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NEWS RELEASE

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Summary of Cases Accepted During the Week of September 26, 2005

[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.]

#05-196 *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, S136690. (F045816; 130 Cal.App.4th 1594, mod. 131 Cal.App.4th 1026a; Kern County Superior Court; 250247.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: When a property insurance policy excludes coverage for damages to a building that is vacant for more than 60 consecutive days except when the building is "under construction," does the "under construction" clause apply to a building that is undergoing renovation or only to a building that is being newly constructed?

#05-197 *People v. Anzalone*, S135646. (D044138; 130 Cal.App.4th 146; San Diego County Superior Court; SCN155182.) 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. Smith*, S123074 (#04-46), which presents the following issue: Was defendant properly convicted of two counts of attempted murder for firing a single shot toward two victims on the theory that both victims were within the so-called "kill zone" at the time of the shooting? (See *People v. Bland* (2002) 28 Cal.4th 313.)

#05-198 *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*, S135587. (B158840; 129 Cal.App.4th 540; Los Angeles County Superior Court; JCCP4182.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court ordered briefing deferred pending decision in

(over)

Californians for Disability Rights v. Mervyn's, S131798 (#05-93), and *Branick v. Downey Savings & Loan Assn.*, S132433 (#05-94), which present the following issues: (1) Do the provisions of Proposition 64 (Gen. Elec. (Nov. 2, 2004)) that limit standing to bring an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) to “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” (Bus. & Prof. Code, § 17204, as amended) apply to actions pending when the provisions of the proposition became effective on November 3, 2004? (2) If the standing limitations of Proposition 64 apply to actions under the Unfair Competition Law that were pending on November 3, 2004, may a plaintiff amend his or her complaint to substitute in or add a party that satisfies the standing requirements of Business and Professions Code section 17204, as amended, and does such an amended complaint relate back to the initial complaint for statute of limitations purposes?

#05-199 *People v. Wahler*, S135805. (E035174; 130 Cal.App.4th 709; Riverside County Superior Court; RIF095477.) Review on the court’s own motion after the Court of Appeal affirmed and affirmed as modified judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. ___, 124 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

DISPOSITIONS

The following case was transferred for reconsideration in light of *People v. Mosby* (2004) 33 Cal.4th 353:

#03-98 *People v. Spradley*, S116445.

The following case was transferred for reconsideration in light of *Warrick v. Superior Court* (2005) 35 Cal.4th 1011:

#03-142 *People v. Miramontes*, S119259

The following case was transferred for reconsideration in light of *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, and, as appropriate, in light of *People v. Alford* (2003) 29 Cal.4th 1033:

#04-28 *People v. Alexander*, S122031.

The following cases were transferred to the Court of Appeal for reconsideration in light of *People v. Barker* (2005) 35 Cal.4th 345 and *People v. Sorden* (2005) 36 Cal.4th 65:

#03-105 *People v. Moss*, S117313.

#03-162 *People v. Rider*, S120014.

Review in the following case was dismissed in light of *People v. Barker* (2005) 35 Cal.4th 345 and *People v. Sorden* (2005) 36 Cal.4th 65:

#03-161 *People v. Apodaca*, S120424.

Review in the following case was dismissed in light of *Fitch v. Select Products Co.* (2005) 36 Cal.4th 812:

#03-106 *Bustamonte v. Flores*, S116992.

STATUS

#04-100 *People v. Warner*, S126233. The court limited the issue to be briefed and argued to the following issue: Does defendant's prior conviction of sexual assault of a child under Nebraska Revised Statutes, section 28-320.01 qualify as a serious felony for sentencing purposes in California as a "lewd and lascivious act on a child under the age of 14 years" within the meaning of Penal Code section 1192.7, subdivision (c)(6), for purposes of Penal Code sections 667, subdivision (a), 667, subdivisions (b) through (i), and 1170.12, subd. (b)(2), even though Penal Code sections 667, subdivision (a), 667, subdivision (d)(2), and 1170.12, subdivision (b)(2), require that a prior felony conviction from another jurisdiction include "all of the elements" of a California serious felony and even though the Nebraska statute does not require that the perpetrator have acted "with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child" (Pen. Code, § 288, subd. (a))?

#05-68 *Hartford Casualty Ins. Co. v. Superior Court*, S131554. The court requested the parties to address the effect on this case of Assembly Bill 1322, amending Code of Civil Procedure section 170.1, which was signed by the Governor on September 22, 2005 and went into immediate effect.