



NEWS RELEASE

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Summary of Cases Accepted During the Week of May 9, 2005

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#05-103 Essex Ins. Co. v. Five Star Dye House, Inc., S131992.

(B167295; 125 Cal.App.4th 1569; Los Angeles County Superior Court; BC156517.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: Can an insured assign its right under *Brandt v. Superior Court* (1985) 37 Cal.3d 813 to recover the attorney fees that are incurred in order to obtain insurance policy benefits that the insurer denied in bad faith?

#05-104 People v. Palacios, S132144. (D042461; 126 Cal.App.4th 428; San Diego County Superior Court; SCN144768.) Petition for review after the Court of Appeal remanded for resentencing, and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Does the multiple punishment bar of Penal Code section 654 apply to sentence enhancements generally and, in particular, to the enhancement under Penal Code section 12022.53, subdivision (d), for the personal and intentional discharge of a firearm resulting in death or great bodily injury?

#05-105 Regency Outdoor Advertising, Inc. v. City of Los Angeles, S132619. (B159255; 126 Cal.App.4th 1281; Los Angeles County Superior Court; YC037625.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) Can a plaintiff maintain an action for inverse condemnation for the loss of a "view right" where trees planted by the city on the city's own property obscured the visibility of plaintiff's billboard? (2) Can an award

(over)

of expert witness fees under Code of Civil Procedure section 998, subdivision (c)(1), include fees incurred before the offer to compromise was made, or is it limited to fees incurred after the date of the offer?

#05-106 *State of California ex rel. Harris v. PricewaterhouseCoopers LLP*, S131807.

(A095918, A097793; 125 Cal.App.4th 1219; San Francisco County Superior Court; 993507.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court limited review to the following issue: Is a public entity a “person” within the meaning of the False Claims Act (Gov. Code, § 12560 et seq.) and thus entitled to bring a *qui tam* cause of action on behalf of the state or another public entity against a defendant for allegedly obtaining payments to which the defendant was not entitled?

#05-107 *People v. Contreras*, S132107. (D043657; unpublished opinion; San Diego County Superior Court; SCD141940.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-108 *People v. Powell*, S131837. (A103286; unpublished opinion; Solano County Superior Court; VCR161797.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Contreras* and *Powell* deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. ___, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court’s imposition of consecutive sentences?

#05-109 *People v. Merchant*, S131836. (E033887; unpublished opinion; Riverside County Superior Court; RIF096279.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Modiri*, S120238 (#03-159), which includes the following issue: Is the so-called “group beating exception” (see *People v. Corona* (1989) 213 Cal.App.3d 589), as embodied in CALJIC No. 17.20, to the requirement of a finding of *personal* infliction of great bodily injury for purposes of imposing an enhancement under Penal Code section 12022.7, inconsistent with *People v. Cole* (1982) 31 Cal.3d 568?