



Authority for California Cities Excess Liability
Litigation Review and Update
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EMPLOYMENT – NEW ATTORNEY FEE PROVISION

Winston v. County of Los Angeles

Docket: B323392 (Second Appellate District)

Opinion Date: December 13, 2024

Summary Rules:

A plaintiff may now recovery attorney fees in a whistleblower retaliation case filed pursuant to Labor Code §1102.5. This new provision applies to currently pending litigation cases, not just cases filed after the amendment to this section.

Facts:

Harold Winston, an African-American male with over 30 years of service, sued his employer, the County of Los Angeles, alleging race-based discrimination, retaliation, and failure to maintain a discrimination-free environment under the California Fair Employment and Housing Act (FEHA) and whistleblower retaliation in violation of Labor Code section 1102.5. While the case was pending, section 1102.5 was amended to allow courts to award reasonable attorney fees to prevailing whistleblower plaintiffs. After the jury found in Winston's favor on his retaliation claim under section 1102.5, he filed a motion for attorney fees based on the new provision.

The Superior Court of Los Angeles County denied Winston's motion for attorney fees, ruling that the fee provision did not apply retroactively to his case, which was filed in 2019 before the amendment took effect. The court found no legislative intent supporting retroactive application and noted that Winston did not prevail on his FEHA claims, which could have provided a basis for attorney fees.

Analysis and Holding:

The California Court of Appeal, Second Appellate District, Division Eight, reviewed the case. The court held that a new statute authorizing an award of attorney fees applies to actions pending on the statute's effective date. The court cited case precedent establishing that newly enacted attorney fee provisions are procedural and apply to pending litigation. The court reversed the trial court's decision and remanded the case with directions for the trial court to determine the appropriateness and reasonableness of Winston's fee request. The judgment was reversed, and the case was remanded for further proceedings.

DANGEROUS CONDITION – DESIGN IMMUNITY

Kabat v. Department of Transportation

Docket: G063082 (Fourth Appellate District)

Opinion Date: December 19, 2024

Summary Rules:

Design Immunity upheld where configuration was as demonstrated in plans. Additional features that could have been added were not relevant since the condition was not a concealed trap.

Facts:

A bicyclist was struck by a vehicle while crossing a marked, non-signalized crosswalk on an onramp from Jeffrey Road in Irvine, leading to the I-405 freeway northbound. The bicyclist's parents sued the Department of Transportation (Caltrans) and the City of Irvine, claiming the crosswalk was dangerous due to the lack of a signal, inadequate signage, and a high speed limit. They alleged these factors contributed to their daughter's death and that the public entities failed to warn of the dangerous condition.

The Superior Court of Orange County granted summary judgment in favor of Caltrans and the City. The court found no triable issue of material fact regarding design immunity, which shields public entities from liability for creating a dangerous condition if the design was approved by a discretionary authority. The court also ruled that the lack of a traffic control signal did not constitute a dangerous condition as a matter of law. Additionally, the court found that the plaintiffs failed to show the alleged dangerous condition was a concealed trap or that there was a failure to warn.

Analysis and Holding:

The California Court of Appeal, Fourth Appellate District, Division Three, reviewed the case. The court affirmed the lower court's decision, agreeing that Caltrans had established design immunity and that the plaintiffs did not raise a triable issue of material fact. The appellate court also found that Caltrans had no notice of the alleged dangerous condition, as there were no similar accidents in the area in the decade prior. The court concluded that the plaintiffs failed to prove that Caltrans had actual or constructive notice of the dangerous condition, which is necessary for a failure-to-warn claim.

ADMINISTRATIVE FEES AND PENALTIES – CANNABIS FEES

Thomas v. County of Humboldt

Docket: 23-15847

Opinion Date: December 30, 2024

Summary Rules:

Cannabis penalties class action case may proceed where plaintiffs had been assessed a penalty and/or fee regardless of whether they had actually paid the fees.

Facts:

Residents of Humboldt County filed a putative class action under 42 U.S.C. § 1983, alleging that the County's system of administrative penalties and fees for cannabis abatement violates the Eighth Amendment's Excessive Fines Clause. The County Code imposes daily fines of \$6,000 to \$10,000 for

illegal cannabis cultivation. Plaintiffs claimed that the County charges landowners based on imprecise data or previous owners' conduct, causing emotional distress and financial burdens due to ongoing penalties and abatement costs.

The United States District Court for the Northern District of California dismissed the case, concluding that plaintiffs lacked standing as they had not paid any fines, rendering the Eighth Amendment claim unripe. The court also found both facial and as-applied challenges untimely, reasoning that the statute of limitations began when the ordinance was enacted.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case. It held that plaintiffs' claim under the Excessive Fines Clause was constitutionally ripe and that they had standing due to the imposition of penalties causing concrete injuries, including emotional distress and financial expenses. The court also found that prudential ripeness considerations supported allowing the litigation to proceed. The court determined that the statute of limitations for facial challenges begins when plaintiffs know of the actual injury, not when the ordinance is enacted. Thus, some plaintiffs' facial challenges were timely. The court also found that several plaintiffs had timely as-applied challenges, except for Cyro Glad, whose claim was untimely.

On the merits, the Ninth Circuit held that plaintiffs plausibly alleged a violation of the Excessive Fines Clause, as the penalties and demolition orders were punitive and potentially excessive. The court reversed the district court's dismissal of the Eighth Amendment claim and remanded for further proceedings, affirming the dismissal only for Cyro Glad's as-applied claim.