



**Association of Defense
Counsel of Northern
California and Nevada**



November 26, 2019

VIA TRUEFILING

Presiding Justice Manuel A. Ramirez
Associate Justice Art W. McKinster
Associate Justice Richard T. Fields
Court of Appeal, Fourth Appellate District
Division Two
3389 Twelfth Street

Re: Request for publication of decision in *Vlahakis v. Hilton
Worldwide, Inc.* (Nov. 12, 2019, No. E069631)

Honorable Justices,

Pursuant to Rules 8.1105 and 8.1120 of the California Rules of Court, the Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”) and the Association of Southern California Defense Counsel (“ASDC”) (together, the “Associations”) write jointly to urge the Court to publish its decision in this case.

Interest of the Requesting Organizations

ADC-NCN is celebrating its 60th anniversary this year, and currently numbers approximately 800 attorneys primarily engaged in the defense of civil actions. Members represent civil defendants of all stripes, including businesses, individuals, HOAs, schools and municipalities and other public entities. Members have a strong interest in the development of substantive and procedural law in California, and extensive experience with civil matters generally. ADC-NCN has been involved as amicus in many cases before the Courts of Appeal and the California Supreme Court. ADC-NCN’s Nevada

members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California.

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. The ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, the ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

Although the Associations are separate organizations, they have some members in common and coordinate from time to time on matters of shared interest, such as this letter. Together and separately, they have appeared as *amicus curiae* in many cases before both the California Supreme Court and Courts of Appeal across the state to express the interests of their members and their members' clients, a broad cross-section of California businesses and organizations.

No party has paid for or drafted this letter.

The Associations were unaware of this appeal until the decision was issued. As a result, they were unable to participate as *amici* or participate in oral argument after the tentative opinion was issued.

Why the Decision Should be Designated for Publication

This Court should order the decision published because of the important issues presented and for a variety of other reasons.

- The decision “[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions” (Cal. Rules of Court, rule 8.1105(c)(2)). In fact, several. The Associations are unaware of any prior reported decision:

(1) applying dram shop immunity (Civ. Code, § 1714; Bus. & Prof. Code, § 25602) to a hotel defendant,

(2) rejecting claims that the immunity is voided because of the assertion of “concurrent causes” of injury, or

(3) stating that “swim at your own risk” signs mean what they say and swimmers assume the risk of drowning.

- The decision “explains ...with reasons given, an existing rule of law” (Cal. Rules of Court, rule 8.1105(c)(3)), by addressing the scope and policies of dram shop immunity.

- The decision “[i]nvolves a legal issue of continuing public interest” (Cal. Rules of Court, rule 8.1105(c)(6)), in fact at least two.

First, it addresses dram shop immunity, which although commonly called “dram shop” actually applies to anyone providing alcohol to adults, including hotels, social hosts, etc. The Associations’ members regularly represent defendants in such cases.

Second, it addresses assumption of risk, an entirely reasonable limitation on tort duty that, as the decision recognizes, ought properly apply to a wide range of activities beyond its California origins in sporting activities.

- The decision “reaffirms a principle of law not applied in a recently reported decision.” (Cal. Rules of Court, rule 8.1105(c)(6)). The principle, recognized in long ago in *Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756, 770, is that the duty of a swimming pool owner may be discharged either by providing a lifeguard or by posting warning signs. The decision properly holds “that some swimmers would be imperiled through their own negligence is one of the foreseeable risks that motivated the requirement to either provide a lifeguard, or post warning signs as to the lack of a lifeguard,” citing *Haft*, so “where swimmers are warned that there is no lifeguard present, and a person uses a swimming pool, drunk or sober, that person has voluntarily accepted the risk of drowning.”

• The decision also contains the following common-sense proposition that would provide useful guidance at the trial court level in many negligence and premises liability cases: “To the extent plaintiffs argue that Hilton was bound to follow its policies, they cannot establish negligence by defendants’ adherence to those policies.”

This Court should publish this decision.

Respectfully submitted,

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PROOF OF SERVICE

Vlahakis v. Hilton Worldwide, Inc. (No. E069631)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 1111 Broadway, Suite 1700, Oakland, CA 94607; email: espiers@grsm.com. On the date below, I served the within document(s):

LETTER SUPPORTING PUBLICATION

Vlahakis v. Hilton Worldwide, Inc. (No. E069631)

- VIA E-SERVICE (TrueFiling) on the recipients designated on the electronic service list generated by TrueFiling system.
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Clerk for delivery to
Hon. David M. Chapman
Riverside Superior Court
4050 Main Street
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 26, 2019 at Oakland, California.

/s/ Eileen Spiers
Eileen Spiers