



September 4, 2007

CALIFORNIA SUPREME COURT DENIES REVIEW IN PUNITIVE DAMAGES CASE (*Omari v. Kindred Healthcare Operating, Inc.*)

The California Supreme Court declined last week to review a lower court ruling that upheld a jury award of three million dollars in punitive damages in a case that constituted a typical breach of contract. The amount of punitive damages was arbitrarily based on the value of the stock of the defendant's parent company.

In *Omari v. Kindred Healthcare Operating, Inc.*, the plaintiffs rented medical equipment to two local Kindred hospitals in Los Angeles, and agreed that the contract that could be terminated for any reason on 30-days notice. One of the co-owners of the medical supply company secretly conspired with a hospital employee to form a side business to service the rental contracts and informed Kindred that a new company had taken over the contract. When the other owner of the company learned of the new arrangement and informed the hospital, the hospital exercised its contractual rights and terminated all the contracts; the Kindred employee resigned before she was terminated for self-dealing.

In its brief to the Supreme Court, WLF argued that the lower court impermissibly allowed an award of punitive damages in a case that was inextricably linked to a breach of contract. The hospital merely exercised its contractual rights to terminate the contract for any reason, and was willing to incur contractual damages for doing so. However, the court of appeal's decision effectively transformed a contract dispute into a tort action and allowed a large punitive damages award to be added to the compensatory damage award. Furthermore, WLF argued that the punitive damage award, even if permissible, was improperly based on the stock value of the parent company to Kindred. WLF filed a brief in *City of Hope v. Genentech, Inc.*, a case raising similar issues pending before the California Supreme Court, and which will be argued this fall. Although the Supreme Court declined to review the *Omari* case, WLF is hopeful for a favorable outcome on the merits in the *Genentech* case.

Paul F. Utrecht of the San Francisco law firm of Zacks Utrecht & Leadbetter, P.C., served *pro bono* as WLF's local counsel.

* * *

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief is posted on its website at www.wlf.org.