



Richard S. Linkert

Partner

rlinkert@mathenysears.com

Phone: 916-978-3434

Fax: 916-978-3430

Rick Linkert has been practicing law since November of 1979, when he passed the California Bar while clerking for this firm – his only job as an attorney. He graduated from U.C. Berkeley (1973) and University of the Pacific, McGeorge School of Law (1979). During the years 1973 – 1976, he ran a lodge in Mammoth Lakes, taking groups skiing in the winter and conducting back country and climbing trips in the Eastern Sierra and Yosemite in the summer. His climbing “resume” includes first ascents in Yosemite and the desert, big wall climbs such as the NW Face of Half Dome and Leaning Tower and numerous difficult free climbs in California and Colorado. During his years as an attorney, he has been honored to receive recognitions by Martindale Hubbell (AV Preeminent), American Board of Trial Advocates (ABOTA), Best Lawyers in America, America’s Top 100 Civil Defense Litigators (Northern California), Super Lawyers, Top Lawyers (San Francisco Magazine and Sacramento Magazine), Sacramento Business Journal Best of the Bar 2019 Honoree. He was voted 2019 “Trial Lawyer of the Year” by the Sacramento Valley Chapter of ABOTA.

Rick began his trial career under the guidance of firm founder, Henry G. (Hank) Matheny. Hank was a consummate trial attorney and Rick was fortunate to “second chair” two major trials involving wrongful death, brain injury and paraplegia during the first few years of practice. Since that time, Rick has focused on handling a diverse spectrum of cases ranging from explosions and wildland fires to sexual exploitation to Governmental Tort Liability. For the last ten years, his practice has emphasized what might be called “Smoke Jumping” assignments – being retained shortly before the trial of a high exposure case. Rick became a partner in 1984.

No one knows more about the risks inherent in taking a case to trial than an experienced trial attorney. Over the years, Rick has developed an approach to litigation that begins with working with the client to define critical issues and objectives. From that point, a strategy is developed to resolve the litigation as efficiently as possible. Trial is, or should be, a last resort. That said, it is critical that an adversary understand that an attorney is not afraid of the courtroom and is ready, willing, and able to take the case to trial if a reasonable resolution cannot be negotiated. Experience has demonstrated, time and again, that having a reputation for trying difficult cases is an essential component of successful non-trial resolutions. Negotiating from a position of power is critical and developing evidence and arguments is essential to creating a “downside risk” for one’s adversary. The most challenging aspect of handling defense cases is the development of a strategy to maximize power– including in cases involving apparent or even clear liability. Having handled selected high-exposure plaintiff cases over the course of his career, Rick has developed an understanding of litigation from the perspective of a plaintiff as well. The successful resolution requires extension of the figurative “olive branch,” but a trial attorney must be ready to respond with a demonstrated willingness to take the case to a jury if reasonable settlement is rejected.

Selected Results

Rick has a very eclectic practice – wildfires, structure fires, trucking accidents, product liability, premises liability, government tort/public entity liability, construction accidents, police excessive force, psychotherapist abuse and malpractice and sexual abuse cases. Many of these were what might be called “smoke-jumping” cases where he was retained by an excess insurer shortly before trial to step in and defend a high exposure case. Below are a few of his selected results.

Wildfire

- The Moonlight Fire litigation is, without question, the most involved complex wildfire matter Rick has handled. The case is still active in its 10th year of litigation. Moonlight was a 65,000-acre fire that ignited on Labor Day, September 3, 2007 in Plumas County. He represent the members of a family who owned the timberland where the fire originated.

- Pursuant to a written contract, Sierra Pacific Industries purchased standing timber. In turn, Sierra Pacific hired Howell's Forest Harvesting to cut, load and haul the trees. A joint USFS/Cal Fire Origin & Cause Investigation determined the fire was ignited by a hot metal particle caused by a bulldozer hitting a rock while constructing an erosion control water bar. The United States filed a Rule 26 Disclosure demanding \$ 791,367,247. Accruing interest took the damages over \$1 billion making it, effectively, an "economic death penalty" case for the defendants. His clients owned the timberland as tenants in common. A finding of liability would result in individual judgments against all family members who had an ownership interest. Because environmental damages in this realm were unheard of prior to the \$102 million settlement in the Storrie Fire in 2008 [\$102 million], Rick's clients only had \$11 million in insurance coverage. Rick also represented their long-time forester, W.M. Beaty & Associates, Inc. To date, there have been over 400 days of depositions, including dozens of expert witnesses. Virtually all were video-taped.
- In the state litigation, the California Department of Forestry and Fire Protection [Cal Fire] filed a fire suppression cost claim of \$8,441,309; various private state plaintiffs claimed damages in excess of \$50 million.
- During concurrent discovery in the federal and state actions, the defense team of attorneys [Sierra Pacific, Howell and Landowners/Beaty] developed the belief that state and federal investigators lied about their initial origin, hid evidence and committed perjury. The federal case went to trial first. As a result of an in-limine ruling at the start of trial prohibiting defendants from pointing to other individuals as potential causes of the fire and a ruling that defendants could be held responsible for not discovering the fire even if they did not start the fire, the defendants were forced to settle the case as the risks were too great. The case settled prior to jury selection for \$55 million cash + 22,500 acres of Sierra Pacific timberland. The U.S. Attorney issued a press release regarding a claimed \$122,500,000 settlement. The clients' insurer paid \$7 million, leaving \$4 million to resolve the state cases; they were not required to make any personal contributions
- After the federal settlement, additional discovery was conducted in the consolidated state action and more evidence of fraud and perjury was developed. The state cases proceeded to trial in Plumas County in July of 2012. On the eve of trial, Leslie C. Nichols (Ret.) [specially appointed by the Chief Justice] held a three-day Cottle hearing and determined that neither Cal Fire nor the private plaintiffs could present a prima facie case of liability. The consolidated cases was dismissed. Next, the defendants moved for terminating sanctions based upon fraud, corruption, perjury and hiding evidence. Six months later, Judge Nichols issued terminating sanctions and awarded the collective sum of \$32.4 million to all defendants after extensive briefing over the course of months and a two-day hearing. It is believed to be the largest sanctions award of its kind in the history of the country. Rick's clients' share was \$6.1 million.
- The finding of fraud, lying under oath, destroying evidence was upheld on appeal and the California Supreme Court denied Cal Fire's Petition for Review. The case was remanded to the trial court to determine the start date for attorneys' fees based upon discovery abuses.
- Rick has handled a number of other wildfire cases over the years, including the Poe Fire, the Geysers' Fire, the Valley Fire, the Calf Fire and others past and pending. All were successfully resolved.

Sexual Abuse

Over the course of many years, Rick has defended sexual molestation cases – principally defending public entities accused of negligent supervision of employees accused and often convicted of sexual crimes. Below are several examples:

- In 1989, Rick defended a man accused of sexually touching a 4 year old girl who was in his girl-friend's day-care class. The jury was out for more than 5 days, eventually finding liability and awarding \$60,000. While it was disappointing that the jury did not reach a defense verdict, the amount of the verdict was viewed as a successful outcome. Opposing counsel is currently a sitting judge on the Sacramento County Superior Court bench
- During the same time frame, Rick represented a man convicted of sexually abusing his step-daughter in a subsequent civil action. The client was serving an 8 year sentence in Avenal State Prison at the time the civil action was filed. On the third day of the Plaintiff- step-daughter's deposition, she broke down and admitted that she and her brother fabricated the charges and offered perjured testimony at the criminal trial. Our client was freed on a Writ of Habeas Corpus and his conviction expunged upon presentation of the deposition transcript to the Court.
- In 2002, Rick was retained to represent Merced County local mental health facility with respect to the alleged forcible rape of a young woman while attending a weekend cultural retreat. Plaintiff (age 14) was a junior counsel; defendant/perpetrator was as senior counselor (age 19) and allegedly had a history of sexual improprieties with under-age girls. They had never met before the alleged rape. went into Plaintiff's tent in the middle of the night. There was a dispute regarding whether the sex was "consensual" or forced. The perpetrator was convicted of rape and imprisoned at the time of trial. Plaintiff became pregnant, developed pre-eclampsia and had to be life-flighted. She was later removed from the home by Child Protective Services following beatings by her father. She gave birth to a daughter. Plaintiff claimed lifetime emotional distress, lack of bonding with the baby, and future complications resulting from pregnancy re pre-eclampsia. Economic damages included a claim of \$100,000+ for past medical expenses with a suggestion that significant money should be set aside for future mental health and physical treatment. It was also claimed that it would cost \$243,000 to raise the child. Plaintiff's counsel asked for a verdict in excess of \$1,500,000. The jury rendered a Defense verdict.
- Several weeks prior to trial in May of 2015, Rick was retained by an excess insurer to associate as trial counsel in a sexual abuse case against a Bay Area school District involving the molestation of four second or third grade girls by their teacher. The teacher was convicted and was serving a lengthy sentence following a highly publicized criminal trial. The sexual abuse was terribly gruesome as it involved multiple acts of oral copulation while the children were blindfolded in the classroom. These crimes took place during recess and lunch in what the teacher called "Helen Keller" exercises. The teacher was married to a fellow teacher, had daughters of the same age and was "Teacher of the Year." One of the children described to the school Principal in what - in hindsight - was clearly a crime. The Principal did not understand what she was being told and, accordingly, did not report. As least one of the 4 plaintiffs was sexually abused after the report to the Principal. The Principal was convicted of a misdemeanor failure to report suspected child abuse as required by Penal Code §11164, et seq. prior to trial and that came into evidence over objection.
- Plaintiffs were represented by four successful litigators from San Diego and San Jose who specialize in sexual molestation cases. Rick joined two other experienced defense litigators who had been defending the case and the team proved to be very effective. In opening statement, counsel plaintiffs expressed an intent to seek at least \$120,000,000 in total damages. The case settled for \$15 million after four weeks of trial and below the layer of the excess insurer. Punitive damages were alleged against the individual defendants, including the elementary school principal who was convicted of the misdemeanor failure to report.

- In the Fall of 2015, Rick was retained by an excess insurer to associate as trial counsel in a hotly contested molestation case against a Bay Area School District. The teacher/perpetrator was convicted at the time of trial and serving a lengthy prison sentence. It was alleged that the teacher/perpetrator molested 12 boys and that the District knew or should have known of the molestation. Rick was asked to associate as trial counsel and he and his team took the laboring oar in completing the depositions of plaintiffs, their parents and numerous expert witnesses. Three law firms represented the Plaintiffs and the case was subjected to considerable pre-trial and during-trial media attention, including protests outside the courthouse and daily media reports in real time. As the perpetrator was in the process of appealing his conviction, it was not “final.” The Plaintiffs, with the aggressive assistance of the Bay Area media, attempted to cast the District as “vouching for the perpetrator” while our position was to respect the appellate process and state that it was up to the jury to determine what happened with the 12 boys. Due to the intense media coverage, all in-Court statements and filings leading up to and during the trial had to be carefully formulated. The case was rendered further problematic as a retired teacher and mandated reporter who worked with the perpetrator retained the lead Plaintiff counsel to represent her. She was a hostile witness and in a position to bind the District if there was evidence of “reasonable suspicion” to trigger California’s Child Abuse and Neglect Reporting Act [CANRA] reporting obligations. On direct exam, the teacher testified that she suspected sexual abuse when she traveled to the perpetrator’s class room one evening and found him alone with a student, emerging from a closet. As an example of how close it can get to a case of liability, the hostile witness/retired teacher/client of Plaintiffs’ counsel ultimately recanted during the final re-cross examination, preventing a clear case of liability.
- The trial spanned several months. The boys were examined by a forensic psychiatrist who predicted life-long suffering. One boy was hospitalized shortly before trial as a result of self-imposed starvation that triggered cardiac issues that required ICYU hospitalization. The defense had the boys examined by the head of the Stanford Hospital Adolescent Psychiatry service. He found diagnosable mental illness but offer optimistic prognosis. There were many days of psychiatric testimony. Plaintiffs asked the jury to award \$55,500,000. The jury was unable to reach a verdict after many days of deliberations, including the ouster of the original foreperson, and a mistrial was declared. Prior to the second trial, a Mandatory Judicial Settlement Conference resulted in a settlement of \$1,200,000. The settlement was well below the attachment of the excess insurer.
- In 2018, Rick was retained to associate as trial counsel in a sexual molestation case brought against a Sacramento area school District. At the time the District was facing numerous claims as a result of alleged long-term sexual touching of elementary school girls by a Paraeducator. By trial in February of 2019, the perpetrator had plead nolo and was serving an 11 year prison sentence. He was represented by counsel but was dismissed mid-trial. The case involving the claims of 4 girls and was the first group of victims to proceed to trial. Plaintiffs were represented by a southern California attorneys who specializes in sexual abuse cases.

- Rick and his team worked through final discovery and expert witness with co-counsel and shared responsibilities at trial. The claim was that the perpetrator sexually touched Plaintiffs throughout the school year by surreptitiously fondling them while seated at a group work table in the back of a classroom and in the presence of the teacher, a named defendant along with the Principal. It was also alleged that one of the three Plaintiffs was touched throughout the year while in an after-school program. The facts necessitated an admission of liability as two of the Plaintiffs reported the sexual touching to a Yard Duty employee on 5 separate occasions over the course of more than a month toward the end of the school year before she eventually reported to her supervisor. While action was quickly taken, the Yard Duty employee did not follow the CANRA training of reporting to law enforcement or CPS). All three claimed to have been repeatedly sexually abused after the initial report. Plaintiffs' counsel argued that the reason they kept going back to the trusted Yard Duty was that the abuse was continuing. The District accepted responsibility for any damages caused by the failure to report at the outset of trial. The District contested there was "reasonable suspicion" prior to the first report.
- The Plaintiffs were examined by a nationally prominent forensic psychiatrist who rendered a gloomy prognosis for all.
Plaintiff asked the jury to award \$15,000,000 to each Plaintiff for a total of \$45,000,000. The jury found liability, awarded \$1,650,000 and apportioned fault as follows:
- Plaintiff 1: \$200,000 (prior to report to yard duty monitor); \$500,000 (post report to yard duty monitor) w/ 30% apportioned to the perpetrator and 70% to the District
Plaintiff 2: \$250,000 (prior to report to yard duty monitor); \$600,000 (post report to yard duty monitor) w/ 30% apportioned to the perpetrator and 70% to the District
Plaintiff 3: \$100,000 w/ 50% apportioned to the perpetrator and 50% to the District
The net award to the District was \$1,135,000 - less than had been offered at pre-trial mediation.

Wrongful Death

Often, cases must be tried because a reasonable settlement cannot be negotiated – even in cases of probable or admitted liability. This has become increasingly true in wrongful death cases where the rise in verdicts and settlement expectations has skyrocketed. Below are several examples

- Lead counsel in a 2004 trial involving a motorcycle versus left-turning vehicle at a T intersection. Liability was contested but was viewed as a "difficult liability case. The crux issue was speed of the motorcycle vs perception/reaction time of the SUV driver. The decedent (DOB 5.21.71) was a husband and father of three minor children. He was alleged to be on an upward earning curve and there was testimony that he was soon headed to six figured. Plaintiff counsel, a top-tier attorney, asked the jury to award approximately \$32.4 million. The jury found liability and awarded \$6.7 million.
- Lead counsel in a 2007 trial involving the death of a 55 year old wife and mother of two young women who was employed a researcher for State of California, Dept. of Health Services and had just obtained her Ph.D. Plaintiffs' decedent was struck in a downtown Sacramento crosswalk by a left-turning Sacramento RT bus; she died a short while later at U.C. Davis Medical Center in the presence of her family. Liability was admitted. She had a past and future wage loss claim of \$1.5 million.
Plaintiff counsel, a top tier attorney, demanded more than \$30 million; the jury awarded \$4,573,520 million. The lowest pre-trial demand was \$10 million

- Lead trial counsel in 2012 trial arising as a result of a bus versus pedestrian fatality in downtown Sacramento. At approximately 6:30 p.m. a Sacramento RT bus driven by experienced bus operator, struck and killed plaintiff's decedent as she attempted to cross 8th Street at the intersection of Q Street. The lighting conditions on the night of the accident were unusually dark. One of four overhead street lights was out and there was little in the way of other lighting on a moonless, cloudy night. The RT driver never saw Plaintiff prior to impact and only stopped his bus as a result of hearing a noise and sensing something under his bus. The sole witness to the accident was a pedestrian walking generally behind plaintiff's presumed path of travel south on 8th Street to the intersection with Q Street. The witness informed police that he never saw Mrs. Jacobs prior to impact and first became aware of the accident when he saw something tumbling under the bus. He informed Sacramento City police that he even watched the bus turn through the crosswalk and did not see Mrs. Jacobs. At deposition and to a greater extent at trial, the witness softened his testimony, indicating that he was not saying she was outside the crosswalk. Based upon scuff marks on the crosswalk striping attributed to Mrs., Jacobs' shoes and spatter alleged to be bodily fluid located beginning approximately 2 ½ feet north of the cross walk, the Sacramento City Police determined that Mrs. Jacobs was in the crosswalk when struck and the matter was referred to the Sacramento County District Attorney for vehicular manslaughter evaluation. The driver was charged with vehicular manslaughter but the case was eventually dismissed.
- The parties entered into a trial stipulation: If decedent was in the crosswalk or in a defined area adjacent to the crosswalk, RT was 100% at fault. If she was determined to be outside this defined zone, RT and the driver were entitled to a defense verdict. The jury, after deliberating 3 ½ days, found RT liable.
- Plaintiff asked for a verdict in the \$9 million range. The jury awarded \$2,411,789, of which \$381,789 was economic damages. The husband/father was awarded \$1.5 million past and \$500,000 future non-economic damages; the adult son received \$30,000 past non-economic damages and \$0 future economic damages. The verdict was below all pre-trial settlement demands

Construction – Structure Fire

- Lead trial counsel in 2007 trial arising as a result of a fire that occurred during the course of constructing a Placer County facility known as the "Foothill Water Treatment Plant, 28MGD Expansion". Plaintiff was the general contractor for the project. Rick's client was the designer and manufacturer of a filtration system pursuant to written contract with the general contractor. The subject fire occurred during the final phase of constructing the building that housed the filtrations system- a structure made principally of concrete and steel that contains various tanks and other elements of the water filtration system. The client's product consisted to a plastic (polystyrene) honeycomb of slanted tubes called lamella. The polystyrene filtration elements were manufactured in various dimensions, all of which were approximately 4 ft high. After installation of the lamella modules located approximately at the 12 foot level of a 24 foot deep concrete tank, it was discovered that some of the modules were sagging. The general contractor contacted our client to develop a "fix" for the problem. The client developed a proposed fix that involved welding L shaped stainless steel support beams to eliminate the sag issue.
- The general contractors employees were assigned the task of welding the L brackets to provide additional support for the lamella. The welders ignited the flammable lamella during the welding operation and the ensuing fire essentially destroyed the facility that was virtually complete.

- The general contractor settled with Placer County and the facility was rebuilt. The general then sued Rick's client for contractual indemnity and additional damages, claiming a defective design caused the need for welded brackets and insufficient warnings regarding the flammability of the lamella. The contractual indemnity provision obligated Rick's client to indemnify the general contractor for all damages except those caused by the "sole negligence or willful misconduct" of the general contractor. A finding of 1% would have triggered an obligation to indemnify the general contractor. The case had a very complex procedural history prior to trial. The claim of general contractor varied from more than \$7 million to \$4.7 million + attorneys' fees and interest during the course of the trial.

The jury returned a defense verdict after a lengthy trial (October 22, 2007 - December 13, 2007). Rick's team filed a post-trial motion for prevailing party contractual attorneys' fees. The fee request was denied at the trial court level. The general contractor appealed. MSLJ handled the appeal; the verdict was upheld and the denial of the attorneys' fees was reversed and fees were awarded to Rick's client. The general contractor eventually paid more than \$800,000 in attorneys' fees, expert witness fees and costs.

Settlement Following Motions in Limine

There are situations where hearings on motions in limine must take place before cases resolve. Below is an example from a very complex trucking accident case.

- Lead trial counsel in 2003 trial arising as a result of a big-rig truck accident on westbound Interstate 80 near Blue Canyon, west of Lake Tahoe. Rick's client was a truck driver employed by national trucking company. He picked up a load of wax paper rolls in Wisconsin and was headed to his final destination in Salinas, California; it was his first trip over the Sierra Nevada range. He testified that he stopped at the rest/brake check area at the top of Blue Canyon before descending. He did not notice any brake problems. As he was nearing the bottom of the steep grade while traveling in the #2 lane, he encountered traffic backing up from a minor fender-bender in the #1 lane. As he began braking, cars from the #1 lane moved into his lane. To avoid hitting them, he swerved and only then saw the stopped vehicles around a curve. He attempted to steer back but lost control. His rig flipped and landed on a SUV that was parked on the shoulder. The SUV driver had stopped and walked uphill as a "Good Samaritan" to warn traffic approaching the curve. His wife remained in the vehicle and was killed. Various witnesses claimed that the truck was speeding and the CHP determined several of his brakes were out of adjustment.
- The driver was arrested and charged with felony vehicular manslaughter. Old "priors" were discovered in Texas and the Placer County DA elected to pursue a "Three- Strikes" conviction. Rick assisted the initial Public Defender with accident reconstruction support as a conviction would have been res judicata in the civil action. The jury hung. Rick's client was tried again and a colleague with expertise in criminal defense negotiated a fee arrangement with Duncan's insurer. Rick again provided accident reconstruction support for the trial and the driver was acquitted on both the felony and misdemeanor counts. The client/driver, an African American man from Baton Rouge endured nearly 2 years in the Placer County Jail but we were ultimately able to put him on a plane and send him home pending the civil trial. Some observers thought the prosecution was racially motivated.

- The civil trial began on September 16, 2003, at which time numerous motions in limine were filed and the hearing process began. Because Plaintiff counsel claimed that computerized electronic engine data was destroyed by national trucking company, a spoliation hearing was commenced after the motions in limine were heard. That hearing – conducted 5 days a week for the majority - lasted until January 22, at which time the case settled for about the pre-trial offer. It was an arduous, multi-year journey.

Professional Associations

- Association of Defense Counsel of Northern California and Nevada
- Fellow, Litigation Counsel of America
- American Bar Association
- Sacramento County Bar Association
- DRI – The Voice of the Defense

Recognition

- Martindale-Hubbell, AV Peer Review Rated
- American Board of Trial Advocates (ABOTA)
 - 2019 “Trial Lawyer of the Year” by the Sacramento Valley Chapter
- Best Lawyers in America
- America’s Top 100 Civil Defense Litigators (Northern California)
- Super Lawyers, Top Lawyers (San Francisco Magazine and Sacramento Magazine)
- Sacramento Business Journal - Best of the Bar
- American College of Trial Lawyers

Continuing Education And Presentations

- “TAKING AND DEENDING EFFECTIVE DEPOSITIONS IN CALIFORNIA” CEB – (All Day Seminar – 8 years)
- “HANDLING MAJOR EXPOSURE LITIGATION” – Webinar (various)
- “ENGINEERS AS EXPERTS” – annual presentation to Doctoral Candidate Engineering Students, “Techniques of Failure Analysis” at Stanford University (2017–2020)
- “ARE DEFENDANTS GETTING BURNED? FEDERAL WILDFIRE LITIGATION POLICY” for The Association of Consulting Foresters – 2017, Lake Tahoe, Nevada.
- “ISSUES AND TRENDS IN LITIGATION” Golden Gate RIMS, San Francisco – September 2019 and Pacific Claims Executive Association, Las Vegas – October 2019

Practice Areas

- Appellate Practice
- Business Solutions

- Charitable & Nonprofit Organizations
- Complex Litigation
- Construction
- Employment Law
- Fires & Explosions
- Personal Injury Claims
- Public Entity Defense
- Products Liability
- Trucking & Transportation