UNITED STATES SUPREME COURT

Pacific Mutual Life Insurance Co. v. Haslip, et al.,

___ U.S. ___, 111 S.Ct. 1032, No. 89-1279 (Mar. 4, 1991).

Supreme Court Upholds Jury Discretion Over Punitive Damages

In a 7-1 decision, the U.S. Supreme Court rejected a constitutional attack on punitive damages, leaving juries with broad discretion over damage awards. Writing for the majority, Justice Harry A. Blackmun acknowledged that the constitutional requirement of due process of law applies to the awarding of punitive damages, and that some awards might be so "extreme" as to violate due process. However, Blackmun noted that due process is satisfied when "the discretion is exercised within reasonable constraints."

The case arose when Cleopatra Haslip, a city employee in Roosevelt City, Alabama, incurred $3,500 in hospital expenses and discovered that her insurance policy had lapsed. The insurance agent who handled policies for Roosevelt City's employees had misappropriated the city's premiums and intercepted cancellation notices, so workers were never warned about their cancelled coverage. Because Haslip was unable to pay her medical expenses, her physician placed her account with a collection agency, which obtained a judgment against Haslip, adversely affecting her credit. Haslip filed suit against the agent; she also named Pacific Mutual as a defendant under a theory of respondeat superior. An Alabama jury awarded Haslip over $1 million, which included compensation for her expenses plus at least $840,000 in punitive damages. The Alabama Supreme Court affirmed the award.

Pacific Mutual appealed to the U.S. Supreme Court, claiming that the award was "the product of unbridled jury discretion" which violated its due process rights. In upholding the punitive damages award, the Supreme Court conceded that it could not "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case." However, the Court noted that "general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus."

The Court reviewed the jury instructions regarding punitive damages which were provided by the trial court, and found that they "reasonably accommodated Pacific Mutual's interest in rational decisionmaking and Alabama's interest in meaningful individualized assessment of appropriate deterrence and retribution." Further, the Court determined that a variety of procedural protections impose a sufficiently definite and meaningful constraint on the discretion of Alabama factfinders in awarding punitive damages; the Court concluded that Pacific Mutual enjoyed the benefit of all such protections.

Renne v. Geary,

___ U.S. ___, ___ S.Ct. ___, No. 90-669 (Jan. 14, 1991).

Supreme Court to Review California's Ban on Party Endorsements for Nonpartisan Offices

On January 14, the U.S. Supreme Court agreed to review the Ninth Circuit's August 1990 *en banc* decision that Article II, section 6(b) of the California Constitution, which provides that no political party or party central committee may endorse, support, or oppose a candidate for nonpartisan office, violates the first and fourteenth amendments of the federal constitution. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 189 and Vol. 9, No. 4 (Fall 1989) p. 139 for extensive background information on this case.)

NINTH CIRCUIT COURT OF APPEALS

Lancaster Community Hospital v. Antelope Valley Hospital District,

923 F.2d 1378, 90 D.A.R. 848, Nos. 89-55167, 89-55347 (Jan. 18, 1991).

State Action Immunity Does Not Shield Hospital District from Antitrust Laws

In this proceeding, the U.S. Ninth Circuit Court of Appeals held that the state action immunity doctrine does not shield a California hospital district from federal antitrust laws. Lancaster Community Hospital brought suit against Antelope Valley Hospital, District and Medical Group (collectively Antelope) based on federal antitrust laws and the Racketeer Influenced and Corrupt Organizations (RICO) Act. Lancaster alleged that Antelope tried to use its monopoly in perinatal care services to increase its market share in non-perinatal services. In support of its position, Antelope argued that the broad authority delegated to it by the state to provide hospital services in and of itself established authority to exclude others from providing hospital services. The district court granted Antelope's motion for summary judgment based in part on the state action immunity doctrine.

On appeal, the Ninth Circuit reversed, stating that "when a state delegates authority to a subordinate entity that then acts anticompetitively, the subordinate is not automatically beyond the reach of antitrust." The court pointed out that Antelope did not show it was acting within a "clearly articulated" state policy to displace competition. The court also determined that the state gave Antelope no power to regulate the hospital services market, but merely authorized Antelope to provide hospital services along with regular competitors. Moreover, the court found that California's legislative history indicates that the state has committed itself to a competitive market. Thus, Antelope was not afforded state action immunity.

However, the Ninth Circuit affirmed the district court's dismissal of the RICO claim, stating that the RICO claim against Antelope fails because "government entities are incapable of forming malicious intent....A specific intent to deceive is an element of the predicate act, mail fraud, on which Lancaster's RICO claim is based." The court noted that the fraud alleged by Lancaster "is in reality nothing more or less than anticompetitive conduct. This conduct may be unacceptable, but it is not 'fraud.'"

Erdman v. Cochise County,

926 F.2d 877, 91 D.A.R. 2141, No. 89-16015 (Feb. 22, 1991).

Offer of Judgment is Valid Against City Even if Fee Award Exclusion Omitted

The U.S. Ninth Circuit Court of Appeals determined that a waiver of attorneys' fees must be clear and unambiguous in 42 U.S.C. section 1983 civil rights settlements or offers of judgment under Rule 68, Federal Rules of Civil Procedure. The matter arose when James Erdman filed a suit against the City of Yuma and Cochise County for damages and injunctive relief, alleging that previous incarcerations constituted double jeopardy and violated the fourth and fourteenth amendments. After holding settlement negotiations, the city made an offer of judgment pursuant to Rule 68 to allow a judgment to be taken against it for $7,500 "with costs now accrued." Erdman and his attorney assumed the

offer meant $7,500 plus attorneys' fees, and accepted it; the city countered that the offer made was intended to include attorneys' fees but was "inartfully drafted." The trial court rescinded the offer without a hearing based on mutual mistake.

The Ninth Circuit reversed and remanded in part and affirmed in part. The court determined that costs in section 1983 actions automatically include attorneys' fees to prevailing plaintiffs pursuant to 42 U.S.C. section 1988; therefore, the settlement agreement as drafted by the city was construed in Erdman's favor. Further, the court held that "any waiver or limitation of attorney fees in settlements of section 1983 cases must be clear and unambiguous."

CALIFORNIA SUPREME COURT

Tamela Harris, et al., v. Capital Growth Investors XIV, et al.,

52 Cal. 3d 1142, 278 Cal. Rptr. 614, No. S011367 (Feb. 28, 1991).

Landlord's Minimum Income Policy Does Not Violate Unruh Act

In this proceeding, the California Supreme Court ruled that a landlord's minimum income requirements do not violate California's Unruh Civil Rights Act, Civil Code section 51 *et seq.*; the restrictive opinion is among several recent decisions which have dramatically affected civil rights law in California.

Tamela Harris and Muriel Jordan (Harris) sued Capital Growth Investors (Capital), managers and owners of apartment buildings, for denying them the opportunity to rent. Capital had a minimum income policy requiring tenants to have gross monthly income of at least three times the rent to be charged. Harris argued that the policy constituted arbitrary economic discrimination and that the minimum income policy has an adverse or disparate impact on women, since women "generally have lower average incomes than males."

The trial court sustained Capital's demurrers and dismissed the case. The Third District Court of Appeal reversed as to the economic discrimination claim, holding that it raised factual issues concerning the alleged arbitrariness of Capital's practice that required a trial; it affirmed as to the sex-discrimination-by-adverse-impact claim.

In a 5-2 decision, the California Supreme Court reversed the appellate court's decision, holding that "[e]conomic and financial distinctions are not among the impermissible classifications listed in the [Unruh Act]." Although the court had previously expanded the protection of the civil rights statute in areas not specifically listed in the Act, the court decided that minimum income requirements seek to further the legitimate interest of business establishments in controlling financial risk while providing goods on a nondiscriminatory basis.

The court refused to apply the "disparate impact test" used by federal courts in employment discrimination cases, stating that there is no authority for extending the test "to a general discrimination-in-public-accommodations statute like the Unruh Act."

Retiring Justice Allen Broussard strongly dissented, noting that "it was well established that the Unruh Civil Rights Act protected the citizens of California against all arbitrary discrimination in the marketplace. In full retreat from the goal of equal access and opportunity, the majority today limit the Act so as to insulate invidious discrimination on the basis of economic class from legal redress." Justice Stanley Mosk separately dissented, finding that Harris had stated a facially valid claim for discrimination, necessitating a trial to determine whether the minimum income policy was arbitrary or unreasonable.

CALIFORNIA COURTS OF APPEAL

Bank of the West v. Superior Court (Industrial Indemnity, Real Party in Interest),

226 Cal. App. 3d 835, 277 Cal. Rptr. 219, No. A050298 (Jan. 4, 1991).

Ambiguity Requires Broad Definition of "Unfair Competition" in Policy

In this proceeding, the principal issue presented for determination is whether the phrase "unfair competition" in a standard form comprehensive general liability policy (CGL) giving rise to advertising injury is limited to the narrow tort as defined in common law (*i.e.*, passing off the goods of a business rival as one's own) or whether it also includes the statutory definition which describes unfair competition broadly so as to embrace all unlawful, unfair, or fraudulent business practices.

Industrial Indemnity Company of Hawaii, Ltd. (Industrial) insured Bank of the West under a CGL policy. In two separate actions, Bank of the West (or its predecessor) was alleged to have committed acts of unfair competition. In both actions, Industrial denied coverage and refused to indemnify or contribute to the Bank's defense costs. Industrial argued, *inter alia*, that the phrase "unfair competition" giving rise to injury in advertising activities should be given the narrow, common law tort definition, which would preclude recovery; the trial court agreed with Industrial.

On appeal, the First District Court of Appeal determined that because the policy itself does not define "unfair competition," the phrase could reasonably be defined by resort to the common law, the broad statutory definition in Business and Professions Code section 17200, or the dictionary. Further, the court noted that where a policy provision is capable of two or more reasonable constructions, it is inherently ambiguous and California law compels that the ambiguity must be resolved against the insurer in favor of providing coverage for the insured. The First District determined that "the trial court violated the well accepted rules of insurance contract interpretation by giving too restrictive a meaning to the ambiguous policy phrase...."

Industrial contended that, when read in context, the policy phrase "unfair competition" was not ambiguous but, instead, clearly meant the tort as defined in common law. Industrial further noted that the rule of ambiguity, if any, was not applicable here because the Bank was not an unsophisticated insured but rather an institution which had equal bargaining power with the insurer. The industry also argued, more persuasively, that section 17200 is an action in equity, and restitution (not damages) is required of violators to disgorge unjust enrichment. Such disgorgement cannot be insured, since that would allow the violator to keep the fruits of the violation and socialize damage through insurance coverage.

On March 28, the California Supreme Court granted review in this case. The final outcome of this case will be extremely important in terms of insurance public policy and the direct liability of insurance firms. Where such liability is found, the burden will be shifted to policyholders who will be forced to pay higher premiums; policyholders which are business entities will pass those higher premium costs on to customers.

The Copley Press, Inc. v. San Diego County Superior Court

228 Cal. App. 3d 77, 278 Cal. Rptr. 443, No. D011794 (Feb. 26, 1991).

Juror Questionnaires are Public Subject to "In Camera" Hearing

In this proceeding, the Fourth District Court of Appeal considered whether juror questionnaires are public records subject to *in camera* hearings and disclosure. The issue arose during the trial of Roberta Pearce, who was charged with the murder of her husband. In accordance with established court procedures, detailed questionnaires—including questions submitted by the trial attorneys to facilitate the voir dire process—were distributed to 300 prospective jurors. An instruction sheet for the questionnaire informed prospective jurors that the information contained in the questionnaire would become part of the court's permanent record, but that it would not be distributed to anyone except the court, its staff, and the attorneys in the case while it is pending.

During the trial, Copley Press, Inc. (Copley) filed a motion requesting the court to release the questionnaires. Since jury qualification information was combined with voir dire questioning, the trial court held that the questionnaires were confidential and denied release. Following the conclusion of the trial, Copley petitioned for a peremptory writ of mandate, which was denied. The California Supreme Court remanded and directed the Fourth District to vacate its opinion and consider the matter in light of *Lesher Communications, Inc. v. Superior Court*, 224 Cal. App. 3d 774 (1990).

The Fourth District adopted the *Lesher* holding insofar as that decision provides that the public or press does not have access to jury questionnaires filled out by prospective jurors who are not called to the jury box for oral voir dire. Additionally, the Fourth District determined that the questionnaires used for the *Pearce* trial included both confidential information about the prospective jurors and responses to voir dire questioning; the court held that public access to such confidential information is not warranted. The court concluded that the prior blanket denial of access to the questionnaires was unconstitutional, because the first amendment affords the right of access to voir dire examination of the jury in criminal trials. However, because of the trial court's assurance of confidentiality to the prospective jurors in the *Pearce* case, the Fourth District denied release of the questionnaires in this particular case based on the principle of estoppel.

Recognizing the tension between the right of access to public information and jurors' right to privacy, the court issued a peremptory writ directing the superior court in future cases to segregate juror qualification information from other questions; plainly instruct prospective jurors in the questionnaire that written responses are not confidential and that venirepersons have the right to request an *in camera* hearing to discuss responses they do not wish to answer in writing; and provide access to the questionnaires in accordance with the court's holding.

Drexel v. Mann,

228 Cal. App. 3d 630, 278 Cal. Rptr. 887, No. H007204 (Mar. 15, 1991).

Law Permitting Deletion of Material From Voter Pamphlet is Constitutional

In this proceeding, the Sixth District Court of Appeal determined that Elections Code section 10013.5 is constitutionally valid on its face. Section 10013.5 allows registered voters or the clerk to seek a writ of mandate or injunction to amend or delete material from candidates' statements which is false or misleading.

In the 1990 race for Santa Clara County District Attorney, George Kennedy defeated Jerome Nadler. Both candidates had submitted statements for inclusion in the official voters' pamphlets pursuant to Elections Code section 10012. During the period for public examination of the statements, Santa Clara voter Jeanne Drexel sought a writ of mandate directing the registrar of voters to delete portions of Nadler's statement pursuant to section 10013.5. The trial court agreed that one of Nadler's statements was false and/or misleading, and issued the writ.

Nadler appealed, claiming that section 10013.5 violates first amendment rights guaranteed by the U.S. Constitution and the free speech clause of the California Constitution; appellant contended that the statute is an unlawful prior restraint of campaign speech in a limited public forum. Respondents claimed the issue was moot since the election was over, but the court agreed to review the matter since election cases often present legal questions "capable of repetition, yet evading review."

The court determined that "the state must have a compelling interest in excising from the voter's pamphlet material that is false, misleading, or inconsistent with statutory requirements." Further, the court determined that to uphold such a statute, the state's interest must be more compelling than the candidate's interest in free speech; the statute must be narrowly drawn to effectuate the state's interest; the party who challenges the candidate statement must shoulder the burden of proving that the material is false, misleading, or non-conforming; there must be adequate opportunity for judicial review; and a candidate whose statement is amended or deleted must have ample alternative channels of communication.

Applying these principles to section 10013.5, the court determined that the statute "does not run afoul of the First Amendment." While recognizing that amendment or deletion of a candidate's statement from the voter's pamphlet runs counter to the first amendment guarantee of free speech, the court noted that the candidate retains the right to disseminate the offending information through any channel other than the official voter's pamphlet; his/her opponent may then respond in kind. The court thus concluded that the state's interest in assuring the accuracy of information in the official voter's pamphlet is more compelling than the candidate's interest in free speech within the voter's pamphlet.

Chemical Specialties Manufacturers Ass'n, Inc. v. Deukmejian,

227 Cal. App. 3d 663, 278 Cal. Rptr. 128, No. A048489 (Feb. 8, 1991).

Proposition 105 Held Invalid for Violating Single-Subject Rule of State Constitution

Proposition 105, the "Public's Right to Know Act" approved by voters at the November 1988 general election, was struck down by the First District Court of Appeal, which determined that the measure violated the single-subject rule of the state constitution. Article II, section 8(d) of the California Constitution provides that initiative measures which encompass more than one subject may not be submitted to the electors or have any effect. However, state courts have upheld a number of broad initiatives so long as the "provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment."

Proposition 105 set new requirements for public disclosure in diverse fields, such as the danger of dumping toxic household products in the garbage or down the drain; the details and quality of "Medigap" insurance, sold to supplement Medicare for the elderly; and the major funding sources of ballot measure advertising. Proposition 105's sponsors argued that the initiative required affirmative disclosure in paid advertising, and contended that this is a narrower subject than measures that have been previously upheld. Although each of the initiative's provisions dealt with some form of disclosure, the First District decided that the provisions were "neither functionally related to one another nor reasonably germane to one another or the objects of the enactment."

301 Ocean Avenue Corporation v. Santa Monica Rent Control Board,

228 Cal. App. 3d 1548,
279 Cal. Rptr. 6636,
No. B047932 (Mar. 6, 1991).

Finding that Parking is Base Amenity Affecting Landlord's Vested Control Right Requires Independent Judgment Review

In this proceeding, appellant, a Santa Monica landlord, petitioned for writ of mandate to overturn the Santa Monica Rent Control Board's (Board) determination that parking is a base amenity for 38 of the 46 rent-controlled units in appellant's building. The trial court applied the substantial evidence test and upheld the Board's determination. This appeal followed.

The Second District Court of Appeal stated that "[w]hen an administrative decision substantially affects a fundamental vested right, the independent judgment standard of review applies." The court further noted that "[w]hether an administrative decision substantially affects a fundamental vested right must be decided on a case-by-case basis.... [T]he issue in each case is whether the 'affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking judicial power.'"

The court concluded that the Board's determination of base amenities affects appellant's fundamental vested right to control the use of property, and thus warrants the application of the independent judgment test. Because "some 8,000 square feet of petitioner's property will be out of petitioner's control if the trial court's decision stands...nothing short of independent review by the court of the entire record will protect the constitutional right to control one's own property." The court thus reversed the judgment and remanded the case back to the trial court.