

No. S209125

FILED WITH PERMISSION

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CAROLYN GREGORY, Plaintiff and Appellant

v.

LORRAINE COTT et al., Defendants and Respondents

SUPREME COURT  
FILED

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Deputy

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT,  
DIVISION FIVE, CASE NO. B237645

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF LOS ANGELES

COUNTY, THE HONORABLE GERALD ROSENBERG, JUDGE PRESIDING

Los Angeles County Superior Court Case No. SC109507

**APPELLANT'S SUPPLEMENTAL BRIEF**

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**No. S209125**

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TABLE OF AUTHORITIES

Cases

*Herrle v. Estate of Marshall* (1996) 45 Cal. App.4th 1761 ... p. 3

Publications

National Highway Traffic Safety Administration *internet publication*  
"Seat Belts Work" 01/23/1997 ... p. 2

www.lifesciences.com, article no. 23989 Trevor Stokes, Author  
"Human Life Span Took Huge Jump In Last Century" 10/15/12 ... p. 2

www.sciencedaily.com, New York Stem Cell Foundation, "Stem cell  
research identifies new gene targets in patients with Alzheimer's disease"  
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www.news-medical.net, "Adult stem cells can prevent Alzheimer's  
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www.eurostemcell.org, "Alzheimer's disease: how stem cells help,"  
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Statutes

Evidence Code § 451(f) ... p. 1

Evidence Code § 645.1 ... p. 1

Evidence Code § 1341 ... p. 1

Civil Code § 41 ... p. 3

**THE IMPOSITION OF LIABILITY FOR AVOIDABLE  
INJURIES, REDUCES THE RISK OF HARM, ENCOURAGES  
RESPONSIBLE BEHAVIOR AND PROMOTES REALISTIC,  
PRACTICE SOLUTIONS TO SITUATIONS GIVING RISE  
TO FOREESEEABLE ACCIDENTS**

Pursuant to Evidence Code § 451(f) the Court shall take judicial notice of: "Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute."

Evidence Code § 645.1 provides as follows: "Printed materials, purporting to be a particular newspaper or periodical are presumed to be that newspaper or periodical if regularly issued at average intervals not exceeding three months."

Evidence Code § 1341 provides as follows: "Historical works, books of science or art and published maps or charts, made by persons indifferent between the parties, are not made inadmissible by the hearsay rule when offered to prove facts of general notoriety and interest." Therefore, according to the rules of evidence the Court can consider the internet periodicals, newspapers and publications attached hereto as Exhibits.

The Appellant urges this Court to judicially notice how the considerable body of law, regarding the manufacture, sale and use of automobiles, has caused the use of the automobile to become safer over time, despite the obvious risks inherent in their use. On January 1, 1986, the Legislature of this state enacted the "seat belt law," codified as California Vehicle Code §27315. Since then, manufactures of automobiles have increasingly installed safety devices, including but not limited to headrests to reduce the risk of whip lash, neck injuries, air bags, to cushion the human body against impacts to the interior of the automobile and accommodating the use of child safety seats, which are required by the California Vehicle Code for children under specified age and weight specifications.

According to the National Highway Traffic Safety Administration:

**"Seat belts work.** They are the most effective means of reducing fatalities and serious injuries when traffic crashes occur and are estimated to save 9,500 lives in America each year. Research has found that lap/shoulder belts, when used properly, reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate-to-critical injury by 65 percent." (*internet pub.* 1/23/97 NHTSA)

Clearly, the imposition of liability against negligent manufacturers and users of automobiles has had the positive effect of reducing the severity and the occurrence of injuries caused by the increasing use of the automobile.

**ALL PARTIES AND AMICUS INVOLVED IN  
THIS APPEAL AGREE, THE INCIDENCE OF  
ALZHEIMER'S DISEASE IS INCREASING AND WILL CONTINUE  
TO INCREASE AS THE AGING POPULATION EXPANDS**

The statistical evidence submitted by the parties and amicus to this appeal is undisputed; the incidence of Alzheimer's disease is increasing. This increase is logically tied to the expanding population and the fact that due to the increasing quality of medical care, the average human life span has increased due to both: advances in modern medical science and the increasing quality and cleanliness of human life in the developed world, (see [www.lifescience.com](http://www.lifescience.com), article no. 23989 Trevor Stokes Aut. 10/15/2012, "Human Life Span Took Huge Jump In Last Century").

**THE LAW BY IMPOSING LIABILITY, WILL FOSTER AND ADVANCE  
RESEARCH ALREADY BEGUN, TO CURTAIL AND/OR END  
ALZHEIMER'S DISEASE**

Advancements in the area of **stem cell research** are giving new hope to persons suffering from Alzheimer's disease and their families. (see [www.sciencedaily.com](http://www.sciencedaily.com) 01/09/2014 New York Stem Cell Foundation, "Stem cell research identifies new gene targets in patients with Alzheimer's disease,") (see also, [www.news-medical.net](http://www.news-medical.net) 09/27/2012, "Adult stem cells can prevent Alzheimer's disease,") (see also, [www.eurostemcell.org](http://www.eurostemcell.org) 01/22/2014, "Alzheimer's

disease: how stem cells could help,"). These articles state that stem cell research can help Alzheimer patients in two ways; first, by creating Alzheimer cells from stem cells in a petri dish, in a controlled laboratory environment, drug testing is facilitated to find new drugs to treat the disease and secondly and more exciting, are experiments which have successfully injected human stem cells into mice, suffering from Alzheimer's disease, and have seen the results that the mice treated with the stem cell injections have reliably demonstrated a regeneration of affected brain tissue and restoration of the ability to learn and recall basic functions.

### CONCLUSION

Civil Code § 41 provides that persons of unsound mind are civilly liable for the wrongs they commit. When the Respondent Mrs. Cott, injured the Appellant Ms. Gregory, within the confines of her single family home, Ms. Gregory was working alone, without the assistance of other health care professionals, without the benefit of any specialized equipment available to Ms. Gregory, and without any appropriate fixtures having been installed in the single family home to assist the Appellant in the control of Mrs. Cott, or to provide advance warning of the approach of Mrs. Cott. Clearly, under these circumstances the law of negligence should be applied to the facts of this case.

The Appellant argues that the rule in the case of *Herrle v. Estate of Marshall* (1996) 45 Cal. App.4th 1761 should not be applied to this case, since the facts are so distinguishable.

Finally, the doctrine of Primary Assumption of the Risk, is simply inadequate to deal with the increasing risk of harm presented by the fact that more and more of our aging population will be suffering from Alzheimer's disease as the population continues to grow and the average human life span increases.

///

Therefore, let this Court impose negligence liability to the facts of this case, to **foster, encourage and inspire** the ongoing research to curtail and/or cure and eliminate Alzheimer's disease.

Dated: April 16, 2014

Law Offices of Alexander J. Petale

By: 

Alexander J. Petale, Esq., for  
Appellant Ms. Caroline Gregory

**CERTIFICATE OF WORD COUNT**

I Alexander J. Petale, Esq., certify that this Appellant's Supplemental Brief was prepared on a computer using Microsoft Word, and that according to that program, this documents contains approximately 1,049 words.

Dated: April 17, 2014

LAW OFFICES OF ALEXANDER J. PETALE

By: 

Alexander J. Petale, Esq., for Appellant  
CAROLYN GREGORY



PROOF OF SERVICE BY MAIL (CCP 1011 & 1013)  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, I am over the age of 18 years and not a party to this action. My business address is P.O. Box 3993, Hollywood, California 90078-3993

On April 17, 2014, I served the documents described as: Appellant's Supplemental Brief, in the matter of GREGORY v. COTT, LASC No. SC 109507 Appellate No. B237645, **SUPREME COURT CASE NO. S209125**

By placing true and correct copies of those documents in a sealed envelope addressed as follows:

SEE ATTACHED MAILING LIST

By Mail: XXX by **US EXPRESS MAIL** on the California Supreme Court only, all other Parties and Counsel, by US First Class Mail, Postage Prepaid.

XXXX, I deposited such envelopes in the mail at Los Angeles, California, 90036, the envelop was mailed with first class postage thereon, fully prepaid.

XXXX, I am readily familiar with this firm's practice for collection and processing correspondence for mailing. Under that practice the above described documents would be deposited in the US Mail on that same day with postage thereon, first class, fully prepaid, in the ordinary course of business. I am aware that on motion of the party affected that service is presumed invalid if the postage meter date or postmark is more than one day after the date stated for deposit in the mail thereon.

By Personal Delivery

        , I caused to be delivered the above described documents, by hand to the address shown above on the date stated herein.

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

Dated: April 17, 2014

By: 

Alexander Petale, Esq.

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