IMPORTANT NEW 2024 CIVIL CASE DECISIONS

Presentation

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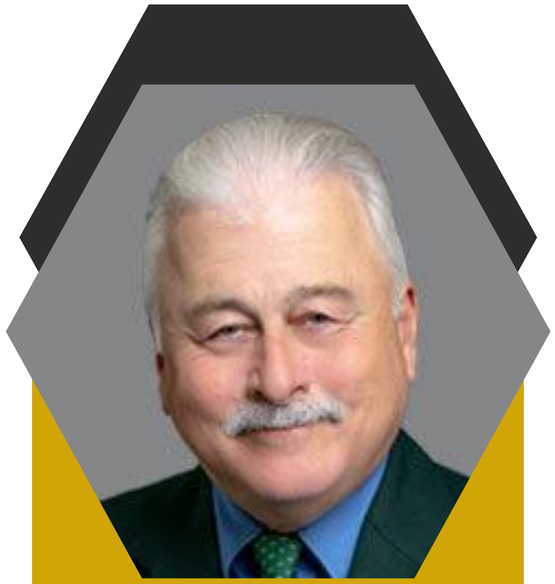
Today's Speakers & Program



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ARBITRATION

Harrod v. Country Oaks Partners, LLC (2024) 15 Cal.5th 939: The California Supreme Court affirmed the Court of Appeal, which had affirmed the trial court's order denying defendant's motion to compel arbitration of plaintiff's complaint alleging negligence and elder abuse. Plaintiff signed a power of attorney for health care appointing his nephew, Mark Harrod, as his "health care agent" to make "health care decisions" should plaintiff's primary physician find plaintiff unable to make those decisions himself. Plaintiff later fell, broke a femur, became unable to walk and was admitted to defendant skilled nursing facility to obtain living assistance and rehabilitative treatment. During the admission process Mark Harrod signed two agreements. The first was an admission agreement that was state-mandated and unalterable. The second was an arbitration agreement. The California Supreme Court concluded that the execution of the optional contract for arbitration was not a health care decision within the health care agent's authority, and defendant's owners and operators could not rely on the agent's execution of the second agreement to compel arbitration of claims arising from the principal's alleged maltreatment alleged in his complaint. (March 28, 2024.)

ARBITRATION

Quach v. Cal. Commerce Club, Inc. (2024) 16 Cal.5th 562: The California Supreme Court reversed the Court of Appeal decision which had reversed the trial court's decision denying defendant's motion to compel arbitration of plaintiff's complaint alleging wrongful termination, age discrimination, retaliation, and harassment. The trial court denied the motion to compel arbitration concluding that plaintiff had shown he would suffer prejudice if arbitration was compelled. The Court of Appeal disagreed with the trial court, finding that defendant did not waive its right to compel arbitration and concluding the trial court's finding that plaintiff had shown prejudice was not supported by substantial evidence. Two weeks after the Court of Appeal's decision, the United States Supreme Court issued

Morgan v. Sundance, Inc. (2022) 596 U.S. 411 (Morgan), holding that federal law does not require a showing of prejudice to establish waiver of the right to arbitrate. (Id. at pp. 413–414.) Because the California law requiring a showing of prejudice had been based upon earlier federal case law that was reversed by Morgan, the California Supreme Court abrogated the prejudice rule in light of Morgan and reversed the Court of Appeal's decision. (July 25, 2024.)

BUSINESS AND PROFESSIONS CODE

Castellanos et al. v. State of California et al. (2024) 16 Cal.5th 588: The California Supreme Court affirmed the Court of Appeal's decision that reversed the trial court's decision concluding that Proposition 22, which enacted Business and Professions Code section 7451 making a driver for an app-based transportation or delivery company, such as Uber Technologies, Inc., Lyft, Inc., or DoorDash, Inc., an independent contractor and not an employee of the company as long as several conditions were met, was unconstitutional. The California Supreme Court concluded that section 7451, does not conflict with article XIV, section 4 of the California Constitution, because the latter provision does not assign the Legislature sole authority, to the exclusion of the initiative power, to govern workers' compensation. (July 25, 2024.)

CIVIL CODE

Niedermeier v. FCA US LLC (2024) 15 Cal.5th 792: The California Supreme Court reversed the Court of Appeal and concluded that in a lemon law action under the Song-Beverly Consumer Warranty Act (Song-Beverly Act; Civ. Code, § 1791 et seq.), neither a trade-in credit nor sale proceeds reduce the statutory restitution remedy set forth in §1793.2(d)(2) when a consumer has been forced to trade in or sell a defective vehicle due to the manufacturer's failure to comply with the Song-Beverly Act. (March 4, 2024.)

CIVIL CODE

Rodriguez et al. v. FCA US, LLC (2024) 17 Cal.5th 189: The California Supreme Court affirmed the Court of Appeal's decision that had affirmed the trial court's order granting defendant's motion to summary judgment in plaintiffs' action alleging violation of the Song-Beverly Consumer Warranty Act (Act; Civ. Code, § 1791 et seq.). Plaintiffs bought a two-year-old car with over 55,000 miles on it, with an unexpired manufacturer's new car warranty. The car repeatedly experienced engine problems despite numerous repair attempts by defendant. Plaintiffs sued defendant to enforce the refund-or-replace provision in Civil Code § 1793.2(d)(2) alleging that their car was a "new motor vehicle" because it was a "motor vehicle sold with a manufacturer's new car warranty" (§ 1793.22(e)(2)). The California Supreme Court agreed with the Court of Appeal and trial court's conclusion that the refund-or-replace remedy did not apply because plaintiffs' car was not a "new motor vehicle." The Supreme Court held that a motor vehicle purchased with an unexpired manufacturer's new car warranty does not qualify as a "motor vehicle sold with a manufacturer's new car warranty" under section 1793.22(e)(2)'s definition of "new motor vehicle" unless the new car warranty was issued with the sale. (October 31, 2024.)

1: the manufacturer must promptly replace the vehicle or promptly pay restitution in an amount equal to the actual price paid or payable by the buyer.

CIVIL PROCEDURE

California Capital Insurance Company v. Hoehn (2024) 17 Cal. 5th 207: *The California Supreme Court overruled the rule in Rogers v. Silverman (1989) 216 Cal.App.3d 1114 (Rogers) and its progeny that Code of Civil Procedure section 437.5's two-year time limit applies to Code of Civil Procedure section 473(d) motions to vacate a judgment that is void, stating that procedural hurdles that are unnecessary to the fair adjudication of default judgments should not stand in the way of the vindication of a defendant's due process rights. In the underlying case plaintiff attempted to serve defendant in 2010 and allegedly obtained substituted service on defendant's girlfriend. In 2011 plaintiff obtained a default judgment of $486,528 against defendant. In 2018 plaintiff assigned the default judgment rights, and in 2020 after the judgment creditor tried to garnish defendant's wages. Defendant then filed his motion to set aside the default judgment which the trial court denied based upon Rogers, and the Court of Appeal affirmed. (November 18, 2024.)*

CIVIL PROCEDURE

City of Los Angeles v. Pricewaterhousecoopers, LLP (2024) 17 Cal.5th 46: The California Supreme Court reversed the Court of Appeal decision that had reversed the trial court's order concluding that plaintiff had been engaging in an egregious pattern of discovery abuse as part of a campaign to cover up its misconduct, and ordering plaintiff to pay $2.5 million in discovery sanctions to defendant. The Court of Appeal concluded that the trial court did not have the authority to issue the order under the general provisions of the Civil Discovery Act concerning discovery sanctions, Code of Civil Procedure sections 2023.010 and 2023.030. The California Supreme Court disagreed, concluding that under the general sanctions provisions of the Civil Discovery Act, Code of Civil Procedure sections 2023.010 and 2023.030, the trial court had the authority to impose monetary sanctions for plaintiff's pattern of discovery abuse. The trial court was not limited to imposing sanctions for each individual violation of the rules governing depositions or other methods of discovery. (August 22, 2024.)

CIVIL PROCEDURE

Meinhardt v. City of Sunnyvale (2024) 16 Cal.5th 643: *The California Supreme Court reversed the Court of Appeal's decision regarding when the time to appeal starts to run in writ of administrative mandate proceedings under California Code of Civil Procedure section 1094.5. The Court of Appeal concluded that the time to appeal began to run with the filing of an order that disposed of all issues in the case and contemplated no further action, not with the subsequent entry of a judgment. The California Supreme Court disagreed, and adopting a bright line rule it concluded that that the time to appeal in administrative mandate proceedings starts to run with entry of judgment or service of notice of entry of judgment, rather than with the filing of, or service of notice of the filing of, an order, minute order, or other ruling. (July 29, 2024.)*

CIVIL PROCEDURE

North Am. Title Co. v. Superior Court (2024) 17 Cal.5th 155: The California Supreme Court reversed the decision of the Court of Appeal regarding disqualification of the trial judge. The Court of Appeal ruled that the nonwaiver provision set forth in Code of Civil Procedure section 170.3(b)(2) precluded waiver of a party's right to seek judicial disqualification when the claim would otherwise be barred by the requirement in section 170.3(c)(1) that a claim for disqualification should be at the earliest practicable opportunity. The Supreme Court disagreed, concluding that the nonwaiver provision of section 170.3(b)(2) applies only in circumstances of judicial self-disqualification, where a judge has determined himself or herself to be disqualified and, absent an explicit waiver of disqualification by the parties, would recuse himself or herself from the proceedings. (§ 170.3(a)(1) & (b)(1).) The nonwaiver provision is inapplicable when a party seeks disqualification by filing a written verified statement of disqualification. (October 28, 2024.)

CIVIL PROCEDURE

TriCoast Builders, Inc. v. Fonnegra (2024) 15 Cal.5th 766: *The California Supreme Court affirmed the Court of Appeal's decision that affirmed the trial court's order denying plaintiff's motion for relief from waiver of a jury trial. Plaintiff did not make a jury fee deposit because defendant did so. On the day of trial, defendant said he was waiving his request for a jury trial. Plaintiff asked for a jury trial and offered to post the jury fee deposit. The trial court denied this request concluding that plaintiff had waived its right to a jury trial by not timely depositing the jury fee deposit. (Code of Civil Procedure, section 631.) Although the trial court observed that plaintiff could challenge the ruling by filing a petition for an extraordinary writ, plaintiff did not do so. After a seven day bench trial the trial court found against plaintiff. The California Supreme Court concluded that a trial court is not required to always grant relief from a jury waiver if proceeding with a jury would not cause hardship to other parties or to the trial court. A request for relief from jury waiver always calls for consideration of multiple factors in addition to hardship, including the timeliness of the request and the reasons supporting the request. The California Supreme Court also concluded that when a litigant challenges the denial of relief from jury waiver for the first time on appeal of the judgment of the trial court, where the constitutional right of jury trial has been validly waived, prejudice from the denial of section 631(g) relief will not be presumed but must be shown. (February 26, 2024.)*

EMPLOYMENT

Bailey v. S.F. Dist. Attorney's Office (2024) 16 Cal.5th 611: The California Supreme Court reversed the Court of Appeal's decision affirming the trial court's order granting defendant's motion for summary judgment in plaintiff's action for violations of the California Fair Employment and Housing Act (FEHA: Government Code section 12900 et seq.). Plaintiff, an African-American, alleged she was subjected to racial harassment by her coworker and retaliation by the human resources manager after complaining of the harassment. The California Supreme Court concluded that a coworker's one-time use of a racial slur may be actionable in a claim of harassment. Such an incident may be so severe as to alter the conditions of employment and create a hostile work environment. An isolated act of harassment may be actionable if it is sufficiently severe in light of the totality of the circumstances, and a coworker's use of an unambiguous racial epithet, such as the N-word, may be found to suffice. The California Supreme Court also concluded that a course of conduct that effectively seeks to withdraw an employee's means of reporting and addressing racial harassment in the workplace may be actionable in a claim of retaliation. Such conduct may constitute an adverse employment action. Applying these standards, the Supreme Court concluded that the record presented triable issues of fact on plaintiff's harassment and retaliation claims and reversed the Court of Appeal. (July 29, 2024.)

EMPLOYMENT

Estrada v. Royalty Carpet Mills, Inc. (2024) 15 Cal.5th 582: The California Supreme Court addressed a conflict in the Courts of Appeal as to whether trial courts have the inherent authority to strike a Labor Code Private Attorneys General Act of 2004 (PAGA; Lab. Code, § 2698 et seq.) claim on manageability grounds. The Supreme Court ruled that trial courts lack inherent authority to strike PAGA claims on manageability grounds. In reaching this conclusion, it emphasized that trial courts do not generally possess a broad inherent authority to dismiss claims. Nor is it appropriate for trial courts to strike PAGA claims by employing class action manageability requirements. And, while trial courts may use a vast variety of tools to efficiently manage PAGA claims, given the structure and purpose of PAGA, striking such claims due to manageability concerns — even if those claims are complex or time-intensive — is not among the tools trial courts possess. (January 18, 2024.)

EMPLOYMENT

Huerta v. CSI Electrical Contractors (2024) 15 Cal.5th 908: *The California Supreme Court answered three questions from the United States Court of Appeals for the Ninth Circuit about Industrial Welfare Commission (IWC) wage order No. 16-2001 (Wage Order No. 16) and the scope of the term "hours worked." First, an employee's time spent on an employer's premises awaiting and undergoing an employer-mandated exit procedure that includes the employer's visual inspection of the employee's personal vehicle is compensable as "hours worked" within the meaning of Wage Order No. 16, section 2(J). Second, the time that an employee spends traveling between a security gate and the employee parking lots is compensable as "employer-mandated travel" under Wage Order No. 16, section 5(A) if the security gate was the first location where the employee's presence was required for an employment-related reason other than the practical necessity of accessing the worksite. Third, when an employee is covered by a collective bargaining agreement that complies with Labor Code section 512(e) and Wage Order No. 16, section 10(E), and provides the employee with an "unpaid meal period," that time is nonetheless compensable under the wage order as "hours worked" if the employer prohibits the employee from leaving the employer's premises or a designated area during the meal period and if this prohibition prevents the employee from engaging in otherwise feasible personal activities. An employee may bring an action under Labor Code section 1194 to enforce the wage order and recover unpaid wages for that time. (March 25, 2024.)*

EMPLOYMENT

Naranjo v. Spectrum Security Services, Inc. (2024) 15 Cal.5th 1056: *The California Supreme Court addressed the issue of whether an employer has knowingly and intentionally failed to comply with Labor Code section 226's requirements when the employer had a good faith, yet erroneous, belief that it was in compliance. The California Supreme Court concluded that when an employer reasonably and in good faith believed it was providing a complete and accurate wage statement as required by Labor Code section 226, then it has not knowingly and intentionally failed to comply with the wage statement law and is not liable for the statutory penalties of up to $4,000 or the employee's actual damages, should the employee's damages exceed the statutory penalties, provided for in Labor Code section 226(e)(1).) (May 6, 2024.)*

EMPLOYMENT

Stone v. Alameda Health System (2024) 16 Cal.5th 1040: The California Supreme Court reversed the Court of Appeal's decision concluding that a public health authority can be liable for wage and hour violations and civil penalties under Labor Code Private Attorneys General Act of 2004 (PAGA; Lab. Code, § 2698 et seq.) Plaintiffs sued defendant for these violations. The trial court sustained defendant's demurrer, without leave to amend, concluding that the provisions of the Labor Code apply only to private sector employees unless they are specifically made applicable to public employees. These provisions did not apply to defendant which the trial court concluded was a public agency. The Court of Appeal reversed the trial court concluding that defendant had liability. The California Supreme Court disagreed and reversed the Court of Appeal, concluding that the Legislature intended to exempt public employers such as the hospital authority from Labor Code provisions governing meal and rest breaks (§§ 226.7, 512) and related statutes governing the full and timely payment of wages (see § 220, subd. (b)). It also concluded that public entities are not subject to PAGA penalties for the violations alleged in this action. (August 15, 2024.)

EMPLOYMENT

Turrieta v. Lyft, Inc. (2024) 16 Cal.5th 664: The California Supreme Court affirmed the Court of Appeal's decision that had affirmed the trial court's order denying motions, by other employees who had filed separate PAGA actions against defendant employer, to intervene in this PAGA action and submit objections to the settlement and to vacate the judgment. This case involved what has become a common scenario in PAGA litigation: multiple persons claiming to be an "aggrieved employee" within the meaning of PAGA file separate and independent lawsuits seeking recovery of civil penalties from the same employer for the same alleged Labor Code violations. The California Supreme Court observed that a PAGA plaintiff may use the ordinary tools of civil litigation that are consistent with the statutory authorization to commence an action such as taking discovery, filing motions, and attending trial. However, the California Supreme Court concluded that it would be would be inconsistent with the scheme the Legislature enacted for PAGA cases to allow other PAGA plaintiffs to intervene in an ongoing PAGA action of another plaintiff asserting overlapping claims, to require the trial court to consider objections to a proposed settlement in that overlapping action, and to allow other PAGA plaintiffs to move to vacate the judgment in that action. This conclusion best comports with the relevant provisions of PAGA as read in their statutory context, in light of PAGA's legislative history, and in consideration of the consequences that would follow from adopting the interpretation requested by the other PAGA plaintiffs. (August 1, 2024.)

INSURANCE

Another Planet Entertainment, LLC v. Vigilant Insurance Co. (2024) 15 Cal.5th 1106: *The California Supreme Court answered a question posed by the Ninth Circuit Court of Appeal and also decided an issue where California Courts of Appeal had come to different conclusions regarding commercial property insurance policy coverage for COVID-19. The question posed by the Ninth Circuit was: "Can the actual or potential presence of the COVID-19 virus on an insured's premises constitute 'direct physical loss or damage to property' for purposes of coverage under a commercial property insurance policy?" The Supreme Court answered: No, the actual or potential presence of COVID-19 on an insured's premises generally does not constitute direct physical loss or damage to property within the meaning of a commercial property insurance policy under California law. (May 23, 2024.)*

INSURANCE

John's Grill, Inc. v. The Hartford Financial Services Group, Inc. (2024) 16 Cal.5th 1003: The California Supreme Court reversed the Court of Appeal's ruling that had reversed the trial court's order sustaining defendant's demurrer, without leave to amend, to pla intiff complaint alleging causes of action including breach of contract, bad faith denial of an insurance claim, and unfair business practices related to defendant's denial of coverage for plaintiff's claim for damages due to COVID-19. Defendant denied coverage on various grounds, including that the loss or damage claimed by plaintiff did not fall within the insurance policy's "Limited Fungi, Bacteria or Virus Coverage" endorsement. The Limited Fungi, Bacteria or Virus Coverage endorsement generally excluded coverage for any virus-related loss or damage that the policy would otherwise provide, but it extended coverage for virus-related loss or damage if the virus was the result of certain specified causes of loss, including windstorms, water damage, vandalism, and explosion. The Court of Appeal reversed the trial court, concluding that the loss limitation was unenforceable because it rendered the policy's promise of virus-related coverage illusory. The California Supreme Court disagreed, concluding that the terms of the endorsement were clear and unambiguous. The endorsement provided virus-related coverage, but only if the virus resulted from certain specified causes of loss. In accordance with long-settled principles of contract interpretation, the plain meaning of the policy governs. Because plaintiff admitted that it could not satisfy the specified cause of loss limitation, it had no claim for coverage under the policy. The California Supreme Court also observed that it had never recognized the so-called illusory coverage doctrine. But even assuming some version of the doctrine might exist under California law, the Supreme Court held that an insured must make a foundational showing that it had a reasonable expectation that the policy would cover the insured's claimed loss or damage and that plaintiff had not shown it had a reasonable expectation of coverage under the policy for its pandemic-related losses. (August 8, 2024.)

INSURANCE

Rosenberg-Wohl v. State Farm Fire & Casualty Co. (2024) 16 Cal.5th 520: The California Supreme Court reversed the Court of Appeal's decision that had affirmed the trial court's order sustaining defendant's demurrer, without leave to amend, to plaintiff's complaint alleging violations of the False Advertising Law (Bus. & Prof. Code, § 17500 et seq.) and the unfair competition law (UCL; Bus. & Prof. Code, § 17200 et seq.). The trial court, and a divided Court of Appeal, concluded that the action was barred because plaintiff did not file the action within the one-year statute of limitations in Insurance Code section 2071. The California Supreme Court disagreed, concluding that the UCL's four-year statute of limitations applied to the UCL claim, not Insurance Code section 2071. Plaintiff's lawsuit was not a suit or action on her policy for the recovery of any claim. Plaintiff did not attempt to directly or indirectly recover damages associated with the denial of her insurance claim. Instead, plaintiff sought only declaratory relief regarding defendant's claims-handling practices generally and a forward-looking injunction under the UCL. In pursuing such relief, plaintiff brought a preventive action to which neither the standard policy language, nor the policy reasons underlying the Legislature's authorization of a one-year limitations period for filing certain kinds of claims-related lawsuits, applied. (July 18, 2024.)

INSURANCE

Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp. (2024) 16 Cal.5th 67: The California Supreme Court reversed the Court of Appeal's decision in plaintiff's equitable contribution claim (in the context of a continuous injury that triggered multiple policy periods) against several insurers that had issued first-level excess policies to defendant for policy years where the directly underlying primary policy had been exhausted. The Court of Appeal agreed that Montrose Chemical Corp. of California v. Superior Court (2020) 9 Cal.5th 215 (Montrose III) did not extend to excess policies that sit over primary insurance. The California Supreme Court disagreed, holding that its analysis in Montrose III applied to this case, and concluding that first-level excess policies are reasonably construed as requiring only vertical exhaustion, not horizontal exhaustion. This conclusion, however, did not fully resolve the questions presented in the appeal because, unlike in Montrose III, which involved a contractual insurance coverage dispute between an insured and its insurer, this case involved an equitable contribution claim between coinsurers. Because the Court of Appeal did not decide the issue of whether it would be unfair as a matter of equity to allow a primary insurer to obtain contribution from an excess insurer given the distinct roles those two types of carriers play in covering a loss, the case was remanded the case to the Court of Appeal to address these alternative arguments in the first instance. (June 17, 2024.)

2: Allowing access to an excess insurance policy as soon as all the directly underlying insurance from that policy period (i.e., any primary and any excess policies with a lower attachment point) were exhausted.
3: This would not allow the insured to access an excess policy until it had exhausted every excess policy with a lower attachment point across all relevant policy periods.

PROBATE

Haggerty v. Thornton (2024) 15 Cal.5th 729: The California Supreme Court affirmed the Court of Appeal, that affirmed the trial court's order concluding that a trust agreement was validly amended, thereby excluding plaintiff from distribution. The California Supreme Court held that under Probate section 15402, a trust may be modified via the Probate section 15401 procedures for revocation, including the statutory method, unless the trust instrument provides a method of modification and explicitly makes it exclusive, or otherwise expressly precludes the use of revocation procedures for modification. (February 8, 2024.)

REAL PROPERTY

JJD-HOV Elk Grove, LLC v. Jo-Ann Stores, LLC (2024) _Cal. 5th_, 2024 WL 5164746: The California Supreme Court affirmed the Court of Appeal decision that upheld a cotenancy provision in a commercial lease as reflecting the parties' agreement regarding acceptable alternative performance of agreed upon contract obligations. The California Supreme Court declined to follow the analysis of the Fifth Appellate District Court of Appeal in Grand Prospect Partners, L.P. v. Ross Dress For Less, Inc. (2015) 232 Cal.App.4th 1332, 1336 that had concluded that a cotenancy provision operated as an unenforceable penalty under California Civil Code section 1671. The trial court and Court of Appeal in this case properly analyzed the cotenancy provision as a form of alternative performance because the provision allocated risks and benefits between the two parties and provided plaintiff a realistic choice between accepting lower rent or taking additional efforts to increase occupancy rates or secure replacement anchor tenants. The lease and cotenancy provision were enforceable because they simply created a rent scheme in which there were two applicable rents. (December 19, 2024.)

REAL PROPERTY

Romero v. Shih (2024) 15 Cal.5th 680: The California Supreme Court reversed the Court of Appeal's decision concluding that California law prohibits a court from recognizing an implied easement that precludes the property owners from making all or most practical uses of the easement area, and such an easement can only be created in a written instrument. The California Supreme Court disagreed, concluding that California law does not impose such a limitation on the recognition of implied easements. The evidentiary standard for recognizing an implied easement is a high one, and that standard will naturally be more difficult to meet where the nature of the easement effectively precludes the property owners from making most practical uses of the easement area. But if there is clear evidence that the parties to the 1986 sale intended for the neighboring parcel's preexisting use of the area to continue after separation of title, the law obligates courts to give effect to that intent. The case was remanded to the Court of Appeal to consider whether substantial evidence supported the trial court's finding that an implied easement existed under the circumstances of the case. (February 1, 2024.)

TORTS

Downey v. City of Riverside (2024) 16 Cal.5th 539: The California Supreme Court reversed the Court of Appeal's order affirming the trial court's orders sustaining defendants' demurrer, without leave to amend, to plaintiff's complaint alleging negligence under Dillon v. Legg (1968) 68 Cal.2d 728 (Dillon). Plaintiff, the mother of daughter Jayde Downey, was giving driving directions to her daughter over a cell phone and heard the event when her daughter was severely injured in a car crash. The trial court, and later the Court of Appeal, concluded that plaintiff could not recover emotional distress damages against the defendants unless at the time of the crash she was aware of a causal connection between her daughter's injuries and the defendants' alleged negligence in maintaining the intersection. The California Supreme Court disagreed, concluding that under Dillon it is the awareness of an event that is injuring the victim — not awareness of the defendant's role in causing the injury — that matters. Neither precedent nor considerations of tort policy supported requiring plaintiffs asserting bystander emotional distress claims to show contemporaneous perception of the causal link between the defendant's conduct and the victim's injuries. (July 22, 2024.)

TORTS

Himes v. Somatics, LLC (2024) 16 Cal.5th 209: *The California Supreme Court, responded to a request from the United States Court of Appeals for the Ninth Circuit. In a typical products liability case, a manufacturer owes a duty to warn the end user "about the hazards inherent in their products." (Johnson v. American Standard, Inc. (2008) 43 Cal. 4th 56, 64.) For manufacturers of prescription drugs and many medical devices, however, the duty to warn runs to the physician, not to the patient. The issue in this case was if a prescription drug or medical device manufacturer breaches its duty under the learned intermediary doctrine and fails to provide an adequate warning (or any warning at all) to the physician, how must the plaintiff prove that the failure to warn caused his or her injury? The California Supreme Court concluded that a plaintiff is not required to show that a stronger warning would have altered the physician's decision to prescribe the product to establish causation. Instead, a plaintiff may establish causation by showing that the physician would have communicated the stronger warning to the patient and an objectively prudent person in the patient's position would have thereafter declined the treatment. (June 20, 2024.)*

TORTS

Rattagan v. Uber Technologies, Inc. (2024) 17 Cal.5th 1: The California Supreme Court answered a question posed by the United States Court of Appeals for the Ninth Circuit: Under Robinson Helicopter v. Dana Corp. (2004) 34 Cal.4th 979 (Robinson), may a plaintiff assert a tort claim for fraudulent concealment arising from or related to the performance of a contract? The California Supreme Court said the answer is a qualified yes. A plaintiff may assert a fraudulent concealment cause of action based on conduct occurring in the course of a contractual relationship if the elements of the claim can be established independently of the parties' contractual rights and obligations, and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract. The economic loss doctrine does not apply if defendant's breach caused physical damage or personal injury beyond the economic losses caused by the contractual breach and defendant violated a duty flowing, not from the contract, but from a separate, legally recognized tort obligation. (August 22, 2024.)

FACTUAL NOTES

P was contacted by subsidiaries of D and retained P to be the lawyer for D in Argentina. He was also the local resident registrant for D with the Buenos Aires Office of Corporations.

Uber decided to launch its operations in Argentina without government approval. The public reaction was violent. P asked D to get another personal representative but they did not get one. P was raided by police and vilified in the media. P was later formally charged with unauthorized use of public space with a commercial aim and aggravated tax evasion. He was subjected to interrogation, mugshots, and fingerprinting. He was also temporarily banned from traveling abroad, which negatively affected his practice.

SETTLEMENT

BTHHM Berkeley, LLC, et al. v. Johnston (2024) 100 Cal.App.5th 1220: *The Court of Appeal affirmed in part, and struck in part, the trial court's order enforcing a settlement term sheet and entering judgment against defendant pursuant to Code of Civil Procedure section 664.6 (section 664.6). The Court of Appeal affirmed in part, concluding that the settlement term sheet was enforceable under section 664.6, the liquidated damages of $250,000 was not unreasonably out of proportion to the $2.2 million settlement, and defendant failed to show the liquidated damages provision was unreasonable under the circumstances as required by Civil Code section 1671(b). However, the trial court erred in awarding prejudgment interest. Section 664.6 authorizes a trial court to enter a judgment reflecting the terms of the parties' settlement agreement—nothing more, and nothing less. Prejudgment interest is not a cost, but an element of damages. By awarding prejudgment interest to compensate plaintiff for damages it suffered by virtue of defendant's failure to pay, the trial court entered a judgment that differed materially from the terms of the parties' agreement, and to that extent it was unauthorized. The portion of the judgment providing for prejudgment interest was stricken. (C.A. 1st, March 28, 2024.)*

SETTLEMENT

Eagle Fire and Water Restoration, Inc. v. City of Dinuba (2024) 102 Cal.App.5th 448: The Court of Appeal affirmed the trial court's order enforcing, under Code of Civil Procedure section 664.6, an oral settlement agreement made on the record before the trial court regarding plaintiff's complaint alleging breach of a roof construction contract, negligence and negligent misrepresentation and defendant's cross-complaint breach of contract, improper work, and failure to secure adequate insurance. On the day the trial court heard motions in limine, after it denied plaintiff's motion for a mistrial plaintiff said it would dismiss the complaint without prejudice. After a lunch break, and after plaintiff's complaint had been dismissed, the parties told the court they had reached a settlement and placed the settlement on the record. Later, after defendant city had approved the settlement, the parties informed the court there was a disagreement regarding the settlement. Defendant filed a motion to enforce settlement pursuant to section 664.6, which the trial court granted. The Court of Appeal concluded that the trial court had subject matter jurisdiction and personal jurisdiction over both parties when it enforced the settlement because defendant's cross-complaint had not been dismissed and the case was pending litigation for purposes of section 664.6(a). Also, the trial court did not need personal jurisdiction over defendant Jason Watts (defendant city's engineer), who had been dismissed from the case before the settlement, because the judgment did not require Watts to do anything. Finally, substantial evidence supported the trial court's findings that an oral settlement agreement was formed and that the agreement resolved all claims arising from the construction project, whether or not included in the parties' pleadings. (C.A. 5th, May 30, 2024.)

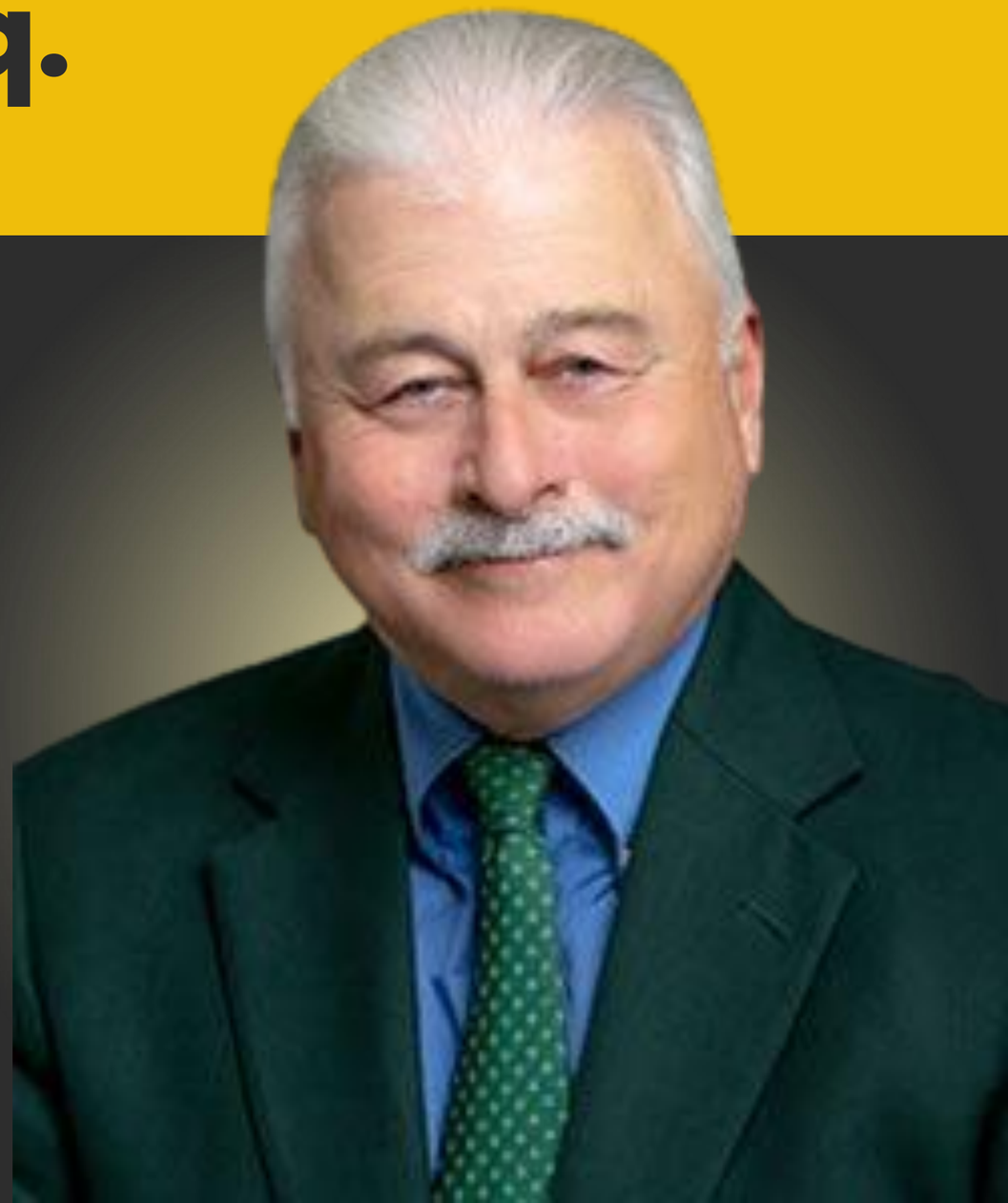
SETTLEMENT

Greisman v. FCA US, LLC (2024) 103 Cal.App.5th 1310: *The Court of Appeal affirmed the trial court's order, following an evidentiary hearing, determining that the parties had entered into a settlement that was inclusive of attorney fees. Plaintiff filed a lemon law action against defendants under the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790, et seq.). A mandatory settlement conference before the trial court was held over Zoom. At the conclusion, the parties advised the judge that the case was settled for $100,000 and the settlement was confirmed on the record. Later, a dispute between the parties arose regarding whether the settlement was inclusive of attorney fees or exclusive of fees, and a new trial judge held a four-day evidentiary hearing to resolve this issue. The new trial judge properly concluded that first trial judge, in confirming the settlement, had used the word "inclusive" regarding attorney fees. The record showed that both attorneys agreed to this when they confirmed the settlement on the record. This was sufficient to make it enforceable under Code of Civil Procedure section 664.6(a). (C.A. 1st, August 5, 2024.)*

SETTLMENT

Vaghashia v. Vaghashia (2024) 106 Cal.App.5th 188: The Court of Appeal affirmed the trial court's order denying plaintiffs' and cross-defendants' (plaintiffs) motion to vacate a settlement agreement between the Govind parties, on the one hand, and defendants and cross-complainants Prashant and Mita Vaghashia (defendants). The trial court did not abuse its discretion in concluding that plaintiffs were estopped from seeking to vacate a settlement agreement that they previously moved to enforce and that the trial court did, in fact, enforce. The trial court did not enforce the agreement the way the plaintiffs wanted, but it accepted their position that the agreement was enforceable. Plaintiffs' later position that the agreement was unenforceable was totally inconsistent with their previous position in their motion to enforce the agreement. (C.A. 2nd, October 28, 2024.)

Monty A. McIntyre, Esq.



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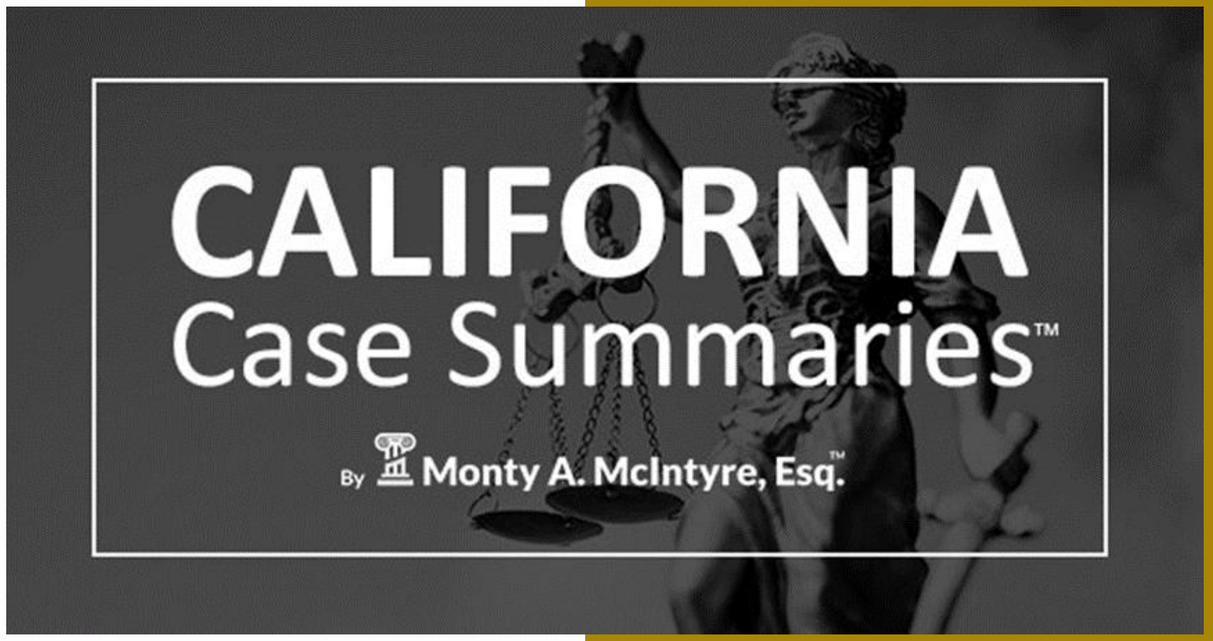

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