



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MAY 17, 2004

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#04-49 *Atwater Elementary School Dist. v. Department of General Services*, S124188. (F043009; 116 Cal.App.4th 844; Merced County Superior Court; 146534.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Can a school district ever suspend or dismiss a credentialed teacher based on matters occurring more than four years before issuance of the notice of intention to impose such discipline (for example, under an equitable tolling or delayed discovery theory), or does Education Code section 44944, subdivision (a), absolutely ban reliance on such evidence? (Cf. Ed. Code, § 44242.7, subd. (a).)

#04-50 *Ebbert v. Superior Court*, S123713. (D042600; 115 Cal.App.4th 1012; San Diego County Superior Court; M875068.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Is information developed as a result of the receipt of information disclosed pursuant to a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531) subject to the same protective order as the information disclosed pursuant to the motion (Evid. Code, § 1045, subd. (e); see *Alford v. Superior Court* (2003) 29 Cal.4th 1033), or can such derivative information be disclosed to and used by a defendant in a separate criminal proceeding?

(over)

#04-51 *Scottsdale Ins. Co. v. MV Transportation, Inc.*, S123766. (B150991; unpublished opinion; Los Angeles County Superior Court; BC231352.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does an insurer have a right to reimbursement of defense fees if it reserved its right to seek such reimbursement, and fully defended and settled the action against the insured, and then sought declaratory relief and obtained a declaration that there was no duty to defend any of the claims? (See *Buss v. Superior Court* (1997) 16 Cal.4th 35.)

#04-52 *People v. Seijas*, S123790. (B160209; 115 Cal.App.4th 1301, mod. 116 Cal.App.4th 1159b; Los Angeles County Superior Court; SA043730.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case includes the following issue: Can the testimony of a witness at a preliminary hearing be presented at trial under Evidence Code section 1291 on the rationale that the witness is unavailable, when the witness invokes the Fifth Amendment at trial due to an asserted fear of prosecution for having previously given a different statement to police regarding the crime for which the defendant is on trial?

#04-53 *Winberg v. Salmon Smith Barney*, S123583. (F042866; unpublished opinion; Fresno County Superior Court; 02 CE CG 04684.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. The court ordered briefing deferred pending decision in *Jevne v. Superior Court*, S121532 (#04-23), which includes the following issue: Are the California Ethical Standards for Neutral Arbitrators (Code Civ. Proc., § 1281.85; Cal. Rules of Court, appen. Div. VI [Ethics Standards for Neutral Arbitrators in Contractual Arbitration]) preempted by the federal Securities Exchange Act of 1934 and rules promulgated under that Act by the National Association of Securities Dealers?

STATUS

#04-40 *People v. Garcia*, S124003. The court limited the issues to be briefed and argued to issues I through VI set forth in defendant-appellant's petition for review.