

CALIFORNIA'S ROLE IN THE MID-TWENTIETH CENTURY CONTROVERSY OVER PAIN AND SUFFERING DAMAGES:

*The NACCA, Melvin Belli, and the
Crusade for "The Adequate Award"*

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INTRODUCTION

During a thirty-year period starting roughly at the end of World War II, California became the nation's most plaintiff-friendly state in personal injury cases. The California Supreme Court used its lawmaking power under the common law to revolutionize tort law. In a series of decisions, the Supreme Court created a strict liability cause of action in products liability cases,¹ replaced contributory negligence with pure comparative fault,² abolished the common law classifications for injuries caused by conditions on land,³ loosened requirements for establishing causation,⁴ expanded the application of *res ipsa loquitur*,⁵ abrogated sovereign immunity

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¹ *Greenman v. Yuba Power Products*, 377 P.2d 897 (Cal. 1962).

² *Li v. Yellow Cab*, 532 P.2d 1226 (Cal. 1975).

³ *Rowland v. Christian*, 443 P.2d 561 (Cal. 1968).

⁴ *Summers v. Tice*, 199 P.2d 1 (Cal. 1948).

⁵ *Ybarra v. Spangard*, 154 P.2d 687 (Cal. 1944); *Escola v. Coca-Cola Bottling Co.*, 150 P.2d 436 (Cal. 1944).

for public entities,⁶ created duties of care in new situations,⁷ and allowed plaintiffs to recover for purely emotional injuries in new contexts.⁸ For injured plaintiffs and their lawyers, this was the golden era of California tort law. The Supreme Court developed a national reputation as the leader in court-instigated changes to tort law.⁹

In the mid-1970s, California again took a leadership role in modifying tort law, but this time the Legislature was the instigator and the change was not plaintiff-friendly. In 1975, the governor called the Legislature into special session to address the problem of rising medical liability insurance costs.¹⁰ Medical professionals and their insurers claimed that large judgments in medical malpractice cases were limiting the availability of liability insurance and driving health care providers from the state. The special session enacted a series of laws in 1975 known collectively as the Medical Injury Comprehensive Reform Act (MICRA). MICRA changed California tort law in medical negligence cases by limiting the contingent fees of plaintiffs' attorneys,¹¹ abolishing the collateral source rule,¹² and allowing for periodic payment of future damages.¹³

⁶ *Muskopf v. Corning Hospital District*, 359 P.2d 457 (Cal. 1961). The case was overruled by statute.

⁷ *Tarasoff v. Regents*, 551 P.2d 334 (Cal. 1976) (duty of psychiatrist to warn potential victim of threat posed by patient); *Vesely v. Sager*, 486 P.2d 151 (Cal. 1971) (duty owed by dram shop owner to victim of intoxicated patron); *Coulter v. Superior Court*, 577 P.2d. 669 (Cal. 1978) (duty owed by host to victim of intoxicated guest). *Vesely* and *Coulter* were abrogated by legislation.

⁸ *State Rubbish Collectors Association v. Siliznoff*, 240 P.2d 282 (Cal. 1952); *Dillon v. Legg*, 441 P.2d 912 (Cal. 1968).

⁹ For a discussion of how California Supreme Court justices rationalized making significant changes to the common law during the period, see G. EDWARD WHITE, *THE AMERICAN JUDICIAL TRADITION* 292-301 (1976). White focuses on the views of Roger Traynor, the Court's most influential member.

¹⁰ "The cost of medical malpractice insurance has risen to levels which many physicians and surgeons find intolerable. The inability of doctors to obtain such insurance at reasonable rates is endangering the health of the people of this State and threatens the closing of many hospitals. . . . It is critical that the Legislature enact laws which will change the relationship between the people and the medical profession, the legal profession and the insurance industry, and thereby reduce the costs which underlie these high insurance premiums." Proclamation by the Governor, 1975 Cal. Stat. 2d Ex. Sess. 3947.

¹¹ CAL. BUS. & PROF. CODE § 6146.

¹² CAL. CIV. CODE § 3333.1.

¹³ CAL. CIV. PROC. CODE § 667.7.