

*(Alcazar v. Los Angeles Unified School District, (2018) 29 Cal.App.5th 86.)*

**Trial court did not abuse its discretion by prohibiting additional mini-opening statements and case-specific facts at trial under Code of Civil Procedure section 222.5.**

### **FACTS/PROCEDURE**

Edgar A. Alcazar (Plaintiff) was injured when he fell from a tree on school property. Prior to the incident, school staff had seen Plaintiff swinging “like Tarzan” from the same branch and had warned him not to do so because it was unsafe. Plaintiff sued Los Angeles Unified School District (LAUSD) for negligence and premise liability alleging that he had “sustained severe and permanent injuries when he climbed and then fell from the subject tree.”

Prior to jury selection, the parties jointly requested leave to give mini-opening statements to the venire. The trial court granted the parties’ request and limited each side’s mini-opening to three minutes. The trial judge, however, refused to allow Plaintiff’s counsel to make mini-opening statements to the subsequent venire and from providing case-specific facts. The jury returned a verdict in favor of LAUSD.

On appeal, Plaintiff argues the trial court’s order was after the first day of the jury selection process prohibiting additional mini-opening statements and discussion of case-specific facts were not in line with the purpose of California Code of Civil Procedure section 222.5, or with its terms. Plaintiff claimed it was error for the trial court to do so.

### **DISCUSSION**

On appeal, the Court of Appeal for the Second District affirmed. As enacted, section 222.5 did not provide for mini opening statements. In 2011, the California legislature amended section 222.5 to state “the trial judge should allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process.” The purpose of the amendment was to ensure that civil trial courts possessed the necessary discretionary authority to control the jury selection process.

The Court of Appeal found that the relevant version of section 222.5<sup>1</sup> makes plain that the trial court has sound discretion to limit case-specific facts or mini-opening statements. In its reasoning, the court decided that the trial court did not impose or enforce a complete ban on case-specific facts. Instead, the trial court imposed what it deemed to be necessary but limited restraints on counsels’ examination of prospective jurors. Additionally, the Court of Appeal found that Plaintiff was not prejudiced by denying mini-opening statements because the trial court liberally allowed counsel to question the second and third venire.

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<sup>1</sup> Section 225.5 was later amended in 2017 to provide that “the trial judge *shall* allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the jury selection process.” This was because the Court of Appeal found that the legislature did not enact a retroactive provision when they amended section 222.5 in 2017.