

# Daily Journal

February 9, 2022

## Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

### TOP APPELLATE REVERSALS

## Gonzalez v. Mathis et al.

#### Case Info

**CASE NAME:** GONZALEZ V. MATHIS ET AL.

**TYPE OF CASE:** NEGLIGENCE

**COURT:** CALIFORNIA SUPREME COURT

**JUDGE(S):** JUSTICE JOSHUA P. GROBAN

#### APPELLANTS'

**ATTORNEYS:** Herzog, Yuhas, Ehrlich & Ardell, Apc, Evan D. Marshall; Law Offices Of Wayne Mcclean, R. Wayne Mcclean; Ppanish Shea Boyle Ravigudi Llp, Brian J. Panish, Spencer R. Lucas

#### APPELLEE'S ATTORNEYS:

Latham & Watkins Llp, Michael E. Bern, Marvin S. Putnam, Robert J. Ellison, Blake E. Stafford, Alexandra P. Shechtel

We thought this was going to be a ... tragic but straightforward case," said Robert J. Ellison, who represented Johnny Mathis against a classic tort claim by a window cleaner who fell off the singer's roof.

Ellison and other Latham & Watkins LLP attorneys from Los Angeles and Washington, D.C., including Michael Bern who handled argument at the California Supreme Court, were victorious in the end.

The state Supreme Court victory in August reversed a 5th District Court of Appeal decision that added an exception to the 29-year-old Privette doctrine.

The addition would have made summary judgment impossible in cases in which homeowners hired contractors who later were injured on the job, Ellison said.

"Insurance premiums and the cost of jobs would have increased. It truly would have impacted millions of transactions," he added.

Justice Joshua P. Groban, writing for the unanimous state high court, agreed after the Latham team appealed the 5th District's decision.

Evan D. Marshall of Herzog, Yuhas, Ehrlich & Ardell, Wayne

McClellan of Woodland Hills as well as Brian J. Panish and Spencer R. Lucas of Panish Shea Boyle Ravigudi LLP sued Mathis for \$60 million on behalf of Luis Gonzalez.

The plaintiff and appellant owned a skylight and window cleaning company, had worked for Mathis for years, and sued for negligence after being seriously injured.

The defense relied on *Privette v. Superior Court* (1993) 5 Cal. 4th 689, which says the hirer delegates responsibility for workplace safety to the contractor. Exceptions include: if the hirer concealed a hidden hazard or retained control over the contractor's work and that contributed to the injury.

Los Angeles County Superior Court Judge Gerald Rosenberg ruled that Gonzalez was aware the roof was slippery, and that Mathis had no control, as he was in the hospital recovering from hip surgery.

But then the 5th District Court of Appeal ruled, adding a new exception to Privette, that hirers would be liable for injuries of independent contractors if they were unable to take reasonable safety precautions to avoid the injury.

"I remember walking out of the court fairly surprised at what

I perceived to be the panel's inclination to announce a whole new exception to a long-standing law," Ellison said.

"The new exception upended decades of established law and would have made summary judgment impossible," he added. "I remember thinking that the plaintiffs' bar would salivate over the new rule."

Almost immediately, "we had seven to eight amici reach out to us and tell us they were interested in our petition to review and that they wanted to join and support it," Ellison said.

Ellison remarked that gathering so much support "was an easy sell, not just because of the massive implications, but also because of the Johnny Mathis angle."

"A lot of people know who he is are familiar with his really decorated career," Ellison continued. "Now he's 86 years old and still touring. There was name recognition. It was easier than usual."

Groban wrote the "third exception to the Privette doctrine" was inconsistent and would "vastly expand hirer liability" in a way that "makes little sense." *Gonzalez v. Mathis*, S247677 (Cal., filed March 19, 2018)

— FEDERICO LO GIUDICE



MICHAEL E. BERN



MARVIN S. PUTNAM



ROBERT J. ELLISON



BLAKE E. STAFFORD