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Old Rule Dumped: Release for One No Longer Releases All

The rule in California has always been that if an injured plaintiff releases one defendant from all liability as part of a settlement, the release lets off all other defendants, too. That rule changed somewhat in 1957 when the Legislature decided that if one defendant made a court-approved "good faith" settlement, other defendants remained liable.

Now, that longstanding rule is gone. "In light of the unjust and inequitable results the common law release rule can bring about, as shown in this case, we hold that the rule is no longer to be followed in California," the state Supreme Court declared unanimously in *Leung v. Verdugo Hills Hospital*.

This case involved a six-day-old boy left with severe brain damage because his pediatrician and hospital staff hadn't spotted his dangerous medical condition. The pediatrician settled with the parents for $1 million, the limit of his malpractice coverage. They did so even though a trial court judge found the settlement "grossly disproportionate" to what the pediatrician should pay and refused to bless it as being in "good faith."

The judge was right. A jury found the boy's total damages to be more than $96 million (or $15.4 million at present value). It said the pediatrician was 55 percent responsible, the hospital 40 percent and the parents 5 percent.

On appeal, the hospital argued that the pediatrician's release also released it, too, and the appellate court reluctantly agreed.

But the Supreme Court held the boy shouldn't be stuck with so little because of an outdated rule carried into California law from English common law. "Under the common law release rule, plaintiff, injured for life through no fault of his own, would be compensated for only a tiny fraction of his total economic damages, a harsh result."

The question was what should replace the old rule. Should the nonsettling defendant — the hospital, in this case — be left responsible for all damages not covered by the settlement? Or should the hospital only have to pay its 40 percent share of the damages, irrespective of the settlement?

The court picked a third approach, which it called "setoff-with-contribution." It held the nonsettling defendant is responsible for all remaining damages, but it then can go after the settling defendant for the part he should have paid. With that approach, "the only practical difference that the settlement makes is that the settling tortfeasor's proportionate share of liability is paid in two parts rather than one," the court said.

The approach also is consistent with the concepts of comparative negligence and joint-and-several liability, doctrines "central to California negligence law." And the new approach will discourage settlements not made in good faith, the court said.

But defense lawyers have said the ruling gives plaintiffs a stronger hand in negotiations and makes securing the "good-faith" seal of approval for settlements all the more important.

Courts Give Owners of Injured Dogs Damages Beyond Price

No matter how annoying your neighbor's dog is, it's probably not a good idea to shoot it or hit it with a baseball bat.

That's one lesson in a pair of rulings from the California Courts of Appeal in recent months. Both cases concluded that the damages someone must pay for injuring a pet can end up being a lot more than you might suppose.

"[T]he usual standard of recovery for damaged personal property — market value — is inadequate when applied to injured pets," one court declared.

The other decision held that "a pet owner [may] recover for mental suffering caused by another's intentional act that injures or kills his or her animal."

That first ruling, *Martinez v. Robledo* decided in October, involved two combined lawsuits in which trial courts had ruled the owners of injured dogs could collect no more than their pets' market value. In one case, the defendant shot his neighbor's German Shepherd while it barked at his dog through a fence. In the other, a veterinarian botched a Golden Retriever's surgery. The appellate court reversed, holding that the plaintiffs could sue for the full cost of their dogs' emergency treatment — nearly $38,000 for the retriever.

The defendants argued that a Civil Code section and a standard jury instruction declare damages for harm to personal property, which includes animals, can't exceed market value. But the plaintiffs and the appellate court looked to a Court of Appeal decision from last year allowing greater damages for pets and to Civil Code Section 3333, which says the measure of damages in noncontract disputes is "the amount which will compensate for all the detriment proximately caused."

"[A]nimals are a unique kind of personal property," the appellate court said, adding that harming animals is a crime. It also noted that most pets have little or no value to anyone except the owner. If market value remains the measure of damages, then a tortfeasor's liability would be minimal "no matter how horrific the wrongdoer's conduct."

Therefore, the court declared, "the determination of a pet's value cannot be made solely by looking to the marketplace."

The second case, *Plotnik v. Meihaus*, decided at the end of August, dealt with one family's claim that its uphill neighbors had engaged in a campaign of terror against them. Among the alleged wrongs: whacking their 12-inch miniature pinscher with a baseball bat. The man of the plaintiff family didn't witness the actual canine line drive, but did see little Romeo yelping and rolling downhill into a tree.

The plaintiff family sued their neighbors for trespass to a chattel, among many other causes of action. A jury awarded damages on the trespass claim not only for the $2,600 in medical expenses but for the plaintiffs' emotional distress over Romeo's injuries. The appellate court upheld both.

Although plaintiffs usually can't collect emotional-distress damages when suing for negligence, that limit doesn't apply "when distress is the result of a defendant's commission of the distinct torts of

trespass, nuisance or conversion," the appellate court said. Further, other states have allowed damages for mental suffering when someone's wrongful act caused a pet's injury or death, the court noted.

Compared to dogs, "there are no other domestic animals to which the owner or his family can become more strongly attached, or the loss of which will be more keenly felt," the court said, quoting an earlier decision.

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The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.