



Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

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Torts - Peculiar Risk Doctrine Does Not Apply To Injured Independent Contractor

Tverberg v. Fillner Construction, Inc.
California Supreme Court (June 28, 2010)

In *Privette v. Superior Court* (1993) 5 Cal 4th 689, the California Supreme Court held that the hirer of a contractor cannot be vicariously liable for on the job injuries sustained by a contractor's employee resulting from a peculiar risk inherent in the work. In this case, the Supreme Court was asked to resolve a conflict between two appellate courts as to whether *Privette* also applies when the injured person is an independent contractor.

Defendant Fillner Construction, Inc. (Fillner) was the general contractor on a gas station project. Fillner contracted with Lane Supply to install a canopy at the project site. Ultimately, through subcontracts, Plaintiff Jeffrey Tverberg was hired to actually erect the canopy. At the same time, another subcontractor, Alexander Concrete, was hired to erect eight "bollards," concrete posts intended to prevent vehicles from colliding with fuel dispensers. As Tverberg began his work to erect the canopy; Alexander started its' job by digging holes for the bollard footings. Tverberg was aware of the presence of the holes and had asked others to cover them up. On his second day on the job, Tverberg fell into one of the holes and was injured.

Tverberg sued Fillner and others, alleging causes of action for negligence and premises liability. Fillner moved for summary judgment, alleging that it owed no duty of care to Tverberg. Both sides agreed that Tverberg had been hired as an independent contractor. The trial court granted Fillner's motion for summary judgment. In doing so, the trial court relied on a Fourth District Court of Appeal decision, *Michael v. Denbeste Transportation* (2006) 137 Cal.App. 4th 1082, which held that *Privette* applies regardless whether the injured worker is an employee or an independent contractor. Tverberg appealed. The First District Court of Appeal reversed the trial court decision holding that the reasoning of *Michael* was inconsistent with *Privette*. The First District held that the injured worker, whether an employee or independent contractor,

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must have an alternative remedy through the workers compensation system for a hirer to argue there is no duty of care.

The Supreme Court granted Fillner's petition for review and reversed the Court of Appeal decision. The Supreme Court agreed with the Fourth District decision in Michael, that an injured independent contractor cannot hold the general contractor vicariously liable for a jobsite injury on a theory of peculiar risk. The Supreme Court's reasoning, however, differed from Michael. The Supreme Court held that the existence of workers compensation insurance is not relevant to deciding whether a hirer should incur vicarious liability to an independent contractor performing inherently dangerous work. What was critical to the Court was that Tverberg had authority over how the work was to be performed. Therefore, Tverberg was not an innocent bystander. He assumed responsibility for safety precautions in his work area. In that situation, the reasoning for imposing vicarious liability on a hirer was lacking and the doctrine of peculiar risk did not apply. As such, the Supreme Court reversed the Court of Appeal decision. The Court left open the issue of whether Fillberg could be held directly liable on a theory that it retained control over safety conditions. The case was therefore remanded to the Court of Appeal for further consideration.

COMMENT

The California Supreme Court's decision further limits the availability of the peculiar risk doctrine for injured workers seeking to hold hirers vicariously liable for jobsite injuries

For a copy of the complete decision see:

[HTTP://WWW.LOWBALL.COM/WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S169753.PDF](http://www.lowball.com/www.courtinfo.ca.gov/opinions/documents/S169753.pdf)

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