

Tentative Rulings – June 26, 2003

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Neco v. Caltrans – 02CV2354 – City of Jackson's Motion for Summary Judgment

The motion of defendant City of Jackson for summary judgment is granted. The evidence in support of the motion establishes that Jackson is entitled to judgment as a matter of law. The State of California admits owning, maintaining, managing and controlling Highway 49, the intersection and the adjoining sidewalk, in the area where the subject accident occurred. (Jackson's Undisputed Material Facts 6 through 17.)

The plaintiffs filed no opposition to the motion and therefore, fail to raise a triable issue of material fact with respect to Jackson's ownership or ability to control the condition of the property where the accident occurred.

As a public entity's liability for a dangerous condition of public property is premised upon the entity owning or controlling the property, the evidence in support of the motion negates an essential element of the plaintiff's claim.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

Williams v. Sutter Amador Hospital – 03CV2675 – Demurrer and Motion to Strike of Peter Sfankiano, M.D.

The demurrer of Peter Sfankianos, M.D., to the plaintiff's complaint is overruled. The first cause of action alleges the defendants were negligent per se, based on a violation of Penal Code Section 368. Sfankianos argues this statute does not provide for a private right of action and therefore, the plaintiff cannot recover damages for a violation of the statute.

However, when a statute is used as evidence of the standard of care in a negligence action, it does not create a new private right to sue. When negligence per se is alleged, the statute serves the function of providing evidence of an element of a preexisting common law cause of action. This use of a statute is distinct from the issue of whether a regulatory statute creates a private cause of action. (Reyes v. Kosha (1998) 65 Cal.App.4th 451, citing, Crusader Ins. Co. v. Scottsdale Ins. Co. (1997) 54 Cal.App.4th 121, 125.)

As noted, plaintiff alleges the defendants were negligent because they violated Penal Code Section 368, which was designed to protect elders from the type of injury alleged. Nothing bars the application of the negligence per se doctrine in medical negligence actions. (Daum v. SpineCare Medical Group, Inc. (1997) 52 Cal.App.4th 1285.)

For the same reasons, the defendant's motion to strike is denied.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

Goltz v. Ellyson – 03CV2702 – Plaintiff's Motion to Change Venue

The plaintiff's motion to change venue is denied. The court finds the plaintiff failed to establish the transfer to Sacramento County was necessary based on the convenience of witnesses. The fact that several doctors may have travel from Sacramento to Jackson to testify at trial does not establish inconvenience sufficient to order transfer. Although the travel time may increase the plaintiff's costs, this is not a factor the court may consider with ruling on a motion to transfer.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.