



Appellate Reports and cases in brief

Columbo declines to rely on Exxon Shipping to cap punitive damages at the amount of compensatory damages

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Columbo v. BRP US, Inc.

(2014) __ Cal.App.4th __ (4th Dist, Div. 1)

Who needs to know about this case? Lawyers who handle products-liability cases, and those who handle cases where punitive damages are an issue.

Why it's important: In a punitive-damage claim under federal maritime law, rejects defense argument that *Exxon Shipping Co. v. Baker* (2008) 554 U.S. 471, capped punitive damages at a 1:1 ratio with compensatory damages; rejected many of the arguments that product-liability defendants rely on to attack punitive-damage awards in failure-to-warn cases; rejected the defense causation arguments.

Synopsis: Defendants Bombardier Recreational Products and BRP US Inc. ("BRP") manufacture a 3-passenger Sea Doo personal watercraft ("PWC"). It placed a warning sticker under the handlebars of the PWC, on its console, which was visible to the driver, but not to the passengers. The warning said that severe injuries to "body cavities" could occur "as a result of falling into water or being near [the] jet thrust nozzle." It further stated that "[n]ormal swimwear does not adequately protect against forceful water entry into lower body

opening(s) of males or females," and, thus, "[a]ll riders must wear a wetsuit bottom or clothing that provides equivalent protection." Plaintiffs Haley Columbo and Jessica Slagel, then 16 and 17, went jet-skiing on Mission Bay with friends and relatives. They were not wearing any protective clothing, and did not see the warning. When the driver of the PWC accelerated quickly, they fell off the back and both sustained grievous vaginal and rectal injuries from the thrust of the PWC's jet nozzle.

They prevailed at trial on their products-liability claim against BRP on a failure-to-warn theory. The jury awarded Jessica roughly \$3.38 million in compensatory damages and awarded Haley about \$1.06 million. The jury further found that BRP acted with a "reckless or callous disregard for the rights of others" and awarded punitive damages of \$1.5 million each to Jessica and Haley.

On appeal, BRP challenged the award based on insufficient evidence, lack of causation, and argued that the trial court made various erroneous rulings that denied it a fair trial. It also argued that under *Exxon Shipping*, the amount of the punitive-damage award was limited to their respective compensatory-damage awards.

Causation: At trial, both Jessica and Haley testified that if they had seen the warning, they would have either declined to ride on the PWC, or would have first obtained protective clothing.

Their expert also opined, based on their testimony, that the warning on the PWC was inadequate. The appellate court found that this testimony was sufficient to support the jury's finding that an inadequate warning was a substantial factor in causing the injury.

Punitive Damages

1. Fact that warning was given negates finding of callous disregard for safety of users

BRP noted that it did warn about the risk from the jet thrust, in the immediate sight of the PWC operator, and it "employed teams of experienced professionals to test its vessels for thousands of hours before they were placed in the market." BRP contended that this evidence was uncontroverted by plaintiffs, and, thus, its "conduct was wholly inconsistent with a callous disregard for the safety of others or a similar state of mind." BRP also cited several federal cases that appear to hold that when a manufacturer warns of a specific risk of harm and how to prevent it, the requisite intent to establish punitive damages is lacking as a matter of law.

The court rejected this argument, finding that it would require it to reweigh the evidence. It declined to follow these cases, distinguishing each of them, because in each case the defendant was either unaware of the risk posed by the product, or the plaintiff had misused the product after being provided with an effective warning. Here, the evidence showed that BRP



was aware of prior orifice injuries, and that the warning was not adequate for passengers of its PWC.

The court also rejected the argument that, because the PWC driver was aware of the warning and negligently failed to warn Jessica and Haley, that no punitive-damage finding could be made against BRP as matter of law.

2. Limitation of punitive damages under Exxon Shipping

In *Exxon Shipping*, the U.S. Supreme Court held that Exxon's exposure for punitive damages for the Exxon Valdez oil spill was limited to the amount of compensatory damages. After that, several courts in other jurisdictions had concluded that *Exxon Shipping* did not establish, under maritime law, a bright-line rule limiting punitive damages to the amount of compensatory damages. The court found these cases persuasive and declined to read *Exxon Shipping* to create such a bright-line limitation on the amount of punitive damages under federal maritime law.

Short(er) takes:

Falls-from-windows; premises liability; hotels; duty of care; compliance with building codes; impact of comparative fault on duty: *Lawrence v. La Jolla Beach and Tennis Club, Inc.* (2014) __ Cal.App.4th __ (4th Dist., Div. 1.)

Michael Lawrence, then five, was badly injured when he fell from a second-story window at defendant's hotel after the screen came loose. The trial court granted summary judgment for the defendant, following a line of cases that have held that a property owner or landlord owes no duty of care to occupants to prevent children from falling out of windows on the property.

Reversed. First, despite the line of authority relied on by the trial court, other cases have held that a landlord owes a duty to protect children from

falling out of windows when the condition or design of the window or other circumstances increase the risk to small children of falling from the window. Second, although both landlords and hotel owners owe a duty to maintain their property in a reasonably safe condition, "because of the temporary nature of most hotel occupancies, hotel owners generally exercise far greater control over hotel rooms than landlords are able to exercise over leased premises." Consequently, a hotel owner's duty to maintain reasonably safe rooms is more akin to the duty to maintain safe common areas than is a landlord's duty to maintain reasonably safe premises.

The parents' potential negligence in failing to supervise their son closely to prevent the fall may be a factor in determining causation, but is generally not relevant to the issue of duty. Similarly, the fact that the property complied with applicable building codes does not establish the use of due care as a matter of law.

The court also found that there were triable issues of fact on the issues of breach of the duty and causation.

Punitive damages; effect of post-trial reduction of compensatory award on punitive award *Izell v. Union Carbide Corp.* (2014) __ Cal.App.4th __ (2d Dist., Div. 3).

Plaintiff was diagnosed with mesothelioma at age 85. He went to trial against five defendants, including Union Carbide, which was held at fault for the exposure to asbestos. The jury awarded compensatory damages of \$30 million, and punitive damages of \$18 million. The trial court conditionally granted Union Carbide's new-trial motion on the ground of excessive damages, unless plaintiffs consented to a remittitur of the compensatory damage award to \$6 million. The trial court declined to disturb the punitive damage award, concluding Union Carbide's

stipulated \$4.2 billion net worth and the evidence concerning the reprehensibility of its conduct supported the amount of the award, notwithstanding the substantial reduction in compensatory damages. Plaintiffs accepted the remittitur and the court entered judgment against Union Carbide.

Affirmed. In a 2-1 decision (authored by Justice Klein, with Justice Aldrich concurring), the appellate court held that the \$18 million punitive-damage award was not excessive under applicable federal due-process standards. In dissent, Justice Kitching argued that either the entire verdict, including the punitive-damage award, was the product of passion or prejudice, which would entitle Union Carbide to a new trial; or that the jury followed the trial court's instruction that the punitive award had to have a reasonable relationship to the harm caused by Union Carbide, and therefore the reduction of the compensatory award might have resulted in a lower punitive award. She would have ordered a retrial on punitive damages.

Attorney's fees, sanctions; motion to quash subpoena *Evilsizor v. Sweeney* (2014) __ Cal.App.4th __ (1st Dist., Div. 1.)

In his divorce litigation, husband (Sweeney) issued a subpoena for wife (Evilsizor)'s bank records. Wife's father had an interest in some of the wife's accounts, and filed a motion to quash the subpoena, claiming insufficient notice. Husband agreed to amend the subpoena to exclude information about father's interests. Father withdrew his motion to quash, but waited several days before taking it off calendar. As a result, the trial court ordered father to pay part of husband's fees in responding to the motion.

Affirmed. Under the Code of Civil Procedure section 1987.2, a trial court can award reasonable attorney's fees incurred in opposing a motion to quash if



it finds that the motion was made in bad faith or lacked substantial justification. This rule applies even if the motion is originally filed legitimately, but is rendered unnecessary by later withdrawal or amendment of the subpoena. Since husband's counsel made it clear that he would amend the subpoena, the delay in withdrawing the motion to quash justified the trial court's order of sanctions.



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