

# **Bond Case Briefs**

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## **LIABILITY - CALIFORNIA**

### **Harb v. City of Bakersfield**

**Court of Appeal, Fifth District, California - January 23, 2015 - Cal.Rptr.3d - 2015 WL 302291**

Patient, who suffered stroke while driving, filed negligence action against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment made consequences of stroke much worse. Following jury trial, the Superior Court entered judgment in favor of defendants. Patient appealed.

The Court of Appeal held that:

- Patient provided adequate appellate record;
- Police immunity instruction was ambiguous in a way reasonably likely to cause jury to misunderstand and misapply instruction;
- As a matter of first impression, doctrine of contributory or comparative negligence was inapplicable; and
- Error in instructing jury on comparative negligence was prejudicial.

Police immunity jury instruction, which stated that officer responding to scene of accident was not liable in negligence action filed by patient, who suffered stroke while driving, if officer was exercising due care, was ambiguous in a way reasonably likely to cause jury to misunderstand and misapply jury instruction in action alleging that delay in getting patient medical treatment made consequences of stroke much worse. Jury was required to determine for itself what “due care” meant and whether instruction was redundant to negligence instructions, defense counsel emphasized police immunity instruction in closing argument, and evidence was not so one-sided that there was little chance of ambiguous instruction being misapplied.

Doctrine of contributory or comparative negligence was inapplicable based on alleged pretreatment negligence of patient, who suffered stroke while driving, in patient’s negligence action against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment made consequences of stroke much worse. First responders were required to take patient as they found him, and only legitimate application of doctrine of contributory fault was when fault took place concurrently with or after delivery of practitioner’s care and treatment.

Error in instructing jury on comparative negligence based on patient’s failure to take his blood pressure medication was prejudicial, such that new trial was warranted on patient’s negligence claims against city, responding officer, ambulance company, and paramedic who drove first ambulance, alleging that delay in getting patient medical treatment after he suffered stroke while driving made consequences of stroke much worse. Even though jury never reached question on special verdict form regarding comparative negligence, defense counsel’s opening statements introduced jury to argument regarding who was to blame and position that patient’s failure to take his medication was important, evidence regarding patient’s failure to take his medication was presented at trial, and defense counsel reference patient’s failure to take his medication during

closing arguments.

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