S152360 **Supreme Court Copy**

2nd Civil No. B 188076

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ALEXANDRA VAN HORN,

Plaintiff and Respondent,

v.

ANTHONY GLEN WATSON,

Defendant and Appellant,

LISA TORTI,

Defendant and Respondent.

B 188076

(Los Angeles County
Super. Ct. No. PC034945)

ALEXANDRA VAN HORN,

Plaintiff and Appellant,

v.

ANTHONY GLEN WATSON, et. al.

Defendants and Respondents.

B 189254

ANSWER OF PLAINTIFF AND APPELLANT ALEXANDRA VAN HORN TO PETITION FOR REVIEW

LAW OFFICES OF HUTCHINSON & SNIDER
Robert B. Hutchinson (State Bar No. 45367)
9454 Wilshire Boulevard, Suite 907
Beverly Hills, California 90212
(310) 276-1460

Attorneys for Plaintiff and Appellant,
ALEXANDRA VAN HORN

2nd Civil No. B 188076

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ALEXANDRA VAN HORN,	**B 188076**
Plaintiff and Respondent,	**(Los Angeles County) Super. Ct. No. PC034945)**
v.	
ANTHONY GLEN WATSON,	
Defendant and Appellant,	
LISA TORTI,	
Defendant and Respondent.	
ALEXANDRA VAN HORN,	**B 189254**
Plaintiff and Appellant,	
v.	
ANTHONY GLEN WATSON, et. al.	
Defendants and Respondents.	

ANSWER OF PLAINTIFF AND APPELLANT ALEXANDRA VAN HORN TO PETITION FOR REVIEW

LAW OFFICES OF HUTCHINSON & SNIDER
Robert B. Hutchinson (State Bar No. 45367)
9454 Wilshire Boulevard, Suite 907
Beverly Hills, California 90212
(310) 276-1460

Attorneys for Plaintiff and Appellant,
ALEXANDRA VAN HORN

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

STATUTES

MISCELLANEOUS

TO THE HONORABLE CHIEF JUSTICE RONALD M. GEORGE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Appellant and plaintiff ALEXANDRA VAN HORN submits her Answer to the Petition For Review submitted by respondent and defendant LISA TORTI.

ISSUE PRESENTED FOR REVIEW

Contrary to the characterization advanced by Petitioner, Section 1799.102 of the California Health & Safety Code is not a "Good Samaritan" statute, it is an immunity Statute. The issue, therefore, is whether, under the facts of this case, Lisa Torti is entitled to blanket immunity for her actions on the night in question even though her actions were claimed to be a rescue effort and not in any way the rendering of "medical care."

THIS PETITION FAILS TO SATISFY THE GROUNDS FOR REVIEW UNDER CALIFORNIA RULES OF COURT, RULE 8.500(b)

The only conceivable ground for this court's review, provided for in Rule 8.500 (b), of which Petitioner could avail herself is found in subpart (1): ". . . or to settle an important question of law . . . "

The only question of law is whether the Court of Appeal correctly applied statutory construction principles in determining legislative intent with respect to the actions covered by the blanket immunity granted by

Section 1799.102.[1] Contrary to the imagined catastrophes conjured up by petitioner, the lower court's interpretation of the statute is consistent with the legislative purpose declared in the chapter in which the immunity section is placed, avoids the absurd result that would immunize all people doing any act at the scene of any perceived emergency, including affording a free pass on liability for "officious intermeddlers," and preserves the long standing rule affording protection for the true "good Samaritan." Correctly applying well settled principles for the interpretation of legislative intent the lower court recognized that while statutory language should ordinarily be given its plain meaning that does not prohibit the courts from determining whether or not the literal meaning of a statute comports with its purpose and that provisions relating to the same subject matter must be construed together and "harmonized to the extent possible". *In Re Kali D.* (1995) *37* Cal. App. 4th 381, 386 [43 Cal. Rptr 2d 581]. Moreover, the lower court construed the provision in a way to promote rather than defeat the legislative purpose and avoided the absurdity that would have resulted by a literal interpretation of the statutory language. *Giles v. Horn* (2002) 100 Cal. App. 4th, 206, 219-220 [123 Cal.Rptr. 2d 735]. In this case, to construe the statute as petitioner argues would completely abrogate the common law

---

[1] All references to "Section 1799.102 are to California Health & Safety Code Section 1799.102.

"good Samaritan" rule which is still very much a part of California law. *Williams v. State of California* (1983) 34 Cal.3d 18 [192 Cal.Rptr. 233]. In other words, rather than undertaking a duty to act with due care, the would be rescuer would be totally immune regardless of the recklessness or carelessness of his or her actions. The lower court correctly reasoned that Chapter 2.5 of the Health & Safety Code evidenced no intent of the legislature to do that.

Plaintiff concedes that statutory construction is a question of law, but that question is not "important" in the present case because the lower court's decision does not disturb existing law nor does it change the current balance between specified legislatively granted immunities consistent with certain public goals and the necessary imposition of potential liability on the part of the volunteer who attempts to offer aid or assistance, not included within the specified situations, and who is either not qualified to render the aid or assistance or who does it negligently under the circumstances. The prudent "good Samaritan" is still protected by the lower court's decision and the "officious intermeddler" is not rewarded with immunity that the legislature gave no indication of wanting to enact.

THE LOWER COURT PROPERLY CONSTRUED SECTION 1799.102

Section 1799.102 is contained within Division 2.5 of the Health &

Safety Code adopted in 1980 and entitled "**Emergency Medical Services.**"

The legislative findings are stated in Section 1797.1 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)

A further specific statement of legislative intent is found in Section 1797.5:

> 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 **life saving first aid techniques** so that people may be adequately trained, prepared, and encouraged to assist others immediately. (Emphasis added).

Section 1797.70 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." Section 1797.72 defines "emergency

medical services" as: ". . . the services utilized in responding to **a medical emergency."** (Emphasis added.)

Having set out a comprehensive program funding, overseeing and administering a system designed to provide California's citizens better access to emergency medical services, especially cardiopulmonary resuscitation, the legislature then set about to provide further encouragement to local agencies, both public and private, to provide training in "emergency medical services" by granting such organizations immunity from civil damages alleged to have resulted from "those training programs." (Section 1799.100). The legislature then went on to grant various categories of individuals immunity for the rendering of "emergency instructions given by a physician to an EMT (Section 1799.104), "emergency care by firefighters, law enforcement officers and EMT personnel (Section 1799.106), "qualified immunity for public entity or personnel engaging in emergency rescue operations" (Section 1788.107), "emergency field care treatment by a certificate holder" (Section 1799.108) as well as any person who "renders emergency care at the scene of an emergency." (Section 1799.102).

Torti argues that because the term "medical" is not used in 1799.102, while it is in other immunity provisions within this Division, the legislature intended to immunize volunteers who render any aid or assistance, even that

which is not "medical" in nature. There are two problems with this argument. First, if the legislature had so intended then this section would be a complete legislative repeal of the common law rule governing the acts of the so called "good Samaritan." There is nothing in the legislative history to support such a conclusion. As the lower court pointed out, if the legislature had so intended it would have put the immunity section in the Civil Code "and certainly not . . . in a section entitled "Emergency Medical Services" (See Appendix A to the Petition For Review, Page 4.) Secondly, to construe 1799.102 as a general grant of immunity for non-medical services would be to insert a complete "disharmony" in Division 2.5 by creating a rule outside the field of "emergency medical services" and by creating a rule that would render other provisions within the Division which grant immunity to specific classes of people completely unnecessary.

There is simply no legal nor logical basis to conclude that the absence of the word "medical" in Section 1799.102 indicates an intent by the legislature to immunize lay persons from liability for actions which were not medical in nature particularly in light of the fact that the legislature had already defined "emergency" to mean " a condition or situation in which an individual has a need for immediate **medical** attention . . . " (Section 1797.70.) It would have made no sense to define the term "emergency" or "scene of an emergency" every time they were used in

subsequent sections.

That non-medical aid was not intended to be subject to the immunity in Section 1799.102 was the conclusion of the Senate and Assembly Committees on the Judiciary when they specifically declined to amend the statute to extend the immunity to mere rescue efforts. (See AA Exhibits J-1 through J-4). Not only did the Senate Committee on the Judiciary analysis point out that it "has been commonly understood . . . [that the law] . . . appl[ies] only to the provision of emergency medical care." (AA Exhibit J-2 p.267) it also expressed concern that extending the coverage to non-medical care would immunize the "untrained volunteer, who may worsen the situation through his or her ignorance," and would reward the "officious intermeddler." (*Id* at 269). Finally, the Committee analysis correctly noted that an extension of the coverage of the immunity would "overturn *Williams v. State of California,* supra.

Further evidence that it was commonly understood that 1799.102 applied only to "medical care" is found in this court's opinion in *Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278. At page 298 this court identified 1799.102 as "exempting from liability nonprofessional persons giving cardiopulmonary resuscitation."

While the *Nally* decision did observe a legislative trend toward broadening the range of immunities, by no means is there any indication

that the "trend" had become a tidal wave wiping out the common law rule in all situations. Because of a "trend" the defendant now asks this court to judicially enact an immunity for actions the legislature clearly chose to leave to the application of the common law rule.

THE LOWER COURT'S DECISION IS NOT INCONSISTENT WITH PUBLIC POLICY CONSIDERATIONS

With due respect to Professor Prosser, the common law rule applicable to the so-called "good Samaritan" is a sound one. No body of law in a free society could force a lay person to come to the aid of another without a myriad of exceptions and exclusions that would make the hearsay rule look simple and straightforward by comparison. But, certainly, the law must recognize that it is human nature for people to rally to the aid of a fellow citizen in trouble. And, the law must also recognize that it is also human nature for some people to react badly in emergency situations either by subconsciously exaggerating the seriousness of the situation, attempting to render a service they are unqualified to perform or intentionally conjuring a need for action when none is needed in order to cloak themselves in the mantle of a "hero." Thus, a duty must be imposed upon the volunteer to "exercise reasonable care." Restatement of Torts, Section 323. As with all "reasonable care" doctrines the actor is judged by whether the reasonably prudent person would have acted in the way the defendant

acted "**under the same or similar circumstances.**" And the standard is not set by the extraordinarily cautious person but one of "ordinary prudence." Rest. 2d Torts, Sections 282, 284. Thus, if one were to run into a burning or collapsed building to rescue "screaming children" his or her conduct would be judged under the exigent circumstances, that a building really was on fire or collapsing. One would be awfully hard-pressed to say that such a person would be held liable for any injuries to the children which may have occurred during their extrication from the fiery inferno. There is nothing in the lower court's decision that would discourage such acts of heroism or in any way deprive the true "good Samaritan" of the protections afforded him by common law. Moreover, the suggestion that the would be rescuer in such a situation would be mindful of the state of the law and calmly reconnoiter his or her potential liability before acting is patently absurd. Even if such a person, a lawyer perhaps, were familiar with the state of the law he or she would immediately recognize that the circumstances were such that any unintended harm he may cause the objects of his rescue efforts would not subject him to liability in any rational court of law.

Therein lies the tale in the present case. Defendant desperately seeks blanket immunity because her actions simply cannot be justified, much less explained, under the circumstances that existed on the night in question.

The lower court, as the trial court, before it, was bound to view the factual record in the light most favorable to the party opposing summary judgment. *Zavala v. Arce* (1997) 50 Cal.App. 4th 915 [Cal.Rptr.]. This is a point defendant has consistently ignored throughout her briefs in these proceedings. Torti was, in fact, confronted with a serious situation. A car in which her friends were riding had crashed into a utility pole at a high rate of speed. (AA Vol. II, Exhibit I, p. 244; Exhibit H, p. 234). Plaintiff Van Horn was a belted passenger in the front seat who was stunned as a result of the collision and in extreme pain. She was able to unhook her seatbelt but unable to open the door. (AA Vol. II, Exhibit H, p. 238). When Torti arrived at the scene a few moments after the collision she claimed to have seen smoke and an unidentified liquid coming from underneath the car. (AA Vol. II, Exhibit I, p. 246). She rushed to the passenger side of the wrecked car screaming "the car is going to blow up, we have to get you out." (AA Vol. II, Exhibit H, p. 238). Torti either did not hear or ignored her companion's shout not to touch Van Horn. (AA Vol. II, Exhibit M, p. 405) and proceeded to grab Van Horn by the arm and yank her out of the car "like a rag doll." (AA Vol. II, Exhibit H, p. 239). The passenger in the back seat of the car in which Van Horn was riding described Torti as "freaking out" and "hysterical." (AA, Vol. II, Exhibit G-8 p. 323, 324).

///

Torti admitted that when she opened the car door, she knew that the only smoke at the scene had come from the air bags. (AA Vol. II, Exhibit H, p. 236; Exhibit I, p. 246). She also admitted that she knew there was no danger of fire (AA Vol. II, Exhibit I p. 248) and smelled no gasoline odors. (AA Vol. II, Exhibit I, p. 249). In spite of these circumstances, Torti yanked Van Horn out of the car and put her down across the downed light pole within arms reach of the vehicle she claimed to be in danger of "blowing up." (AA Vol. II, Exhibit H, p. 239). An exploding or burning car would have been just as lethal to Van Horn in the position she was removed to as it would have been in the position she was removed from.

It is highly doubtful that Torti had the immunity provisions in mind when she chose to act as she did. And, it would be highly doubtful that any person, confronted with a truly dire situation, would be spurred to acts of heroism only after they carefully considered whether or not they would be protected by the cloak of an immunity statute if things went badly. What is less doubtful is the knowledge of Torti and others similarly situated that any attempts they make to do something that they are unqualified to do may cause more harm than good. If Torti had thought of that prospect, Alexandra Van Horn would be walking today instead of being confined to a wheelchair. It is clear, as confirmed by the Committee analysis of bills introduced specifically for the purpose of extending the coverage of the

immunity statute to "rescuers" or non-medical care providers, that the policy of the state is to discourage the acts of untrained persons which may only worsen the victim's situation and to discourage the irrational acts of the "officious intermeddler" just as much as it is the policy of the state to encourage the intervention of persons trained in CPR and other advanced first aid techniques.

THE LOWER COURT'S DECISION HAS NO EFFECT ON THE "FIREFIGHTERS" AND OTHER IMMUNITY SECTIONS

Torti argues that the lower court's decision would "undo" the provision for immunity granted to firefighters under Section 1799.107. Presumably, Torti was referring to the qualified immunity provided for "emergency rescue personnel" not "firefighters" who are covered by Section 1799.106 which specifically qualifies the immunity granted for rendering "emergency medical services." Obviously, the lower court's decision would have no impact on the interpretation of that section and is entirely consistent with it. In Section 1799.107, the legislature granted immunity to emergency rescue personnel for the stated purpose of encouraging emergency rescue efforts unqualified by the need for those services to be "medical." This is a specific section with application to a limited type of individual. Thus, the section's protections extend **only** to:

///

> (d) For purposes of this section, 'emergency rescue personnel' means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation . . . whether such person is a volunteer or partly paid or fully paid, **while he or she is actually engaged in providing emergency services . . .** (Emphasis added).

The clear difference between this section and 1799.102 is that this section deals with professionals trained in rescue techniques and further limits the qualified immunity to only those persons who are "acting within the scope of their employment," while Section 1799.102 covers "any person." There can be no argument in the future that the lower court's reasoning in determining that the legislature intended only "medical services" to be covered by 1799.102 somehow limits the immunity specified in 1799.107 because the two sections deal with entirely different classes of people and 1799.107 limits the coverage for rescue personnel to only those persons who are acting in their official capacity. In fact, adding 1799.107 to cover "rescue operations" by such professionals confirms that 1799.102 was never intended to extend to non-medical services. Stated another way, if 1799.102, which covers "any person" who renders non-medical emergency services, then 1799.107 granting immunity for non-

medical services to professionals would be completely superfluous as these professionals would certainly already be included in the class of people defined as "any person." *Lewis v. Mendocino Fire Protection District* (1983) 142 Cal.App.3d 345, cited by defendant, would have been decided differently if 1799.102 extended to non-medical rescue efforts which was the activity engaged in by the firemen in that case.

Defendant's argument that the lower court's decision adversely affects other immunity sections fails for the same reason. Section 1799.108 deals with a specific group of people: "any person **certified** . . . to provide pre-hospital emergency field care . . . " (Emphasis added). Again, since these people would also clearly be included within the universal group of "any person" there would be no need for specific coverage if section 1799.102 were interpreted as defendant argues. In fact, if defendant's argument, that 1799.102 immunizes any person who comes to the aid of another at the scene of an emergency regardless of the type of service rendered, were adopted then there would be no need for any other immunity statute within the entire body of California law. Period! By its act, the legislature would have decided that any person who comes to the aid of another is immune and therefore the common law doctrine known as the "good Samaritan rule" would no longer be the law in California. If that were the intent of the legislature then why did they waste time and effort

providing immunity rules for so many different classes of people? The only answer that makes sense is that the legislature assumed, by the nature of the public policy they sought to encourage, the stated purpose of the body of law adopted and the definitions provided that the "any person" class would be immune only for rendering medical care such as CPR and advanced first aid techniques.

THE COURT OF APPEAL'S DECISION DOES NOT CREATE UNWORKABLE DISTINCTIONS FOR ORDINARY PEOPLE OR THE COURTS

This argument has no place in this litigation. Defendant Torti was not removing Van Horn from the vehicle for purposes of rendering CPR by herself or anyone else. Her sole purpose was to remove Van Horn from a vehicle which she inexplicably believed was going to explode and had no relationship at all to the rendering of any medical or first aid technique.

Future cases with different facts may generate the need for the courts to carve out distinctions in order to further the aims of legislative purposes. For example, a lay person who performs some non-medical service as an incident to the rendering of a medical service might well be covered by the immunity. There are a myriad of conceivable circumstances that may require further statutory interpretations but none of them can be decided here and it would be grossly unjust to Alexandra Van Horn to deny her a day in court because of the possibility that some future case may present a

factual scenario that would require the drawing of distinction with the lower court's decision in this case.

The argument that the lower court's decision adversely affects ordinary citizens in their decisions to get involved or not, is pure speculation piled upon a non-existent stereotype that people never venture anything without first considering the legal consequences. Moreover, defendant's reference to the "Disaster Service Worker Volunteer Program" supports plaintiff's argument because the program specifically provides that "Convergent volunteers not registered as DSW volunteers, **have some liability protection for disaster service under Good Samaritan laws.** They are not, however, provided immunities to the extent as registered DSW volunteers . . . " See Petitioner's Request for Judicial Notice, Exhibit G, page 8. This provision completely undermines defendant's argument that somehow the lower court's decision takes away something from DSW volunteers sought by the Governor's office. In fact, the Governor's office felt that non-registered volunteers have some "liability protection" from "Good Samaritan laws" which is precisely where the lower court's decision leaves people like defendant Torti; protected by the common law rule related to volunteers, not blanket immunity. Moreover, if 1799.102 included non-medical services, we can only presume that the Governor's office would have recognized that and seen no point in applying different

rules to registered and non-registered persons since all would be immune for any act of rescue or other form of non-medical assistance at the scene of any emergency.

CONCLUSION

There is no valid reason for this court to review the decision of the lower court. The lower court, in an unanimous decision, by highly respected jurists, correctly analyzed the legislative intent behind the adoption of Health & Safety Code Section 1799.102 and determined that it did not cover the defendant under the facts of this case. None of the adverse consequences conjured up by the defendant are valid legal or logical reasons to disturb the lower court's decision.

For the reasons stated herein, Plaintiff/Appellant ALEXANDRA VAN HORN respectfully requests that this Court deny the Petition for Review.

DATED: May 15, 2007

LAW OFFICES OF HUTCHINSON & SNIDER

ROBERT B. HUTCHINSON

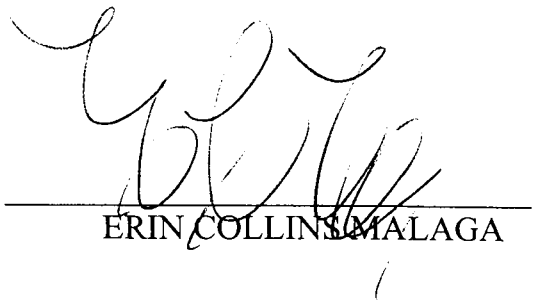
CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.204(c):

I, Erin Collins Malaga, declare I am a secretary in the Law Offices of Hutchinson & Snider.

The word count for Plaintiff and Appellant's Alexandra Van Horn's Answer to Petition for Review is 3,819 as counted in the WordPerfect X3 word-processing program used to generate this brief.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed May 15, 2007 at Beverly Hills, California.



ERIN COLLINS MALAGA

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Law Offices of Hutchinson & Snider, 9454 Wilshire Boulevard, Suite 907, Beverly Hills, California 90212. I am readily familiar with Hutchinson & Snider's practices for the service of documents. On this date, I served a true copy of the following document(s) in the manner listed below:

ANSWER OF PLAINTIFF AND APPELLANT ALEXANDRA VAN HORN TO PETITION FOR REVIEW

x **BY MAIL:** I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Following that practice, I placed a true copy of the aforementioned document(s) in a sealed envelope, addressed to each addressee, respectively, as specified below. The envelope was placed in the mail at my business address, with postage thereon fully prepaid, for deposit with the United States Postal Service on that same day in the ordinary course of business.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Beverly Hills, California on May 17, 2007.

ERIN COLLINS MALAGA

SERVICE LIST

Ronald D. Kent, Esq.
Sekret T. Sneed, Esq.
SONNENSCHEIN NATH & ROSENTHAL, LLP
601 South Figuera Street, Suite 2500
Los Angeles, CA 90017
Telephone: (213) 623-9300
Facsimile: (213) 623-9924
Attorneys for Defendant and Respondent LISA TORTI

Jody Steinberg, Esq.
Lisa Mead, Esq.
HANGER, LEVINE & STEINBERG
21031 Ventura Boulevard, Suite 800
Woodland Hills, CA 91364-6512
Telephone: (818) 226-1222
Facsimile: (818) 226-1215
Attorneys for Defendant and Respondent, LISA TORTI

Edwin B. Brown, Esq.
CRANDALL, WADE & LOWE
7700 Irvine Center Drive, Suite 700
Irvine, CA 92618-2929
Telephone: (949) 753-1000
Facsimile: (949) 753-1039
Attorneys for Defendant and Appellant ANTHONY GLEN WATSON

Jeff I. Braun, Esq.
Frank C. Cracchilo, Esq.
McNEIL, TROPP, BRAUN & KENNEDY LLP
611 Anton Boulevard, Suite 1050
Irvine, CA 92626
Telephone: (714) 557-3600
Facsimile: (714) 557-3601
Attorneys for Defendant and Appellant ANTHONY GLEN WATSON

Honorable Howard Schwab
LOS ANGELS SUPERIOR COURT
9425 Penfield Avenue
Chatsworth Courthouse, Dept. F-48
Chatsworth, CA 91311

Clerk's Office
CALIFORNIA COURT OF APPEAL
Second Appellate District, Division Three
300 S. Spring Street, 2nd Floor, N. Tower
Los Angeles, CA 90013