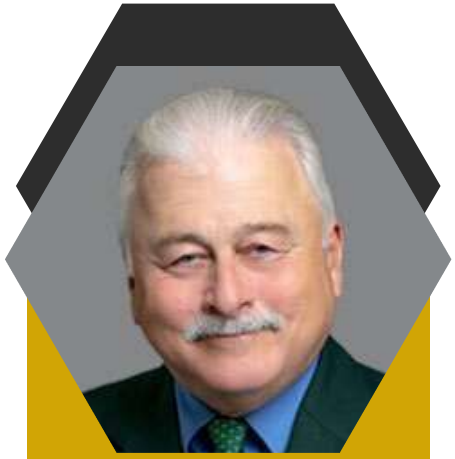
IMPORTANT NEW 2023 CIVIL CASE DECISIONS

Presentation

Monty A. McIntyre, Esq. - ADR Services, Inc.
Michael J. Roberts, Esq. - ADR Services, Inc.

Today's Speakers & Program



Monty A. McIntyre, Esq.

Mediator, Arbitrator & Referee with ADR Services

Publisher: California Case Summaries™

Podcaster: Trial Alchemy™

Michael J. Roberts, Esq.

Mediator and Arbitrator with ADR Services

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ARBITRATION

Law Finance Group, LLC v. Key (2023) 14 Cal.5th 932: The California Supreme Court reversed the Court of Appeal's decision ruling that the 100-day statute of limitations to request the trial court to vacate an arbitration award, in Code of Civil Procedure section 1288.2, is a jurisdictional time limit. The California Supreme Court disagreed, concluding that section 1288.2's deadline for seeking vacatur of an arbitral award is a nonjurisdictional statute of limitations that is subject to equitable tolling and equitable estoppel. The prevailing party in the arbitration filed a petition to confirm the award, and section 1290.6 allowed plaintiff to respond within 10 days after service of the petition to confirm. However, this date was beyond the 100-day deadline for plaintiff to seek to vacate the award. The Supreme Court held that when a party both (1) responds to a petition to confirm, and (2) requests that the arbitration award be vacated, both deadlines apply. Absent a written agreement or court order, the response must be filed within 10 days after service of the petition to confirm and, in any event, no later than 100 days after service of the award. In this case the request to vacate the award was untimely. However, the case was remanded to the Court of Appeal to determine whether plaintiff was entitled to equitable relief from the deadline. (June 26, 2023.)

BUSINESS AND PROFESSIONS CODE

Cal. Medical Assn. v. Aetna Health of Cal., Inc. (2023) 14 Cal.5th 1075: The California Supreme Court reversed the Court of Appeal decision that had affirmed the trial court's order granting defendant's motion for summary judgment in plaintiff's action alleging that defendant violated the unfair competition law (UCL; Bus. & Prof. Code, § 17200 et seq.) by engaging in unlawful business practices. The California Supreme Court ruled that the UCL's standing requirements are satisfied when an organization, in furtherance of a bona fide, preexisting mission, incurs costs to respond to perceived unfair competition that threatens that mission, so long as those expenditures are independent of costs incurred in UCL litigation or preparations for such litigation. When an organization has incurred such expenditures, it has "suffered injury in fact" and "lost money or property as a result of the unfair competition." (§ 17204.) In this case, the record disclosed a triable issue of fact as to whether the plaintiff association expended resources in response to the perceived threat the defendant health insurer's allegedly unlawful practices posed to plaintiff's mission of supporting its member physicians and advancing public health. The evidence was also sufficient to create a triable issue of fact as to whether those expenses were incurred independent of the litigation. For those reasons, the trial court erred in granting summary judgment for the defense. (July 17, 2023.)

CIVIL PROCEDURE

L.A. Unified School Dist. v. Superior Court of Los Angeles County (2023) 14 Cal.5th 758: The California Supreme Court affirmed the Court of Appeal's decision, and concluded that Code of Civil Procedure section 340.1 (b)(1), which allows the recovery of treble damages when a plaintiff suing in tort for childhood sexual assault proves that the assault was as the result of a cover up, cannot be awarded against a public entity because they are prohibited by Government Code section 818 which specifies that a public entity may not be held liable in tort for damages imposed primarily for the sake of example and by way of punishing the defendant. (June 1, 2023.)

CORPORATIONS

Turner v. Victoria (2023) 15 Cal.5th 99: The California Supreme Court reversed the Court of Appeal decision affirming the trial court's order sustaining defendants' demurrer, without leave to amend, to plaintiff's complaint alleging causes of action under Corporations Code sections 5142, 5233, 5223, and 5710. The trial court and Court of Appeal concluded that plaintiff no longer had standing to bring her action because, at the time that she filed the complaint, plaintiff was no longer a director of the Conrad Prebys Foundation. The California Supreme Court disagreed, concluding an examination of the statutory text, its surrounding context, the legislative history, and the overarching purpose of the director enforcement statutes revealed that the statutes do not impose a continuous directorship requirement that would require dismissal of a lawsuit brought under these statutes if the director-plaintiff failed to retain a director position. Each statute grants a director standing to bring a lawsuit. None expressly requires continued service as a director as a condition for pursuing the lawsuit, and there is no indication that the Legislature intended to impose such a condition. (August 3, 2023.)

EDUCATION

Boermeester v. Carry (2023) 15 Cal.5th 72: The California Supreme Court reversed the Court of Appeal decision holding that respondents' disciplinary procedures were unfair because they denied petitioner a meaningful opportunity to cross-examine critical witnesses at an in-person hearing, holding that respondents should have afforded petitioner the opportunity to attend a live hearing at which he or his advisor-attorney would directly cross-examine the alleged victim, Jane Roe, as well as the third party witnesses, or indirectly cross-examine them by submitting questions for respondents' adjudicators to ask them at the live hearing. The California Supreme Court disagreed, holding that, though private universities are required to comply with the common law doctrine of fair procedure by providing accused students with notice of the charges and a meaningful opportunity to be heard, they are not required to provide accused students the opportunity to directly or indirectly cross-examine the accuser and other witnesses at a live hearing with the accused student in attendance, either in person or virtually. Requiring private universities to conduct the sort of hearing the Court of Appeal majority envisioned would be contrary to the long-standing fair procedure admonition that courts should not attempt to fix any rigid procedures that private organizations must invariably adopt. Instead, private organizations should "retain the initial and primary responsibility for devising a method" to ensure adequate notice and a meaningful opportunity to be heard. (July 31, 2023.)

EMPLOYMENT

Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104: The California Supreme Court ruled that where plaintiff has brought a PAGA action comprising individual and non-individual claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA. To have PAGA standing a plaintiff must be an "aggrieved employee", someone (1) who was employed by the alleged violator and (2) against whom one or more of the alleged violations was committed. (July 17, 2023.)

EMPLOYMENT

Kuciemba v. Victory Woodworks, Inc. (2023) 14 Cal.5th 993: Answering two questions of California law certified from the United States Court of Appeals for the Ninth Circuit concerning the scope of an employer's liability when an employee's spouse is injured by transmission of the COVID-19 virus, the California Supreme Court ruled that if an employee contracts COVID-19 at the workplace and brings the virus home to a spouse, the California Workers' Compensation Act (WCA; Lab. Code, § 3200 et seq.) does not bar the spouse's negligence claim against the employer. However, it also ruled that an employer does not owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members. (July 6, 2023.)

EMPLOYMENT

Raines v. U.S. Healthworks Medical Group (2023) 15 Cal.5th 268: The California Supreme Court answered the following question from the Ninth Circuit Court of Appeals: “Does California’s Fair Employment and Housing Act, which defines ‘employer’ to include ‘any person acting as an agent of an employer,’ Cal. Gov’t Code § 12926(d), permit a business entity acting as an agent of an employer to be held directly liable for employment discrimination?” The California Supreme Court concluded that an employer’s business entity agents can be held directly liable under the FEHA for employment discrimination in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA’s regulated activities on behalf of an employer. (August 21, 2023.)

EVIDENCE

Doe v. Super. Ct. (2023) 15 Cal.5th 40: The California Supreme Court reversed the Court of Appeal's ruling on whether the trial court had properly applied Evidence Code sections 1106, 783 and 352 in determining whether defendant could offer evidence of a later sexual molestation of plaintiff in 2013 to address whether plaintiff's damages were entirely caused by plaintiff's sexual molestation in 2009-2010 by her fourth-grade teacher. The Supreme Court held that subdivision (a) of section 1106 does not contemplate categorical exclusion of evidence concerning "other sexual conduct" when that evidence is sought to be admitted under the same section's subdivision (e) to challenge the credibility of the plaintiff as provided in section 783. In appropriate and limited circumstances, admission of "other sexual conduct" evidence may be warranted under section 1106(e), and section 783 for impeachment — even when that same evidence is inadmissible as substantive evidence under section 1106(a) — subject, of course, to the credibility and section 352 analysis contemplated by the Legislature's scheme. The Supreme Court concluded that the trial court did not conduct a proper hearing under 783, because it did not hold a robust "hearing out of the presence of the jury," at which it would "allow the questioning of the plaintiff regarding the offer of proof made by the defendant." (§ 783(c).) The trial court also failed to properly undertake to "make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted," which in turn would have allowed defendant to later "offer evidence pursuant to the order of the court." (§ 783, subd. (d).) Nor did the trial court apply the section 352 analysis called for by the pertinent shield statutes. For these reasons, the Court of Appeal was directed to remand the case for further proceedings. (July 27, 2023.)

GOVERNMENT

County of Santa Clara v. Superior Court of Santa Clara (2023) 14 Cal.5th 1034: The California Supreme Court reversed the Court of Appeal's decision granting a writ petition and holding that a claim for reimbursement of emergency medical services may not be maintained against a health care service plan when the plan is operated by a public entity because the Government Claims Act (Gov. Code, § 810 et seq.) immunizes a public entity from such a claim. The Supreme Court disagreed, concluding that the immunity provisions of the Government Claims Act are directed toward tort claims, and do not foreclose liability based on contract or the right to obtain relief other than money or damages. (Gov. Code, § 814.) Plaintiff hospitals did not allege a conventional common law tort claim seeking money damages. Instead, they alleged an implied-in-law contract claim based on the reimbursement provision of the Knox-Keene Act, and sought only to compel defendant County of Santa Clara to comply with its statutory duty. Accordingly, defendant was not immune from suit under the circumstances and the claim may proceed. (July 10, 2023.)

GOVERNMENT

Travis v. Brand (2023) 14 Cal.5th 411: The California Supreme Court reversed the judgment of the Court of Appeal affirming an award attorney fees to defendants, under Government Code section 91003(a), after they prevailed in an action accusing defendants of failing to make required disclosures under the Political Reform Act of 1974 (Government Code, § 81000 et seq.). In order to effectuate the purpose of encouraging private litigation enforcing the Political Reform Act, the California Supreme Court interpreted section 91003(a) to impose an asymmetrical standard, which constrains the trial court's discretion to award attorney's fees to a prevailing defendant. Consistent with the standard adopted in similar contexts, including the enforcement of civil rights and fair housing and employment laws, a prevailing defendant under the Political Reform Act "should not be awarded fees and costs unless the court finds the action was objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so." (Williams v. Chino Valley Independent Fire Dist. (2015) 61 Cal.4th 97, 115.) (January 30, 2023.)

INSURANCE

Allied Premier Ins. v. United Financial Casualty Co. (2023) 15 Cal.5th 20: The California Supreme Court, answering a question certified by the Ninth Circuit Court of Appeal, ruled that under California's Motor Carriers of Property Permit Act (the Act; Veh. Code, § 34600 et seq.), a commercial automobile insurance policy ends on the policy expiration date, and does not continue in full force and effect beyond the policy expiration date until the insurer cancels its Certificate of Insurance on file with the Department of Motor Vehicles (DMV). Plaintiff carrier filed an action in federal district court seeking equitable contribution from defendant carrier for one-half of a $1,000,000 payment that plaintiff made to settle a wrongful death suit against its insured. The district court found for plaintiff, concluding that since defendant failed properly to submit a Notice of Cancellation to the DMV, its policy remained in effect on the date of the accident even though the policy had lapsed under its own terms, and plaintiff was intitled to equitable contribution in the sum of $500,000. Answering the Ninth Circuit Court of Appeal's question, the California Supreme Court disagreed with the district court, concluding that the terms of an insurance contract generally determine the duration of the policy's coverage. Although an endorsement can amend the policy, neither the Act nor the specific endorsement it requires extend coverage beyond the underlying policy's expiration date. (July 24, 2023.)

PUBLIC RESOURCES CODE

Chevron U.S.A., Inc. v. County of Monterey (2023) 15 Cal.5th 135: The California Supreme Court affirmed the Court of Appeal decision that affirmed the trial court's order granting judgment for plaintiffs in six actions filed against defendant challenging Measure Z, a local ordinance passed by voters banning oil and gas wastewater injection and impoundment and the drilling of new oil and gas wells throughout defendant's unincorporated areas. By providing that certain oil production methods may never be used by anyone, anywhere, in the County, Measure Z nullified — and therefore contradicted — Public Resource Code section 3106's mandate that the state "shall" supervise oil operation in a way that permits well operators to "utilize all methods and practices" the supervisor has approved, and therefore was preempted by section 3106. (August 3, 2023.)

PUBLIC UTILITIES CODE

Gantner v. PG&E Corp. (2023) 15 Cal.5th 396: The California Supreme Court answered a question from the United States Court of Appeals for the Ninth Circuit regarding whether Public Utilities Code section 1759 bars a lawsuit that seeks damages resulting from emergency power shutoffs, called Public Safety Power Shutoffs (PSPS), where the suit alleges that a utility's negligence in maintaining its grid necessitated the shutoffs but does not allege that the shutoffs were unnecessary or violated California Public Utilities Commission (PUC) regulations. The California Supreme Court held that allowing suit in this situation would interfere with the PUC's comprehensive regulatory and supervisory authority over PSPS. Section 1759 therefore barred plaintiff's class action complaint against defendant filed in 2019 in the Bankruptcy Court for the Northern District of California as part of defendant's Chapter 11 bankruptcy proceedings. (November 20, 2023.)

TORTS

Leon v. County of Riverside (2023) 14 Cal.5th 910: The CaliforniaSupreme Court reversed the Court of Appeal decision that affirmed the trial court's order granting defendant's motion for summary judgment in plaintiff's action for emotional distress as a result of Sheriff Deputies dragging her deceased husband's body behind a truck, causing his pants to be pulled down an exposed his naked body, and leaving the body uncovered for approximately eight hours while officers searched for the shooter and investigated the shooting. The trial court and Court of Appeal concluded that the immunity in Government Code section 821.6 applied to these circumstances. The California Supreme Court disagreed. Because the claim did not concern alleged harms from the institution or prosecution of judicial or administrative proceedings, section 821.6 did not apply. (June 22, 2023.)

TORTS

Tansavatdi v. City of Rancho Palos Verdes (2023) 14 Cal.5th 639: The California Supreme Court affirmed the Court of Appeal's decision concluding that while defendant city was not liable due to design immunity, under Cameron v. State of California (1972) 7 Cal.3d 318 (Cameron), design immunity did not preclude liability under a theory of failure to warn of a dangerous condition. This wrongful death case was filed after a bicycle rider was killed by a truck making a turn in an intersection that plaintiff (decedent's mother) alleged was a dangerous condition. The trial court granted defendant's motion for summary judgment on the basis that design immunity precluded defendant's liability. The Court of Appeal disagreed, and following Cameron concluded that when design immunity applied defendant could still be liable for failing to warn of a dangerous condition. Defendant unsuccessfully tried to persuade the California Supreme Court to overrule Cameron. The Supreme Court found nothing illogical in Cameron's conclusion that Government Code section 830.6 was not intended to allow government entities to remain silent when they have notice that a reasonably approved design presents a danger to the public. Moreover, while Cameron has been controlling law for over 50 years, the Legislature has never chosen to abrogate the holding. (April 26, 2023.)

ARBITRATION

Castelo v. Xceed Financial Credit Union (2023) 91 Cal.App.5th 777: The Court of Appeal affirmed the trial court's order denying a motion to vacate the arbitration award and it's judgment confirming the arbitration award. Plaintiff sued her former employer for wrongful termination and age discrimination in violation of the Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.) The case was submitted to binding arbitration pursuant to the stipulation of the parties. The arbitrator granted defendant's motion for summary judgment on the basis that plaintiff's claims were barred by a release in her separation agreement. The Court of Appeal concluded that the arbitrator correctly ruled the release did not violate Civil Code section 1668. Plaintiff signed the separation agreement after she was informed of the decision to terminate her but before her last day on the job. At the time she signed, she already believed that the decision to terminate her was based on age discrimination and that she had a valid claim for wrongful termination. The alleged violation of FEHA had already occurred, even though the claim had not yet fully accrued. Accordingly, the release did not violate section 1668 because it was not a release of liability for future unknown claims. (C.A. 2nd, May 18, 2023.)

ARBITRATON

Cvejic v. Skyview Capital (2023) 92 Cal.App.5th 1073: The Court of Appeal affirmed the trial court's order granting plaintiff's election to withdraw from an arbitration pursuant to Code of Civil Procedure section 1281.98. Plaintiff sued defendants after he was terminated. The trial court granted defendants' motion to compel arbitration. The arbitration proceeded under the American Arbitration Association rules for commercial cases. The final hearing on the merits was set to begin August 5, 2021, and defendants were required to pay arbitration fees by June 4, 2021. They didn't. The arbitration panel then set a new fee payment deadline of July 14, 2021, and defendants paid their fees by that date. Plaintiff informed the arbitration panel that he was withdrawing from the arbitration under section 1281.98. The panel ruled section 1281.98 was not in play because defendants had paid the fees by the new deadline. The Court of Appeal concluded that defendants' fees were due June 4, 2021. When defendants failed to timely pay the fees they were in material breach of the arbitration agreement. As a result, section 1281.98 entitled plaintiff to withdraw from the arbitration. Moreover, the statute does not empower an arbitrator to cure a party's missed payment. (C.A. 2nd, June 28, 2023.)

ATTORNEY FEES

Nash v. Aprea (2023) 96 Cal.App.5th 21: The Court of Appeal affirmed the trial court's order awarding plaintiffs' attorney fees of $27,721 for enforcing a judgment under Code of Civil Procedure section 695.080(a). Because defendant never answered the complaint, plaintiffs obtained a default judgment of $59,191 in plaintiffs' action alleging breach of a written contract regarding the rental of plaintiffs' home. The default judgment included $1,000 in attorney fees pursuant to a provision in the parties' lease agreement authorizing attorney fees to the prevailing party not to exceed $1,000. On appeal, defendant argued the attorney fees for enforcing the judgment should be limited to $1,000 per the written agreement. The Court of Appeal affirmed the trial court's fee award, concluding that once the judgment was entered, the terms of the lease, including the $1,000 limitation on fees, were merged into and extinguished by the judgment. Because the judgment included an award of attorneys' fees authorized by contract, section 685.040 allowed an award of reasonable attorney fees incurred in enforcing the judgment. (C.A. 2nd, October 3, 2023.)

ATTORNEY FEES

Snoeck v. ExakTime Innovations (2023) 96 Cal.App.5th 908: The Court of Appeal affirmed the trial court's order awarding plaintiff $686,795.62 in attorney fees after plaintiff obtained a verdict, following a jury trial, of $130,088 in his disability discrimination action. Plaintiff requested an award of $2,089,272.50 in attorney fees. The trial court applied a .4 negative multiplier to its $1,144,659.36 adjusted lodestar calculation to account for plaintiff's counsel's lack of civility throughout the entire course of the litigation, awarding fees totaling $686,795.62. The Court of Appeal held that a trial court may consider an attorney's pervasive incivility in determining the reasonableness of the requested fees, and may apply, in its discretion, a positive or negative multiplier to adjust the lodestar calculation (a reasonable rate times a reasonable number of hours) to account for various factors including attorney skill. The record in this case amply supported the trial court's finding that plaintiff's counsel was repeatedly, and apparently intentionally, uncivil to defense counsel, and to the court, throughout the litigation. (C.A. 2nd, filed October 2, 2023, published October 25, 2023.

CIVIL CODE

Grayot v. Bank of Stockton (2023) 98 Cal.App.5th 8: The Court of Appeal reversed the trial court's order granting defendant bank's motion for summary judgment in plaintiff's action against a car dealership and defendant bank alleging: (1) violation of the Consumers Legal Remedies Act (CLRA; Civ. Code, § 1750 et seq.); (2) violation of Business and Professions Code section 17200 et seq.; (3) fraudulent misrepresentation; and (4) negligent misrepresentation. Defendant bank was assigned the contract by the car dealership, and plaintiff made four payments to defendant under the contract. When plaintiff made a demand to defendant and the car dealership under Civil Code 1782, defendant cancelled its loan to plaintiff, assigned the financing contract back to the dealership and paid the dealership all funds paid by plaintiff. The trial court granted defendant's motion for summary judgment on the basis that defendant was no longer the holder of the financing contract and was not in possession of any funds paid by plaintiff per the financing contract. The Court of Appeal disagreed, concluding that the trial court erred in granting the summary judgment because liability under the Federal Trade Commission's Holder Rule is not limited to the current holder. The Court of Appeal also rejected defendant's argument that it could not be liable under the Holder Rule because it no longer possessed any funds that plaintiff paid because it had given those funds back to the dealership. (C.A. 3rd, December 20, 2023.)

CIVIL CODE

Martin v. THI E-Commerce, LLC (2023) 95 Cal.App.5th 521: The Court of Appeal affirmed the trial court's order sustaining defendant's demurrer, without leave to amend, to plaintiffs' complaint alleging that the blind plaintiffs suffered disability discrimination under the Unruh Civil Rights Act (Unruh Act; Civ. Code, § 51 et seq.) because one of defendant's web sites discriminated against the blind by being incompatible with screen reading software. The trial court concluded that a web site was not a place of public accommodation under the Americans with Disabilities Act (ADA; 42 U.S.C. § 12101 et seq.; which is incorporated into the Unruh Act) and the Court of Appeal agreed. While observing that this issue has split the federal courts, the Court of Appeal concluded that the ADA unambiguously applies only to physical places. Moreover, even if it were to find ambiguity and decide the issue on the basis of legislative history and public policy, the Court of Appeal would still conclude that the ADA does not apply to web sites. (C.A. 4th, September 13, 2023.)

CIVIL PROCEDURE

Glassman v. Safeco Ins. Co. of Am. (2023) 90 Cal.App.5th 1281: The Court of Appeal affirmed the trial court's order denying plaintiff's motion for prejudment interest, under Code of Civil Procedure section 3287(a), from the date of plaintiff's CCP section 998 offer to settle her uninsured motorist (UIM) claim for $999,999.99 (the UIM umbrella policy limit was $1 million). Plaintiff won the UIM arbitration and was awarded the $1 million policy limit. Plaintiff could not obtain prejudgment interest under Civil Code 3291 because the California Supreme Court, in Pilimai v. Farmers Insurance Exchange Co. (2006) 39 Cal.4th 133, ruled that UIM proceedings are not actions for personal injury sounding in tort to which section 3291 applies, are instead in the nature of an action in contract arising out of a policy of insurance. In this case plaintiff sought pre-judgment interest under section 3287(a). To obtain pre-judgment interest plaintiff had to show: she was entitled to recover damages certain, or capable of being made certain by calculation, the right to recover was vested on a particular day, and the defendant knew was able to calculate from reasonably available information the amount of the plaintiff's liquidated claim owed as of a particular day. The trial court properly denied plaintiff's request for prejudgment interest under section 3287(a) because the amount of her policy-limit claim for excess UIM benefits was not certain or capable of being made certain and this uncertainty was not fixed by plaintiff's CCP section 998 policy-limit offer. The Court of Appeal rejected plaintiff's argument that an insured's prevailing CCP section 998 offer in a UIM proceeding should effectively liquidate the insured's claim in the amount and as of the date of the offer under section 3287(a), mandating an award of prejudgment interest. Moreover, the record did not include evidence that defendant had knowledge that plaintiff's economic losses or special damages resulting from the accident—her hard costs—already exceeded the umbrella-policy limits when plaintiff's CCP section 998 offer was made. (C.A. 6th, April 28, 2023.)

CIVIL PROCEDURE

Pabla v. Superior Court of Merced County (2023) 90 Cal.App.5th 599: The Court of Appeal granted a peremptory writ of mandate directing the trial court to schedule a trial within 120 days as required by Code of Civil Procedure section 36. Plaintiff filed a motion for trial preference under section 36. Plaintiff's declaration explained she was 73 years old, and suffered from asthma and hypertension, had recently undergone kidney surgery and was receiving dialysis. Defendant raised concerns regarding completing discovery and pretrial motions under an accelerated schedule but did not challenge plaintiff's eligibility to request trial setting preference. The trial court granted the motion for preference but set the trial for one year after the motion was granted. Superior courts have no discretion to avoid the command of section 36 in the interest of efficient management of the court's docket as a whole. (Miller v. Superior Court (1990) 221 Cal.App.3d 1200, 1204.) Having granted trial setting preference, the trial court was required to set trial within 120 days. (C.A. 5th, filed January 19, 2023, published April 12, 2023.)

EMPLOYMENT

Arce v. The Ensign Group, Inc. (2023) 96 Cal.App.5th 622: The Court of Appeal reversed the trial court's order granting defendants' motion for summary judgment in plaintiff's action under the Labor Code Private Attorneys General Act of 2004 (PAGA; Lab. Code, § 2698 et seq.). The trial court granted summary judgment concluding that plaintiff had not offered any competent proof that one or more cognizable Labor Code violations occurred during her employment in connection with her right to meal and rest periods. The Court of Appeal disagreed, holding that the trial court erred in granting summary judgment because defendants did not meet their initial burden of establishing plaintiff's lack of standing. It was not enough to for defendants to show that plaintiff had not been denied a meal or rest break during the year before she submitted her PAGA notice. They also needed to establish that plaintiff had been paid all outstanding meal and rest premiums—either before or after her termination. Defendants needed to provide evidence that either (1) plaintiff had never suffered a Labor Code violation, and thus, no premiums were due upon her termination, or (2) they paid all premiums at the time of the violations, so no additional monies were due plaintiff upon her termination. (C.A. 2nd, filed September 19, 2023, published October 19, 2023.)

EMPLOYMENT

Grace v. The Walt Disney Company (2023) 93 Cal.App.5th 549: The Court of Appeal reversed the trial court's order granting defendants' motion for summary judgment in plaintiffs' class action alleging that defendants were required to pay employees a living wage pursuant to the approval in 2018 of a Living Wage Ordinance (LWO; Anaheim Mun. Code, § 6.99 et seq.) which applies to hospitality employers in the Anaheim or Disneyland Resort areas that benefit from a City Subsidy. (§ 6.99.060.) It was undisputed that plaintiffs were not being paid the required minimum hourly wage under the LWO. Defendants argued they were not covered under the LWO as a matter of law because they did not benefit from a City Subsidy. (See § 6.99.060.) The trial court agreed with defendants and granted the motion for summary judgment. The Court of Appeal disagreed. The City of Anaheim (City) and defendants the Walt Disney Company, Walt Disney Parks and Resorts, U.S., Inc. ("Disney") had entered into several agreements: an Infrastructure and Parking Finance Agreement, a Disney Credit Enhancement Agreement, and a Reimbursement Agreement. The Court of Appeal concluded that the Reimbursement Agreement gave Disney the right to receive a rebate—or a return—of transient occupancy taxes (paid by hotel guests), sales taxes (paid by consumers), and property taxes (paid by Disney), in any rebound years when the City's tax revenues were sufficient to meet its bond obligations. Consequently, Disney received a City Subsidy within the meaning of the LWO and it is therefore obligated to pay its employees the designated minimum wages. (C.A. 4th, July 13, 2023.)

EVIDENCE

LAOSD Asbestos Cases (2023) 87 Cal.App.5th 939: The Court of Appeal reversed the trial court's order granting defendant Avon Products, Inc.'s (defendant) motion for summary judgment against plaintiffs Alicia Ramirez (Alicia died while the appeal was pending) and her husband Fermin Ramirez (after Alicia's death he prosecuted the action individually and as Alicia's successor-in-interest, collectively plaintiffs) in their complaint for damages against several defendants due to Alicia's development of mesothelioma. Defendant's motion for summary judgment relied on a declaration from Lisa Gallo (Gallo Declaration), an employee who did not begin work at Avon until 1994, halfway through Alicia's alleged exposure period. Plaintiffs objected to the Gallo Declaration and attached exhibits on the grounds they lacked foundation, lacked personal knowledge, and contained hearsay. The trial overruled the objections and granted the motion for summary judgment, finding the declaration was the sole evidence which shifted the burden to the plaintiffs to produce evidence sufficient to create a triable issue of material fact. The Court of Appeal disagreed, concluding that the trial court erred in overruling plaintiffs' objections based on lack of foundation, lack of personal knowledge and the hearsay nature of the documents. Because Lisa Gallo was a lay witness, not an expert witness, she was limited to testimony reflecting her personal knowledge and could not testify to hearsay. There is no special category of "corporate representative" witness. Moreover, a person deposed as a corporate person most qualified (PMQ deponent) may only testify at trial according to the rules of evidence which apply to ordinary lay witnesses. The rules relating to witness testimony at a trial or hearing apply equally to defendants and plaintiffs. The trial court abused its discretion in admitting the declaration and hearsay documents. Without the Gallo Declaration, defendant did not offer evidence which shifted the burden to plaintiffs. The Court of Appeal rejected defendant's argument that the summary judgment should still have been granted because plaintiffs' discovery responses were factually devoid, because defendant failed to adequately develop this theory in the trial court and on appeal and it was therefore forfeited. (C.A. 2nd, January 23, 2023.)

REAL PROPERTY

Ridec LLC v. Hinkle (2023) 92 Cal.App.5th 1182: The Court of Appeal reversed the trial court's judgment in a quiet title action concluding that plaintiff's deed of trust on real property was invalid, because it was based upon a quiet title judgment that was later determined to be void. The trial court in this case refused to follow California's Quiet Title Act (the Act; Code of Civil Procedure section 760.010 et seq.) and Tsasu LLC v. U.S. Bank Trust, N.A. (2021) 62 Cal.App.5th 704, which held that a party acquiring title to property in reliance on a quiet title judgment retains its rights in that property—even if that judgment is subsequently invalidated as void—as long as the party was a purchaser or encumbrancer for value who lacked knowledge of any defects or irregularities in the earlier quiet title judgment or the proceedings. Instead, the trial court followed the pre-Act, common law rule that deemed invalid any and all rights deriving from a judgment later invalidated as void. The Court of Appeal held that a trial court may not disregard the plain text of a statute or binding precedent in favor of its own view of what the law should be, section 764.060 does not violate due process or deny equal protection of the law, and the trial court also erred when, in the alternative, it applied section 764.060 to deprive a lender of its rights to property based on a later-invalidated quiet title judgment. (C.A. 2nd, June 29, 2023.)

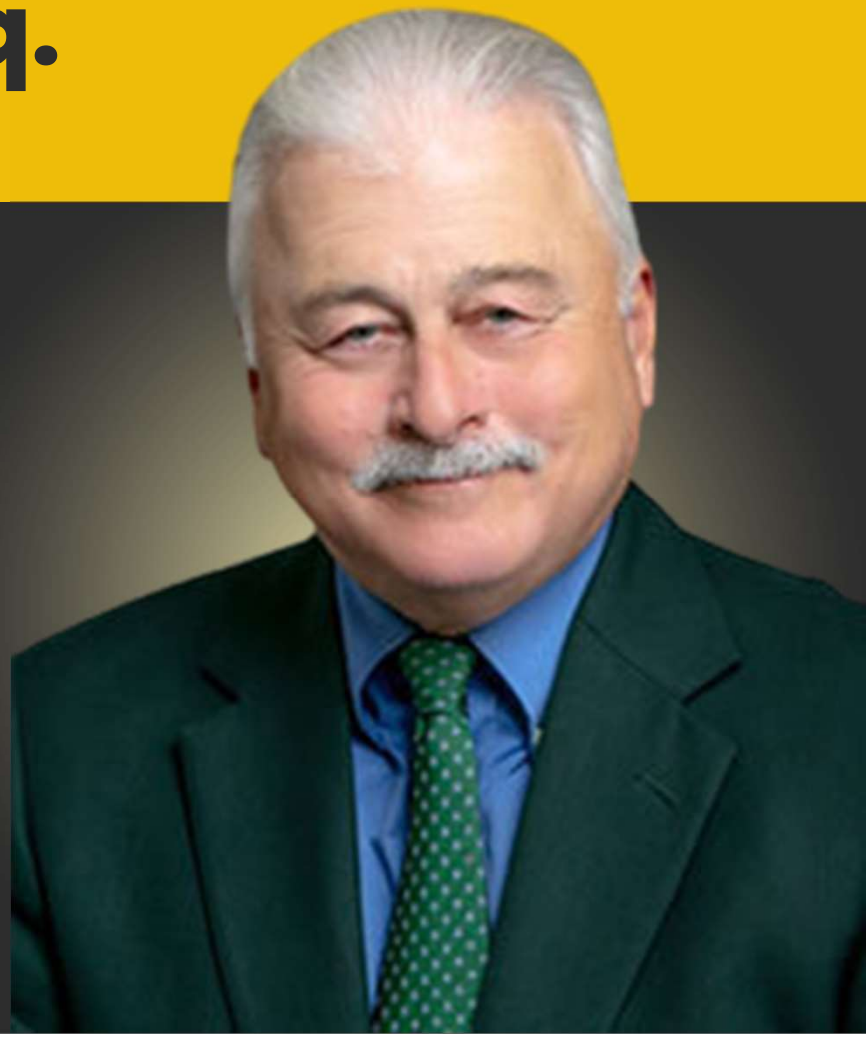
TORTS

Brancati v. Cachuma Village, LLC (2023) 96 Cal.App.5th 499: The Court of Appeal reversed the trial court's order granting defendant's motion in limine to disqualify plaintiff's medical expert in her action for personal injuries due to toxic mold exposure. The trial court granted defendant's motion, concluding that plaintiff's medical expert was not qualified to testify on whether toxic mold exposure was the medical causation of plaintiff's illnesses. The Court of Appeal disagreed. Because the medical expert was qualified and his opinion was based on facts and a differential diagnosis, the trial court erred in excluding his expert opinion testimony. (C.A. 2nd, October 16, 2023.)

TORTS

Gutierrez v. Tostado (2023) 97 Cal.App.5th 786: The Court of Appeal affirmed the trial court's order granting defendant's motion for summary judgment of plaintiff's personal injury complaint regarding an accident where an ambulance owned by defendant ProTransport-1, LLC and driven by defendant Uriel Tostado crashed into plaintiff's car while it was stopped. At the time of the accident defendants were transporting a medical patient from one medical facility to another. Plaintiff filed his complaint within two years of the accident. The trial court properly granted the summary judgment. Because defendants were transporting a patient at the time of the accident, they were rendering professional services and the one-year statute of limitations under the Medical Injury Compensation Reform Act (Code of Civil Procedure § 340.5) applied, not the general personal injury two-year statute of limitations (§ 335.1). (C.A. 6th, December 1, 2023.)

Monty A. McIntyre, Esq.



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Haward Cho, haward@adrservices.com, (213) 683-1600, or
Rachael Boughan, rboughan@adrservices.com, (619) 233-1323.

ADR Services web:
ADR Services: Monty McIntyre
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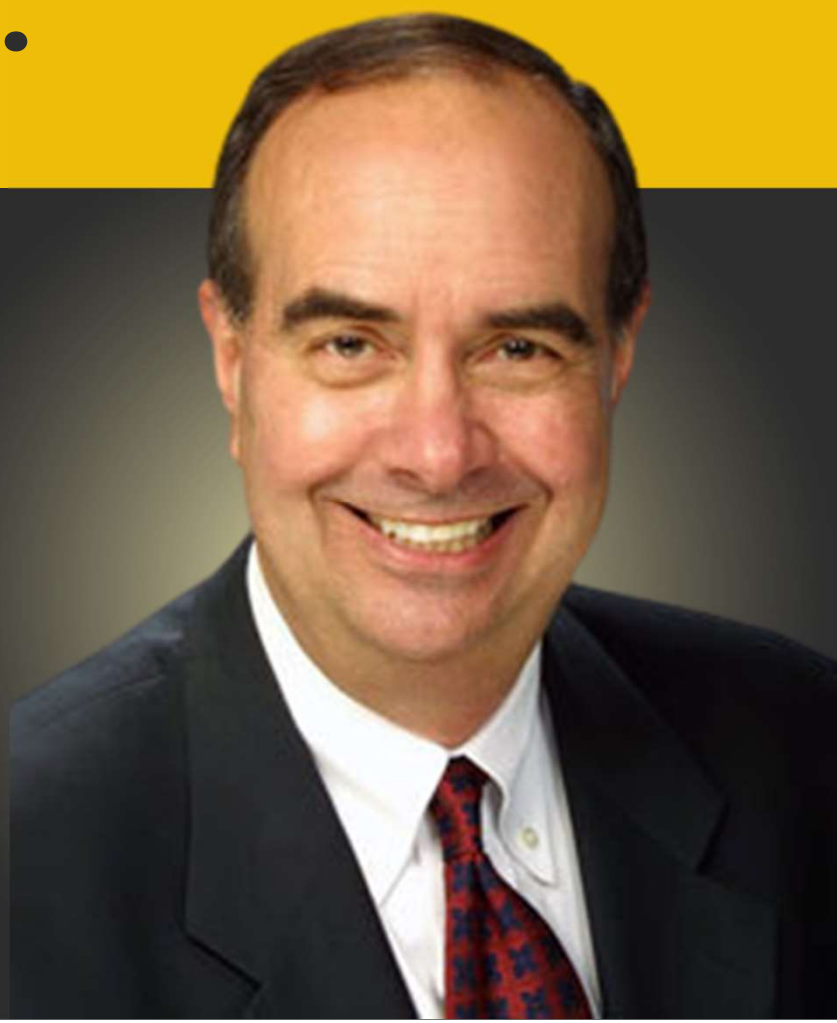

Mediator and Arbitrator at ADR Services, Inc.

Cases handled: Business, Construction, Employment, Insurance, and Real Property.

To schedule a matter contact Mike's case managers
Haward Cho, haward@adrservices.com, (213) 683-1600, or
Rachael Boughan, rboughan@adrservices.com, (619) 233-1323.

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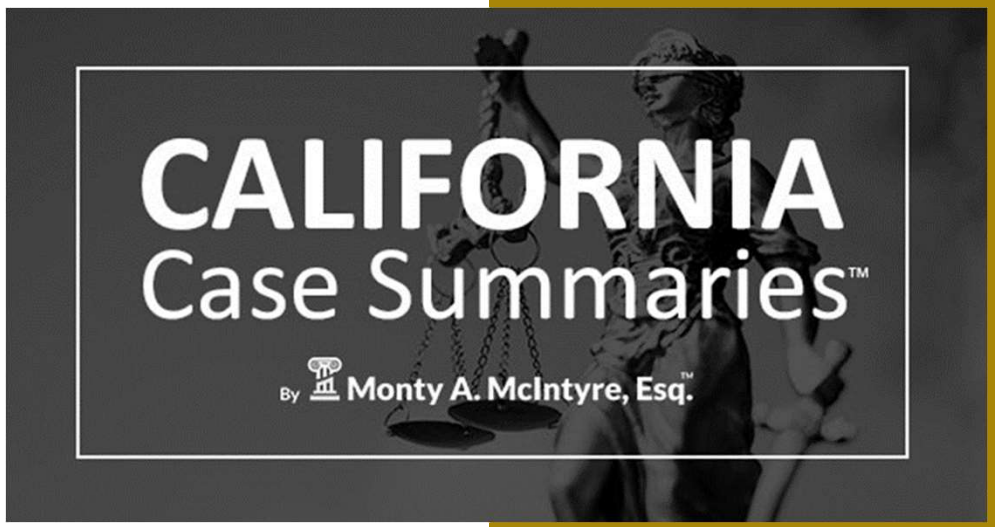

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