



# Richard S. Linkert

## Senior Partner

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### BACKGROUND

Rick Linkert joined the firm in 1979 while awaiting Bar results. He began work 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 molestation 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 and was Managing Partner 1995 - 2018. In a prior life, he was an avid rock climber and spent considerable time in Yosemite, the Sierra Nevada, Colorado and the Desert.

### PHILOSOPHY

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 understanding the client in order 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. Successful resolution requires extension of the figurative “olive branch,” but the other hand must be ready to respond powerfully and persuasively if a reasonable settlement offer is rejected.

## Selected Results

Mr. Linkert has focused on handling high-exposure cases in a variety of subject matter areas over the last several decades, often being asked to “parachute” into a case shortly before trial. He has also handle major exposure cases from the inception, including pre-litigation. One example is a molestation case against a San Francisco Bay Area School District. Mr. Linkert was asked by an excess insurer to assist at trial several weeks before trial commenced. The Plaintiffs were four second or third grade girls who were horrible molested by their teacher. At the time of trial, the teacher was convicted and serving a lengthy sentence following a highly publicized trial. The elementary school principal was convicted of a misdemeanor for failure to report suspected child abuse as required by California law. Plaintiffs were represented by three successful litigators who specialize in sexual molestation cases. Mr. Linkert joined two other experienced defense litigators who had been defending the case and the team proved to be very effective. In opening statements, counsel for Plaintiffs expressed an intent to seek at least \$120,000,000 in damages. The case settled for \$15 million after four weeks of trial, an amount defendants were willing to offer prior to trial. The settlement did not reach the layer of Mr. Linkert’s excess insurer.

The *Glass Fire* broke out on famed Howell Mountain in Napa on September 27, 2020. It consumed over 67,000 acres and destroyed hundreds of homes in Napa and Sonoma Counties and destroyed or damaged numerous wineries, restaurants and lodges. The losses were pegged at well over \$1 billion. Cal Fire immediately focused on the “Dancing Bear” vineyard owned by Cakebread Cellars as the origin and an electrical fence as the ignition source. Mr. Linkert was directly hired by Cakebread because of his experience as a wildfire defense litigator. The fire was still burning at the time of Mr. Linkert’s initial visit with a fire expert and the electrical fence and related equipment had already been seized. There were leaks from the investigation and media stories pointed the finger of blame at Cakebread. Mr. Linkert quickly put together a forensic team that was comprised of a forensic electrical engineer, a fire origin and cause expert, a fire modeling/progression expert and a photogrammetry expert. There were small armies of plaintiff and subrogation experts who attempted to gain access and those efforts were successfully resisted while Mr. Linkert’s team gathered and analyzed evidence they ultimately shared with Cal Fire. The defense investigation involved extensive use of drone video as well still photos and video from area fire towers and private parties who were located and interviewed. A compelling video was developed by the team and was presented to Cal

Fire. The net result was to convince Cal Fire that both the origin and the ignition source theories against Cakebread Cellars were wrong. The final report published by Cal Fire exonerated Cakebread Cellars. A front page article appears in the San Francisco Chronicle. [www.sfchronicle.com/food/wine/article/How-Napa-s-Cakebread-winery-absolved-itself-of-16399282.php](http://www.sfchronicle.com/food/wine/article/How-Napa-s-Cakebread-winery-absolved-itself-of-16399282.php)

## **OTHER RESULTS**

Defended a Sacramento School District in a sexual molestation brought by three students who were molested by a paraeducator while in the third grade. The perpetrator was convicted and serving a prison sentence at the time of trial; he was eventually dismissed by plaintiff counsel. The girls repeatedly reported the sexual assaults to a Yard Supervisor who, as a mandated reporter, failed to make a report for over a month. Liability was admitted for any assaults that took place after the initial report. Mr. Linkert was associated with another experienced trial attorney due to the multiple claims. Plaintiff counsel, a sexual molestation specialist from Southern California, asked the jury to award \$45 million. The verdict was \$1,050,000 - less than the pre-trial offer.

Defended an East Bay School District in a sexual molestation brought case brought by 12 plaintiffs represented by three law firms. Mr. Linkert was retained by an excess insurer several months before trial to work with the original defense counsel retained by the District. Mr. Linkert and his colleague, Julia Reeves, completed the depositions of plaintiff and the parents as well as experts in the final days before trial commenced. The trial involved extensive psychiatric testimony and numerous liability witnesses - other percipients and experts. The trial lasted about 6 weeks. 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 and television reports. The perpetrator's deposition was filmed in Avenal State Prison. Because 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 made 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 classroom 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 collective demand at trial was \$55,500,000. After many days of deliberation, the jury hung. The case then settled for \$1,200,000 - below the attachment of the excess insurer.

Obtained dismissal of 6 consolidated cases arising out of the 2007 Moonlight Fire. The cases were dismissed on the eve of trial in Plumas County Superior Court after plaintiffs were unable to present a prima facie case of negligence.

The alleged damages included an 8.1 million fire suppression cost claim by the State of California Department of Forestry and Fire Protection (Cal Fire) and more than \$50 million in damages claimed by five groups of property owners affected by the fire. Subsequent to dismissal, all defendants filed motions for attorneys' fees and sanctions based upon evidence that Cal Fire investigators conducted a fraudulent investigation, hid evidence, changed their claimed origin and were untruthful in depositions. The specially assigned judge for all purposes granted the motions and awarded attorneys' fees/expert expenses/sanctions in the aggregate sum of \$32.4 million against Cal Fire. This is one of the largest sanctions award of its kind in the country. Mr. Linkert represented a family group of landowners and their forest management company. Their share of the award was \$6.1 million. The matter has been appears twice with interim retrial of damages. The case is still pending. The award of sanctions for the fraudulent investigation is final; only the amount of sanctions is still being litigated.

Obtained defense verdict for subcontractor in \$7 million contractual indemnity action filed by general contractor following fire loss where client would have been responsible for the entire claimed amount if any percentage of liability was found. Upheld on appeal and the denial of Motion for Attorneys' Fees reversed. Plaintiff contractor paid \$800K in attorneys' fees, expert witness fees and costs.

Obtained verdict of \$4.5 million in a wrongful death case of admitted liability. The lowest demand prior to trial was \$10 million; top-tier plaintiff counsel demanded \$32 million at trial. Decedent wife and mother of two recently earned her Ph.D. Wage loss of \$1.5 million.

Obtained defense verdict in rape of a teen attending a weekend retreat sponsored by client. The rapist was invited to attend the retreat as a "counselor." Plaintiff became pregnant as a result of the rape, developed preeclampsia, and had significant medical bills prior to and after birth of child.

Obtained Habeas Corpus release from state prison for client convicted of sexually assaulting step-daughter. Daughter admitted fabricating charges during fourth day of deposition cross-examination.

Obtained successful Motion for Summary Judgment in catastrophic burn case where client's foreman admitted mistakenly informing plaintiff that gasoline vapor recovery system was not connected to underground storage tank being relined. Settlement demand: \$16 million. Upheld on appeal.

Obtained \$23 million judgment for client following successful Motion for Summary Judgment in Breach of Contract, Promissory Note Default case. MSJ based upon a strategy of limited discovery (requests for admissions and interrogatories; no depositions taken in the case).

Obtained Motion for Summary Judgment for General Contractor following job site trench cave-in that killed three boys and injured a fourth. All other co-defendants lost their respective MSJ's and remained in the case. Upheld on appeal.

# Professional Associations

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

# Recognition

- Martindale-Hubbell, AV Preeminent Judicial Edition
- American Board of Trial Advocates (ABOTA)
- American College of Trial Lawyers - Fellow
- Best Lawyers
- Litigation Counsel of America - Fellow
- Super Lawyers
- Sacramento Magazine - Top Lawyers
- America's Top 100 Civil Defense Litigators, Northern California
- Sacramento Valley Chapter "Trial Lawyer of the Year" - 2018

# Continuing Education And Presentations

- Taking and Defending Effective Depositions in California (All Day Seminar – 8 years)
- Handling Major Exposure Litigation - Webinar
- Presentations:
  - "Minimizing Risks and Exposures: An Attorney's Perspective" - AIG 2016
  - "Are Defendants Getting Burned" Federal Wildfire Litigation Policy" - Association of Consulting Foresters - Lake Tahoe 2017
  - "Fire Litigation Risk: One Lawyer's Perspective" - Mason, Bruce & Girard, Inc. 2017
  - "Techniques of Failure Analysis: Engineers as Expert Witness" - Stanford University Graduate Engineering - Annual 2018 - to date
  - "Issues and Trends in Litigation" - AIG - 2018
  - "School Molestation and Scooter Litigation Issues" - AIG - 2019
  - "Active Shooter: Prevention, Response and Liability" - AIG 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