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Equitable Ruling Could Require Defendant to Pay Double Toll

Normally, one wouldn't expect that someone injured in an accident could sue, win damages and then, many months later, sue the same defendants again under a different legal theory.

Yet a California Court of Appeal issued a decision recently that could allow something very similar to that to occur. *Hopkins v. Kedzierski*

The case began in May 2008 when a woman fell from the balcony of the San Diego dental lab where she was employed. Unable to work, she put in for and received workers' compensation benefits, which she extended in April 2009.

The couple who owned the lab also owned the building where it was located, and in September 2010, the injured ex-employee sued them for premises liability. They countered that she had filed her suit too late, several months after the two-year statute of limitations had run out.

The woman responded that the statute of limitations clock had been suspended, under the doctrine of equitable tolling, while she pursued her workers' compensation claim.

Typically, the issue of equitable tolling arises when a plaintiff is prevented from going forward with one cause of action and then calls on the equitable tolling to justify bringing a second claim late.

That's what the trial judge in this case held was required. He ruled the statute of limitations could have been tolled only if the woman had been denied workers' compensation benefits. Since she wasn't, he held, no tolling.

But the appellate court disagreed. Although a state Supreme Court precedent on equitable tolling involved someone denied workers' compensation benefits, "the logic of [that decision] compels the opposite conclusion, namely, that tolling is premised on the 'filing of a compensation claim,'" the appellate court declared. "[T]he rejection of such a claim is not a prerequisite to tolling."

After all, an injured worker can't know for sure whether she'll get compensation benefits. "If failure … were a requirement for equitable tolling," the plaintiff would, in effect, be required to sue first and ask questions later. "This is the precise outcome that the [Supreme Court] sought to avoid."

"No court has held, or even suggested, that the doctrine of equitable tolling under California law contains such a requirement [of failure]," the appellate court added at another point.

What the doctrine does require is a showing that the defendants received timely notice of the claims, that they weren't prejudiced by the delay and that the plaintiff acted reasonably and in good faith. Since the trial court never considered those three elements, the appellate court sent the case back for a new hearing.

But it did reject the plaintiff's request for a jury trial on whether equitable tolling applied. In what was apparently the first ruling on the question in California, the court held that equitable tolling is "as the name suggests" an equitable issue and therefore cannot be decided by a jury.

Even Products Defendants Can Sometimes Apportion Damages

In 1986, voters adopted Proposition 51 to limit the sting to defendants of the doctrine of joint and several liability. Since then, each defendant in a multiple-defendant injury cases only has to pay the portion of a plaintiff's noneconomic damages equivalent to that defendant's portion of fault.

But the ballot measure's rule doesn't fit well with the usual rules followed in products liability cases. In a typical products case, all the parties in the stream of commerce that put a defective product in the injured consumer's hands — manufacturer, distributor, retailer — are each strictly liable for all damages.

Recently, however, a California Court of Appeal held that in certain products liability cases, multiple defendants could have their shares of damages apportioned among them based on their shares of fault for the injury.

When voters passed Proposition 51, they wanted to eliminate "liability for noneconomic damages far out of proportion to the defendant's share of responsibility," the court declared, quoting an earlier decision. "We see no reason to believe that the voters thought that evil was any less or different when the defendant was a manufacturer held strictly liable for a defective product … ." Romine v. Johnson Controls, Inc.

The decision grows from a horrific 2006 traffic accident in which one driver, Raymond Gallie, going about 80 miles per hour plowed into a line of cars at a red light exiting a freeway. The plaintiff was driving a Nissan pickup, the third of four vehicles in the line. When the crash happened, her seatback collapsed and she slid backward, slamming head first into the rear seat.

She was made a quadriplegic. The driver of the car behind her died.

She sued Gallie, Nissan and companies involved in making her seatbelt, her seat and its recliner mechanism. Most settled, including Nissan, but several of the seat- and seatbelt-related companies took the case to trial. A jury awarded the plaintiff total damages of more than $24 million, assigning 20 percent of the overall fault to the defendants and the rest to Gallie.

Some evidence indicated that both the seat recliner and seat belt could have failed. But the trial judge kept out evidence that could have allowed the jury to apportion liability among all the product defendants, including Nissan.

On appeal, the appellate court noted that some earlier precedents had held Proposition 51 should not apply "when a single defective product produced a single injury." But other decisions had applied the ballot measure in asbestos cases when "there are multiple products that caused the plaintiff's injuries and there is evidence that provides a basis to allocate fault for noneconomic damages between the defective products."

This case did not fit either line of decisions, the court said. In this case, the single injury might have been caused by several products. But the jury heard no evidence to allow it to allocate fault among those products.

It should have, the court held. It sent the case back for a new trial — limited to the apportionment of fault and noneconomic damages. The amount of damages could not change, it held.

Barry L. Rodolff

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.