

Appellate Reports and Cases in Brief

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



By Jeffrey Isaac Ehrlich

Cabral v. Ralphs Grocery Co.

(2011) __ Cal.4th __ , 2011 WL 677396 (Cal. Supreme)

Who needs to know about this case: Lawyers handling negligence claims; lawyers handling cases involving traffic collisions between autos and parked vehicles

Why it's important: Clarifies the rules that California courts must employ to determine whether a duty of care exists; clarifies that the *Rowland v. Christian* factors are used to determine whether to make an exception to the ordinary duty of care imposed by Civil Code section 1714; clarifies that duty is not defined based on case-specific facts, and courts should therefore not find that no duty exists unless they can formulate a generally-applicable legal rule; affirms verdict against truck driver for parking alongside freeway.

Synopsis: Decedent Cabral lost control of his automobile while driving on I-10 and was killed when he crashed into the back of a Ralphs' tractor-trailer rig that was parked 16 feet from the roadway. The driver had parked to have a snack. A jury apportioned 90 percent of the fault for the accident to Cabral and 10 percent to Ralphs and its driver. The Court of Appeal held that the trial court should have granted a JNOV because Ralphs owed no duty to Cabral as a matter of law, because parking its truck in an "emergency parking only" area could not be the proximate cause of the accident as a matter of law, and because the court believed that the testimony of plaintiff's traffic-reconstruction expert was too speculative. A unanimous Supreme Court reversed.

Under Civil Code section 1714, each person has a duty to use ordinary care and is liable for injuries caused by his failure to exercise reasonable care in the circumstances. The factors articulated in *Rowland v. Christian* are applied to determine whether public policy may justify a departure from this general duty. The *Rowland* factors are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

The *Rowland* factors are to be evaluated at a broad level of factual generality. The issue is whether "carving out an entire category of cases from that general duty rule is justified by clear considerations of policy." By making exceptions to Civil Code section 1714's general duty of ordinary care only when foreseeability and policy considerations justify a categorical no-duty rule, the Court preserves the crucial distinction between a determination that the defendant owed the plaintiff no duty of ordinary care, which is for the *court* to make, and a determination that the defendant did not breach the duty of ordinary care, which in a jury trial is for the *jury* to make.

"On the facts of a particular case, a trial or appellate court may hold that no reasonable jury could find the defendant failed to act with reasonable prudence under the circumstances. Such a holding is simply to say that as a matter of law the defendant *did not breach* his or her duty of care, i.e., was not negligent toward the plaintiff under the circumstances shown by the evidence. But the legal decision that an exception to Civil Code section 1714 is warranted, so that the defendant *owed no duty* to the plaintiff, or owed only a limited duty, is to be made on a more general basis suitable to the formulation of a legal rule, in most cases preserving for the jury the fact-specific question of whether or not the defendant acted reasonably under the circumstances."

Hence, on the question of duty presented in the case, "the factual details of the accident are not of central importance. That Horn parked 16 feet from the outermost traffic lane, rather than six feet or 26 feet; that parking for emergencies was permitted in the dirt

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area where Horn parked; that Cabral likely left the highway because he fell asleep and not from distraction or intoxication – "none of these are critical to whether Horn owed Cabral a duty of ordinary care." "These facts may have been important to the jury's determinations of negligence, causation and comparative fault, but on duty California law looks to the entire 'category of negligent conduct,' not to particular parties in a narrowly defined set of circumstances."

The Court held that the general duty of due care indisputably applies to the operation of a motor vehicle, the issue before it is properly stated as whether a categorical exemption from the general rule should be made exempting drivers from potential liability to other freeway users for stopping alongside a freeway. The Court held that the *Rowland* factors did not support a departure from the ordinary duty of care. In particular, the fact that emergency parking was permitted in the spot where Horn stopped did not make it unforeseeable that parking there could result in a collision – it is not the foreseeability of a collision that changes depending on the reason why a vehicle is stopped; it is the justification for the conduct. Society tolerates the risk from allowing stopping in emergencies because that risk is outweighed by making drivers continue to travel on the road during emergencies.

CASES IN BRIEF

Class-actions; "death knell" doctrine; appealability of orders terminating class claims. *In re Baycol Cases I & II* (2011) __ Cal.4th __, 2011 WL 681378 (Cal. Supreme). Trial court sustained demurrer to class allegations and individual claim, but later reconsidered and allowed individual claim to continue. Court of Appeal held order dismissing class allegations was immediately appealable, and hence plaintiff's failure to appeal within 60 days of entry of order made appeal untimely. Reversed. The "death knell" doctrine renders appealable only those orders that effectively terminate class claims but permit individual claims to continue. Here, the original order terminated both the class and individual claims. The order sustaining the demurrer without leave to amend as to both individual and class claims was not immediately appealable as to the class claims.

Fire insurance; innocent insureds; exclusions for intentional acts of "any" insureds. *Century-National Ins. Co. v. Garcia* (2011) 51 Cal.4th 564 (Cal. Supreme). Homeowner's son intentionally set fire to his bedroom in the homeowner's house, causing substantial damage. The insurer refused coverage, invoking the exclusion in its policy for losses caused by the intentional acts of "any" insured. The trial court sustained a demurrer to the insured's cross-complaint against the insurer, and the Court of Appeal affirmed. The Supreme Court reversed. Fire-insurance policies are subject to Insurance Code section 2071, which prescribes a standard form for all policy language. Insurers must use the standard language, or provide coverage that is substantially equivalent or more advantageous to the insured. The standard form contains no intentional-acts exclusion, but Insurance Code section 533, which is read into the standard form, provides that an insured is not liable for "the willful act of *the* insured." [Emphasis added] The Legislature's use of the term "the" insured is significant because unlike exclusions for the acts of "an" insured or of "any" insured, exclusions based on the acts of "the" insured are construed not to bar coverage for innocent co-insureds. The other provisions of section 2071 indicate that provisions barring insurer liability or excluding coverage operate severally, not collectively, because all the provisions refer to conduct of "the" insured.

Jeffrey Isaac Ehrlich is the principal of the Ehrlich Law Firm *in Encino. His practice emphasizes insurance bad-faith and appellate litigation. A Harvard Law graduate, he is certified by the State Bar of California as an appellate specialist. He has twice been selected as Appellate Lawyer of the Year by the Consumer Attorneys Association of Los Angeles.*

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