

Tentative Rulings – May 8, 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.

CSE Insurance v. B&G Mechanical – 01CV1276 – Motion of B&G Mechanical, Inc. in Opposition to Application of Slakey Brothers, Inc., for a Good Faith Determination

The court denies the motion of B&G Mechanical Inc. objecting to the Application of Slakey Brothers, Inc. for a good faith settlement determination. The court finds the settlement was made in good faith and grants the application accordingly.

Code of Civil Procedure Section 877.6 bars claims for total indemnity. (Far West Financial Corp. v. D. & S. Co. (1988) 46 Cal.3d 796.) Applying the Tech-Bilt factors to the subject settlement, the court finds the settlement is a rough approximation of Slakey Brothers proportional liability in this matter. Both the manufacturer (Myson) and upstream distributor (McNeely-Yuill) are parties. If the product were defective, Slakey would be entitled to total indemnification from these entities. If the product was not defective, there does not appear to be an independent basis for liability against Slakey Brothers.

The court further orders any cross complaints filed against Slakey Brothers based on equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault shall be dismissed with prejudice. (Norco Delivery Service v. Owens-Corning (1998) 64 Cal.App.4th 955.)

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.

Vicari v. Pharmacia Corp. – 02CV2076 – Plaintiff's Motion to Amend Complaint

The plaintiff's motion to file a first amended complaint is granted. As both parties acknowledge, leave to amend is liberally granted. The defendants have not established they will be significantly prejudiced by the delay in amending the complaint. The additional claims and cause of action are based on acts allegedly committed by defendant Shapiro, who is an employee of the remaining defendant, Pharmacia. The factual basis of the plaintiff's allegations can be verified internally.

Whether the proposed complaint adequately states a cause of action for harassment or invasion of privacy is better determined on demurrer, motion for summary judgment or at trial. The plaintiff is ordered to file his proposed first amended complaint within 10 days of the date of this order.

Defendants' response shall be filed 10 days after service of the amended complaint.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed. Moving party to provide notice of this ruling.

Croker v. Sutter Creek Roofing – 01CV1087 – Defendants' Motion to Continue Trial

The motion to continue is granted. However, appearances by the parties at the hearing are required to avoid further scheduling problems. If a party fails to appear at the hearing, this matter will be set for trial and, absent exceptional circumstances, the court will not entertain any further requests to continue the trial date.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed. Moving party to provide notice of this ruling.