Woolsey Fire Cases

Superior Court of California, County of Los Angeles

October 2, 2023, Decided; October 2, 2023, Filed

JCCP NO. 5000, 18STCV06727, 22STCV12890

Reporter
2023 Cal. Super. LEXIS 70246 *

WOOLSEY FIRE CASES

Judges: [*1] HON. WILLIAM F. HIGHBERGER, JUDGE OF THE SUPERIOR COURT.

Opinion by: WILLIAM F. HIGHBERGER

Opinion

RULINGS ON PLEADING CHALLENGES

I. INTRODUCTION

This coordinated proceeding arises out of hundreds of cases filed by thousands of plaintiffs alleging damages caused by the Woolsey Fire. The Woolsey Fire ignited the afternoon of November 08, 2018. The cause was malfunctioning electrical transmission equipment owned by the Southern California Edison Company ("Edison").[1] The overhead power lines that sparked the fire traversed the Santa Susana Field Laboratory, which is owned by The Boeing Company ("Boeing") and the National Aeronautics and Space Administration ("NASA"), an agency of the federal government, and managed by Boeing. Boeing contracted with Universal Protection Service, L.P. ("Allied") to provide fire prevention and protection services at the Santa Susana Field Laboratory site.

Allied, as Boeing's contractor, responded to the fire. It, along with government firefighters, was unable to contain the blaze to Boeing's and NASA's property. The fire escaped the Santa Susana Field Laboratory and persisted for several more days, ultimately burning some 96,949 acres and destroying 1,643 structures, many of them [*2] residences, and damaging several more. Three people lost their lives to the fire. In addition, more than 295,000 people were evacuated from their homes. Woolsey Fire - 2018 California Wildfires, United States Census Bureau, https://www.census.gov/topics/preparedness/events/wildfires/woolsey.html. Since then, hundreds of cases brought by thousands of plaintiffs have been filed. All name Edison as a defendant, and Edison has endeavored to settle plaintiffs' claims through a structured mediation program.

A significant minority of complaints filed also name one or both of Boeing and Allied as additional defendants, claiming they are also liable for failure to contain the fire to the Santa Susana Field Laboratory property. The plaintiffs who bring suit against Boeing and Allied claim damages to property that is not necessarily adjacent to the Santa Susana Field Laboratory or even nearby. Their suits against these two non-Edison defendants are premised on theories of common law negligence, trespass, and nuisance, as well as statutory fire liability under California law. In contrast to Edison, Boeing and Allied have no interest in resolving the claims brought against them. They argue they [*3] have no responsibility as a matter of law, and accordingly challenge the pleadings naming them via a series of demurrers and motions to strike.

These pleading challenges present, to the Court's understanding, a matter of first impression—whether a property owner and its fire protection contractor owe a duty, or are otherwise liable, to fire victims when the fire ignited on the property owner's land due to the acts or omissions of another and escaped the property when the owner and its fire protection contractor were unable to contain the conflagration.

The Court will first review Allied's challenges to the claims asserted against it before moving on to Boeing's challenges. The case presents issues not squarely addressed by any existing published authority in this state. Allied and Boeing's pleading challenges will both be sustained, which will produce appealable judgments.

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[1] The cause of the fire was established after a monthslong investigation by the California Department of Forestry and Fire Protection ("Cal Fire Report").

II. DISCUSSION

A. Allied's Pleading Challenges

All plaintiffs that sued Allied also sued Boeing and Edison, acknowledging that the fire was caused by Edison's negligence and other misconduct, but also alleging that Boeing and Allied failed to maintain the Santa Susana Field Laboratory property in a safe condition and [*4] failed to provide adequate fire prevention and firefighting services that would have prevented the Woolsey Fire from escaping to plaintiffs' properties. *See* 22STCV12890 1st Am. Compl. ¶¶ 4-5 (filed Oct. 07, 2022).[2] Certain plaintiffs assert causes of action against Allied for negligence, trespass, public and private nuisance, and violation of sections 13007 and 13008 of the California Health and Safety Code. The Court will first address the negligence cause of action, which raises by far the most important and controversial questions in this case, before moving on to plaintiffs' other theories of recovery.

1. Negligence

The elements of negligence are "a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." *United States Liability Insurance Co. v. Haidinger-Hayes, Inc.*, 1 Cal. 3d 586, 594 (1970). The chief dispute is whether Allied owed a duty to plaintiffs. Plaintiffs allege that Allied "had been subcontracted by [Boeing] to fulfill [Boeing's] duty to prevent and fight fires" originating on its property. 22STCV12890 1st Am. Compl. ¶ 5. But Boeing and Allied "failed to maintain [Boeing's] property in a safe condition and failed to provide adequate fire prevention and [*5] firefighting resources for a known and foreseeable wildfire hazard—exactly the hazard for which [Allied] had been contracted to prevent and ameliorate." *Id.* The Woolsey Fire "could have been controlled, extinguished, or at least contained until additional resources could arrive to assist." *Id.* Boeing and Allied could have prevented the fire from occurring "by maintaining the property in a safe condition and by adequately securing equipment and staffing" which would have prevented the fire from escaping the property. *Id.* Plaintiffs further allege that Boeing and Allied knew of the significant risk of ignition and spread of a wildfire at Boeing's property, *id.* ¶ 42, that Boeing recognized "the extreme risk to surrounding communities" posed by wildfires that burned on its property, which Allied was also aware of, *id.* ¶¶ 47-48, 51, and that Boeing had stated that fire prevention exercises and its firefighting capabilities benefited its neighbors and surrounding communities. *Id.* ¶ 49.

"[A]s a general rule, an individual or entity does not have a duty under the common law to come to the aid of another person whom the individual or entity has not injured." *Verdugo v. Target Corp.*, 59 Cal. 4th 312, 335 (2014). "The law does not impose [a] duty [*6] on a defendant who did not contribute to the risk that the plaintiff would suffer the harm alleged." *Brown v. USA Taekwondo*, 11 Cal. 5th 204, 214 (2021). This principle applies regardless of the scope of the danger or the ease of the rescue. *Williams v. Southern California Gas Co.*, 176 Cal. App. 4th 591, 601 (2009). This is commonly known as the "Good Samaritan rule," though it actually condones behavior of a passive, and thus "not good," person. So the starting premise is that Allied would owe no duty to plaintiffs since Allied was not the direct cause of the harm that created a need for assistance. However, the rule is not absolute. A number of exceptions are recognized, such as when the defendant undertook to come to the aid of another, or if a special relationship exists between the defendant and the victim. *Brown*, 11 Cal. 5th at 215-16.

a. Contracted Fire-Fighting Services Not Recognized as Necessary for Protection of Third Parties

The negligent undertaking theory creates third-party liability when a third party "undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things" and the victim suffers physical harm resulting from the third party's failure to exercise reasonable care to perform the undertaking, if the failure to exercise [*7] reasonable care increased the risk of such harm. *Artiglio v. Corning Inc.*, 18 Cal. 4th 604, 612-13 (1998). A negligent undertaking claim requires evidence that "(1) the actor . . . undertook, gratuitously

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[2] The operative First Amended Complaint in *Steele v. Southern California Edison Co.*, 22STCV12890, will be referenced in this ruling as the exemplar pleading. The pleading challenges filed by Boeing and Allied to the several pleadings asserted against them are functionally and substantively identical. No party argues that there are an allegations made in some pleading other than the *Steele* First Amended Complaint that would alter the outcome of th demurrers and motions to strike.

or for consideration, to render services to another . . . ; (2) the services rendered were of a kind the actor should have recognized as necessary for the protection of third persons . . . ; (3) the actor failed to exercise reasonable care in the performance of its undertaking; (4) the failure to exercise reasonable care resulted in physical harm to the third persons; and (5) either (a) the actor's carelessness increased the risk of harm, or (b) the undertaking was to perform a duty owed by the other to the third persons, or (c) the harm was suffered because of the reliance of the other or the third persons upon the undertaking." *Id.* at 613-14; *see also Peredia v. HR Mobile Services, Inc.*, 25 Cal. App. 5th 680, 687-88 (2018).

There appears to be no dispute that plaintiffs have sufficiently alleged that Allied (1) undertook to render services to Boeing for consideration; (3) failed to exercise reasonable care in the undertaking of those services; (4) such failure resulted in harm to plaintiffs' real property; and (5) that the alleged carelessness increased the risk of harm. *See* 22STCV12890 1st Am. Compl. ¶ 5. The element [*8] in controversy is the second—whether "the services rendered were of a kind [Allied] should have recognized as necessary for the protection of" plaintiffs' real property. *Artiglio*, 18 Cal. 4th at 613-14. This is a legal question of whether a duty exists. *See id.* at 614 (recovery on the negligent undertaking theory predicated on presence of "each of the well-known elements of any negligence cause of action, viz., duty, breach of duty, proximate cause and damages"); *see also id.* at 615 (question is whether defendant's actions would constitute an "undertaking" within the negligent undertaking theory sufficient to create a duty of care). Plaintiffs have alleged that Boeing and Allied were aware of risks of wildfire on Boeing's property and risks to surrounding communities. *See* 22STCV12890 1st Am. Compl. ¶¶ 47-48, 51. And Boeing had noted in letters to regulatory authorities that its fire protection plan benefited its neighbors and the surrounding communities. *Id.* ¶ 49.

But this does not mean that Allied's services were "necessary for the protection of" plaintiffs and their real property, and the allegations fail to establish that Allied's services were necessary to protect plaintiffs. Boeing owned the property on which the Woolsey Fire ignited, [*9] *see id.* ¶ 21; one could readily conclude from this fact that Boeing retained Allied to protect *its own* property from the risks of wildfire. Indeed, the only other party who might reasonably be expected to be protected by the agreement is NASA, which owned property managed by Boeing. Plaintiffs would only be incidental beneficiaries if their property was protected from fires escaping Boeing's property. There are no facts pled alleging the necessity of Allied's services to protect plaintiffs' property from wildfires. While there certainly was a known risk that Edison's equipment could spark a wildfire, it is not as if Boeing, NASA, or Allied were presently undertaking some sort of activity—for example, rocket testing—that would increase the risk of a wildfire such that provision of fire protection was necessary for the safety of neighboring properties.

Cases cited by the parties indicate that a service is recognized as necessary for the protection of third parties when it directly benefits third persons. In *Peredia*, the second element was satisfied when the defendant human resources vendor had been engaged by the decedent's employer to assist with carrying out the employer's workplace safety [*10] obligations—obligations which were necessary for the protection of employees like the decedent. *See Peredia*, 25 Cal. App. 5th at 696-97. Here, there is no demonstrated obligation of Boeing to prevent a fire ignited by another on its property from spreading to plaintiffs' lands. The *Peredia* employer operated a dairy, and that carried with it serious workplace safety risks. *See id.* at 684. Nothing indicates that Boeing did anything on its lands (such as engaging in activity likely to ignite a fire) that made it likely it would have to protect its neighbors from a fire on its lands. And nothing indicates that Allied was hired to protect the property of Boeing's neighbors.

In *Artiglio*, Dow Chemical's toxicology research involving silicone was an undertaking for the benefit of others—potential patients who would receive treatment developed on the basis of the toxicology research and safety testing. *Artiglio*, 18 Cal. 4th at 615. But this undertaking did not create an obligation to plaintiffs injured by silicone breast implants manufactured years later by an affiliated business entity, Dow Corning, that had never had such implants tested by Dow Chemical. *Id.* at 616-18. While the facts here are quite dissimilar from the *Artiglio* case, *Artiglio* established that work undertaken for one purpose does not establish [*11] a contractor's liability to others who are affected by the work but were not intended to benefit therefrom. Allied's undertaking to respond to fires on Boeing's property is not so broad that the obligation extended to protection of plaintiffs' property in neighboring communities. Boeing retained Allied to protect Boeing's and NASA's land—not plaintiffs'.

b. No Special Relationship Existed Between Allied

and Plaintiffs

The other means by which plaintiffs could plead an exception to the general rule is by establishing a special relationship between Allied and plaintiffs. No direct relationship is pled. Instead, a duty could be created if the sole purpose of the transaction between Allied and Boeing was to benefit third parties, such as plaintiffs. *See Giacometti v. Aulla, LLC*, 187 Cal. App. 4th 1133, 1139 (2010). The mere fact that a third party stood to benefit does not render that third party a beneficiary owed a duty. *See B.L.M. v. Sabo & Deitsch*, 55 Cal. App. 4th 823, 832 (1997) ("mere fact that B.L.M. stood to benefit from the successful completion of the project does not render B.L.M. a third party beneficiary of the employment agreement").

"The determination whether in a specific case the defendant will be held liable to a third person not in privity is a matter of policy and involves the balancing [*12] of various factors, among which are [1] the extent to which the transaction was intended to affect the plaintiff, [2] the foreseeability of harm to [the plaintiff], [3] the degree of certainty that the plaintiff suffered injury, [4] the closeness of the connection between the defendant's conduct and the injury suffered, [5] the moral blame attached to the defendant's conduct, and [6] the policy of preventing future harm." *Biakanja v. Irving*, 49 Cal. 2d 647, 650 (1958).

Evaluating the facts alleged using the six *Biakanja* factors indicates that plaintiffs have not stated a claim on which Allied should be held liable. The transaction could not have been intended to affect plaintiffs. The agreement was for the protection of Boeing's and NASA's property only. Any benefit to neighboring property holders would be incidental at best.

The second factor, foreseeability of harm, is in Allied's favor because it could not have anticipated the difficulty in containing the incipient Woolsey Fire, nor the wide-ranging destructive effects the fire would have. Judicially noticeable materials suggest that the Woolsey Fire was extraordinary. A review of the response to the fire by the County of Los Angeles recognized that "[e]ven some of the largest, most [*13] experienced agencies in the United States were, at times, overwhelmed in the first hours by this incident's [i.e., the Woolsey Fire's] *speed and weight of impact*, exposing some limitations between the agencies and systems[.]" County of Los Angeles, After Action Review of the Woolsey Fire Incident 5 (2019) (emphasis in original, hereinafter "After-Action Report"), *available at* https://file.lacounty.gov/SDSInter/bos/supdocs/144968.pdf.[3] The County further observed that "[t]he expected fire behavior and rate of spread far exceeded the past experience of emergency responders, policy makers, and the public in the Santa Monica Mountains fire corridor areas" and "what occurred in less than 24 hours was not anticipated by any prior plan or preparedness exercise." *Id.* Just 24 minutes before ignition of the Woolsey Fire, the Hill Fire had ignited in nearby Thousand Oaks, which "quickly consumed the geographical area's augmented fire resources." *Id.* at 56. Local firefighting authorities could only commit limited resources to fighting the early stages of the Woolsey Fire "[d]ue to commitments at the fast-moving Hill Fire[.]" *Id.* This speaks to the unprecedented nature of the Woolsey Fire and the [*14] circumstances surrounding its ignition and initial growth that fostered its destructive effects. Given the unexpected and unanticipated difficulty in the initial containment of the Woolsey Fire, the firefighting services were not "of a kind [Allied] should have recognized as necessary for the protection of" plaintiffs' real property. *See Artiglio*, 18 Cal. 4th at 613-14. Allied could not have anticipated the difficulty in containing the Woolsey Fire and the destruction it would bring, and thus should not be charged with recognizing its services were necessary to prevent a small brush fire from erupting into a wildfire of historic proportions.

The third factor, the degree of certainty that plaintiffs suffered injury, is somewhat favorable to plaintiffs, but not dispositive. However, there is not a high degree of closeness of connection between Allied's alleged conduct—negligently containing the fire—and the injury suffered. Edison is responsible for the fire, and there is no plausible allegation that the fire could have been stopped before escaping Boeing's property. Even less helpful to plaintiffs is the next factor—moral blameworthiness of Allied's alleged conduct—because Edison is morally responsible [*15] for the ignition of the fire and resulting destruction. Finally, the policy of preventing future harm does not necessarily favor plaintiffs under this analysis. It would be quite

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[3] The generation and publication of this report is an official act of the County of Los Angeles. *See* Evid. Code § 452(c). The Court *sua sponte* takes judicial notice thereof, but by the furnishing of this draft [Proposed] Rulings on Pleading Challenges, the Court is affording all interested parties notices and an opportunity to object, comment or to provide citations to other equally relevant material. *See id.* § 455(b).

burdensome to hold liable someone with an opportunity to prevent the spread of a dangerous wildfire the same as if they were the igniter. This would discourage parties like Allied from entering into fire protection contracts with entities like Boeing, and might overall increase the risk of fire damage in California by precluding smaller, more manageable fires from being extinguished quickly by private fire brigades.

Allied was hired by Boeing to respond to fires that ignited on Boeing's property. It thus had a contractual duty to Boeing and NASA to protect their property from fires. Plaintiffs have not pled sufficient facts to allege that Allied also owed them a duty. There are no allegations of facts that would establish that the firefighting contract between Allied and Boeing was necessary for the safety and protection of plaintiffs and their property, nor do the allegations support a finding of duty under the *Biakanja* balancing test. Nothing in the pleadings indicates the Boeing—Allied contract served any purpose [*16] other than protection of Boeing's and NASA's property. Nothing shows that Allied owed a duty to Boeing's neighbors. Allied is involved in this case because it was a contractor, and the extent of its duty is framed by that contract. At the very most, it owed a duty to Boeing and NASA. It owed no duty to owners of land neighboring the Santa Susana Field Laboratory, and certainly not to any landowners with property far beyond Boeing's lands.[4] Allied's demurrers to the negligence causes of action are sustained.

2. Trespass

"The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm." *Ralphs Grocery Co. v. Victory Consultants, Inc.*, 17 Cal. App. 5th 245, 262 (2017). "[W]hen a defendant intentionally starts a fire on its property, and negligently allows that fire to escape onto and to damage the adjoining plaintiffs' property," it is a trespass under California law. *Elton v. Anheuser-Busch Beverage Group, Inc.*, 50 Cal. App. 4th 1301, 1305-07 (1996).

It is not possible for Allied to be liable under a trespass theory because it did not start the fire that damaged plaintiffs' [*17] property. The second element of trespass is "the *defendant's* . . . *entry* onto the property[.]" *Ralphs Grocery Co.*, 17 Cal. App. 5th at 262 (emphasis added). Allied did not start the fire and thus did not enter plaintiffs' property. At the very most, it failed to contain the fire to Boeing's property. Allowing an intruder is not entry. For this reason, the demurrers to the trespass causes of action are sustained.

3. Nuisance

Nuisance claims are similar to trespass claims, but do not require proof of damage to the plaintiff's property—only proof of interference with the plaintiff's use and enjoyment of the property. *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal. 4th 893, 937 (1996). The nuisance plaintiff must also show that the invasion was substantial and unreasonable. *Id.* at 938. "[T]he critical question is whether the defendant created or assisted in the creation of the nuisance." *City of Modesto Redevelopment Agency v. Superior Court*, 119 Cal. App. 4th 28, 38 (2004). "Where negligence and nuisance causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim." *El Escorial Owners' Ass'n v. DLC Plastering, Inc.*, 154 Cal. App. 4th 1337, 1349 (2007); *see also Melton v. Boustred*, 183 Cal. App. 4th 521, 542 (2010).

Allied asks the Court to dismiss the nuisance claims on grounds they are simply negligence claims, identical to the negligence causes of action. The infirmity of the negligence causes of action also serves as grounds on which the Court sustains the demurrers to the nuisance [*18] causes of action. Independently, the Court sustains the demurrers to the nuisance claims because Allied did not "create[] or assist[] in the creation of the nuisance." *City of Modesto Redevelopment Agency*, 119 Cal. App. 4th at 38. Edison started the fire; plaintiffs merely allege that Allied failed to stop it, which is not the same as alleging that Allied assisted in its creation. The Court is unpersuaded that allegations that Allied failed to clear vegetation around Edison's malfunctioning transmission equipment suffices as a pleading of creation or assistance in the creation of the nuisance.[5] *See id.* Allied owed no duty to plaintiffs as a

[4] Even if the Court were to hold that Allied owed a duty to some or all of these plaintiffs in the abstract, the claim would eventually fail under the *Rowland v. Christian* analysis discussed more fully below in connection with the claims against landowner Boeing.

[5] The Court is aware of an unpublished federal district court case wherein allegations that a railroad was negligent because it did not clear vegetation from a right of way

matter of law to undertake such efforts. For this additional reason the demurrers to the nuisance causes of action are sustained.

4. Sections 13007 and 13008 of the Health and Safety Code

Finally, Allied challenges the causes of action for violation of sections 13007 and 13008 of the Health and Safety Code. Section 13007 provides that anyone who negligently sets fire to or allows fire to be set to "the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire." One who attempted to suppress a fire did not "attend[]" the fire for the purpose of liability under [*19] section 13007. *See People v. Southern Pacific Co.*, 139 Cal. App. 3d 627, 638 (1983). Section 13008 provides that someone who allows "any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property" for fire damages. Allied did not own either of the properties in question (which were owned by Boeing and NASA), and plaintiffs' generalized allegations of alleged "control" by Allied over such property do not convert Allied into a property owner for these purposes.

The demurrers to these causes of action are sustained. The allegations are not that Allied kindled the fire that damaged plaintiffs' properties; plaintiffs merely allege Allied failed to stop it. This does not create liability under section 13007. Furthermore, and as noted above, Allied did not own the land upon which the fire ignited, so it cannot be liable as a landowner under section 13008. Plaintiffs' attempts to demonstrate Allied is liable because it was charged with firefighting services on Boeing's property are unsupported by any controlling authority. Allied's contract with Boeing to provide fire suppression and response services does not elevate it to the status of owner or possessor of the Santa [*20] Susana Field Laboratory.

5. Summary of Resolution of Allied's Pleading Challenges

Plaintiffs have not provided any authority that would establish that Allied, as a contractor of a landowner, owed any duty to owners of neighboring or more distant lands to extinguish a fire that ultimately escapes the property and causes widespread destruction. For this reason, the negligence causes of action fail. This is a pure question of law. No leave to amend shall be given. The Court is satisfied that there is no way to state a negligence claim against Allied. The Court is similarly satisfied that other causes of action for trespass, nuisance, and violation of the Health and Safety Code are also fatally infirm and incapable of being successfully asserted against Allied. For these reasons, each and every demurrer brought by Allied is sustained without leave to amend.

Allied also brought several companion motions to strike, but in light of Allied's successful demurrers, there is no need to rule on these.

B. Boeing's Demurrers

Boeing is situated differently because it is the owner of the land on which the fire erupted. While it appears from the Cal Fire Report that a second ignition point occurred on land [*21] owned by NASA, the allegation that one of the two points of ignition was on Boeing's fee simple, producing a larger fire when the two fires conjoined during their early spread despite such firefighting efforts as were made by Boeing and Allied, is the essential starting point of this legal analysis. Like the questions surrounding the claims against Allied, these appear to be matters of first impression in California.

The Court does, however, have the benefit of a very recent state Supreme Court decision which provides the exact analytical framework needed for evaluation of these claims. The case is *Kuciemba v. Victory Woodworks, Inc.* (July 6, 2023) 14 Cal.5th 993. It makes clear that the policy judgments which inform whether or not a given category of risk should give rise to tort liability must be analyzed on a categorical basis and not with specific reference to a given plaintiff's allegations against a specific defendant. *Id.* at 1021, citing *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 629; see also *Kuciemba*, 14 Cal.5th at 1022 ("[C]ourt must focus not on particularities of the defendant's conduct and the plaintiff's injury, but on 'whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experience

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adequately pled a duty of care. *See Exact Property & Casualty Co. v. Union Pacific Railroad Co.*, 2021 WL 2711188 at *3 (E.D. Cal. 2021). As stated, this case is unpublished and comes from a federal court. It thus is not controlling authority in state court. The Court finds the case unpersuasive given the absence of any in-depth analysis of whether there is ever any obligation to clear vegetation that could potentially be ignited by the acts or omissions of a third party.

that liability may appropriately be imposed.'").

It also makes clear that a finding that [*22] a legal duty might exist between a targeted tort defendant and a plaintiff is not the end of the analysis with the plaintiff given a path to proceed to trial. Rather, to apply the important common-law policy judgments required under the analysis mandated by the teaching of *Rowland v. Christian* (1968) 69 Cal.2d 108, a court must go beyond the threshold finding that a duty may exist in the abstract to consider additional factors, such as "moral blame, preventing future harm, burden, and insurance availability" before deciding that a given class of tort claims will be allowed, particularly novel theories. *Kuciemba, supra*, 14 Cal.5th at 1022. In *Kuciemba* considerations of Burden alone were sufficient to prompt our Supreme Court to reject imposition of liability on employers for the take-home spread of the Covid virus to employees' family members because it would wreck financial havoc on employers and inundate state trial courts with a "flood of complex cases that cannot be resolved in the early stages of litigation." *Kuciemba, supra*, 14 Cal.5th at 1030. The Court reached this conclusion based on consideration of Burden alone and without regard to the availability of insurance, but in the context of this case and the type of liability which plaintiffs wish to impose on all landowners who are upwind from [*23] other properties, the Insurance consideration further supports the conclusion that these claims cannot proceed when the issue is fire generated by the operation of the electrical grid, whether the source of the fire is negligent or non-negligent conduct by the owner of the utility apparatus. For reasons more fully discussed below, it is contrary to sound public policy to allow this type of tort claim to proceed past the pleading stage, for which reason the demurrer is sustained without leave to amend. A direct appeal can be taken to test the legal correctness of this ruling.

1. Negligence

Once again, the chief dispute is whether Boeing owes a common law duty to other landowners who suffered injuries caused by the fire. Unlike Allied, Boing is the owner of the property upon which the Woolsey Fire ignited. The question is thus whether a landowner has a duty to extinguish or combat a fire burning on its property, even if ignition of the fire occurred through no fault of the landowner.

As previously stated, whether a party situated as Boeing is situated may be held liable under a common-law negligence theory for fire damage to neighboring and far-flung landowners appears to be a matter of [*24] first impression in California law. To discern what the common law is in California, the Court will begin with the Restatement (Second) of Torts. The Restatement provides that "[a] negligent act or omission may be one which involves an unreasonable risk of harm to another through . . . the foreseeable action of the other, a third person, . . . or a force of nature." Restatement (Second) of Torts § 302. Note that this includes "a force of nature" as a possible seminal cause as well as "the foreseeable action of the other, a third person." In both such situations the prospective tort defendant has done nothing wrong to create the conditions needing attention, and this section of the Restatement must be seen as a limit on unbridled application of the "Good Samaritan" rule which allows a disinterested party to ignore another person's peril without legal liability, the principle under which Allied prevails. This section of the Restatement and the comments thereto and, particularly, the illustrations to those comments, suggests that Boeing may owe a common law duty to plaintiffs for perils which escape from land it owns.

Comment c to section 302, quoted in full below, suggests Boeing owes plaintiffs some common law duty of reasonable [*25] care:

> The actor may be negligent in setting in motion a force the continuous operation of which, without the intervention of other forces or causes, results in harm to the other. **He may likewise be negligent in failing to control a force already in operation from other causes, or to prevent harm to another resulting from it**. Such continuous operation of a force set in motion by the actor, or of a force which he fails to control, is commonly called "direct causation" by the courts, and very often the question is considered as if it were one of the mechanism of the causal sequence. In many instances, at least, the same problem may be more effectively dealt with as a matter of the negligence of the actor in the light of the risk created.

Id. § 302 cmt. c (emphasis added). As comment c demonstrates, an actor may "be negligent in failing to control a force already in operation from other causes[.]" *Id.* Boeing, as a landowner, may thus be liable for failing to control a force—the fire—already in motion. The illustrations to comment c make clear the Restatement's view that an uncontrolled fire creates a kind of risk giving rise to a duty to exercise due care to prevent its spread:

> A sets a fire on his own [*26] land, with a strong wind blowing toward B's house. Without any other negligence on the part of A, the fire escapes from A's land and burns down B's house. A may be found to be negligent toward B in setting the fire.

Id. § 302 cmt. c, illus. 1. The common law duty described in section 302 of the Restatement thus appears to apply to landowners—not to their contractors. Boeing thus might be responsible for failing to take action to stop a fire it started on its land from blowing onto a neighbor's property. But illustration 1 describes a scenario where the landowner ignites a fire on its own property. Boeing did not ignite the Woolsey Fire. But that does not mean there is no duty as described by section 302. Tellingly the very next illustration in the Restatement describes the general circumstances pled here:

> A discovers on his land a fire originating from some unknown source. Although there is a strong wind blowing toward B's house, **A makes no effort to control the fire. It spreads to B's land and destroys B's house. A may be found to be negligent toward B in failing to control the fire**.

Id. § 302 cmt. c, illus. 2 (emphasis added). Illustration 2 provides a reading of the common law duty described in section 302 tailored to some of the key facts of this case: notwithstanding [*27] the general applicability of the "Good Samaritan" rule condoning inaction, a landowner has a default duty to control a fire on its land, regardless of the fire's source. Note, however, the illustration is very non-specific as to the cause in fact of this fire "from some unknown source." There was no express contemplation that the cause of the fire might be the operation of public utility infrastructure which reaches into most every geographical nook and cranny of this state to provide essential services.

Note that in illustration 2 there was a strong wind blowing the fire toward B's house. Presumably B's property was adjacent to A's land. B's property was clearly in the path of the fire. But not every plaintiff owned property adjacent to the Santa Susana Field Laboratory. Did Boeing owe a duty to these far-flung landowners, or just to its immediate neighbors? The text of comment c is silent on the issue of proximity of the harm resulting from the "force already in operation from other causes" to the initiation of the damaging force. But the comment notes that "continuous operation of a force set in motion by the actor, or of a force which he fails to control, is commonly called 'direct [*28] causation' . . . and very often the question is considered as if it were one of the mechanism of the causal sequence." *Id.* § 302 cmt. c. The fire operated continuously from ignition to extinguishment, destroying structures near and far from the Santa Susana Field Laboratory. The Court is persuaded that any theoretical common law duty imposed on a landowner to control a fire burning on its lands, as described by section 302 and comment c, might extend to owners of other properties both in the immediate vicinity of the fire and those further afield but later affected by the same fire.[6] The fact that this conceptual exposure would create an impossibly large amount of exposure for each and every landowner located in or downwind from the many wildfire prone areas of the state is a consideration which will be considered next when the several considerations under the *Rowland v. Christian* analysis occurs.[7]

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[6] Professor William Lloyd Prosser, the chief Reporter for this Restatement (and a California law professor at Berkeley Law for many years), did include some limiting language when discussing "Abnormal conditions of nature," the situation presented by the Woolsey Fire and many similar conflagrations:

> **g. Abnormal conditions of nature**. The actor is not required to anticipate or provide against conditions of nature or the operation of natural forces which are of so unusual a character that the burden of providing for them would be out of all proportion to the chance of their existence or operation and the risk of [*29] harm to others involved in their possible existence or operation. It is therefore not necessary that a particular operation of the natural force be unprecedented. The likelihood of its recurrence may be so slight that in the aggregate the burden of constantly providing against it would be out of all proportion great as compared with the magnitude of the risk involved in the possibility of its recurrence.

Restatement (Second) of Torts § 302 cmts. d g (emphasis added) (illustrations omitted).

[7] Given the tension between (a) desired compliance with wildfire evacuation orders and the limited resources and skill that a typical owner of a single-family residence in a fire corridor would have to confront and contain a spreading fire and (b) the theoretical common-law duty of such a property owner may have to stay and to make "some effort" to contain the fire, presumably with garden hoses, brooms, and rakes, it would be absurd to expect a homeowner or small rancher on Mulholland Highway in interior Malibu or Calabasas to "stand and fight" a fire which has jumped a freeway and spread without control for hours so as to protect other homeowners downwind on the Pacific Ocean at Point Dume even if this is what the Restatement may suggest, in the abstract, to be his, her, or its duty.

A finding that a duty might exist as a "default rule" is not the end of the analysis. The Supreme Court found good reasons to hold initially that the employer ought to have a duty to protect the families of workers from take-home Covid exposure due to the employer's commingling of workers during a public health emergency but then refused to allow a tort claim to proceed after considering all of the *Rowland v. Christian* factors:

> Civil Code section 1714 articulates a general duty of care. But exceptions can be recognized when supported by compelling policy considerations. (See *Brown, supra*, 11 Cal.5th at p. 217; *Regents, supra*, 4 Cal.5th at p. 628; *Cabral, supra*, 51 Cal.4th at p. 771.) That is the case here.
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> *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*) identified several considerations that may, on balance, justify a departure from Civil Code section 1714's default rule of duty. (*Cabral, supra*, 51 Cal.4th at p. 771.) They are: "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff [*30] suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland*, at p. 113.) *Rowland*'s multifactor test "was not designed as a freestanding means of *establishing* duty, but instead as a means for deciding whether to limit a duty derived from other sources," like Civil Code section 1714. (*Brown, supra*, 11 Cal.5th at p. 217, italics added.) "As we have also explained, however, in the absence of a statutory provision establishing an exception to the general rule of Civil Code section 1714, courts should create one only where 'clearly supported by public policy.'" (*Cabral*, at p. 771, quoting *Rowland*, at p. 112.)
>
> This analysis is conducted "at a relatively broad level of factual generality." (*Cabral, supra*, 51 Cal.4th at p. 772.) We analyze the *Rowland* factors to determine "not whether they support an exception to the general duty of reasonable care on the facts of the particular case before us, but whether carving out an entire category of cases from that general duty rule is justified by [*31] clear considerations of policy." (*Ibid.*; see *Kesner, supra*, 1 Cal.5th at pp. 1143-1144.) "In other words, the duty analysis is categorical, not case specific." (*Regents, supra*, 4 Cal.5th at p. 629.)
>
> "The *Rowland* factors fall into two categories. The first group involves foreseeability and the related concepts of certainty and the connection between plaintiff and defendant. **The second embraces the public policy concerns of [a] moral blame, [b] preventing future harm, [c[burden, and [d] insurance availability. The policy analysis evaluates whether certain kinds of plaintiffs or injuries should be excluded from relief."** (*Regents, supra*, 4 Cal.5th at p. 629; see *Kesner, supra*, 1 Cal.5th at p. 1145.) It bears noting that different timeframes are relevant to different aspects of the analysis. Whereas foreseeability issues are assessed based on information available during the time of the alleged negligence (*see Kesner*, at pp. 1145-1146), "our duty analysis is forward-looking" in regard to policy issues surrounding burdens that would be placed on defendants (*id.* at p. 1152). We conclude that, although the transmission of COVID-19 to household members is a foreseeable consequence of an employer's failure to take adequate precautions against the virus in the workplace, policy considerations ultimately require an exception to the general duty of care in this context.

Kuciemba, supra, 14 Cal.5th at 1021-22 (bold [*32] emphasis added).

Accordingly, while common law negligence (e.g., Restatement) and statutory provisions consistent therewith in California imposed a theoretical default duty on Boeing to respond to the incipient Woolsey Fire, this is not the end of analysis. Boeing had no Moral Blame for owning the utility easement where the fire started where the utility had the primary responsibility for maintaining the man-made and natural conditions of the easement. While not dispositive, this is a very important consideration.

Preventing Future Harm in the form of lethal, uncontrolled wildfires might speak in favor of imposing legal liability on Boeing in conjunction with Edison.

But on the issue of Burden, the theory necessarily takes a fatal dive because this kind of legal liability imposed not just on Boeing, a large corporate entity, but on every owner of a fee simple (and possibly on possessors of leaseholds) would create an impossible amount of liability. *Kuciemba* expressly recognizes that imposition

of limitless liability in the name of tort law is contrary to the sound public policy which informs our common law of torts:

> While employers may already be required to implement health and safety protocols [*33] to protect their employees from COVID-19 infections, concluding they owe a duty to the household members of employees has the potential to alter employers' behavior in ways that are harmful to society. Because it is impossible to eliminate the risk of infection, even with perfect implementation of best practices, the prospect of liability for infections outside the workplace could encourage employers to adopt precautions that unduly slow the delivery of essential services to the public. Even San Francisco's health order, imposed early in the pandemic, acknowledged that compliance cannot always be total and may give way "to the limited extent necessary ... to carry out the work of Essential Businesses." **Moreover, if a precedent for duty is set in regard to COVID-19, the anticipated costs of prevention, and liability, might cause some essential service providers to shut down if a new pandemic hits. This negative "consequence[] to the community" (*Rowland, supra*, 69 Cal.2d at p. 113), while hypothetical, cannot be ignored. A finding of duty may be inappropriate if its recognition would deter socially beneficial behavior. (See *Southern California Gas Leak Cases* (2019) 7 Cal.5th 391, 402.)**
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> Although *Kesner* cautioned that "the most relevant burden" in a *Rowland* analysis is the cost of upholding [*34] a tort duty (*Kesner* [v. Superior Court (2016)]*, supra*, 1 Cal.5th at p. 1152), we did not completely ignore the financial consequences that could result from increased litigation. Indeed, *Rowland*'s formulation of this factor incorporates such considerations, because it requires analysis of the burden of "imposing a duty to exercise care *with resulting liability* for breach." (*Rowland, supra*, 69 Cal.2d at p. 113, italics added.) We observed in *Kesner* that the defendants had raised a "forceful contention" in pointing out that a finding of duty "would open the door to an 'enormous pool of potential plaintiffs.'" (*Kesner*, at p. 1153.) Conceding that there were legitimate concerns about the potential breadth and unmanageability of claims, we nevertheless concluded these problems did not require a categorical rule against tort liability for take-home asbestos exposure. Instead, these concerns were addressed by limiting the scope of the duty. (*Id.* at p. 1154.) We determined it was sensible, in that context, to limit the duty to prevent take-home asbestos exposure to household members only. (*Id.* at pp. 1154-1156.)
> ***
>
> **In addition to dire financial consequences for employers, and a possibly broader social impact, the potential litigation explosion facilitated by a duty to prevent COVID-19 infections in household members would place significant burdens** [*35] **on the judicial system and, ultimately, the community**. As amicus curiae CEA aptly put it, "If there was ever a 'floodgates' situation, this is it." Courts would have to manage a very large number of suits, and variations in individual exposure history and precautions against the virus would likely make it difficult, if not impossible, for the cases to be grouped into collective or class actions. Fact-specific disputes could also make these cases complex and time-consuming to litigate.

Kuciemba, supra, 14 Cal.5th at 1028-1030.

As noted in the above quote, the same considerations were acknowledged by our Supreme Court four years ago in the arguably analogous circumstances of the *Southern California Gas Leak Cases* (2014) 7 Cal.5th 391. There, the defendant was the cause in fact of the harm, a massive, months-long leak of noxious gases from below-ground storage caverns used by the gas utility to hold natural gas reserves. The gas spread over many square miles and various types of claims were pursued, including claims for alleged economic loss by businesses who lost their patronage when the residents of this large area evacuated, with assistance of the utility and the government. These businesses did not claim personal injury or damage to their physical property; rather, only economic [*36] loss was sought, a loss which appears that they clearly suffered given the massive dislocation of their customer base. Negligence tort law has historically excluded purely economic loss as a category of cognizable tort claims, and our Supreme Court decided this rule should still apply to these claims because the consequences of an alternative holding would produce "endless litigation":

> The allegations before us underscore the ineluctable difficulty associated with imposing a duty to guard against purely economic losses in negligence cases like this one. **It may be possible**

to quantify the profits any one business lost because of an industrial accident, but imposing such a duty would nevertheless create line-drawing problems across—quite literally—space and time. So although **our duty determination must ultimately "occur[] at a higher level of generality"** than would a jury's analysis of fact-intensive issues like breach and causation (*Kesner, supra*, 1 Cal.5th at p. 1144), we examine some particulars of Plaintiffs' claims to illustrate those two sets of persistent line-drawing problems.
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Without adopting a (not so) bright-line evacuation zone rule, the alternative is applying a fact-intensive, case-by-case standard à la [*37] *People Express* [*Airlines, Inc. v. Consolidated Rail Corp.* (1985) 100 N.J. 246]. But we have already experimented with an analogous approach regarding recovery for negligent infliction of emotional distress. It did not go well. In Thing, we lamented the "arbitrary results" and the "inconsistent and often conflicting" body of law that approach produced. (*Thing* [*v. La Chusa* (1989)]*, supra*, 48 Cal.3d at p. 662.) Which is why we retreated from an ad hoc standard and imposed instead a hard-and-fast rule. (*Id.* at pp. 667-668.)

We have not forgotten that experience. Today, we are confronted with hundreds of claims brought by hundreds of businesses stemming from one industrial accident—and that's just the artificially limited class Plaintiffs seek to represent, not the full universe of potential claimants whose pocketbooks were adversely (and foreseeably) affected by the leak. **We see no workable way to limit geographically who may recover purely economic losses. Without one, the dangers of indeterminate liability, Over-deterrence, and endless litigation are at their apex**.

Southern California Gas Leak Cases, supra, 7 Cal.5th at 408, 410. Similarly here, the imposition of a fire-fighting duty on all property owners in the state to mitigate utility-caused wildfires would impose a burden totally beyond the current, reasonable expectations of such persons and entities. To do so would be an extreme judicial [*38] overreach.

Plaintiffs' last briefs assert that reaching this conclusion has the effect of judicially overruling a legislative enactment with the passage of Health & Safety Code §§ 13007 and 13008. (Plaintiffs' Joint Repose To Being's Supplemental Brief at pg. 2) The response is that duty is only one of many pieces to the determination of whether a common-law claim for recovery should proceed and consideration of the *Rowland* factors allows — indeed requires — common-law courts to determine if the imposition of a duty is or is not socially desirable. *Kuciemba* recently cited favorably to the *Southern California Gas Leak Cases* decision for the proposition that: "A finding of duty may be inappropriate if its recognition would deter socially beneficial behavior." *Kuciemba, supra*, 14 Cal.5th at 1028. Similarly, our Supreme Court has recognized that "[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences, which the Legislature did not intend." *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276 (limiting application of Proposition 213 to claims of a wrongful death plaintiff where the decedent was operating a motor vehicle without required liability insurance).

There is one additional *Rowland* factor which needs to be considered: [*39] whether the Insurance Availability for the risk in question makes it suitable for risk transfer from the injured party to another party and thus risk sharing through an insurance pool. Given the rapid erosion of the first-party insurance market for fire insurance in California in recent years for properties at any risk of wildfire,[8] one cannot confidently state that risk-transfer through the use of insurance to cover such claims would be a panacea supporting the allowance of such claims. Thus the "availability of insurance" factor speaks very loudly against imposing such liability. If this form of liability was seen to be the tort law in California, the current problems in the first-party insurance market in California would merely be a fond memory.

2. Trespass

As was previously discussed, "when a defendant intentionally starts a fire on its property, and negligently allows that fire to escape onto and to damage the

[8] The Court takes judicial notice of recent pronouncements by Governor Gavin Newsom and Insurance Commissioner Ricardo Lara confirming the highly unstable condition of first-party insurance markets for the coverage of real and personal property from fire risk. https://www.gov.ca.gov/wp-content/uploads/2023/09/9.21.23-Homeowners-Insurance-EO.pdf; https://www.insurance.ca.gov/0400-news/0100-press-releases/2023/release051-2023.cfm

adjoining plaintiffs' property," it is a trespass under California law. *Elton v. Anheuser-Busch Beverage Group, Inc.*, 50 Cal. App. 4th 1301, 1305-07 (1996).

Like Allied, it is not possible for Boeing to be liable under a trespass theory because Boeing did not start the fire that damaged plaintiffs' property. The second element of trespass is "the *defendant's [*40] . . . entry* onto the property[.]" *Ralphs Grocery Co.*, 17 Cal. App. 5th at 262 (emphasis added). Boeing did not start the fire and thus did not enter plaintiffs' property. For this reason, the demurrers to the trespass causes of action are sustained.

3. Nuisance

As previously discussed, nuisance claims are similar to trespass claims, but do not require proof of interference with the plaintiff's use and enjoyment of the property. *San Diego Gas & Electric Co.*, 13 Cal. 4th at 937. "[T]he critical question is whether the defendant created or assisted in the creation of the nuisance." *City of Modesto Redevelopment Agency*, 119 Cal. App. 4th at 38.

The Court sustains the demurrers to the nuisance claims because Boeing did not "create[] or assist[] in the creation of the nuisance." *Id.* Edison started the fire; plaintiffs merely allege that Boeing failed to stop it, which is not the same as alleging that Boeing assisted in its creation. The Court is unpersuaded that allegations that Boeing failed to clear vegetation around Edison's malfunctioning transmission equipment suffices as a pleading of creation or assistance in the creation of the nuisance. *See id.* The Court holds that Boeing owed no duty to plaintiffs as a matter of law to undertake such efforts.

4. Sections 13007 and 13008 of the Health and Safety Code

Section 13007 provides that anyone who negligently sets fire [*41] to or allows fire to be set to "the property of another, whether privately or publicly owned, is liable to the owner of such property for any damages to the property caused by the fire." One who attempted to suppress a fire did not "attend[]" the fire for the purpose of liability under section 13007. *See Southern Pacific Co.*, 139 Cal. App. 3d at 638. Plaintiffs do not allege that Boeing kindled the Woolsey Fire; they merely allege that Boeing failed to stop it.

Section 13008 provides that someone who allows "any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property" for fire damages. Conceptually this is no different than Plaintiffs invocation of Civil Code § 1714 as a statutory declaration of the general duty standard for negligence claims. As noted above, the *Rowland v. Christian* analysis is imposed upon this theoretical statement of duty by the Legislature, and the tort theory under § 13008 must die for the same reason that the basic negligence claim must fail.

5. Boeing's Immunity Arguments

Given the rulings above, this is moot. One comment is nevertheless worth noting. The immunity created by Health & Safety Code § 13863(b) for the benefit of public agencies [*42] (which Boeing sought to invoke) extends to failure to establish a fire department or fire protection district; failure to maintain sufficient personnel, equipment, or other fire protection facilities; and the condition of fire protection or firefighting equipment or facilities. *See* Govt. Code §§ 850, 850.2, 850.4. These grants of immunity are broad. *See People ex rel. Grijalva v. Superior Court*, 159 Cal. App. 4th 1072, 1078 (2008). It is presumably for this reason that the many plaintiffs injured physically or financially by the Woolsey conflagration have not sued the public entities, such as the Counties of Los Angeles and Ventura, which maintained the public fire-fighting forces which were so overwhelmed by this wildfire, as fully and frankly acknowledged in the After-Action Report discussed previously. It would be somewhat anomalous if Allied or Boeing were expected to pay in tort liability to thousands of claimants for their failed attempt to contain the fire in its infancy when the principal actors in the grossly inadequate firefight are legally immune for negligence in their collective efforts.

C. Boeing's Motion to Strike

This is moot.

III. CONCLUSION

The Court **sustains** Allied's demurrers in their entirety and without leave to amend. Allied's motions to strike are **moot** as a result [*43] of this ruling. The Court

sustains Boeing's demurrers in their entirety and without leave to amend. Boeing's motions to strike are **moot** as a result of this ruling. Allied and Boeing each to submit separate [Proposed] Judgment in their favor by Oct. 16, 2023.

IT IS SO ORDERED.

Dated: Oct. 2, 2023

/s/ William F. Highberger/Judge

HON. WILLIAM F. HIGHBERGER

JUDGE OF THE SUPERIOR COURT
