

The LEGAL Update

PERSONAL INJURY & WORKERS' COMPENSATION



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ALPS ON BIKES

For most people riding a bicycle 225 miles, while climbing 34,000 feet of elevation, might not be a relaxing getaway, but for Jones|Clifford partners Kevin Morrison and Josh White it was "the perfect vacation."

The two long-time bicycle enthusiasts returned recently from a week-long road tour throughout Italy for the 100th edition of the Giro D'Italia bike race (the Italian version of the Tour de France) – which is affectionately referred to as "the hardest race in the most beautiful place."

Morrison and White didn't compete in the race but they rode the same route just before the professionals and got to experience the enthusiastic support that bike racing has across Europe.

"It was great," Morrison noted, "We rode through picture-postcard villages with spectacular scenery along roads crowded with fans cheering us on. It was the trip of a lifetime."



White pointed out that, unlike the vast majority of bike races in which roads are often closed for hours before and after a race, "For the Giro, the roads are open to ride immediately before the racers arrive and after they pass." When the racers are about to come through the police come by and close the road and as soon as they are gone the road is open again, according to White.

"Throughout the week we were often riding the race route just before the professionals. So, even though we can't ride like pros, we got the pro experience because the Italian fans line the route and scream all sorts of things at you, like "vai, vai, vai" (or, 'go, go, go'). You really feel all of the excitement and passion from the fans, which truly helps to push you up the mountain," White added.

"We would ride five to seven hours and up to 80 miles a day, racing through the Italian Alps, starting at about 5,000 feet and sometimes climbing up to 9,000 feet.

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ALPS ON BIKES (CONT.)



It's much different than training in the Bay Area," Morrison added.

Included in their ride was the infamous Passo del Mortirolo which former bicycle champion Lance Armstrong once called "the hardest climb of my life."

Morrison, who is now 51, said he wanted to make the trip for his 50th birthday last year, but a back injury and operation had him sidelined. This year, fully recovered, he was determined to make the trip.

White says that in addition to celebrating Morrison's birthday, he was celebrating recently becoming a partner of the firm. As a result, they were looking for a memorable ride and considered several destinations but were swayed to the Italian trip because of the allure of the Italian Alps and Dolomites, as well as the 100th edition of the Giro.

Morrison and White were clearly proud that they didn't have to take advantage of the "sag wagon," which provides support and gear to the riders, but Morrison admitted some of the climbs were challenging. He called White, who is 10 years younger, "an animal" on the climbs. White didn't hesitate to return the compliment saying Morrison was "killing it," as well. Both admitted that the Passo Fedaia climb, which lies at the northern base of the Marmolada – the highest peak in the Dolomites – was the hardest climb of their lives. Luckily for the duo, it was also the last climb of the trip.

Morrison said he was the second oldest of the 12 riders on the trip but says the whole experience "was perfect."

He was also quick to point out the difference between riding a bike in the United States and in Europe. "There are no jerk drivers there," he says, "they give you plenty of room to ride, and even wave and honk as a greeting. It's just so much different than riding here."

White and Morrison say they spent two months preparing for the ride, routinely climbing Mount Tamalpais and along Stinson Beach, but admitted, "There is no way to prepare for the altitude."

Despite the hard work, both men said it was a great trip. The two riders are even considering making the challenging ride an annual experience.

JONES | CLIFFORD SPONSORS WALK SF

Jones|Clifford was, once again, a sponsor to the fourth annual Walk-to-Work Day event organized by Walk San Francisco. The event is intended to be a fun and festive way to celebrate what Walk SF calls the "most healthy, sustainable form of transportation." Residents who live near their workplaces are encouraged to spend at least 15 minutes of their commute walking.

Many Jones|Clifford partners, associates, and staff participated in the event. The firm also hosted a "hub" where participants could enjoy free giveaways such as safety lights and backpacks or simply share some coffee and breakfast with their fellow walkers. Participants also received "I walked SF" T-shirts and were able to compete for prizes in a number of categories such as "Longest Walking Commute" and "Best Shoe Bling."

Since 1998, Walk SF has been San Francisco's only pedestrian advocacy organization fighting for more than 837,000 residents, 162,000 weekday commuters, and 16.5 million visitors annually, who walk in the city. Through smart, targeted advocacy, Walk SF's goal is to make San Francisco a more livable, walkable city by reclaiming streets as safe and shared public spaces for everyone.

Jones|Clifford is an active supporter of Walk SF, and takes great pride in sponsoring and participating in its numerous events to help further the organization's mission to make walking in San Francisco safe for everyone, so our community is healthier and more livable.

WOMEN IN POLICE



Jones|Clifford was recently a proud sponsor of the International Association of Women Police's regional conference in Walnut Creek. Melanie Carr and Kenneth Sheppard represented the firm at the event. Sheppard addressed the group on the importance of having adequate uninsured/underinsured motorist coverage. The IAWP is an association for women in policing on a global scale. It offers programs and services to "strengthen, unite and raise the capacity of women internationally." The IAWP was established in Los Angeles, in 1915 by the first American policewomen as an international organization to provide professional development, mentoring, training, networking and recognition for female law enforcement officers and civilian support staff as well as to increase the numbers of women in policing.



LEGAL RULING IN THE HANIFF CASE

It's not unusual for defense attorneys to make demands that fly in the face of established legal precedents, especially when they feel aging legal principles need to be reviewed.

Often they are counting on a weak or passive response from the plaintiff's attorney.

That was not the case in a recent appellate court decision (Haniff v. Superior Court (2017) 9 Cal.App.5th 191) won by Jones|Clifford attorneys representing a severely injured client in a personal injury case.

The issue involved a vocational rehabilitation examination that the defense wanted their specialist to perform on the injured client. Under a precedent established almost 40 years ago, voc rehab exams can be performed by the plaintiff's specialist and reviewed by the defense, but the defense is not allowed to have their own specialist conduct an exam.

"It's just not part of discovery," lead attorney Kevin Morrison noted, "but despite that, the defense asked to have one done and the trial court judge agreed." So, the issue was appealed and while appeals are not usually successful, the Jones|Clifford team prevailed.

Josh White, the Jones|Clifford partner who handled the oral argument, said he and Morrison were both surprised when the trial court agreed with the defense attorney, but he said there was no doubt that the firm would appeal the ruling.

"The defense argued that the case law was old, and simply because of that it was no longer applicable. Shockingly, the judge agreed and also said that fundamental fairness required that the defense would get a voc rehab exam," White said. "Among other arguments, we asserted that the discovery law on this issue does not allow a defense voc rehab exam, and that if the defense believed the law was unfair, the defense should appeal to the California legislature to have it changed."

One interesting side note to the case involved the law firm that won the original case which established the precedent. Morrison pointed out that one of the lawyers at the firm was the father of current Jones|Clifford partner, Steve Bell.

Bell pointed out that his father's law firm had argued the Browne case (Browne v. Superior Court (1979) 98 Cal.App.3d 610). "The Browne case has been law since 1979. We were aware of the case and that my dad's firm was involved. We joked that I should go argue the case. I would have pointed out the connection because the defense was saying in part that the law was 'too old' and needed to be revisited."

According to Bell, the major issue was the defense's confusion of the scope of discovery with the tools of discovery. "Yes, there is wide latitude in discovery, but the methods you can use are restricted and exclude voc rehab exams." He noted, "And the age of a case is not an issue in case law. The law is old and has not been challenged because it's good law."

MORRISON NOTED, "MANY FIRMS DO NOT BOTHER TO FIGHT A RULING LIKE THIS BECAUSE IT TAKES TIME, BUT WE ARE WILLING TO TAKE ON THESE ISSUES. THAT'S WHAT MAKES US DIFFERENT."

White added, "Our entire team on this case, from associate Ross Psychogios who was vital to the process of drafting the appellate papers, to paralegal Richard Kornbluh and case manager Maggie Broers, both of whom made sure not a single detail was missed, did an excellent job in ensuring that we prevailed on appeal for our client."

The voc rehab issue added an extra year to the case resolution, but now that it has been decided, a final agreement is expected this summer.

WORKERS' COMP CASE: SCHOLARSHIPS FOR STUDENTS



In May 2015, Officer Oskar Reyes of the Newark Police Department was diagnosed with lung cancer. He never smoked a day in his life, however, he served as an Alameda County Deputy Sheriff for 12 years prior to transferring to the Newark Police Department in 2014. Known for his tremendous work ethic and dedication to public safety, Officer Reyes was a respected and beloved member of the law enforcement community. Even after his diagnosis, Officer Reyes returned to work in a light duty capacity with the Newark Police Department until he was ultimately unable to continue working.

Unfortunately, Officer Reyes lost his battle with cancer on January 22, 2017, leaving behind two twin teenage sons and a young daughter.

A workers' compensation claim was filed by Jones|Clifford, LLP associate Isabella Shin, alleging Officer Reyes' injury fell under the Cancer Presumption found in Labor Code section 3212.1. As a result of the tireless efforts of Ms. Shin and prolonged litigation against the County of Alameda and the City of Newark, Officer Reyes' workers' compensation claim was accepted as an industrial injury, entitling his three children to benefits they otherwise would not have recovered.

Officer Reyes' story may be familiar to those who have lost loved ones in the line of duty. For the many peace officers and firefighters who risk their lives for the communities they serve, their biggest concern in the event of a devastating injury is the wellbeing of their families. Like Officer Reyes, many have college-aged children who could face significant financial hardship after the loss of a parent.

Fortunately, a recent amendment to the Alan Pattee Scholarship Act of 1970 brought to the forefront an educational benefit for children of peace officers and firefighters who have died from an industrial injury or illness. The scholarship (codified in Education Code section 68120) originally provided tuition and fee waivers at all public state universities and colleges in California for the surviving child of a parent who was killed in the performance of active law enforcement or active fire suppression and prevention duties, or died as a result of an accident or injury caused by external violence or physical force incurred in the performance of those duties.

Regrettably, prior to this year, the statute excluded those whose parent died of an occupational illness, such as work-related cancer.

However, thanks to the hard work and leadership of the California Association of Professional Firefighters and Assembly member Patrick O'Donnell, the Education code was amended effective January 1, 2017 to specifically include children whose parent "died as a result of an industrial injury or illness arising out of and in the course of active law enforcement or fire suppression and prevention duties." As a result, free college tuition is now available to the children of a peace officer or firefighter who has died as a result of any occupational injury or illness.

With the diligent efforts of Ms. Shin, Officer Reyes' children are now eligible for this under-utilized waiver, and will be among the first to receive free college tuition under the newly amended code. Although most schools do not advertise its availability, you can contact the campus financial aid department of the college directly and speak to a counselor about applying.

If you know of a fellow law enforcement officer or firefighter who died as the result of an occupational injury or illness, and left behind children who plan on attending college, please have their families contact the attorneys at Jones|Clifford, LLP so we can be of assistance.