

The Morrison Law Journal
January 2008
Volume III, Edition 1

Court of Appeal Rules That Co-Defendant To Personal Injury Matter Sued on
Negligent Entrustment Theory Will Be Considered An Independent Tortfeasor
For Purposes Of Proposition 51 And The Other Co-Defendants Will Only Be
Severally Liable For The Plaintiff's Non Economic Damages

By: Edward F. Morrison, Jr., Esq.
Christina S. Karayan, Esq.

In a surprisingly simple but important ruling, the Court of Appeal, Second Appellate District, has recently ruled that, for purposes of California's "several" liability statute, known as Proposition 51, a defendant in a personal injury matter which has been sued on a negligent entrustment theory will be considered to be an "independent" tortfeasor and the remaining co-defendants will only be liable for that defendant's proportionate fault of the plaintiff's noneconomic damages.

This decision was issued in the matter of Bayer-Bel v. Litovsky (2008) DJDAR 1372 ("Bayer-Bel case"). In the Bayer-Bel case, sixteen year old Anna Litovsky and a female friend left school (during the school day) to attend a party. The pair were transported in a Chevrolet Tahoe owned by Anthony Mosley. Mr. Mosley drove the vehicle to the party and a third friend, Eugene Green, accompanied them as well. Ms. Litovsky and her female friend later left the party in Mr. Mosley's vehicle with the female friend operating the vehicle. Mr. Green accompanied them but Mr. Mosley, who had been drinking alcohol, remained at the party. Ms. Litovsky later decided to return to the party with Mr. Green and drove Mr. Mosley's vehicle in spite of the fact that she did not have a driver's license or permit. She drove the vehicle down the wrong side of a street and had a head on collision with a vehicle operated by Paulette Bayer-Bel.

Ms. Bayer-Bel then filed a lawsuit for personal injuries against Ms. Litovsky, Mr. Mosley and Mr. Green. At trial, after a verdict in favor of the plaintiff, the trial court ruled that California's several liability law, found in Civil Code section 1431, did not apply in favor of Ms. Litovsky and that she was liable for all of the plaintiff's noneconomic damages. Ms. Litovsky appealed.

Under Civil Code section 1431, a defendant in a personal injury matter is only severally liable for the plaintiff's economic damages. An exception to this rule, however, is where the defendant is only liable based on a derivative theory such as a nondelegable duty arising from the employer's status as an employer. See, Miller v. Stouffer (1992) 9 Cal.App.4th 70. The theory to this exception is

that such a defendant is only secondarily liable (or vicariously liable) in the first place and should not be entitled to the benefits of the several liability statute which contemplates comparative fault among independent tortfeasors.

In the Bayer-Bel case, the Court of Appeal reversed the trial court's order and found that Litovsky was entitled to the benefits of the several liability statute found in Civil Code section 1431 because the case involved at least two "independently acting" defendants who were primarily liable for the plaintiff's injuries.

The Bayer-Bel case is an important decision and should be considered in evaluating damages exposure in multiple defendant personal injury matters.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Christina S. Karayan is a senior associate of The Morrison Law Group, a professional corporation. Their biographies can be viewed at www.morrisonlawgroup.com.

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