SUMMARY OF CALIFORNIA APPELLATE DECISIONS

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When you receive your summaries, each page will have an alphabetical letter located in the upper right-hand corner. Each alphabetical letter corresponds to a separate subject matter category. For a description of the subject matter included within each letter category, consult the Table of Contents in the binder previously received by you. Each page of the summaries should simply be filed behind the appropriate letter category for future reference.

EXAMPLE:

K

DAMAGES; EMOTIONAL DISTRESS; DILLION V. LEGG PRINCIPLE

Jones v. Smith, 82 Cal.App.3d 145

The example cited above deals principally with damages and, therefore, is filed under Category K.

Good luck and pleasant reading!

Michael J. Brady

LAWYERS
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INSURANCE; DUTY TO DEFEND; INSURANCE COVERAGE; INTENTIONAL ACTS; SEXUAL MISCONDUCT

Gonzalez v. Fire Insurance Exchange
(2015) 234 Cal.App.4th 1220, 184 Cal.Rptr.3d 394 (WL 960927)

FACTS:

This is an important case concerning sexual misconduct, intentional acts, the meaning of "accident" and occurrence, and standard language used in primary and umbrella policies.

Rebagliati was a member of the De Anza baseball team. Plaintiff was a 17-year-old woman who was invited to attend a party at which several members of the baseball team were present. She alleged that they got her drunk and that she was unconscious. Several members of the team raped and sexually assaulted her. They were all in the room together, cheering each other on. Some girls attempted to rescue plaintiff, but they were rebuffed by the men and prevented from doing so. Plaintiff's complaint alleged intentional and negligent conduct, including false imprisonment, invasion of the right of privacy, failure to rescue, sexual misconduct, etc.

The primary policy was with Fire Insurance Exchange (Fire). The umbrella policy was with Truck Insurance Exchange (Truck). The Fire policy provided coverage for bodily injury or property damage resulting from "occurrence" which was defined to mean an "accident." The word "accident' has a long-established meaning. Interestingly, the policy also provided coverage for "personal injury," which included various specific offenses, including false imprisonment, invasion of the right of private occupancy, etc. But the offenses included within the concept of "personal injury" had to result from an "accident."

The umbrella policy issued by Truck provided coverage for many of the same things, but did not condition the personal injury coverage offenses as having to arise from an accident. Both insurers refused to accept the tender of defense from Rebagliati. This resulted in a settlement between Rebagliati and plaintiff with a stipulated judgment and the present lawsuit for bad faith and breach of contract (failure to provide coverage and a defense). The trial court ruled in favor of both insurers.

APPELLATE COURT DECISION:

Reversed as to Truck; affirmed as to Fire. With respect to Fire, all of the acts alleged to be classified as intentional and deliberate conduct therefore could not be the result of an

accident and Fire properly rejected the defense. However, with respect to Truck, it did not limit the personal injury coverage to "accidents." Hence, it should have accepted the tender of defense.

COMMENT:

This decision is recommended reading for the insurance coverage attorney. It touches on issues that are frequently encountered, especially in the area of sexual misconduct. It is interesting that the primary policy properly rejected the tender of defense because it had carefully provided that intentional acts covered in the personal injury section had to result from an accident (arguably a difficult concept to grasp!). Had the umbrella carrier employed the same language, it might have escaped the defense obligation as well.

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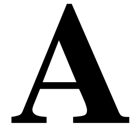

INSURANCE COVERAGE; DUTY TO DEFEND

McMillin Companies, LLC v. American Safety Indemnity Co.
(2015) 233 Cal.App.4th 518, 183 Cal.Rptr.3d 26 (WL 270034)

FACTS:

McMillin was a contractor. It had many subs, and the subs had promised to indemnify McMillin for construction defects litigation, including covering McMillin as an additional insured. Construction litigation ensued. All insurers rejected McMillin's tender of defense. Later on, McMillin entered into a settlement with all insurers except American Safety. American Safety then moved for summary judgment on grounds that its policy provided no coverage if insured's operations had ceased before the policy incepted. This motion was denied. The trial court then held that the denial of the motion for summary judgment created a duty to defend on the part of American Safety.

APPELLATE COURT DECISION:

Reversed. The denial of this particular motion brought by American Safety did not create automatically a duty to defend on the theory that the denial meant that there was a potential for coverage and that a triable issue of fact existed on this point, and therefore, that the insurer should have defended. The trial court erred because it denied the motion for summary judgment of American Safety on grounds that it had not met its additional burden in a duty to defend case. American Safety should be allowed to produce other evidence at the trial to satisfy this initial burden, and this can be done at trial.

COMMENT:

This may be the first decision since the famous *Montrose* case so limiting the effect of the denial of an insurer's motion for summary judgment on the duty to defend.

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B

INDEMNITY; UNCONSCIONABILITY

Lennar Homes of California, Inc. v. Stephens
(2014) 232 Cal.App.4th 673, 181 Cal.Rptr.3d 638

FACTS:

Lennar was a developer. Stephens purchased a home built by Lennar. In the contract documents, it provided that in the event that Stephens sued Lennar, Stephens would pay all the costs and attorney's fees of Lennar in connection with such suit, regardless of how the suit turned out. Construction defects developed. Stephens brought a class action. Lennar successfully had the suit thrown out by the trial court on grounds of the anti-SLAPP statute.

APPELLATE COURT DECISION:

Reversed. This contract is unconscionable. It means that if Stephens sues the builder, even if Stephens wins, Stephens still has to pay the builder's attorney's fees and costs.

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PROFESSIONAL LIABILITY; MEDICAL MALPRACTICE; STATUTE OF LIMITATIONS

Blevin v. Coastal Surgical Institute
(2015) 232 Cal.App.4th 1321, 182 Cal.Rptr.3d 704

FACTS:

Plaintiff had knee problems and went to defendant's surgical center for treatment. The claim was that the defendant used an unclean sponge to clean the surgical equipment and this resulted in plaintiff contracting an infection after the procedure. The surgical center paid more than $4,000 to take care of plaintiff's expenses for treating the infection. Plaintiff did not file a lawsuit until 15 months after the payment of the $4,000 by defendant. Defendant never sent plaintiff notice of what the statute of limitations would be. The trial court first of all held that the statute of limitations under C.C.P. section 340.5 (one year) was tolled until notice was given by defendant of the statute of limitations. The case then went to the jury which returned a verdict for $545,000 which was reduced by the trial court to $281,000.

APPELLATE COURT DECISION:

Affirmed. Insurance Code section 11583 provides that when a defendant makes payment on behalf of a plaintiff, this tolls any statute of limitations unless the defendant has provided notice to plaintiff of what the statute of limitations is. Here, no notice was provided, and therefore, the statute of limitations is tolled because of the payment made by defendant on behalf of plaintiff. This statute applies even though it is in the Insurance Code, and any tolling provision in MICRA is not the exclusive guide. The jury verdict is also affirmed.

D

LEGAL MALPRACTICE; MEDIATION; PRIVILEGE

Amis v. Greenberg Traurig LLP
(2015) 235 Cal.App.4th 331, 185 Cal.Rptr.3d 322 (WL 1245902)

FACTS AND HOLDING:

Court of Appeal holds that trial court acted correctly in dismissing legal malpractice action, when attorney was accused of giving negligent advice to client (plaintiff) as to settling case and how it should be arranged, during a mediation, and how settlement papers should be drawn. Case properly dismissed because all dealings in the mediation are privileged, and since that is the sole basis of plaintiff's claim, plaintiff cannot produce evidence to support the legal malpractice claim.

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GOVERNMENT LIABILITY AND IMMUNITY; CLAIM STATUTE; EQUITABLE ESTOPPEL; SUFFICIENCY OF THE EVIDENCE

J.P. v. Carlsbad Unified School District
(2014) 32 Cal.App.4th 323, 181 Cal.Rptr.3d 286

FACTS:

Two students were molested by a teacher. They reported this to their parents and the parents went to the school administration about the incident. The parents were told that the matter would be investigated by the school district and that the parents were not supposed to talk to anyone pending the investigation since this might jeopardize the prosecution of the teacher. The teacher ultimately pleaded guilty about a year after the incident. In the meanwhile, one of the parents had talked with therapists, to the police, and with others, but had not consulted a lawyer for legal advice (same situation with the other parent). A lawsuit was filed against the district alleging negligence. A jury returned a verdict for $200,000 for each of the molested students for future medical care/psychological care and expenses. The jury awarded one plaintiff $1.2 million in emotional distress and the other more than $2,000,000. The district appealed, contending that a claim was not file within six months of the incident, and therefore, the lawsuit was barred by the claim statute. The appeal also alleged insufficiency of the evidence to support the damages award.

APPELLATE COURT DECISION:

Affirmed in full. The doctrine of equitable estoppel applies with respect to the claim statute. The parents had been told not to talk to anyone, which meant that they did not seek legal advice from a lawyer. The district is therefore barred from making the claim that the six-month time period for filing a claim was not complied with. The evidence was sufficient to support the jury's verdict in all respects.

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INTERFERENCE WITH CONTRACTS; INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; BUSINESS TORTS

Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.
(2015) 234 Cal.App.4th 748, 184 Cal.Rptr.3d 279, (WL 738675)

FACTS:

The two contesting parties in this case were in the asbestos application and supply business. They typically competed in various Southern California counties for road work. Over a five-year period, plaintiff and defendant bid on various public works jobs worth about $40 million. Defendant always got the job. Plaintiff filed suit alleging that the reason defendant got the job on some 23 contracts, as the lowest bidder, was because defendant violated the prevailing wage law, underpaying its employees. Plaintiff alleged that had defendant followed the law, it would not have been able to be the lowest bidder, and that plaintiff would have obtained the bids on those projects. Plaintiff sued for interference with contract and interference with prospective economic advantage.

Various decisions were made in various counties by the trial courts and they were consolidated appeals.

APPELLATE COURT DECISION:

Plaintiff had stated proper causes of action for intentional interference with contract and for intentional interference with economic advantage. The illegal conduct by the defendant (failing to observe the wage law) enabled defendant to gain an advantage over plaintiff. Both causes of action were validly stated.

F

DEFAMATION; ANTI-SLAPP; LIMITED PUBLIC FIGURE

Grenier v. Taylor
(2015) 234 Cal.App.4th 471, 183 Cal.Rptr.3d 867

FACTS:

Plaintiffs, suing for defamation, were a pastor and his wife. The defendants were the pastor's son and another individual who had allegedly defamed plaintiffs. Plaintiffs charged that defendants had published on a website that the pastor was involved in theft, child molestation and income tax evasion. When the defendants were sued, they filed a motion to strike under C.C.P. section 425.16. The motion to strike was denied, although the trial judge held that the pastor was a limited public figure and, therefore, would have to prove malice in additional to defamation.

APPELLATE COURT DECISION:

Affirmed, but the Appellate Court held that the pastor was not a limited public figure and, therefore, malice would not have to be shown. He had not been openly involved in any controversy concerning income tax evasion, theft or child molestation. Therefore, he could not be considered a public figure. Furthermore, the motion to dismiss was properly denied because the pastor had shown probability of success on the defamation claim.

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ANTI-SLAPP STATUTE; DEFAMATION

Baral v. Schnitt
(2015) 233 Cal.App.4th 1423, 183 Cal.Rptr.3d 615

FACTS:

Baral and Schnitt were both investors in a business involving outsourcing services. Schnitt unilaterally started arranging for sale of the business to someone else, without involving Baral. Meanwhile, Baral's son was engaged in misappropriating some funds from the business. When Baral found out about this, he agreed to indemnify for the loss of these funds. Schnitt went ahead and proceeded to sell the business, to which Baral objected. Complex litigation resulted when Baral filed suit. Schnitt cross-complained, seeking dismissal under the anti-SLAPP statute, but the trial court denied the motion.

APPELLATE COURT DECISION:

Affirmed. The Appellate Court, analyzing the complaint, said that some of the causes of action contained allegations that were protected under the anti-SLAPP statute, but also contained allegations that were not protected, and under such circumstances, it was proper to deny an anti-SLAPP motion.

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G

GOVERNMENT LIABILITY AND IMMUNITY; NEGLIGENCE; COMPARATIVE NEGLIGENCE; PRE-ACCIDENT NEGLIGENCE OF VICTIM IN LAW SUIT AGAINST FIRST RESPONDER

Harb v. City of Bakersfield
(2015) 233 Cal.App.4th 606, 183 Cal.Rptr.3d 59

FACTS:

This is an interesting case and a case of first impression on the comparative negligence point. Dr. Mohammad Harb was a Bakersfield, California. He had put in a 12-hour shift at the hospital and was driving home when he had a stroke. His car left the road, went up over a curb and stopped. Somebody in the neighborhood called 911 and reported that they thought that the driver was intoxicated. Police officers arrived at the scene, and talked to the person who had made the 911 call. The police officer went to the Harb car and attempted to talk to the victim, but he was incoherent. The police officer then asked for the car keys, but Dr. Harb tried to start the car. The police officer seized him by the arm and brought him to the curb. An ambulance was called; here, there was a dispute: the ambulance driver thought that Dr. Harb should be transported to the hospital; the police took the position that the ambulance driver said no such thing, and the ambulance driver left the scene. Subsequently, other police officers arrived and they concluded that the victim needed medical attention, and another ambulance was called which arrived in seven minutes. The doctor was transported to the hospital where extensive bleeding on the brain was found. Surgery was performed, but permanent damage was done and the doctor was unable to care for himself. He and his wife sued the police and the ambulance company. A defense verdict was returned by the jury.

APPELLATE COURT DECISION:

Reversed. Firstly, the jury was instructed ambiguously. They were in effect told that police officers could be immune for their negligence. Although this was a correct statement of the government immunity statute, this, combined with other instructions saying that police officers could be liable for negligence, was ambiguous and was prejudicial.

The jury was also told in instructions that the pre-accident negligence of Dr. Harb in failing to take his blood pressure medicine could be considered by the jury on the issue of comparative fault. This is a case of first impression in California. Other states which have addressed this issue do <u>not</u> allow the pre-accident conduct of the victim reduce the liability of the tortfeasor/ responder. This is but a restatement of the old principle that the tortfeasor takes the victim as he finds him. Although there was a total defense verdict returned, with

no determination as to separate percentages of liability of the victim and the tortfeasor, the instruction was prejudicial because counsel for the police argued that Dr. Harb's conduct was the cause of his injuries. The instruction was therefore prejudicial. Several out-of-state cases have applied the rule that the victim's pre-accident conduct cannot be considered to reduce the tortfeasor's liability. Verdict reversed and new trial ordered.

The essence of this claim by Dr. Harb was that the considerable delay in getting him to the hospital (more than two hours) was the decisive factor in his injuries. But should his failure to take his blood pressure medicine before the accident have been allowed to be considered by the jury on the issue of comparative fault? Other states have said no and this is the rule of the Restatement of Torts liability. California will adopt a similar rule following the old maxim that the tortfeasor takes the victim as he finds him, and the pre-accident negligence of the victim will not be considered on the doctrine of comparative fault. While it is true that there was a total defense verdict, with no assigning of separate fault to the victim and the tortfeasor, the attorney for the police argued that Dr. Harb's failure to take his own blood pressure medicine was the cause of his injuries. Therefore, the instruction was prejudicial. A trial is therefore ordered and the verdict is reversed.

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CONSTRUCTION DEFECTS; FRAUDULENT CONCEALMENT; BUILDER'S LIABILITY; STATUTE OF LIMITATIONS

Stofer v. Shapell Industries, Inc.
(2015) 233 Cal.App.4th 176, 182 Cal.Rptr.3d 478

FACTS:

The builder built a subdivision of homes. One of the homes was sold to the vice president of the builder's company, and that person/purchaser of the home was Tim Wright. The builder had become aware that the subdivision was built on filled land. This had been related by the soils engineer. But the builder had concealed this, and Wright knew nothing about it. No disclosure documents were sent by the builder to Wright. Wright experienced some land settlement problems, cracks, etc., while he was the owner, but he really didn't think much about it. Wright then sold the house to Dr. Laux. Disclosure documents were exchanged. Laux suffered some fairly significant damage from settlement. Laux then sold to the present plaintiff and provided a $2,000 reduction in the purchase price to take care of the problems. When the present plaintiff came into possession of the house, major problems with cracks in the ceilings, foundation, doors and windows occurred (typical of California land settlement problems). The plaintiff brought suit against the builder alleging, *inter alia*, fraudulent concealment. The trial court granted summary judgment for the builder after a bench trial, finding that the cause of action had accrued before plaintiff came into possession and that the statute of limitations had expired.

APPELLATE COURT DECISION:

Reversed. Fraudulent concealment was adequately alleged, sufficient to conclude that the statute of limitations had not expired on the plaintiff as a subsequent purchaser. The trial court also erred in conducting a <u>bench trial</u> on the issue of the accrual of the statute of limitations. This involved credibility questions regarding when people knew or should have known of the problem, and those are appropriately to be resolved by the jury, not the court in a bench trial.

G

PECULIAR RISK DOCTRINE; PRIVETTE; VICARIOUS LIABILITY

Vargas v. FMI, Inc.
(2015) 233 Cal.App.4th 638, 182 Cal.Rptr.3d 803

FACTS:

FMI was in the business of arranging to haul goods across country. FMI hired Eves Express (Eves) to transport a cargo to New Jersey. The relationship between FMI and Eves was independent contractor. Eves in turn hired two drivers, Vargas and Villalobos to be the drivers of this cargo. The relationship between Eves and Vargas/Villalobos was also that of independent contractor. Vargas was driving a load to New Jersey and Villalobos was sleeping in the sleeping compartment. Due to Vargas' negligent driving, the truck turned over and Villalobos was seriously injured. He sued Vargas, Eves, and FMI alleging negligence and vicarious liability. The trial court found that there was no vicarious liability, that an independent contractual relationship existed, and that the Privette doctrine precluded liability of FMI and Eves because of the peculiar risk doctrine.

APPELLATE COURT DECISION:

Reversed. This was a motor vehicle accident. The matter is governed by the Federal Motor Carrier Act. That Act provides that a carrier (FMI) cannot delegate safety responsibilities to independent contractors and thereby escape exposure. The carrier is obliged to conduct itself so as to protect the public and all persons. The prohibition against non-delegation precludes application of the Privette doctrine (to eliminate general contractor liability), and therefore, vicarious liability of FMI and Eves applies, and Villalobos would be entitled to sue all three defendants.

COMMENT:

The Federal Motor Carrier Act contains very liberal provisions, making it difficult for the "hirer" to escape liability under the independent contractor doctrine. The case should be viewed as creating an exception to Privette when motor carriers and haulers are involved. Nothing else in the decision undermines the Privette doctrine.

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NEGLIGENCE; ASSUMPTION OF THE RISK

Fazio v. Fairbanks Ranch Country Club
(2014) 233 Cal.App.4th 1053, 183 Cal.Rptr.3d 566

FACTS:

Plaintiff was an experienced musician. He was to perform on a stage at a country club. The stage was put together by the country club in a corner of the room. It was a series of platforms/risers fastened together. Between the pieces of the platform, there was a gap. Plaintiff fell through the gap while setting up his instruments. He sued the club for negligence. The trial court granted summary judgment to the club on the grounds of assumption of the risk.

APPELLATE COURT DECISION:

Reversed. Triable issues of fact existed as to whether the club, in the way that they built the stage, increased the risk. This has not been refuted in papers filed by the club on the motion for summary judgment. Therefore, it was error to grant the summary judgment.

NEGLIGENCE; ASSUMPTION OF THE RISK; RELEASES

Grebing v. 24 Hour Fitness USA, Inc.
(2015) 234 Cal.App.4th 631, 184 Cal.Rptr.3d 155

FACTS:

Plaintiff was a member of 24-Hour Fitness. When he joined, he signed membership applications including a release of liability, releasing the fitness club form negligence claims and products liability claims, and claims associated with the use of the exercise equipment and for any claims of poor maintenance. Plaintiff was using a rowing machine which broke, causing weights to strike plaintiff in the forehead. He sued the club for negligence and strict liability. The trial court granted summary judgment for the defendant.

APPELLATE COURT DECISION:

Affirmed. Plaintiff's release was all-encompassing. It included everything having to do with use of the equipment and negligence on the part of the defendant. There is no products liability claim against the defendant. The defendant was in the business of providing services, not supplying products, and plaintiff acknowledged this in the membership application. The defendant was not a manufacturer of products. Strict liability and products liability theories do not apply. Summary judgment was properly granted.

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G

NEGLIGENCE; ASSUMPTION OF THE RISK; RELEASE; WRONGFUL DEATH

Eriksson v. Nunnink
(2015) 233 Cal.App.4th 708, 183 Cal.Rptr.3d 234

FACTS:

The decedent was a 17-year-old girl. She was in an equestrian class. Six months before her death, she had signed an agreement releasing the trainer from all liability for negligence and agreeing that she assumed the risk of any such injury. She was on the horse which jumped a hurdle and then collapsed, throwing her off and then falling on her, causing her death. The release had also been signed her mother as parent. The parents brought a wrongful death action including claims for negligent infliction of emotional distress, etc. The claim was that the horse had been improperly trained and had been involved in falls before which were not disclosed to the decedent or her parents. The case went to trial, and at the end of the trial, the court entered judgment for the defendant based upon the release.

APPELLATE COURT DECISION:

Affirmed. The release extinguished all duties owed by the trainer to the decedent. No duty being owed to the decedent, this deprived the parents of the right to sue for wrongful death. The parents were bound by the release, even though the release did not mention wrongful death (it could not have since the decedent could not wipe out someone else's wrongful death claim by reciting such). The policy is to encourage the teaching of dangerous sports, and this case falls into that category. It would discourage such activity if this result were not reached.

COMMENT:

Interesting case – a strict interpretation of the old release. California law is split as to whether a bar applies; for example, in medical malpractice cases.

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G

NEGLIGENCE; NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS; WITNESSING THE INJURY-CAUSING EVENT

Keys v. Alta Bates Summit Medical Center
(2015) 235 Cal.App.4th 484, 185 Cal.Rptr.3d 313 (WL 1346310)

FACTS:

Plaintiffs are the sister and daughter of the decedent. The decedent went into the hospital for thyroid surgery. Plaintiffs had taken the decedent to the hospital. They were waiting for her in her room after the surgery. They observed that the decedent seemed to be in some distress and they called the doctor who removed some of the bandages to relieve the pressure. The decedent then seemed to go into severe distress, her eyes rolled back and her hand went up. The daughter immediately notified the doctor who sent out a code blue, but the hospital staffers did not arrive until several minutes later, and decedent suffered brain damage, was taken to ICU and then died. An action for medical malpractice and negligent infliction of emotional distress was filed. The trial judge did not allow the claim for negligent infliction of emotional distress because the plaintiffs had not actually witnessed the surgery that was claimed to have been negligent.

A jury awarded $1,000,000 on the plaintiffs' wrongful death claim. The jury awarded $175,000 to one plaintiff and $200,000 to the other for the negligent infliction of emotional distress claim.

APPELLATE COURT DECISION:

Affirmed. The defendants claim that plaintiffs cannot recover unless they witnessed the injury-causing event, namely, the surgery. However, the plaintiffs claim that it was the failure of the hospital to react in time, the negligence of the hospital in failing to do so, that formed the basis of their claims for negligent infliction of emotional distress. Plaintiffs' claims were adequate, and the verdict is affirmed.

COMMENT:

Interesting case which does not follow the strict guidelines for third parties' claims for negligent infliction of emotional distress. In the context of medical malpractice, and the many things that go wrong thereafter and while still in the hospital, this could create some worries for the medical profession and hospitals.

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PRIVACY; PERSONAL INFORMATION FROM CREDIT CARD

Lewis v. Jinon Corp
(2015) 232 Cal.App.4th 1369, 182 Cal.Rptr.3d 354

FACTS:

Plaintiff went into a store to purchase an alcoholic beverage and used his credit card to do so. The credit card had plaintiff's birth date on it, and the store took that information from the credit card and recorded it in defendant's computerized cash register. Plaintiff sued for violation of the Song-Beverly Credit Card Act, contending that the recording of personal information from the credit card is forbidden. The trial court sustained defendant's demurrer.

APPELLATE COURT DECISION:

Affirmed. This case falls within the "special purpose" exemption to the prohibition against the recording of personal information from a credit card. The store was entitled to record this information to protect itself from liability for selling alcohol to underage minors. This information in the computerized cash register would be a defense to any such charge. Therefore, the special exemption doctrine applied, and the suit was properly dismissed.

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STANDING; UNINSURED MEDICAL PATIENTS; PAYMENT OF MEDICAL BILLS

Sarun v. Dignity Health
(2015) ___ Cal.App.4th ___ (WL 7475221)

FACTS:

Plaintiff was injured in an automobile accident and went to the hospital emergency room. He had no insurance and, therefore, had to sign an agreement to pay the medical bill. The agreement that he signed stated that he was obligated to pay the full amount of the medical bill. The hospital had forms which indicated that plaintiff could apply for a discount, or that there were other forms of financial aid or assistance, including governmental aid and assistance. Eventually, this information was brought to the attention of plaintiff, but he never applied for such.

Plaintiff received a medical bill for more than $25,000 for some magnetic tests and other procedures that were done in the emergency room for a period of about four hours. Plaintiff brought a class action, alleging violation of Unfair Competition Law (Business and Profession Code section 17200) and the Consumer Legal Remedies Act (Civil Code section 1750 et seq.). He alleged that for uninsured patients, the hospital typically charged three to four times more than they charged to insured patients.

The trial court sustained defendant's demurrer, finding no standing.

APPELLATE COURT DECISION:

Reversed. Plaintiff has sufficiently alleged injury in fact and economic harm. The fact that he did not take advantage of any discounts or other financial assistance does not deprive plaintiff of standing to sue.

N

BUSINESS TORTS; JOINT AND SEVERAL LIABILITY; PUNITIVE DAMAGES; FINANCIAL CONDITION

I-CA Enterprises, Inc. v. Palram Americas, Inc.
(2015) 235 Cal.App.4th 257, 185 Cal.Rptr.3d 24, (WL 1212707)

FACTS:

This is a complex business dispute matter. The defendants will be referred to as D1 (an American distributor of wood products) and D2 (an Israeli manufacturer of the wood products). D1 and D2 entered into an arrangement to provide wood products in the nature of siding. Someone suggested that the products, instead of being attached to each other by wood strips, be attached with plastic strips, and D1 and D2 agreed. They entered into relationships in writing. Disputes then resulted and D1 and D2 then both interfered with each other's contractual arrangements with customers, including the plaintiff. This interference caused damage to plaintiff who brought suit against D1 and D2. At trial, the trial court rejected efforts of the plaintiff to hold D1 and D2 jointly and severally liable. In a jury trial, the jury found punitive damages against D2, but was not allowed to find punitive damages against D1 because financial information had not been secured from an overseas source (Israel), therefore, the jury was not allowed to consider punitive damages. The jury awarded punitive damages against one defendant, and also awarded against both defendants compensatory damages exceeding $250,000 each for intentional interference with contract.

The trial court, in post-trial proceedings, struck the $3,000,000 punitive damage award against one of the defendants on grounds that there was no evidence of malice, fraud or oppression.

APPELLATE COURT DECISION:

Affirmed. The trial court was correct in striking the punitive damage award. Even though there may have been a misrepresentation, it did not rise to the level of malice, fraud or oppression. The trial court was also correct in finding no joint and several liability. The jury was not allowed to consider punitive damages against one of the defendants, and this was correct. There has to be proper and admissible evidence on the financial worth of that defendant, and here the evidence was in Israel and it was beyond the power of the court to order production of the documents or witnesses who would have been competent to supply that information. The effort of plaintiff to produce a Dunn and Bradstreet report for the financial worth of the defendant in question was properly rejected by the trial court. This was incompetent evidence to establish financial worth.

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INDEMNITY; PRODUCTS LIABILITY

National Union Fire Insurance Company of Pittsburgh, PA. v. Tokio Marine and Nichido Fire Insurance Company
(2015) 233 Cal.App.4th 1348, 183 Cal.Rptr.3d 472

FACTS:

This is a products liability and indemnity case. The plaintiff bought a tire from Costco. The tire was manufactured by Yokohama. The tire had been serviced by Costco. Three years after the purchase, the tire failed, causing plaintiff's Explorer to roll over and rendering plaintiff a quadriplegic. In a suit against Costco and Yokohama, the case settled with Costco paying more than $5,000,000 and Yokohama paying about $1.1 million. In that suit, Yokohama did have an expert. Costco had tendered the lawsuit when it was filed to Yokohama on a theory of indemnity owed by the manufacturer, but Yokohama (through its insurer, Tokio Marine) had turned down the tender. Costco's insurer was National Union.

National Union commenced an indemnity (subrogation) claim against Tokio Marine. In that trial, Costco retained an expert and developed new theories of liability as to why the tire was defective. The expert who had been retained for the plaintiff's case did not provide the expert testimony in connection with that particular claim.

The trial judge said that National Union was limited to the expert evidence in the plaintiff's case and could not rely upon the expert evidence it had independently developed.

APPELLATE COURT DECISION:

Reversed. Costco is entitled to develop evidence on its own and independently as to the defective tire. Costco and its insurer (National Union) were not limited to the evidence that was prepared to have been presented in the original trial.

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ARBITRATION; DEMAND FOR ARBITRATION

Hyundai Amco America, Inc. v. S3H, Inc.
(2014) 32 Cal.App.4th 572, 181 Cal.Rptr.3d 470 (

FACTS:

Hyundai Amco was the general contractor for the building of the U.S. headquarters for Hyundai Motor Corporation. The defendant was a subcontractor who was supposed to put in the mechanical system for the building. There was an arbitration agreement. Disputes arose between the general and the sub, and the general filed a lawsuit alleging breach of contract and various other causes of action. The defendant subcontractor moved to compel arbitration. The trial court denied the motion because there had been no demand for arbitration filed by the defendant.

APPELLATE COURT DECISION:

Reversed. The statutory law does require that arbitration applies when one of the parties refuses to arbitrate, but in this case, the general contractor went ahead and filed a lawsuit, implying that it was refusing to arbitrate. This eliminates the necessity for the petitioner to formally demand arbitration. Therefore, the trial court decision is reversed.

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ALIEN TORT CLAIMS ACT; POLITICAL QUESTIONS

Saldana v. Occidental Petroleum Corp.
(2014) 774 F.3d 544 (9th Cir.)

FACTS:

The United States government provided nearly $100 million in financial and training support for the Colombian National Army (CNA). One of the purposes of this assistance was to train the army to battle guerrillas who were out to destroy Colombia's oil drilling operations. Social activists in the country also protested that the oil operations were doing damage to the environment. Occidental Petroleum was involved in the drilling operations, and they also provided about $6,000,000 of aid to the CNA. Three union leaders (social activists) were killed. A complaint was filed alleging that Occidental was involved in assisting and financing the killing.

The U.S. District Court dismissed the claim on grounds that it was non-judiciable because it involved a political question.

NINTH CIRCUIT DECISION:

Affirmed. Occidental is sued for exactly the same thing that the U.S. government was doing; namely, aiding and assisting the army in battling guerilla operations. This is a political question and is non-judiciable. When the private corporation is doing the same thing that the government is doing, and the government cannot be sued, then the private corporation is not subject to suit under the Alien Tort Claims Act, either.

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ANTI-SLAPP; PROBABILITY OF PREVAILING

Squires v. City of Eureka
(2014) 231 Cal.App.4th 577, 180 Cal.Rptr.3d 10

FACTS:

Plaintiff owned 26 properties within the City of Eureka. Plaintiff had a long history of Code violations with numerous complaints from the neighborhood and from plaintiff's tenants. Plaintiff sued the City alleging that the City falsely swore out eviction notices filed under false papers having to do with Code enforcement. Plaintiff also alleged harassment and sought to file a class action, alleging unequal treatment of the plaintiff. The defendant filed a motion to strike, which was granted by the trial court.

APPELLATE COURT DECISION:

Affirmed. Enforcement of Code violations is a discretionary act on the part of the City. Plaintiff had a long history of misconduct in this regard, and has done nothing in showings before the trial court to rebut that or to establish any false swearing of papers in court having to do with Code enforcement. Further, plaintiff has made no showing of unequal treatment – that plaintiff was singled out among other Code violators for prosecution. All of the claimed activity involved discretionary acts of a public entity associated with enforcement of its ordinances and Codes. The defendants have adequately shown in their motion to strike that plaintiff has no probability of prevailing. Accordingly, the motion to strike was properly granted.

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CONSUMER TORTS; LABELING; PREEMPTION

Reid v. Johnson & Johnson
(2015) 780 F.3d 952 (WL 1089583 9th Cir.)

FACTS:

The action was filed in Federal District Court based upon claims that defendant had falsely labeled a food product as containing "no trans fats." In fact, the product indicated that it contained hydrogenated vegetable oil which did contain trans fats. The District Court threw out the case on grounds that plaintiff did not adequately rely upon the label and on the grounds of Federal preemption.

NINTH CIRCUIT DECISION:

Substantially reversed. The reliance basis for dismissing the case was erroneous; the average consumer would not appreciate that hydrogenated vegetable oil contained trans fats. Furthermore, the case was not barred by Federal preemption.

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EMPLOYMENT TORTS; DISCRIMINATION; DISABILITY; FAILURE TO ACCOMMODATE

Swanson v. Morongo Unified School District
(2014) 32 Cal.App.4th 954, 181 Cal.Rptr.3d 553

FACTS:

Plaintiff had been a teacher in the school district for 30 years. She taught kindergarten. She then contracted breast cancer and was being treated. The treatment lowered materially her immune system, rendering her subject to health problems and infections. She requested reassignment to a different grade (second grade) instead of kindergarten, because the kindergarten children were so often sick, causing plaintiff to become susceptible to infection. The school district failed to accommodate plaintiff's request, but did offer other grade levels, which plaintiff contended were unsatisfactory. She was ultimately let go by the school district after evaluations. Plaintiff sued for discrimination, disability discrimination and failure to accommodate. Summary judgment was granted by the trial court in favor of the district.

APPELLATE COURT DECISION:

Reversed. A triable issue of fact existed in this case regarding the discrimination, the disability discrimination and the failure to accommodate claims. Therefore, the summary judgment in favor of the district is reversed.

EMPLOYMENT TORTS; TERMINATION; ARBITRATION

Richey v. AutoNation, Inc.
(2015) 60 Cal.4th 909, 182 Cal.Rptr.3d 644 (Supreme Court)

FACTS:

The employee was taking leave under the Family Leave Act. His employer had a policy that while on leave, the employee was not permitted to work at another company. The employee violated this policy and the employer had photographs proving this. The employee was terminated. He brought suit for retaliation and violation of the Family Leave Act provisions.

There was an arbitration agreement, and ultimately an arbitrator decided in favor of the employer, finding that the "honest belief doctrine" (under Federal law) insulated the employer from exposure.

CALIFORNIA SUPREME COURT DECISION:

The Court ultimately upheld the arbitrator's decision, finding that even though it was not clear that the honest belief doctrine applied, the arbitrator also found that the plaintiff had violated the employer's business policy that employees not work for another company while on leave.

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EMPLOYMENT TORTS; REASONABLE ACCOMMODATION

Nealy v. City of Santa Monica
(2015) 234 Cal.App.4th 359, 184 Cal.Rptr.3d 9

FACTS:

This case demonstrates a long history of dealings between the City employee Nealy and the City of Santa Monica in trying to accommodate Nealy's disability condition. Nealy worked for the solid waste department which involved lifting and retrieving heavy bins of trash. He developed knee problems. Then, a long series of efforts to reasonably accommodate Nealy ensued. The City offered him a groundskeeper/landscape position. He took it, but then found that his knees tended to buckle. He then wanted a clerical position or a driver only position. But the essential job functions in the solid waste department did require some heavy work, and the City was never able to accommodate Nealy because Nealy could not do any heavy work. Ultimately, the City indicated that it could not accommodate Nealy, who then sued for disability discrimination and failure to reasonably accommodate. The trial court ruled in favor of the City.

APPELLATE COURT DECISION:

Affirmed. The City has made every effort to reasonably accommodate Nealy. But the City is not required to eliminate essential job functions in order to accommodate an employee. Since some heavy work is required, and Nealy claims he cannot do this, then this is the end of the matter. The City had also encouraged him to apply for a clerical position with the Planning Commission; he had done so but he did not qualify and could not get that job. The City acted reasonably in attempting to accommodate Nealy.

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RACIAL DISCRIMINATION; REMEDY; CRIMINAL CONVICTION

Horne v. District Council 16 International Union of Painters and Allied Trades
(2015) 234 Cal.App.4th 524, 183 Cal.Rptr.3d 879

FACTS:

Horne applied for a job as a labor organizer. He applied to the District Council of Labor Organizations. He was rejected and a white person was selected instead. Horne sued for racial discrimination. After the lawsuit was filed, the Council discovered that Horne had been convicted of narcotics violations and they contended that compelled dismissal of his discrimination suit because he would not have been eligible for the job anyway. The trial court agreed with the Council's arguments and dismissed the claim.

APPELLATE COURT DECISION:

Reversed, but remedy limited. Years before, Horne had been convicted of a narcotics violation. He lost his civil right to vote and to serve on a jury. He was on parole. Later, his civil right to vote and serve on a jury were restored, but not his right to bear arms. Federal law precluded the Council from employing him as a labor organizer, unless, after a conviction for a narcotics violation, his civil rights had been fully restored. In this case, his civil rights had not been fully restored because he could not bear arms. Therefore, he would not have been eligible to serve as a labor organizer at the time the alleged discrimination took place.

However, the refusal of the Council to hire him was not based upon his ineligibility to be employed as a labor organizer; instead, it was alleged that the failure to hire was purely the result of racial discrimination. Horne's remedy is limited, however. He is limited to the damages between the time of the discriminatory act and the time when the Council became aware of his conviction and disqualification to be a labor organizer.

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EMPLOYMENT TORTS; ANTI-SLAPP STATUTE

Decambre v. Rady Children's Hospital-San Diego
(2015) 35 Cal.App.4th 1, 184 Cal.Rptr.3d 888

FACTS:

This is a complex case involving firing of a physician by a hospital controlled by the Regents of the University of California. The position was Dr. Decambre. She was a urologist and was hired to work at the hospital as a pediatric urologist. She worked there for a number of years. There were many complaints about her behavior and her rudeness and her attitude and her negativity. She was African-American and a woman. There were five times more complaints about her than complaints about the next physician. She went through various procedures, including a review by a peer review committee. Ultimately, she was terminated. She brought suit for discrimination, harassment, retaliation, wrongful termination and intentional infliction of emotional distress. The hospital moved to dismiss under the anti-SLAPP statute. The trial court agreed, dismissing the case and also sustained defendant's demurrer.

APPELLATE COURT DECISION:

Substantially affirmed. The hospital peer review committee is an official body. In connection with most of the causes of action, including the cause of action for wrongful termination, its acts are protected and the hospital is not subject to suit for this protected activity. With respect to the discrimination claim, plaintiff did not really show a probability of prevailing, because she was fired for her attitude and her negativity rather than for her race or gender. Plaintiff is, however, allowed to have a chance to amend her claim for defamation.

EMPLOYMENT TORTS; DISCRIMINATION; SEXUAL HARASSMENT; FAILURE TO PREVENT; PUNITIVE DAMAGES

Dickson v. Burke-Williams, Inc.
(2015) 234 Cal.App.4th 1307, 184 Cal.Rptr.3d 774

FACTS:

Plaintiff was a massage therapist at a spa. She claims to have been sexually harassed by customers and her complaint against her employer alleged sexual harassment, discrimination, and failure to prevent sexual harassment. A jury found that the alleged harassment was not pervasive or severe. Nonetheless, the jury found in plaintiff's favor against the employer on grounds of failure to prevent the sexual harassment from occurring. Compensatory damages of $35,000 and punitive damages of $250,000 were awarded. In post-trial proceedings, the trial court refused to set aside the verdict.

APPELLATE COURT DECISION:

Reversed. A necessary element of both sexual harassment and failure to prevent sexual harassment is that the conduct must be severe and pervasive. The jury specifically found to the contrary in this case, and therefore, there was no basis for the compensatory or punitive award.

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