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California Supreme Court Allows Unfair Competition and False Advertising Claims Against Employer Arising From Workplace Accident

Written by Mark N. Duvall, Jayni A. Lanham, Kaitlyn D. Shannon – 4/23/18

A recent California Supreme Court decision held that employees can sue their employers for workplace safety violations under the State's consumer protection laws. *See Solus Industrial Innovations, Inc. v. Superior Court of Orange County*, 4 Cal.5th 316 (February 8, 2018). The practical impact of this decision is that claims arising from workplace accidents, which have traditionally been addressed through an administrative process, could give rise to civil claims for unfair competition or false advertising, at least in California.

Background Facts

A water heater exploded at Solus Industrial Innovations, Inc., killing two employees. The California Division of Occupational Safety and Health, known as Cal/OSHA, investigated and issued five citations against Solus. Solus appealed the citations to the Cal/OSHA Appeals Board.

While Cal/OSHA was conducting its investigation, the California Bureau of Investigations ("BOI") conducted a separate investigation, as is required when a workplace accident results in a fatality. As a result of the BOI investigation, the Orange County district attorney filed criminal charges against the plant manager and maintenance supervisor, and the district attorney also filed a civil action against Solus, claiming that Solus had violated California's Unfair Competition Law and Fair Advertising

Law. The district attorney alleged that Solus, by maintaining an unsafe work environment, had engaged in unfair and unlawful business practices and also committed false advertising by touting a commitment to workplace safety, which facilitated Solus' ability to hire and retain employees and customers.

In the trial court, Solus filed a demur to the lawsuit, arguing that the district attorney's action was preempted by the federal Occupational Safety and Health Act of 1970 (the "federal OSH Act"). The trial court denied the demur. The Court of Appeals, however, agreed with Solus, and held that the federal law preempted the state civil claims. The California Supreme Court unanimously held that the federal law did not preempt unfair competition and consumer protection claims based on workplace safety and health violations in California.

Analysis

In *Solus*, the California Supreme Court had to determine whether the federal OSH Act preempted California civil actions arising from workplace safety violations under statutory schemes beyond Cal/OSHA's program. Under the federal OSH Act, the Occupational Safety and Health Administration ("OSHA") regulates workplace safety and health, but states are permitted to create their own regulatory plans subject to federal review and approval. State plans must be at least as stringent as the federal requirements, but states may enact additional protections. California has had an approved state plan since 1973.

The California Supreme Court reviewed the federal OSH Act and concluded that it "expressly states what is *not* preempted[,]" including state workers' compensation laws and any occupational safety or health issue as to which there is no federal standard. *Id.* at 337 (emphasis in

original). The federal law does not, however, specify what state regulations are preempted. The Court reasoned that the federal OSH Act, which allows states to provide broader protections to workers, allows states to use other enforcement mechanisms, such as civil litigation under other state law statutory schemes, to further the state's aim of worker safety. Therefore, the district attorney could bring a civil action against Solus for allegedly violating the State's consumer protection laws.

Impact of *Solus*

Solus may lead to an increase in civil lawsuits filed against employers after workplace accidents for at least two reasons. First, the *Solus* decision does not suggest that administrative citations are a prerequisite to filing a claim under the Unfair Competition Law or the False Advertising Law. This means that employees could pursue civil litigation against employers without having to file an administrative complaint with Cal/OSHA. Second, the statute of limitations is four years for a claim under the Unfair Competition Law (Ca. Bus. & Pros. Code § 17208) and three years for a claim under the False Advertising Law (Cal. Bus. & Pros. Code § 17500). In contrast, Cal/OSHA has six months to issue a citation. Therefore, employees could pursue civil claims for a much longer period of time, subjecting employers to increased uncertainty.

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