

7/11/69

Memorandum 68-72

Subject: Possible New Topic for Study

In Dillon v. Legg, 68 A.C. 766 (June 1968)(copy attached), the California Supreme Court (Traynor, Burke, and McComb dissenting) held that recovery for physical injury resulting from emotional trauma on witnessing the tortious infliction of death or injury on a third party does not require the claimant to have been in the zone of danger.

One of the dissenting opinions states:

It appears to me that in the light of today's majority opinion the matter at issue should be commended to the attention of the Legislature of this state. Five years have elapsed since our Amaya decision, during which that body has not undertaken to change the law we there declared. We may presume, therefore, that the limitations upon liability there affirmed comport with legislative views. But if all alleged California tortfeasors, including motorists, home and other property owners, and governmental entities, are not to be faced with the concept of potentially infinite liability beyond any rational relationship to their culpability, then surely the point has been reached at which the Legislature should reconsider the entire subject and allow all interests affected to be heard.

Does the Commission believe that this is a topic that we should request authority to study?

Respectfully submitted,

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Executive Secretary