

FORD, WALKER, HAGGERTY & BEHAR



Law Review
First Quarter 2001

These decisions are of particular interest. Should you wish a copy of any of the decisions below, please contact Maxine Lebowitz at (562) 983-2513 with the name of the case and the number.¹

Updating the Law Review

Fourth Quarter '00 Edition, pp. 4-5: Commercial Underwriters Ins. Co. v. Superior Court has been decertified. Consequently, the opinion is no longer authoritative. See "Coverage" below. '01 Daily Journal D.A.R. 1747; 2/14/01.

Fourth Quarter '00 Edition, pp. 6: Minster v. Contadina Food, Inc. has been decertified and review has been granted by California's Supreme Court. Consequently, the opinion is no longer authoritative. See "Torts" below. '01 Daily Journal D.A.R. 938; 1/17/01.

Recent Cases

APPEAL

JUDGMENT FOLLOWING GRANT OF "SLAPP" MOTION IS NOT AUTOMATICALLY STAYED PENDING PLAINTIFF'S APPEAL: The Fourth Appellate District has held that "a SLAPP plaintiff's perfecting of an appeal from a judgment awarding attorneys fees and costs to a prevailing SLAPP defendant under subdivision (c) of section 425.16 does not automatically stay enforcement of the judgment." The Court further held that to stay enforcement of the judgment it is necessary to either post a bond or an undertaking. (Dowling v. Zimmerman '01 Daily Journal D.A.R. 347.) [File #314.]

¹ The information contained in this Law Review is meant to be a tool to keep abreast of recent developments in the law in the State of California. It is not intended to give legal advice. It is one interpretation of the cases outlined and is not meant to substitute for a thorough reading of the cases before citing them as precedent. It is also important that the subsequent history of the cases be checked before they are cited.

ARBITRATION

ARBITRATOR CAN AMEND AWARD: According to the Second Appellate District, an arbitrator is entitled to amend an arbitration award in order to address issues which were inadvertently omitted. “An arbitrator may not correct an error as to fact or law but may modify or amend an award from which a ruling on a submitted issue was inadvertently omitted.” (Century City Medical Plaza v. Sperling, Isaacs & Eisenberg ’01 Daily Journal D.A.R. 1135.) [File #180.]

AVIATION

U.S. COURT NEED NOT HEAR LAWSUIT ARISING FROM CRASH OCCURRING IN NEW ZEALAND: On forum non conveniens grounds, the Ninth Circuit has affirmed the dismissal of a lawsuit brought in a Federal court in California. The Court based its decision on the fact that the case did not involve any law of the United States which required venue in the U.S. and that New Zealand was an adequate forum. (Lueck v. Sundstrand Corp. ’01 Daily Journal D.A.R. 325.) [File #204.]

BAD FAITH

1. INSURER OWES NO DUTY TO DEFEND IN CONNECTION WITH CONDUCT OCCURRING OUTSIDE THE POLICY PERIOD: “A claim is potentially covered only if the alleged harm occurred within the policy period,” according to the Second Appellate District. (Buena Vista Mines, Inc. v. Industrial Indemnity Co. ’01 Daily Journal D.A.R. 2155.) [File #68.]

2. CGL INSURER OWES NO DUTY TO DEFEND AN EASEMENT DISPUTE: California’s Supreme Court has held that “an insurer providing a liability policy that covers damage to tangible property on the insured’s premises has no duty to defend an easement dispute.” (Kazi v. State Farm ’01 Daily Journal D.A.R. 661.) [File #68.]

3. POLICY DOES NOT COVER DAMAGES ORDERED BY ADMINISTRATIVE AGENCY: California’s Supreme Court has concluded that “the insurer’s duty to indemnify the insured for ‘all sums that the insured becomes legally obligated to pay as damages’ is limited to money ordered by a court.” So saying, the Court rejected the contention that insurers owed a duty to indemnify policyholders in proceedings conducted before administrative agencies attempting to enforce environmental clean-up statutes. (Certain Underwriters at Lloyd’s London v. Superior Court ’01 Daily Journal D.A.R. 1259.) [File #68.]

CIVIL PROCEDURE – FEDERAL

1. A CLAIM DISMISSED IN ONE FEDERAL COURT IS NOT NECESSARILY BARRED IN ANOTHER FEDERAL COURT: The United States Supreme Court has held that the law of the state in which a particular Federal court sits determines the claim-preclusion effect of a federal judgment dismissing a diversity action. The Court explained that, “Because the claim-preclusive effect of the California federal court’s dismissal ‘upon the merits’ of petitioner’s action on statute-of-limitations grounds is governed by a federal rule that in turn incorporates California’s law of claim preclusion . . . , the Maryland Court of Special Appeals erred in holding that the dismissal necessarily precluded the bringing of this action in the Maryland courts.” The action might have been viable in Maryland given Maryland’s longer statute of limitations. (Semtek Int’l. Inc. v. Lockheed Martin Corp. ’01 Daily Journal D.A.R. 1995.) [File #204.]

2. EXTENUATING CIRCUMSTANCES WARRANT VACATING DEFAULT JUDGMENT: Explaining why the District Court erred in refusing to set aside a default, the Ninth Circuit explained that, “Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process is not ‘intentional’ under our default cases, and is therefore not necessarily – although it certainly may be, once the equitable factors are considered – culpable or inexcusable.” (TCI Group Life Ins. Plan v. Knoebber ’01 Daily Journal D.A.R. 3015.) [File #204.]

CIVIL PROCEDURE – STATE

1. RELIEF FROM DEFAULT IS PROPER EVEN WHERE BOTH DEFENDANT AND HIS COUNSEL ARE AT FAULT: The First Appellate District has affirmed an Order vacating a default and default judgment based upon the attorney “oops” provision of Code of Civil Procedure § 473 even though the defendant was partially at fault. (Benedict v. Danner Press ’01 Daily Journal D.A.R. 2543.) [File #52.]

2. “CLEAR AND CONVINCING” STANDARD APPLIES IN RULING ON MOTION FOR SUMMARY ADJUDICATION OF RIGHT TO RECOVER PUNITIVE DAMAGES: According to the Second Appellate District, “Where the plaintiff’s ultimate burden of proof will be by ‘clear and convincing’ evidence, the higher standard of proof must be taken into account in ruling on a summary judgment motion.” (Basich v. Allstate Ins. Co. ’01 Daily Journal D.A.R. 2747.) [File #56.]

3. ATTORNEY FEES ARE RECOVERABLE BY ATTORNEY REPRESENTED BY OTHER MEMBERS OF HIS OWN FIRM: The Second Appellate District has held that “An Attorney who is represented by other members of his or her law firm may be entitled to recover attorney fees under Civil Code, section 1717.” (Gilbert v. Master Washer & Stamping Co., Inc. ’01 Daily Journal D.A.R. 1947.) [File #60.]

4. INSURER WHICH DOES NOT QUALIFY AS “AGGRIEVED PARTY” LACKS STANDING TO VACATE A JUDGMENT: An insurer sought to vacate a judgment entered against its insured in a wrongful death case. After the verdict in the

wrongful death case, the insured filed a declaratory relief action against the insurer and the insurer initiated proceedings to vacate the underlying judgment. To set aside a judgment, it is necessary to establish standing as an “aggrieved party” as that term is used in Code of Civil Procedure § 663. The Sixth Appellate District held that the insurer could not establish the requisite showing because it would “not necessarily be bound by” the verdict in the underlying case and because it would have ample defenses to that judgment in the declaratory relief action. (Tomassi v. Scharff ’01 Daily Journal D.A. R. 17.) [File #67.]

5. PARTY MAY NOT ASSERT A BLANKET FIFTH AMENDMENT

OBJECTION: Fearing prosecution, certain witnesses sought a protective order based upon their Fifth Amendment right not to incriminate themselves. The witnesses sought to avoid being deposed. The Second Appellate District held, however, that they could not assert a blanket objection to the entirety of having their depositions taken. Rather, they had to present themselves for deposition and determine in response to each question whether assertion of the Fifth Amendment privilege was warranted. If the questions have not even been asked, it is impossible to determine whether the information sought is protected by the Fifth Amendment. (Fuller v. Superior Court ’01 Daily Journal D.A.R. 2033.) [File #69.]

6. SANCTIONS WERE PROPERLY IMPOSED UPON ATTORNEY WHO ADVISED CLIENT TO REFUSE TO ANSWER PROPER QUESTIONS: The Second Appellate District has affirmed an award of sanctions levied against an attorney who advised his client not to answer questions which were calculated to lead to the discovery of admissible evidence. (Stewart v. Colonial Western Agency, Inc. ’01 Daily Journal D.A.R. 2663.) [File #81.]

7. GRANT OF FORUM NON CONVENIENS MOTION REQUIRES SHOWING THAT ALL DEFENDANTS ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THE ALTERNATE FORUM: In a case of first impression, the First Appellate District held that a party seeking to stay or dismiss a case on the grounds of forum non conveniens must establish that all defendants are subject to the jurisdiction of the courts of the alternate forum. (American Cemwood Corp. v. American Home Assur. Co. ’01 Daily Journal D.A.R. 2113.) [File #94.]

8. NEW STANDARD OF REVIEW FOR PUNITIVE DAMAGES AWARDS: The Ninth Circuit Court of Appeals has held that the standard of review routinely used in reviewing punitive damage awards is **the wrong standard of review**. The correct standard of review requires the reviewing court to consider the award of punitive damages “de novo,” considering three factors:

1. The degree of reprehensibility of the defendant’s misconduct,
2. The disparity between the harm (or potential harm) suffered by the plaintiff and the punitive damages award, and
- (3) The difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The court based its conclusion on federal constitutional considerations of due process. Consequently, this decision is of use in state courts as well as federal courts. (Cooper Industries, Inc. v. Leatherman Tool Group, Inc. ’01 Daily Journal D.A.R. 4673.) [File #56.]

9. BAD FAITH ACTION ARISING FROM CLAIM ON FLOOD INSURANCE MUST BE BROUGHT IN FEDERAL COURT: Travelers Insurance Company issued a policy covering flood loss under a standard flood insurance policy issued as part of the National Flood Insurance Program (NFIP). The First Appellate District has held that a bad faith action challenging the handling of the plaintiffs' claim for flood loss insurance benefits must be adjudicated in federal court. (McCormick v. Travelers Ins. Co. '01 Daily Journal D.A.R. 783.) [File #14.]

10. STATUTE OF LIMITATIONS FOR FRAUD BEGINS TO RUN WHEN PLAINTIFF IS ON INQUIRY NOTICE OF FRAUD: A fraud cause of action does not accrue until the plaintiff discovers the facts constituting the fraud. Actual knowledge is not required, however. The statute accrues either when the plaintiff knew or should have suspected that an injury was caused by tortious conduct. "The statute of limitations begin to run when the plaintiff has information which would put a reasonable person on inquiry," according to the Fourth Appellate District. (Kline v. Turner '00 Daily Journal D.A.R. 3069.) [File #43.]

11. STATUTE OF LIMITATIONS FOR FRAUD CAN ACCRUE EVEN IF ALL DAMAGE HAS NOT YET OCCURRED: Applying California law, the Ninth Circuit has held that "where an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date." (Nodine v. Shiley Inc. '00 Daily Journal D.A.R. 771.) [File #43.]

12. FIVE-DAY EXTENSION FOR SERVICE BY MAIL DOES NOT APPLY TO MOTION FOR NEW TRIAL: Code of Civil Procedure § 660 requires the court to rule on a motion for new trial within 60 days. Here, the court ruled on the motion on the 61st day. The Fourth Appellate District has held that the five-day extension for the time to act authorized by Code of Civil Procedure § 1013, subdivision (a), does not extend the time during which a trial court can rule on a motion for new trial. (Westrec Marina Management, Inc. v. Jardine Ins. Brokers Orange County, Inc. '01 Daily Journal D.A.R. 13.) [File #220.]

13. COURT PROPERLY DENIES "SLAPP" MOTION IN THE ABSENCE OF A SHOWING THAT DEFENDANT'S FIRST AMENDMENT RIGHTS WERE VIOLATED: According to the Second Appellate District, a trial court did not err when it denied a defendant's anti-SLAPP motion. The Court concluded that "defendants ha[d] failed to make a prima facie showing that the lawsuit was brought to chill their First Amendment rights." (The People v. Building Permit Consultants, Inc. '01 Daily Journal D.A.R. 561.) [File #314.]

14. TRIAL COURT ERRED IN DENYING RIGHT TO ORAL ARGUMENT: The Fourth Appellate District has held that a trial judge erred when he

ruled on a demurrer and notified the parties there would be no oral argument. The arguments raised in the demurrer addressed whether the facts alleged qualified the more than three hundred plaintiffs to proceed as a class action. The Court concluded that the defense was entitled to an oral argument on the demurrer because “there is a real and genuine dispute.” As a result, the Court could not conclude that hearing the oral argument would be an “empty gesture.” The opinion contains a good discussion of the importance of oral argument. (The TJX Companies, Inc. v. Superior Court ’01 Daily Journal D.A.R. 2409.) [File #320.]

CIVIL RIGHTS

1. COURT USUALLY CANNOT AWARD DAMAGES TO A DEFENDANT IN A “MONELL” CIVIL RIGHTS ACTION: The Fourth Appellate District has held that a court can refuse to award attorneys fees in a civil rights action brought pursuant to 42 U.S.C. 1983 when the plaintiff’s victory results in only a nominal award of damages. Here, in addition to refusing to award attorneys fees to the plaintiffs, the trial court actually awarded attorneys fees to the defense. The Court also held that the trial court erred in doing so, however. “Monell” attorneys fees are recoverable by defendants only if the claims are “”frivolous, unreasonable or groundless, or [...] the plaintiff continued to litigate after it clearly became so.”” (Choate v. County of Orange ’01 Daily Journal D.A.R. 642.) [File #270.]

2. DISCRIMINATION BASED UPON PATCH SIGNIFYING “TROUBLE” DID NOT VIOLATE UNRUH ACT: The Fourth Appellate declined to second guess the business judgment of the defendant sports bar when it held that the sports bar had not violated the Unruh Act by refusing service to members of a Hessian motorcycle club. The members were excluded not because they were motorcyclists, but because a patch which they wore signified allegiance to a particular club. The sports bar defendant had recognized that membership in the club portended trouble. Hence, the plaintiffs could not establish that they were among the classification of people protected by the Unruh Act. (Hessians Motorcycle Club v. J.C. Flanagan ’01 Daily Journal D.A.R. 1043.) [File #270.]

CONSTRUCTION DEFECT

1. GENERAL CONTRACTOR IS NOT LIABLE FOR FAILING TO REQUIRE SUBCONTRACTOR TO TAKE SAFETY PRECAUTIONS: Expanding the Privette rule, the First Appellate District has held that “a general contractor owes no duty of care to an employee of a subcontractor to prevent or correct unsafe procedures or practices to which the contractor did not contribute by direction, induced reliance, or other affirmative conduct. The mere failure to exercise a power to compel the subcontractor to adopt safer procedures does not, without more, violate any duty owed to the plaintiff.” (Kenney v. CSB Construction, Inc. ’01 Daily Journal D.A.R. 1124.) [File #197.]

COVERAGE

1. DECERTIFIED: “ACCIDENT” INCLUDES UNINTENDED HARM FLOWING FROM INTENTIONAL ACT: Division Seven of the Second Appellate District has opined that “the ‘intentional act vs. intentional harm’ analysis” often used is overly simplistic. The court adopted a New Jersey rule that “the accidental nature of an occurrence is determined by analyzing whether the alleged wrongdoer intended or expected to cause an injury. That interpretation prevents those who intentionally cause harm from unjustly benefiting from insurance coverage while providing injured victims with the greatest chance of compensation consistent with the need to deter wrong-doing.” (Commercial Underwriters Ins. Co. v. Superior Court ’00 Daily Journal D.A.R. 11221; Decert. 01 Daily Journal D.A.R. 1747, 2/14/01.) [File #68.]

2. “INSURED v. INSURED” EXCLUSION BARS COVERAGE OF CLAIMS FILED BY FORMER DIRECTOR: The Ninth Circuit reversed a jury verdict, holding that the “insured v. insured” exclusion of a Directors & Officers liability policy precluded coverage of a former director’s claim. As a result, the Court held “that where there is no coverage of any kind under an insurance contract, the insured may not hold the insurer liable for breach of the implied covenant of good faith and fair dealing.” (American Medial International, Inc. v. National Union Fire Ins. Co. of Pittsburgh ’00 Daily Journal D.A.R. 3043.) [File #14.]

3. COURT ENFORCES “CRIMINAL ACTS” EXCLUSION: The Third Appellate District has affirmed a summary judgment in favor of a plaintiff insurer. The insured had pleaded no contest to willful discharge of a firearm. (Century-National Ins. Co. v. Glenn ’01 Daily Journal D.A.R. 1593.) [File #170.]

4. EXCLUSION FOR “INSURANCE SIMILAR” TO INSURED’S UM COVERAGE IS UNENFORCEABLE WHERE THE AMOUNT OF COVERAGE APPLICABLE TO THE NON-DESCRIBED VEHICLE IS LESS THAN THAT APPLICABLE TO THE DESCRIBED VEHICLE: The insured was injured when riding as a passenger in a vehicle not described in his own insurance policy. The Third Appellate District has concluded that where the insured has a higher amount of uninsured motorist coverage than does the owner of a vehicle not described in the insured’s own policy, the insured’s uninsured motorist coverage applies to cover the loss. Because the vehicle in which the insured had been riding did not have “insurance similar to that provided in this section, . . . the exclusion authorized by subdivision (c)(2) of section 11580.2” did not apply. (CalFarm Ins. Co. v. Wolf ’01 Daily Journal D.A.R. 1130.) [File #174.]

EVIDENCE

PSYCHOTHERAPIST-PATIENT PRIVILEGE IS NOT ENTIRELY WAIVED BY PATIENT’S DISCLOSURE THAT SHE TREATED WITH PSYCHOTHERAPIST: Construing a potential waiver of the psychotherapist-patient privilege narrowly, the Fourth Appellate District has held that a plaintiff had not waived

the privilege in its entirety when she disclosed that she had treated with a psychotherapist for anxiety. Rather, the party seeking the information was required to show a compelling need for the information which was otherwise private. (San Diego Trolley, Inc. v. Superior Court '00 Daily Journal D.A.R. 2757.) [File #37.]

LAW ENFORCEMENT

1. USE OF PEPPER SPRAY MAY CONSTITUTE EXCESSIVE FORCE :

The Ninth Circuit Court of Appeals has reversed a jury verdict which had held that police officers were entitled to qualified immunity. The Court held that the use of pepper spray on passive protesters can constitute an unreasonable use of excessive force. (Headwaters Forest Defense v. Burton '01 Daily Journal D.A.R. 1182.) [File #130.]

TORTS

1. DECERTIFIED & REVIEW GRANTED: NEGLIGENT HIRING CLAIM AGAINST HIRER OF INDEPENDENT CONTRACTOR DOES NOT SURVIVE

PRIVETTE: According to the First Appellate District, an “employee may not pursue [a] claim [for negligent hiring] because a hirer’s duty to exercise reasonable care in employing a competent and careful independent contractor with the skills necessary to perform the work without creating an unreasonable risk of injury to others does not extend to an employee of the independent contractor.” (Minster v. Contadina Food, Inc. '00 Daily Journal D.A.R. 11509; Decert. & Rev. Gr. 1/17/01, '01 Daily Journal D.A.R. 938.) [File #197.]

2. WRONGFUL DEATH ACTION WILL LIE AGAINST PARTIES WHO ALLEGEDLY HASTENED A TERMINAL CANCER PATIENT’S DEATH: Causation was at issue here. Whether the defendant’s conduct contributed to the decedent’s death was a question of fact according to the Second Appellate District. “The plaintiff’s ‘inability to pin down the exact extent to which defendants’ conduct contributed to the outcome is immaterial for purposes of *causation*.” (Bird v. Saenz '01 Daily Journal D.A.R. 463.) [File #102.]

3. ESSENTIAL ELEMENT OF “FAVORABLE TERMINATION” IN MALICIOUS PROSECUTION CASE IS MISSING WHERE UNDERLYING ACTION CONCLUDES BY SETTLEMENT:

The Fourth Appellate District has concluded that “[w]here the underlying litigation ends by way of a negotiated settlement, there is no favorable termination for the purposes of pursuing a malicious prosecution action.” (Ferreira v. Gray, Cary, Ware & Freidenrich '01 Daily Journal D.A.R. 2163.) [File #113.]

4. FACTS DO NOT SUPPORT A FINDING THAT DEFENDANT IS SUCCESSOR-IN-INTEREST TO ORIGINAL TORTFEASOR:

The First Appellate District concluded that a defendant was not a successor-in-interest to a particular alleged tortfeasor because the purchase agreement defining the successor’s duties revealed that the successor had not assumed the seller’s liabilities. (Franklin v. USX Corp. '01 Daily Journal D.A.R. 2263.) [File #155.]

5. GENERAL RELEASE BARS SEX DISCRIMINATION ACTION: Relying upon Edwards v. Comstock Ins. Co., the Fourth Appellate District has held that “in the absence of evidence to the contrary, language in a workers’ compensation release stating that all claims are waived means just that, unless the release specifies otherwise.” (Jefferson v. California Dept. of Youth Authority ’01 Daily Journal D.A.R. 2999.) [File #169.]

6. EXPRESSIONS OF OPINION DO NOT ESTABLISH CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION: Plaintiffs sought to recover for negligent misrepresentation from an accounting firm. Plaintiffs alleged that the accountants misrepresented both the value of a building and that the title of the property would not present a problem in securing financing. The Fourth Appellate District held that both “representations” were mere opinion and, as a result, neither were actionable. The court noted that, “Value is quintessentially a matter of opinion, not a statement of fact.” (Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells ’00 Daily Journal D.A.R. 637.) [File #38.]

7. DOCTRINE OF PRIMARY ASSUMPTION OF THE RISK BARS PLAINTIFF’S RECOVERY FOR INJURIES SUSTAINED WHILE OFF-ROADING: The Fourth Appellate District has held that “the sport of off-roading involves inherent risks that the participants in this recreational activity may be involved in inadvertent motor vehicle collisions and may suffer serious injury or death.” Consequently, the court affirmed the trial court’s grant of summary judgment in favor of the defense. (Distefano v. Forester ’00 Daily Journal D.A.R. 131.) [File #48.]

8. PATIENT STATES CLAIM FOR INVASION OF PRIVACY BASED UPON PHYSICIAN’S FAILURE TO INFORM HER THAT THE INDIVIDUAL OBSERVING HER EXAMINATION WAS NOT A HEALTH CARE PROVIDER: Noting that, “It cannot be disputed that medical examinations involve private matters,” the Second Appellate District held that a cause of action for invasion of privacy was viable where a physician failed to inform the plaintiff that an individual present while she was being examined intimately was a drug salesman and not a health care professional. (Sanchez-Scott v. Alza Pharmaceuticals ’01 Daily Journal D.A.R. 631.) [File #201.]

9. IN A MALICIOUS PROSECUTION ACTION, ADEQUACY OF INVESTIGATION IS IRRELEVANT IN DETERMINING WHETHER THE DEFENDANT LACKED PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDINGS: In determining whether the essential element of lack of probable cause was present in an action filed subsequent to a verdict vindicating the plaintiff of criminal charges, the test to determine whether facts were sufficient to establish probable cause was “whether it was objectively reasonable for the defendant (Raging Waters) to suspect the plaintiff (Ecker) had committed a crime.” Although the Second Appellate District held that the facts did not support a cause of action for malicious prosecution, it also held that the facts

were sufficient to survive nonsuit as to false imprisonment, negligent infliction of emotional distress, and negligent training and/or supervision of employees. Employees of Raging Waters had detained the plaintiff for more than three hours. (Ecker v. Raging Waters Group, Inc. '01 Daily Journal D.A.R. 2971.) [File #224.]

10. REALTOR MAY BE ENTITLED TO INDEMNITY FROM HOME INSPECTION COMPANY: A “realtor who is sued for negligent nondisclosure of defects in real property [may] obtain equitable indemnity from a home inspection company that allegedly breached its duty to the purchaser to discover and disclose” defects, according to the Second Appellate District. (Leko v. Cornerstone Home Inspection '01 Daily Journal D.A.R. 1247.) [File #288.]

11. “SUBSTANTIAL IMPAIRMENT” WITHIN THE MEANING OF CALIFORNIA’S “LEMON LAW” IS MEASURED BY AN OBJECTIVE TEST: It is not just any impairment which invokes the protections afforded by California’s “Lemon Law.” To qualify for replacement of a motor vehicle or restitution, the plaintiff must establish that a “reasonable person” would consider the vehicle defective. (Lundy v. Ford Motor Company '01 Daily Journal D.A.R. 2151.) [File #295.]

TRIAL

POST-JUDGMENT INTEREST RUNS FROM DATE OF ORIGINAL JUDGMENT: Rejecting a contention that post-judgment interest begins to run from the date the remittitur issues following resolution of an appeal, the Second Appellate District has held that post-judgment interest begins to run from the date of entry of judgment of the original verdict. (Ehret v. Congoleium Corp. '01 Daily Journal D.A.R. 1915.) [File #148.]