



May 20, 2022

Jorge E. Navarrete, Supreme Court Clerk and Executive Officer
Supreme Court of California
Earl Warren Building at Civic Center Plaza
350 McAllister Street
San Francisco, CA 94102-4797

**Re: *Kuciemba, et al. v. Victory Woodworks, Inc.* Case No. S274191
CRC Rule 8.548(e) Response Letter in Support of Request for Decision**

Dear Clerk of the Court:

Pursuant to *Cal. Rules of Court* Rule 8.548(e) we respond to the May 11, 2022 letter from non-party See's Candies, Inc. See's Candies takes the position that this Court should not accept the Ninth Circuit's request for a decision on the existence of a duty of care because the issue was addressed in *City of Los Angeles v. Superior Court* (2021) 62 Cal. App. 5th 129. We respectfully disagree.

In *City of Los Angeles*, the plaintiff was married to an LAPD officer who worked at an allegedly unsanitary premises owned by the City. *City of Los Angeles, supra*, 62 Cal. App. 5th at 134. The officer was diagnosed with typhus in June 2019. Wife claimed that the City's failure to maintain its property caused the officer's typhus infection. Wife also claimed that exposure to her husband caused wife's own typhus infection in October 2019. *Id.* at 134.

Wife sued the City of Los Angeles pursuant to *Gov't Code* § 835 and a common law negligence claim. The trial court overruled the City's demurrer, citing this Court's decision in *Kesner v. Superior Court* (2016) 1 Cal. 5th 1132. *City of Los Angeles, supra*, 62 Cal. App. 5th at 136.

The Court of Appeal ultimately determined that the City did not owe a duty to wife. "The City contends that the court's reliance on *Kesner* was inappropriate, in part because *Kesner* involved private companies rather than public entities. We agree." *City of Los Angeles, supra*, 62 Cal. App. 5th at 143. The Court of Appeal explained how "[D]irect tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714." *Id.* at 143. Thus, *Kesner* was distinguishable because that decision relied on the more expansive general duty principles of *Civ Code* § 1714 instead of the narrower dangerous condition on public property statute, *Gov't Code* § 835.

See's Candies ignores this key distinction and instead points to *dicta* in the *City of Los Angeles* decision that suggests that wife did not have the same basis for liability as the *Kesner* plaintiffs. *City of Los Angeles, supra*, 62 Cal. App. 5th at 144. See's Candies' analysis is too simplistic and quotes *Kesner* out of context. First, See's Candies ignores the bulk of the *Kesner* decision which analyzed and weighed the various foreseeability and public policy factors to find that the employer held a duty of care for negligence purposes to avoid take-home liability. This Court emphasized that "[a]n employee's role as a vector in bringing asbestos fibers into his or her home is derived from the

Reply to Walnut Creek

employer's or property owner's failure to control or limit exposure in the workplace.” *Kesner, supra*, 1 Cal. 5th at 1148.

Second, the language from *Kesner* quoted by *City of Los Angeles* refers to a section of the opinion where this Court determined that a property owner, *for premises liability purposes*, could owe a duty of care to a person who has not stepped foot on the premises. In that section of the opinion, this Court emphasized that “[w]e have never held that the physical or spatial boundaries of a property define the scope of a landowner's liability” and that “liability for harm caused by substances that escape an owner’s property is well established in California law.” *Id.* at *Kesner, supra*, 1 Cal. 5th at 1158. Applying the law, this Court found a duty of care existed and again emphasized that the worker and his clothing “acted as a vector” to carry the toxic asbestos fibers from the employer’s premises into the worker’s household. *Id.* at 1159.

The *City of Los Angeles* court simply did not consider the full context of the *Kesner* opinion and did not perform an extensive *Rowland* factors analysis. Indeed, the *City of Los Angeles* Court did not have to perform this analysis because, unlike *Kesner* which involved a private defendant, the City of Los Angeles was a public defendant and the holding was that *Gov’t Code* § 835 foreclosed plaintiff’s claims. *City of Los Angeles, supra*, 62 Cal. App. 5th at 142-144.

Thus, *City of Los Angeles* does not resolve the question certified by the Ninth Circuit because this case involves a private corporation, not a public entity, and the *City of Los Angeles* Court did not conduct an extensive analysis on the duty question, it merely conducted an analysis of *Gov’t Code* § 835. This Court should have the opportunity to weigh and analyze the foreseeability and public policy factors to determine if Defendant Victory Woodworks, Inc. owes a duty of care to Mrs. Kuciemba.

Very Truly Yours,

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/s/ Martin Zurada

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S274191**

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/s/Noemi Gonzalez

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Gonzalez, Noemi (Other)

Last Name, First Name (PNum)

Venardi Zurada LLP

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