

AT ISSUE

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THE BREAK IN BREAKTHROUGHS

Source: *ChangeThis.com*, *Mind of the Innovator: Taming the Traps of Traditional Thinking* by Matt E. May



I can't overemphasize the value of reflection. And here's a crucial element to it: time away from the problem. I've discovered that "break" is a big part of breakthrough, both literally and figuratively.

I've observed it, experienced it, and studied it.

Researchers looking into how the human brain actually solves problems now confirm what many artists and scientists instinctively know about the process of idea incubation: that seemingly unproductive times are a key ingredient of immensely productive and creative ones.

We've all heard of the apparently serendipitous occurrences—Archimedes' ("Eureka!") flash of insight regarding displacement occurring during a bath, and Einstein's theory of relativity coming to him in a daydream.

Experiments show that creative revelations come when the mind is engaged in an activity unrelated to the issue being addressed, and that pressure is not conducive to creative thought. Recent research demonstrates that the ultimate break—sleep—actually changes our mind's perspective unconsciously. Information is consolidated by a

process taking place in the hippocampus during sleep, enabling the brain to effectively clear itself and reboot, all the while forming new connections and associations. The result is new insight and the aha! feeling of the Eureka moment.

The catch is obvious: if the neural workings of the brain are hidden from our awareness, we can't speed them up or artificially influence them to work harder or more intensely. We can only let go. Ironically, when we do—when we escape either physically or mentally, we actually speed up the transformational processes.

But here's the thing: we're reticent to take those breaks. Certainly we don't include them or build them in as a formal part of our problem-solving efforts. The question is why we don't, when without the break, there may just be no breakthrough.

Enter the irrational fear of failure. Backing off is counterintuitive. It somehow feels wrong, like preemptive surrender. It's scary to ease up, because we may lose our steam, or we may abandon hope. We get anxious when the answers aren't so forthcoming, and we begin to doubt

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BY: IRA H. ROSENBLATT, ESQ.

Q: What is a joint venture?

A: A joint venture ("JV") is simply a partnership for a specific project. Companies of all sizes frequently form joint ventures for various reasons (e.g. penetrate new markets, leverage capital, technology, and human resources, among many others). In a JV, two or more parties agree to make certain contributions, in exchange for which they agree to split profits and losses along certain lines. Since it is project specific, once the specific project terminates, so does the joint venture. Though not required, it is recommended that parties reduce their agreements to writing, usually in the form of a joint venture agreement. This serves as a good exercise in forcing the parties to think through various issues they otherwise may not focus on, and also serves to memorialize the parties' intentions. Joint ventures are not without risk. Depending on a number of factors, it is common that one joint venturer will have exposure for the sins of another joint venturer (a legal doctrine known as vicarious liability). This is just another reason not to enter into a joint venture without consulting competent counsel first.

Q: I allowed an employee to take two weeks of vacation in January, even though he had only accrued two vacation days at the time. Upon his return, he gave notice and quit. I instructed my controller to deduct the eight days of advanced pay from his last paycheck. My controller's comments gave me pause as to if we could lawfully do so. Could we?

A: Although your sense of fairness may not like this answer, those who like black and white answers will. The answer to your question is "no." Though your intuition likely suggests that since you advanced the employee eight paid vacation days, and he quit before paying them back, that you are free to offset those paid days from his last pay check. However, this not-so-uncommon scenario is a trap for the unwary. It is true that the advance wages creates a debt; however, since wages are exempt from pre-judgment attachment, an employer cannot unilaterally collect that debt through self-help means. Essentially, you have two choices. One, secure the employee's prior written consent to allow the company to deduct his debt from his last paycheck. Or, two, initiate a small claims suit to recover the amount due.

Q: My company is currently under investigation by the Department of Labor regarding certain alleged wage and hour violations. The Department of Labor is responding to complaints received by certain ex-employees. My question is whether I, as a corporate officer, have personal exposure should the Department of Labor find violations.

A: You can breath easy. The current law in California is that individual owners, officers, and managers of companies are not personally liable for Labor Code violations arising from failure to pay earned wages, including accrued vacation. This issue was addressed in a case captioned *Bradstreet v. Wong* (decided April 16, 2008) by the California Appellate Court. Notwithstanding the foregoing, you should be diligent and proactive in addressing and correcting any true Labor Code violations while the problem is still manageable.

EDITOR'S NOTES

We are pleased to provide you with our Spring 2010 Edition of *At Issue*. We are especially excited for this edition as we debut a new generation of *At Issue*. This renovation marks the tenth anniversary of our publication, and coincides with the launch of our new web site, www.srclaw.com, which we invite you to visit as well. We hope you enjoy both the updated design and layout. Although the look and feel has changed, *At Issue* remains an in-house Stone, Rosenblatt & Cha publication comprised entirely of original material researched and authored by our attorneys, clerks, staff, friends of the firm (and sometimes even our clients). Our publication is designed to inform, educate and entertain. As always, we welcome your comments and suggestions. Please feel free to contact us regarding any topics you would like to see addressed in future editions at Editor@srclaw.com.

WHO WE ARE...

Stone, Rosenblatt & Cha, based in Southern California, is an award winning business law firm serving our clients' litigation and transactional needs. The firm enjoys the highest available rating ("AV") from Martindale-Hubbell (the legal industry bench-mark) for both legal ability and ethics, and is listed in Martindale-Hubbell's National Bar Register of Preeminent Lawyers. Our clients are successful businesses, entrepreneurs, artists, and high net-worth individuals.

WHAT WE DO...

"We help our clients define, and ultimately achieve, their strategic and financial objectives. We fulfill our Mission by delivering more than just quality legal services — we deliver solutions." Ira Rosenblatt, Managing Director.

QUESTIONS OR COMMENTS

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LAW GLOSSARY

Practically every day, I find myself providing clients with plain English definitions of common legal business terms. At the risk of oversimplifying things, perhaps the following definitions will benefit some of our readership as well.

Agent: A person who represents another (called a principal) in dealings with third parties within the scope of the agent's actual or ostensible authority. The maxim *qui facit per alium facit per se*, i.e., one who acts for another acts by or for oneself, expresses the effect of the agent's acts in binding the principal. Agents can legally bind their principals.

Articles of Incorporation: This document, which then continues perpetually unless otherwise expressly provided by law or in the articles, contains basic information such as the name, agent for service of process, purpose, and the capital structure (number and class of shares), and may contain additional optional specifics such as number of directors, reasonable transfer restrictions, and the like.

Board of Directors: One or more individuals appointed by shareholders of a corporation to oversee the business and affairs of the corporation and maximize shareholder value. Often, that means vetting and appointing certain top level corporate officers (e.g. CEO), forming corporate committees, and shaping strategic direction.

Bylaws: Best described as a contract between the shareholders and the corporation, as well as among the shareholders themselves. They may be adopted, amended, or repealed by approval of the outstanding shares or the Board of Directors. If the initial directors are not named in the Articles of Incorporation, however, the incorporators (the people who sign the Articles) may adopt or amend the bylaws until the board is filled.

Corporation: The most common organization; it is a separate legal entity, providing much desired limited liability for its owners, the shareholders.



SOME INTERVIEW NO-NO'S

By: Ira H. Rosenblatt, Esq.



"When did you graduate?" "Are you married?" "How many children do you have?" Acceptable questions?

Perhaps, depending on when and where they are asked. Fire any of these questions at your blind date and you're probably fine. Pose any of these to an applicant in a job interview, and you could be exposing your company to civil liability. Not long ago, employers and prospective applicants routinely discussed issues such as date of graduation, marital status, number of children, and perhaps even one's religious beliefs. Boy, have things changed! Or should I say, "Neutral gender, have things changed!"

Today, terms of art such as sexual harassment, workplace violence, and disparate treatment are known to employers and employees alike. Employers are all too familiar with problem areas in the workplace; however, too few are familiar with the dangers present prior to hiring employees, namely in the interviewing process. Mistakes in the pre-hire phase can be costly, exposing employers to civil liability no matter how innocent in nature. Some no-no's are obvious (e.g., asking a female applicant if she is pregnant). Others, however, although equally prohibited, are not perhaps as obvious.

So, please add the following No-No's to your interview tool box:

Degradation of At-Will Status: Avoid oral or written representations such as this is a "secure position"; we are looking for someone to make a "long term commitment"; we need someone who can "grow with the company," or "we can provide you with a nice future." You may also reconsider probationary or introductory periods. For example, some employers hire employees on a 90 day probationary period. Some courts have found that successfully surviving these periods may give rise to an implied agreement that good cause is necessary to terminate thereafter.

Avoid Tripping Over Anti-Discrimination Bans: The California Fair Employment and Housing Act bans employment discrimination on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex or age. Employers should be careful in drafting help-wanted advertisements and interviewing, specifically avoiding use of language which implies limitations or exclusions based on any of the aforementioned protected class-

es. For example, avoid the following in advertisements and in the interview process:

Gender: "Two man operation"; "must wear coat and tie"; "salesman"; wanted "big ticket guy."

Disability or Physical or Mental Condition: "work on your feet"; "lean and mean"; inquiries about general health or receipt of worker's compensation benefits.

Age: "young and energetic"; looking for "recent grad"; "will train bright new graduate"; inquiries regarding years an applicant attended or graduated from a certain institution; date of birth.

Ethnicity: "U.S. Citizen wanted"; "no accents"; "English must be mother tongue"; "Anglo applicant fluent in Japanese."

Sex and Marital Status: "family man"; "married and stable"; "no children"; "unattached"; inquiries regarding marital status, dependents, maiden name, child support obligations, pregnancy, or whether the applicant has made provisions for child care.

Religion: religious affiliation; membership; inquiring into observance of certain religious holidays.

Organizations: inquiries into membership or affiliation in clubs, associations, lodges, societies, (excluding professional or trade organizations relevant to the position for which the applicant is interviewing).

Utilize a well drafted job application: Your application should comply with all applicable state and federal laws. Drafted well, job applications can later be used as a first-line-of-defense should the applicant/employee sue for wrongful termination. Most important in this regard is a conspicuous provision that any future employment will be on an at-will basis, and that any representations or agreements to the contrary are not binding unless in writing and signed by the President, Board of Directors, or similar person or body.

In this great country of ours, anyone can sue anyone for any reason – and they often do. There is no silver bullet guaranteed to insulate employers from litigation. However, this reality simply makes following these recommendations that much more important. If you have questions, or are interested in having us prepare any of the aforementioned documents for use at your place of employment, please contact Ira Rosenblatt at rosenblatt@srclaw.com.



MAKING THE INTANGIBLE TANGIBLE

By: Mishawn Nolan, Esq.



The FTC Pulls Back the Curtain

Blogs, social networks and other open online forums allow anonymous communications of thought, feeling, ideas and opinions. There is comfort in being able to communicate with the world without accountability. Some businesses have learned to use this to their advantage. Others have been damaged by it. Now, all the rules have changed and businesses are going to need to adapt to the new online environment.

The Federal Trade Commission (“**FTC**”) instituted new guidelines effective December 1, 2009 restricting the use of endorsements and testimonials through electronic communications. The purpose of these guidelines is to hold businesses and individuals who post opinions, endorsements, critiques and information about products and services accountable for deceptive communications.

Who needs to know about these regulations?

(1) any business owner that uses any form of electronic communication to promote their goods or services such as websites, Facebook, Twitter, blogs, online forums for reviews and recommendations, YouTube and viral marketing, and (2) any person who posts any electronic communication that consumers are likely to believe reflects the opinions, beliefs and experiences of a party other than the sponsoring business (“**Posters**”).

What is being regulated? Any speech that deceives the consuming public such as a communication that a member of the public would perceive differently if it knew of the material connection between the business and the Poster. Some examples are friend and family member reviews, paid celebrity endorsements, reviews in exchange for cash or free products, positive reviews of sponsors, negative reviews of competitors and viral marketing campaigns that pretend to be grass roots. Also subject to the new FTC regulations are communications of the re-

sult of use, such as “I lost 25 pounds in 2 weeks!” and “I had fewer wrinkles in just 5 days!” Not only do these claims need to be accurate and based on someone’s actual experience, but the results a business reports must now be the typical result supported by scientific evidence.

What should a business do? Conduct a thorough analysis of existing electronic marketing, make sure that every communication is truthful, current and not deceptive, disclose any material connections with Posters, put a posting policy in place and make sure all Posters are in compliance (because businesses will be held accountable for a Poster’s conduct) and if it communicates results of use, have scientific data to support it.

What happens if a business does not comply? The FTC could subject the business to fines or a lawsuit.

Is there any good news for businesses?

Yes. Although the new FTC regulations will consume time, energy and resources to get compliant, increase or substantially change marketing practices and possibly impose cost prohibitive requirements, hopefully, in the not too distant future, positive information posted will have credibility and negative information posted will have accountability.

In the Know – Online Operations

Always have a selection of law and venue clauses in website terms and conditions. Without one, it will be easy for end users with a grievance to file a claim on their home turf.

If you hire anyone to provide content or functionality development, make sure that there is a written assignment of rights. Without one, you could find yourself without the ability to update, modify or control your website, or you could find your competitors with the same look, unique features and competitive advantages as your website.

Everything online is not in the public domain. Make sure you have permission to use all photographs, identifiable people, published writings and third party brands.

Do not promise not to sell collected personal information without a good reason. Aggregated information is the new currency and you should not rob your business of that potential revenue source. To make end users feel comfortable, or if otherwise required by law, you could anonymize it.

THE BREAK IN BREAKTHROUGHS CONTINUED...

our creativity, abilities and intelligence, fearing that if we take our eye off the problem even for a moment, we may lose the energy we’ve invested.

The key is a quiet mind. We need to learn to rid ourselves of the potentially destructive negative self-talk: inevitable thoughts of failure, inner voices of self-criticism and judgment, and the ever-present temptations to compare ourselves to others whose circumstances have little to do with our own.

High performers know that the line between failure and success is very often drawn on the mental field of play. The good news is that turning down the chatterbox brain is something that can be learned. Some prefer simply taking downtime to reflect and think (or not think as the case may be).

Think Week is the now-legendary solitary sabbatical taken twice yearly by Microsoft founder and chairman Bill Gates. In his tiny lakeside cottage hideaway, he ponders the past, present and future of his company, of technology and of his industry. He takes long walks along the lake shore in contemplation to quiet his mind.

Meditation may be the most powerful tool known. Neuroscientists have since the 1990s been studying Tibetan monks in the hills above Dharamasala to understand how meditation affects brain activity. In the most experienced Buddhist practitioners, researchers using electroencephalography (EEG) and functional magnetic resonance imaging (fMRI) have discovered abnormally high levels of gamma brainwaves, which are believed to be associated with the brain’s ability to synthesize disparate bits of data, solve problems, heighten perception, and boost consciousness.

Scientists have now concluded that mental training can create an enduring brain trait. That means we may actually be able to rewire our brains to adopt different thinking circuits. In fact, in a reversal of conventional medical wisdom which holds that mental experiences result from physical goings-on in the brain, startling new evidence suggests the reverse may also be true—that our mental machinations may actually alter the physical structure of our grey matter. Neuroscientists call the phenomenon neuroplasticity.

In other words, when you change your mind, you change your brain. And that leaves a whole new world of opportunity for the mind of the innovator.

Matthew E. May is an innovation consultant, AMEX Open Forum columnist, and author of “In Pursuit of Elegance: Why the Best Ideas Have Something Missing” (2009). His website is InPursuitofElegance.com.

CALIFORNIA SUPREME COURT DENIES "GROSSLY INFLATED" ATTORNEY'S FEE REQUEST IN FEHA CASE

By: Robyn McKibbin, Esq.



Unemployment is on the rise, and so are claims for discrimination, harassment and retaliation. Plaintiffs who bring successful claims under the California Fair Employment and Housing Act ("FEHA") are entitled to recover their attorney's fees. The intent is to make it easier for "plaintiffs of limited means to pursue meritorious claims." Oftentimes, however, the potential fee recovery dwarfs the plaintiff's actual damages, making settlement negotiations difficult. But employers have some hope. In *Chavez v. City of Los Angeles*, an LAPD officer sued for racial and perceived disability discrimination, harassment and retaliation. Over a span of five years, the plaintiff doggedly pursued his claims in both state and federal courts. Ultimately, a state jury found in favor of the plaintiff on the retaliation claim. All of the other claims were dismissed or found to be lacking in merit. The plaintiff was awarded a total of \$11,500 in damages. His attorney then asked for \$870,935.50 in fees, representing more than 1,800 hours of attorney time. The trial court declined the request and the case found its way to the state's highest court.

California used to have municipal courts and superior courts. The courts are now all superior courts but are divided up into limited and unlimited civil cases. In limited civil cases, the amount in controversy does not exceed \$25,000. Cases involving more than \$25,000 are heard as unlimited civil cases. Limited civil cases have streamlined procedures intended to control the costs of litigation and provide a prompt resolution of minor civil disputes.

In *Chavez*, the trial court concluded the attorney fee request was "grossly inflated" in light of the fact that the plaintiff prevailed on only one claim: the "modest" amount of damages awarded on the one claim, and the amount of time an attorney might reasonably expect to spend in litigating such a claim. The trial court also found that plaintiff's evidence was "seriously deficient" on the essential element of damages and that the lawyer should have realized plaintiff's purported injuries would not exceed \$25,000. Since the lawsuit could have been fairly and effectively litigated as a limited civil case, no fees were awarded. The Court of Appeal reversed the ruling but in a unanimous decision, the California Supreme Court sided with the trial court and held that a trial court may deny attorney's fees in FEHA cases where the compensatory damages award could have been recovered in a limited civil case.

The *Chavez* decision should make plaintiffs' lawyers pursuing cases with potentially minimal damages think more carefully about where they file their claims and how much to ask for in fees. Plaintiffs' lawyers also may be more willing to recommend a reasonable settlement to their clients instead of gambling on an anticipated "windfall" of fees.

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RECORD HIGH DISCRIMINATION CHARGES

By: Robyn McKibbin, Esq.

The total discrimination charges filed in 2009 was 93,277, the second highest level ever. According to their Fiscal Year 2009 Charge Statistics, the Equal Employment Opportunity Commission (EEOC) collected over \$376 million in monetary relief for the alleged victims of discrimination, a \$20 million increase over awards made in 2008. Retaliation, race and sex discrimination continue to rank as the top three charges filed with the agency. Charges alleging discrimination based on disability, religion, national origin, and age hit record highs.

The statistics should be viewed as a sign of the tough economic times, and the willingness of disgruntled employees to file charges. Discrimination in employment is regulated by both state and federal agencies, with the EEOC enforcing federal discrimination laws. Employers are advised to ensure their policies, procedures and practices are in compliance with both state and federal anti-discrimination statutes and regulations.

10 Best Practices For Evaluating and Improving Employee Performance

By: Robyn McKibbin, Esq.

Employees are some of your most valuable assets. Ensuring that your employees are working to their full potential will help contribute to the employee's overall satisfaction, improve the company's productivity and, in turn, profitability. Also, when designed and implemented correctly, performance appraisals can be an effective means of preventing employee lawsuits.

Employee performance should be observed and evaluated throughout the year on an ongoing basis. A formal meeting and written evaluation once a year can be used to summarize the performance and establish a plan going forward but there should not be any surprises at the meeting.

Approach:

- Be honest but not brutal.
- Avoid generic "Check the Box" forms and include specific examples of performance, both positive and negative.
- Tie performance appraisal to essential tasks of position (as reflected in the job description).
- Use objective vs. subjective standards.
- Confer with another manager or supervisor to reduce subjectivity and check for evaluator error.
- Ask the employee for his/her self-assessment.
- Clearly identify expectations.
- Establish a plan for evaluating the improvement and advise the employee that a failure to improve may result in termination.
- Allow employee to respond to the evaluation.
- Document the communications.



OF NOTE...

By: Kristi Dean, Esq.

On Monday, March 15, 2010, Insurer Lloyds of London received a disappointing ruling from the Ninth Circuit Court of Appeals in a coverage dispute involving alleged swindler Allen Stanford. Despite the fact that the Lloyd's D&O policy contained a money laundering exclusion, the Court ordered that Lloyd's pay for the defense of Stanford against allegations concerning his alleged \$7 billion Ponzi scheme.



The California Legislature is considering a 4.8% surcharge on commercial and property policies to help pay for state firefighting and emergency personnel. If passed, those who live in more urban areas and face little wildfire risk would effectively be subsidizing those who live in state responsibility areas, where the state has the primary firefighting responsibility. This would amount to an average increase of \$2,000 for a \$600,000 home. The surcharge would go to the state, not to insurance carriers. (*Union Democrat*, March 10, 2010)



Most homeowner policies require the homeowner to clear brush away from the building by a specific distance. Before summer and fire season arrives, check your policy and talk to your insurance professional to make sure that your yard is in compliance.

CLASH OF THE CARRIER TITANS

By: Kristi Dean, Esq.

In a March 2010 ruling, the Second District of the California Court of Appeal addressed a dispute between two major construction insurers. Scottsdale Insurance Company sued Century Surety Company seeking equitable contribution because Century refused to participate in the defense of over 300 underlying actions involving 17 common insureds. Scottsdale and other carriers shared the costs of defense and sought reimbursement for defense costs and indemnity payments.

Century argued that it was not required to defend or indemnify the insureds because of its prior work exclusion, drafted in response to case law which adopted a continuous trigger theory of liability. The trial court held the exclusion was not enforceable, finding that the insureds had an initial expectation of coverage and the prior work exclusion was not conspicuous, plain and clear.

Century also asserted that the statute of limitations had run on Scottsdale's right to seek equitable contribution. Scottsdale attempted to rely upon a tolling agreement on one of the lawsuits, but the trial court found that the tolling agreement applied only to some of the lawsuits, and could not be used to toll the

statute for the other litigation matters. The court affirmed the lower court's ruling on the application of the limitations defense.

The court next addressed the pro rata allocation split to which Scottsdale was entitled. The trial court awarded Scottsdale half of all defense and indemnity payments it made, even though Century argued it should be ordered to pay only the difference between the equal share Scottsdale paid without Century's participation, and the equal share it would have paid had Century participated ("time on risk"). The trial court ruling was in conflict with the general rule previously applied in non-insurance cases, that in order to be entitled to equitable contribution, a party must have first paid more than its share of the loss and bears the burden of proving such circumstances. The court remanded the case back to the trial court to recalculate damages under the allocation methods to which Scottsdale and the participating insurers agreed.

Scottsdale Insurance Company v. Century Surety Company (filed March 10, 2010, 2nd Dist.) -- Cal.Rptr.3d ----, 2010 WL 797189.

FIRE, FRAUD AND FURY: Insurer's Denial of Suspicious Fire Claim is Upheld

By: Kristi Dean, Esq.

An insured was denied policy benefits for an arson fire that burned her home, and then sued the carrier for breach of contract and bad faith. The court upheld the carrier's denial because during the carrier's investigation, the insured refused to produce requested documentation, failed to answer material questions, and failed to establish the amount of her loss.

During the course of its investigation, the carrier learned that the insured was living on government benefits and credit cards, yet she managed to buy a house worth over \$700,000. After the purchase, she began to remodel her new home, paid \$87,000 to her contractors, but the City shut down the partially completed project because the contractors failed to obtain the proper permits. The contractors refused to return her money. Just before the fire, the insured contacted her insurance agent to make certain changes to her homeowners policy. After the fire, accelerants were found at the scene and the incident was found to be "suspicious."

Homeowners policies require that the insured cooperate with a carrier in the investigation

of a claim. Though there was some suspicion that the insured may have been responsible for the fire, the carrier did not deny the claim because of fraud, and instead began its investigation. The insured was resistant and obstreperous. When the carrier asked for proof of the insured's loss, the insured withheld information from the carrier and refused (on advise of counsel) to answer questions about her personal finances. She was elusive about the source of her funds and would not explain inconsistencies and contradictions in the paperwork she did produce. The insurer invoked the cooperation clause and denied the claim. The court upheld the denial and found that the questions were material and the insured's refusal was unjustified. Her claim was properly denied because she failed to give the carrier the degree of cooperation required by her policy.

Abdelhamid v. Fire Insurance Exchange (filed February 22, 2010, publication ordered March 9, 2010, 3rd Dist.) --- Cal.Rptr.3d ----, 2010 WL 599329.

MARCH MADNESS IN THE COURTROOM

By: Victoria Cantore, Esq.



Ah, the Ides of March. For many, it marks the arrival of one of the most storied traditions in collegiate sports. For the NCAA, it marked the arrival of a fresh batch of plaintiffs in a class-action lawsuit spearheaded by former U.C.L.A. basketball star Ed O'Bannon.

The lawsuit argues that the NCAA, athletic conferences and member institutions violate federal antitrust laws by preventing former athletes from earning royalties when their likenesses and images are licensed by the NCAA for use in television advertisements, video games, apparel and other products. Current collegiate athletes are considered amateurs, and NCAA rules prevent them

from earning money on their images or likenesses. According to attorneys for O'Bannon and the other plaintiffs, such rules should not apply to former athletes.

Among the eleven new plaintiffs are Alex Gilbert, a teammate of Larry Bird at Indiana State, four participants in the 1966 Division I men's basketball championship game, and football and basketball players who competed in the 1990s and into the past decade.

In February, a U.S. District Court judge in San Francisco denied the NCAA's motion to dismiss, finding that for these players, the lawsuit is, as they say, fair game.

ONCE AGAIN, MCDONALD'S LANDS IN HOT... GREASE

It became the poster child for so-called frivolous lawsuits when a 79-year old woman sued McDonald's because of injuries sustained from a cup of coffee that was too hot. The woman, Stella Liebeck, received third degree burns when her cup of coffee spilled in her lap and soaked through her clothing. The lawsuit was featured all over the news, late night talk shows, and was even the basis for an episode of "Seinfeld."

Now, another patron has sued McDonald's after his lips were burned when he bit into an extremely hot fried-chicken sandwich. When Frank Sutton bit into his sandwich, scalding grease flew all over his mouth. Seven months

later, the injuries he sustained had still not completely healed. Mr. Sutton sued McDonald's and the local franchisee, alleging that he suffered \$2 million in medical bills, lost wages, and pain and suffering.

A federal district court dismissed the suit, ruling that Mr. Sutton had failed to prove what standard McDonald's was supposed to meet in handling its food and that Mr. Sutton was mostly responsible because he'd failed to exercise reasonable care. The United States Court of Appeal for the Fourth Circuit reinstated the suit, saying that diners clearly "did not expect Sutton's fried-chicken sandwich to contain a hot pocket of grease."

Would you like a 9 mm with your Skinny Vanilla Latte?

By: Victoria Cantore, Esq.

Starbucks, along with several other chain stores, has become the battleground for a heated firearms debate, as gun control advocates gear up against gun owners campaigning to carry holstered pistols in public places. The so-called "open carry" movement is characterized by gun owners carrying unconcealed handguns as they go about their everyday business.

Businesses have the final say on whether individuals can carry unconcealed weapons onto their property. Several retail chains, including Starbucks, Home Depot, Barnes and Noble, and Best Buy, have been coined "OC-friendly," as they've chosen not to ban guns.

In California, it is legal to carry a gun openly in most places without a license, as long as it is unloaded. As a result, growing numbers of people have been turning up at Starbucks, as well as other restaurants and retailers, with guns holstered to their belts to protest what they contend are unfair limits on permits to carry a concealed weapon.

Starbucks, in particular, has complained about being thrust into the debate. The official Starbucks policy is to comply with state open-carry weapons laws. A spokesperson for the company has stated, "The political, policy and legal debates around these issues belong in the legislatures and courts, not in our stores."

NOTABLE BLURBS...

The 9th Circuit upheld references to God on U.S. money and in the Pledge of Allegiance. The court ruled these were not violations of the separation of church and state. *The Wall Street Journal*

■ ■ ■

Lindsay Lohan is suing E*Trade for using her name and likeness without her permission. The source? The 2010 Super Bowl ad featuring the stock-savvy E*Trade baby and his boyfriend-stealing, "milkaholic" mistress Lindsay. *Courthouse News Service*

■ ■ ■

Supreme Court Justices' McDonald's preferences are revealed in a new book called *Little Billy's Letters*. Sandra Day O'Connor prefers a McDonald's Big Mac. Clarence Thomas confessed, "I like the Egg McMuffin. Actually, I like almost everything there." *The Wall Street Journal*

■ ■ ■

A \$657 million settlement has been reached for rescue and cleanup workers who sued after being exposed to contaminants at the World Trade center site after 9/11. The 10,000 plaintiffs will be compensated based on their illnesses and levels of exposure to chemicals while working at the site. *Courthouse News Service*

■ ■ ■

An Orange County couple who tore out the grass in their front yard in an effort to save water were sued by the City for violating a local law requiring residents to cover significant portions of their front yards with live ground cover. *The Wall Street Journal*

■ ■ ■

The University of California must refund about \$38 million to professional degree students who were illegally charged fee increases after they started school in 2003, after a Superior Court judge in San Francisco found the school had broken its promise not to increase student fees during the students' enrollments. *Los Angeles Times*

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NEWS & EVENTS

- Ira Rosenblatt can finally report closing an exclusive distribution transaction in the digital media space. SRC's client estimates that the transaction, which required over a year of negotiations, is valued at more than \$50,000,000.
- In March, Director Gregory Stone was a panelist at the Association of Southern California Defense Counsel's (ASCDC) 49th Annual Seminar held at the Biltmore Hotel in Los Angeles. The keynote speaker at the event was Tom Ridge, assistant to President Bush for Homeland Security.
- Principal Kristi Dean and Senior Associate Leslie Blozan traveled to London in March to meet with members of different syndicates at Lloyd's, London. Ms. Dean and Ms. Blozan specialize in insurance coverage and insurance related litigation and have represented the London market for many years.
- Kudos to Gregory Stone who once again received a Certificate of Appreciation from the Los Angeles Superior Court for his work as a Court-appointed mediator.
- In April, Kristi Dean and Robyn McKibbin will be speaking to members of the Independent Insurance Agents and Brokers of Orange County on the need for proper documentation and how to compete fairly in the insurance industry.
- Mishawn Nolan, Co-Chair of the Intellectual Property, Entertainment and Media Section of the San Fernando Valley Bar Association, presented the "2009 IP Round-Up," consisting of highlights and discussion of the most relevant legal cases and legislative changes in the practice of Intellectual Property Law from 2009.
- Robin McConnell spoke at the 2010 Winning Strategies Workshop held at Bloomington in Sherman Oaks for women business owners. Topics covered business strategy, financial management, human resources, business law, and brand management.
- Congratulations to our own Duke alumna Victoria Cantore, who won SRC's 2010 March Madness Pool. Nice Job!
- Kudos to Amy Lewis and Gregory Stone who successfully prevailed on an Anti-SLAPP Motion, resulting in a complete dismissal with prejudice.

Stone, Rosenblatt & Cha is a business law firm specializing in business transactions and litigation. We represent businesses and their owners in the areas of Litigation, Business Transactions, Entertainment, IP, and Employment.

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