



WEEKLY LAW RESUME™

Issue By: Mark F. Hazelwood

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## Torts - Independent Contractor Cannot Use Cal-OSHA Regulations To Establish Negligence Per Se

*Kurt Iversen v. California Village Homeowners Association*

Court of Appeal, Second District (March 23, 2011)

Under the negligence per se rule, a presumption of negligence arises from a defendant's violation of a statute if the violation caused the plaintiff's injury; the injury resulted from the kind of occurrence the statute was designed to prevent; and the plaintiff is a member of a class of persons the statute was intended to protect. In *Elsner v. Uveges* (2004) 34 Cal. 4th 915, the California Supreme Court held that under amendments to Cal. Labor Code section 6304.5, Cal-OSHA provisions may be admitted to establish a duty of care in negligence and personal injury actions. In this case, the issue was whether an injured independent contractor with no employees could invoke Cal-OSHA regulations to establish a claim for negligence per se against a homeowners association that hired him.

Defendant California Village Homeowner's Association (California Village) hired plaintiff Kurt Iversen, an independent contractor, to service air conditioner units on the roofs of several buildings at a condominium complex. Iversen subsequently fell from a ladder attached to one of the buildings. Iversen sued California Village alleging causes of action of negligence and premises liability. Iversen alleged negligence per se because the 26 ½-foot fixed ladder was not equipped with a safety mechanism provided for by Cal-OSHA. California Village moved for summary judgment contending that Iversen could not rely on Cal-OSHA to support a negligence claim, because he was an independent contractor, not an employee of California

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Village. The trial court granted California Village's summary judgment motion. Iversen appealed. The Second District Court of Appeal affirmed.

In its decision, the Court of Appeal interpreted *Elsner* to hold that Cal-OSHA regulations may only be introduced by employees in tort actions to establish negligence per se. This is because Labor Code section 6304.5 sets forth that the occupational safety standards and orders promulgated under the code section are applicable to proceedings against employers for the purpose of maintaining employee safety. The Second District therefore held that there was no direct authority for holding that Cal-OSHA and its regulations are applicable to someone like Iversen, who worked as an independent contractor with no employees. The Court of Appeal concluded that Iversen was not a member of the class of persons that Cal-OSHA was created to protect. As such, California Village did not owe Iversen a duty by virtue of Cal-OSHA and could not prevail on a negligence claim. The judgment was therefore affirmed.

## COMMENT

This case holds that an independent contractor with no employees may not invoke Cal-OSHA regulations to establish negligence per se. As the Court of Appeal noted, the issue of whether an employee of an independent contractor can claim a violation of Cal-OSHA in a tort action against the hirer of the independent contractor remains unsettled.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B220683.PDF](http://www.courtinfo.ca.gov/opinions/documents/B220683.pdf)

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