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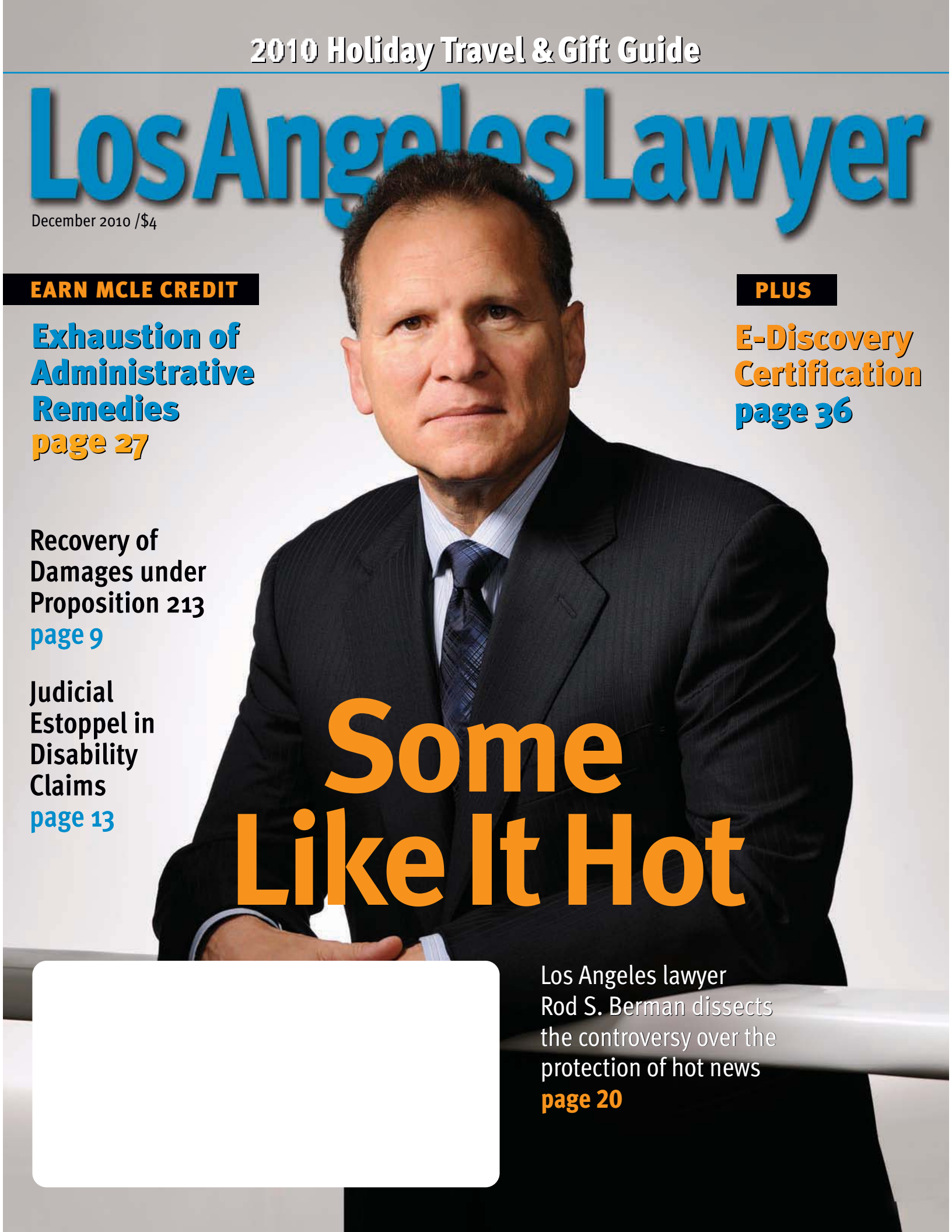

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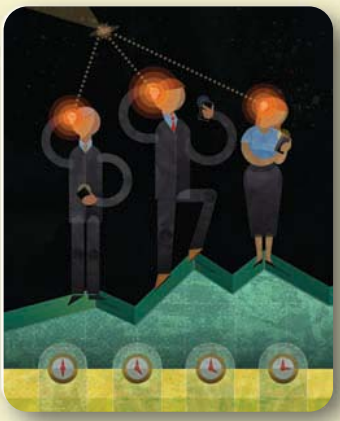

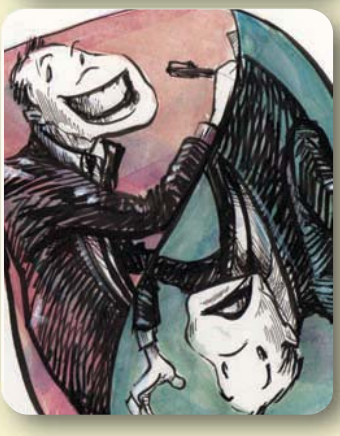

FEATURES

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DEPARTMENTS

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BY ROBERT GLASSMAN

The Expansive Reach of Proposition 213

ON NOVEMBER 5, 1996, California voters passed Proposition 213, the Personal Responsibility Act of 1996. The measure was designed to prohibit the recovery of noneconomic losses—such as pain, suffering, physical impairment, and disfigurement—resulting from car accidents under certain situations while still allowing the victims of those accidents to pursue economic losses—including lost wages, medical expenses, and property damage.

Proposition 213 was particularly aimed at drivers subsequently convicted of driving under the influence as well as uninsured drivers. Neither drunk nor uninsured motorists are permitted to bring an action for noneconomic losses against another driver at fault for an accident arising out of the operation or use of a motor vehicle. The law also prohibits a person convicted of a felony from suing to recover any losses suffered while committing the crime or fleeing from the crime scene if those losses resulted from another person's negligence. An exception to these restrictions is that if an uninsured driver is injured by a driver subsequently convicted of a DUI, the uninsured driver may still recover noneconomic losses.[1]

Since its enactment, Proposition 213 has evolved from a legislative effort to increase the number of insured drivers into a practically all-encompassing prohibition of noneconomic damages in cases involving an injured plaintiff without car insurance. In light of the ever-expanding number of scenarios to which courts are applying Proposition 213, plaintiffs' lawyers should know the pitfalls before filing cases on behalf of uninsured motorists.

Chude v. Jack in the Box, Inc., a case decided this year, is illustrative. Teckla Chude suffered second-degree burns and skin discoloration to her buttock and thigh after being handed a cup of hot coffee with an unsecured lid at a local Jack in the Box drive-through window. Her injuries prevented her from working, sitting, or driving for nearly two weeks.

Thereafter, Chude sued Jack in the Box for negligence and sought both economic and noneconomic damages. The trial court granted Jack in the Box's motion for summary adjudication on Chude's noneconomic damages claim. On appeal, the Second District Court of Appeal affirmed the lower court's decision, holding that Chude was barred from recovering noneconomic damages for one reason alone: She had no car insurance at the time of the incident.[2]

Lawsuits challenging Proposition 213's constitutionality were filed almost immediately following its passage. On December 17, 1996, the Congress of California Seniors and other groups representing consumers, taxpayers, and citizens as well as three individuals brought an action in state court for an injunction and for declaratory relief against Charles Quackenbush, California's insurance commissioner at the time. The plaintiffs alleged that Proposition 213 violated equal protection and due process rights under the U.S. and California Constitutions, burdened the right to travel, and denied the targeted drivers the First Amendment right to petition government for redress of grievances.[3] The court held that the law had a rational basis for classifications among personal injury plaintiffs and found that the insurance related-penalties were constitutionally permissible travel regulations.[4] Later cases also held that the law did not violate due process or equal protection rights.[5]

Courts also began interpreting Proposition 213's operative provisions. Upon its passage, Proposition 213 was codified as Civil Code Sections 3333.3 and 3333.4. Unlike other statutes, however, these sections do not define certain key words and phrases contained in their provisions. Courts thus found themselves with the responsibility of interpreting critical words in the statute such as "operation" and "use" and "arising out of." The result has been an ever-growing expansion of the law's applicability. Indeed, while the law may have once been deemed a measure "remedying an imbalance in the justice system that resulted in unfairness when an accident occurred between two motorists-one insured and the other not,"[6] it has since become a protective mechanism utilized by a variety of defendants other than insured motorists.

Broad Interpretations

This progression is attributable to the courts' broad interpretations of the words "operation" and "use." In particular, courts faced with the question of whether an injured and uninsured plaintiff's lawsuit is an "action to recover damages arising out of the operation or use of a motor vehicle" under Section 3333.4(a) have typically held that "operation" and "use" encompass more situations than simply driving the car. For example, the court in *Cabral v. Los Angeles County Metropolitan Transportation Authority*[7] found that "operation" does not require that the vehicle be in motion or even that its engine be running, and "use" in the context of automobiles extends to any activity utilizing the vehicle. Therefore, according to the *Cabral* court, an uninsured motorist's act of opening the door of a parked vehicle to exit was "operation" or "use" of a motor vehicle within the meaning of the statute.

Similarly, courts have liberally construed "arising out of" so that the phrase is not limited to injuries stemming from accidents occurring between two motorists. In *Harris v. Lammers*, an extreme example, an uninsured motorist was struck in a parking lot while she was standing outside her vehicle and handing balloons to her children inside the vehicle. Her resulting personal injury action was determined to be one "arising out of the use of a motor vehicle," within the meaning of Section 3333.4,[8] and thus she was precluded from recovery.

These expansive definitions for Proposition 213's language have led to the denial of recovery for uninsured plaintiff motorists in cases extending far beyond accidents occurring between two motorists. Cases involving dangerous conditions are prime examples. Plaintiffs suffering injuries attributed to negligently maintained or designed roadways have not been compensated if they were uninsured while oper-

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ating their vehicles. For example, in *Day v. City of Fontana*,[9] an uninsured motorcyclist sued a city and county regarding overgrown vegetation near an intersection where the collision occurred in which the motorcyclist was injured. The motorcyclist, alleging that the vegetation was a nuisance and a dangerous condition of public property, sought to recover damages "arising out of the operation or use" of the motorcycle. The court held that Proposition 213 prevented recovery for injured owners of uninsured vehicles, including the uninsured motorcyclist, from recovering noneconomic damages against the city and county.

Some courts have even precluded an insured spouse from recovering noneconomic damages for loss of consortium of an uninsured spouse under Proposition 213. For example, in *Honsickle v. Superior Court*, the husband owned and insured his vehicle, but at the time of the accident the car was being driven by his wife, who was excluded from the insurance policy. The court concluded that the husband was the owner of an uninsured vehicle for the purposes of the accident and the case arising from it.[10] Under Civil Code Section 3333.4, an "owner" of a vehicle is a person having or exercising the incidents of ownership—dominion, control, right, interest, and title.[11]

When the Second District Court of Appeal in *Chude* decided that Proposition 213 also applied when a motorist without car insurance was burned by hot coffee in a fast food drive-through, it first discussed many of the prior cases applying Proposition 213. After this review, the court concluded that "Chude would not have been in the drive-through lane purchasing coffee but for her vehicle." Moreover, the plaintiff's "'action to recover damages ar[ose] out of the operation or use of a motor vehicle' and so [Section]3333.4, subdivision (a) applies to bar her recovery of non-economic damages." Her injuries, the court contended, were caused and exacerbated by the vehicle: "Had she been standing at the take-out counter, presumably the coffee might have spilled on her shoe, but she would not have been forced to sit in a puddle of hot liquid as she tried to extricate herself from a seatbelt."[12]

Surviving Remedies and Theories

Based on the decisions of courts regarding the reach of Proposition 213, uninsured drivers will find it exceedingly difficult to recover noneconomic damages from any classification of defendant—motorist or not. Nevertheless, plaintiffs' lawyers working on contingency should not turn away a client simply because the potential plaintiff did not have car insurance at the time he or she was injured. Indeed, a case involving catastrophic injuries, such as quadriplegia, will offer plaintiffs damages that will be sufficiently substantial, notwithstanding the inability to recover noneconomic damages. Moreover, uninsured drivers are not prohibited from recovering noneconomic damages in products liability cases.[13] For instance, if Chude had pursued a claim for products liability against the coffee cup manufacturer—much like the plaintiff in the infamous 1994 products liability case, *Liebick v. McDonald's*,[14] who sued McDonald's claiming that the coffee served by the fast food entity was "defective" because it was too hot—her case would most likely be characterized as something other than an example of the harsh application of Proposition 213.

Plaintiffs' lawyers also can pursue noneconomic damages for uninsured clients in a variety of other circumstances. For example, Proposition 213 does not preclude an uninsured driver involved in a car accident from recovering punitive damages against a reckless defendant.[15] Plaintiffs also may recover noneconomic damages in wrongful death cases in which the decedent was the uninsured operator of a vehicle involved in an accident.[16] Further, the state legislature has exempted employees involved in an accident while driving their employers' vehicles from having to establish proof of financial responsibility. Therefore, these employees may allege claims for noneconomic damages.[17]

The court in *Goodson v. Perfect Fit Enterprises, Inc.* held that Section 3333.4 does not apply to injuries sustained in an accident by an uninsured vehicle owner when the driver of the car at the time of the accident was the owner's daughter-in-law, who was covered by a liability policy that was applicable to her operation of the owner's vehicle.[18] Finally, an uninsured owner of mobile machinery who was injured in the process of transporting the device from one place to another could recover noneconomic damages once the device was removed from the road and placed as freight for transportation to another site.[19]

Plaintiffs' lawyers should not relent in the face of Proposition 213 and refrain from taking cases involving an uninsured driver. Rather, practitioners should carefully determine at the outset of a case if it contains a products liability component. If so, a products liability claim should be pursued, because the uninsured status of the driver will have no bearing on his or her ultimate recovery from the defendant responsible for the defective product. Other fact patterns may also offer avenues for seeking significant recoveries for noneconomic damages in cases involving an uninsured plaintiff motorist. ■

[1] *See* Nakamura v. Superior Court, 83 Cal. App. 4th 825, 833 (2000).

[2] Chude v. Jack in the Box, Inc., 185 Cal. App. 4th 37 (2010).

[3] Quackenbush v. Superior Court (Congress of California Seniors), 60 Cal. App. 4th 454 (1997), *modified on denial of rehearing*, *review denied*, *cert. denied*, 525 U.S. 826.

[4] *Id*. at 466, 469.

[5] *See* Yoshioka v. Superior Court, 58 Cal. App. 4th 972, 989 (1997) (Due process did not require that an uninsured driver be given a hearing before being denied recovery for noneconomic damages in an action arising out of the use of a motor vehicle.). The *Yoshioka* court noted that potential culpability was not at issue. The driver could have avoided the penalty by simply choosing alternative forms of transportation or if he had made any attempt to buy insurance. *See also* Honsickle v. Superior Court, 69 Cal. App. 4th 756, 763 (1999). The *Honsickle* court found that the interest in restoring balance to the judicial system and in reducing costs of mandatory automobile insurance were legitimate. The court also ruled that it was not arbitrary to distinguish between those who obey the law, buy automobile insurance, drive sober, and commit no vehicle-related felonies and those who are disfavored because they do not. Even retroactive application of Civil Code §3333.4 was held to be constitutional. Nakamura, 83 Cal. App. 4th at 829.

[6] *See* Hodges v. Superior Court, 21 Cal. 4th 109, 116 (1999).

[7] Cabral v. Los Angeles County Metro. Transp. Auth., 66 Cal. App. 4th 907, 914 (1998).

[8] Harris v. Lammers, 84 Cal. App. 4th 1072, 1076 (2000).

[9] Day v. City of Fontana, 25 Cal. 4th 268, 280 (2001); *see also* Allen v. Sully-Miller Contracting Co., 28 Cal. 4th 222, 229 (2002) (An action to recover damages arising out of an accident caused by a private construction company's negligent creation or maintenance of a dangerous road condition—an unmarked, elevated bus pad—was an "action to recover damages arising out of the operation or use of a motor vehicle" within the meaning of Proposition 213. Thus the uninsured motorcyclist could not recover noneconomic losses.).

[10] Honsickle, 69 Cal. App. 4th at 767.

[11] Ieremia v. Hilmar United Sch. Dist., 166 Cal. App. 4th 324, 331 (2008); *see also* Savnik v. Hall, 74 Cal. App. 4th 733, 743 (1999) (Whether passenger in uninsured vehicle was the vehicle's "owner," for purposes of Civil Code §3333.4, was a jury question in an action arising from an accident involving the vehicle. Passenger did not contribute any funds to buy the vehicle, never drove it, and had no knowledge that her name was listed on the registration.).

[12] Chude v. Jack in the Box, Inc., 185 Cal. App. 4th 37, 45 (2010).

[13] *See*, *e.g.*, Hodges v. Superior Court, 21 Cal. 4th 109, 112 (1999) (Civil Code §3333.4 does not apply to a products liability action brought by an uninsured motorist against a vehicle manufacturer.).

[14] Liebeck v. McDonald's Restaurants, P.T.S., Inc., No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994).

[15] *See* Nakamura v. Superior Court, 83 Cal. App. 4th 825, 839 (2000) (The defendant was not convicted of violating Vehicle Code §23152 or §23153, so the exception in Civil Code §3333.4(c) did not apply. Thus the plaintiffs could recover punitive damages but were barred from recovering noneconomic damages.).

[16] *See* Horwich v. Superior Court, 21 Cal. 4th 272, 280 (1999).

[17] *See* Montes v. Gibbens, 71 Cal. App. 4th 982, 987 (1999).

[18] Goodson v. Perfect Fit Enters., Inc., 67 Cal. App. 4th 508, 515 (1998).

[19] *See* Garcia v. Superior Court, 137 Cal. App. 4th 342, 348 (2006).