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Appellate Report

COURTS LOOK AT EXPERT CONCESSIONS ON CAUSATION; ALSO PERSONAL JURISIDICTION

Torts; causation; expert concessions; jury's credibility determinations

Davis v. Harano (2022) __ Cal.App.5th __ (Second Dist. Div. 8.)

In 2016, plaintiff Davis was involved in a car accident that totaled his car and caused him neck pain. He settled his claims. In 2017, Harano rear-ended Davis's car, causing only slight damage. After the collision, Davis walked around the accident scene without showing any signs of discomfort. He drove himself home and immediately called his attorney. The attorney recommended that Davis seek medical treatment from a provider willing to treat him on a lien basis. Davis sued Harano, who conceded negligence. The jury rendered a defense verdict, finding that the 2017 did not cause Davis to suffer any damage. Davis appealed, arguing that the trial court erred in refusing to direct a verdict for Davis on causation. Affirmed.

Contrary to Davis's assertion, the defense medical expert did not concede that the accident caused Davis's injury. Rather, he said that "if and only if" the jury believed that Davis was testifying truthfully about his claim of new pain, then the accident would have caused that pain. Thus, the expert's opinion hinged on the jury's evaluation of Davis's credibility. The defense raised convincing challenges to Davis's credibility – including his conduct at the accident scene, his call to his attorney before seeking medical care, and the fact that Davis failed to disclose his 2016 accident to his own medical expert.

Personal jurisdiction; specific jurisdiction; insufficient contacts; products liability

LG Chem, Ltd. v. Superior Court (*Lawhon*) (2022) __ Cal.App.5th __ (Fourth District, Div. 1.)

Lawhon was injured when an 18650 lithium-ion battery he purchased from a vape shop in San Diego exploded in his pants. He sued LG Chem, the South Korean company that manufactured the 18650 line of batteries for products liability. The trial court denied LG Chem's motion to quash service of summons for lack of personal jurisdiction. LG Chem petitioned for a writ. Petition granted.

LG Chem sold millions of 18650 lithium-ion batteries to three California manufacturers of electric vehicles. But Lawhon's injury for a vape purchased from a vape shop whose supply chain was unknown could not be seen to arise in any way from those sales to the EV manufacturers. LG Chem did not advertise, market, or solicit California buyers to purchase the 18650 batteries, nor did it solicit California customers to purchase them as standalone replacements. Rather, LG Chem made businesses who purchased the batteries agree in writing not to resell the batteries as standalone replacements and fixed warning labels on the batteries to this effect. Because Lawhon's injuries did not arise out of LG Chem's conduct in California, the California court lacked personal jurisdiction over it to resolve Lawhon's claims.

Tort Claims Act; insufficient claim; failure to advise claimant of insufficiencies; waiver

Simms v. Bear Valley Community Healthcare Dist. (2022) __ Cal.App.5th __ (Fourth District, Div. 2.)

Timothy Simms was treated at Bear Valley's emergency room in December 2017. He saw Bear Valley providers in December 2017 and January 2018 for follow-up treatment. In December 2017 and January 2018 he verbally "filed a grievance" with Bear Valley, claiming that the providers were refusing to treat him based on their erroneous view that he was trying to obtain drugs on false pretenses. On January 18, 2018, Bear Valley responded by letter, explaining the providers' observations at the appointments. In April 2018, Bear Valley sent Simms a "formal notice" that it would no longer treat him because of unresolved differences in treatment/care philosophy between Simms and the providers. On May 13, 2018, Simms sent Bear Valley a letter responding to its January 18 letter. His letter denied any drug-seeking behavior and stated that by treating him like a "criminal," Bear Valley's providers had added to his chronic pain and given him "a tremendous amount of stress, anxiety, and severe mental anguish." He complained about the providers' refusal to renew his pain medications as well as their failure to order additional scans to determine the cause of his pain. He threatened to file a lawsuit if he continued to be defamed and mistreated. Bear Valley did not respond to the letter. In July 2019, Simms sent Bear Valley a notice of intent to file suit. Bear Valley treated the notice as a claim and returned it to Simms on the ground that it was not presented within six months of the event or occurrence as required by the Tort Claims Act. When the trial court denied Simms' petition for an order relieving him from the claim-presentation requirement, Simms appealed. Reversed.

Simms' May 2018 letter communicated to Bear Valley that Simms felt that he had compensable claims for defamation and medical malpractice against Bear Valley and threatened litigation if his concerns about being mistreated were not resolved. Although it was not complete, it constituted a claim for injuries for defamation and malpractice, triggering Bear Valley's

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obligation to advise Simms of any insufficiencies in the claim. By failing to send the required notice of the insufficiencies in his claim, Bear Valley waived any defense based on the insufficiencies in the claim.

Respondeat superior; coming-and-going rule; special-risk exception

Feltham v. Universal Protection Service (2022) __ Cal.App.5th __ (First District, Div. 3.)

While riding a motorcycle, Feltham was injured when she was struck by a car driven by Villegas, who had fallen asleep after her shift as a security guard at Allied Universal Corporation (Allied) and driven into oncoming traffic. Feltham argued that Allied had negligently required Villegas to work excessive hours, causing her to fall asleep at the wheel while within the scope of her employment. The trial court granted Allied's motion for summary judgment, finding that Villegas was not acting within the course and scope of employment. Affirmed.

Under the going-and-coming rule, employers are generally not liable for torts committed by their employees while the employee is on their way to work or on the way home after work. The special-risk exception to the rule applies when the employee injures others because of a risk arising from or related to work. To apply the exception, the plaintiff must establish a causal nexus between the injury and the employee's job, to the extent that it is predictable that the employee would commit torts of the type at issue. Here, Villegas did not use her car for work and was not at work when the accident occurred. She worked a regular eight-hour shift. There was no evidence that employment-related fatigue was a cause of the accident. Rather, the evidence showed that it was Villegas's inability to sleep during her time off work that was the cause of her fatigue.

Contractors; work performed by unlicensed subcontractors; compensation

Kim v. TWA Construction, Inc. (2022) __ Cal.App.5th __ (Sixth District)

Kim and Truong, a married couple, hired TWA to perform work on their property. TWA hired a subcontractor to remove a large tree partially owned by the couple's neighbor. The neighbor sued the couple, who cross-complained against TWA seeking, inter alia, disgorgement of the money paid for the tree removal. At trial, TWA failed to prove that the subcontractor was licensed to perform the tree work. The jury verdict was for the couple. TWA appealed. Affirmed.

Under Business & Professions Code section 7031, subdivision (a), contractors must obtain proper licensure and may not recover any compensation for work performed without a proper license. This rule precludes an unlicensed subcontractor from recovering compensation from either the contractor or property owner. Because TWA failed to prove that the subcontractor it hired was licensed, it could not receive any compensation for the work performed by the subcontractor.

Common carriers; Uber; duty of care to passengers

Jane Doe No. 1 v. Uber Technologies, Inc. (2022) __ Cal.App.5th __ (Second District, Div. 1.)

Three women (Jane Does) were abducted and sexually assaulted by assailants posing as Uber drivers. The assailants had no affiliation with Uber but had obtained Uber decals to place on their vehicles from the Uber website. The woman sued Uber, arguing that its business model created the risk that criminals would use this "fake Uber scheme" and that Uber failed to protect its customers from the scheme. The trial court sustained Uber's demurrer with prejudice. Affirmed.

While there is generally no duty to protect others from criminal conduct of third parties, such a duty may arise when there is a special relationship. A common carrier owes its passengers a duty to warn of reasonably foreseeable risks when the passengers are within its care and control. Here, Uber had no control over the women or their environments while they were waiting for their rides from Uber. The fact that Uber could direct the women to a specific pick-up location and knew about their whereabouts was not akin to passengers submitting themselves to a carrier's care and control.

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