

Appellate Reports and Cases in Brief

Recent cases of interest to members of the plaintiff's bar

Kwikset Corp. v. Superior Court

(2011) __ Cal.4th __ , 2011 WL 240278 (Cal. Supreme)

Who needs to know about this case: Lawyers who litigate claims under Business & Professions Code section 17200 (the unfair competition law or "UCL")

Why it's important: Settles the issue of what it means to have "lost money or property" within the meaning of the UCL's standing provisions added by Proposition 64

Synopsis: California law makes it illegal to market merchandise in California as "Made in the USA" if it contains foreign-made parts or was manufactured outside of the USA. Plaintiffs sued Kwikset under the UCL for violating these laws. The trial court overruled Kwikset's demurrer, and the Court of Appeal reversed. The Supreme Court granted review, and reversed the Court of Appeal.

The Court held that plaintiffs who were deceived by a product's label into spending money to purchase the product have "lost money or property" as required for UCL standing. The Court rejected the contention that, as long as the plaintiff received fair value for the item purchased, and it was not defective, that the plaintiff had not actually lost money or property. The Court held that "labels matter." Accordingly, "A consumer who relies on a product label and challenges a misrepresentation contained therein can satisfy the standing requirement of section 17204 by alleging, as plaintiffs have here, that he or she would not have bought the product but for the misrepresentation. That assertion is sufficient to allege causation – the purchase would not have been made but for the misrepresentation. It is also sufficient to allege economic injury." The Court rejected the construction of the UCL standing requirement that held that the "injury in fact" requirement was necessarily distinct from the "lost money or property" factor. The Court explained that someone who has lost money or property has necessarily suffered a loss in fact.

The Court also rejected the argument that only plaintiffs who plaintiff could allege a valid claim for restitution under the UCL had standing to make a UCL claim. The standards for standing under the UCL and for restitution under that statute are distinct. Accordingly, the standing requirement that a plaintiff "have lost money or property" as a result of the alleged unfair competition does not mean that only plaintiffs who are eligible for restitution to address that loss have standing under the UCL. This is because a restitution order requires that the defendant have acquired the plaintiff's property. It is possible that a defendant may have caused a plaintiff to lose money or property without actually acquiring that property from the plaintiff – for example, if the defendant's acts merely diminish the value of the plaintiff's property. The Court disapproved of *Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798; *Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 245, 109 Cal.Rptr.3d 27; *Citizens of Humanity, LLC v. Costco Wholesale Corp.* (2009) 171 Cal.App.4th 1, 22, 89 Cal.Rptr.3d 455; *Walker v. GEICO General Ins. Co.* (9th Cir.2009) 558 F.3d 1025, 1027 [all following *Buckland* on this issue].

Cortez v. Abich

__ Cal.4th __, 2011 WL 198105 (Cal. Supreme)

Who needs to know about this case: Lawyers handling cases where the defendant violated Cal-OSHA requirements

Why it's important: Holds that Cal-OSHA regulations applied to a claim by a laborer against a homeowner, for work done on the homeowner's remodeling project, where the project involved an extensive construction work for which a building permit was required. The Court rejected the homeowner's argument that the laborer was covered by the "household domestic service" exemption in Cal-OSHA.

Synopsis: Plaintiff Cortez was hired by an unlicensed contractor, Ortiz, to work on an extensive home-remodeling project for Abich, the homeowner. The project included demolition of existing walls and a deck, the addition of a new master bedroom and bathroom, construction of a garage, a kitchen upgrade, and replacement of the roof. Cortez was seriously injured when he stepped on the partially-demolished roof and it gave way. He sued the homeowner in tort. The trial court granted the homeowner's motion for summary judgment, finding that the Cal-OSHA worksite requirements did not apply because the homeowner was not the plaintiff's employer in light of the Cal-OSHA household domestic service exemption.

Under Cal-OSHA, the employment and place of employment provided to employees must be safe and healthful. (§ 6400, subd. (a).) Among other things, the employer must "furnish and use safety devices and safeguards," adopt methods and practices that are "reasonably adequate to

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render such employment and place of employment safe and healthful," and "do every other thing reasonably necessary to protect the life, safety, and health of employees." (§ 6401.) The employer must also "establish, implement, and maintain an effective injury prevention program" pursuant to the Act's terms. (§ 6401.7, subd. (a).) Moreover, "[e]very employer and every employee shall comply with occupational safety and health standards," including "all rules, regulations, and orders" pursuant to the Act "which are applicable to his [or her] own actions and conduct." (§ 6407.)

The violation of these standards may be admitted to establish a standard or duty of care in all negligence and wrongful death actions. Section 6303, subdivision (b), defines "employment" as "the carrying on of any trade, enterprise, project, industry, business, occupation, or work, *including all excavation, demolition, and construction work, or any process or operation in any way related thereto,* in which any person is engaged or permitted to work for hire, *except household domestic service*." (Italics added.) The Court found that because the defendants' home remodeling project entailed demolition and construction work, it qualified as employment under Cal-OSHA unless the Legislature intended the household-domestic service exemption to apply to home remodeling projects. After considering the legislative history of the Act, and the various arguments advanced, the Court held that, "the usual and ordinary import of that term ["household domestic service"] excludes work performed on a remodeling project calling for the demolition and rebuilding of significant portions of a house and the construction of new rooms. Hence, Cal-OSHA applied to the plaintiff's claims.

Pannu v. Land Rover N. Am., Inc.

(2011) __ Cal.App.4th __, 2011 WL 149963 (2d Dist. Div. 7.)

Who needs to know about this case: Lawyers handling product-liability claims, and particularly vehicle-defect claims

Why it's important: Affirms judgment against Land Rover of $21 million in action arising from injuries suffered in rollover accident. Holds that application of "consumer expectation test" to alleged stability and roof defects was a very close question, which it did not have to answer because the alternative risk-benefit test was satisfied; rejects Land Rover's claim that without evidence of skid marks, plaintiff could not prove causation; affirmed trial court's decision to exclude evidence of crash testing done by Ford and GM because the vehicles and test dynamics were not similar to the accident at issue; affirms award of economic losses based on plaintiff's lost earning capacity as a franchise owner/vice-president.

Synopsis: Sukhsagar Pannu suffered a severe spinal injury, resulting in quadriplegia, when his Land Rover Discovery (Series 1) sport utility vehicle rolled over following a chain of collisions on the 118 Freeway near Simi Valley. Pannu sued Land Rover North America, Inc., Jaguar Land Rover North America, LLC and Terry York Motor Cars, Ltd., doing business as Land Rover Encino (collectively Land Rover) alleging claims, among others, for strict liability based on defective design.

Following a bench trial, the court entered a judgment for $21,654,000 against Land Rover, finding stability and roof defects in the Discovery had caused Pannu's injury. On appeal, Land Rover contended a new trial was warranted because the trial court erred as a matter of law in applying the "consumer expectation" test for product liability, misapplied the alternative "risk-benefit" test and abused its discretion in excluding certain evidence proffered by Land Rover. Land Rover also contends the court's ruling was not supported by substantial evidence because no skid marks were found at the accident site, evidence it asserts necessarily must have been present had the rollover been caused by the alleged stability defect.

Concerning application of the risk-benefit test, Pannu established that the production Discovery would tip under evasive steering maneuvers and that slight modifications to the track width and center of gravity of the vehicle dramatically improved its rollover resistance. Similarly, modest enhancement of the roof support of the production Discovery yielded substantial gains in roof strength. Pannu proved these improvements could be achieved at a modest cost. Land Rover did not rebut any of these showings.

Land Rover argued that the finding of a stability defect was fully refuted by the lack of evidence of skid marks, which, in the opinion of its reconstruction expert, demonstrates the rollover must have resulted from a tripping mechanism. It argued that absent evidence of skid marks, Pannu failed to carry his threshold burden of causation.

The court held that Land Rover's argument fundamentally misperceives the nature of Pannu's burden. Pannu did not need to prove skid marks were present at the accident site; instead, he bore the burden of establishing in the mind of the trial court "a requisite degree of belief"– meaning more probably than not – his injury was caused by a design defect. He was entitled to rely on a full array of evidence, including the observations of percipient witnesses and the opinion testimony of expert witnesses. The testimony by eyewitnesses that Pannu's vehicle rolled on the roadway and not on the curb was sufficient to support the judgment.

In brief

Punitive damages; new-trial motions. *Green v. Laibco, LLC* (2011) __ Cal.App.4th __, 2011 WL 295276 (2d Dist. Div. 8.) In wrongful termination action plaintiff obtains verdict for $1,237,000 in compensatory damages and equal amount in punitive damages. The trial court grants a new trial 61 days after the initial notice of intent to move for new trial was filed. Reversed. The trial court lacked jurisdiction to grant the new trial after the 60th day. The court also rejected the defendant's argument that the punitive-damages award could not stand

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because the plaintiff failed to introduce any evidence of the defendant's net worth or financial condition. The plaintiff sought discovery on the defendant's financial condition, but the defendant did not comply. At trial, it produced a cryptic financial statement. The defendant's CEO was asked on the stand to interpret the information but could not, and could not answer questions about the company's net worth, other than that it was positive. The CEO testified that the defendant's net profit in the prior 12 months was $677,343. The court held that this was sufficient to support the punitive-damages award.

The court added the following comment: "We cannot leave this subject without comment on what may be described colloquially as defendant's chutzpah in insisting that plaintiff failed to meet her burden to prove defendant's financial condition. The notion that the jury did not have necessary information about defendant's net worth because plaintiff did not move defendant's financial statements into evidence – statements which defendant's own CEO could not read – is the height of absurdity. The jury did not have information about defendant's net worth because defendant's CEO engaged in stonewalling, pure and simple, from beginning to end.


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