

19 of 997 DOCUMENTS

Copyright (c) 2000 Southwestern University School of Law
Southwestern University Law Review

2000

29 Sw. U. L. Rev. 949

LENGTH: 3397 words**XII. TORT LAW:** COURTS OF APPEAL VALENTINE V. BAXTER **HEALTHCARE** CORP. 68 CAL. APP. 4TH 1467 (1999)**NAME:** Michael Wallenstein**TEXT:**

[*949]

I. Holding

The court unanimously held that a trial court can declare a partial mistrial and reserve judgment on some, but not all, causes of action pending the results of a second trial.ⁿ² The court also concluded that when one jury exonerates a defendant for strict liability failure to warn, the finding subsumes a negligent failure to warn theory such that a court in a subsequent trial can issue a directed verdict on the latter theory.ⁿ³

II. Procedural History

In 1992, Mildred Valentine ("Valentine") sued Baxter **Healthcare** Corporation ("Baxter") and others for personal injuries allegedly caused by silicone breast implants.ⁿ⁴ The trial ended in special verdicts being returned for the defense on fraud as well as on strict liability, both for failure to warn and manufacturing defect.ⁿ⁵ While the jury found for Valentine on a **negligence** theory (failure "to exercise reasonable care in the design, manufacture, testing or inspection of the product or ... to adequately warn"), it could not agree on the issue of causation. Subsequently, the trial court severed the various causes of action, entered an interlocutory judgment in favor of Baxter as to strict liability and fraud, and declared a partial mistrial on the **negligence** cause of action, reserving final judgment pending a second trial.

At the conclusion of the second trial, the jury deliberated on the issues of **negligence** in design and manufacture and also on negligent [*950] failure to warn. That jury found for Baxter on the design and manufacturing theories, but came to an impasse on the failure to warn count. Valentine was then allowed to add a question to the special verdict form that asked whether Baxter was negligent in testing and inspection of the implants. The jury was still unable to reach a verdict and the court declared a mistrial. On a motion from the defense, the court entered judgment as a matter of law in favor of Baxter on the unresolved causes of action. Valentine appealed after the court denied a motion for a new trial. The appellate court affirmed both lower courts' decisions.ⁿ⁶

III. Facts

After the birth of her son in early 1975, Valentine consulted with her doctor about available options in breast enhancement.ⁿ⁷ She elected to have breast augmentation surgery with silicone breast implants manufactured by Baxter's predecessor in interest, Heyer-Schulte Corporation.ⁿ⁸ Valentine soon developed a condition known as capsular

contraction and underwent surgery to correct it. Nevertheless, the condition returned and Valentine underwent additional corrective surgery. In 1976, Valentine was diagnosed with lupus. By 1991, the lupus had impacted her lungs severely and her pulmonary specialist recommended removal of her silicone implants. During removal, her doctor observed that some of the silicone had apparently bled to the outside of the implant.ⁿ⁹ Because the doctor did not see silicone anywhere outside of the scar capsule, he elected not to do a tissue biopsy. In 1995, Valentine learned that she had a granuloma in her breast and underwent yet another surgery to have it removed. Valentine had apparently suffered some symptoms of the lupus prior to having the implantation surgery, and her condition did not improve significantly after having the implants removed.ⁿ¹⁰ Valentine died after the second trial and prior to the time this opinion was handed down.ⁿ¹¹

IV. Discussion

Valentine v. Baxter **Healthcare** Corp. is significant in that it answered two major questions never before decided by a California appellate [*951] court.ⁿ¹² The court first concluded that a trial court could declare a partial mistrial while entering judgment on some issues conclusively decided by the jury, and withholding final judgment pending the second trial.ⁿ¹³ Second, the court held that where a jury returns a negative finding on a strict liability failure to warn cause of action, the finding subsumes a negligent failure to warn theory and exonerates the defendant of all liability for failure to warn.ⁿ¹⁴

A. Partial Mistrial

In reaching its holding on the partial mistrial question, the Valentine court looked to a variety of California statutes and **cases** which address a court's ability to partially resolve issues before it.ⁿ¹⁵ First, the court noted that a trial court can selectively eliminate causes of action at the demurrer stage,ⁿ¹⁶ as well as on motions for summary judgment.ⁿ¹⁷ Next, the court surmised that during trial a judge can grant a nonsuit as to some of the issues in a **case** while reserving entry of final judgment.ⁿ¹⁸ Likewise, a court may also grant judgment in one party's favor as to some or all of the issues after the presentation of that party's evidence.ⁿ¹⁹

The court found additional support for its holding in the trial court's statutory right to direct a jury to find a special verdict upon all or some of the issues.ⁿ²⁰ The court declared that this statute contemplates a partial special verdict and is consistent with the court's holding.ⁿ²¹ Additionally, the court noted that a trial court has post-trial authority to grant a partial directed verdict while reserving final judgment until termination of the action,ⁿ²² and may even do so after the jury has been discharged without rendering a verdict.ⁿ²³ Finally, looking further into the trial process, the Valentine court observed that a [*952] trial court can grant a partial judgment notwithstanding the verdict where a motion for directed verdict would have been granted if made,ⁿ²⁴ or order a new trial on some or all of the issues.ⁿ²⁵

These statutory provisions illustrated the legislature's desire to "consistently expand[] the trial court's ability to partially resolve the issues before it."ⁿ²⁶ Furthermore, by providing that final judgment be reserved until termination of the action, the legislature remained true to the "one final judgment" rule.ⁿ²⁷ The court concluded that the statutory scheme, displaying a clear legislative effort to enable judges to partially resolve issues before, during, and after trial, gave authority to the first trial judge to enter its "interlocutory judgment" on the strict liability and fraud causes of action, while reserving final judgment until the second trial resolved the **negligence** issue.ⁿ²⁸

The court found that Valentine's **negligence** causes of action were severable from her strict liability and fraud counts.ⁿ²⁹ The court observed that the **negligence** counts were "separately pled, separately covered on the verdict form, and subject to separate instructions."ⁿ³⁰ The court rejected Valentine's argument that she was entitled to have her entire **case** heard by one jury.ⁿ³¹ The trial court's decision resulted in no denial of due process because its "interlocutory judgment" determined those issues were conclusively resolved in Baxter's favor, as a matter of law, and its reservation of final judgment pending the second trial was in accordance with the statutory scheme.ⁿ³² Finally, the court declared that allowing partial mistrials clearly advances the "public policy of [the] state to promote judicial economy."ⁿ³³

B. Failure to Warn

In its second major holding, the Valentine court concluded that when a jury finds no strict liability for failure to warn, the finding necessarily [*953] subsumes a negligent failure to warn theory and exonerates the defendant from all liability for failure to warn.ⁿ³⁴

The court rested its holding on several factors. First, the strict liability failure to warn instructions given to the jury in Valentine I required Baxter to warn of "potential risks and side effects ... known or knowable in light of generally recognized and prevailing best ... medical knowledge at the time of manufacture and distribution."ⁿ³⁵ In contrast, the **negligence** failure to warn instructions focused on a continuous duty as opposed to one capped at the time of distribution.ⁿ³⁶ The appellate court concluded that since the trial judge later clarified that the duty to warn was a continuous one under any theory, the jury's finding that Baxter was not liable under a strict liability theory also included a negative finding as to **negligence**.ⁿ³⁷

Second, because the jury instructions on strict liability called for warnings about potential risks, the duty subsumed the **negligence** theory instructions which only required a warning for known or knowable dangers or likely dangers from intended use of the product.ⁿ³⁸ In other words, the duty under strict liability instructions "enveloped a broader set of risk factors than the duty, per **negligence** instructions."ⁿ³⁹ The court concluded that if Baxter warned of potential risks, by necessity it also warned of "facts likely to render the product dangerous to the user."ⁿ⁴⁰

Third, while **negligence** imposes liability only for falling below an acceptable standard of care based on a notion of reasonableness, strict liability has no such limitation.ⁿ⁴¹ The court suggested that a negative finding on the lower threshold in strict liability obviates imposition of liability in the higher threshold **negligence** cause of action.ⁿ⁴² Thus, since the Valentine I jury found that Baxter was not subject to strict liability for failure to warn, it also foreclosed a later finding of negligent failure to warn.ⁿ⁴³ Accordingly, the judge in Valentine II correctly directed a verdict in Baxter's favor on the **negligence** cause of action [*954] because it was no longer viable after the strict liability verdicts at the first trial.ⁿ⁴⁴

C. Additional Holdings

In affirming the judgment of both the Valentine I and Valentine II trial courts, the appellate court also held that the trial court in the second trial properly directed a verdict for Baxter on negligent testing and inspection.ⁿ⁴⁵ Negligent testing can only result in liability if the lack of adequate testing leads the manufacturer to produce or design a product that is defective.ⁿ⁴⁶ Thus, since Baxter was exonerated of producing or designing a defective product, "nothing remained upon which to hang the testing and inspection duties."ⁿ⁴⁷

Additionally the court held that the special verdict form used in Valentine II was permissible.ⁿ⁴⁸ The form consolidated all of the plaintiff's **negligence** theories together, instructing the jury that Baxter had a duty to exercise reasonable care in the design, manufacture, testing and inspection of the breast implant.ⁿ⁴⁹ But the court held that this did not harm Valentine because **negligence** was her only cause of action and not every element of that cause of action garnered the required minimum nine of twelve jury votes.ⁿ⁵⁰

Legal Topics:

For related research and practice materials, see the following legal topics:

Civil ProcedureTrialsJudgment as Matter of LawDirected VerdictsCivil ProcedureTrialsJury TrialsVerdictsSpecial VerdictsEducation LawCivil LiabilityGeneral Overview

FOOTNOTES:

n2. See *id.* at 1475, 81 Cal. Rptr. 2d at 258.

n3. See *id.* at 1481, 81 Cal. Rptr. 2d at 261.

n4. See *id.* at 1474, 81 Cal. Rptr. 2d at 257.

n5. See *id.* at 1475, 81 Cal. Rptr. 2d at 257.

n6. See *id.* at 1471, 81 Cal. Rptr. 2d at 255.

n7. See *Valentine*, 68 Cal. App. 4th at 1471, 81 Cal. Rptr. 2d at 255.

n8. See *id.* at 1472, 1473 n.6, 81 Cal. Rptr. 2d at 255, 256 n.6.

n9. See *id.* at 1472, 81 Cal. Rptr. 2d at 256.

n10. See *id.* at 1473, 81 Cal. Rptr. at 256.

n11. See *id.* at 1471 n.1, 81 Cal. Rptr. 2d at 255 n.1.

n12. See *id.* at 1471, 81 Cal. Rptr. 2d at 255.

n13. See *Valentine*, 68 Cal. App. 4th at 1475, 81 Cal. Rptr. 2d at 258.

n14. See *id.* at 1481, 81 Cal. Rptr. 2d at 261.

n15. See *id.* at 1475-80, 81 Cal. Rptr. 2d at 258-61.

n16. See *id.* at 1475, 81 Cal. Rptr. 2d at 258 (citing Cal. Civ. Proc. Code 430.50 (West 1973))

n17. See *id.* (citing Cal. Civ. Proc. Code. 437c (f) (West Supp. 2000)).

n18. See *id.* at 1476, 81 Cal. Rptr. 2d at 258 (citing Cal. Civ. Proc. Code 581c (b) (West Supp. 2000)).

n19. See *Valentine*, 68 Cal. App. 4th at 1476, 81 Cal. Rptr. 2d at 258 (citing Cal. Civ. Proc. Code 631.8(b) (West Supp. 2000)).

n20. See *id.* (citing Cal. Civ. Proc. Code 625 (West Supp. 2000)).

n21. See *id.* at 1477, 81 Cal. Rptr. 2d at 259.

n22. See *id.* at 1476, 81 Cal. Rptr. 2d at 258 (citing Cal. Civ. Proc. Code 630(b) (West Supp. 2000)).

n23. See *id.* (citing Cal. Civ. Proc. Code 630 (f) (West Supp. 2000)).

n24. See *id.* at 1475, 81 Cal Rptr. 2d at 258. (citing Cal. Civ. Proc. Code 629 (West 1976); *Beavers v. Allstate Ins. Co.*, 225 Cal. App. 3d 310, 322 (1990)).

n25. See *Valentine*, 68 Cal. App. 4th at 1475, 81 Cal. Rptr. 2d at 258 (citing Cal. Civ. Proc. Code 662 (West Supp. 2000)).

n26. *Id.* at 1477, 81 Cal. Rptr. 2d at 259.

n27. See *id.*

n28. See *id.* at 1478, 81 Cal. Rptr. 2d at 259.

n29. See *id.* at 1478, 81 Cal. Rptr. 2d at 260.

n30. See *id.* at 1479, 81 Cal. Rptr. 2d at 260.

n31. See Valentine, 68 Cal. App. 4th at 1479, 81 Cal. Rptr. at 260.

n32. See id. at 1480, 81 Cal. Rptr. 2d at 261.

n33. Id.

n34. See id. at 1480-84, 81 Cal. Rptr. 2d at 261-64.

n35. See id. at 1481, 81 Cal. Rptr. 2d at 262 (quoting from the instructions given to the Valentine I jury).

n36. See id. at 1482, 81 Cal. Rptr. 2d at 262.

n37. See Valentine, 68 Cal. App. 4th at 1482, 81 Cal. Rptr. 2d at 262.

n38. See id. at 1482, 81 Cal. Rptr. 2d at 262.

n39. Id. at 1483, 81 Cal. Rptr. 2d at 263.

n40. Id. (emphasis added).

n41. See *id.* at 1484, 81 Cal. Rptr. 2d at 263.

n42. See *id.*

n43. See *Valentine*, 68 Cal. App. 4th at 1481, 81 Cal. Rptr. 2d at 261.

n44. See *id.* at 1481 & n.12, 81 Cal. Rptr. 2d at 261 & n.12.

n45. See *id.* at 1484, 81 Cal. Rptr. 2d at 264.

n46. See *id.* at 1486, 81 Cal. Rptr. 2d at 265 (quoting *Kociemba v. G.D. Searle & Co.*, 707 F. Supp. 1517, 1527 (D. Minn. 1989)).

n47. *Id.* at 1485, 81 Cal. Rptr. 2d at 264.

n48. See *id.* at 1486, 81 Cal. Rptr. 2d at 265.

n49. See *Valentine*, 68 Cal. App. 4th at 1487, 81 Cal. Rptr. 2d at 265.

n50. See *id.* at 68 Cal. App. 4th at 1487, 81 Cal. Rptr. 2d at 266.