In the Supreme Court of the State of California

PRESBYTERIAN CAMP AND CONFERENCE CENTERS, INC., **Petitioner,** **v.** **THE SUPERIOR COURT OF SANTA BARBARA COUNTY,** **Respondent,** **CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION and CHARLES E. COOK,** **Real Parties in Interest.**	**CASE NO. S259850**

SECOND APPELLATE DISTRICT, DIVISION SIX, CASE NO. B297195
SANTA BARBARA SUPERIOR COURT—MAIN CASE NO. 18CV02968
THE HONORABLE THOMAS P. ANDERLE, JUDGE

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

COURT RULES

INTRODUCTION

The Second District Court of Appeal's published decision in this case is correct and sets clear and helpful precedent for the proper construction of the State's fire suppression cost recovery statutes as applied to corporate defendants. In that decision, the Second District held that a corporation is a 'person' that can be held liable for fire suppression and investigation costs, consistent with well-established principles of corporate liability.

But the decision in this case does not stand alone, and it cannot on its own rectify the confusion and harm created by the Third District's conflicting opinion in *Department of Forestry and Fire Protection v. Howell* (2018) 18 Cal.App.5th 154. That case insulated property owners, a property manager, and a timber purchaser from liability resulting from the actions of a hired harvester's employees. (*Id.* at p. 180; see Petn. Exh. A at 39 [typed opn. at 4].) The Second District expressly disagreed with the *Howell* majority's analysis, holding that *Howell* misinterpreted the relevant statutes' plain language, legislative history, and remedial purpose. (Petn. Exh. A at 37, 41-54 [typed opn. at 2, 6-19].)

Absent review by this Court, defendants will continue to argue, as Petitioner did below, that *Howell* bars liability for corporations—whether that liability is based on their employees' acts that ignite fires, or corporate negligence and law violations that create conditions for fires to start and spread, or both. Whether and when corporate defendants are liable for fire investigation and suppression costs is a matter of significant

statewide importance and warrants this Court's review.

Real Party in Interest California Department of Forestry and Fire Protection (CAL FIRE) also requests that, if the Court grants review, it order the Second District's opinion remain precedential pending review. (Cal. Rules Court, rule 8.1115(e)(1) & (3).) Such an order is appropriate because the opinion below offers a more thorough analysis of the fire liability statutes than *Howell*, and, unlike *Howell*, directly addresses corporate liability for acts of employees. (See Petn. Exh. A at 39 [typed opn. 4].) The opinion should continue to be available to and binding on superior courts addressing the liability of corporations for fire-related costs based on their employees' actions or non-actions while review is pending.

I. REASONS FOR GRANTING REVIEW

Proper interpretation of the statutes governing liability for wildfire-related costs present questions of law that are of statewide importance. (Cal. Rules of Court, rule 8.500(b)(1).) California agencies incur hundreds of millions of dollars in costs annually to fight large and deadly wildfires. Those costs have grown over the past decade and will continue to mount as fires increase in number and severity.

Recognizing the danger such fires pose and the immense costs involved in fighting them, the Legislature enacted Health and Safety Code sections 13009 and 13009.1 and their predecessor statutes (collectively, the Fire Liability Laws). These laws help ensure that the costs of fire are not borne by the public but instead by those responsible. "Any person" who, either

"negligently" or in "violation of law," sets a fire or allows a fire to be set or escape is liable for fire suppression and response costs. (Health & Saf. Code, §§ 13009, subd. (a), 13009.1, subd. (a).)[1] The Fire Liability Laws form a central part of the State's fire prevention efforts because such cost shifting is "designed to stimulate precautionary measures aimed at preventing the starting and spreading of fire." (*County of Ventura v. Southern Cal. Edison Co.* (1948) 85 Cal.App.2d 529, 539.)

In a published opinion, the Second District Court of Appeal reached what should be an unremarkable conclusion. It held that a corporate defendant is liable for costs incurred in fighting a fire started by its employee because the Fire Liability Laws encompass the established principle of "vicarious corporate liability." (Petn. Exh. A at 37 [typed opn. at 2].) The court held that the statutes' plain language authorizes recovery from any "person," and the term "person" is statutorily defined to include a "corporation" and other entities. (*Id.* at 41-42 [typed opn. at 6-7].) Because corporations "necessarily act[] through agents"—such as their employees—the Fire Liability Laws necessarily contemplate that corporations are liable for fires started by their employee-agents. (*Ibid.* [quoting *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 782].)

The Second District noted that vicarious liability was "deeply rooted" in the common law and codified in California Civil Code section 2338 long before the Fire Liability Laws were

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[1] All statutory references are to the California Health and Safety Code unless otherwise stated.

enacted. (Petn. Exh. A at 42-43 [typed opn. at 7-8].) Applying well-established principles of statutory construction, it held that courts must "presume the Legislature did not intend to depart from these [common law and statutory] rules since sections 13009 and 13009.1 are silent on the issue of vicarious liability." (*Id.* at 43 [typed opn. at 8].)

Petitioners relied heavily on a 1971 amendment to section 13009. That amendment was designed to abrogate a court decision denying cost recovery where the fire burned only the defendant's own property. (*Id.* at 49-50 [typed opn. at 14-15].) The Legislature amended section 13009 to no longer incorporate sections 13007 and 13008 by reference, instead adding those statutes' relevant language into section 13009. (*Id.* at 46-47, 49-50 [typed opn. at 11-12, 14-15].) Rejecting the reasoning of *Howell*, the court held that the presence of the phrase "personally or through another" in section 13007 and its absence from section 13008 and 13009 did not preclude corporate liability under those statutes based on employees' acts. (*Ibid.*)

As the Second District explained, *Howell* erred in construing the 1971 amendment as an implied repeal of agent-based liability. Neither sections 13008 nor 13009 has ever included the phrase "personally or through another." (*Id.* at 46-47 [typed opn. at 11-12].)[2] Adding the phrase "personally or through another" in the amended statutes was unnecessary in

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[2] Petitioner acknowledges in a footnote that the phrase "personally or through another" has "never been in section 13009." (Petn. at 16 n.5.)

1971 because, by that time, the Fire Liability Laws defined the term "person" to encompass corporations and other entities that can act only through others. (*Id.* at 50-51 [typed opn. at 15-16].) Given that the 1971 amendment was designed "to address a very specific problem"—cost recovery where a fire burned only the defendant's property—it was "not surprising" that the amendment did not add language to address a problem that was not before it. (*Id.* at 50 [typed opn. at 15] [quoting *Apple, Inc. v. Superior Court* (2013) 56 Cal.4th 128, 146-147].) And, as the court observed, *Howell*'s interpretation cannot be reconciled with other sections of the fire liability chapter that lack the phrase "personally or through another" but nonetheless have been interpreted as providing for vicarious liability. (*Id.* at 42, 47-49 [typed opn. at 7, 12-14].)

If the Second District's decision were the only precedent on agent-based liability, CAL FIRE would oppose further review. In CAL FIRE's view, the decision is correct and sets clear and helpful precedent for the proper construction of the Fire Liability Laws. But this case does not stand alone, and it cannot on its own correct the confusion caused by *Howell*. The Court should grant review to resolve the tension between the Second District's approach to employee- and agent-based liability taken in this case, and that of the Third District taken in *Howell*. (Cal. Rules of Court, rule 8.500(b)(1).)

In the decades leading to *Howell*, no court questioned that CAL FIRE—the state entity on the front line of fire protection and prevention—could recover its fire suppression and

investigation costs from corporations. But corporate defendants now cite *Howell* to claim that the Fire Liability Laws do not apply to them.[3] Even where CAL FIRE ultimately prevails, the *Howell* decision makes litigation more expensive, resulting in complicated motion practice and appeals. *Howell*'s undermining of the Fire Liability Laws comes at a time when agencies are least able to absorb these additional expenses; as Petitioner acknowledges, California "confronts an unprecedented increase in the frequency and ferocity of wildfires" that have "imposed huge costs on California's public agencies." (Petn. at 9.)

Should the Court decline to grant review, it may be that, after years of litigation, the accumulated intermediate appellate decisions in this area will settle into a more predictable and workable body of law, distinguishing and relegating *Howell* to its facts. But such development will come at significant cost to parties, stakeholders, government agencies, and taxpayers. CAL FIRE therefore supports review in this case so that this Court may more expeditiously settle the law governing fire-cost liability.

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[3] CAL FIRE petitioned for review of *Howell,* concerned about the mischief it would cause. This Court denied the petition after the defendants in *Howell* downplayed its significance by claiming "nowhere in the majority opinion is there any language that remotely holds that companies cannot be held vicariously liable for the acts of their employees through respondeat superior." (Response to Petn. for Review, 2018 WL 871573, at *23.) Now, as CAL FIRE feared, corporate defendants such as Petitioner argue *Howell* bars all recovery under a "respondeat superior theory." (Petn. at 20.)

II. THE OPINION SHOULD REMAIN PRECEDENTIAL PENDING REVIEW

If review is granted, CAL FIRE requests that this Court order that the Second District's opinion remain precedential pending review, pursuant to California Rules of Court, rule 8.1115(e). (See, e.g., *People v. Meraz* (2017) 215 Cal.Rptr.3d 3.)

Ordering the opinion to remain precedential is warranted for several reasons. First, the opinion provides trial courts with a far more reasoned and thorough analysis of the Fire Liability Laws than the limited discussion in *Howell* and, in particular, how those laws apply to corporate defendants held to answer for the actions or inactions of their employees. (See Petn. Exh. A at 39 [typed opn. 4].) Second, proper analysis of these statutes is especially important now that California wildfires have increased in number and intensity, resulting in numerous cases in which recovery of hundreds of millions of dollars is at stake. Any period of confusion may have serious economic consequences for the State. Third, allowing the Second District's decision to remain precedential keeps in place incentives for corporate responsibility and best practices for critical fire prevention measures.

CONCLUSION

The Court should grant the petition for review and order the opinion below to remain precedential pending review.

Dated: January 15, 2020

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER TO PETITION FOR REVIEW uses a 13 point Century Schoolbook font and contains 1,590 words.

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J.F. Aguins
Declarant

Signature

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(Cal. Dept of Forestry & Fire Protection etc.)
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