensation benefits for an injury, those benefits constitute the worker's exclusive remedy against his or her employer for injuries sustained in the course of employment.[l]

However, there are a few exceptions to the exclusivity rule. With regard to co-employees, in addition to the right to compensation from the employer, an injured employee, or the dependents of the employee in the event of the employees death, may bring an action at law against a co-employee for damages where the employee's injury or death is caused by the willful and unprovoked physical act of aggression of the co-employee, or when it is caused by the intoxication of the co-employee.[li]

With regard to the employer, an injured employee, or the dependents of the employee in the event of the employees death, may bring an action at law against the employer where the employee's injury or death is: 1) caused by a willful physical assault by the employer; 2) aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment (however, damages are limited in this instance to those caused by the aggravation); and 3) caused by a defective product manufactured by the employer and sold, leased, or otherwise transferred for valuable consideration to an independent third person, and that product is thereafter provided for the employee's use by a third person.[lii]

II. POTENTIAL DAMAGES ISSUES

A. Statutory Caps on Damages

There is no cap on damages for economic (special), or non-economic (general) losses. There is one exception to this rule in medical malpractice actions, which place a cap on non-economic (general) damages at $250,000.[liii]

B. Compensatory Damages for Bodily Injury

In a personal injury action, a plaintiff may recover compensation for his or her special, or economic, damages, which consist of out-of-pocket losses that can be documented, including medical and related expenses, loss of income, property damage, and costs of services.[liv] A plaintiff may also recover compensation for his or her general, or non-economic, damages, which include pain and suffering, emotional distress, loss of privacy, loss of earning capacity, and other subjective detriment that cannot be directly quantified.[lv] The spouse of the injured party may also recover for loss of consortium.[lvi]

C. Collateral Source

California follows the collateral source rule, which precludes the deduction of compensation the plaintiff has received from sources independent of the tortfeasor from damages the plaintiff would otherwise collect from the tortfeasor.[lvii] An exception, however, exists for paid medical bills. A plaintiff may only recover for past medical expenses the amounts actually paid for treatment and not the larger amount billed.[lviii]

D. Pre-Judgment/Post judgment Interest

Pre-judgment interest is available in contract and tort actions, as well as claims based in statutory obligations.[lix] Interest accrues from the date damages become certain or capable of being made certain by calculation.[lx] In a contract action, where the damages are not certain, or capable of being made certain by calculation, until sometime after the initiation of the lawsuit, it is in the court's discretion to determine the date from which interest should be calculated, but that date will not be earlier than the date the action was filed.[lxi]

In contract actions, the applicable interest rate is the rate stipulated to within the contract, or, if the contract does not stipulate to any such rate, the applicable rate is 10 percent per year.[lxii]

In non-contract actions, the applicable interest rate 7% per year.[lxiii]

Post-judgment interest accrues at the rate of 10 percent per year, accruing from the date of entry of judgment, on the principal amount of a money judgment remaining unsatisfied. Unless the judgment otherwise provides, if a money judgment is payable in installments, interest commences to accrue as to each installment on the date the installment becomes due.[lxiv]

E. Damages for Emotional Distress

Emotional distress damages are available as an element of damages in a standard negligence cause of action.[lxv]

A person may recover for negligent infliction of emotional distress as a "bystander" if that person (1) is closely related to the injury victim, i.e., a family member; (2) is present at the scene of the accident and aware that the accident is causing injury to the victim; and (3) suffers emotional distress beyond that of a disinterested witness.[lxvi] Plaintiff need not visually observe the accident as non-visual, sensory perception is sufficient.[lxvii]

A person may also recover for emotional distress under the "direct victim" theory of liability, which allows a plaintiff to recover where the defendant has either assumed a duty directly in relation with the plaintiff or if there is a pre-existing relationship between plaintiff and defendant.[lxviii] For example, the California Supreme Court has held that family members could sue a funeral home, mortuary or crematorium which mishandled family members' mortal remains for emotional distress.[lxix]

Plaintiffs may not recover for negligent infliction of emotional distress arising solely from property damage.[lxx]

F. Wrongful Death and/or Survival Action Damages

A plaintiff in a wrongful death case may be awarded damages that, under all the circumstances of the case, may be just.[lxxi] Such damages are limited to losses suffered by the heir, or other wrongful death plaintiff, including loss of earning, society, and companionship, as well as pecuniary losses such as funeral expenses.[lxxii]

Punitive damages are not recoverable by the heirs in a wrongful death action as they can only recover loss to themselves.[lxxiii]

G. Punitive Damages

Punitive damages may only be recovered for acts of malice, fraud and oppression, which can include reckless disregard for another's safety.[lxxiv] An employer will not be liable for punitive damages based on the acts of its employees unless the employer knowingly employed the unfit employee with a conscious disregard of the rights or safety of others, or authorized or ratified the wrongful conduct of the employee, or was personally guilty of oppression, fraud, or malice. In the case of a corporate employer, such acts or knowledge must be on the part of an officer, director or managing agent of the corporation.[lxxv]

There is no cap on the amount of punitive damages a jury may award.[lxxvi] This is true even in medical malpractice cases that place a cap on general, or non-economic, damages.[lxxvii]

Contracts which seek to exempt anyone from responsibility for his own fraud or willful injury to the person or property of another are against public policy.[lxxviii] This public policy limitation is treated as an implied-in-law exclusion for punitive damage claims, even if the insurance policy contains no specific exclusion.[lxxix]

However, unless punitive damage claims are clearly excluded from the insurance policy, the insurer may owe a duty to defend if the insured reasonably expects that a defense will be provided for a claim, and the insurer will not escape its obligation to defend on the mere basis that public policy precludes it from indemnifying that claim.[lxxx]

Indemnification for punitive damages is statutorily barred. An insurer is not liable for the willful acts of the insured.[lxxxi]

H. Diminution in Value of Damaged Vehicle

Generally, the measure of damages for a damaged motor vehicle is the diminished value, unless the cost of necessary repairs is less than the diminished value. Diminution in value may be proved by testimony of the owner of the vehicle regarding his/her opinion of the market value of the vehicle immediately before and after it was damaged. The burden of proof then shifts to the defendant to show that the reasonable cost of necessary repairs was or would have been less than the diminution in value.[lxxxii] Although opinion testimony of the owner is enough to establish diminished value, it is more prone to attack due to the usual lack of documentary evidence. Thus, in practice it is generally preferred to obtain an appraisal regarding the cost of necessary repairs and seek to recover that amount.

In some rare instances, if the vehicle cannot be repaired completely, the owner may recover both the reasonable cost of repairs and the diminished value after repairs were made, i.e., the difference between its market value before it was damaged and after the repairs were made.[lxxxiii]

I. Loss of Use of Motor Vehicle

An owner of a commercial vehicle may also recover for loss of use, also referred to as "downtime". An owner need only testify to his damages for loss of use, no documentation is required. Loss of use may be shown by testimony or other proof regarding the reasonable rental value of a substitute vehicle, whether such vehicle was actually rented or not.[lxxxiv] Typically, the time period for loss of use is that which is reasonably required for making repairs. Plaintiff is, as always, under a duty to mitigate his damages. However, in some instances a longer period of time for recovering loss of use has been allowed. If there is a delay pending the arrival of parts needed for the repair plaintiff may be permitted to recover for a longer period

of time.[lxxxv] Also, the court may allow a longer time period for recovery of loss of use damages if plaintiff was unable to make the repairs due to financial difficulty.[lxxxvi]

III. POTENTIAL EVIDENTARY ISSUES

A. Preventability Determination

Admission of a preventability determination depends upon how the determination was made. If the determination was made in anticipation of litigation by an insurance company, the attorney work product doctrine may apply. Further, if a preventability determination is made by a company, its admissibility depends on the standard used by the company to determine a "preventable accident" and why the determination was made (i.e., driver discipline, future training, fleet management tool, etc.) Generally, courts will allow a qualified "trucking expert" to offer an opinion as to whether an accident was preventable. The standard of care is often defined by the FMCSR if the truck was engaged in interstate commerce or by the standard set forth by the company.

B. Traffic Citation from Accident

Generally, evidence of prior traffic citations is not admissible to prove that on the particular occasion in question, the driver receiving such prior citations was negligent. Evidence concerning prior offenses for the purposes of impeachment is relevant if material. For instance, where a defendant volunteers that he never committed an offense such as the one charged, evidence of prior offenses is admissible to impeach his statement.[lxxxvii]

Often, a party may seek to introduce evidence of the issuance of a traffic citation related to the accident at issue to prove negligence per se. Generally, courts exclude evidence of a traffic citation as it invades the province of the jury and can be prejudicial on issues of proximate cause.

To prove negligence per se based on a violation of a statute, regulation, or ordinance, the proponent must show a violation of a law and that the violation was a substantial factor (proximate cause) in bringing about the harm. The trial court will determine whether the law defines the standard of care in a particular case and the jury decides the issue of whether there was a violation and issues of causation. Courts will exclude evidence of traffic citations that do not have any probative value to causation. For example, a citation for failing to have evidence of insurance or a registration violation would not be admissible because such violations usually are not relevant to causation of an injury.

C. Failure to Wear Seat Belt

In a civil action, failure to wear a seatbelt does not establish negligence as a matter of law or negligence per se for comparative fault purposes.[lxxxviii] However, failure to wear a seat belt may be raised as an affirmative defense. The defendant must prove that a working seat belt was available, that a reasonably careful person would have used it, that the plaintiff failed to wear the seat belt, and that the injuries would have been avoided or less severe if the plaintiff had worn a seat belt.[lxxxix]

D. Failure of Motorcyclist to Wear Helmet

Although there is no case law on point, failure to wear a helmet is closely analogous to failure to wear a seatbelt. Wearing a seatbelt while driving or riding in an automobile, and wearing a helmet while riding a motorcycle are both required by statute, and therefore, it is likely such evidence may be used as an affirmative defense to show that the Plaintiff's injuries would have been avoided or less severe if the plaintiff had worn a helmet. Just as it is with failure to wear a seatbelt, the burden would be on the defendant to prove this affirmative defense.[xc]

E. Evidence of Alcohol or Drug Intoxication

Mere consumption of drugs or alcohol is not negligent in and of itself. Intoxication is a circumstance for the jury to consider in determining whether such intoxication was a contributing cause of an injury and is also a question of fact for a jury. People who drink alcohol or take drugs must act just as carefully as those who do not. Intoxication is not an excuse for failure to comply with the reasonable-person standard.[xci]

Evidence of intoxication is admissible by expert opinion testimony, based on scientific testing, or by lay opinion testimony if the lay person testifies as to factual information that he/she perceived that lead to their conclusion.[xcii] However, if the intoxicated individual has violated a statute, such as driving under the influence, the intoxicated individual may be found to be "negligent per se" if it is shown that the intoxicated individual violated a law and the violation was a substantial factor (proximate cause) in bringing about the claimed harm. Generally, a violation of a law raises a presumption that the violator was negligent.

F. Testimony of Investigating Police Officer

An investigating police officer can offer opinion evidence if the officer is qualified as an expert and the officers name is disclosed as an expert that a party intends to call at trial to offer opinion evidence. Otherwise, the officer may only testify as a lay witness concerning those things he or she observed.[xciii] To qualify as an expert, it must be shown that the officer has special knowledge, skill, experience, training, or education sufficient for the court to deem the officer qualified to testify on a subject that the officer is asked to express an opinion.[xciv] An

investigating officer can also read portions of the traffic collision report to refresh his/her recollection or portions of the report may be admissible as past recollection recorded.

G. Expert Testimony

Expert testimony is permissible on those subject matters sufficiently beyond common experience, so that it would assist the trier of fact; however the expert witness must have appropriate qualifications, and the opinion is based on reliable matter.[xcv] Where evidence involves novel devices or processes (i.e., extends beyond the scope of ordinary expert testimony, which includes accepted scientific methods),[xcvi] there is a foundational requirement that the proponent of the evidence make a preliminary showing of general acceptance of the new technique in the relevant scientific community.[xcvii] Although the Federal Courts use the "*Daubert* test"—expert opinion testimony is admissible if it is based on "scientific, technical, or other specialized knowledge" that will assist the trier of fact to understand the evidence or to determine a fact in issue[xcviii] — the California Supreme Court has rejected *Daubert* and reconfirmed the *Kelly* approach.[xcix]

Under the *Kelly* approach, evidence based on a new scientific method, technique, or device may be received in evidence if the following factors have been established:

1. The reliability of the method in general
2. The evidence is furnished by a properly qualified expert; and
3. The use of proper scientific procedures in the particular case.[c]

H. Collateral Source

Evidence showing plaintiff received benefits from a collateral source is ordinarily inadmissible to mitigate in an action against the wrongdoer. Unlike evidence of defendant's liability insurance coverage (Evid. Code § 1155), the admissibility of evidence of plaintiff's receipt of collateral source payments is not the subject of a specific statutory exclusion.[ci]

Even if relevant on another issue (for example, to support a defense claim of malingering), under Evidence Code section 352 the probative value of a collateral payment must be carefully weighed against the inevitable prejudicial impact such evidence is likely to have on the jury's deliberations.[cii]

I. Recorded Statements

A recorded statement is generally excluded from evidence as hearsay unless it can be shown that the statement qualifies under a hearsay exception.[ciii] Often, recorded statements can be entered into evidence as satisfying one of the following hearsay exceptions: Prior inconsistent

statement[civ]; Admission by party opponent[cv]; Declaration against interest[cvi]; or State of Mind of declarant.[cvii]

J. Prior Convictions

Evidence of a prior felony conviction may be used only to attack the credibility of a witness.[cviii] However, evidence of prior convictions in civil actions may be excluded as prejudicial or not relevant.[cix] This would be the case in a motor vehicle negligence action. As evidence of prior convictions may only be used to attack the credibility of a witness, it may not be used in an attempt to show a driver had a propensity to commit a negligent act, though a prior conviction could be admissible if it were offered to prove knowledge, skill, motive or intent.[cx] The scope of any such examination of the witness is limited to: (a) the name of the felony; (b) general nature or elements of the felony; (c) the date of the conviction and (d) the place of the conviction.[cxi]

K. Driving History

Generally, evidence that a litigant was involved in a prior accident is inadmissible where the only purported relevance is to enhance the probability of negligence in the current action. Usually, the court would preclude introduction of such evidence as prejudicial or unwarranted.[cxii] However, evidence of a commercial driver's driving history may be admissible if relevant to a cause of action for negligent hiring, training, or retention.

L. Driver Fatigue

Often, a party will seek to introduce evidence of a log violation to prove driver fatigue. Generally, a violation of a law raises a presumption that the violator was negligent. To prevail on a cause of action for negligence per se based on a violation of a statute, regulation, or ordinance, the proponent must show a violation of a law and that the violation was a substantial factor (proximate cause) in bringing about the harm.[cxiii] The trial court will determine whether the law defines the standard of care in a particular case and the jury decides the issue of whether there was a violation and issues of causation.

M. Spoliation

There is no cause of action for spoliation of evidence. However, the intentional spoliation of evidence by a party to the litigation to which it is relevant is an unqualified wrong. Therefore, various remedies are available in first party spoliation cases to the spoliation victim, especially the evidentiary inference provided by Evidence Code § 413 and the discovery remedies of Code of Civil Procedure § 2023. These remedies provide a substantial deterrent to acts of spoliation, and substantial protection to the spoliation victim.[cxiv]

IV. SETTLEMENT ISSUES

A. Offer of Judgment

A statutory offer to compromise can be made at any time prior to ten days before the commencement of trial. An offer is in effect for either thirty days or until the first day of trial, whichever is shorter.[cxv]

A plaintiff who rejects a defendant's offer of compromise and fails to obtain a more favorable judgment is precluded from recovering its post-offer costs and shall pay defendant's costs from the time of the offer. Additionally, the court has discretion to require plaintiff to pay defendant's reasonable costs for the services of defendant's expert witnesses. Likewise, a defendant who rejects plaintiff's offer of compromise and fails to obtain a more favorable judgment may at the court's discretion be required to pay plaintiff's costs as well as pay a reasonable sum to cover plaintiff's expert witness fees.[cxvi]

B. Liens

1. Who Is Entitled to Assert a Lien?

A judgment lien does not attach to any vehicle or vessel required to be registered with the Department of Motor Vehicles. Tractor trailers must be registered with the Department of Motor Vehicles. Therefore, a plaintiff may not attach a judgment lien to a tractor trailer.[cxvii] Attorneys and doctors may assert a lien against plaintiff's cause of action. These liens may be created expressly by contract or impliedly.

Additionally, a carrier may assert a carrier's lien on freight in its possession. The carrier has a lien on freight in its possession for the total amount owed plus the cost of storage and appropriate security for the subsequent shipment of the goods. The carrier must have notified the shipper in writing of the possibility of a lien on future shipments for failure to pay charges. Additionally, a carrier cannot assert a lien on perishable goods.[cxviii] The property may not be sold less than thirty-five days after taking possession. The lien holder must notify the shipper, the consignee and each secured party with a perfected interest of the time, date and place of the sale at least ten days prior to the sale.[cxix]

2. When Is a Lien Enforceable Against a Defendant?

A judgment is enforceable upon entry.[cxx]

A settlement, satisfaction or judgment in favor of the debtor may not be entered by or on behalf of the debtor unless the creditor's money judgment is satisfied, the lien is released, the judgment creditor consents in writing, or a court order so authorizes.[cxxi]

A defendant's responsibility with respect to liens depends on the nature of the lien. With respect to a governmental lien, a defendant on notice is responsible for payment of the lien. The customary manner to satisfy this responsibility is to include the lien holder on any settlement check. Attorney liens are subject to the same rules. A defendant is also responsible for payment of any worker's compensation lien of which the defendant has notice. Indeed, the worker's compensation insurer is empowered to bring a separate action against a defendant/tortfeasor in order to collect on its lien. Medical providers, by contrast, are not true lienholders, in that they are not subrogated to the rights of injured Plaintiffs. Rather, medical providers may assert a claim for reimbursement from the party to whom they rendered services, but are not subrogated to that party's rights against tortfeasors. The exception to this later rule is if the medical provider is itself a governmental entity, as for example Medicare or an emergency first responder.

C. Settlement of Minor's Claim

A settlement with a minor of any amount must be approved by the Court. The petitioner seeking Court approval may be a parent, guardian, or guardian ad litem.[cxxii]

A petition for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise, covenant, settlement, or disposition. Except in the case of an expedited petition, the petition must be prepared on a fully completed Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability (California Judicial Council form MC-350).[cxxiii]

D. Confidentiality Agreements

The privacy of a settlement is generally understood and accepted in our legal system, which favors settlement and therefore supports attendant needs for confidentiality. Private settlement agreements are entitled to at least as much privacy protection as a bank account or tax information.[cxxiv] Thus, given the private nature of a confidential settlement of a lawsuit, the burden rests on the proponents of discovery of this information to justify compelling production of this material. They must do more than show the possibility it may lead to relevant information. Instead they must show a compelling and opposing state interest.[cxxv]

However, confidential settlement agreements between a policyholder and a primary insurer must be disclosed to excess insurers so the excess insurer can determine whether the primary insurance is exhausted and, therefore, whether the excess insurer has any obligation to the policyholder. This is because the courts have determined that in this instance, the information contained in the confidential settlement agreement is critical to resolution of a dispute involving a non-party to the agreement, and the need for information necessary to resolve the dispute overrides any interest the parties to the confidential settlement agreement have in keeping the agreement or its terms secret.[cxxvi]

F. Releases

Generally, California treats a Release like any other contract. There is no particular distinction between the release of one or more than one tortfeasor. The drafter must simply make his or her intent clear. No notary is required. No statute or case law requires translation into the language of the releasor. As a matter of practice, the release should contain a clause whereby the releasor attests that he or she has read and understood the document and has had the document explained to the releasor by his or her counsel. Finally, California Civil Code § 1542 provides:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Thus, for a Release to foreclose unknown claims, an express waiver of California Civil Code § 1542 must be included in the document.

G. Voidable Releases

A release agreement is subject to rescission in the same manner as other contracts.[cxxvii] Rescission is necessary only with respect to a release that is voidable, rather than absolutely void.[cxxviii] An agreement is therefore voidable, and subject to unilateral rescission when one party did not freely consent, or was legally unable to consent. These grounds include when consent is given by mistake, or when that consent was obtained by duress, menace, fraud, or undue influence. Additionally, a release is voidable and subject to rescission where the consideration fails, where the release is unlawful for causes which do not appear in its terms or conditions, and where the parties are not equally at fault, an where the public interest will be prejudiced by permitting the contract to stand.[cxxix]

In the case of a unilateral mistake concerning the releases effect, a release may be rescinded only if the mistake arose from an unrectified misrepresentation by one party of which the other was aware.[cxxx] Failure to read a release before signing it is not a valid ground for claiming mistake as to its contents.[cxxxi]

Another ground for unilateral rescission is mental incompetence under California Civil Code § 39. That is, when the rescinding party was of unsound mind, but not entirely without understanding, and made the contract before his or her incapacity was judicially determined. The test is whether he or she was mentally competent to deal with the particular subject with full understanding of his or her rights, such that he or she actually understood the nature, purpose, and effect of the release[cxxxii]

Where an unrepresented injured individual enters into a release, he or she may not unilaterally rescind the agreement unless the agreement is voidable for one or more of the reasons discussed herein. However, the sole fact that the injured individual is unrepresented is insufficient on its own to make the agreement voidable.[cxxxiii]

V. TRANSPORTATION LAWS

A. State DOT Regulatory Requirements

Certain variances between the FMCSRs and State laws and regulations are allowed. The following are pertinent variances between California regulations and FMCSRs.

1. Hours of Service

California has adopted the hours of service regulations for interstate and intrastate commercial drivers as outlined in Part 395 of Title 49 of the Code of Federal Regulations. As adopted from the Federal Code, California regulations allow commercial drivers who only engage in intrastate commerce activities to drive a maximum driving time within a work period of 12 hours, except for a driver of a tank vehicle with a capacity of more than 500 gallons transporting flammable liquid, who shall not drive for more than 10 hours within a work period. Additionally, a motor carrier shall not permit or require a driver to drive, nor shall any driver drive, for any period after having been on duty for 80 hours in any consecutive eight days.[cxxxiv]

2. Driver Physical Qualifications

California regulations require that the California Department of Transportation determine whether the applicant is mentally and physically fit to operate a motor vehicle, and permits the department to consider the standards required by federal regulations in establishing California

medical requirements for commercial driver licenses. It also provides that any physical defect of the applicant which, in the opinion of the department, is compensated for to ensure safe driving ability, will not prevent the issuance of the license. California Vehicle Code section 12809 authorizes the department to refuse to issue a commercial license to any person not meeting the medical requirements.[cxxxv]

Title 13, Article 2.1, 28.18 and 28.19, of the California Code of Regulations provides the minimum physical and medical requirements for Class A, B, or Commercial Class C driver licenses. These are the same standards required of motor carrier drivers by the Federal Highway Administration of the Department of Transportation.

Drivers seeking a federal waiver or exemption may qualify for a federal waiver if they are employed driving in interstate commerce. The federal waiver and exemption program is designed to allow persons with specific conditions listed in 49 CFR 391.41 to qualify under the Federal Motor Carrier Safety Regulations. Restrictions may be included on individual waivers when the Regional Federal Highway Administrator determines they are necessary for public safety. If the driver is found otherwise medically qualified, the examining physician must include the statement, "medically unqualified for interstate commerce unless accompanied by a waiver," on the medical certificate.[cxxxvi]

3. Driver Age

California regulations allow commercial drivers who only engage in intrastate commerce activities to be 18 years of age or older. Drivers who drive a commercial vehicle engaged in interstate commerce or transport hazardous materials or wastes (intrastate or interstate commerce), must be 21 years of age or older.[cxxxvii]

B. State Speed Limits

A driver is not necessarily negligent if the driver was going faster than the posted speed limit, and the speed limit is only a factor that can be considered to determine if the driver was negligent. A driver may be found to be negligent for driving the speed limit or slower than the speed limit. The Basic Speed law requires that a person drive at a reasonable speed under the circumstances and failure to do so is negligence. The maximum speed limit in California is 65 mph on highways.

C. Overview of State CDL Requirements

California has developed licensing and testing requirements for drivers of commercial vehicles which equals or exceeds federal standards. It takes special skills and a professional attitude to safely operate large trucks and buses. Only professional drivers will receive and keep a

Commercial Driver License (CDL).

The commercial driving test will be administered in the English language only. This is pursuant to Federal Motor Carrier Safety Administration regulations §§391.11(b)(2) and 383.133(c)(5). Only California residents may obtain a California CDL. Residency is established by any of the following: registering to vote here, paying resident tuition at a public institution of higher education, filing for a California homeowner's property tax exemption, obtaining a license (such as a fishing license), or any other privilege or benefit not ordinarily extended to nonresidents. You need a CDL if you operate a vehicle or combination of vehicles which requires a Class A or Class B, license or Class C license with endorsements.

1. Commercial Vehicle Defined.

A commercial motor vehicle is a motor vehicle or combination of vehicles that:

• Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more.

• Is a combination vehicle with a gross combination weight rating of 26,001 or more pounds, if the trailer(s) has a GVWR of 10,001 or more pounds.

• Tows any vehicle with a GVWR of 10,001 pounds or more.

• Tows more than one vehicle or a trailer bus.

• Has three or more axles (excludes three-axle vehicles weighing 6,000 pounds or less gross).

• Is any vehicle (bus, farm labor vehicle, general public paratransit vehicle, etc.) designed, used, or maintained to carry more than 10 passengers including the driver, for hire or profit, or is used by any nonprofit organization or group.

• Is any size vehicle which requires hazardous material placards or is carrying material listed as a select agent or toxin in 42 CFR part 73.

• Transports hazardous wastes (Health and Safety Code §§25115 and 25117).

2. Endorsements

A special endorsement is also required to drive the following types of vehicles. The Endorsement shows as a single letter on the driver license.

• Placarded or marked vehicles transporting hazardous materials or wastes—(H).

• Tank vehicles (including a cement truck)—(N).

• Passenger transport vehicles—(P).

• School bus—(S).

• Double/Triples combination—(T).

• Tank vehicles transporting hazardous materials or wastes–(X). (Hazardous waste must meet the definition of California Vehicle Code §§353 and 15278.)

• Firefighter—(F) (not required but optional for commercial class A or B license holders.)

3. Exceptions to the CDL requirements:

• Persons exempted under Health and Safety Code §25163 (Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104; and persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, as long as they meet with the additional requirements of § 25163 (c)).

• Persons operating a vehicle in an emergency situation at the direction of a peace officer.

• Drivers who tow a fifth-wheel travel trailer over 15,000 pounds GVWR or a trailer coach over 10,000 pounds GVWR, when the towing is not for compensation. Drivers must have a noncommercial Class A license.

• Drivers of housecars over 40 feet but not over 45 feet, with endorsement.

• Noncivilian military personnel operating military vehicles.

• Implement of husbandry operators who are not required to have a driver license.

4. Special Certificates

Special certificates may sometimes be required in addition to a CDL, depending on the type of vehicle or load you carry. Those certificates may include Ambulance Driver Certificate; Hazardous Agricultural Materials (HAM) Certificate; Verification of Transit Training Document (VTT); General Public Paratransit Vehicle Certificate (GPPV); School Bus Driver Certificate; School Pupil Activity Bus Certificate (SPAB); Farm Labor Vehicle Certificate; Youth Bus Certificate; Tow Truck Driver Certificate; Vehicle for Developmentally Disabled Persons (VDDP).

5. How to Get a CDL

a. Applicants for a CDL.

• Must be 18 years of age.

• May drive for hire within California if you are 18 years of age or older and do not engage in interstate commerce activities.

• Must be at least 21 years old to drive a commercial vehicle engaged in interstate commerce or to transport hazardous materials or wastes (intrastate or interstate commerce) (California Vehicle Code §12515).

b. Applicants for a CDL Must Provide the Following:

• A completed Commercial Driver License Application (DL 44C) form.

• Applicant's true full name.

• An approved medical form (or copy) completed by a U.S. licensed doctor of medicine (M.D.), licensed doctor of osteopathy (D.O.), licensed physician's assistant (P.A.), registered advanced practice nurse (APN), or licensed chiropractor (when you apply for a driver license or instruction permit. Drivers who hold certificates to drive school buses, SPAB, youth buses, GPPV, or farm labor vehicles must have their medical examinations given by doctors of medicine, licensed physician's assistant, or a registered advanced practice nurse (California Vehicle Code §12517.2).

• An acceptable birth date/legal presence (BD/LP) document.

• Applicant's social security card (cannot be laminated), Medicare card, or U.S. Armed Forces active, retired, or reserve DD2 form

• A Certificate of Driving Skill (DL 170 ETP) if your employer is authorized by DMV to issue such certificates.

• The applicable fee must be paid.

6. Required Testing

You must take and pass vision, knowledge (law), and performance (pre-trip, skills, and driving, if required) tests to get your original CDL and/or endorsements or to upgrade to a different class of license. Law and vision tests may be required for renewals.

A driving test is required:

• For an original CDL.

• To remove a restriction placed on your license because of vehicle size or equipment.

• To add a "P" or "S" endorsement.

• To renew a CDL expired for more than two years.

7. CDL Law Tests:

• General Knowledge Test, for all Class A, B, and commercial C applicants.

• Air Brakes Test, if you operate vehicles with air brakes.

• Combination Vehicles Test, if you drive Class A combination vehicles.

• Passenger Transport Vehicle Test, if you transport passengers.

• Hazardous Materials Test, if you transport hazardous materials or wastes requiring placards.

• Tank Vehicle Test, if you transport liquids in bulk (including cement mixers).

• Doubles/Triples Test, if you pull double or triple trailers. (Triple trailers are illegal in California.)

• The School Bus test is required if you want to drive a school bus.

• Firefighter Endorsement Test, to operate firefighting equipment. (Not required but optional for commercial class A or B license holders).

After passing the required knowledge test(s), the applicant must schedule a CDL performance test which includes a pre-trip inspection/knowledge test, basic control skills tests, and the driving test. The applicant must use the same (or similar) vehicle for all three performance tests. Under certain specified conditions, the driving test requirements may be waived by DMV or CHP.

8. Additional Requirements

All commercial vehicle drivers must:

• Be a California resident before applying for a California CDL.

• Disclose all states in which they were previously licensed during the past ten years and surrender all out-of-state driver licenses (current or expired), if any.

• Certify that they do not have a driver license from more than one state or country.

• Notify their home state Department of Motor Vehicles of any conviction which occurred in other states within 30 days of the conviction.

• Notify their employer of any conviction within 30 days of the conviction using form Report of Traffic Conviction (DL 535).

• Notify their employer of any revocation, suspension, cancellation, or disqualification before the end of the business day following the action.

• Give their employer a 10-year employment history of commercial driving, if applying for a job as a driver.

VI. LIABILITY INSURANCE ISSUES

A. State Minimum Limits of Financial Responsibility

The minimum automobile insurance limits for a private individual are 15,000/$30,000/$5,000.[cxxxviii] The minimum automobile insurance limits for a commercial vehicle (motor carrier of property) is a combined single limit of $750,000.[cxxxix]

B. Uninsured Motorist Coverage

Uninsured motorist coverage is not mandatory, but an insurance carrier must offer such coverage and the insured may refuse it.[cxl] Uninsured motorist coverage must be at least the

minimum amounts required by statute ($15,000/$30,000) and the insurer may impose maximum limits in the policy of $30,000 because of bodily injury/death to one person in one accident and $60,000 because of bodily injury/death of two or more persons in one accident.[cxli] These are simply statutory minimum/maximum amounts and an insurance policy may provide greater uninsured motorist benefits if negotiated. Such requirements also apply to commercial automobile insurance policies.[cxlii]

A policy may provide that payments under the med-pay coverage will be offset against an uninsured motorist award, but in the absence of such a provision, no offset right exists.[cxliii] Payments under an uninsured motorist coverage policy may also be offset against any available bodily injury liability coverage.[cxliv] Additionally, any loss payable under uninsured motorist coverage may be reduced by the amount of worker's compensation benefits paid or presently payable to the insured, provided there is a specific provision in the policy for such reduction.[cxlv]

No stacking of benefits is allowed and regardless of the number of vehicles involved, persons covered, claims made, or premiums paid, uninsured motorist coverage for two or more vehicles or two or more policies cannot be added together to increase the minimum uninsured motorist coverage available to injured persons.[cxlvi]

Where uninsured motorist coverage is available under several policies issued by different insurers, the amount recoverable depends on whether the insured's policy provides proration of damages, but in the absence of such a clause Insurance Code § 11580.2(c)(2) prevents double recovery where more than one policy of uninsured motorist protection is involved.[cxlvii]

Section 11580.2(c)(2) provides in pertinent part:

> "the insurance coverage provided for in this section does not apply either as primary or as excess coverage… To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section."

A two year statute of limitations applies to claims for uninsured motorist benefits and within two years the claimant must (1) settle with the insurer, (2) commence arbitration against the uninsured motorist carrier, or (3) sue the uninsured motorist and notify the insurer. [cxlviii]

C. No Fault Insurance

California does not have no fault insurance.

D. Disclosure of Limits and Layers of Coverage

A third-party claimant cannot require an insurance carrier to disclose the insured's policy limits without the insured's consent unless the claimant files a lawsuit or a collateral proceeding to perpetuate testimony.[cxlix] However, a party may seek discovery of the contents of an insurance policy through both interrogatories and requests for production.[cl]

E. Unfair Claims Practices

Unfair Claims Practices are codified in California Insurance Code § 709.03(h)(1-16), which provides:

> "The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance…
>
> (h) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:
>
> (1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.
>
> (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
>
> (3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
>
> (4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.
>
> (5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
>
> (6) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.
>
> (7) Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made.

(10) Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

(14) Directly advising a claimant not to obtain the services of an attorney.

(15) Misleading a claimant as to the applicable statute of limitations.

(16) Delaying the payment or provision of hospital, medical, or surgical benefits for services provided with respect to acquired immune deficiency syndrome or AIDS-related complex for more than 60 days after the insurer has received a claim for those benefits, where the delay in claim payment is for the purpose of investigating whether the condition preexisted the coverage.

However, this 60-day period shall not include any time during which the insurer is awaiting a response for relevant medical information from a health care provider." [cli]

F. Bad Faith Claims

A first party insured may assert a cause of action against its insurance carrier for breach of the implied covenant of good faith and fair dealing and for breach of contract.[clii] These claims may also be assignable under certain circumstances to a third party, however, a third party may not independently maintain/assert a bad faith cause of action against an insurance carrier.[cliii]

G. Coverage – Duty of Insured

There is no statutory duty for the insured to cooperate with its insurance carrier. Any such duty to cooperate is provided in the insurance policy itself.

H. Fellow Employee Exclusions

Fellow employee exclusions are routinely enforced by California courts absent ambiguous policy language.

Footnotes

[i] Ladd v. County of San Mateo (1996) 12 Cal.4th 913, 917.
[ii] Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal. 4th 953, 969.
[iii] California Civil Code § 1714.; Li v. Yellow Cab Co. of California (1975) 13 Cal.3d 804.
[iv] FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367.
[v] California Code of Civil Procedure § 458.
[vi] Li v. Yellow Cab Co. of California (1975) 13 Cal.3d 804.
[vii] Pretzer v. California Transit Company (1930) 211 Cal. 202.
[viii] Richards v. Stanley (1954) 43 Cal.2d 60
[ix] California Civil Code § 3333.4 (a).
[x] California Civil Code § 3333.4 (b).
[xi] California Civil Code § 3333.3.
[xii] California Civil Code § 1431.2.
[xiii] Franklin v. Gibson (1982) 138 Cal.App.3d 340.
[xiv] Lara v. Nevitt (2004) 123 Cal.App.4th 454.
[xv] City of Santa Barbara v. Superior Court (2007) 41 Cal. 4th 747, 754.
[xvi] Eriksson v. Nunnink (2011) 191 Cal.App.4th 826, 856, fn. 18.
[xvii] City of Santa Barbara v. Superior Court (2007) 41 Cal. 4th 747, 754, fn. 4.
[xviii] Underwriters Ins. Co. v. Purdie (1983) 145 Cal.App.3d 57.
[xix] Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 828, 843.
[xx] Holman v. State of California (1975) 53 Cal.App.3d 317.
[xxi] City of Los Angeles v. Superior Court (1973) 33 Cal.App.3d 778.
[xxii] Noble v. Sears, Roebuck (1973) 33 Cal.App.3d 654.
[xxiii] Syah v. Johnson (1966) 247 Cal.App.2d 534.
[xxiv] Mettelka v. Superior Court (1985) 173 Cal.App.3d 1245.
[xxv] Benton v. Sloss (1952) 38 Cal.2d 399; Zucker v. Passetti Trucking Co. (1961) 191 Cal.App.2d 260.
[xxvi] Jeld-Wen, Inc. v. Superior Court (2005) 131 Cal.App.4th 853, 870 [disapproving of Syah v. Johnson (1966) 247 Cal.App.2d 534.].
[xxvii] California Evidence Code § 669.
[xxviii] California Business and Professions Code § 25602

[xxix] California Business and Professions Code § 25602.1
[xxx] California Civil Code § 1431.2.
[xxxi] American Motorcycle Assn. v. Superior Court of Los Angeles County (1978) 20 Cal.3d 578.
[xxxii] California Civil Code § 1431.2.
[xxxiii] California Code of Civil Procedure § 877(b); Contractor's Ass'n v. Touchstone Inc. Services (1994) 27 Cal.App.4th 1085.
[xxxiv] California Code of Civil Procedure § 877(a); Gouvis Engineering v. Superior Court (1995) 37 Cal.App.4th 642.
[xxxv] California Civil Code §1431.2.
[xxxvi] Espinoza v. Machonga (1992) 9 Cal.App.4th 268.
[xxxvii] Id. at 275.
[xxxviii] Id. at 272.
[xxxix] Barrett v. Superior Court (1990) 222 Cal.App.3d 1176.
[xl] California Code of Civil Procedure § 377.60.
[xli] California Civil Code § 2338; Perez v. Van Groningen & Sons (1986) 41 Cal.3d 962.
[xlii] Henderson v. Adia Services (1986) 182 Cal.App.3d 1069.
[xliii] Cain v. Marquez (1939) 31 Cal.App.2d 430.
[xliv] Hinman v. Westinghouse Elec. Co. (1970) 2 Cal.3d. 956.
[xlv] Eli v. Murphy (1952) 39 Cal.2d 598; Klein v. Leatherman (1969) 270 Cal.App.2d 792.
[xlvi] Hill Bros. Chem. Co. v. Superior Court (2004) 123 Cal.App.4th 1001.
[xlvii] California Vehicle Code § 34660; Klein v. Leatherman (1969) 270 Cal.App.2d 792.
[xlviii] Bailey v. Inter Insurance Exchange (1975) 49 Cal.App.3d 399; California Vehicle Code § 16454.
[xlix] California Insurance Code § 11580.2; California Insurance Code § 11580.2.
[l] California Labor Code § 3602, subd. (a); 63 Cal. Comp. Cases 132 (1998) 17 Cal.4th 632.
[li] California Labor Code § 3601.
[lii] California Labor Code § 3602.
[liii] California Civil Code § 3333.2(a)(b).
[liv] Beeman v. Burling (1990) 216 Cal.App.3d 1586; California Civil Code §1431.2(b)(1).
[lv] Id.; California Civil Code §1431.2(b)(2).
[lvi] California Civil Code §1431.2(b)(2).
[lvii] Howell v. Hamilton Meats & Provisions (2011), 52 Cal. 4th 541, 548.
[lviii] Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541.
[lix] California Civil Code § 3287; see also Tripp v. Swoap (1976) 17 Cal 3d 671 (overruled on other grounds by Frink v. Prod (1982) 31 Cal 3d 166.
[lx] California Civil Code § 3287.
[lxi] California Civil Code § 3287(b).
[lxii] California Civil Code § 3289.
[lxiii] California Constitution, Article 15, section 1; and Children's Hospital and Medical Center v. Bonta (2002) 97 Cal. App. 4th 740, 775.
[lxiv] California Code of Civil Procedure §§ 685.010-685.020.
[lxv] Long v. PKS (1993) 12 Cal.App.4th 1293; California Civil Code §1431.2(b)(2).
[lxvi] Thing v. La Chusa (1989) 48 Cal.3d 644.
[lxvii] Wilks v. Horn (1992) 2 Cal.App.4th 1264, 1272-1273; Bird v. Saenz (2002) 28 Cal.4th 910, 916-917.
[lxviii] Huggins v. Longs Drug Stores California, Inc. (1993) 6 Cal.4th 124.
[lxix] Christensen v. Superior Court, et al. (1992) 54 Cal.3d 868.
[lxx] Cooper v. Superior Court (1984) 153 Cal.App.3d 1008.
[lxxi] California Code of Civil Procedure § 377.61.
[lxxii] Krouse v. Graham (1977) 19 Cal.3d 59.
[lxxiii] Doak v. Superior Court (1968) 257 Cal.App.2d 825.
[lxxiv] California Civil Code § 3294(a).
[lxxv] California Civil Code § 3294(b).
[lxxvi] California Civil Code § 3294(a).
[lxxvii] Baker v. Sadick (1984) 162 Cal. App. 3d 618, 627.
[lxxviii] California Civil Code §1668.
[lxxix] Ohio Cas. Ins. Co. v. Hubbard (1985) 162 Cal.App.3d 939.

[lxxx] Id.
[lxxxi] California Insurance Code § 533
[lxxxii] Conner v. Dale (1923) 63 Cal.App. 338, 218 P. 462.
[lxxxiii] Byrne v. Western Pipe & Steel Co. (1927) 81 Cal.App. 270, 274, 253 P. 776; Merchant Etc. Assn. v. Kellogg E. & D. Co. (1946) 28 Cal.2d 594, 600, 170 P.2d 923; and Brown v. Roland (1940) 40 Cal.App.2d Supp.825, 104 P.2d 138.
[lxxxiv] Tremeroli v. Austin Trailer Equipment Co., (1951) 102 Cal.App.2d 464, 482.
[lxxxv] Lyle v. Seller (1924) 70 Cal.App. 300, 302.
[lxxxvi] Valencia v. Shell Oil Co. (1944) 23 Cal.2d 840, 846.
[lxxxvii] Travis v. Southern Pacific Co., 210 Cal.App.2d 410.
[lxxxviii] California Vehicle Code § 27315.
[lxxxix] Housley v. Godinez (1992) 4 Cal.App.4th 737, 743-747.
[xc] California Vehicle Code § 27803, Housley v. Godinez (1992) 4 Cal.App.4th 737, 743-747.
[xci] Pittman v. Boiven (1967) 249 Cal.App.2d 207, 217.
[xcii] In re G. (1970) 7 Cal.App.3d 695; People v. Garcia (1972) 27 Cal.App.3d 639; People v. Williams (1988) 44 Cal.3d 833; People v. Loomis (1984) 156 Cal.App.3d Supp. 1.
[xciii] People v. Loomis (1984) 156 Cal.App.3d Supp. 1.
[xciv] California Evidence Code § 801.
[xcv] California Evidence Code § 801
[xcvi] People v. Ward (1999) 71 Cal.App.4th 368; People v. Nolan (2002) 95 Cal.App.4th 1210; People v. Cowan (2010) 50 Cal.4th 401.
[xcvii] People v. Kelly (1976) 17 Cal.3d 24.
[xcviii] Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993) 509 US 579; Kumho Tire Co., Ltd. v. Carmichael (1999) 526 US 137.
[xcix] People v. Leahy (1994) 8 Cal.4th 587.
[c] People v. Kelly (1976) 17 Cal.3d 24.
[ci] Hrnjak v. Graymar, Inc. (1971) 4 Cal. 3d 725, 728.
[cii] Howell v. Hamilton Meats & Provisions (2011) 52 Cal. 4th 541, 552.
[ciii] California Evidence Code § 1200.
[civ] California Evidence Code § 1235.
[cv] California Evidence Code § 1220.
[cvi] California Evidence Code § 1230.
[cvii] California Evidence Code §§ 1250, 1251.
[cviii] California Evidence Code § 788.
[cix] Robbins v. Wong (1994), 27 Cal. App. 4th 261, 274.
[cx] California Evidence Code §§ 1101, 1104; Carr v. Pacific Tel. Co. (1972) 26 Cal.App.3d 537.
[cxi] People v. Terry (1974) 38 Cal. App.3d 432, 446.
[cxii] Shmatovich v. New Sonoma Creamery (1960) 187 Cal.App.2d 342, 344, overruled on other grounds by Prichard v. Veterans Cab Co. (1965) 63 Cal.2d 727, 732.
[cxiii] California Evidence Code § 669.
[cxiv] Cedars-Sinai Medical Center v. Superior Court (1998) 18 Cal.4th 1, 17-18.
[cxv] California Code of Civil Procedure § 998.
[cxvi] California Code of Civil Procedure § 998.
[cxvii] California Code of Civil Procedure § 697.530(d)(1).
[cxviii] California Civil Code § 3051.5.
[cxix] California Civil Code § 3051.5(d).
[cxx] California Code of Civil Procedure § 683.010.
[cxxi] California Code of Civil Procedure § 708.440.
[cxxii] California Code of Civil Procedure § 372; California Probate Code § 3600; and California Rules of Court, rule 3.1384(a).
[cxxiii] California Rules of Court, rule 7.950
[cxxiv] Hinshaw Winkler v. Superior Court (1996) 51 Cal.App.4th 233, 241
[cxxv] Hinshaw Winkler v. Superior Court (1996) 51 Cal.App.4th 233, 241
[cxxvi] Home Ins. Co. v. Superior Court (Atl. Richfield Co.) (1996) 46 Cal.App.4th 1286, 1291-1295.
[cxxvii] Matthews v. A.T. & S.F. Ry. (1942) 54 Cal.App.2d 549, 557.
[cxxviii] Garcia v. California Truck Co. (1920) 183 Cal. 767, 770.
[cxxix] California Civil Code § 1689.

[cxxx] Larsen v. Johannes (1970) 7 Cal.App.3d 491, 503.
[cxxxi] Hoffman v. Sports Car Club of America (1986) 180 Cal.App.3d 119, 126.
[cxxxii] Carr v. Sacramento C.P. Co. (1917) 35 Cal. App.439, 442.
[cxxxiii] In re Marriage of Hasso (1991) 229 Cal.App.3d 1174, 1184-1185.
[cxxxiv] California Vehicle Code § 34501.2.
[cxxxv] California Vehicle Code § 12804.9.
[cxxxvi] www.dmv.ca.gov/dl/driversafety/cdl_guidelines.htm
[cxxxvii] California Vehicle Code §12515.
[cxxxviii] California Insurance Code § 11580.1(b); California Vehicle Code § 16056(a).
[cxxxix] California Vehicle Code § 34631.5.
[cxl] California Insurance Code § 11580.2(a)(1).
[cxli] California Insurance Code § 11580.1(b), 11580.2(a), (m); California Vehicle Code §16056(a).
[cxlii] Enter. Ins. Co. v. Mulleague (1987) 196 Cal. App. 3d 528.
[cxliii] California Insurance Code § 11580.2(e) and Cannizzo v. Guarantee Ins. Co. (1966) 245 Cal. App.2d 70.
[cxliv] Criterion Ins. Co. v. Welish (1985) 167 Cal. App. 3d 62.
[cxlv] California Insurance Code § 11580.2(h)(1), Coltherd v. Workers' Comp. Appeals Bd. (1990) 225 Cal. App. 3d 455, 459.
[cxlvi] California Insurance Code § 11580.2(q)
[cxlvii] California Insurance Code §§ 11580.2(d); 11580.2(c)(2).
[cxlviii] California Insurance Code § 11580.2(i)(1).
[cxlix] Griffith v. State Farm Mut. Auto Ins. Co. (1991) 230 Cal. App. 3d 59.
[cl] Irvington-Moore, Inc. v. Superior Court (1993) 14 Cal. App. 4th 733.
[cli] California Insurance Code § 790.03(h)(1-16).
[clii] Gruenberg v. Aetna Ins. Co. (1973) 9 Cal.3d 566, 573, Wilson v. 21st Century Ins. Co. (2007) 42 Cal.4th 713, 720.
[cliii] Hamilton v. Maryland Ca. Co. (2002) 27 Cal. 4th 718, 732.