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**DAVID H. RICKS &  
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INLAND EMPIRE  
LAW GROUP**



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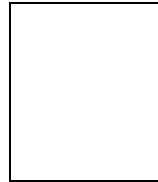


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**Your Inland Empire Legal Professionals' Newsletter**



**Get our Glove Box Accident Information Form, by calling Ashley at 909-481-0100 and request your copy today, or send us an E-mail ([ashleyg@davidrickslaw.com](mailto:ashleyg@davidrickslaw.com)) with your name, address, telephone number and the number of forms you need. You don't want to be in an accident without knowing the information you need to protect your rights and assure your recovery.**



**Your Referral is Our Highest Compliment**

Your referral of our office would be greatly appreciated. Please allow us the opportunity to help those you know, who need an attorney, by giving them the information below with your information on it so we can recognize your contribution to the success of our business. Thank you for your support and thank you for letting us serve the people of the Inland Empire.

**Areas of Business Practice**

- Real Estate Litigation
- Contract Disputes
- Breach of Contract Claims
- Construction Litigation
- Mechanics Lien Claims
- General Litigation
- Employment Discrimination

**Representative Areas of Injury Practice**

- Auto Accidents
- Motorcycle Accident
- Truck Accident
- Dog Bite Injuries
- Slip and Fall Accidents
- Medical Malpractice
- Wrongful Death

I RECOMMEND DAVID H. RICKS & ASSOCIATES AND THE INLAND EMPIRE LAW GROUP

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**Special points of interest:**

- Referral business is welcomed and acknowledged as our greatest compliment
- The Inland Empire Law Group pushes hard to secure proper personal injury recovery for our clients.
- David H. Ricks & Associates primarily focuses on business related matters and litigation of all matters handled by us.
- Did you enjoy your experience with our firm? Tell others about us! Review us on Yelp, Google, or Avvo. Just search— David H. Ricks & Associates or Inland Empire Law Group to leave your review.

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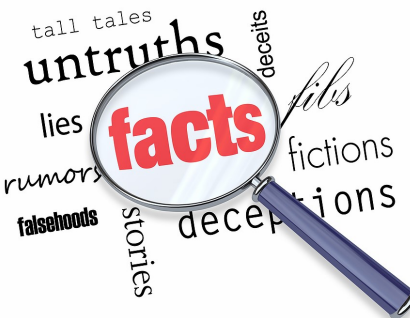
**August 2018, Issue XXVI**

**Case vs. Facts and Law Edition**

**DISCOVERING FACTS OR LAW CAN IMPACT YOUR CASE**

In representing clients, I encounter situations when facts or laws come to light which cut strongly against my client's interests. These facts or laws may impair our ability to help a client recover damages or to properly defend a case brought against a client. I want to share with you examples of how discovering facts or applying law can impact the outcome of one's case.

At the beginning of any case, we seldom have access to all the facts or know all the law which might impact the outcome of the case. In most instances, a client has a certain set of facts she knows, but at the same time, lacks a full understanding of other facts which might be important to the outcome of the case. I often use the analogy of a continuum where on one end of that line is the client's initial version of what occurred, and on the other end is the opposing party's version of those same facts. At times these versions are similar, while in other instances, the perceived facts seem so vastly different you wonder if it is the same case. When meeting with the client, we do not know the other side's version of the facts, so we are looking at the potential claim with the benefit of only one point of view. Thereafter, as we progress through the development of the case, additional facts are exposed to enhance a better understanding into the broader spectrum of information will shape the outcome of the case. These facts come to us in various forms and from multiple sources. Let's take a look at some situations which are real and are dealt with frequently in our practice. For this article, I will focus solely on claims of harm caused by the wrongful conduct of another, rather than breach of contract claims. These claims are called tort claims and include personal injury and wrongful death actions.



history potentially contributes to the immediate injury. Most individuals are focused on the recent accident and the associated pain while forgetting to report on other factors which might be contributing to their pain such as a health condition which existed prior to the most recent injury. While this is understandable, eventually, during the course of the claim, information will be developed from the person's medical history which predate the injury. This information may have a significant bearing on the injury claim itself. Some individuals have little medical history, while others have an extensive history. To reduce the value of the injury claim, the defense insurance company will focus on the medical history to try to explain a reason for the cause of the injuries other than the accident for which it's insured is being sued. Medical history is principally developed through medical records from emergency rooms, doctors' visits, chiropractic care, prior claims of injuries or worker's compensation claims and other generally reliable sources. From the very beginning, a client should anticipate the opposing party's insurance company will obtain medical history information or may already have access to this information. To deflate the impact of potentially negative information, a client must disclose all relevant medical history and help the attorney get ahead of the defense. Our office has experienced many instances when a random note in a medical record about a prior complaint of back injury has made the difference in how we proceed with the case by either settlement or trial. If a client reports never having had any back injury, but the medical records state otherwise, distrust arises and that failure of memory or intentional concealment hurts the client's credibility. To prevent this, we want access to the medical history early on in the case so we are able to prepare the client and prevent a client from inadvertently providing inconsistent information regarding the medical history.

When meeting with the client, we do not know the other side's version of the facts, so we are looking at the potential claim with the benefit of only one point of view. Thereafter, as we progress through the development of the case, additional facts are exposed to enhance a better understanding into the broader spectrum of information will shape the outcome of the case. These facts come to us in various forms and from multiple sources. Let's take a look at some situations which are real and are dealt with frequently in our practice. For this article, I will focus solely on claims of harm caused by the wrongful conduct of another, rather than breach of contract claims. These claims are called tort claims and include personal injury and wrongful death actions.

**UNDISCLOSED MEDICAL HISTORY**

When potential clients meet with my office and describe their injuries, most individuals do not think about their medical history, or how that

information or may already have access to this information. To deflate the impact of potentially negative information, a client must disclose all relevant medical history and help the attorney get ahead of the defense. Our office has experienced many instances when a random note in a medical record about a prior complaint of back injury has made the difference in how we proceed with the case by either settlement or trial. If a client reports never having had any back injury, but the medical records state otherwise, distrust arises and that failure of memory or intentional concealment hurts the client's credibility. To prevent this, we want access to the medical history early on in the case so we are able to prepare the client and prevent a client from inadvertently providing inconsistent information regarding the medical history.

Each client should understand that a pre-existing injury does not eliminate a claim, but it alters the



**The best policy for addressing changing circumstances is for the client and the attorney's office to have a very open and real discussion**



**DISCOVERING FACTS OR LAW CAN IMPACT YOUR CASE- CONT.**

way we approach the injury claim process. A person can recover solely for the injuries caused by the most recent accident, or for the aggravation to a pre-existing condition. It is important to distinguish the current injuries from the past medical history.

**UNDISCLOSED WITNESS INFORMATION**

Following a collision, especially a serious collision, law enforcement will be called to the scene to assess the situation, evaluate the circumstances of the collision and possibly prepare an incident report. The incident report is supposed to contain information from the various drivers as well as witnesses who come forward to report their observations of the collision. Accident reports may take weeks or months to prepare and so a potential client can be meeting with our office without the benefit of having a copy of the police report. We can only access these reports with a client's authorization and only after they are prepared. Once obtained, we take a careful look at the incident report, along with its findings and statements attributed to each person. Sometimes those statements are helpful, other times they are seriously deficient. We often find that witness statements are missing or the description of the collision is inconsistent with the reported accident by the client. When this occurs we have to further evaluate the available information by using a private investigator, speaking with witnesses directly or engaging an accident reconstructionist. This additional information helps us understand the complete picture and the perspectives of others in the collision. Many times there are errors in the incident report or conclusions which don't make any sense. We have to address these errors and correct them early on to prevent them from negatively impacting the case. Sometimes those reports wrongly or rightly place blame on one or more of the drivers. It is our job to decide if this attribution of blame is justified or needs to be proven wrong.

**APPLICABLE LAW WHICH MAKES THE CASE MORE DIFFICULT**

At the commencement of an injury case, we are looking at several key elements we have to prove at trial. These key elements include, the defendant's negligence, whether that negligence caused the injuries suffered by the client, and the seriousness of the

injuries suffered. These are the basic questions that have to be answered in a personal injury case. Thereafter, there are more specific facts which the law requires to be proven to establish liability in certain cases. For example, in a slip and fall case, to impose imposition of liability the law requires the owner or occupant of the property to have had knowledge of the dangerous condition which caused the fall, or that the condition existed for such a period of time that the owner or occupant should have known of the danger and done something to correct the condition. Thus, when dealing with a grocery store slip and fall claim, it is insufficient to merely state that a fall occurred in the store, liability must be established by showing that the grocery store employees were negligent in the maintenance of the store, thereby causing the dangerous condition or allowing it to remain for an extended period of time. This requirement can be a very difficult, but not impossible. We have used store videos, witnesses, and store sweep sheets, etc., to help show the source of the dangerous condition, the length of time it had been present and whether earlier action should have been taken to correct the situation.

In a medical malpractice case, the law requires that the plaintiff, or the victim of the malpractice, have a doctor testify as to the negligent care provided by the defendant doctor to the patient. If a doctor will not testify that the defendant's conduct fell below the standard of care and caused the injury, then the court will not allow a medical malpractice case to proceed against the doctor who allegedly caused the injury, even if the injuries are really serious.

These are a few examples of how a case can change from its inception. The best policy for addressing changing circumstances is for the client and the attorney's office to have a very open and real discussion about these events as they develop. Occasionally, I have to sit down with a client and explain why his case no longer has the potential for a positive outcome as we had hoped for at the beginning of the claim. Other times, we learn supporting facts which improve the likelihood of success for the client. As we proceed with any client's case, challenges will arise, obstacles will be placed in our way, yet we will do our best to meet those challenges, while at the same time, being realistic and honest with each client about the legal and factual hurdles. Working together, client and law firm, we will do our best to achieve your success.

**Recent Success - Back to Back Trials End with Mixed Results**

Between April and May 2018, I had back to back medical malpractice cases in the same courthouse and before the same judge. We were grateful to our clients for their trust in us to present their respective cases to the court and to the two juries. Our first case involved both medical negligence and medical battery. Medical negligence is where a doctor acts below the standard of care in treating a patient, thereby causing injuries. Medical battery is a unique type of case where a doctor either performs a procedure without permission or receives permission for one type of procedure and then performs a substantially different procedure. After about two and a half weeks of trial, the jury returned a substantial high seven figure verdict in our client's favor. Needless to say,

we were thrilled with the outcome for him. Since that verdict, the defense has continued to fight us and has indicated that it intends to appeal the judgment. We believe that in the end, we will be able to uphold the verdict and ultimately prevail for our client.

Our second case involved a surgical error in the performance of a gallbladder removal surgery. The resulting injury was a life long condition which will impact our client's ability to return to work. We engaged the services of excellent medical experts and we presented a very strong case. The defense did the same and in the end it was left to the jury to decide whether the doctor's error was a negligent act or merely an unfortunate consequence of the surgery

which occurred absent negligence. After three weeks of trial, and after several days of deliberation, a 9-3 divided jury, decided that the doctor committed error in the performance of the surgery, but that error did not rise to the level of compensable negligence. They turned my client away from recovering anything for his injuries. This loss really hurt because I knew how much this young father of four needed the financial help.

We work as hard as we can for our clients, but there are no guarantees of success at trial. Those who observed both trials thought we should have been successful in both instances. However, the two different jury panels had the final say and one disagreed with our position.



**We work as hard as we can for our clients, but there are no guarantees of success at trial.**

**How You Can Help Us**

Our work is dedicated to helping clients succeed. Whether it is through a personal injury case, or a business matter, we want the best for our clients. We hope those of you who have been our clients have felt our concern for you. Now we need your help on social media and in other ways. Let others know about your experience with us, in person or through social media such as Yelp, Google+, Facebook, etc. The best client is one referred by a former client.

It is really easy to review us online! You can review us on any of the review platform listed below:

- Yelp
- Avvo
- Google+
- Facebook

If you need help, please call our office and we will walk you through the review process.

**What's David Up To These Days?**

As many of you know, spending time with my family is really important to me. Over the years you have followed some of our family vacations and activities. In June 2016, my joy in family greatly expanded with the birth of my first grandchild. Cooper Jack has brought such joy and happiness to Diane and myself. I heard being a grandparent is wonderful, I just didn't know how wonderful it would be. Cooper lives in Georgia so my time with him is precious when I get to visit him. I look forward to being a part of his life as he grows. I will also say that it is fun watching my daughter transition from a single daughter to a married parent..

A few months ago, I got some more wonderful news. My youngest son Justin, and his wife Janae, are going to have a baby in December. Now my fun will double.

Enjoy your families and build those bonds because the time with your kids passes so quickly.

