

CALIFORNIA CASELAW HIGHLIGHTS

ARBITRATION

Mere participation in litigation and discovery does not compel a necessary finding that a party has waived its right to arbitration. **Oregel v. PacPizza, LLC**, 237 Cal.App.4th 342 (2015).

ATTORNEY FEES

When a jury awards damages for losses not suffered by the plaintiff or for damages not allowed by law, those damages must be excluded when determining whether the defendant failed “to obtain a more favorable judgment or award” for purposes of the cost-shifting provisions of a statutory offer to compromise. **Lee v. Silveira**, 236 Cal.App.4th 1208 (2015).

Under the cost-shifting provisions of a statutory offer to compromise, a losing defendant whose settlement offer exceeds the judgment is treated for purposes of post-offer costs as if it were the prevailing party. **Litt v. Eisenhower Medical Center**, 2015 WL 3799523 (Cal.App. 23015).

BUSINESS

The sale of consumer debt to entities that are not licensed finance lenders or institutional investors does not violate the Finance Lenders Law provision which states that a person licensed to make consumer loans may sell notes “to institutional investors.” **Montgomery v. GCFS, Inc.**, 2015 WL 3653314 (Cal.App. 2015).

When the weaker party to an adhesion contract can show the contract is unconscionable under California law, a contractual provision requiring the application of a different state's law to enforce the contract is itself unenforceable. **Pinela v. Neiman Marcus Group, Inc.**, 2015 WL 3955254 (Cal.App. 2015).

CIVIL PROCEDURE

A trial court lacks jurisdiction to enter an order purportedly granting a new trial to a personal injury plaintiff conditioned upon the plaintiff securing an appellate determination that the trial court erred in concluding the motion for new trial was untimely. **Maroney v. Iacobsohn**, 237 Cal.App.4th 473 (2015).

If a defendant moves to dismiss a multi-defendant action in California for *forum non conveniens*, but the new forum cannot exercise jurisdiction over all the defendants, the action should be severed so that the new forum has jurisdiction over all the applicable defendants and the California action remains as to the remaining defendant(s). **David v. Medtronic, Inc.**, 188 Cal.Rptr.3d 103 (Cal.App. 2015).

An injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial. **Bermudez v. Ciolek**, 2015 WL 3826842 (Cal.App. 2015).

The filing of a class action normally does not toll a limitations period for class members who file subsequent actions unless two policy considerations are met: the class action promotes efficiency in litigation, and the

statute of limitations protects a defendant from unfair claims. **Falk v. Children's Hospital Los Angeles**, 2015 WL 3895464 (Cal.App. 2015).

A written stipulation extending the time for trial to a date certain beyond the statutory five-year deadline to bring a case to trial acts as a waiver to the right to seek dismissal upon the five-year anniversary date. **Munoz v. City of Tracy**, 2015 WL 3958324 (Cal.App. 2015).

CONSTRUCTION

When a homeowner alleges in his unverified complaint for construction defects that a general contractor is licensed, the contractor is not required to produce a verified certificate from the Contractors' State License Board in order to maintain a cross-complaint against the homeowner for unpaid work. **Womack v. Lovell**, 2015 WL 3658066 (Cal.App. 2015).

EMPLOYMENT

Labor Code penalties are generally not recoverable as a form of restitution in a lawsuit alleging Unfair Competition. **Noe v. Superior Court**, 237 Cal.App.4th 316 (2015).

The goals of the Prevailing Wage Law are to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas, and to permit union contractors to compete with nonunion contractors. **Henson v. C. Overaa & Co.**, 2015 WL 3941499 (Cal.App. 2015).

GENERAL LIABILITY

A vehicle with an allegedly defective transmission which a dealer sells "as is" and without a warranty is not new for purposes of the Song-Beverly Consumer Warranty Act even though the manufacturer's warranty has not expired and allegedly is transferable. **Leber v. DKD of Davis, Inc.**, 237 Cal.App.4th 402 (2015).

A liability release, to the extent it purports to release liability for future gross negligence, violates public policy and is unenforceable; whether conduct constitutes gross negligence is generally a question of fact, depending on the nature of the act and the surrounding circumstances shown by the evidence. **Jimenez v. 24 Hour Fitness USA, Inc.**, 188 Cal.Rptr.3d 228 (Cal.App. 2015).

A duty to warn is imposed on a product's manufacturer when the intended use of a product inevitably creates a hazardous situation, but not when that situation is merely foreseeable and is due solely to another product. **Sherman v. Hennessy Industries, Inc.**, 2015 WL 3798014 (Cal.App. 2015).

The "concert of action" theory of group liability may be used to impose liability on a person who does not personally cause harm to a plaintiff, but whose advice or encouragement to act operates as a moral support to the tortfeasor, thereby rendering the non-actor a joint tortfeasor. **Navarrete v. Meyer**, 2015 WL 3826660 (Cal.App. 2015).

A settlement agreement's integration clause declaring it to be "the final expression of the parties' agreement" does not preclude admission of extrinsic evidence to explain or interpret ambiguous language in the

agreement. ***Epic Communications, Inc. v. Richwave Technology, Inc.***, 2015 WL 3862491 (Cal.App. 2015).

HEALTHCARE

Reducing a non-economic damage award to \$250,000 under MICRA does not deprive a plaintiff of due process rights despite the contention that the MICRA cap discourages many plaintiff lawyers from agreeing to sue for medical malpractice on a contingency basis. ***Chan v. Curran***, 188 Cal.Rptr.3d 59 (Cal.App. 2015).

A genuine issue of material fact exists as to whether a patient's signing of hospital admission form or the existence of signs posted around an emergency room can put a patient on notice that the emergency room physician is an independent contractor rather than an employee of the hospital, thus precluding summary judgment for the hospital on a wrongful death claim based on vicarious liability for the physician's alleged negligence. ***Whitlow v. Rideout Memorial Hospital***, 188 Cal.Rptr.3d 246 (Cal.App. 2015).

INSURANCE

An insurance appraiser has authority to determine only a question of fact, namely the actual cash value or amount of loss of a given item. ***Lee v. California Capital Ins. Co.***, 2015 WL 3797827 (Cal.App. 2015).

PROFESSIONAL LIABILITY

An attorney acting as a court-appointed settlement officer who receives confidential information from one party during a mandatory settlement conference may not thereafter allow his law firm to represent an opposing party in the same underlying action, regardless of the ethical walls within the law firm. ***Castaneda v. Superior Court***, 2015 WL 3892154 (Cal.App. 2015).

NEVADA CASELAW HIGHLIGHTS

BUSINESS

The sale of 100% of the membership interest in a limited liability company does not prevent enforcement of an employee's employment contract with the LLC because the sale does not create a new entity. ***Excellence Community Management, LLC v. Gilmore***, 2015 WL 3915794 (Nev. 2015).

CIVIL PROCEDURE

A Nevada court may dismiss a foreign government's lawsuit in Nevada against a non-Nevadan business even though the business waives its defenses of no personal jurisdiction, statute of limitations, and *forum non conveniens*, when no parties or witnesses reside in Nevada and a judgment can be entered against the business in its home jurisdiction. ***Provincial Government of Marinduque v. Placer Dome, Inc.***, 2015 WL 3646220 (Nev. 2015).

CAVEAT: THE FOREGOING DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING INDIVIDUAL SITUATIONS.