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SOUTHERN CALIFORNIA
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April 27, 2020

REQUEST FOR PUBLICATION
(Cal. Rules of Court, rule 8.1120)

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Re: *Babski v. Lowell*
3d Civil Case No. C088065

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Dear Honorable Justices:

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Pursuant to rule 8.1120(a) of the California Rules of Court, the Association of Southern California Defense Counsel (“ASCDC”) respectfully requests that this Court publish its recent opinion in *Babski v. Lowell* (Apr. 10, 2020, No. C088065) (the “Opinion”).

Interest Of The Requesting Organization

LOS ANGELES COUNTY

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ASCDC is the nation’s largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California’s civil defense bar. ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in amicus appellate matters, ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas. ASCDC’s members, and the broader legal community, regularly confront the legal doctrine that *Babski v. Lowell* addresses—the sudden emergency doctrine—particularly in litigation involving vehicle accidents. So, ASCDC has a significant interest in developments affecting this area of law.

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The Opinion

The Opinion addresses what is sufficient evidence to support instructing the jury with CACI No. 452, the instruction on the sudden emergency doctrine. The Opinion thoroughly explains the purpose of the sudden emergency doctrine. (Opn. at pp. 5-7.) It also explains when a sudden emergency jury instruction is proper. (Opn. at pp. 6-10.) Ultimately, the Opinion holds that the trial court properly instructed the jury with CACI No. 452, based on evidence that the defendant motorist was confronted with an emergency condition when the vehicle ahead of him suddenly and unexpectedly discharged a dense cloud of blinding smoke. (Opn. at pp. 8-10.)

Why Publication Is Warranted

An opinion “should be certified for publication in the Official Reports” if it meets any of the nine separately listed criteria in California Rules of Court, rule 8.1105(c). The Opinion meets at least three such criteria:

- It “explains . . . an existing rule of law”;
- It “[i]nvolves a legal issue of continuing public interest”; and
- It “reaffirms a principle of law not applied in a recently reported decision.”

(Cal. Rules of Court, rule 8.1105(c)(3), (6), (8).)

The Opinion explains an existing rule of law and involves a legal issue of continuing public interest (rule 8.1105(c)(3), (6)). The Opinion is helpful in describing the purpose of the sudden emergency doctrine and in explaining what is sufficient evidence to support instructing the jury with CACI No. 452. The Opinion helpfully synthesizes prior case law to explain the doctrine’s contours (Opn. at pp. 5-7) and then addresses each element of CACI No. 452 (Opn. at pp. 7-8). The Opinion is particularly helpful in providing an example of what sort of evidence shows that at least two courses of action were available to the party after the danger was perceived, an issue that is repeatedly litigated in California, particularly in the context of vehicle accidents. (Opn. at pp. 8-9.) The correct application of a jury instruction, and the correct application of a legal doctrine, are issues of continuing public interest. That is particularly true for jury instructions and legal doctrines that are relevant to personal-injury cases involving vehicle accidents. Such lawsuits are filed across California on a daily basis.

The Opinion reaffirms a principle of law not applied in a recently reported decision (rule 8.1105(c)(8)). As noted, the Opinion reaffirms the applicability of CACI No. 452, the jury instruction on the sudden emergency doctrine. No recent published opinion addresses what sort of evidence is sufficient to support instructing the jury with CACI No. 452. In fact, this Court had to rely almost entirely on opinions that are more than 50 years old. (See Opn. at pp. 7, 9.) The *most recent* opinion cited by this Court on the sudden emergency jury instruction issue—*Damele v. Mack Trucks, Inc.* (1990) 219 Cal.App.3d 29—is *30 years old*. (See Opn. at p. 7.) Most importantly, none of the cases cited involved CACI No. 452. (See *Damele, supra*, 219 Cal.App.3d at p. 36; *Leo v. Dunham* (1953) 41 Cal.2d 712; *Christensen v. Bergmann* (1957) 148 Cal.App.2d 176, 185; *Grinstead v. Krushkhov* (1964) 228 Cal.App.2d 793, 795.) The most recent published opinion on the sudden emergency doctrine, *Shiver v. Laramie* (2018) 24 Cal.App.5th 395, applied the doctrine at the summary judgment stage and did not address a jury instruction argument.

* * *

If published, the Opinion's comprehensive treatment of the sudden emergency jury instruction will afford substantial guidance. ASCDC's members routinely litigate cases with facts analogous to this lawsuit, where a sudden danger presents itself to a vehicle driver on a roadway. By clarifying what sort of evidence is sufficient to support instructing the jury with CACI No. 452, the Opinion will reduce uncertainty and minimize needless litigation on this issue in both the trial and appellate courts. Guidance on this important and reoccurring issue will benefit the broader legal community. For all these reasons, ASCDC respectfully urges this Court to publish its opinion.

Respectfully submitted,

ASSOCIATION OF SOUTHERN CALIFORNIA
DEFENSE COUNSEL

By: /s/ Geoffrey B. Kehlmann

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cc: See Attached Service List

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On April 27, 2020, I hereby certify that I electronically served the foregoing **REQUEST TO PUBLISH OPINION** through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Proof of electronic filing through TrueFiling is then printed and maintained in our office. Electronic service is complete at the time of transmission.

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Executed on April 27, 2020, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Pauletta L. Herndon
Pauletta L. Herndon