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The Year in Review:
Key Decisions by the U.S. and California Supreme Courts

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2019–2020 in Review: Notable Civil Cases from the California Supreme Court

By: Mary-Christine Sungaila
Marco A. Pulido

Each year, the California Supreme Court grants review in a very small percentage of cases, usually only 3 to 7% of all petitions for review. In this article, we review notable civil cases decided by the Court between 2019 and 2020. These cases address issues ranging from labor and employment law to actions under the Private Attorneys General Act of 2004 to insurance and standing issues. We also highlight "cases to watch" that are awaiting decision by the Court.

Labor & Employment

Frlekin v. Apple Inc. (2020) 8 Cal.5th 1038

The underlying dispute in *Frlekin* arose from Apple's Employee Package and Bag Searches policy, which imposes mandatory searches of retail employees' bags, packages, purses, backpacks, briefcases, and personal Apple technology devices, such as iPhones.

In *Frlekin*, the Court addressed whether "time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees [is] compensable as 'hours worked' within the meaning of Wage Order 7"?

The Court held that the time plaintiffs spent on Apple's premises waiting for, and undergoing, these exit searches is compensable. The Court laid out several factors for determining whether "*onsite* employer-controlled activities" give rise to compensable hours. The Court explained that "courts may and should consider": (1) "the location of the activity"; (2) "the degree of the employer's control"; (3) "whether the activity primarily benefits the employee or employer"; and (4) "whether the activity is enforced through disciplinary measures."

Voris v. Lampert (2019) 7 Cal.5th 1141

The Court in *Voris* addressed whether an employee may raise a conversion claim based on the nonpayment of wages. A majority of the Court said no, holding "that a conversion claim is not an appropriate remedy" for the nonpayment of wages. The majority reasoned that, while "full and prompt payment of wages is of fundamental importance to the welfare of both workers and the State of California," there is no need to "supplement" with a conversion action the existing legislatively crafted set of remedies for wage nonpayment.

Justice Cuéllar (joined by Justice Liu) dissented. The dissenting justices declined to "close the courthouse door when a worker invokes the conversion tort to recover earned but unpaid wages." In the dissent's view, unpaid wages in California "are the employee's property once they are earned and payable" and could give rise to a conversion action, just as improperly withheld payments to an employee in the form of stocks or commissions can.

Private Attorneys General Act of 2004 ("PAGA")

Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73

In *Kim*, the Court decided whether employees lose standing to pursue a PAGA claim if they settle and dismiss their individual claims for Labor Code violations. The Court held that "[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state's authorized representative, to pursue PAGA remedies." The *Kim* Court reasoned that a PAGA claim has two standing requirements under the PAGA statute: the "plaintiff must [1] be an aggrieved employee, that is, someone 'who was employed by the alleged violator' and [2] 'against whom one or more of the alleged violations was committed." An employee like Kim who can meet each of these two requirements has "standing to pursue penalties on the state's behalf" through a PAGA claim, even if his or her individual claims against the employer have been settled.

ZB, N.A. v. Superior Court (2019) 8 Cal.5th 175

ZB involved a PAGA action in which the plaintiff (Kalethia Lawson) sought civil penalties under Labor Code section 558 to cover unpaid

wages. Lawson had agreed to arbitrate claims against her employer, and so the Court examined whether Lawson's claim could be compelled to arbitration. In examining the arbitrability question, the Court first addressed whether an aggrieved employee may seek the "amount sufficient to recover underpaid wages" in a PAGA action alleging a violation of Labor Code section 558. The Court said no, concluding "that the civil penalties a plaintiff may seek under section 558 through the PAGA do not include the 'amount sufficient to recover underpaid wages.'" The Court therefore held that Lawson's PAGA action was not cognizable and therefore did not need to be sent to arbitration. The Court left it to the trial court on remand to determine whether "Lawson's allegation requesting unpaid wages" had to be stricken from the complaint entirely or whether she should be allowed an opportunity to replead her case "to request unpaid wages under an appropriate cause of action."

Insurance

Montrose Chemical Corp. v. Superior Court (2020) 9 Cal.5th 215

Montrose concerned "the sequence in which Montrose" could "access the excess insurance policies" during a time when Montrose had both primary insurance coverage as well as numerous excess insurance policies. Montrose argued that it was "entitled to coverage under any relevant policy once it ha[d] exhausted directly underlying excess policies for the same policy period"—so-called "vertical exhaustion." The defendant-insurers, in contrast, argued that Montrose could "call on an excess policy only after it has exhausted every lower level excess policy covering the relevant years"—so-called "horizontal exhaustion."

The Court agreed with Montrose, concluding that the company was "entitled to access otherwise available coverage under any excess policy once it has exhausted directly underlying excess policies for the same policy period." The Court added, however, that an "insurer called on to provide indemnification may . . . seek reimbursement from other insurers that would have been liable to provide coverage under excess policies issued for any period in which the injury occurred."

Pitzer College v. Indian Harbor Ins. Co. (2019) 8 Cal.5th 93

California's notice-prejudice rule generally allows insureds to

proceed with their insurance policy claims even if they give their insurer late notice of a claim, provided that the late notice does not substantially prejudice the insurer. In *Pitzer*, the Court addressed whether the notice-prejudice rule constitutes a fundamental public policy for purposes of a choice of law analysis. The Court said yes, concluding that California's "notice-prejudice rule is a fundamental public policy of our state in the insurance context." The Court further held that the notice-prejudice "rule generally applies to consent provisions in the context of first party liability policy coverage and not to consent provisions in third party liability policies."

Choice of Law

***Chen v. Los Angeles Truck Centers, LLC* (2019) 7 Cal.5th 862**

In *Chen*, the Court addressed whether a trial court is *required* to revisit a prior choice of law ruling based on a party's settlement. The trial court in *Chen* had decided prior to trial that Indiana law would govern the parties' dispute, which arose "out of a fatal tour bus accident in Arizona" and initially included "plaintiffs from China and defendants from both Indiana and California." Before trial, the plaintiffs accepted a settlement offer from the Indiana manufacturer of the tour bus and dismissed that defendant from the case, giving rise to the issue before the Court.

The Court concluded that the trial court was not *required* to revisit its prior choice of law ruling after the Indiana defendant settled out of the case. The Court reasoned that "given the importance of determining the choice of law early on in a case — to enable trial courts to manage proceedings in an orderly and efficient fashion —" the "circumstances in which trial courts are required to revisit a choice of law determination, if any, should be the exception and not the rule." The Court cautioned that its decision did not answer "the question whether trial courts *may* revisit a prior choice of law ruling," or whether there are "circumstances under which the trial court would be obligated to reconsider the choice of law."

Consumer Protection

***Abbott Laboratories v. Superior Court* (2020) ___ Cal.5th___**

The Court in *Abbott* addressed whether a district attorney's authority to enforce California's consumer protection laws under the auspices of the unfair competition law ("UCL") (Bus. & Prof. Code, § 17200 *et seq.*) is limited to the county's borders. The Court said no, holding that the "UCL does not preclude a district attorney, in a properly pleaded case, from including allegations of violations occurring outside as well as within the borders of his or her county."

Standing Under the Unruh Civil Rights Act

***White v. Square, Inc.* (2019) 7 Cal.5th 1019**

In *White*, the Court determined whether a plaintiff has standing to bring a claim under the Unruh Civil Rights Act when he or she visits a business's website with the intent of using its services, encounters terms and conditions that allegedly deny the plaintiff full and equal access to its services, and then leaves the website without entering into an agreement with the service provider. The Court said yes, holding that when "a plaintiff has visited a business's website with intent to use its services and alleges that the business's terms and conditions exclude him or her from full and equal access to its services, the plaintiff need not enter into an agreement with the business to establish standing under the Unruh Civil Rights Act." The Court reasoned that "visiting a website with intent to use its services is, for purposes of standing, equivalent to presenting oneself for services at a brick-and-mortar store."

Probate

***Barefoot v. Jennings* (2020) 8 Cal.5th 822**

Barefoot involved a dispute that arose after amendments to a revocable trust were made shortly before the settlor died. Those amendments disinherited a beneficiary who had been previously named in the revocable trust. The beneficiary who was disinherited asked the probate court for relief, and thus the Court addressed whether "that individual, as one who is not named in the trust's final iteration, ha[d]

standing to challenge the validity of the disinheriting amendments in probate court on grounds such as incompetence, undue influence, or fraud." The Court said yes, holding that the "Probate Code grants standing in probate court to individuals who claim that trust amendments eliminating their beneficiary status arose from incompetence, undue influence, or fraud."

Contracts

***Ixchel Pharma v. Biogen*, (2020) __ Cal.5th __. (9th Cir. No. 18-15258; 930 F.3d 1031.)**

The Court decided two issues it had accepted as certified questions from the Ninth Circuit: "Does section 16600 of the California Business and Professions Code void a contract by which a business is restrained from engaging in a lawful trade or business with another business? Is a plaintiff required to plead an independently wrongful act in order to state a claim for intentional interference with a contract that can be terminated by a party at any time, or does that requirement apply only to at-will employment contracts?"

The Court concluded that section 16600 does apply to contracts between businesses, and that in the business to business context it would be governed by a reasonableness standard. The Court also held that the tort of interference with a prospective economic relationship applies to a at-will relationship, extends beyond employment disputes to other at-will business contracts, and requires proof of an independent wrongful act. The independent wrongful act requirement balances "providing a remedy for predatory economic behavior and keeping legitimate business competition outside litigative bounds."

Cases to Watch

1. *B.B. v. County of Los Angeles*, S250734. (B264946; 25 Cal.App.5th 115, mod. 25 Cal.App.5th 1006a; Los Angeles County Superior Court). Issue: May a defendant who commits an intentional tort invoke Civil Code section 1431.2, which limits a defendant's liability for non-economic damages "in direct proportion to that

defendant's percentage of fault," to have his liability for damages reduced based on principles of comparative fault?

2. *Donohue v. AMN Services, LLC*, S253677. (D071865; 29 Cal.App.5th 1968; San Diego County Superior Court.) Issue. Can employers utilize practices upheld in the overtime pay context to round employees' time to shorten or delay meal periods?

3. *Gonzalez v. Mathis*, S247677. (B272344; 20 Cal.App.5th 257; Los Angeles County Superior Court.) Issue: Can a homeowner who hires an independent contractor be held liable in tort for injury sustained by the contractor's employee when the homeowner does not retain control over the worksite and the hazard causing the injury was known to the contractor?

4. *Vazquez v. Jan-Pro Franchising International, Inc.*, S258191. (9th Cir. No. 17-16096; 939 F.3d 1045; Northern District of California.) Issue: Does the decision in *Dynamex Operations West Inc. v. Superior Court* (2018) 4 Cal.5th 903, apply retroactively?

Mary-Christine ("M.C.") Sungaila, a member of the OCBA Board of Directors, chairs the firmwide appellate practice group at Buchalter. Marco A. Pulido is an appellate associate at Haynes and Boone, LLP.