

CALIFORNIA CASELAW HIGHLIGHTS

ATTORNEY FEES

In some cases a party may obtain a result that is so minimal or insignificant as to justify a finding that no prevailing party attorney fees should be awarded pursuant to statute. **James L. Harris Painting & Decorating, Inc. v. West Bay Builders, Inc.**, 239 Cal.App.4th 1214 (2015).

CIVIL PROCEDURE

Evidence of a settlement agreement between a plaintiff and one or more joint tortfeasors is not admissible to prove the liability of the settling tortfeasor at trial. **Diamond v. Reshko**, 239 Cal.App.4th 828 (2015).

An exception to the general rule of accrual for statutes of limitation is the “discovery rule,” which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. **WA Southwest 2, LLC v. First American Title Insurance Company**, 240 Cal.App.4th 148 (2015).

The classification of a case as a limited or unlimited civil action does not go to subject matter jurisdiction, and the court may award damages in excess of the limited action amount. **AP-Colton LLC v. Ohaeri**, 240 Cal.App.4th 500 (2015).

In a personal injury case involving 20 defendants and claims of joint and several liability, a court cannot evaluate the reasonableness of a joint pretrial settlement offer by 14 of the defendants absent a final judgment as to the remaining six defendants. **Kahn v. The Dewey Group**, 192 Cal.Rptr.3d 679 (Cal.App. 2015).

Since requests for admissions are not limited to matters within the personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his or her personal knowledge. **Grace v. Mansourian**, 192 Cal.Rptr.3d 551 (Cal.App.2015).

CONSTRUCTION

Where a project owner sues a general contractor for disgorgement based on the general contractor’s alleged failure to maintain a professional license, the general contractor is entitled to a jury trial on the issue of licensure. **Jeff Tracy, Inc. v. City of Pico Rivera**, 240 Cal.App.4th 510 (2015).

A “pay if paid” provision that makes payment by a project owner to the general contractor a condition precedent to the general contractor’s obligation to pay the subcontractor for work the subcontractor has performed is unenforceable in California as a violation of public policy. **Vita Planning and Landscape Architecture, Inc. v. HKS Architects, Inc.**, 2015 WL 5634430 (Cal.App. 2015).

CYBERTECHNOLOGY

The Stored Communications Act (18 U.S.C. Section 2701) may prohibit pretrial disclosure of a victim's social network account contents. **Facebook, Inc. v. Superior Court**, 192 Cal.Rptr.3d 443 (Cal.App. 2015).

GENERAL LIABILITY

Plaintiffs cannot prevail in an asbestos personal injury case without evidence of exposure to asbestos-containing materials manufactured or furnished by a defendant with enough frequency and regularity as to show a reasonable medical probability that this exposure was a factor in causing the claimed injuries. **Shiffer v. CBS Corporation**, 192 Cal.Rptr.3d 346 (Cal.App. 2015).

It is only when negligence amounts to a reckless or wanton disregard for the truth, so as to reasonably imply a willful disregard for or avoidance of accuracy, that malice is shown sufficient to defeat the common interest privilege in a defamation action. **Barker v. Fox & Associates**, 192 Cal.Rptr.3d 511 (Cal.App. 2015).

The legal theory supporting the exclusive remedy provision of the Workers' Compensation Act is a presumed compensation bargain, pursuant to which an employer assumes liability for industrial personal injury or death without regard to fault, in exchange for limitations on the amount of that liability; an employee is afforded relatively swift and certain payment of benefits to cure or relieve effects of industrial injury without having to prove fault while giving up the wider range of damages potentially available in tort. **Melendrez v. Ameron International**, 2015 WL 5453873 (Cal.App. 2015).

A court cannot, under the equitable powers of the restitution provision of the California Unfair Competition Law, award whatever form of monetary relief it believes might deter unfair practice. **In re Tobacco Cases II**, 2015 WL 5673070 (Cal.App. 2015).

HEALTHCARE

The California Department of Health Care Services may require exhaustion of other health coverage under policies that charge copayments exceeding the allowable copayments for Medicaid. **Marquez v. Department of Health Care Services**, 240 Cal.App.4th 87 (2015).

INSURANCE

If a liability insurer refuses to defend an underlying third-party lawsuit, the insured is free to enter into a non-collusive settlement with the claimant and then maintain or assign an action against the insurer for breach of the duty to defend, and in the subsequent action the amount of the settlement will be presumptive evidence of the amount of the insured's liability. **21st Century Insurance Company v. Superior Court**, 192 Cal.Rptr.3d 530 (Cal.App. 2015).

NEVADA CASELAW HIGHLIGHTS

ARBITRATION

The party seeking extraordinary writ relief from an order compelling arbitration should show why an eventual appeal does not afford a plain, speedy and adequate remedy in the ordinary course of law, and that the matter meets the other criteria for extraordinary writ relief. ***Tallman v. Eighth Judicial District Court***, 2015 WL 5656981 (Nev. 2015).

CIVIL PROCEDURE

In a matter of first impression, a forum selection clause is permissive and not mandatory if the other forum is not specified as the only, exclusive forum for litigated matters between the parties. ***American First Federal Credit Union v. Soro***, 2015 WL 5656960 (Nev. 2015).

GENERAL LIABILITY

One defense to a negligence claim is the “sudden emergency doctrine,” which allows a defendant to argue he was not negligent if he was confronted with a sudden emergency that did not arise due to his own negligence and he acted as a reasonably prudent person would upon being confronted with that emergency. ***Frazier v. Drake***, 2015 WL 5172876 (Nev. 2015).

INSURANCE

Courts inquire on a case-by-case basis whether an actual conflict of interest exists that requires the appointment of independent counsel for an insured, because issuance of a reservation of rights letter does not create a per se conflict of interest. ***State Farm Mutual Automobile Insurance Company v. Hansen***, 2015 WL 5656978 (Nev. 2015).

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