

PROFESSIONAL LIABILITY UPDATE

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Juan C. Araneda

Jennifer A. Becker

David Borovsky

Robert J. Buccieri

Kathleen Ewins

Howard M. Garfield

Jason A. Geller

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John Hong

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Helen Kim

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David P. Nemecek

Glen R. Olson

Steven M. Sharafian

John B. Sullivan

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Irene K. Yesowitch

CALIFORNIA LAW

By Glen R. Olson

Daniels v. Robbins – California Court of Appeal, Fourth District Case No. G039984 (February 24, 2010)

Court of Appeal Holds That Dismissal for Discovery Abuse Can Constitute a “Favorable Termination” for Malicious Prosecution Purposes

In *Daniels v. Robbins*, the Fourth District California Court of Appeal affirmed a judgment dismissing a malicious prosecution suit. While the Court found the plaintiff’s evidence of malice lacking, it also noted that the dismissal of the underlying lawsuit as a discovery sanction could constitute a “favorable termination” for malicious prosecution purposes.

Young sued Daniels for slander and other causes of action. Young failed to comply with discovery orders and the trial Court granted a motion to dismiss. Daniels then sued Young and Young’s attorneys for malicious prosecution, and the attorneys filed an anti-SLAPP motion pursuant to Code of Civil Procedure §425.16. The trial court granted the motion, finding that Daniels had failed to establish a probability that she would prevail on her malicious prosecution claim.

While the Court of Appeal upheld the dismissal of Daniels’ case, it disagreed

with the trial court on whether she had made a *prima facie* showing that the underlying slander action had been terminated in her favor. The appellate court noted that Daniels had shown both the dismissal as a discovery sanction and that the judgment in the underlying action reflected on the merits of the case brought against her. In reaching its conclusion, the Court disagreed with *Zeavin v. Lee* (1982) 136 Cal.App.3d 766, in which the Court “found it inconceivable” that an attorney could be held liable for a client’s intransigence in discovery. The *Daniels* court observed that, where the attorney has no probable cause for filing suit and the attorney shares the client’s malice against the defendant, malicious prosecution can attach to both the attorney and client, even if the case ended due to discovery sanctions.

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