



**Association of Defense
Counsel of Northern
California and Nevada**



ORDER DUE: 06/29/2023

June 12, 2023

OPINION FILED: 05/30/2023

OPINION BY: TMG WWB MS

**Letter supporting publication
Cal. Rules of Court, rule 8.1120(a)**

Acting Presiding Justice William W. Bedsworth
Associate Justice Maurice Sanchez
Associate Justice Thomas M. Goethals
Fourth Appellate District, Division Three
3389 12th Street
Riverside, California 92501

Re: *Travis Blaylock v. DMP 250 Newport Center, LLC, et al.*
Case No. G061301
Request for Publication; Opinion filed May 30, 2023

Dear Honorable Justices:

Pursuant to Rules 8.1105 and 8.1120 of the California Rules of Court, the Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”) and the Association of Southern California Defense Counsel (“ASCDC”) (together, the “Associations”) write jointly to urge the Court to publish its decision in this case. As explained below, the opinion warrants publication because it provides helpful and needed guidance about application of the *Privette* doctrine, in particular, guidance regarding the *Kinsman* concealed-hazard exception.

Interest of the Requesting Organizations

ADC-NCN numbers approximately 700 attorneys primarily engaged in the defense of civil actions. Members represent civil defendants of all stripes, including businesses, individuals, HOAs, schools and municipalities and other public entities. Members have a strong interest in the development of

Acting Presiding Justice William W. Bedsworth
Associate Justice Maurice Sanchez
Associate Justice Thomas M. Goethals
June 12, 2023
Page 2 of 4

substantive and procedural law in California, and extensive experience with civil matters generally. including issues related to allocation of responsibility for workplace safety. ADC-NCN's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California.

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

Although ASCDC and ADC-NCN are separate organizations, they have some common members and coordinate from time to time on matters of shared interest, such as this letter. Together and separately, they have appeared as *amicus curiae* in many cases before both the California Supreme Court and Courts of Appeal across the state to express the interests of their members and their members' clients, a broad cross-section of California businesses and organizations.

The Associations' members are frequently involved with cases where the *Privette* doctrine comes into play. They have an interest in ensuring that the law governing when the *Privette* doctrine applies, and when it entitles defendants to summary judgment, is consistent and clear.

No party has paid for or drafted this letter.

Why the Court should order publication

The opinion meets several of the factors justifying publication.

- The opinion “[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions.” (Cal. Rules of

Court, rule 8.1105(c)(2).) It applies the *Kinsman* concealed-hazard exception (see *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 675)—an exception to the *Privette* doctrine (see *Privette v. Superior Court* (1993) 5 Cal.4th 689)—to a situation where the hirer of an independent contractor knew about a dangerous property condition yet there was no evidence the hirer knew the condition was concealed or hazardous.

- The opinion “[i]nvolves a legal issue of continuing public interest” (Cal. Rules of Court, rule 8.1105(c)(6)), because application of the *Privette* doctrine and the *Kinsman* exception involve important public-policy-based recurring issues of statewide importance.

- The opinion “reaffirms a principle of law not applied in a recently reported decision.” (Cal. Rules of Court, rule 8.1105(c)(8).) The opinion only cites, and relies upon, *Kinsman* itself. We know of no other published cases addressing the factual scenario presented by this case.

The opinion involves a set of facts not addressed in any prior Court of Appeal decision. An employee of an air-conditioning contractor was injured from falling through an access panel in a crawl space between the ceiling and floor below. The access panel was visible from the building owner’s offices in the floor below because it was a different color than the rest of the ceiling. But the panel was somewhat difficult to see inside the crawl space because it was made of the same plywood material as the surrounding surfaces. The contractor’s employee sued the owner of the office building and its property manager, claiming that the access panel fell within *Kinsman*’s concealed hazard exception.

This Court affirmed the grant of summary judgment to the defendants, concluding as a matter of law that the *Kinsman* exception was inapplicable and the *Privette* doctrine applied. It relied on two separate grounds, each of which warrants publication:

- (1) While the building owner and property manager may have known about the access panel from seeing it from the offices below, there was no evidence they should have known the panel was concealed or hazardous to

Acting Presiding Justice William W. Bedsworth
Associate Justice Maurice Sanchez
Associate Justice Thomas M. Goethals
June 12, 2023
Page 4 of 4

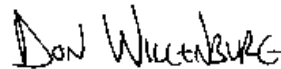
a contractor working in the crawl space above. The building owner's employees had no way of knowing what the panel looked like in the crawl space, nor reason to know that it posed a hazard to any air-conditioning professionals.

(2) A hazard is not "concealed" if the contractor could have discovered it via a reasonable inspection. Here, the contractor would have discovered the access panel if it conducted a reasonable inspection, because the panel was sitting at a lower level than surrounding surfaces.

The opinion thus clarifies that, under *Kinsman*, the plaintiff must show not only that the hirer knew about a condition on the property but that the hirer also knew the condition was concealed and hazardous. The factual scenario presented by this case is not the only context where hirers of independent contractors might have limited or incomplete knowledge about known conditions on their property. The opinion also clarifies the responsibility of independent contractor to conduct thorough pre-work inspections of worksites, a clarification that—if published—will enhance worksite safety in California.

The Associations request that this Court order publication.

Respectfully submitted,



By: _____

Don Willenburg (SBN 116377)
Gordon Rees Scully
Mansukhani LLP
1111 Broadway, Ste. 1700
Oakland, CA 94607

Attorneys for Association of Defense
Counsel of Northern California and
Nevada

Acting Presiding Justice William W. Bedsworth
Associate Justice Maurice Sanchez
Associate Justice Thomas M. Goethals
June 12, 2023
Page 5 of 4



Edward L. Xanders, SBN 145779
Greines, Martin, Stein & Richland LLP
6420 Wilshire Boulevard, Suite 1100
Los Angeles, California 90048

Attorneys for Amicus Curiae Association
of Southern California Defense Counsel

cc: See Attached Proof of Service

PROOF OF SERVICE

Travis Blaylock v. DMP 250 Newport Center, LLC, et al.
Case No. G061301

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 1111 Broadway, Suite 1700, Oakland, CA 94607; email: espiers@grsm.com. On the date below, I served the within document(s):

LETTER REQUESTING PUBLICATION

- VIA E-SERVICE (TrueFiling) on the recipients designated on the electronic service list generated by TrueFiling system.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 12, 2023 at Walnut Creek, California.



Eileen Spiers