



ASSOCIATION OF  
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May 10, 2019

Hon. Presiding Justice Kathleen O’Leary  
Hon. Associate Justice William Bedsworth  
Hon. Associate Justice Richard Aronson  
California Court of Appeal  
Fourth Appellate District, Division Three  
601 W. Santa Ana Boulevard  
Santa Ana, California 92701

**Re: *Stephen Taulbee et al. v. EJ Distribution Corp. et al.*  
No. G054545—ASCDC Request for Publication of Opinion  
Cal. Rules of Court, rule 8.1120**

Honorable Justices:

The Association of Southern California Defense Counsel (ASCDC or Association) submits this letter pursuant to California Rules of Court rule 8.1120 to request publication of this court’s opinion in *Taulbee v. EJ Distribution Corp.*, No. G054545 (*Taulbee*) issued April 23, 2019.

### **Identity and Interest of ASCDC**

ASCDC is among the nation’s largest and preeminent regional organizations of trial and appellate lawyers devoted to defending civil actions, comprised of approximately 1,100 attorneys in Southern and Central California. ASCDC is actively involved in assisting the courts and organized bar in addressing legal issues of interest to its members and the public.

ASCDC is actively involved in assisting courts addressing legal issues of interest to its members and the public. ASCDC and its constituent members have appeared on numerous occasions in matters of concern to the legal community, including case law defining legal duty, negligence and causation.

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(See, e.g., *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 546 (*Parsons*), *Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077 (*Vasilenko*) and *Lee v. Hanley* (2016) 61 Cal.4th 1225.)

ASCDC is substantially interested in assuring the proper development and application of California law concerning the elements of tort liability claims and defenses, including the doctrine of negligence per se, as capably articulated by this court's *Taulbee* opinion. Accordingly, the Association requests publication of the decision in this case.

### **Reasons Why This Decision Should Be Published**

Rule 8.1105 (c) provides that an appellate decision “should be certified for publication in the Official Reports,” if the opinion meets any one of the nine criteria for certification stated by the Rule. ASCDC submits that the opinion satisfies several of those criteria.

#### **1. Background and Procedural History**

Appellant Stephen Taulbee (Taulbee) suffered catastrophic injuries after driving his Jeep into the back of a truck parked in a gore point, a triangular-shaped zone demarcated by the freeway and the exit ramp. Taulbee and his wife sued respondent Carlos Aldana, the truck driver, and his employer, respondent EJ Distribution Corporation. The trial court instructed the jury that it could find Aldana negligent per se for parking in the gore point (Veh. Code, § 21718), and that Taulbee could be found negligent per se for driving into the gore point (§ 21651). The trial court declined to instruct the jury that Aldana also could be found negligent per se for driving into the gore point to park his vehicle (§ 21651). The jury found Aldana was not negligent for parking in the gore point. Judgment was entered for respondents. (Opn. at p. 2.)

Appellants contended the trial court prejudicially erred in not giving the requested negligence per se instruction. They argued substantial evidence supported their theory that Aldana was liable for the traffic collision by driving into the gore point in violation of section 21651. According to appellants, even if Aldana needed to stop on the freeway, he could and should have stopped elsewhere along the roadway “outside of traffic lanes,” such as on the shoulder rather than in the gore point. (Opn. at pp. 2-3.) A defense traffic engineering expert testified that “it was perfectly appropriate under these circumstances for the truck to stop in the gore area,” because “[i]f that was his first point of safety, absolutely, it’s okay to stop there.” (*Id.* at p. 4.)

This court affirmed. The opinion reasons that the trial court properly declined to give the requested instruction because Aldana’s negligent driving into the gore point was not a proximate cause of the traffic accident. In any event, on this record, any instructional error in failing to give the instruction was harmless given the jury’s finding that Aldana was “not negligent” for parking in the gore point. (Opn. at pp. 2, 5-7.)

**2. Published Authority is Necessary to Clarify the Rules Governing Negligence Per Se, Particularly Considering All Other Elements of the Negligence Tort**

The opinion warrants publication because it “[a]pplies an existing rule of law to a set of facts significantly different from those stated in [prior] published opinions [explaining the principles of negligence per se in relation to other elements]” (Cal. R. Ct., rule 8.1105(c)(2)); the decision “modifies, [expands upon, and] explains ... with reasons given, an existing rule of law” concerning these important principles (rule 8.1105(c)(3)); “[a]dvances a new interpretation, clarification ... or construction of a provision of a constitution, statute, ordinance, or court rule [here, for example, the interplay of Veh. Code, §§ 21651, 21718]” (see rule 8.1105(c)(4)); “[m]akes a significant contribution to legal literature by reviewing either the development of a common law rule or the ... judicial history of a ... statute, or other written law” (rule 8.1105(c)(7); and “[i]nvolves a legal issue of continuing public interest” ” (rule 8.1105(c)(6).

As the jury was instructed under the plaintiffs’ theory of negligence per se, defendant is presumed negligent by virtue of the breach of a duty established by the violation of a statute or ordinance. In California, a defendant is negligent per se (i.e., presumed negligent) when:

1. The defendant violated a statute, ordinance, or regulation;
2. The violation caused death or injury to person or property;
3. The death or injury resulted from an act the statute, ordinance, or regulation was designed to prevent; and
4. The person who suffered the death or the injury was a member of a group the statute, ordinance, or regulation was designed to protect.<sup>1</sup>

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<sup>1</sup> Evidence Code, § 669; Cal. Civil Jury Instructions (CACI) Nos. 481(a), (b); see, e.g., *Spriesterbach v. Holland* (2013) 215 Cal.App.4th 255, 263-264.

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The trial court ably addressed the parties' legal positions, giving two general negligence instructions, and two negligence per se instructions that appropriately addressed all elements of each theory. (Opn. at pp. 5-6.)

This case amply demonstrates that when principles of negligence per se apply, other components of tort liability must be evaluated by the courts and juries as in any negligence case. The defendant's negligence still must be a substantial factor in causing the plaintiff harm.<sup>2</sup> These are often fact issues. In the final analysis, the jury answered the questions of Aldana's negligence by finding he was not negligent. Moreover, the undisputed facts adduced at trial demonstrated why the separate "causation" element was not satisfied.

The court analyzes these circumstances in a straightforward manner that will likely aid both plaintiff's and defendant's trial attorneys; by focusing attention on required proof of *each* of the essential elements of tort liability. Such as, whether a statutory violation was excused or rebutted, and if proven, whether the violation was a "substantial factor" in causing plaintiff's damages.

Publication of this opinion would assist parties and courts in future cases analyze the elements of negligence per se more effectively and efficiently.

Respectfully submitted,

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<sup>2</sup> CACI No. 400; Civil Code, § 1714; see also *Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 366-370; *Parsons, supra*, 15 Cal.4th at pp. 486-487 (conc. opn. by Werdegar, J.); *Vasilenko, supra*, 3 Cal.5th at p. 1083.

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

I am employed in the County of Sacramento, State of California.

I am over 18 years of age and not a party to this action. My business address is BUCHALTER, A Professional Corporation, 500 Capitol Mall, Suite 1900, Sacramento, CA 95814.

I served the document described as **ASCDC Request for Publication of Opinion (Cal. Rules of Court, rule 8.1120)** by the following means:

**[X] (BY ELECTRONIC SERVICE VIA TRUEFILING)** Based on court order or statutory procedure, I caused the above-entitled document to be served through TrueFiling, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited, or maintained with the original documents in this office. To the Addressees identified on the attached SERVICE LIST.

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

Executed May 11, 2019 at Sacramento, California.



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HARRY W.R. CHAMBERLAIN II

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