FEATURED STORY
Criminal Charges Against Deputy Dismissed After Aggressive Defense
Is it now politically fashionable for elected district attorneys to prosecute peace officers? San Francisco Sheriff’s Deputy Linton Martin was sucker-punched by an inmate. When the dust cleared, prosecutors leveled criminal charges against client Deputy Martin for assault under color of authority. RLS attorney Nicole Pifari recounts her aggressive defense of Deputy Martin, resulting in full acquittal.

Q&A
PUBLIC EMPLOYEE PENSIONS AND THE CALIFORNIA SUPREME COURT
WITH TIMOTHY K. TALBOT

TABLE OF CONTENTS

FEATURED STORY
Criminal Charges Against Deputy Dismissed After Aggressive Defense 2

LEGAL DEFENSE
Post-Interrogation Discovery Rights 4

LABOR
RLS Wins Right of Union to Bring Collective Action 5
How to Respond to an Employer’s Claim of Overpayment 7

INJURY RESOURCE
A Law Enforcement Officer’s Guide to Restitution 8

VICTORIES, VERDICTS & SETTLEMENTS 10

Q&A 12

ANNOUNCEMENTS 13

RLSLawyers.com
FEATUERED STORY
Criminal Charges Against Deputy Dismissed After Aggressive Defense

Has filing charges against cops become politically fashionable for elected district attorneys?

Nicole Pifari

For nearly two years I tried to tell San Mateo prosecutors they needed to drop the charges against San Francisco Deputy Linton Martin accusing him of engaging in a so-called “crime.” I told them he acted in self-defense. I told them their evidence conflicted and made no sense. They refused to listen, asserting they cannot give “special treatment” to law enforcement officers.

This is a phrase we’re hearing a lot these days from prosecutors: “we do not give special treatment to cops.” “Special treatment,” however, is not the issue. Based on our experience, at least here in the Bay Area, law enforcement officers DO get “special treatment” from prosecutors - in the form of being criminally charged for things no other person would ever be charged for.

The charges against Linton Martin are a perfect example. He was working at the San Bruno jail (a San Francisco facility located within San Mateo County), moving two inmates who were handcuffed together with a single set of cuffs. Without warning, one of the inmates punched him in the head with stunning speed and force. The blow instantly created a goose-egg swelling on his head that one witness would later describe as “just like in Looney Tunes.” As fellow deputies arrived to assist with getting the attacker into cuffs, Deputy Martin felt the inmate tense up under his hands. Deputy Martin was the only deputy who knew about and experienced the violent assault that had just occurred moments prior. Given the sudden muscle tension he felt under his hands, he knew another assault was coming and he acted to defend himself and others.

What happened next was described differently by each of the nine people who were crammed into the hallway. This is not uncommon after a stressful event because each witness has a different focus in the moment, and thus emerges with a unique memory. Of course, the D.A.’s office concluded that the multiple deputies whose stories were supportive of Deputy Martin’s force must be lying, and those few who feared they might have witnessed excessive force should be believed without hesitation.

The result was that Deputy Martin found himself the subject of a criminal jury trial, accused of assault under color of authority.

During the trial, the prosecutor argued that Deputy Martin acted maliciously and out of anger when he punched the handcuffed inmate in the face five times. But the evidence contradicted the prosecutor’s narrative. The prosecutor was unable to explain why the inmate didn’t recall being punched, had no injuries, and never complained about any pain. The prosecution based its entire case on two faulty witnesses who thought they had seen Deputy Martin throw punches, even though four other deputies and the “victim” himself seemed to dispute this.

If my client wasn’t a cop, this case would never had been filed."
explain how a man the size of Deputy Martin could possibly punch someone multiple times in the face, leave no injury, and leave the inmate unaware he’d been punched at all. The criminal investigator provided no viable explanation to the jury for his failure to account for the inmate’s assault on the deputy as part of his investigation analysis.

The judge saw clearly what our defense demonstrated. The prosecution’s case had absolutely no proof. Using a power rarely utilized, the judge dismissed the charges and entered a judgment of acquittal. The case never got to the jury. Although they never had a chance to officially cast their votes, it appeared that the jurors agreed, as they hugged Deputy Martin in the hallway, shook his hand, and thanked him for his service.

So, exactly why did the D.A.’s office try to convict this deputy? A major reason was the overtly biased internal “criminal” investigation spearheaded by the San Francisco Sheriff’s Department. The internal investigator assigned to this case began with a pre-determined result already in mind, and used leading questions to elicit the desired responses from various witnesses. Such methods led to misleading witness statements with glaring holes left by unasked questions. The administrative investigator completely failed to explore the concept of self-defense, and didn’t ask a single question of any witness about the violent assault that occurred seconds earlier. None of the witness officers had counsel present to round out questioning or flesh out the missing facts.

Each time we met with prosecutors I tried to point out these issues, but they refused to back down, telling me they “have no bargaining power” because the decision to charge my client came “straight from the top.” The San Mateo District Attorney’s Office has had a reputation for being very thorough and objective when considering criminal charges against cops for excessive force. That reputation was absent from this case, however, as demonstrated by the District Attorney’s statement to a local newspaper that “[the inmate] hit the deputy, but we have to pick somebody to prosecute and we’ve selected the deputy sheriff…”

We fear that the D.A.’s office’s insistence on taking this case to trial is a troubling sign of the times, and a chilling vision into the immediate future. What we heard from San Mateo prosecutors has become much more prevalent in law enforcement cases: “we can’t give cops special treatment.” Of course, that sentiment misses the mark entirely.

Luckily, in the case of Linton Martin, we were able to demonstrate the fallacies of the prosecution’s case: conflicting stories, no injury, and an inadequate investigation. A year later (last month) the ordeal for Deputy Martin finally came to an end as the Department concluded the administrative misconduct allegations were not sustained. Justice ultimately prevailed, but it doesn’t change the fact that Linton Martin had to live through a jury trial, and three years of essentially working in a closet (the control room) because the Department refused to let him have inmate contact.

The scary thing is, we believe Deputy Martin was charged because it is currently fashionable in many counties for district attorneys to bring criminal cases against law enforcement officers. After all, why should elected officials expose themselves politically when they can just defer to the results of a jury trial? Even if they lose, they retain the ability to tell the vocal minority “I prosecute cops.” And if future D.A. races result in the public electing cop-hating prosecutors such as Chesa Boudin in San Francisco, we are likely going to see a lot more of these types of prosecutions in the future. If and when those occur, RLS, as
always, will be proud to serve as our client’s ultimate backup.

About the author
Nicole Pfari is a senior associate with the firm’s Legal Defense Group. She represents clients in criminal and administrative matters, and responds to critical incidents. Prior to coming to RLS, Nicole was a police officer for the City of Missoula, Montana.

LEGAL DEFENSE
Post-Interrogation Discovery Rights
POBRA affords peace officers significant discovery rights prior to submitting to a subsequent administrative interrogation. Be aware of and utilize this right.

Justin E. Buffington

When ordered to appear for an internal affairs interview as a subject officer, it is never a level playing field. Subject officers are usually interviewed last, meaning the investigator already knows what witnesses have said, what the videos purport to reveal, and what the complainant has claimed. Many employing agencies do not allow officers access to anything to refresh their recollection prior to an interview, or, what access agencies do allow is not sufficient to paint a full picture as to what transpired in a given incident.

However, officers should be aware that they are entitled to significant discovery rights if they are compelled to attend a second, subsequent interrogation. In Santa Ana Police Officers Association v. City of Santa Ana (2017) 13 Cal.App.5th 317, the court of appeal held that after an officer has been interrogated by their department, Government Code section 3303(g) requires that they be provided with “all reports and complaints concerning the alleged misconduct” prior to any subsequent interrogation.

It is important for officers to assert this right prior to a subsequent interrogation, as the term “reports and complaints” has been given an expansive definition. In San Diego Police Officers Association v. City of San Diego (2002) 98 Cal.App.4th 779, the court of appeal held that “reports and complaints” encompass all materials that may contain reports of or complaints concerning the misconduct that is the subject of the investigation. This includes pre-interrogation access to the investigators’ notes or tape-recorded interviews. (Id. at p. 784 [“[t]o the extent that an investigator’s notes or tape-recorded interviews may contain reports or complaints made by other persons concerning the misconduct, [Government Code section 3303(g)] requires their production.”])

Therefore, under Santa Ana, if a subject officer is compelled to attend a second interrogation by their employer for the same administrative investigation, that officer is entitled to receive “all reports and complaints” “concerning the misconduct” in advance of the second interrogation. Thus, prior to the follow-up interview, that officer should demand access to all audio recorded statements of witnesses or fellow subject officers, body camera video germane to the alleged misconduct, surveillance video, the investigator’s notes, any reports concerning the misconduct, and the complaint itself.

The rights and protections afforded under section 3303(g) apply whenever an officer is made to appear for an interrogation that could lead to punitive action by order of their employer, which includes interrogations conducted by local police agencies.
Post-Interrogation Discovery
Rights (cont.)

commissions and civilian review boards. Thus, where an officer has been interviewed by their department, and a police commission or civilian review board seeks to compel another, subsequent statement from the officer concerning the same incident giving rise to the misconduct allegations, that officer has a right to receive the full panoply of post-interrogation discovery discussed in Santa Ana and San Diego.

The rights afforded under section 3303(g) are important, and can greatly assist an officer in refreshing their recollection and otherwise providing greater insight into the often spurious allegations that have been made against them. For these same reasons, this right should be liberally enforced and jealously guarded.

About the author

Justin E. Buffington is a partner with the firm’s Legal Defense Group. He represents clients in criminal and administrative matters, and responds to critical incidents.

LABOR

RLS Wins Right of Union to Bring Collective Action

RLS convinced the Court of Appeal that employer’s attempt to insist each affected member file an individual grievance – for identical claims – is absurd.

Brian P. Ross

A grievance process between an employer and an employee can often be a trap for the unwary. While they can provide an informal method of resolving issues that might otherwise require expensive and lengthy litigation, they can also empower an employer to defeat or reduce the value of meritorious claims by creating procedural hurdles and shortened statutes of limitations.

Another problem with some grievance procedures is that they do not all allow for a single grievance to cover multiple employees – known as “class” grievances. In the absence of language permitting class grievances, employers may claim that each individual with a dispute must bring his or her own individual grievance, notwithstanding the fact that multiple employees are affected by a single employer decision.

Although the doctrine of “exhaustion of administrative remedies” generally requires an employee to go through the grievance process before he or she is entitled to seek relief in court, there are exceptions to the doctrine which free an employee from having to go through the administrative grievance process. One such exception is where the process does not provide for an adequate remedy. (See Campbell v. Regents of Univ. of Cal. (2005) 35 Cal.4th 311, 322.)

In Association for Los Angeles Deputy Sheriffs (ALADS) v. County of Los Angeles (2019) 42 Cal.App.5th 918, a published opinion by the Second District Court of Appeal, RLS Partner Jacob Kalinski and I successfully argued that a grievance procedure that does not allow for class
RLS Wins Right of Union to Bring Collective Action (cont.)

grievances is not an adequate remedy under the law. Consequently, a union litigating a dispute on behalf of its members need not show that each individual has exhausted the grievance process. In that case, the Association for Los Angeles Deputy Sheriffs (“ALADS”) alleged that the County of Los Angeles had violated two “me too” clauses in its MOU by failing to provide increases granted to another County union. Initially, ALADS filed two grievances along with two of its board members, one for Deputy Sheriffs, the other for District Attorney Investigators. However, because the ALADS MOU did not expressly provide for class grievances and did not expressly allow ALADS to file a grievance in its own name, the County asserted that only individual relief for the two board members could be obtained under the filed grievances.

In response, RLS initiated two separate actions: a lawsuit was filed in Superior Court alleging breach of contract, and approximately 7,800 identical individual grievances were filed on behalf of each ALADS member, seeking to enforce the “me too” clauses. The County subsequently moved to dismiss the complaint in Superior Court, contending that ALADS could not circumvent the exhaustion requirement by filing suit until all 7,800 members had completed the grievance process, including arbitration, even though none of these arbitrations would have been binding. The trial court agreed with the County and dismissed the lawsuit.

RLS appealed, pointing out the absurdity of requiring 7,800 individual grievances that would all address the same issue, a process that would take approximately 21 years to resolve if the non-binding arbitration hearings which completed the grievance process were held every day. The Court of Appeal agreed, holding: “Without the County’s agreement to accept the result of any individual arbitration as binding on others, there could be no classwide resolution at the administrative level.” Moreover, case law “establish[es] that administrative relief is not adequate in a class or representative action if it does not apply to the class.”

This case presents a significant tool to fight back against grievance procedures requiring each affected employee to file individual grievances which exist only to limit the employer’s liability. Armed with the ALADS decision, if a union is faced with an employer who will not allow for meaningful grievance procedures designed to adequately address disputes affecting multiple employees, the union can let the employer know that this position will only result in such matters proceeding directly to Court. The case is also a great reminder to ensure that your association’s collective bargaining agreement allows for the association itself to file grievances on behalf of multiple employees.

About the author

Brian P. Ross is a senior associate with the firm’s Labor Litigation Group in southern California. Brian’s practice primarily involves writs of mandate, appellate litigation, and general labor and employment legal issues.
LABOR

How to Respond to an Employer's Claim of Overpayment

That's not your money! What to do when your employer claims you have been mistakenly overpaid.

Jacob A. Kalinski & Brian P. Ross

You’ve likely seen the situation before. The public employer makes an error in calculating an employee’s paycheck causing the employee to be overpaid. When the employer figures out the mistake, it attempts to recoup the money from the employee who had no idea he was being overpaid because his paycheck looks like it was written in a foreign language. Inevitably, the employer will attempt to recoup the funds, often claiming it is compelled to do so by California Constitution Article XVI, Section 6, which prohibits gifts of public funds.

Although there is no dispute that an employer generally has the authority to recover funds paid in error, employers wishing to collect mistaken overpayments must do so within the law. Importantly – an employer is generally not allowed to unilaterally, without an employee’s consent, deduct from an employee’s paycheck to recover overpaid funds. (Barnhill v. Robert Saunders & Co. (1981) 125 Cal.App.3d 1, 6.) As the Barnhill court explains, “[p]ermitting [an employer] to reach [an employee’s] wages by setoff would let it accomplish what neither it nor any other creditor could do by attachment….“(Id. at p. 6.)

However, this issue can be further complicated by language in an MOU which purports to grant the employer the ability to unilaterally deduct from an employee’s paycheck.

Labor Code section 221 provides, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” There is an exception to this rule contained in Labor Code section 224 for certain unilateral deductions authorized by a collective bargaining agreement. However, as the Public Employee Relations Board (“PERB”) explained in Berkeley Council of Classified Employees v. Berkeley Unified School District (“Berkeley Council”) (2012) PERB Decision No. 2268, this exception is limited: “[t]he only exception [to Labor Code section 221] permitted solely on the basis of an express authorization in a collective bargaining or wage agreement is a deduction for health and welfare or pension plan contributions.” (Id. at p. 9.)

Public employers may contend that Social Services Union v. Board of Supervisors (“Social Services”) (1990) 222 Cal.App.3d 279 supports their position. In that case, the employer authorized a resolution increasing the health insurance premiums for those electing dependent coverage and, when impasse was reached during collective bargaining, the employer unilaterally deducted retroactive payments from employees who were still electing dependent coverage. (Id. at p. 283.) The Social Services court held, “[u]nder the circumstances presented here, public policy would not be promoted by limiting the [employer’s] recourse to the filing of individual lawsuits against each of its affected employees. (Id. at p. 288.) In reaching its decision, the court cited to Labor Code section 224 which, according to that court, “expressly authorizes agreements between public employees and their employers for the payment of health care costs through payroll deductions.” (Id.
How to Respond to an Employer's Claim of Overpayment (cont.)

at p. 287.)

It is important to realize that Social Services does not apply to unilateral deductions for paycheck errors. That case merely permitted payroll deductions for health care costs when expressly authorized by an agreement, a limited purpose expressly provided for in Labor Code section 224.

Thus, in a recent case in Los Angeles County Superior Court, RLS sued and obtained a judgment in favor of two individuals against whom the employer had unilaterally deducted from their paychecks an alleged overpayment pursuant to an MOU provision. The Court stated in its decision, “[i]n sum, the general prohibition of section 221 applies to the overpayments, section 224 provides no applicable exception, and [the agency has] a ministerial duty to comply with section 221 by pursuing the collection of overpayments through the Wage Garnishment Law.” Moreover, in pursuing such collection efforts, agencies must be mindful of relevant statutes of limitation, including the three-year statute of limitations in Code of Civil Procedure section 338 for mistake.

About the authors

Jacob A. Kalinski is the lead partner of the firm’s Labor Litigation Group in southern California, where he oversees the firm’s representation of employee associations and individual clients in various types of civil litigation. He is also an experienced negotiator, having negotiated numerous collective bargaining agreements to improve clients’ wages and working conditions.

Brian P. Ross is a senior associate with the firm’s Labor Litigation Group in southern California. Brian’s practice primarily involves writs of mandate, appellate litigation, and general labor and employment legal issues.

INJURY RESOURCE

A Law Enforcement Officer's Guide to Restitution

Victims of a Crime are Entitled to be Made Whole Through "Restitution" Including Peace Officers Who Have Suffered Economic Loss on Duty.

Nicole R. Castronovo

An unfortunate reality of law enforcement work is that many officers will find themselves the victims of a crime at some point in their careers. If you find yourself in such a situation, it is important to know your rights. Broadly speaking, they include: (1) representation by counsel for any interviews you may be requested to participate in after a critical incident; (2) representation for any civil suit that could arise out of the incident; and (3) representation for any restitution hearing that arises out of criminal charges against the defendant who assaulted you. This article will focus on the right you may have to restitution if you are the victim of a crime.

Who Can Get Restitution?

The direct victim of a crime who has suffered economic loss as a result of that crime may receive restitution (Penal Code section 1202.4(a)). In addition, the indirect victims of a crime, such as a
spouse, may also be eligible to receive restitution. *(Santos v. Brown* (2015) 238 Cal.App.4th 398, 404.)

**Can I Still File a Personal Injury Suit If I am Awarded Restitution?**

A victim of a crime can receive an award of criminal restitution and still file a successful personal injury lawsuit in some circumstances. Vice versa, the settlement of a civil lawsuit does not waive a victim’s right to restitution. *(People v. Clifton* (1985) 172 Cal.App.3d 1165, 1168.) In other words, a crime victim may have multiple avenues to seek recovery for their damages.

**What Can You Be Awarded?**

Restitution covers a wide breadth of economic damages under Penal Code section 1202.4(f). This can include reimbursement for past and future wage loss, property damage, along with past and future medical bills. For immediate family members of a victim, restitution can include the loss of future economic support. *(People v. Giordano* (2007) 42 Cal.App.4th 644, 657.)

Restitution traditionally does not cover pain and suffering. If you have been involved in an incident where you have experienced pain and suffering you should consult with a personal injury attorney to explore pursuing a civil lawsuit.

**What Evidence Do You Need?**

Sometimes law enforcement officers may not have documents to support every loss they have suffered. For example, you may not have a receipt for the uniform or holster you bought years ago. Under the law, a victim can provide estimates for their damages. *(People v. Goulart* (1990) 224 Cal.App.3d 71, 82-83.) However, a court will be more likely to award damages where the victim can provide receipts or bills evidencing the claimed loss.

**What Happens If You Are Awarded Restitution?**

If you are awarded restitution by court order, it will be unlikely that you will receive a lump sum from the defendant. However, the court may order the defendant to make payments to you during the term of their probation.

In the event a defendant owes you money and fails to make payment, there are a few ways you can collect, such as enforcing the restitution order as a civil judgment, seeking wage garnishment and filing a lien on the personal property of the person who failed to pay restitution.

In conclusion, officers should do their best to maintain records of the damages that they incur when they have been the victim of a crime. Officers in these sorts of difficult situations should also reach out to attorneys who can aid them through the process. It is important that officers be advocates for themselves when they are the victims of crime, in the same way they are advocates for the public they assist.

**About the author**

Nicole R. Castronovo is an associate with the firm’s Legal Defense Group and Injury Resource and Litigation Group. She represents clients in criminal and administrative matters, and responds to critical incidents. Nicole also works as a civil litigator in a variety of areas, including industrial accidents, premises liability, and auto accidents.
**Victories, Verdicts, and Settlements**

**Whistleblowers Claim Air District Destroyed Public Records of Pollution**

*Bachmann, et al. v. Bay Area Air Quality Mgmt District*

| Settlement: $4,000,000 | RLS Attorney | Eustace de St. Phalle |

Whistleblowers Michael B. and Sarah S. claimed the Bay Area Air Quality Management District illegally destroyed documents critical to the District’s ability to monitor, regulate, and enforce air quality for the Bay Area and then terminated them when they brought their concerns to executive management.

The Bay Area Air Quality Management District regulates sources of air pollution within the nine San Francisco Bay Area Counties, and inspects and enforces air pollution regulations against refiners and major polluters. Michael B. was an IT manager in charge of document and record retention. Sarah S. was assigned to Michael B.’s team.

Michael’s team was tasked with moving the District’s records and creating an electronic database and software program to manage the District’s historic records used for enforcement and management of the Bay Area’s air quality control. Our clients claimed they witnessed records, both paper and electronic, being destroyed in violation of District policy and state and federal law. They claimed failure to follow the law and record retention policy caused documents relevant to the proper enforcement of pollution standards to be destroyed. They alleged that after bringing these concerns to executive management at BAAQMD nothing was done to protect the records, Sarah and Michael were retaliated against, subject to bogus investigations, and ultimately fired. As part of the settlement of Michael’s claims, his status was changed to retired.

The District denied any wrongdoing and denied plaintiffs’ assertions that any records were improperly destroyed.

**Firefighter Suffers Career-ending Injury in Traffic Accident**

*Thompson v. Parnow*

| Settlement: $1,200,000 | RLS Attorney | Andrew S. Miller |

On September 25, 2015, Travis Thompson, then 28 years old, was employed as a seasonal firefighter. While driving north on Route 101, his Honda Civic was rear-ended by defendant Peter Parnow. The next day, Travis began experiencing neck pain. After a period of conservative treatment, he was ultimately diagnosed with a C5-6 disc injury and underwent a disc replacement surgery.

Plaintiff claimed that the impact caused the disc injury. His treating orthopedic surgeon, Paul Slosar, M.D., recommended disc replacement surgery after conservative measures, including chiropractic care and pain injections, failed.

Though the surgery resolved the radicular component of the pain, plaintiff continued to suffer axial pain which limited his cervical mobility. He was unable to continue as a seasonal firefighter. Plaintiff alleged that he would have been able to continue working towards a full time firefighting position had he not been injured. A claim was made for impaired earning capacity.

Defendant claimed that the forces of the impact were insufficient to have caused the injury and that the plaintiff’s cervical pathology was either pre-existing or related to a construction injury which occurred after the accident. The defendant asserted that plaintiff would not have been able to become a full time firefighter even if the accident had not occurred.

Defendant agreed to settle for $1.2 million.
Victories, Verdicts, and Settlements (cont.)

Unlicensed Truck Operator Causes Collision in Highway Construction Zone

Valmore Courtney, Jr. v. California Department of Transportation, et al.

Settlement: $2,300,000

RLS Attorneys
Joseph R. Lucia
Eustace de Saint Phalle

Defendant California Department of Transportation ("Cal Trans") contracted with Defendant DeSilva Gates Construction L.P. (DeSilva Gates) to perform a highway improvement construction project on I-580 near the “Altamont Pass” in Livermore, California. Defendant Mike Boyd Water Trucks was subcontracted to provide water trucking services for the project. Defendant Musu Bennett was hired by Defendant Boyd to drive a large water truck and deliver water to the construction zone.

Mr. Courtney was traveling eastbound on I-580 in the #1 one lane (far left, near the center median). Defendant Bennett was traveling in the #4 lane (far right, near the shoulder). She observed a construction “cone zone” and figured that was where she needed to enter in order to get to the construction zone. The Defendant alleged that she looked in her mirrors and did not see cars close to her. She switched lanes into the #1 lane and entered the path of Mr. Courtney’s vehicle. Mr. Courtney attempted to avoid the collision by honking his horn and slamming on his brakes, but it was too late. Defendant Bennett collided with the right front portion of Mr. Courtney’s vehicle causing his vehicle to spin, and then flip.

It was discovered, that Defendant Bennett was operating a large water truck with a suspended California driver’s license. Plaintiff alleged that Defendants Cal Trans, DeSilva Gates and Mike Boyd Water Trucks were liable as hirers of Defendant Bennett because none complied with the duty to hire a properly licensed employee/subcontractor. It was further alleged this type of work carried a “peculiar risk” (strict liability under the peculiar risk doctrine) and therefore the Defendants were required to prepare and institute a safe traffic control plan, provide specific instructions on how to access (enter or exit) the construction zone, and post proper signage and warnings in and around the entrance of construction zone to advise workers and warn motorists of trucks entering and exiting the highway. Plaintiffs were able to prove that the Defendants failed to do any of these requirements.

As a result of the collision, Mr. Courtney suffered a right hip/pelvis fracture, which required an internal fixation with plates and screws. Mr. Courtney was also diagnosed with right carpal tunnel syndrome, right hip joint pain, and a right knee condition that has required injection therapy.

Mr. Courtney missed a few months of work, but went back to working full time as a law enforcement officer. Plaintiff’s alleged that Mr. Courtney would require a total hip replacement in the future that would leave him incapable of continuing his career in law enforcement. Defendants’ disputed that he needed a hip replacement and even if one was required, it would actually improve his condition and that he would still be able to fulfill his work life expectancy in law enforcement.

The matter resolved for $2,300,000, which included $50,000 being paid to Defendant DeSilva Gates Construction L.P by Defendants Mike Boyd Water Trucks, Robert Michael Boyd and Kathleen Diane Boyd as part of an indemnification agreement.
Q&A

Public Employee Pensions and the California Supreme Court

As most of our clients are aware, RLS Principal Timothy K. Talbot argued before the California Supreme Court on May 5, 2020 in the matter of Alameda County Deputy Sheriffs’ Assn., et al. v. Alameda County Employees’ Retirement Assn. (“Alameda”). Alameda is one of the most important public employee pension cases to be considered by the Supreme Court in the last 25 years, and concerns the impact of the Public Employee Pension Reform Act (PEPRA) on existing pension rights. The Supreme Court has not yet issued a ruling, but is expected to do so by August 2020.

Q: What is the “California Rule” and will the Supreme Court uphold it?

A: The “California Rule” is a pension law doctrine establishing generally that pension benefits promised to public employees vest upon commencement of employment and cannot be impaired by subsequent legislative action absent a comparable new (off-setting) economic advantage. In practice, this means the pension benefits promised to public employees when they accept employment are guaranteed and constitutionally protected from reduction (in most cases).

Unfortunately, it is not known how the Supreme Court will rule on the continuing validity of the California Rule. Based on the justices’ questions during oral argument, it tentatively appears – though it is by no means certain – that the Supreme Court will not completely modify the doctrine to the detriment of public employees. However, it is expected that the Supreme Court will define its applicability with more specificity, which may ultimately narrow its practical effect.

Q: What pension benefits are at issue in Alameda?

A: The primary question in Alameda is what items of compensation can be included in the calculation of pension benefits. The specific pay items at issue included on-call pay, annual leave cash-outs and terminal pay (vacation payouts upon retirement). Prior to PEPRA, the County retirement associations in the case allowed such pay items to be included when calculating an employee’s pension benefit. Following the enactment of PEPRA, they excluded the pay items for legacy employees, which prompted the lawsuits. Legacy employees argued that the California Rule prevented the retirement associations from excluding the pay items because they were included as part of the promised pension benefit. The State of California and involved employers, on the other hand, argued that such benefits were never allowed, even before PEPRA, and thus the retirement associations acted unlawfully in promising to include them in the calculation of pension benefits. Both the State of California and involved employers urged the Supreme Court to invalidate the California Rule and redefine the concept of vested pension benefits.

Q: What is “Estoppel” and what will happen if the Supreme Court allows it?

A: “Estoppel” is an equitable doctrine that prevents an injustice by stopping wrongdoers from benefiting from their own wrongful conduct at the expense of others. In this case, legacy employees argued that, even if the retirement associations unlawfully promised that the disputed pay items
would be included in the calculation of their pension benefits, the retirement associations should be “estopped” from excluding the pay items. Indeed, thousands of employees relied on direct promises – maintained for more than 10 years – by both their employers and the retirement associations that the calculation of their pension benefits would include the disputed pay items. Those employees had no reason to suspect their employers and the retirement associations would continually misrepresent the value of their promised pension benefits and falsely induce them to forego other employment opportunities and plan their lives in reliance on those misrepresentations. The lower appellate court allowed estoppel for legacy employees who detrimentally relied on those promises. If the Supreme Court agrees, a closed group of public employees in three counties will be afforded pensions based on the inclusion of the promised pay items even though PEPRA precludes their inclusion, because of the injustice that would result to legacy employees who were induced to devote their professional lives to County employers based on unlawfully promised pension benefits.

About the author

Timothy K. Talbot is a principal at RLS and manages the firm's Sacramento office. Tim is a member of the Collective Bargaining Practice Group and manages the Labor Litigation Group where he oversees the firm's representation of public and private sector employee associations and individual clients in litigation.

Coronavirus Guide
for
Public Safety Employees

RLSLawyers.com/Virus

RLS Symposium

We are excited to announce that our annual Labor Symposium and Protecting Cops Symposium will be combined into a single two day event for 2021.

Attendees will have the option to sign up for one or both days.

Save the Date
Jan. 28 - Jan. 29, 2021

Location
Reniassance Newport Beach Hotel
4500 MacArthur Boulevard
Newport Beach, CA 92660
California’s full-service law firm specializing in the representation of public employees. Protecting all aspects of your career in the courtroom, at the bargaining table, and in the media. Premier advocacy for the legal, strategic, and political challenges facing public servants.

SERVING ALL OF CALIFORNIA
- PLEASANT HILL
- LOS ANGELES
- SACRAMENTO
- SANTA ROSA
- ENCINO
- ONTARIO
- SAN FRANCISCO
- TRUCKEE
- FRESNO
- SANTA MONICA

NOTICE: Making a false or fraudulent workers’ compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

24 HOURS A DAY
Northern California
866.964.4513
Southern California
310.393.1486