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California Supreme Court:

Not All Officers Need Acknowledge Chase Policy for Agency Immunity

By a MetNews Staff Writer

A police department is immune from liability for crashes during police chases even if some of its officers have not acknowledged receiving the department's vehicular pursuit policy, the state Supreme Court held yesterday.

Vehicle Code §17004.7 limits civil immunity for accidents in the course of such chases to public agencies which adopt and promulgate a written policy on vehicular pursuits. Sec. 17004.7(b)(2) provides:

"Promulgation of the written policy…shall include, but is not limited to, a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy."

The plaintiff in the case, Irma Ramirez, sued the City of Gardena for the wrongful death of her son, Mark Gamar, who died during a chase after Gardena Police Officer Michael Nguyen's vehicle rammed a truck that was being pursued in which Gamar was a passenger.

City's Evidence

Gardena had a written vehicular pursuit policy in place, but could only produce evidence that 81 of its 92 police officers had received training under the policy within a year before the accident, and that 64 officers had signed acknowledgements of the policy. The city's custodian of records testified that all the officers had signed such documents, but some forms must have been lost.

Los Angeles Superior Court Judge Yvette M. Palazuelos

found that the city was immune from liability because it had a written policy in place which fulfilled all of §17004.7's requirements.

Div. One of this district's Court of Appeal, in an opinion by Justice Elwood G. Lui (now presiding justice of Div. Two), unanimously affirmed the judgment in August 2017, dismissing Ramirez's contention that each peace officer at the agency must actually sign the required acknowledgement before it can claim immunity.

Justice Ming W. Chin wrote for a unanimous court in affirming the Court of Appeal.

Response to Decision

The Legislature enacted the current version of §17004.7 in 2005, in apparent response to a 2002 Fourth District Court of Appeal decision in *Nguyen v. City of Westminster*. There, then-Justice William F. Rylaarsdam, now retired, found that the version of the section then in effect afforded defendant immunity, but criticized the statute for not requiring implementation of policies, saying:

"We urge the Legislature to revisit this statute and seriously reconsider the balance between public entity immunity and public safety. The balance appears to have shifted too far toward immunity and left public safety, as well as compensation for innocent victims, twisting in the wind."

In 2016, the Fourth District again issued an opinion interpreting §17004.7. In that decision, *Morgan v. Beaumont Police Department*, Acting Presiding Justice Patricia Benke of Div. One interpreted the current version of the law as requiring every police officer in an agency to have actually signed the certification, the approach Ramirez encouraged the high court to adopt.

Chin's opinion disapproves *Morgan*, agreeing instead with Lui's analysis. The jurist relied on the plain language of the statute itself, writing:

"Here, the statutory language resolves the issue. Section 17004.7, subdivision (b)(2), does not say that, for the public agency to obtain immunity, all of its peace officers must have made the certification. It says instead that '[p]romulgation' of

the policy must include 'a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy.' The plain meaning of this language is that the policy must contain the requirement, not that every peace officer must meet the requirement."

Policy Considerations

He also adopted Lui's reasoning that, aside from the plain meaning of the statute, the policy behind it requires such an interpretation.

Chin explained:

"When it amended section 17004.7 in 2005, the Legislature sought to improve public safety by encouraging public entities to promulgate a pursuit policy and provide training pursuant to that policy, which, in turn, was designed to reduce the number of pursuits and the number and severity of collisions resulting from pursuits….But the Legislature made 'adoption of a vehicle pursuit policy ...discretionary,' not mandatory….Achieving immunity was the incentive for public entities to adopt the policy and provide the training."

He continued:

"Plaintiff's interpretation would make it very difficult for a public entity like the City to achieve immunity, and almost impossible for a large entity employing thousands of peace officers. Thus, that interpretation would greatly reduce the incentive for public entities, especially large ones, to promulgate the policy and provide the training, something we doubt the Legislature intended."

The high court declined to address in what cases an agency might be said to not meaningfully comply with the statute's requirements, with Chin noting that "[t]hose questions fall outside the scope of the issue presented for our review."

The case is *Ramirez v. City of Gardena*, 2018 S.O.S. 3947.

Ramirez was represented before the Supreme Court by Abdalla J. Innabi of Innabi Law Group in Pasadena. Ladell H. Muhlestein of Manning & Kass, Ellrod, Ramirez, Trester in Los Angeles argued for Gardena.