



## California Supreme Court Pending Cases Alert

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April 2013

### PENDING CALIFORNIA SUPREME COURT EMPLOYMENT, GENERAL LIABILITY, HEALTH CARE, INSURANCE, PROFESSIONAL LIABILITY, AND PUBLIC ENTITY CASES AS OF MARCH 29, 2013

*Our firm is following a number of employment, general liability, health care, insurance, professional liability and public entity cases that are pending in the California Supreme Court, the outcome of which may impact our clients. We will issue a Client Alert when the Court issues its decisions. Those cases are the following, and the issues presented are those articulated by the California Supreme Court.*

*American Nurses Assn. v. Torlakson*, S184583. 185 Cal.App.4th 393. (1) Under California law, are designated school personnel who are not licensed nurses allowed to administer insulin to diabetic students pursuant to treating physicians' orders under a Section 504 Plan (29 U.S.C. § 794; 34 C.F.R. § 104.1 et seq.) or an Individualized Education Program (20 U.S.C. §1414(d))? (2) If not, is California law preempted by federal law?

*American States Ins. Co. v. Ramirez*, S205073. Nonpublished opinion; San Bernardino County Superior Court. (1) Was a form, which was included in the envelope containing policy documents sent to the insured and which stated that the insured was covered for any vehicle he drove, part of the insurance policy? (2) If so, did that form create an ambiguity in coverage that should be construed against the insurer?

*Ayala v. Antelope Valley Newspapers, Inc.*, S206874. 210 Cal.App.4th 77. This case presents questions concerning the determination of whether common issues predominate in a proposed class action relating to claims that turn on whether members of the putative class are independent contractors or employees.

*Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP*, S208173. 211 Cal.App.4th 1301. May an architect who provides services to a residential developer be liable to the eventual purchasers of the residences for negligence in the rendition of those services?

*City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.*, S198638. 200 Cal.App.4th 885. This case include issues concerning preemption, under federal or state law, of local ordinances regulating or banning the operation of medical marijuana dispensaries and related activities.

*Cordova v. City of Los Angeles*, S208130. 212 Cal.App.4th 243. May a government entity be held liable if a dangerous condition of public property existed and caused the injuries plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident?

*Duran v. U.S. Bank National Assn.*, S200923. 203 Cal.App.4th 212, mod. 203 Cal.App.4th 622. This case presents issues concerning the certification of class actions in wage and hour misclassification litigation and the use of representative testimony and statistical evidence at trial of such a class action.

*El-Attar v. Hollywood Presbyterian Medical Center*, S196830. 198 Cal.App.4th 664, mod. 198 Cal.App.4th 1234c. (1) Could the executive committee of the hospital medical staff delegate to the hospital governing board its authority to select the hearing officer and the physician members of the peer review panel to hear a physician's challenge to the governing board's denial of his application for reappointment to the hospital medical staff? (2) If the hospital by-laws did not permit this procedure, was the peer review panel selected by the governing board improperly constituted, requiring a new peer review procedure conducted by a new hearing panel selected by the executive committee?

*Ennabe v. Manosa*, S189577. 190 Cal.App.4th 707. (1) Is a person who hosts a party at a residence, and who furnishes alcoholic beverages and charges an admission fee to uninvited guests, a social host within the meaning of Civil Code section 1714, subdivision (c), and hence immune from civil liability for furnishing alcoholic beverages? (2) Under the circumstances here, does such a person fall within an exception stated by Business and Professions Code section 25602.1 to the ordinary immunity from civil liability for furnishing alcoholic beverages provided by Business and Professions Code section 25602, subdivision (b)?

*Fluor Corp. v. Superior Court*, S205889. 208 Cal.App.4th 1506. Are the limitations on assignment of third party liability insurance policy benefits recognized in *Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934 inconsistent with the provisions of Insurance Code section 520?

*Hartford Casualty Ins. Co. v. Swift Distribution, Inc.*, S207172. 210 Cal.App.4th 915. Did the allegations of the complaint constitute disparagement for purposes of insurance coverage or the duty to defend under the advertising injury provision of defendant's insurance policy?

*Hayes v. County of San Diego*, S193997. 658 F.3d 867. The question presented is whether under California negligence law, liability can arise from tactical conduct and decisions employed by law enforcement preceding the use of deadly force.

*Richey v. Autonation, Inc.*, S207536. 210 Cal.App.4th 1516, mod. 211 Cal.App.4th 701b. This case presents the following issues: (1) Is an employer's honest belief that an employee was violating company policy or abusing medical leave a complete defense to the employee's claim that the employer violated the Moore-Brown-Roberti Family Rights Act (Gov. Code §§ 12945.1, 12945.2)? (2) Was the decision below to vacate the arbitration award in the employer's favor consistent with the limited judicial review of arbitration awards?

*Verdugo v. Target Corp.*, S207313. 704 F.3d 1044. In what circumstances, if ever, does the common law duty of a commercial property owner to provide emergency first aid to invitees require the availability of an Automatic External Defibrillator (AED) for cases of sudden cardiac arrest?

*Zhang v. Superior Court*, S178542. 178 Cal.App.4th 1081. (1) Can an insured bring a cause of action against its insurer under the unfair competition law (Bus. & Prof. Code, § 17200) based on allegations that the insurer misrepresents and falsely advertises that it will promptly and properly pay covered claims when it has no intention of doing so? (2) Does *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287 bar such an action?

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