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NEWS RELEASE

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Summary of Cases Accepted During the Week of August 21, 2006

[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 statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#06-92 *People v. Alice, S144501.* (E038046; unpublished opinion; San Bernardino County Superior Court; FMB 006972.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses and remanded with directions to vacate order dismissing one count and placing the defendant on probation. The court limited review to the following issues: (1) Did the People have the right to appeal under Penal Code section 1238, subdivision (a)(1) or (a)(10), from the trial court's order dismissing a charge, when the dismissal made the defendant eligible for probation and the People are prohibited under Penal Code section 1238, subdivision (d), from appealing a grant of probation? (2) Did the Court of Appeal err under Government Code section 68081 in not permitting briefing on the People's right to appeal under Penal Code section 1238, subdivision (a)(10), when that basis for an appeal was first mentioned in the court's tentative opinion?

#06-93 *Berglund v. Arthroscopic & Laser Surgery Center of San Diego, S144813.* (D045218; 139 Cal.App.4th 904; San Diego County Superior Court; GIC753465.) Petition for review after the Court of Appeal reversed an order in a civil action. This case presents the following issues: (1) When an arbitrator issues a discovery order to a third party who is not bound by the arbitration agreement, may that third party seek judicial review of its objections to discovery? (2) If so, what is the scope of judicial review of such an order?

(over)

#06-94 *In re Lemanuel C.*, S144515. (A109322; 139 Cal.App.4th 482; Solano County Superior Court; J31469.) Petition for review after the Court of Appeal affirmed orders in a wardship proceeding. The court limited review to the following issue: Was petitioner's civil commitment under Welfare and Institutions Code section 1800 unconstitutional because the petition did not allege, and the trial court did not specifically find, that there was "a serious and well-founded risk" that petitioner would reoffend if not committed?

#06-95 *Sentry Select Ins. Co. v. Fidelity & Guaranty*, S145087. (9th Cir. No. 04-56265; 455 F.3d 956; Southern District of California; CV-02-01055-LSP.) Request under California Rules of Court, rule 29.8, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: "What is the appropriate test for determining whether an insured is 'engaged in the business of renting or leasing motor vehicles without operators' under California Insurance Code § 11580.9(b)? Compare *Travelers Indem. Co. of Ill. v. Md. Cas. Co.*, 41 Cal.App.4th 1538, 1546-47 (1996), and *McCall v. Great Am. Ins. Co.*, 119 Cal.App.3d 993, 998 (1981), with *W. Carriers Ins. Exch. v. Pac. Inc. Co.*, 211 Cal.App.3d 112, 116-17 (1989), *Mission Ins. Co. v. Hartford Accident & Indem. Co.*, 160 Cal.App.3d 97, 101 (1984), and *Transp. Indem. Co. v. Robert Alo*, 118 Cal.App.3d 143, 148 (1981)."

#06-96 *People v. Garces*, S145056. (D045022; unpublished opinion; San Diego County Superior Court; SCD133238.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Giles*, S129852 (#04-159), which presents the following issues: (1) Did defendant forfeit his Confrontation Clause claim regarding admission of the victim's prior statements concerning an incident of domestic violence (see Evid. Code, § 1370) under the doctrine of "forfeiture by wrongdoing" because defendant killed the victim, thus rendering her unavailable to testify at trial? (2) Does the "forfeiture by wrongdoing" doctrine apply where the alleged "wrongdoing" is the same as the offense for which defendant is on trial?

#06-97 *Larranaga v. Superior Court*, S144818. (G036475; unpublished opinion; Orange County Superior Court; 05NF1789.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in *Garcia v. Superior Court*, S127432 (#04-106), which presents the following issue: Is a defendant entitled to file a declaration under seal in support of a motion for discovery under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 if the declaration contains information protected from disclosure by the attorney-client or work-product privilege, and, if so, may the trial court nonetheless grant counsel for the police department access to the sealed document so long as the access is accompanied by a protective order?

#06-98 *Williams v. Genentech, Inc.*, S144327. (A110611; 139 Cal.App.4th 357; San Francisco County Superior Court; CGC-03-422285.) Petition for review after the Court of

Appeal affirmed the judgment in a civil action. The court ordered briefing deferred pending decision in *Green v. State of California*, S137770 (#05-211), which presents the following issue: In order to establish a prima facie case under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) for discrimination in employment based on disability, does the plaintiff bear the burden of proving that he or she is capable of performing the essential duties of the job or does the employer have the burden of proving that the plaintiff was *not* capable of performing those duties?

STATUS

#06-52 *People v. Alford*, S142508. The court directed the parties to file supplemental briefs addressing the following issue: Is the \$20.00 court security fee provided for by Penal Code section 1465.8 subject to Penal Code section 3's prohibition on retroactive application of newly enacted law?

#05-141 *Taus v. Loftus*, S133805. The court invited the parties to file supplemental briefs addressing the following issues: Does the qualified common-interest privilege established by Civil Code section 47, subdivision (c), apply to plaintiff's claim for defamation based upon defendant Loftus' alleged statement at an October 2002 professional mental health conference, and, if so, what effect does that statutory provision have on the potential merits of that claim?

People v. Bell, S038499. The court invited the parties to file supplemental briefs in this automatic appeal addressing the effect of *Johnson v. California* (2005) 545 U.S. 162 and *People v. Johnson* (2006) 38 Cal.4th 1096.

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