S241825

# IN THE
# SUPREME COURT OF CALIFORNIA

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**VINCENT E. SCHOLES**

*Plaintiff and Appellant,*

*v.*

**LAMBIRTH TRUCKING COMPANY,**

*Defendant and Respondent.*



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AFTER AN PUBLISHED DECISION BY THE COURT OF APPEAL,
THIRD APPELLATE DISTRICT, CASE NO. C070770
COLUSA COUNTY SUPERIOR COURT CASE NO. CV23759

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## ANSWER TO AMICUS CURIAE BRIEF OF CONSUMER ATTORNEYS

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## INTRODUCTION

Health and Safety Code section 13009.2, which governs claims by public agencies for damages caused by fire, prohibits the recovery of enhanced damages under Civil Code section 3346. Although the statute is directed at public agencies, The Consumer Attorneys argue that this section impliedly authorizes the recovery of those damages by all other entities. This argument ignores the Legislature's express rejection of that argument. Section 13009.2 explicitly states that it does *not* alter the interpretation of Civil Code section 3346. Thus, Consumer Attorneys' contrary argument conflicts with unequivocal statutory language.

Health and Safety Code section 13009.2 is relevant to the issues in this case for a different reason than that identified by Consumer Attorneys. Section 13009.2 provides that a public agency may recover only those damages that are reasonable in relation to the property's market value before the fire. As set forth in the Legislative History of that section, this reflects a public policy that damages in fire cases be *reasonable*. This same reasonableness requirement supported the Legislature's passage of the 1931 Fire Liability Law which repealed the multiplier for injury to trees from fire. Consumer Attorneys' strained statutory interpretation both undermines the Legislature's recognition that fire damages must bear a reasonable relationship to the value of the real property damaged and nullifies the Legislature's prior repeal of a multiplier in fire damage cases.

Finally, Consumer Attorneys "commercial interest" argument is irrelevant to the issues before this Court. Neither the Court of Appeal in this case nor Respondent have contended that Section 3346 was intended to address only injury to traditionally commercial interests. Instead, as the

Court of Appeal in this case recognized, the Legislature set up a statutory scheme which was intended to apply to all damages caused by negligently set fires. This scheme is separate from the scheme which the Legislature enacted to remedy the wrongful cutting or other injury to another's trees. *Scholes v. Lambirth Trucking Co.* (2017) 10 Cal.App.5th 590, 602, see also *Gould v. Madonna* (1970) 5 Cal.App.3d 404, 407. Thus, Consumer Attorneys "commercial interest" argument is irrelevant to the issues before this Court.

Accordingly, and as more fully set forth in Respondent's Brief, the decision of the Court of Appeal in this case should be affirmed.

## I. THE LEGISLATURE SPECIFICALLY FORECLOSED THE ARGUMENT THAT HEALTH AND SAFETY CODE SECTION 13009.2 ALTERS THE INTERPRETATION OF CIVIL CODE SECTION 3346.

In September 2012, the Legislature enacted Health and Safety Code section 13009.2 to govern the recovery by public agencies of pecuniary, ecological, and environmental damages caused by fire. (Health & Saf. Code, § 13009.2, subds. (a), (b).) Among other things, the statute prohibits public agencies from seeking a multiplier of those damages. (Health & Saf. Code, § 13009.2, subd. (d).)

Consumer Attorneys argue that this prohibition of enhanced damages for public agencies under Health and Safety Code section 13009.2 impliedly authorizes the recovery of enhanced damages for all other litigants. According to Consumer Attorneys, enhanced damages must be available for "the damage to trees caused by a fire loss — or else the Legislature would not have required a carve-out in section 13009.2." (Consumer Attorneys ACB 9.) However, Consumer Attorneys' argument

was expressly rejected by the Legislature. In fact, Health and Safety Code section 13009.2 explicitly provides that:

> "[t]his section is *not intended to alter the law* regarding whether Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure can be used to enhance fire damages.

(Health & Saf. Code, § 13009.2, subd. (d), emphasis added.) The Legislature next confirmed this point by stating that a public agency could not seek enhanced damages under those sections "*regardless* of whether those sections might otherwise apply." Health & Saf. Code, § 13009.2, subd. (d), emphasis added. Thus, by its very terms, Health & Safety Code section 13009.2 does not affect the interpretation of Civil Code section 3346 or Code of Civil Procedure section 733.

Even so, Consumer Attorneys argue that the Legislature "is *presumed* to know about existing case law when it enacts or amends a statute." *In re W.B., Jr.* (2012) 55 Cal.4th 30, 57; see Consumer Attorneys ACB 12. According to Consumer Attorneys, this presumption shows that the Legislature was on notice that Civil Code section 3346 supposedly "provided double and triple damages in wildfire liability cases." Consumer Attorneys ACB 12. This contention is incorrect: a presumption does not prevail over the Legislature's express statement.

> "When the Legislature has stated the purpose of its enactment in unmistakable terms, we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose."

*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 831. Moreover, at the time Section 13009.2 was enacted, the Courts of Appeal

were *divided* on the construction of Civil Code section 3346. On the one hand, in *Gould v. Madonna* (1970) 5 Cal.App.3d 404, 407 (*Gould*), the Third District held that the legislative history demonstrates an "intention that only actual damages be recoverable for injury caused by negligently set fires." The Second District disagreed with this statement in *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, stating that "the trial court properly awarded double damage for injury to plaintiff's trees proximately caused by the fire." *Id.* at p. 463. The Legislature's presumed awareness of the conflicting Court of Appeal decisions does not show that the Legislature endorsed one line of conflicting decisions over the other.

Consumer Attorneys also contend that the 2012 legislative history of Health and Safety Code section 13009.2 somehow demonstrates the earlier Legislature's intent when enacting Civil Code section 3346 in 1872 and when amending that section in 1957. See Consumer Attorneys ACB 12. This is also incorrect. The statement "of a later Legislature is of little weight in determining the relevant intent of the Legislature that enacted the law." See *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 52.

In short, Consumer Attorneys' arguments on this point are both contrary to black letter law. The Legislature expressly stated that Health and Safety Code section 13009.2 did not alter the interpretation of Civil Code section 3346. Additionally, the 2012 statements of the Legislature that enacted section 13009.2 shed no light on the intent of either the 1872 or 1957 Legislature. Thus, Consumer Attorneys arguments concerning Section 13009.2 must be disregarded in their entirety.

## II. BOTH HEALTH AND SAFETY CODE SECTION 13009.2 AND THE REPEAL OF THE MULTIPLIER FOR FIRE DAMAGE TO TREES REFLECT THE POLICY THAT FIRE DAMAGES BE REASONABLE.

Perhaps not surprisingly, Consumer Attorneys do not direct the court's attention to the fact that Health and Safety Code section 13009.2 reflects the public policy that fire damages be reasonable. Section 1300.9 provides that it a public agency can recover only those damages that are "*not unreasonable* in relation to the pre-fire fair market value of the property." (Health & Saf. Code, § 13009.2, subd. (a), emphasis added.) The Assembly Floor Analysis states that the legislation was in response to the federal government's aggressive demands for enhanced damages in wildfire liability cases including "double damages" and "intangible environmental damages." (Assem. Com. on Budget, Analysis of Assem. Bill. No. 1492 (2012 Reg. Sess.), as amended August 7, 2012), at<https://goo.gl/XGgQzS> [as of Jan. 11, 2018].) The legislation was intended "to reform wildfire liability by requiring damages to be reasonable and quantifiable." *Ibid.*

Health and Safety Code section 13009.2's prohibition of enhanced damages by public agencies reflects the same public policy as the Legislature's repeal of the multiplier for fire damage to trees. In 1931, the Legislature enacted the Fire Liability Law and repealed the fire damage multiplier part of both Political Code section 3344 and Civil Code section 3346a. Stats. 1931, ch. 790, p. 1644; see *County of Ventura v. So. Cal. Edison Co.* (1948) 85 Cal.App.2d 529, 531, 537-538. Thus, the Fire Liability Law reflected the public policy that a multiplier is not reasonable when applied to fire damages to trees because a fire that starts on land that is properly occupied by the defendant will not only harm that land, but can quickly escape to a great many surrounding properties. Accordingly, even

without a multiplier, such a fire can trigger extraordinary liability exposure on the part of a defendant who has been merely negligent in protecting his own property from the risk of fire. This fact alone provides a strong incentive for property owners to be cognizant of any potential fire danger, and to protect against it.

Additionally, the fire liability scheme also appropriately further punishes a defendant who causes a fire either intentionally or in conscious disregarding of risk of a fire by subjecting that defendant is subject to the possibility of punitive damages on top of the broad spectrum of damages for which he or she is already legally responsible. Civ. Code, § 3294. By definition, punitive damages are intended "to punish the tortfeasor whose wrongful action was intentional or malicious, and to deter him and others from similar extreme conduct." *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1046. Citations omitted. Thus, the amount of such punitive damages will be appropriately predicated on both the egregiousness of the defendant's conduct and his or her financial condition. See *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1308. In appropriate cases these punitive damages can be extremely high. See e.g., *Downey Sav. and Loan Ass'n v. Ohio Cas. Ins. Co.* (1987) 189 Cal.App.3d 1072. Thus, a statutory scheme that provides full recompense to those injured, and punitive damages to the extent it is appropriate, best fulfills the Legislature's goals with respect to protecting both its citizens and their property from fire damage.

In contrast, a set damage multiplier is more reasonably appropriate to deter *non*fire damage caused when someone trespasses onto property and takes or otherwise damages the trees on that property. See *Gould, supra*, 5 Cal.App.3d at p. 408. As the *Gould* court noted, such a multiplier for trespass injury to trees is "an expression of the policy of increasing the risks of timber appropriation to the point of making it unprofitable."

Thus, rather than supporting a claim for increased rote multiplier damages in fire damage cases, Health and Safety Code section 13009.2 reflect the same public policy as contained in not the 1931 Fire Liability Law therefore that damages in fire cases be reasonable. That policy is not served by Consumer Attorneys' improper construction of section 13009.2 which nullifies the Legislature's repeal of the multiplier for injury to trees from fire.

## III. CONSUMER ATTORNEYS' ARGUMENTS REGARDING COMMERCIAL INTERESTS ARE IRRELEVANT TO THE ISSUES BEFORE THE COURT.

Consumer Attorneys also argue that Civil Code section 3346 is not limited to commercial interests. (Consumer Attorneys ACB 16-17.) However, neither the Court of Appeal nor Lambirth Trucking has ever suggested that section 3346 contains such a limitation. Thus, the argument is irrelevant in the first instance.

Moreover, while Consumer Attorneys appear to conflate the issue of cutting trees with that of commercial interests, the two issues are not the same. Instead, and as set forth in the decision of the Court of Appeal in this case, the "normal use of Civil Code section 3346 is in cases where timber has been cut from another's land" and the section's purpose "is to educate blunderers (persons who mistake location of boundary lines) and to discourage rogues (persons who ignore boundary lines), to protect timber from being cut by others than the owner." *Scholes v. Lambirth Trucking Co.* (2017) 10 Cal.App.5th 590, 602, quoting *Gould, supra*, 5 Cal.App.3d at p. 408. These purposes are equally furthered when Section 3346 is applied to people who cut down another's trees for non-economic reasons, such as improving the view from his own property. See, e.g., *Roche v. Casissa* (1957) 154 Cal.App.2d 785; see also *Fulle v. Kanani* (2017) 7 Cal.App.5th.

1305. For this additional reason, Consumer Attorneys' attempt to create this artificial distinction should be disregarded.

## CONCLUSION

Consumer Attorneys' arguments conflict with both the relevant statutes and the legislative history. As demonstrated by the Legislative history, the Legislature specifically amended the fire injury statutes to eliminate a multiplier in favor of more expanded categories of damages. Additionally, Health and Safety Code section 13009.2 demonstrates the Legislature's intent that fire damages be "reasonable." This intent is best served by holding that Civil Code section 3346 does not authorize a multiplier for fire damage to trees. Rather, such damages must be analyzed pursuant to Health and Safety Code Section 13007, with the possibility of punitive damages under the appropriate circumstances. Thus, Respondent reiterates its request that the court uphold the decision of the Third District Court of Appeal.

Dated: January 29, 2018

SPINELLI, DONALD & NOTT

/s/

By: Lynn Garcia
Attorney for Lambirth Trucking Company

## CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d) of the California Rules of Court, I certify that the foregoing Answer to Amicus Curiae Brief of Pacific Gas and Electric Company was produced on a computer in 13-point type. The word count, including footnotes, as calculated by the word processing program used to generate the brief is 2,134 words, exclusive of the matters that may be omitted under subdivision (c)(3).

Dated: January 29, 2018

SPINELLI, DONALD & NOTT

/s/

By: Lynn Garcia
Attorney for Lambirth Trucking Company

*Scholes v. Lambirth Trucking Company, et al.*
Supreme Court of California, Case No. S241825

**PROOF OF SERVICE**

I am over the age of 18, and not a party to the above-entitled action. My business address is 601 University Avenue, Suite 225, Sacramento, CA 95825.

I am readily familiar with the day-to-day practices of this office for collection and processing of mail for deposit with the United States Postal Service on the same business day.

On the date set forth below, I served a copy of the attached

**ANSWER TO AMICUS CURIAE BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY**

on the party(ies) to this action by:

**BY MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by Image Soft TrueFiling (TrueFiling) as indicated on the attached service list:

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

~~F~~February 1, 2018

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Amber Pharr

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CASE NAME: *Vincent E. Scholes, Plaintiff and Appellant v. Lambirth Trucking Company, Defendant and Respondent*

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