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State Supreme Court Opens Oral Argument Calendar Tomorrow in San Francisco

San Francisco—The California Supreme Court will hear oral arguments in 8 cases tomorrow and Wednesday, May 24–25, 2011, in the Supreme Court Courtroom, Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California. Legal briefs in all cases to be argued are posted on the California Courts website at

<http://www.courts.ca.gov/13967.htm> .

The court's calendar with case summaries appears below and is posted at <http://www.courts.ca.gov/smay24g.pdf> . The Supreme Court will issue a written opinion in each case within 90 days of oral argument.

SUPREME COURT OF CALIFORNIA ORAL ARGUMENT CALENDAR SAN FRANCISCO SESSION MAY 24 and 25, 2011

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, MAY 24, 2011—9:00 A.M.

(1) *Howell v. Hamilton Meats & Provisions, Inc., S179115 (Klein, P.J., assigned justice pro tempore)*

#10-25 Howell v. Hamilton Meats & Provisions, Inc., S179115.

(D053620; 179 Cal.App.4th 686; Superior Court of San Diego County;

GIN053925.) Petition for review after the Court of Appeal reversed a postverdict order in a civil action. This case presents the following issues: (1) Is the “negotiated rate differential”—the difference between the full billed rate for medical care and the actual amount paid as negotiated between a medical provider and an insurer—a collateral source benefit under the collateral source rule, which allows plaintiff to collect that amount as economic damages, or is the plaintiff limited in economic damages to the amount the medical provider accepts as payment? (2) Did the trial court err in this case when it permitted plaintiff to present the full billed amount of medical charges to the jury but then reduced the jury’s award of damages by the negotiated rate differential?

(2) *Voices of the Wetlands v. Cal. State Water Resources Control Bd. (Duke Energy Moss Landing LLC et al., Real Party in Interest), S160211 (Kitching, J., assigned justice pro tempore)*

#08-61 *Voices of the Wetlands v. Cal. State Water Resources Control Bd. (Duke Energy Moss Landing LLC et al., Real Party in Interest), S160211. (H028021; 157 Cal.App.4th 1268; Superior Court of Monterey County; M54889.)* This case presents the following issues: (1) whether the Central Coast Regional Water Quality Control Board (Regional Water Board) correctly found that a powerplant’s cooling water intake system represented “the best technology available for minimizing adverse environmental impact” (33 U.S.C. § 1326(b)), (2) whether, in an administrative mandamus action, the court may order an “interlocutory remand” for further evidence and findings by the agency, and (3) whether, under the circumstances of this case, the Warren-Alquist Act (Pub. Resources Code, § 25000 et seq.) gave this court exclusive jurisdiction to review the Regional Water Board’s determination.

(3) *People v. McKinnon (Crandell), S077166 (Turner, P.J., assigned justice pro tempore) [Automatic Appeal]*

This matter is an automatic appeal from a judgment of death.

2:00 P.M.

(4) *Baker v. W.C.A.B and X.S., S179194 (Lambden, J., assigned justice pro tempore)*

#10-35 *Baker v. W.C.A.B. and X.S., S179194. (H034040; 179 Cal.App.4th 1009.)*

Petition for review after the Court of Appeal annulled a decision of the Workers’

Compensation Appeals Board. This case presents the following issue: When do cost-of-living adjustments under Labor Code section 4659, subdivision (c), for payments for total permanent disability and life pensions begin?

(5) *People v. Lowery (Eddie Jason), S179422 (Zelon, J., assigned justice pro tempore)*

#10-38 *People v. Lowery (Eddie Jason), S179422. (E047614; 180 Cal.App.4th 630; Superior Court of Riverside County; INF062558.)* Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Is Penal Code section 140, subdivision (a), which makes it a crime to threaten a victim or witness who provided assistance to law enforcement, unconstitutionally overbroad, because it fails to require either the specific intent to retaliate against the victim with the present ability to do so or the specific intent that the threat be communicated to the potential victim?

(6) *Ardon v. City of Los Angeles, S174507*

#09-51 *Ardon v. City of Los Angeles, S174507. (B201035; 174 Cal.App.4th 369; Superior Court of Los Angeles County; BC363959.)* Petition for review after the Court of Appeal affirmed an order striking class action allegations in a civil action. This case presents the following issue: Does Government Code section 910 authorize a class claim for refund of a local tax, or must each putative class member file his or her own claim prior to the filing of a class action suit?

WEDNESDAY, MAY 25, 2011—9:00 A.M.

(7) *Seabright Ins. Co. v. U.S. Airways (Anthony Verdon Lujan, Intervener, S182508 (Johnson, J., assigned justice pro tempore))*

#10-69 *Seabright Ins. Co. v. U.S. Airways (Anthony Verdon Lujan, Intervener, S182508. (A123726; 183 Cal.App.4th 219; Superior Court of San Francisco County; 458707.)*

Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: When an employee of an independent contractor sustains an on-the-job injury, can the hirer of the contractor be liable on the theory that the hirer's breach of a nondelegable duty contained in a statute or regulation constituted an

“affirmative contribution” to the injury within the meaning of *Hooker v. Dept. of Transp.* (2002) 27 Cal.4th 198, 212, footnote 3?

(8) *People v. Mendoza (Ronald), S065467 (Bruiniers, J., assigned justice pro tempore) [Automatic Appeal] (To be called and continued to a future oral argument session.)*

This matter is an automatic appeal from a judgment of death.

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