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## CALIFORNIA SUPREME COURT OPENS DOOR TO EXTENSIVE NEW REMEDIES FOR VIOLATIONS OF SAFETY AND HEALTH STANDARDS

It's always California, isn't it? The California Supreme Court issued a **unanimous decision** last week allowing civil prosecutions to be brought against employers who violate the standards of the California Division of Occupational Safety and Health ("Cal/OSHA"). Civil actions could subject employers to potentially huge fines under state unfair competition and fair advertising laws. Even more of a concern is the possibility that this is a sign of things to come in other states that have OSHA plans.

### ***Solus Industrial Innovations v. Superior Court***

As is often the case, this expansive new decision had its genesis in bad facts. Solus Industrial Innovations, LLC, installed in its Orange County plastics manufacturing facility an electric water heater that was designed for residential use. The water heater exploded, killing two employees. Cal/OSHA investigated the incident and issued multiple citations alleging various violations of Cal/OSHA safety standards, including the alleged removal of safety controls. The matter was also referred to the District Attorney for Orange County, who filed criminal charges against the Company's plant manager and maintenance supervisor, both of whom pleaded no contest to felony charges.

The District Attorney also filed a civil action, alleging, among other things, fraudulent business practices and violation of the state Business and Professions Code because the company "made numerous false and misleading representations concerning its commitment to workplace safety and its compliance with all applicable workplace safety standards, and as a result of those false and misleading statements, Solus was allegedly able to retain employees and customers in violation of [Section 17500 of the Code]." In the civil action, the DA sought civil penalties for each cause of action of up to \$2,500 per day, *per employee*, for a period of about a year and a half.

Solus argued that the civil causes of action were preempted by the federal Occupational Safety and Health Act, and the California Court of Appeal, Fourth District, **agreed**. According to the appeals court, the claims were preempted because they were not part of the Cal/OSHA state plan approved by federal OSHA.

However, the state Supreme Court unanimously disagreed. In last week's

# OSHA UPDATE

February 14, 2018



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7-0 decision, the Supreme Court reasoned that when a state's OSHA program has been approved by federal OSHA, the state plan preempts federal OSHA standards – in other words, federal safety law gives way to state safety law. As long as the state's safety and health standards are at least as effective as federal OSHA's comparable standards, federal OSHA will defer to the state. The Supreme Court further concluded that once federal OSHA had ceded its jurisdiction to enforce its safety and health standards in California, California was free to pursue unfair business practice claims based on the alleged violation of state safety and health standards.

These same arguments would not apply in states that do not have their own OSHA programs. **But according to the U.S. Department of Labor**, 26 states plus Puerto Rico and the Virgin Islands do. The *Solus* decision raises the possibility of similar lawsuits in these other jurisdictions. Courts outside of California that are not applying California law would not be required to follow the *Solus* decision, but they could very well consider it and adopt its reasoning.

In any event, employers in California now face a triple threat if they violate Cal/OSHA standards: (1) citations issued by Cal/OSHA; (2) criminal prosecution under Labor Code § 6425; and now (3) additional civil penalties under the Business and Professions Code if the local district attorney decides that the violation constitutes an unfair and fraudulent business practice or a false and misleading statement intended to gain an edge against an employer's competitors.

If you have any questions, please feel free to contact **Bill Principe, Steve Simko, David Smith, Pat Tyson, or Neil Wasser.**

## Constangy, Brooks, Smith & Prophete, LLP

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