

## **RECENT COURT DECISIONS**

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### **Foreign Plaintiff Forced to Try Case in Homeland**

*Stangvik v. Shiley*, Case No. S018015 (Cal Sup. Ct., Nov. 21, 1991) (Lexis, Cal. library, Cal. file).

In a decision that may close California courts to many foreign plaintiffs alleging claims against California defendants, the state supreme court held a state trial court was not a convenient forum for products liability claims concerning defective heart valves. In the cases decided by the supreme court, the surviving relatives of Swedish and Norwegian heart valve recipients alleged that the valves were defective and resulted in the patients' deaths. They filed their claims against the California-based manufacturers in California. The manufacturer moved to have the cases tried in Sweden and Norway and offered to make documents and witnesses available if the motion were granted. On a complicated set of private and public policy conclusions, the trial court granted the motion which survived repeated appeals.

The doctrine on which the defendants relied, *forum non conveniens*, is an equitable doctrine a court may use to decline to exercise its power to hear a case if it believes that the claim should be tried elsewhere. The court considers two factors in making the decision to dismiss a case based on the doctrine. First, the court must determine that another jurisdiction has the power to hear the case. Second, the court will balance the private and public interests in moving the case to another jurisdiction.

The court had little trouble dealing with the first question. As part of its stipulation to the court, the manufacturer agreed to submit to the jurisdiction of the courts in the foreign countries. The second question proved more complicated for the court since the parties' relationship to the forum was reversed from the ordinary case. That is, the California party was seeking to move to foreign jurisdictions. The reason for this odd circumstance, however, was readily apparent to the court. Both sides were seeking a forum whose law was perceived to be more favorable for its theory of the case.

First, the court considered the effect of a change on the plaintiffs' right to bring suit. Each of the plaintiff's countries provided for some sort of

remedy for defective products. Therefore, the court found that an alternative forum to hear their claims existed.

Second, the court concluded that the plaintiffs' choice of forum was not conclusive. The presumption that the defendant's place of business was a convenient forum for the defendant could be overcome by evidence that an alternative jurisdiction was more appropriate. In part, the presumption was rebutted by the manufacturer's agreement to provide documents and witnesses to the parties. The court also noted that disadvantage would occur to either of the parties wherever the trials were held since the evidence of design problems was in California and the evidence concerning damages was in the foreign countries.

Third, the court considered the public interest in allowing the suit to proceed. The court felt that one of the primary concerns was the demand foreign citizens would place on California courts. At least 235 separate suits had been filed in California concerning the heart valve, and the court felt that the complex litigation would severely tax the courts. Any additional deterrence needed to prevent the dangers of defective products could be achieved in suits brought by Californians.

Finally, the court approved, but did not claim to base its holding on, the notion that improved transportation and the ability to transmit documents allowed the court to move the case out of the jurisdiction. Taken together, the court concluded that the case was properly dismissed.

### **Punitive Damages Turnover Statute an Unconstitutional Taking**

*Kirk v. Denver Publishing Co.*, 818 P.2d 262 (Colo. 1991).

The Colorado Supreme Court concluded that a state statute requiring a plaintiff who won punitive damages to pay one third of those damages to the state exacted an unconstitutional taking. In this case, Kirk successfully sued the Denver Publishing Company for malicious prosecution. In addition to substantial compensatory damages, a jury awarded punitive damages that were reduced by agreement to \$118,000. (Under another section of the state tort reform statute that the plaintiff did not challenge, punitive damages were limited to an amount equal to the compensatory damages unless the plaintiff or defendant showed special circumstances.) Kirk challenged the Colorado statute that directed him to turn over a third of the punitive damages to the state's general fund. The trial court held that the statute was constitutional as a proper limitation on a statutorily created right to damages. The supreme court disagreed and reversed.

Initially, the court noted that the limitation was part of a tort reform package the state legislature adopted in 1986. Despite the legislative limitations on the nature of the damages, the court went on to find that the damages were a property right. The court reasoned that a claim for compensatory damages generally gave rise to a property right. The court then suggested that punitive damages were in part reparative. Because these

