Appellate Reports

Troester v. Starbucks Corp. – The California Supreme Court rejects the use of the de minimus doctrine to allow employers to demand small amounts of uncompensated work for employees

By Jeffrey I. Ehrlich

Troester v. Starbucks Corp.

(2018) __ Cal.5th __ (Cal. Supreme).
Who needs to know about this case? Lawyers handling California wage-and-hour cases where the defense has relied on the de minimis doctrine.
Why it's important: Holds that California does not follow the de minimis doctrine.
Synopsis: The de minimis doctrine is an application of the maxim *de minimis no curat lex*, which means "the law does not concern itself with trifles." Federal courts have relied on the doctrine in some circumstances to excuse the payment of wages for small amounts of otherwise compensable time upon a showing that the administrative time is difficult to record.

Troester worked at Starbucks as a shift supervisor. He alleged that Starbucks's computer software required him to clock out when closing a store, but he was then required to initiate the software's "store-close procedure" on another computer terminal in the back office, and to perform other duties before he left the store. He alleged that the duties he was required to perform after clocking out typically required him to work 4 to 10 additional minutes per shift.

Troester filed a class action on behalf of similarly situated Starbucks employees in California state court. Starbucks removed and moved for summary judgment on the ground that his uncompensated time was so minimal that Starbucks was not required to compensate him. The district court granted summary judgment on this ground. The court found that his total uncompensated time over the 17-month period of his employment was approximately 12 hours and 50 minutes, which added up to $102.67 at his $8 per hour wage rate, exclusive of any penalties or other remedies. The court also assumed that the time would be administratively difficult to capture. On appeal, the Ninth Circuit certified the following question to the California Supreme Court: Does the federal Fair Labor Standards Act's de minimis doctrine, as stated in *Anderson v. Mt. Clemens Pottery Co*. (1946) 328 U.S. 680, 692, and *Lindow v. United States* (9th Cir. 1984) 738 F.2d 1057, apply to claims for unpaid wages under California Labor Code sections 510, 1194, and 1197?

The Supreme Court analyzed the question in two parts: (1) Have California's wage-and-hour statutes or regulations adopted the FLSA's de minimis doctrine? And, (2) even if they have not, does the de minimis principle, which operates in California in various contexts, apply to wage-and-hour claims? The Court's answer to both questions was "no."

As applied in FSLA cases, courts have allowed up to 10 minutes of otherwise compensable time to be treated as de minimis upon a showing that capturing the time would be difficult and that the aggregate amount of uncompensated time was not substantial. The California Supreme Court noted that both California's statutes and the IWC wage orders require employers to pay for "all hours worked." The Court noted that the DLSE Manual does include the de minimis doctrine, but it further noted that unlike wage orders, the manual is not binding authority on the Court. After examining the relevant California statutes and regulations, the Court concluded that there was no evidence that the Legislature or the IWC had incorporated the federal standard for payment of wages that was less protective of employee rights than the controlling California authorities.

The Court further held that even though the de minimis doctrine applied in various other contexts in California law, it did not apply to wage-and-hour claims. Although the Court did not rule out that in a given case, the rule might apply, it held that it did not apply to the facts presented in the case against Starbucks.

The Court noted that the availability of computerized tracking of hours made it easier to track compensable time than when the decisions relied on by Starbucks were decided, and that the advent of the class-action remedy showed that it could be practical to keep track of small claims and aggregate

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them into a justiciable controversy. Moreover, the Court noted that small amounts of time can add up to something of significance – that the $102 owed to Troester could be enough to pay a utility bill, buy a week of groceries, or a month of bus fares. Hence, "What Starbucks calls "de minimis" is not de mininis at all to many ordinary people who work for hourly wages."

Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC

(2018) __ Cal.App.5th __ (3d Dist.)
Who needs to know about this case? Lawyers handing tort claims where release agreements, the doctrine of gross negligence, or the doctrine of assumption of risk is an issue.
Why it's important: Holds that a snowboarder who was badly injured when she collided with a "snow cat" at Mammoth was unable to state a viable claim given her signature on a release agreement and under the doctrine of assumption of the risk. The appellate court affirmed the trial court's order excluding the plaintiff's experts' declarations as too conclusory.
Synopsis: Plaintiff was snowboarding down an open run and collided with a snow cat pulling a tiller when it made a sharp left turn into her path without signaling. She lost a leg and suffered serious facial lacerations and skull injuries. When plaintiff purchased a season pass at Mammoth, she signed a liability waiver and an acknowledgment that "the sport involves numerous risks including, but not limited to, the risks posed by variations in terrain and snow conditions, . . . unmarked obstacles . . . and collisions with natural and man-made objects, including snow making equipment, snowmobiles, and other over-show vehicles." The vehicle itself was 30 feet long, 18 feet

wide, and the tiller behind it was 20 feet long. They are equipped with warning beacon, light, and an audible alarm.

Before the collision the plaintiff saw the snow cat about 150 feet ahead of her, proceeding down the middle of the run at about 10 mph. She attempted to carve a turn to her left to go around the vehicle, but when she looked up it had "cut off her path" and she collided with it, becoming caught in the tiller behind it.

The trial court granted Mammoth's summary-judgment motion based on the doctrine of primary assumption of the risk and based on the express assumption-of-risk agreement plaintiff signed when she purchased her season pass. The court excluded the declarations from plaintiff's three experts: (1) Michael Beckley, an expert in ski resort safety and snow cat safety. He opined that operation of the snow cat on an open run was "extremely dangerous" and constituted "an extreme departure from ordinary standards of conduct." (2) Eric Deyerl, a mechanical engineer and accident-reconstruction expert. He opined, based on photometric accident-reconstruction techniques that the circumstances that led to the collision were different than what the eyewitnesses stated, and that before initiating his turn the snow cat operator failed to signal a left turn or monitor his surroundings to determine that the area was clear. He opined that skiers would not expect a snow cat to stop and turn from the middle of a run, and that these circumstances increased the potential for a collision and the risk of injury. (3) Brad Avrit, a civil engineer with a specialty in evaluating safety issues. He opined that operating a snow cat on an open run with an active tiller was an extreme departure from the ordinary standard of care.

The appellate court held that the trial court did not abuse its discretion in excluding these declarations. It noted that although they stated that the conduct at issue was an extreme departure from industry standards and increased the risk of collision, no expert actually stated what the industry standard was. The court stated, "The declarations here merely repeated the facts contained in the discovery materials and concluded that risk of injury or collision was increased because of those facts." The court found that the declarations provided irrelevant opinions more akin to advocating, not testifying.

The court held that both the common law and the season pass agreement state that collisions with snow-grooming equipment is an inherent risk of skiing, and therefore participants in the sport assume that risk. Mammoth warned plaintiff of the presence of the snow cats and other grooming equipment on signs at the top and bottom of every lift, in the trail maps, on signs on the ski runs, and in the season-pass agreement.

Moreover, the snow cat itself was large, red, slow moving, and had a warning beacon and audible warnings to alert anyone near it to its presence.

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In fact, the plaintiff was aware of it 150 feet ahead of her. It was incumbent on her to avoid it.

Given all the warnings, the plaintiff cannot show either a "want of scant care" or "an extreme departure" from the ordinary standard of conduct, and therefore failed to raise a triable issue of fact on the issue of gross negligence.

Short(er) takes

Statute of limitations for prenatal injuries: *Lopez v. Sony Electronics* (2018) __ Cal.5th __ (Cal. Supreme)

Dominique Lopez was born with various birth defects. She filed a lawsuit against her mother's employer when she was 12 years old, alleging that she and her mother were exposed to toxic chemicals while she was in utero. The employer sought summary judgment based on Code of Civil Procedure section 340.4, which sets a 6-year statute of limitations for birth and prenatal injuries. Plaintiff argued that the applicable limitations provision was section 340.8, which applies to exposure to toxins, and allows for tolling during the plaintiff's minority. The Supreme Court held that the statutes were in conflict, and therefore invoked the rule that later enactments control over earlier ones and more specific provisions take precedence over more general ones. Here, section 340.8 is the more recent, and more specific section. Accordingly, it controls, and the plaintiff's action was timely.

Civil Procedure; discovery sanctions; filing of supporting papers before hearing; deadlines: *Weinstein v. Blumberg* (2018) __ Cal.App.5th __ (Second Dist., Div. 1)

Plaintiff filed suit through his counsel, RPB against BRI. BRI noticed the plaintiff's deposition and propounded 212 requests for production. After the deposition the parties met and conferred about the sufficiency of the deposition responses and responses to discovery requests. They agreed that any motion to compel would be filed by December 6, 2016. On December 6, 2016, BRI filed a motion to compel. But the motion did not include all the declarations and evidence supporting the motion. Rather, its notice of motion stated that the motion was based on the various materials it identified "*that will be filed* and served as provided in section 1005(b) of the Code of Civil Procedure." (Emphasis added.)

The trial court granted the motion and imposed sanctions. Reversed. The relevant statutes do not allow a party to file a notice of motion "alluding to other papers but not attaching them." The motion that BRI filed by the deadline was defective, and the defect could not be cured by later serving the missing documents on the opposing party closer to the hearing date.

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