Court of Appeal, Second Appellate District, Division 3
Nos. B188076 (Lead) and B189254

No. S152360

IN THE SUPREME COURT OF CALIFORNIA

ALEXANDRA VAN HORN, Plaintiff and Appellant,

v.

ANTHONY GLEN WATSON, Defendant and Appellant;

LISA TORTI, Defendant and Respondent

and Consolidated Case.

PLAINTIFF AND APPELLANT'S [redacted] BRIEF ON THE MERITS

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PLAINTIFF AND APPELLANT'S REPLY BRIEF ON THE MERITS

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I. ISSUE PRESENTED

Whether or not the unqualified immunity afforded by California Health & Safety Code Section 1799.102 (hereafter "H&S") applies to mere rescue efforts or assistance or is limited to those persons who render emergency "medical" care at the scene of a "medical" emergency.

II. STATEMENT OF THE CASE

A. PRELIMINARY STATEMENT

The factual summary is derived from the Statements of Material Facts submitted by the parties in connection with Defendant and Respondent LISA TORTI's Motion for Summary Judgment to the trial court. (See A.A., Vol. II[1], p. 233-241; p.242-253). The facts are presented in the light most favorable to Plaintiff and Appellant ALEXANDRA VAN HORN consistent with the reviewing Court's duty to independently review the propriety of the lower court's ruling and strictly construe the evidence submitted by the moving party and liberally construe that of the opposing party. ***Zavala v. Arce*** **(1997) 58 Cal.App. 4th 915 [68 Cal.Rptr. 2d 571].**

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[1] "A.A." refers to Appellant's Appendix in Lieu of clerk's transcript.

B. DRAMATIS PERSONNAE

Appellant ALEXANDRA VAN HORN (herein after "VAN HORN"), Respondent LIZA TORTI (hereinafter "TORTI") and one JONELLE FREED (hereinafter "FREED") were friends and co-workers. Defendant/Cross-Complainant and Co-Appellant ANTHONY GLEN WATSON (hereafter "WATSON") and Defendant in default DION DUPREE OFOEGBU (hereafter "OFOEGBU") were friends. (A.A. Vol. II p. 243, Exhibit "I").

C. THE EVENTS OF OCTOBER 30/31, 2003

VAN HORN, TORTI, WATSON, OFOEGBU and FREED, were a group of young people who got together on the evening of October 30, 2003 for drinks and socializing. After having spent about three hours in a club in Woodland Hills, California, the group got into two cars, driven by WATSON and OFOEGBU, respectively, in order to drive the three girls; VAN HORN , TORTI and FREED, to TORTI's house where the girls planned to spend the night. (A.A. Vol. II, pp. 243-244, Exhibit "I").

Upon leaving the club, VAN HORN got into the right front passenger seat of WATSON's vehicle while FREED occupied the right rear passenger seat. TORTI rode in the OFOEGBU vehicle. (A.A., Vol. II p.234, Exhibit "H"). Traveling northbound on Topanga Canyon Boulevard, WATSON lost control of his vehicle claiming he swerved to avoid an animal and collided with a light pole. (A.A. Vol. II p. 244, Exhibit "I", Vol. II p. 234, Exhibit "H"). The

OFOEGBU vehicle was also traveling northbound on Topanga Canyon Boulevard but was several seconds to a minute behind the WATSON vehicle. (A.A. II p.235, Exhibit "H").

As a result of the collision, WATSON's vehicle came to rest against the light pole. (A.A. Vol. II, p.234, Exhibit "H"). The air bags in the front of WATSON's vehicle deployed (A.A.Vol. II p. 245, Exhibit "I"). WATSON sat in the vehicle for a few minutes and then exited on his own. (A.A. Vol. II p. 237, Exhibit "H"). FREED remained in the rear seat, unable to move or speak and was in pain. (A.A. Vol. II p.237, Exhibit "H"). VAN HORN was stunned but conscious and able to unhook her seatbelt. (A.A. Vol. II p. 238, Exhibit "H"). She was in intense pain but could feel her legs. (A.A. Vol. II p. 250, Exhibit "I").

When OFOEGBU arrived at the scene he parked his vehicle about 20 feet behind WATSON's vehicle at the curb. (A.A. Vol. II p.235, Exhibit "H"). TORTI had not observed the actual collision but observed the result when OFOEGBU's vehicle arrived at the scene. (A.A. Vol. II p. 235, Exhibit "H").

After the collision, WATSON saw some "smoke" in the glare of his headlights but it was dissipating and he could not determine the origin. (A.A. Vol. II p. 236, Exhibit "H"). No one smelled gasoline or other unusual odors. (A.A. Vol. II p. 236, Exhibit "H") nor did anyone see sparks or flames. (A.A. Vol. II p.237, Exhibit "H"). At no time did the vehicle catch fire or explode.

(A.A. Vol. I pp. 119-127, Exhibit "E-D").

D. TORTI'S ACTIONS

Earlier in the evening, when FREED, and VAN HORN met TORTI at her house, TORTI and VAN HORN smoked some marijuana. (A.A. Vol. II, p.235, Exhibit "H"). By nature, TORTI was extremely excitable, hyperactive and given to outlandish behavior. (A.A. Vol. II p.235, Exhibit "H").

Upon arriving at the scene, TORTI observed that the WATSON vehicle had collided with a pole causing the pole to fall into a nearby building. (A.A. Vol. II p. 245, Exhibit "I"). TORTI claimed to have seen an unidentified liquid coming from underneath the WATSON vehicle. (A.A. Vol. II p. 246, Exhibit "I"). TORTI ran to the WATSON vehicle shouting "the car is going to blow up" and "we have to get you out." (A.A. Vol. II p.238, Exhibit "H"). TORTI then opened the passenger door, grabbed VAN HORN by the arm and yanked her out of the vehicle "like a rag doll." (A.A. Vol. II p.239, Exhibit "H"). In spite of her alleged concern that the vehicle was going to "blow up" TORTI then lay VAN HORN down across the light pole within arms reach of the vehicle. (A.A. Vol. II p. 239, Exhibit "H"). FREED observed that when TORTI pulled VAN HORN from the vehicle it caused VAN HORN's body to contort. (A.A. Vol. II p. 237, Exhibit "H").

Before she extricated VAN HORN from the vehicle TORTI knew that the only smoke at the scene had come from the air bags. (A.A. Vol. II p. 236,

Exhibit "H", A.A. Vol II p. 246, Exhibit "I"). She knew there was no danger of fire. (A.A. Vol. II p. 248, Exhibit "I"). TORTI also admitted that she never smelled gasoline. (A.A. Vol. II p.249, Exhibit "I"). Moreover, OFOEGBU told TORTI not to touch VAN HORN until the paramedics arrived but she did not respond. (A.A. Vol. II p.405, Exhibit "M"). Her actions were described as "freaking out" and "hysterical." (A.A. Vol. II p.323, 324, Exhibit "G-8"; p.405, Exhibit "M").

Paramedics were on the scene within a few minutes of the collision and VAN HORN and FREED were removed by them from the scene. (A.A. Vol. II p.239, Exhibit "H," p.251, Exhibit "I").

As a result of the collision and aftermath VAN HORN was rendered a paraplegic and suffered other injuries. A material issue of fact remains as to whether TORTI's actions exacerbated VAN HORN's injuries including the movement of some bone fragments in her spine causing the paraplegia. (A.A. Vol. 2 p.238-239, p.251, p.443).

III. PROCEDURAL HISTORY

Plaintiff/Appellant agrees with the Statement of Procedural History as set forth in TORTI's Opening Brief, p.5, except that the trial court did specifically find that the immunity provided by H&S Section 1799.102 was not limited to those persons who rendered emergency "medical" care. (A.A. Vol. II p.460).

IV. ARGUMENT

A. TORTI's ACTIONS ON THE NIGHT IN QUESTION ARE NOT THE ACTIONS THAT SOCIETY SHOULD ENDEAVOR TO PROTECT

Defendant and Respondent has, as she has done throughout the appellate process, grossly distorted the facts underlying this case. She claims, on page 4 of her Opening Brief, that she "then moved Ms. VAN HORN from the vehicle to the ground nearby." In truth, and in keeping with the requirement that the evidence be viewed in the light most favorable to the party opposing summary judgment, TORTI, ignoring warnings from her boyfriend not to touch VAN HORN, grabbed VAN HORN by the arm and yanked her out of the car "like a rag doll." Instead of carrying VAN HORN some distance away which would have been consistent with her claim that she thought the vehicle was going to explode, TORTI simply dropped VAN HORN across the fallen light pole within a few feet of the vehicle, the very vehicle TORTI allegedly believed was about to explode. (A.A. Vol. II, p. 239, p. 331,Exhibit "H").

Appellant submits that there is purpose to TORTI's continued effort to misrepresent the factual record. The actions on the night in question were precisely those of the "officious intermeddler" to whom the legislature was unwilling to extend immunity coverage. Moreover, her behavior is indicative of the need for a rule of law which holds a volunteer to a duty of due care.

TORTI and her conduct stand as the "poster child"for the need for a society to find an acceptable balance between rewarding and encouraging citizens to come to the aid of one another yet discourage acts by citizens that are beyond their training and qualification or are taken where no action is required or prudent motivated by a selfish desire to bask in a hero's limelight. Equally important from a public policy perspective is the desirability of protecting accident victims from the consequences of such officious intermeddling.

Over the years the legislature has attempted to strike this balance by enacting various specific immunity statutes while leaving the common law rule in place. TORTI argues (Opening Brief, p.7) that in adopting H&S Code Section 1799.102, the legislature purposefully abrogated the common law rule but her argument is not supported in logic nor in any case decision nor in any expression of legislative intent.

B. TORTI IS NOT OF THE CLASS OF PERSONS THE LEGISLATURE INTENDED TO IMMUNIZE

In striking a balance between society's desire to encourage those with special knowledge, skill or training to assist others in a time of need and society's need to protect victims from undesirable interference by persons without the requisite qualifications or who are acting out fantasies of heroism recognition, or who are simply acting irrationally, the legislature has adopted a series of immunity statutes for specific classes of persons and/or specific

types of actions. Although these are sometimes referred to as "good Samaritan" statutes they are, in reality, immunity statutes whose function is to carve out particular exceptions to the common law rule.

The common law rule is still the law of California. ***Williams v. State of California* (1983) 34 Cal.3d 18 [664 P.2d 137;192 Cal.Rptr. 233]** was decided five years after the adoption of H&S Code Section 1799.102. For decades, California juries have been instructed in the common law rule. See California Jury Instructions [BAJI] Civil Instruction 4.45 p. 86 (9th Ed.) and Civil Jury Instructions [CACI] Instruction 450 p. 271 (Spring 2007 Ed.).

There is nowhere to be found any expression of legislative intent that in enacting H&S Section 1799.102, or any other particular immunity statute, the legislature intended an abrogation of the common law rule. But to adopt the position espoused by TORTI in this case, this court would be doing exactly that. Under TORTI's argument, **every** person who does **any** act at the scene of any emergency, no matter how outrageous, no matter how unnecessary, no matter how harmful would be completely immune. The common law rule would be eviscerated rather than carefully and surgically altered which is the course the legislature has chosen to follow.

Clearly TORTI does not fit into any of the class of persons granted specific immunity over the years. California Business & Professions Code, Sections 2395-2398, physicians; Business & Professionals Code, Sections

2727.5, nurses, Business & Professions Code, Sections 1627.5, dentists. Health & Safety Code Section 1317(f), rescue teams, Health & Safety Code, Section 1799.104, paramedics and others. Therefore, her only avenue of escape for the consequences of her outrageous behavior is H&S Section 1799.102 which applies to "any person." But clearly the legislature did not mean to immunize "any person" for "any act." Had it so intended it surely would have clearly stated its intent since the consequence of its action would have meant the abrogation of the common law rule. Additionally, as the Court of Appeal pointed out, it would have placed this particular grant of immunity in the Civil Code not in Chapter 2.5 of the Health & Safety Code designated as "the Emergency Medical Services" act.

TORTI asserts that the language "no person who . . . renders emergency care at the scene of an emergency . . . " covers her alleged rescue attempt of VAN HORN. But the section itself, unlike Section 1799.107[2], provides no definition of the terms: "emergency care" or "scene of an emergency."

It is therefore necessary to determine legislative intent through traditional means, as done by the Court of Appeal.

TORTI's discussion of this issue (Opening Brief, Section B.1) ignores some critical principles of statutory construction and applies strained reasoning

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[2] Section 1799.107 which grants a qualified immunity to emergency rescue personnel specifically defines "emergency service." Subsection (e)

to others in an attempt to bolster her argument.

As the Court of Appeal correctly noted, the primary duty in interpreting a statute is to determine and effectuate legislative intent. ***Brodie v. Workers' Appeals Bd.*** **(2007) 40 Cal.4th, 1313, 1324 [156 P.2d 1100, 57 Cal.Rptr.3d 644]**. And, of particular importance here, this court further held in ***Brodie*** that "[w]e do not presume that the legislature intends, when it enacts a statute to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied." **Id.** at 1325 (Citation). There is no "clearly expressed" intent by the legislature to overthrow the common law "good Samaritan" rule nor is any such intent necessarily implied.

While a statute needs no interpretation if the words are clear and unambiguous, ***Microsoft Corp. v. Franchise Tax Bd.*** **(2006) 39 Cal.4th 750, 758 [139 P.3d 1169, 47 Cal.Rptr. 3d 216]**, and words used should ordinarily be given the meaning they bear in ordinary use, ***Lungren v. Deukmejian*** **(1988) 45 Cal.3d 727 [755 P.2d 299; 248 Cal.Rptr. 115]**, the "plain meaning" rule does not mean that courts must interpret a statute in accordance with its literal meaning if that would frustrate rather than promote the stated purpose of the act, cause disharmony with other provisions of the act or lead to absurd results, ***In Re Kadi D*** **(1995) 37 Cal.App.4th 381,386 [37 Cal.Rptr. 2d 581]**; ***Giles v. Horn*** **(2002) 100 Cal.App.4th 206, 219-220 [123 Cal.Rptr.2d 735]** "The intent prevails over the letter, and the letter will, if possible, be so read as to

conform to the spirit of the act." ***Lungren v. Deukmejian, supra*, p.735**.

In determining the intended meaning of the words "emergency care" and "scene of an emergency" the Court of Appeal considered three primary issues: the definition of "emergency" provided in the act itself; the location of the immunity provision and the statement of legislative intent and purpose found within the act.

The immunity section TORTI relies upon to shield her from her alleged rescue attempt (clearly nothing she did could remotely be considered as the rendering of medical care or medical services) is in H&S Code Section 1799.102 which is a part of Division 2.5 of the code and is entitled **Emergency Medical Services.**" It was enacted as part of the "**Emergency Medical Services System and the Prehospital Emergency Care Act**."

The statute defines "emergency" as "a condition or situation in which an individual has a need for immediate medical attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." H&S Section 1797.70.

Even without looking to legislative history the Court of Appeal correctly determined, from the statute's clear expression of legislative purpose and intent, that the immunity provided in Section 1799.102 was available only to those persons who voluntarily provide "medical services at the scene of a medical" emergency. The legislature expressed its findings, intent and purpose which

was to provide a scheme to enhance the delivery of "medical" services to the citizens of California.

Section 1797.1 expresses the "legislative findings" as follows:

> The Legislature finds and declares that it is the intent of this act to provide the state with a statewide system for **emergency medical services** by establishing within the Health and Welfare Agency the Emergency Medical Services Authority, which is responsible for the coordination and integration of all state activities **concerning emergency medical services.** (Emphasis added).

Section1797.5 expresses legislative intent and policy:

> It is the intent of the Legislature to promote the development, accessibility, and provision of **emergency medical services** to the people of the State of California.
>
> Further it is the policy of the State of California that **people shall be encouraged and trained to assist others at the scene of a medical emergency.** Local governments, agencies, and other organizations shall be encouraged to offer **training in cardiopulmonary resuscitation and lifesaving first aid techniques so that people may be adequately trained, prepared, and encouraged to assist others immediately.**

Additionally, the legislature's goal was to provide state direction and supervision over emergency medical services in order to provide for state action immunity under federal antitrust statutes necessitated by the U.S. Supreme Court in holding in ***Community Communications Co. Inc. v. City of Burbank*** **455 U.S. 40, 70 L. Ed. 2d 810, 102 S. Ct. 835**. H&S Section 1797.6.

The Court of Appeal also relied upon the fact that the immunity provision was placed in this division, providing for a statewide system for delivery of emergency medical services, not in the civil code which would be the logical place for a statute abrogating the common law "good Samaritan" rule. The common law rule has been in place for decades in this state and undoubtedly many if not all other states as well. Restatement Second of Torts, Section 323. Given the longevity and widespread use of this principle of law, it strains logic to the breaking point to suggest that the legislature intended a complete abrogation of the rule by placing an unqualified immunity provision in the Health & Safety Code with no clearly stated intent to do so.

Indeed, if such an intent was present it completely escaped this court and the publishers of the widely used guides for instructing juries on the civil law of California. [3] Most recently this court has reiterated the common law rule in ***Artiglio v. Corning*** **(1998) 18 Cal.4th 604, 613 [957 P 2d 1313; 76 Cal.Rptr.2d 479]**citing ***Williams v. State of California*** **(1983) 34 Cal.3d 18 [664 P2d 137; 192 Cal.Rptr.233].** *Williams*, decided five years after the adoption of H&S Code Section 1799.102 cited with approval the decision in ***Mann v. State of California*** **(1977) 70 Cal.App. 3d 773 [139 Cal.Rptr. 82]**

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[3] Judicial Council of California, Civil Jury Instructions (CACI) Instruction No. 450, P. 271 (Spring 2007 Ed.) California Jury Instructions (BAJI) Civil, Instruction No. 4.45, P. 88 (9th Edition 2007).

which held that the State could be liable for the actions of a state traffic officer who stopped to assist stranded motorists but then left the scene, without warning the stranded motorists, thereby removing the protections afforded them by his flashing lights.

Ten years after the adoption of Section 1799.102 this court noted a legislative trend to encourage volunteers by pointing out certain specified immunities that had been enacted including one for "nonprofessional persons giving cardiopulmonary resuscitation" under H&S Code Section 1799.102. ***Nally v. Grace Community Church*** **(1988) 47 Cal.3d 278, 298 [763 P. 2d 948 253 Cal.Rptr. 97].**

The Court of Appeal also relied upon the legislative history of Section 1799.102 noting that it was derived from former Section 1767 which specified that "no person who in good faith renders emergency medical care . . . " could be held liable. The word "medical" is absent in Section 1799.102 but because the stated purpose of former section 1767 was identical to the new statute no intention to broaden the scope of the immunity was indicated.

TORTI has asked this court to take judicial notice of Assembly Bill 1301 introduced in 1977 which ultimately led to the adoption of 1799.102 replacing Section 1767. In an apparent deliberate effort to mislead this court she states that "AB1301 was introduced to encourage citizens to help others." (Opening Brief, P. 23, Exhibit "A" to Request for Judicial Notice In Support of Opening

Brief). Far from TORTI's claim of a broad statement of purpose to "help others" the proposed legislation in each of its iterations contains nearly identical language in Section 1767 as follows:

> In order to encourage citizens to participate in emergency **medical** services training programs and to render emergency **medical** services to fellow citizens, no person who in good faith and not for compensation renders emergency care at the scene of an emergency . . . "

While the original AB1301 and each amended version contains the language "In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens" before describing the immunity, that language is absent from Section 1799.102. Nonetheless, that is not a valid argument for concluding that the legislature intended an expanded immunity beyond the rendering of "medical" services for two reasons. First, in none of the amendments is that language striken. Second, very similar language is found in the final enactment in H&S Sections 1797.5 and 1799.100. The Bill went through several amendments without any substantive changes to Section 1767. It is more reasonable to conclude that in final drafting the goal was to eliminate excess verbiage rather than completely, and apparently silently, change the character of the immunity.

As TORTI admits, the proposed legislation was motivated by Seattle, Washington's success in reducing the rate of death from heart attack by

promoting the training of its citizens in CPR. It is a stretch beyond reason to suggest that this history supports her contention that the immunity granted by Section 1799.102 was intended to apply to the type of conduct engaged in by TORTI in this case, which was a far cry from performance of CPR, advanced first aid, medical care or, for that matter, any "care" at all.

C. THE COURT OF APPEAL'S DECISION CREATES NO DISHARMONY WITH OTHER IMMUNITY PROVISIONS

TORTI argues that the Court of Appeal's decision would "eviscerate" the firefighter's immunity provided in H&S Code Section 1799.107. The argument presumes that interpreting 1799.102 to cover only "medical" services would require a similar interpretation applied to 1799.107. But, the two sections are different on several levels and there is absolutely no reason to assume that construction of the language in 1799.102 would require an identical construction for 1799.107.

Section 1799.102 applies to any "person" and was part of the original enactment. It evolved from former Section 1767. The declaration of intent and purpose in that section found its way into Section 1797.1, 1797.5 and 1799.100 of the 1978 enactment.

Section 1799.107, on the other hand applies to a specific class of people (public entity personnel employed as a member of a fire department) and contains its own declaration of purpose "that a threat to public health and safety

exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services." Furthermore, the section was adopted six years after the enactment of Chapter 2.5. Finally, unlike Section 1799.102 this section contains its own definition of "emergency services" in subsection (e).

Thus, the two sections address distinct public health and safety concerns and apply to different classes of people. The courts will have little difficulty in harmonizing the Court of Appeal's decision with 1799.107 which has self-contained statements of intent and definitions. As this court said in ***Troppman v. Valverde*** **(2007) 40 Cal.4th 1121, 1135 [156 P. 3d 328; 57 Cal.Rptr. 3d 306]** "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be **harmonized to the extent possible**." (Emphasis added). The operative concept is "harmony" not rigid conformity. The interpretation of 1799.102 has no conceivable impact on any other immunity provision in this or any other statutory provision.

D. SUBSEQUENT LEGISLATIVE HISTORY CONFIRMS LEGISLATIVE INTENT TO IMMUNIZE ONLY EMERGENCY "MEDICAL" CARE

During the 1991/92 legislative session the Senate and Assembly Committees On The Judiciary considered amendments to H&S Code Section

1799.102 that would have expanded the immunity granted in that section to include rescuers or persons providing non-medical care or aid to accident victims. (See "Committee Analyses; Senate and Assembly Committees On the Judiciary, A.A. Vol. III, p.p. 260-282; Exhibits J1-J4, Plaintiff/Appellant's Request To Take Judicial Notice in Support of Reply Brief, hereafter "RJN" Exhibits A-E.

The impetus for these proposed amendments was the bills' sponsors' reactions to a case which arose out of an automobile accident on the San Diego freeway, the facts of which are strikingly similar to the facts in the case at bench. In that case, three persons were in a vehicle which overturned in the roadway. An off-duty police officer and a citizen went to their assistance. They had pulled three people from the vehicle placing one of them (the eventual plaintiff) on the median while helping another over the center divider barrier. Another vehicle collided with the overturned vehicle which exploded in flames and struck the plaintiff resulting in further injuries. (A.A. Vol. II, p. 262, Exhibit "J-2"RJN, Exhibit B).

In discussing the need for expanding the immunity provisions of Section 1799.102 the committee specifically posed the question of whether "emergency care" included the kind of "simple, non-medical assistance provided by the two volunteers " in the San Diego Freeway case. (A.A. Vol. II p. 262, Exhibit "J-1", RJN Exhibit A). Declining to expand the immunity the committee

expressed its concern that such an amendment would "significantly expand the law, which has been commonly understood **to apply only to the provision of emergency medical care."** (A.A. Vol. II p.267, Exhibit "J-2", RJN Exhibit B p.2). (Emphasis added). The committee further expressed concern that the proposed immunity for "good faith rescue efforts" might be overly broad in several respects including covering "untrained volunteer[s] who may worsen the situation through his or her ignorance." (A.A. Vol. II p. 269, Exhibit "J-2", RJN Exhibit B p. 4). Moreover, the committee was concerned that the expansion of the immunity to include mere assistance or rescue efforts might result in "IMMUNIZING DAMAGES CAUSED BY THE CONDUCT OF AN OFFICIOUS INTERMEDDLER." (A.A. Vol. II p. 269, Exhibit "J-2", RJN Exhibit B p.4). (emphasis theirs).

The uncontroverted facts presented to the trial court established that Respondent TORTI was, at best, a mere rescuer, and at worst, an officious intermeddler and therefore not qualified to wear the cloak of immunity.

The refusal of the legislature to extend the immunity granted by H&S Code Section 1799.102 to non-medical care is a clear expression of legislative intent. It has been held that such post-enactment activities are of limited value in discerning legislative intent. ***Eastburn v. Regional Fire Protection Agency* (2003) 31 Cal.4th 1175 [80 P3d 656; 7 Cal.Rptr. 3d 552]; *People v. Sparks* (2002) 28 Cal.4th 71; [47 P 3d 289; 120 Cal.Rptr. 2d 508]. *Dyna-Med, Inc.***

v. Fair Employment & Housing Com. **(1987) 43 Cal. 3rd 1379 [743 P2d 1323; 241 Cal.Rptr. 67];*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App. 2d 41 [73 Cal.Rptr.855]; *Ambrose v. Cranston* (1968) 261 Cal.App.2d 137 [68 Cal.Rptr. 22].** But, these cases do not hold that consideration of such post-enactment inaction is improper. In fact, the Supreme Court in ***Dyna-Med,*** **supra**, did discuss the post-enactment inactivity after stating that "unpassed bills, as evidence of legislature intent, have little value. **43 Cal.3d at 1396.** (emphasis added.) The other cases refused consideration of such indicia of legislative intent because the legislation proposed but not enacted was an omnibus bill that would have overhauled an entire code, ***People v. Sparks*****, supra, 28 Cal.4th at 87 fn 20**; or because the proposed amendments were subject to conflicting inferences; ***Sacramento County Bd. Of Supervisors*****, supra, 263 Cal.App 2d at 58;** ***Ambrose v. Cranston*****, supra, 261, Cal.App. 2d at 143** and ***Eastburn v. Regional Fire Protection Authority,*** **supra, 31 Cal.4th at 1184.**

In this case the analysis by the legislative committees contain no conflicting interferences. The committees were asked to alter Section 1799.102 to specifically accommodate a factual situation almost identical to the one at issue here. In rejecting the proposed amendment the legislative committee acted consistently with the overall purpose and intent of the legislative scheme.

TORTI refers to AB 1252 and contends that it supports her theory that Section 1799.102 was always intended by the legislature to immunize mere rescue efforts. She states, at page 27 of her opening brief "Thus, the Legislature did not view AB 1252 as an attempt to re-write or change the intent of Section 1799.102, but rather viewed it as a clarification of law that already was widely known." This careless, or possibly deliberate, verbal slight of hand claims to characterize the "legislature's" view of AB 1252 when in fact it was only the view of the author and the Bill's sponsor, the City of Los Angeles. [4]

Nevertheless, the Bill failed and was amended May 8, 1991 eliminating the original language regarding a definition of "emergency"and replacing it with "This bill would extend the above protection to emergency assistance." (Exhibit E(b) to Defendant and Respondent's Request for Judicial Notice). (Emphasis added.) If anything this history confirms that the author, consistent with the analysis of the Senate Committee On the Judiciary, understood that Section 1799.102 did not provide immunity for rescue or assistance efforts or there would have been no need to "extend" the immunity.

Regardless of who opposed or supported efforts to amend Section 1799.102 in the early 90's the fact remains that the legislature declined to do so

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[4] TORTI also claims that the case generated a "huge public outcry" without citation to a single source in support of her factual assertion.

and the only clearly articulated reason was that of the Senate Judiciary Committee's Analysis that to do so would encourage acts by "untrained volunteers who may worsen the situation through his or her ignorance" or shield the "OFFICIOUS INTERMEDDLER."

E. THE COURT OF APPEAL'S DECISION DOES NOT CREATE UNWORKABLE DISTINCTIONS FOR ORDINARY PEOPLE.

TORTI's argument that the Court of Appeal's decision creates unworkable distinctions for ordinary people completely ignores the fact that some distinctions have been in place for decades with no evidence documenting that such distinctions have produced any difficulties among "ordinary people" much less the "catastrophes" claimed in her brief. Anyone would be hard pressed to argue that the existence of a common law good Samaritan rule has any chilling effect on the actions of ordinary people when confronted with an emergency and certainly no one has yet produced any anecdotal, statistical or other evidence to that effect. The newspapers frequently carry stories of heroic behavior by "ordinary people" who apparently consistently act without pausing to give thought to their potential liability.

Section 1799.102 has been on the books since 1978 and, as we have seen, no California case has yet been decided establishing that it in fact grants immunity to people who render some form of assistance or attempt a rescue

effort. Yet for all these years people have been responding unselfishly to come to the aid of others. TORTI herself offered no testimony that she responded to the perceived need to "rescue" VAN HORN only after reassuring herself that she was covered by some immunity. Indeed, had she done so no one would have believed her.

TORTI goes on to argue that the Court of Appeal decision instructs that we should encourage health care professionals to respond on a volunteer basis but "discourage ordinary people" from giving assistance at the scene of an emergency. This argument is fallacious on two levels. First, it misrepresents the legislature's stated purpose to "encourage" and "train" people to assist others at the scene of a medical emergency. H&S Code Section 1797.5. The legislature wanted to "provide the state with a statewide system for emergency medical services." H&S Code Section 1797.1. Moreover, the chapter of the legislation containing the various immunities begins with Section 1799.100 which declares that "in order to encourage local agencies and other organizations to train people in **emergency medical services**, no local agency . . . or organization which sponsors . . . the training of people or certifies those people, excluding physicians and surgeons . . . in **emergency medical** services shall be liable . . . " This court must take the legislature at its word which was that it was concerned with providing the citizens of California better access to emergency **medical** services particularly cardiopulmonary resuscitation. The

legislature was not concerned with the encouragement or discouragement of ordinary people providing general assistance to others. It was not concerned with whether or not the ordinary person would discern where emergency medical care begins and ends. Presumably, it understood that common sense would answer that question for most people in that the difference between giving CPR, applying a tourniquet or attempting to immobilize a broken bone are different than carrying someone from a burning car or building.

Secondly, there is nothing in the Court of Appeal's decision that would discourage ordinary people from helping others. The Court's decision has no impact on the common law good Samaritan rule. It bears repeating that under that rule the volunteer is held only to a duty to act as the ordinarily prudent person would act under the **same or similar circumstances**. If the Watson vehicle had actually been on fire and **if** TORTI had pulled VAN HORN out of the vehicle and carried her to a place of safety this case would never have been filed. It is inconceivable that a rational jury or trial court would find that enhancing someone's spine injury in the process of saving them from burning to death would be inconsistent with the acts of the ordinarily prudent person confronted with those circumstances.

TORTI points to the Disaster Service Worker Volunteer Program (**Govt. Code Section 8657**) and argues that the Court of Appeal's decision would have a chilling effect on the "convergent volunteers." Section 8657 of the

Government Code grants immunity only to those "unregistered persons duly impressed into service during a state of war emergency, a state of emergency . . . complying with or attempting to comply with any order . . ." Such persons, who are "impressed into service" could hardly feel any chilling effect from the Court of Appeal's decision since there is no choice involved on their part in the first place. Additionally, the Governor's Office of Emergency Service obviously disagrees with TORTI's argument since it was content to make a distinction between those persons trained in disaster relief ("registered DSW volunteers") and those who are not ("convergent volunteers"). The trained volunteers enjoy "limited immunity" from liability but only so long as their acts don't involve "unreasonable acts beyond the scope of DSW training." (Exhibit G to Request For Judicial Notice For Support of Petition For Review, p. 8 "Immunity from Liability"). In fact, the non-trained volunteers, according to the Governor's Office for Emergency Services, have **some** liability **protection** for disaster service under Good Samaritan Laws. They are not, however, provided immunity to the extent as registered DSW Volunteers . . ." (Id. At p. 8 "Good Samaritan Laws").

This is yet another example of the "balancing" effort discussed earlier in this brief. The legislature and the Governor's office have clearly drawn a distinction between trained and untrained volunteers. One can only conclude that the legislature intended by that to encourage training and reward acts done

within the scope of that training while leaving untrained volunteers to the more limited "protection" of the Good Samaritan laws.

Thus, the chilling effect on volunteers in a natural or man-made disaster are non-existent. But even if there might be some untrained volunteers who withhold assistance because of some fear of liability that is entirely consistent with the legislative scheme, seen throughout its enactments, that there is far greater public good to be obtained through training and measured response by professional or semi-professional citizens than there is by granting unqualified immunity to any person who does any act at the scene of any emergency regardless of the circumstances.

V. CONCLUSION

Defendant and Respondent's position that H&S Code Section 1799.102 grants immunity to the type of conduct she engaged in can only be supported if it be concluded that in adopting that section the legislature intended a complete abrogation of the common law rule that one who has no duty to act but volunteers to act must exercise reasonable care. She cites no express legislative intent to do that nor does she present any evidence from which it could be reasonably implied that the legislature so intended.

Even though Section 1799.102 does not use the word "medical" to modify "care" or "scene of emergency" the only interpretation of the language of the legislation that is consistent with its stated purpose and intent, and

consistent with its history is that the unqualified immunity provided therein extends only to persons rendering emergency medical care and the scene of a medical emergency. The Court of Appeal's decision should be affirmed.

DATED: October 11, 2007

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.204(c)(1), counsel for Plaintiff and Appellant ALEXANDRA VAN HORN hereby certify that this REPLY BRIEF ON THE MERITS consists of 6,127 words, as counted by the Word Perfect word-processing program used to generate this brief.

DATED: October 11, 2007

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PROOF OF SERVICE

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)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is Hutchinson & Snider, 9454 Wilshire Boulevard., Suite 907, Beverly Hills CA 90212.

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