Filed 10/10/18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

VIANEY SOLORIO MENERA et al.,
Plaintiffs and Appellants,
v.
MEGA R.V. CORPORATION et al.,
Defendants and Respondents.

A149247

(Sonoma County
Super. Ct. Nos. SCV253007,
SCV254843)

Plaintiffs filed a wrongful death lawsuit against several defendants, including Mega R.V. Corporation (Mega). Following a jury trial, the court entered judgment for Mega and denied plaintiffs' new trial motion. On appeal, plaintiffs contend the court erred by denying their new trial motion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2012, Elva Ayala, her daughter, and her boyfriend, Jose Solorio, died in a traffic collision in Mendocino County. In 2014, plaintiffs—the children of Ayala and Solorio—filed a lawsuit against several defendants. Plaintiffs alleged the collision occurred because Ayala's car lost traction and slid on power steering fluid leaked from a recreational vehicle (RV) manufactured by Country Coach Corporation (Country Coach) and sold by Mega. Plaintiffs' products liability and negligence claims alleged: (1) the power steering hose (hose or hydraulic hose) was improperly mounted below the L-brackets on the RV's chassis when the RV was manufactured; (2) the hose was exposed to abrasion when the bottom of the RV came into contact with the ground; and (3) on the day of the accident, the hose—which was severely abraded—ruptured and sprayed power

steering fluid on the highway. According to plaintiffs, Ayala drove her car through the fluid, lost control, and crashed. Trial proceeded against Country Coach and Mega.

Summary of Plaintiffs' Evidence

Dan Williams was driving the RV at the time of the accident. Country Coach manufactured the RV in 2006. On each side of the RV's chassis is an L-bracket. The hydraulic hose is attached to the L-brackets. The motor home was in Michigan from 2007 to 2010. In 2011, Williams purchased the RV in Arizona. Williams did not perform any work on the hose, nor authorize anyone to perform such work. The RV never bottomed out and did not leak oil.[1] The RV had no power steering issues.

In August 2012, the RV had approximately 58,000 miles on it. Williams was driving his family in the RV on the 101 freeway in Mendocino County when he noticed the steering felt "really stiff." Thinking a tire had lost air pressure, Williams pulled into a turnout and got out of the RV. He noticed liquid pooled behind the RV. Williams glanced off in the distance and saw a traffic collision. By that time, another car had pulled into the turnout. Williams called 911. He told the dispatcher he was concerned his RV was leaking something, possibly transmission or steering fluid. Williams said, "There is a couple behind me that are saying that they were in . . . the fluid. And they swerved."

The RV was towed to a repair shop. A mechanic inspected the undercarriage and noticed the hydraulic hose was mounted, with two clamps, under the L-brackets. The mechanic could not determine whether the clamps were original, but he thought they had been in the RV for a long time because they were corroded. Between the clamps, the hose was "rubbed through." Fluid dripped from a small hole in the hose. The hose seemed as though it had been in the RV for a long time.[2] The mechanic had seen other

---

[1] Williams had a mechanic inspect the RV in October 2011, after he bottomed out the RV. Williams had four extra gallons of motor oil in the RV at the time of the accident.

[2] On cross-examination, the mechanic acknowledged the apparent age of the hose and the connectors could have been a function of Michigan's road and weather

RVs with hydraulic hoses mounted under L-brackets. Another mechanic rerouted the hose above the L-brackets. Walter Williams, a former Country Coach employee, inspected about 50 to 60 RVs manufactured between 2005 and 2008. In eight to ten of those RVs, the hydraulic hose was mounted under the L-brackets. Country Coach's design schematics did not direct the placement of hydraulic hoses.

Plaintiffs' mechanical engineering expert, David Rondinone, testified the RV's hydraulic hose "failed" and leaked oil in the roadway, and that the oil caused Ayala's car to lose control and crash. Rondinone testified the hose was under the L-brackets and, as a result, it rubbed against the roadway every time the RV bottomed out. Eventually, the rubbing caused a hole. On the day of the collision, the hose was "abraded all the way through" and had "at least one hole." A hose mounted under L-brackets is dangerous and defective. Rondinone opined the hose was mounted under the L-brackets when it was manufactured, based on: (1) the absence of evidence the hose was moved or rerouted before the collision; (2) testimony that new Country Coach RVs had hoses mounted under the L-brackets; and (3) the lack of written instructions from Country Coach on where to install the hoses.

Summary of Mega's Evidence

Mega is an RV retailer. It does not perform mechanical repairs on RVs. There were "big gaps" in the RV's maintenance records, and no repair records for 2007 to 2010, when the RV was in Michigan. Williams had the RV repaired often, in various locations, including California, Arizona, and New Mexico.

In October 2011, an Arizona mechanic repaired Williams's RV. Williams told the mechanic he had "bottomed out" and wanted the RV inspected for damage. The mechanic inspected the undercarriage; the only damage was "a couple scraped bolts on the backside." Had the mechanic noticed the hydraulic hose mounted under the L-brackets, he "definitely" would have noted it in his report. If the hose had been mounted

---

conditions. He also stated—contrary to Williams's testimony on direct examination—that the RV had bottomed out at least once.

under the L-brackets, the hose would have been damaged "from being bottomed out or it would be in the way of the bolts."

David Remington was a Country Coach "chassis prep" manager during the relevant time frame. He trained employees to install hydraulic hoses above the L-brackets, and he personally installed hoses in that manner. Installing hydraulic hoses was straightforward: it was obvious where they should be placed. After the hoses were installed, they were sprayed with undercoating. Country Coach's quality control workers ensured the hoses were mounted above the L-brackets. According to Remington, installing a hose below the L-brackets would be more difficult than installing it above the L-brackets. Remington had seen hundreds of Country Coach RVs; not one had a hydraulic hose mounted under the L-brackets. If Remington had seen a hose mounted *under* the L-brackets, he would have moved the hose. Remington never received any complaints about a hose being mounted under the L-brackets.[3] He testified the RV's hose was not mounted under the L-brackets when it was manufactured.

Mechanical and human factors expert Roman Beyer conducted a forensic examination of the L-brackets, clamps, and the hydraulic hose. Beyer testified the hose was mounted above the L-brackets when it was manufactured. Later, the hose was "rerouted improperly below the L-brackets."[4] Beyer explained that if the RV had been manufactured with the hose under the L-brackets, the undercoating application would have left a shadow—i.e., an area without undercoating where the hose was placed. There was no shadow in the RV. Beyer surveyed similar Country Coach RVs and found "every one of them . . . had the hoses mounted above the [L-]bracket."

Two California Highway Patrol officers investigated the collision scene and found no oil or dark substances on the highway. A CalTrans employee searched the highway

---

[3] The mechanic who repaired the RV after the accident had never seen a Country Coach RV with an abraded hydraulic hose. Country Coach's founder had never heard of a hydraulic hose being mounted under the L-brackets on a Country Coach RV.

[4] One witness suggested placing the hose under the L-brackets would have been a shortcut method of repairing the hose.

for oil or dark liquid and found none. An accident reconstruction expert concluded oil or fluid on the highway was not a factor in causing the collision.

Shortly before deliberations began, the court directed a verdict for Country Coach on a successor liability issue. The court instructed the jury that Country Coach "is no longer a party to this case. Do not speculate as to why this entity is no longer involved in this case. You should not consider this during your deliberations."

Verdict, Judgment, and Plaintiffs' New Trial Motion

In a special verdict form, the jury concluded the RV had no manufacturing defect when Mega sold it. It also determined the power steering hose was not mounted under the L-brackets at the time of sale. The jury also found: the RV was modified in an extraordinary and unforeseeable way after it left Mega's possession; as designed, the RV performed as an ordinary consumer would have expected; and the risk of the RV's design did not outweigh the benefits.

The court entered judgment for Mega, and denied plaintiffs' new trial motion.

DISCUSSION

Plaintiffs contend the court erred by denying their new trial motion (Code Civ. Proc., § 657).

I.

No Jury Misconduct

A. *Background*

Plaintiffs' new trial motion argued the jury committed prejudicial misconduct by speculating about Country Coach's absence from the case, and then deciding not to hold Mega responsible because it was " '*just the retailer.*' " To support this claim, plaintiffs offered declarations from two jurors, J.H. and D.T. J.H. averred jurors "talked about the fact the manufacturer, Country Coach, was no longer in the case and that the only remaining party, Mega . . . was 'just the retailer.' These jurors said 'Well, Country Coach is now gone so we cannot hold the retailer responsible' and . . . that the retailer does not have the same level of responsibility as the manufacturer." J.H. also averred the jurors stated, "the law is different for manufacturers and retailers."

D.T. stated several jurors opined, "Country Coach likely settled with plaintiffs and that's why they are out. One of the jurors said 'they probably got their money and the other jurors nodded in agreement.' " According to D.T., "Many jurors stated that Country Coach was the 'real culprit' and with Country Coach out of the case, those jurors did not want to 'punish the little guy.' " D.T. also averred jurors stated Mega should not be held responsible for a manufacturing defect. The court excluded this evidence, i.e., the description of the jury's purported discussions about Country Coach, as well as the summary of the jury's comments regarding the legal distinction between manufacturers and retailers.

B. *No Abuse of Discretion in Excluding Portions of J.H. and D.T.'s Declarations*

" 'The moving party bears the burden of establishing juror misconduct.' " (*Barboni v. Tuomi* (2012) 210 Cal.App.4th 340, 345.) When a party seeks a new trial based on jury misconduct, the trial court determines: (1) whether the evidence of misconduct is admissible; (2) if the evidence is admissible, whether the facts establish misconduct; and (3) whether any misconduct is prejudicial. (*Ibid.*) We review the admissibility of juror declarations for abuse of discretion, and the misconduct determination for substantial evidence. (*Ibid.*) We review the entire record to independently determine whether the misconduct was prejudicial. (*Ibid.*)

According to plaintiffs, the jury committed misconduct by speculating about Country Coach's absence from the case and by discussing its unwillingness to hold Mega responsible. This claim fails. The trial court excluded the evidence supporting this claim, and plaintiffs have not demonstrated the court's ruling was an abuse of discretion. "Evidence of jurors' internal thought processes is inadmissible to impeach a verdict. . . . Juror declarations are admissible to the extent that they describe overt acts constituting jury misconduct, but they are inadmissible to the extent that they describe the effect of any event on a juror's subjective reasoning process. [Citation.] Accordingly, juror declarations are inadmissible to the extent that they purport to describe the jurors' understanding of the instructions or how they arrived at their verdict." (*Bell v.*

Bayerische Motoren Werke Aktiengesellschaft (2010) 181 Cal.App.4th 1108, 1124–1125; see Evid. Code, § 1150 [excluding evidence of jurors' reasoning process].)

Plaintiffs urge us to review the court's admissibility ruling de novo. We decline to do so. We review the admissibility ruling for abuse of discretion, evaluating whether the court's exclusion of the relevant portions of J.H. and D.T.'s declarations was outside the bounds of reason. It was not. While the declarations are couched in terms of what certain jurors said about Country Coach's absence and the effect of that absence on Mega, the court was within its discretion to conclude the essence of the declarations reflected the jury's subjective reasoning. The " 'subjective quality of one juror's reasoning is not purged by the fact that another juror heard and remembers the verbalization of that reasoning.' To hold otherwise would destroy the rule . . . which clearly prohibits the upsetting of a jury verdict by assailing these subjective mental processes. It would also inhibit and restrict the free exchange of ideas during the jury's deliberations.' " (*English v. Lin* (1994) 26 Cal.App.4th 1358, 1367.)

Plaintiffs also claim the declarations were admissible because they show the jury violated the court's instruction not to speculate regarding Country Coach's absence. Evidence of a jury's explicit or implicit agreement to violate a court's instruction does not touch upon a juror's subjective reasoning process—the agreement itself is the misconduct. (*People v. Perez* (1992) 4 Cal.App.4th 893, 908.) Here, the declarations do not reflect an agreement to disregard the court's instructions. The excluded portions of the declarations are not themselves expressions of misconduct.

We conclude the court did not abuse its discretion by excluding J.H. and D.T.'s description of the jury's discussion regarding Country Coach's absence, and the impact of that absence on Mega. (*English v. Lin, supra,* 26 Cal.App.4th at p. 1368.) Without admissible evidence of jury misconduct, the court properly denied plaintiffs' new trial motion on this ground. (*Ford v. Bennacka* (1990) 226 Cal.App.3d 330, 335–336.)[5]

---

[5] Plaintiffs complain about errors in the jury instructions and the special verdict form. To the extent plaintiffs suggest a new trial was warranted based on these errors, we disagree.

II.

Juror S.P. Did Not Commit Misconduct

A. *Background*

In their new trial motion, plaintiffs also contended juror S.P. committed prejudicial misconduct by injecting her alleged expertise into the deliberations, and that S.P.'s comments showed bias. Plaintiffs relied on J.H. and D.T.'s declarations, which averred the jury's first vote was three for plaintiffs and three for Mega, with six jurors, including S.P., who had not yet discussed their view of the case or cast a vote. After the initial vote, S.P.—a manager of an RV park—made numerous comments about RVs and hydraulic hoses, specifically: (1) hydraulic hoses "are always mounted above the 'L' brackets, not below"; (2) a hose mounted below the L-bracket would have ruptured " 'within a year' " because RVs frequently " 'bottom out' "; and (3) hydraulic hoses are " 'very flimsy.' " According to the declarations, S.P. opined the RV was not defective when it left Country Coach or Mega's possession. At one point, J.H. told S.P. not to bring her own expertise into the case, but S.P. ignored the directive. After S.P. spoke, the five jurors who had not voted decided "there was no defect in the RV when it left Country Coach or Mega."

B. *S.P. Did Not Commit Misconduct*

According to plaintiffs, S.P. committed misconduct by communicating her "experience and expertise with RVs." "A juror commits misconduct by making a 'claim to expertise or specialized knowledge of a matter at issue.' " (*People v. Engstrom* (2011) 201 Cal.App.4th 174, 185.) But " '[i]t is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial. Jurors' views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work.' [Citation.] Jurors ' "must be given enough latitude in their deliberations to permit them to use common experiences and illustrations in reaching their verdicts." ' " (*Ibid.*)

Substantial evidence supports an implied conclusion that S.P did not commit misconduct. "A juror does not commit misconduct merely by describing a personal experience [during] deliberations." (*Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 819.) Plaintiffs acknowledge S.P.'s comments were based on her personal experience. (See *In re Lucas* (2004) 33 Cal.4th 682, 697.) S.P.'s comments were also "within the range of . . . permissible interpretations" of the evidence. (*People v. Steele* (2002) 27 Cal.4th 1230, 1266.) According to the declarations, S.P. stated hydraulic hoses "are always mounted above the 'L' brackets, not below." This comment was consistent with the evidence presented by Mega, and the inferences Mega sought to have the jurors draw from that evidence, i.e., that hydraulic hoses in Country Coach RVs were placed above the L-brackets. (*In re Lucas*, at p. 697.)

We reach the same conclusion with respect to S.P.'s opinion that a hose mounted below the L-brackets would have ruptured " 'within a year' " because RVs frequently " 'bottom out.' " Numerous witnesses testified RVs often bottom out and agreed a hose mounted under the L-brackets would abrade. Additionally, the hose in the RV was mounted under the L-brackets at the time of the accident, and it was abraded. S.P.'s final comment, that hydraulic hoses are " 'very flimsy,' " may have been inconsistent—to a degree—with testimony that hoses are reinforced with steel. This point, however, was largely immaterial to the disputed issue at trial: whether the hose was mounted above or below the L-brackets when the RV was manufactured and sold.

Plaintiffs' reliance on *McDonald v. Southern Pacific Transportation Co.* (1999) 71 Cal.App.4th 256, 260 does not demonstrate S.P. committed misconduct. In that case, a plaintiff was hit by a train at a railroad crossing and sued the defendant for failing to place gates at the crossing. During deliberations, a juror opined on crossing gate sensors and offered a rationale for the absence of crossing gates. (*Id.* at pp. 262, 264.) The *McDonald* court held the juror committed misconduct because there was no evidence on crossing gate sensors, nor on the rationale for the absence of gates; the court also determined the juror's opinion rebutted a significant element of the plaintiff's case, which was otherwise undisputed. (*Id.* at p. 266.) Here and in contrast to *McDonald*, there was

ample evidence on which S.P. based her comments. And unlike *McDonald*, the main subject upon which S.P. opined—the location of the hoses in relation to the L-brackets at the time of manufacture and sale—*was* contested.

We are not persuaded by plaintiffs' cursory claim that S.P.'s comments show bias. During voir dire, S.P. stated she worked for an RV park, had lived in an RV, and had experience with RV maintenance. There was no evidence S.P. harbored a bias against plaintiffs, nor that she "intentionally concealed such a bias on voir dire." Once S.P. revealed her experience, "it was the function of [plaintiffs'] attorney to explore the subject if he wished and decide for himself whether a potential for juror bias existed." (*Jutzi v. County of Los Angeles* (1987) 196 Cal.App.3d 637, 654, 655.) We conclude the court properly denied plaintiffs' new trial motion premised on S.P.'s alleged misconduct.

III.

Any Assumed Attorney Misconduct Was Not Prejudicial

A. *Background*

Before trial, the court excluded evidence of plaintiffs' settlement with various codefendants, including Williams. On cross-examination, counsel for Mega asked Williams about declarations he signed, and about his knowledge of and involvement in the lawsuit. Williams's answers were not forthcoming. Defense counsel asked, without objection, whether Williams recalled denying liability for the accident. Williams said, "I do not recall." Then counsel asked: "would [you] like to take a moment and contact counsel before we continue . . . ?" Williams responded, " No." Then counsel asked whether Williams had been required to sign a settlement. The court sustained plaintiffs' counsel's objection.

Later, counsel asked, without objection, why Williams agreed to testify. Williams answered, "it was part of an agreement." Then counsel asked, without objection, whether "as part of that agreement," Williams had agreed to testify he had never had any issues with the RV's power steering. Williams answered, "Correct." After questioning Williams about his repairs to the RV, counsel asked whether Williams had testified about the lack of repairs because he was asked to do so as part of an agreement. The court

sustained plaintiffs' counsel's objection that the question was argumentative. When counsel asked Williams why he had made the statement about the repairs, the court sustained an objection that the question had been asked and answered.

Plaintiffs' new trial motion argued defense counsel committed prejudicial misconduct by repeatedly attempting to elicit inadmissible testimony about Williams's settlement. To support this argument, plaintiffs relied on J.H.'s declaration, which stated, "there was a discussion among the jurors regarding the comment during trial that Dan Williams should call his lawyer. The jurors discussed the fact that, during his testimony, the attorney for Mega . . . asked Dan Williams whether he wanted to call his attorney."[6] Plaintiffs also relied on D.T.'s declaration, which averred "[d]uring deliberations, several of the jurors discussed the fact that the attorney for Mega . . . asked Dan Williams if he wanted to call his lawyer."

B. *No Prejudicial Attorney Misconduct*

Plaintiffs argue Mega's attorney committed prejudicial misconduct by attempting to elicit testimony regarding Williams's settlement with plaintiffs in violation of the court's in limine order. We assume for the sake of argument plaintiffs preserved this claim in the absence of a request for an admonition, and that defense counsel committed misconduct by referring to Williams's settlement. "But it is not enough for a party to show attorney misconduct. . . . [T]o justify a new trial, the party must demonstrate that the misconduct was prejudicial." (*Garcia v. ConMed Corp.* (2012) 204 Cal.App.4th 144, 149.)

---

[6] The court excluded these comments from the declarations: (1) "The jurors repeatedly said during deliberations that the defense attorney told Williams to call his attorney because he must have been at fault"; and (2) "The jurors said during deliberations that because the defense attorney asked Williams if he would like to call his attorney before answering further questions, it looked bad for him. The jurors said that because of the comments to call his attorney, Dan is responsible for the accident and Mega R.V. should not be held liable." Plaintiffs do not challenge the court's exclusion of these comments on appeal.

We have considered " 'the overall record, taking into account such factors, inter alia, as the nature and seriousness of the remarks and misconduct, the general atmosphere, including the judge's control, of the trial, the likelihood of prejudicing the jury, and the efficacy of objection or admonition under all the circumstances.' [Citation.] '[I]t is only the record as a whole, and not specific phrases out of context, that can reveal the nature and effect of such tactics.' " (*Garcia v. ConMed Corp., supra,* 204 Cal.App.4th at p. 149.) We conclude plaintiffs cannot demonstrate prejudice, i.e., a reasonable probability they would have achieved a more favorable result in the absence of the assumed misconduct. Defense counsel's questions were a brief portion of a lengthy trial, where numerous witnesses testified; they were also a relatively minor aspect of the entirety of Williams's cross-examination, where defense counsel portrayed Williams as evasive and lacking credibility. Additionally, the record as a whole amply supports the jury's conclusion the RV did not have a defect when it was sold by Mega.

This case is not, as plaintiffs' claim, like *Martinez v. Department of Transportation* (2015) 238 Cal.App.4th 559, 567, where defense counsel repeatedly violated in limine orders by—among other things—insinuating the plaintiff had a Nazi affiliation and was lazy, irresponsible, and scamming the legal system. We conclude the court properly denied the new trial motion premised on attorney misconduct.

IV.

No Abuse of Discretion in Excluding Two of Plaintiffs' Witnesses

A. *Background*

Before trial, plaintiffs stated they intended to call several witnesses not disclosed during discovery, including Eric Olstrom, a former Country Coach employee. Olstrom would testify the hoses on Country Coach RVs are routinely misrouted. Plaintiffs claimed they did not disclose Olstrom and other witnesses during discovery because they did not "know about them." The court deferred ruling on Mega's motion to exclude; it ordered plaintiffs to provide Mega with Olstrom's contact information. The court cautioned that Olstrom would not be permitted to testify if plaintiffs did not make him available for an interview. Plaintiffs did not make Olstrom available for an interview.

The court ruled: "he's off the [witness] list." Several days later, plaintiffs requested permission for Olstrom to testify, noting he "now can be made available." The court denied the request.

Near the end of trial, plaintiffs sought to call Chris Snyder, a former Country Coach employee, as a rebuttal witness. Plaintiffs argued Snyder would rebut Remington and Beyer's testimony, and would testify it was common knowledge the hoses were routed incorrectly, and that Country Coach received warranty claims concerning misrouted power hoses. Mega opposed the request, noting Snyder's proposed testimony was cumulative. The court ruled Snyder was "not testifying."

Plaintiffs' new trial motion claimed the court prejudicially erred by excluding Olstrom and Snyder. According to plaintiffs, had the jury heard Olstrom and Snyder's testimony, "it would have questioned the credibility of Remington . . . as well as the accuracy of Beyer's expert opinions."

B. *The Court Did Not Abuse its Discretion by Excluding Olstrom and Snyder*

Plaintiffs contend the court's erroneous exclusion of Olstrom necessitates a new trial. They claim the court explicitly found their failure to disclose Olstrom was not willful. We have carefully reviewed the transcript and we do not interpret the court's comment as a finding that plaintiffs' failure to disclose Olstrom was inadvertent, or made in good faith. Regardless of whether the court made such a finding, however, the court did not abuse its discretion by excluding Olstrom. Trial judges possess an " 'inherent power to control litigation before them' " and " ' "to exercise reasonable control over all proceedings connected with pending litigation." ' " (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351.) Here, the court suggested Olstrom could testify if plaintiffs made him available for an interview. When plaintiffs did not make Olstrom available, the court excluded his testimony. This condition of admissibility was within the trial court's inherent authority, as a means of controlling the proceedings and preventing surprise and prejudice to Mega. (*Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580, 592.)

Nor did the court abuse its discretion by excluding Snyder's rebuttal testimony. "The decision to admit rebuttal evidence rests largely within the discretion of the trial court." (*People v. Harris* (2005) 37 Cal.4th 310, 335.) The court did not abuse its discretion here, where Snyder's testimony would have been cumulative to the testimony elicited during plaintiffs' case-in-chief, including Rondinone's testimony that the hose was mounted under the L-brackets when it was manufactured, and Walter Williams's testimony on the prevalence of misrouted hoses on Country Coach RVs. The court's ruling was within the bounds of its discretion.

DISPOSITION

The judgment is affirmed. Mega and Federated Mutual Insurance Company are entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

Jones, P. J.

We concur:

Needham, J.

Bruiniers, J.

A149247