

The Arnold Law Practice

News from the Practice

Volume 9, Issue 1

January 2009

Even Realtors Don't Read The Fine Print

In these times, people and companies have more and more legal problems. But, they often have less and less funds to deal with them.



So, contracts that say “loser pays attorneys fees” are very important in figuring out what to do. The standard California residential purchase contract – you get it from a real estate broker – says in the fine print that the winner will only collect his or her attorneys fees if he or she first attempts to mediate the dispute. In a recent decision, a real estate broker who bought a property sued the seller and the seller’s realtors for fraud. The buyer realtor filed the lawsuit and then offered to mediate. The court suggested that a pre lawsuit offer to mediate might have avoided such a result and denied the buyer’s claim for \$80,000 in attorneys fees. The requirement of mediation before suing “means what it says and will be enforced.” *Lange v. Schilling* No. C055471, June 28, 2008.

*Comments? We would appreciate your comment on our newsletter.
Please email us at
comments@arnoldlp.com*

“Green Chemistry” & “Benign By Design Products” – But How To Prove It?

First, “green chemistry” is not “rocket science.” Any time you use dish soap and clay to repel invading ants, you are using “green chemistry.” But, “green chemistry” is probably a good idea if it is done right. Why use something like asbestos if you know that we will have major health and death problems later on? So, California regulators in mid-December 2008 launched the State’s “green chemistry” plan. In the future, every product sold in the State will have to show its “environmental footprint.” California’s plan has been called “the most comprehensive regulations ever adopted for consumer goods.” *Los Angeles Times, Dec. 17, 2008.*



As the Governor explained, “These recommendations usher in a new era of how we look at household products -- from our children’s toys to the plastic we use to make shampoo bottles, to the varnish on our wood furniture,” said Schwarzenegger... “We will now pay attention... when the product is designed, manufactured, used and recycled.”

With this step, California leapfrogs the similar European program, called REACH. Both California’s Green Chemistry program and the European REACH program are based on requiring sellers to “prove it is safe before it is marketed.” This may be a logical result of a global economy, but it will a burden on all sellers and distributors of goods in California.

“Life, Liberty And The Pursuit Of Fish”

This was the title of a recent article in the *San Francisco Chronicle*. It’s a constitutional right, like a lot of other things in California (Art. 1, Sect. 25, California Constitution). And, now commercial fishermen and two subsistence fishermen have filed separate



lawsuits against the owners, operator, and pilot for the supertanker *Cosco Busan*, which hit the Bay Bridge and dumped 50,000 gallons of oil. If a constitutional fishing right is recognized for an oil spill, can similar lawsuits for climate change be far behind? *SF Chronicle, Nov. 9, 2008.*



YOU ARE OUT!!! California Approves Conclusive Effects Of Prop. 65 Settlements

It is tempting in settling Prop. 65 cases to rush through “standard language” in settlements. This is particularly a threat in consumer product cases because narrow profit margins are at risk from the legal fees in defending such cases. But, the “devil is in the details,” as the world’s largest oil company recently learned. ExxonMobil settled one Prop. 65 case about leaking fuel tanks involving benzene and toluene in gasoline. But, a second lawsuit also included lead in gasoline. ExxonMobil argued that the settlement of the first lawsuit meant the second lawsuit was barred. But, it was not, because it did not include claims about lead in gasoline spills. In other words, ExxonMobil was “out at the plate.” *Consumer Advocacy Group v. ExxonMobil Corp.* B201245, Nov. 20, 2008.

The California Regulators Can Force You To Allow Drilling Of Your Property

The California Water Code does not specifically authorize the California courts to grant Regional Water Quality Control Boards access rights to private property. However, Water Code, 13305 authorizes Regional Boards to get court approval for access where contamination is not abated within a “reasonable time.” And, courts can grant access despite the objections of the property owner. *People v. Barry*, No. C000634 (1987). So, property owners should listen when a Regional Board says “give access to your neighbor or we will force you to.”



2009 – The 25th Anniversary Of The EPA’s UST Program

The USEPA’s underground storage tank program was established in 1984. It was based on the program developed in Silicon Valley, when industrial solvents were found in drinking water. As of 2008, about 1.7 million underground fuel tanks have been closed, leaving 626,000 USTs at 236,000 sites still in operation. And, over ¾ of all fuel tanks comply with leak protection laws. www.epa.gov/OUST/pubs/ustfacts.pdf.

The Arnold Law Practice Three Decades of Environmental Law

225 Bush Street, 16th Floor
San Francisco, CA 94104

Phone: 415-439-8831

Fax: 925-284-1387

Website: www.arnoldlp.com

Email: jarnold@arnoldlp.com



The Arnold Law Practice represents companies and individuals in brownfields redevelopment litigation with claims of pollution, USTs, waste disposal practices, Prop. 65, claims as to site audits, Fish & Game civil penalty proceedings, condemnation for road expansion, failures of seller to disclose buried contamination, compliance with air pollution control laws, civil penalties from air quality management districts, spill response claims, toxics reporting and disclosure requirements, and UST closure and UST Fund matters.

The Arnold Law Practice represents companies and individuals in state and federal courts in a variety of lawsuits, including civil penalty claims as to permits, complaints for specific performance of real estate contracts, waste water treatment issues, defending and prosecuting construction claims, breach of contract, negligence, fraud, property trespass and damages, and related matters.

The Arnold Law Practice associates with specialized counsel in complex real estate closings, estate and trust planning, partition actions involving contamination, and transfers of real estate with indemnities and cleanup rights under the California UST Fund.

DISCLAIMER: This newsletter is for informational purposes only and does not constitute legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Readers should not act on this information without seeking legal counsel. © 2009 James R. Arnold The Arnold Law Practice.