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## WHITE PAPER ALERT

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*Long Term Care – In-Home Care Giver Injury Suits*  
**Primary Assumption of Risk - Employment**

Gregory v Cott (2014) \_\_\_\_\_ Cal.4<sup>th</sup> \_\_\_\_\_

People with dementia are not liable for harming home health workers caring for them. In-home caregivers injured while working are limited to workers' compensation benefits, according to an August 4, 2014 ruling by the California Supreme Court.

#### Background

Gregory v Cott, involved a home health worker caring for an 85-year-old woman with an Alzheimer's type dementia diagnosis.

Carolyn Gregory, the injured care worker, worked with Alzheimer's patients before. She was washing a knife at the kitchen sink when 85-year-old Lorraine Cott approached her from behind and reached toward the sink. Carolyn tried to restrain her and dropped the knife, which hit her wrist. Since then, she lost feeling in her fingers and still feels pain. Even though she's already received workers compensation, Gregory sued the Cotts for negligence and the Lorraine for battery.

#### Decision

Primary assumption of risk is a bar to recovery where the defendant owes no duty to the plaintiff. (as in recreational activities or inherent occupational hazards as in firefighting). In this case, finding that neither Lorraine nor Bernard Cott -- Lorraine's husband and Gregory's employer -- owed Gregory a duty, the court also concluded Gregory accepted the occupational risks associated with treating Alzheimer's patients, which could include being injured by them.

Gregory wanted the case analyzed under secondary assumption of risk because, at the time of the injury, she was performing a housekeeping function, not a medical caregiving one. But secondary assumption of risk requires a duty, and the majority didn't find Gregory was owed a

duty. Whether Gregory was housekeeping or caregiving was not relevant, as the question turned on the nature of the activity, not the specifics of the activity.

## **Conclusion**

The California Supreme Court held employers have no duty, and hence no liability where the caregivers are warned of the risks of their work. Ms. Gregory was told Ms. Cott sometimes acted violently. The court noted that California case law already holds that people who have dementia and live in institutional settings are not liable for injuring their caregivers, so the same rule should, and now does, apply in home health settings. In dicta the court noted the legislature could pass new laws specifying training and insurance requirements to protect home health workers in similar instances in the future.

This is an excellent, if not unexpected, result for those defending long term care providers from claims regarding injuries caused by dementia patients and for all matters involving the primary assumption of risk defense in an employment setting.

Please contact us with any questions.

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