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No. B226240

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LeFIELL MANUFACTURING COMPANY,

Supreme Court No.

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS
ANGELES, SOUTHEAST DISTRICT,
NORWALK COURTHOUSE,**

Respondent.

O'NEIL WATROUS and NIDIA WATROUS,

Real Parties-in-Interest.

**SUPREME COURT
FILED**

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Deputy

PETITION FOR REVIEW

After Decision by Court of Appeal

Second Appellate District

Division Three

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PETITION FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE, TANI CANTIL-SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

LeFiell Manufacturing Company, defendant and petitioner, hereby petitions this Court for review that portion of the published opinion and order of the Court of Appeal, Second Appellate District, Division Three, filed on March 30, 2011, denying the petition for writ of mandate to order the trial court to sustain the demurrer to Real Party-in-Interest Nadia

Watrous' claim for loss of consortium damages without leave to amend. A copy of the opinion and order of the Court of Appeal is attached hereto as Exhibit A.

ISSUE PRESENTED FOR REVIEW

Whether the spouse of an injured worker may claim damages for loss of consortium in an action at law brought by the injured worker under *Labor Code* section 455(8)(b).

REASONS REVIEW SHOULD BE GRANTED

This is a matter of first impression. There is no case law on the issue of whether the spouse of an injured worker may assert a claim for damages in a court of law, where the injured worker's action is brought under *Labor Code* 4558(b). The precedential value is great, as it is likely that a majority of such injured workers have spouses who would be able to assert claims for loss of consortium, as opposed to being limited to the remedies, if any, provided by the Workers' Compensation Act.

This published decision to permit a tort claim by the spouse of an injured worker to be brought in a court of law because it is excluded from Workers' Compensation has precedential value if allowed to stand, and presents an issue of law that will arise frequently. The ruling to permit the spouse of an injured worker to prosecute claims in a court of law is an expansion of the jurisdiction of *Labor Code* section 3600, without legislative authority for such an expansion.

STATEMENT OF THE CASE

Real Party in Interest O'Neil Watrous (the "worker") sustained a workplace injury. Real Party in Interest Nidia Watrous (the "spouse") is the spouse of the injured worker, who filed an action at law for loss of consortium.

The worker and the spouse filed an action for damages. The worker alleged a claim under *Labor Code* section 4558(b), the exception to *Labor Code* section 3600 which permits a civil action in certain narrow circumstances, in this case, involving an injury on an alleged power press.

Petitioner LeFiell Manufacturing Company ("LeFiell") is the special employer.

LeFiell brought a demurrer to the Complaint. The demurrer raised the issues that the Worker was not entitled to allege tort actions against the employer because the injury was subject to the exclusive remedy doctrine of the Workers' Compensation Act. The demurrer was denied by the trial court.

LeFiell petitioned the Court of Appeal for a writ of mandate, which, as to the Worker, was granted.

In the same action, the Spouse brought a cause of action for loss of consortium.

LeFiell brought a demurrer that asserted that the Spouse was barred by the provisions of *Labor Code* sections 3600 *et seq.* and 4558(b), from

bringing an action at law for damages for loss of consortium. The trial court denied this demurrer as well.

The Court of Appeal denied the petition for writ of mandate as to the legal claims for loss of consortium brought by the Spouse, and permitted the Spouse to assert claims in a court of law for loss of consortium.

STATEMENT OF FACTS

This action arises from injuries allegedly suffered by Real Party-in-Interest O'Neil Watrous arising out of an industrial accident that occurred in the course of his employment with Petitioner LeFiell Manufacturing Company. The only claim by O'Neil Watrous is pursuant to the *Labor Code* section 4558(b) exception to the exclusive remedy doctrine in *Labor Code* section 3600 *et seq.* The remaining claim of Real Party-in-Interest Nidia Watrous is for damages for loss of consortium arising from the claim by her spouse under *Labor Code* section 4558.

ARGUMENT

I.

UNTIL PUBLICATION OF THIS CASE, THERE HAS BEEN NO AUTHORITY TO PERMIT THE RECOVERY OF GENERAL DAMAGES AT LAW BY THE SPOUSE OF AN INJURED WORKER

Certain *Labor Code*¹ provisions make Workers' Compensation the exclusive remedy for workplace injuries.

“Labor Code section 3600 provides that liability thereunder is ‘in lieu of any other liability whatsoever to any person’ (...). Section 3601, subdivision (a), provides that ‘Where the conditions of compensation exist, the right to recover such compensation exist, the right to recover such compensation, pursuant to the provisions of this division is ... the exclusive remedy for injury ...of an employee against the employer ...’ Section 5300, subdivision (a), declares that proceedings ‘For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto’ shall be instituted before the Workers’ Compensation Appeals Board and not elsewhere.”

Williams v. Schwartz (1976) 61 Cal. App. 3d 628, 131 Cal. Rptr. 200

There are several very limited exceptions to the exclusive remedy doctrine, one of which, at 4558(b), is at issue herein.

Labor Code section 4558(b) provides as follows:

¹ All section references are to the *Labor Code* unless otherwise noted.

“An employee, or his or her dependents in the event of the employee’s death, may bring an action at law for damages against the employer where the employee’s injury or death is proximately caused by the employer’s knowing removal of, or knowing failure to install, a point of operation guard on a power press, and this removal or failure to install is specifically authorized by the employer under conditions known by the employer to create a probability of serious injury or death.”
[Emphasis added.]

The legislature clearly had the opportunity to, and declined to, expand the exclusion to the exclusive remedy of Workers’ Compensation to a dependent of the employee in the case of injury. Section 4558 provides a remedy to the spouse of an injured worker only in the case of death of the injured worker, not in the case of injury not resulting in death. There was no death of the injured worker in this case.

In the opinion of the Court of Appeal in this matter, the Court expanded the exception set forth in 4558(b) to permit a spouse of an injured worker to state a claim for loss of consortium in the trial court.

In a matter not involving section 4558, the Court held as follows on the rights of the spouse of an injured worker:

“The whole scheme of workmen’s compensation contemplates that, in exchange for imposing on the employer a liability without fault and denying to him the common law defenses of contributory negligence and the fellow servant rule, he is assured of a single liability, limited by a statutory scheme, which provides for medical expenses and which allots a scheduled sum in lieu of both lost earnings and general damages. We can see no

reason why the employer should also be held liable for collateral damages to third persons whose rights, at common law, were derivative from those of the employee. *Gillespie v. Northridge Hospital Foundation* (1971) 20 Cal. App. 3d 867, 98 Cal. Rptr. 134

The *Gillespie* court agreed with the holding in the New Jersey case of *Danek v. Hommer* (1952) 9 N.J. 56 [87 A.2d 5] that where the employer becomes immune from liability in tort in consideration of the payment of compensation at a fixed rate irrespective of fault, then any action in tort that the spouse of the injured worker had by virtue of the marital status of the injured worker spouse in tort falls as well.

II.

A SPOUSE'S CAUSE OF ACTION FOR LOSS OF CONSORTIUM DERIVING FROM A WORK-CONNECTED INJURY TO AN EMPLOYEE SPOUSE IS BARRED BY THE EXCLUSIVE REMEDY DOCTRINE

The injury to the employee spouse is compensable under workers' compensation law. *Labor Code* Sections 3600, 3601 and 3602 provide that where conditions warranting compensation exist, the sole remedy of the employee or his dependents is to recover such compensation and the employer's liability to pay is in lieu of any other liability to any person.

The Court of Appeals in this matter correctly opined that the “plain language of section 4558 does not permit Watrous’ spouse to seek loss of consortium damages.” (Opinion, page 10)

The instant Court then continues as follows:

“Where the exclusivity rule of section 3600 applies, that rule encompasses not only any cause of action asserted by the injured employee but also loss of consortium causes of action that are deemed collateral or derivative of the employee’s injuries. [Citations omitted.] This is so because claims for loss of consortium by a nonemployee spouse are dependent upon the employee injury, and the claim could not exist without an injury to the employee spouse. [Citations omitted]” (Opinion, page 11)

The instant Court further states that “Watrous’s spouse’s claim for loss of consortium is legally and causally dependent upon Watrous’s power press injury.” [Citation omitted] (Opinion, page 12)

Thereafter, the Court takes a wrongheaded leap into unsupported conclusions, and in so doing, is led to a misinformed and entirely incorrect holding:

The instant Court states that “Watrous’s injury is excluded from the exclusive remedy rule in section 3600. Since Watrous’s injury is outside the workers’ compensation bargain, his spouse’s dependent claim also falls outside the workers’ compensation bargain of section 3600.”

There is absolutely nothing in the record to support the conclusion that the injured employee’s injury is any way “excluded” from the

exclusive remedy rule. It appears that the Court may have inadvertently confused the word “exception” which is what section 4558(b) is, with the word “exclusion.” That error has tainted the decision, and led the court to the wrong conclusion.

In fact, Watrous’ injury was fully subject to Workers’ Compensation. The “exception” provided by section 4558(b) does not preclude or exclude the remedy provided by sections 3600, 3601 and 3602. As an exception to the exclusive remedy rule, 4558(b) provides an additional remedy to the injured worker, namely, that the worker may bring a claim in civil court, and accordingly, may seek damages in addition to those within the jurisdiction of the Workers’ Compensation Appeals Board. Indeed, here the injured worker filed both a Workers’ Compensation action and an action at law. There is no requirement that all such claims be brought in civil court. Nor, most importantly, is the injured worker excluded, by any statutory or case law, from Workers’ Compensation. As provided in section 3602(a), where the “conditions of compensation” concur, as they do here, the

“right to recover such compensation is, except as specifically provided in this section and Section[...] ...4558, the sole and exclusive remedy of the employee or his ... dependents against the employer...”

Thus, the injured worker is fully entitled to proceed in the Workers’ Compensation Appeals Board and ALSO proceed in civil court under

section 4558. The injured worker is in no way EXCLUDED from proceeding in both the Workers' Compensation Appeals Board and in civil court under the exception provided in section 4558.

III.

THE COURT OF APPEAL HAS BROADENED THE STATUTORY EXCEPTION TO THE EXCLUSIVE REMEDY RULE AND HAS MADE THE EMPLOYER SUBJECT TO LIABILITY FOR DAMAGES TO THE THIRD PARTY SPOUSE

The instant Court of Appeals states that:

“Our holding in this case does not broaden the exception, but rather permits the recovery of full relief to those injured employees who plead and prove a power press injury. This result does not further expose the employer to tort liability. Nor does this result expose the employer to third-party liability; the statute protects the employer from liability from indemnity.” [Opinion, page 12]

The Court of Appeal also mischaracterized section 4558 at page 2 of its Opinion as an “exclusion” rather than as an “exception.” Section 4558 is not an EXCLUSION from Workers' Compensation. It is a statutory exception to the exclusive remedy doctrine, which, if an injured employee can plead the statutory requirements, permits the employee to pursue civil remedies which might include remedies which are not part of Workers' Compensation. It appears that the Court of Appeal mischaracterized the

statute and its remedies because of a confusion of the terms “exclusion” and “exception.”

The Court of Appeal is wrong on all counts. The Court of Appeal has exceeded the statutory language by permitting the spouse of the injured worker to bring an action for loss of consortium in the civil court. Any statutory remedies for a spouse occur when death has occurred to the injured worker, and the spouse essentially stands in the shoes of the deceased spouse, so that the compensation due is not lost to the marital community.

The Court of Appeal here holds that section 4558 does not permit the spouse of the injured worker to bring a loss of consortium action except in the case of death of the injured worker, yet it concludes that the spouse can bring the action at law because the worker is “excluded” from Workers’ Compensation. This is the plain confusion and wrong holding. There is no exclusion; the worker filed a Workers’ Compensation action. Rather, section 4558 allows an additional remedy. If there is no exclusion, then the spouse is limited to her remedies in the Workers’ Compensation Appeals Board, just as the worker is. The only difference is that the worker has additional remedies by statute (section 4558(b)), which the Court of Appeal correctly holds does not extend to the spouse.

The legislature specifically omitted the spouse of an injured but not deceased worker from the jurisdiction of section 4558. The instant Court of

Appeal has taken it upon itself to supplant the legislature and increase the statutory benefits.

This Court's ruling specifically exposes the employer to third party liability to the spouse for loss of consortium, contrary to the plain language of the statute, by holding that "Watrous's spouse has alleged a loss of consortium cause of action that does not fall within the exclusive remedy rule of the workers' compensation laws." (Opinion, page 12)

The Court of Appeal cites *Schifando v. City of Los Angeles* (2003) 31 Cal. 4th 1074, 1081 as the sole legal authority in support of its holding that Watrous's spouse's loss of consortium cause of action does not fall within the exclusive remedy rule of the workers' compensation laws. *Schifando* is a case involving employment discrimination involving physical disability and whether certain administrative remedies must be exhausted before filing a claim under the California Fair Employment and Housing Act (Gov. Code §12900 *et seq.*). There is absolutely nothing in *Schifando* that addresses Workers' Compensation, or the exclusive remedy doctrine, or any exception to the exclusive remedy doctrine, let alone section 4558. *Schifando* has no applicability to the case at issue, and is misleading at best. It is not authority for any holding in this matter.

IV.

CONCLUSION

The Court of Appeal in this matter has made a serious error in interpreting the exclusive remedy doctrine and the scope of the exception to it set forth in Section 4558(b). There is no other California case that can be found specifically addressing the right of the spouse of an injured worker to bring a cause of action in civil court for loss of consortium, together with the publication of this mistaken opinion, will open the proverbial floodgates to such claims. If that is to happen, it must be by the legislative process, and not by judicial edict.

For the reasons stated herein, Petitioner requests this Court to grant review to determine the issues presented above.

Dated: May 2, 2011

Respectfully submitted,

By 
Jeffrey L. Malek
Sandra L. Malek
Attorneys for Petitioner
LeFiell Manufacturing Company

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

LEFIELL MANUFACTURING COMPANY,

Petitioner,

v.

THE SUPERIOR COURT OF
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Respondent;

O'NEIL WATROUS et al.,

Real Parties in Interest.

B226240

(Los Angeles County
Super. Ct. No. VC055585)

PETITION for writ of mandate. Yvonne T. Sanchez, Judge. Petition granted in part, and denied in part.

Malek & Malek, Sandra L. Malek and Jeffrey L. Malek for Petitioner.

No appearance for Respondent.

Law Offices of Christopher E. Purcell, Christopher E. Purcell and Christina D. Bennett for Real Parties in Interest.

In this appeal, we resolve two issues addressing the scope of the power press exception in Labor Code section 4558.¹ Section 4558 provides an exception to the workers' compensation exclusive remedy rule for employees injured as a result of the employer knowingly having removed or having failed to install a point of operation guard on a power press machine. *Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128 (*Award Metals*), held the exception applies only for injuries meeting the statute's heightened pleading requirements of knowledge, and an affirmative act on the part of the employer. (*Id.* at pp. 1134-1136.) We follow *Award Metals* and reject the application of any exception that would expand section 4558 to permit pleading other tort causes of action requiring a lesser standard of proof.

We also conclude section 4558 does not permit a spouse to bring a loss of consortium cause of action. Nevertheless, since section 4558 is an exclusion from the workers' compensation laws, a spouse may bring a loss of consortium cause of action because that claim is dependent upon an injured spouse's excluded injury.

Here, the complaint sufficiently pleads the power press exception. Accordingly, employer and petitioner LeFiell Manufacturing Company (LeFiell) is entitled to some, but not all, of the relief it seeks, and we shall grant the writ limited to O'Neil Watrous's (hereafter Watrous) additional tort claims that are barred.

BACKGROUND

Watrous was injured operating a FENN 5f swaging machine while working for LeFiell. The swaging machine allegedly is a power press machine.

Watrous and his spouse filed a complaint against LeFiell seeking damages for a violation of section 4558,² negligence, products liability, and loss of consortium. Since

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

² Section 4558, subdivision (b) provides in pertinent part: "An employee . . . may bring an action at law for damages against the employer where the employee's injury . . . is proximately caused by the employer's knowing removal of, or knowing failure to install, a point of operation guard on a power press, and this removal or failure to install is specifically authorized by the employer under conditions known by the employer to create a probability of serious injury or death."

this case arises from LeFiell's demurrer to the complaint, our recitation of the facts is taken from the operative complaint.

1. *Civil Complaint for Work-related Injury*

The complaint seeks damages arising from a violation of section 4558 (fourth cause of action).³ Watrous's injury allegedly was proximately caused by LeFiell's "knowing and intentional removal of, or knowing and intentional failure to install a point of operation guard" on the FENN 5f swaging machine. The removal of, or failure to install, a point of operation guard was alleged to have been specifically authorized by Watrous's employers under conditions known by them to create a probability of serious injury or death to the user. The manufacturer of the swaging machine "designed, installed[,] required[,] or otherwise provided by specifications the attachment of an appropriate point of operation guard and conveyed knowledge of the same to the employer(s)."

Watrous's negligence cause of action alleges LeFiell had a duty to maintain, manage, control, and generally keep the FENN 5f swaging machine in a safe and reasonable manner so as not to endanger Watrous. LeFiell allegedly failed to "properly maintain said premises, failed to properly maintain, manage, control, keep in a safe condition said machine and allowed it to be [used] in such a condition that it endangered Plaintiff during his operation of the machine." LeFiell also "failed to properly provide guarding so as to prevent material from flying up into or out of the machine" Moreover, LeFiell allegedly breached a duty to properly "train, instruct, warn, educate and oversee . . . and . . . supervise . . . so as to allow the said swaging machine to be used in a manner and in a condition that created a dangerous and unsafe condition to the operator of the machine, including Plaintiff O'Neil Watrous."

³ LeFiell did not demurrer to this cause of action and concedes it is sufficiently alleged.

Watrous also alleges a products liability cause of action. The form pleading seeks to recover for strict liability, negligence, and breach of implied and express written and oral warranties.

Watrous's spouse seeks damages for loss of consortium. She incorporated all the other causes of action alleged in the complaint, and alleges she has been deprived of Watrous's services in the care and management of their home and family, and in the "necessary duties as a husband."

2. *Demurrer to the Complaint*

LeFiell filed a demurrer to the complaint, asserting Watrous's causes of action for negligence (first cause of action) and products liability (second cause of action) were barred by the exclusive remedy of the workers' compensation laws. LeFiell also contended Watrous's spouse lacked standing to pursue any cause of action arising from the power press injury (first, second, and fourth causes of action). Moreover, LeFiell argued her loss of consortium claim for damages (third cause of action) was barred by the exclusive remedy rule (§ 3600 et seq.) and did not fall within a recognized exception to the workers' compensation laws.

The trial court overruled the demurrer to Watrous's causes of action for negligence and products liability. As to his spouse, the trial court sustained the demurrer to all causes of action except her claim for loss of consortium damages. Having concluded Watrous pled facts to support the power press exception to the exclusivity rule under sections 3600 and 4558, the trial court reasoned "his spouse, may properly assert a claim for loss of consortium."

3. *Writ of Mandate*

LeFiell sought a writ of mandate commanding the trial court to sustain the demurrer to Watrous's causes of action for negligence and products liability without leave to amend based upon *Award Metals, supra*, 228 Cal.App.3d 1128. LeFiell also sought a writ to command the trial court to sustain the demurrer to Watrous's spouse's claim for loss of consortium damages without leave to amend, because that cause of action is barred by the exclusive remedy rule in the workers' compensation laws, and the

cause of action does not fall within the power press exception. As we shall explain, LeFiell correctly interprets section 4558 and *Award Metals* for Watrous's claims, and is therefore entitled to some of the relief it requests, and we shall issue a writ of mandate restricted to that relief. Watrous's spouse, however, may plead a cause of action for loss of consortium.

DISCUSSION

Workers' compensation is generally the exclusive remedy of an employee and his or her dependents against the employer for work-related injuries. (§§ 3600, subd. (a), 3601, subd. (a), 3602, subd. (a); *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810.) The exclusivity rule is based upon a presumed compensation bargain: "[T]he employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort." (*Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16.) Here, we are dealing with the scope of an exception to the exclusive remedy rule.

1. *Section 4558 Exception to the Exclusive Remedy Rule*

Section 4558 is one of the statutory exceptions to the exclusive remedy rule. (See §§ 3600, subs. (a) & (b), 3601, subd. (a), 3602, subs. (a) (b) & (c), 3706, 4558, subd. (b).) Section 4558 applies to certain actions for personal injury or death arising from the use of a power press machine. (See *Mora v. Hollywood Bed & Spring* (2008) 164 Cal.App.4th 1061, 1067.)

Subdivision (b) of section 4558 describes the exception. To bring a civil suit, the employee must allege (1) the injury or death was proximately caused by the employer's knowing removal of, or knowing failure to install, a point of operation guard on a power press; and (2) this removal or failure to install was specifically authorized by the employer under conditions it knew created a probability of serious injury or death. (§ 4558, subd. (b); *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505,

1516.) Knowledge means “actual awareness” by the employer at the time of the removal or replacement. (*Saldana v. Globe-Weis Systems Co.*, *supra*, at pp. 1516-1517.)

“ ‘Specifically authorized,’ ” as defined in the statute, is an affirmative instruction issued by the employer to remove, or fail to install, the point of operation safety guard before the employee’s injury or death. (§ 4558, subs. (a)(6), (b); *Mora v. Hollywood Bed & Spring*, *supra*, 164 Cal.App.4th at pp. 1068-1070.) No liability arises “absent proof that the manufacturer designed, installed, required, or otherwise provided by specification for the attachment of the guards and conveyed knowledge of the same to the employer.” (§ 4558, subd. (c); see *Bingham v. CTS Corp.* (1991) 231 Cal.App.3d 56, 61, 65-67.)

“Section 4558 was enacted as part of an extensive overhaul of the workers’ compensation system designed to address perceived inadequacies in the rules.” (*Jones v. Keppeler* (1991) 228 Cal.App.3d 705, 709; see also *Flowmaster, Inc. v. Superior Court* (1993) 16 Cal.App.4th 1019, 1029.) The power press exception is one of only four circumstances in which an injured employee can bring a civil action against the employer. (*Jones v. Keppeler*, *supra*, at p. 709, fn. 6.) “The language of section 4558 reflects the Legislature’s careful drafting of the terms triggering the application of the statute.” (*Id.* at p. 709.)⁴

Section 4558 is intended to address situations where the employer acted in disregard of worker safety and removed or failed to install appropriate guards on large power tools. (*Ceja v. J. R. Wood, Inc.* (1987) 196 Cal.App.3d 1372, 1377.) “Many of these power tools are run by large mechanical motors or hydraulically. (Cal. Admin. Code [now Cal. Code Regs.], tit. 8, § 4188.) These sorts of machines are difficult to stop while they are in their sequence of operation. Without guards, workers are susceptible to extremely serious injuries. For this reason, the Legislature passed section 4558,

⁴ At one point during the legislative overhaul, a proposed amendment included an additional Labor Code section qualifying that the power press exception “shall not be interpreted” so as to expand the exceptions in existing workers’ compensation law. (Legis. Counsel’s Dig., Amends. to Assem. Bill No. 1244 (1981-1982 Reg. Sess.)) The amendment did not become law.

subdivision (b), which subjects employers to legal liability for removing guards from powerful machinery where the manufacturer has designed the machine to have a protective guard while in operation.” (*Id.* at p. 1377.) Thus, as noted by the court in *Flowmaster, Inc. v. Superior Court, supra*, 16 Cal.App.4th at page 1029, the Legislature has determined that employees who are injured using power presses require additional compensation in a civil action.

The Legislature, however, limited the employer’s liability. If an employee brings this kind of civil action, no other defendant whom the employee sues may bring a cross-complaint against the employer. (§ 4558, subd. (d).) Once an employee gets a judgment against the employer and another defendant, that defendant may obtain contribution toward payment of the judgment if the employer fails to discharge the comparative share of the judgment. (*Ibid.*)

2. *Section 4558 is a Narrow Exception With a Heightened Standard of Proof, Barring Watrous’s Claims for Negligence and Products Liability*

Section 4558 permits a civil suit for damages arising from power press injuries provided the statutory requirements have been met, which limits the available causes of action in a civil suit. (See *Award Metals, supra*, 228 Cal.App.3d at p. 1134.) In *Award Metals*, the court held an injured employee is not permitted to bring an action at law on causes of action that require a lesser showing than that prescribed in section 4558. “From the plain language of section 4558, it is clear that an exception to the exclusivity of workers’ compensation only arises for a power press injury where the employer has been expressly informed by the manufacturer that a point of operation guard is required, where the employer then affirmatively removes or fails to install such guard, and where the employer does so under conditions known by the employer to create a probability of serious injury or death.” (*Award Metals*, at p. 1134.) Absent an employer’s knowledge and actions, an employee would not be entitled to bring a civil suit. (*Ibid.*) Moreover, “[i]f such action cannot be brought on its own where the facts fail to establish all the elements of the power press exception under section 4558, it follows that individual causes of action against an employer which do not meet the requirements of section 4558

cannot be bootstrapped onto a civil action for damages which is properly brought under section 4558.” (*Ibid.*)

In *Award Metals*, the court applied this principle to determine whether the level of proof of the employee’s remaining causes of action for negligence and strict liability met the heightened level of proof necessary to establish the statutory exception of section 4558. Both negligence and strict liability require a lesser standard of proof than the statutory exception. (*Award Metals, supra*, 228 Cal.App.3d at p. 1134-1135.) Thus, in *Award Metals*, the injured worker’s only viable cause of action was to recover damages for injuries arising from the power press injury in section 4558. (*Award Metals*, at p. 1136.)

While *Award Metals* appeared to leave open the possibility of additional causes of action subject to the heightened standard of proof, we agree with the court’s assessment that any other theory of liability would be superfluous given the statutory requirements to invoke the power press exception. “If a violation of section 4558 is proven, it is difficult to see how any greater recovery could be obtained on any other theory than that which is available under the [power press exception].” (*Award Metals, supra*, 228 Cal.App.3d at p. 1136.) This conclusion is compelled by the plain language of the power press exception and the exclusive remedy rule.

Award Metals resolves Watrous’s causes of action for negligence and products liability as they are “bootstrapped” and do not meet the heightened pleading standards of the power press exception. We disagree with Watrous that he has pled more than simple negligence. Even if he had, Watrous implicitly concedes any such cause of action is superfluous.

The only viable theory of recovery Watrous asserts in the complaint is the power press exception in section 4558. Thus, the trial court erred and should have sustained LeFiell’s demurrer to the negligence and products liability causes of action.

3. *Spouse's Loss of Consortium Cause of Action is Not Barred, But is Dependent Upon Pleading and Proving the Power Press Injury*

Watrous and his spouse contend her loss of consortium claim falls within the power press exception in section 4558. We reject this contention, but we nevertheless conclude that his spouse's dependent claim arising from the power press injury may be maintained in a civil action.

Our resolution of this issue requires us to interpret certain provisions of the Workers' Compensation Act. Our task in construing a statute is to ascertain the legislative intent so as to effectuate the purpose of the law. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715; *Mora v. Hollywood Bed & Spring, supra*, 164 Cal.App.4th at p. 1068.) The statutory language is the most reliable indicator of legislative intent. (*Smith v. Workers' Comp. Appeals Bd.* (2009) 46 Cal.4th 272, 277.) We give the words of the statute their ordinary and usual meaning and construe them in the context of the statute as a whole and the entire scheme of law of which it is a part. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1043.) If the language is clear and literal construction would not result in absurd consequences that the Legislature did not intend, the plain meaning governs. (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) Our interpretation includes "the context of the legislation, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction. [Citations.]" (*Flowmaster, Inc. v. Superior Court, supra*, 16 Cal.App.4th at p. 1028.) Workers' compensation statutes are to be liberally construed in favor of the injured worker. (§ 3202; *Smith v. Workers' Comp. Appeals Bd., supra*, at p. 277.)

In determining the scope of a statutory exception to the workers' compensation laws, we are mindful that exceptions are to be narrowly construed and we must avoid "the 'fallacy of importing tort concepts into workers' compensation law. Exclusiveness is a compensation law question, not a tort law question.' [Citation.]" (*Soares v. City of Oakland* (1992) 9 Cal.App.4th 1822, 1830.) Consistent with these principles, the power

press exception has been interpreted narrowly to exclude (1) additional tort claims that require a lesser standard of proof (*Award Metals, supra*, 228 Cal.App.3d at pp. 1134, 1136), (2) injuries that are not caused by a power press machine as defined in the statute (*Rosales v. Depuy Ace Medical Co.* (2000) 22 Cal.4th 279, 285-287), and (3) claims in which the employer either did not give an “express directive” to remove the operation guard (*Mora v. Hollywood Bed & Spring, supra*, 164 Cal.App.4th at p. 1069), or did not have actual knowledge of the probability of injury (*Saldana v. Globe-Weis Systems Co., supra*, 233 Cal.App.3d at pp. 1516-1517).

The plain language of section 4558 does not permit Watrous’s spouse to seek loss of consortium damages. Section 4558 only permits a dependent to pursue a civil suit for damages upon the death of the injured worker. (§ 4558, subd. (b).) There is no language in the statute that would expand the exception to permit a spouse to proceed with a loss of consortium claim.

Watrous and his spouse’s interpretation of this narrow exception is also contrary to the plain language of the statute, which does not contain expansive language. (See, e.g., § 3706 [“If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply.”].) The section 3706 exception, for example, authorizes an injured employee to recover damages in a civil action against an employer who does not carry workers’ compensation insurance. This exception has been construed to permit the injured employee to recover the full range of relief generally available in personal injury actions if the injury was the result of the employer’s negligence. (See *Le Parc Community Assn. v. Workers’ Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1172.)

As we have previously stated, section 4558, by contrast, was construed narrowly in *Award Metals, supra*, 228 Cal.App.3d at page 1134, and limits the relief in a civil action to only those injuries that meet the requirements of section 4558. Section 4558, therefore, does not permit Watrous’s spouse to bring a loss of consortium claim.

Since section 4558 does not permit Watrous's spouse to bring a loss of consortium cause of action for damages, we turn to section 3600 which sets out section 4558 as an exception to the exclusive remedy rule. Where the conditions of compensation set forth in section 3600 concur, the right to recover such compensation is the sole and exclusive remedy "in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558 . . ." (§ 3600, subd. (a).)

Where the exclusivity rule of section 3600 applies, that rule encompasses not only any cause of action asserted by the injured employee but also loss of consortium causes of action that are deemed collateral or derivative of the employee's injury. (See *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 162-163; *Gillespie v. Northridge Hosp. Foundation* (1971) 20 Cal.App.3d 867, 869-871; see also *Casaccia v. Green Valley Disposal Co.* (1976) 62 Cal.App.3d 610, 612-613.) This is so because claims for loss of consortium by a nonemployee spouse are dependent upon the employee injury, and the claim could not exist without an injury to the employee spouse. (See *Snyder v. Michael's Stores, Inc.* (1997) 16 Cal.4th 991, 998-999.)

In *Snyder v. Michael's Stores, Inc.*, *supra*, 16 Cal.4th 991, while discussing the derivative injury doctrine, the Supreme Court explained its holding in *Cole v. Fair Oaks Fire Protection Dist.*, *supra*, 43 Cal.3d at pages 162 through 163, which barred recovery by an injured employee's spouse for loss of consortium: "[I]t is true, we acknowledged that consortium claims are not 'merely derivative or collateral to the spouse's cause of action,' but at the same time we held the exclusivity provisions applied because the consortium claim is 'based on the physical injury or disability of the spouse.' [Citation.] While the losses for which damages are sought in a consortium action may properly be characterized as 'separate and distinct' from the losses to the physically injured spouse (*Rodriquez v. Bethlehem Steel Corp.* (1974) 12 Cal.3d 382, 405 . . .), the former are unquestionably dependent, legally as well as causally, on the latter. One spouse cannot have a loss of consortium claim without a prior disabling injury to the other spouse." (*Snyder v. Michael's Stores, Inc.*, *supra*, 16 Cal.4th at pp. 998-999.)

Watrous's spouse's claim for loss of consortium is legally and causally dependent upon Watrous's power press injury. (See *Cole v. Fair Oaks Fire Protection Dist.*, *supra*, 43 Cal.3d at pp. 162-163.) Unlike the injured worker in *Cole*, Watrous's power press injury is excluded from the exclusive remedy rule in section 3600. Since Watrous's injury is outside the workers' compensation bargain, his spouse's dependent claim also falls outside the compensation bargain of section 3600. The loss of consortium claim, however, is only viable if Watrous establishes his power press injury. Thus, Watrous's spouse must plead the power press injury as the "tortious conduct" element of her loss of consortium claim. (See *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 746, fn. 2.)

This claim for loss of consortium is not "bootstrapped" to the power press exception, as LeFiell contends, but is consistent with the narrow construction of section 4558 as set forth in *Award Metals*, *supra*, 228 Cal.App.3d at page 1136. Watrous must first establish a power press injury, which requires a heightened standard of proof. If the requirements of section 4558 are not established, neither Watrous nor his spouse may recover damages outside of the workers' compensation laws.

We reject LeFiell's argument that this holding will cause further expansion to the statutory exception, which is contrary to the Legislature's intent and the plain language of section 4558, limiting employer liability. Our holding in this case does not broaden the exception, but rather permits the recovery of full relief to those injured employees who plead and prove a power press injury. This result does not further expose the employer to tort liability. Nor does this result expose the employer to third-party liability; the statute protects the employer from liability for indemnity. (§ 4558, subd. (d).)

Watrous's spouse has alleged as "tortious conduct" the power press injury to her husband by incorporating the allegations of the fourth cause of action asserting the statutory requirements of a power press injury. Under the appropriate standard of review on demurrer, Watrous's spouse has alleged a loss of consortium cause of action that does not fall within the exclusive remedy rule of the workers' compensation laws.

(*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Therefore, the trial court properly overruled LeFiell's demurrer.

DISPOSITION

Let a peremptory writ of mandate issue directing the Los Angeles County Superior Court to vacate its order overruling LeFiell's demurrer to Watrous's negligence and products liability causes of action, and to enter a new order sustaining LeFiell's demurrer to those causes of action without leave to amend. In all other respects the petition is denied. Each side is to bear its own costs on appeal.

CERTIFIED FOR PUBLICATION

ALDRICH, J.

We concur:

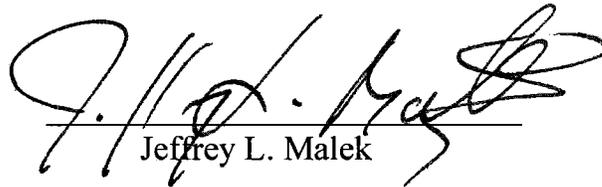
CROSKEY, Acting P. J.

KITCHING, J.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Petitioner is produced using 13-point Roman type including footnotes and contains approximately 2,946 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: May 2, 2011



Jeffrey L. Malek

PROOF OF SERVICE

LeFiell Manufacturing Company, Petitioner v. The Superior Court of California, For the County of Los Angeles, Southeast District, Norwalk Courthouse, Respondent. O'Neil Watrous and Nidia Watrous, Real Parties-in-Interest.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 3625 Del Amo Boulevard, Suite 350, Torrance, California 90503.

On May 2, 2011, I served the following document PETITION FOR REVIEW, on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope or package, addressed as follows:

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CALIFORNIA SUPREME COURT 350 McAllister Street Room 1295 San Francisco, CA 94102-4797	(Original + 13 copies)
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COURT OF APPEAL Second Appellate District Division 3 300 South Spring Street 2 nd Floor Los Angeles, CA 90013	(1 copy)
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Hon. Yvonne T. Sanchez
Judge of the Superior Court
LOS COUNTY SUPERIOR COURT
Southeast District, Norwalk Courthouse
12720 Norwalk Blvd.
Norwalk, CA 90650

(1 copy)

X BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2011, at Torrance, California.



Patricia Gardner