

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE  
STATE OF CALIFORNIA,  
Appellant/Cross-Respondent,  
vs.  
GILBERT P. HYATT,  
Respondent/Cross-Appellant.

No. 53264

**FILED**

**FEB 24 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

ORDER SETTING ORAL ARGUMENT

We have determined that oral argument would be of assistance in resolving this appeal. Accordingly, we direct the clerk of this court to schedule oral argument on the next available calendar before the full court. Argument shall be one hour. The court has further determined that, during the scheduled argument the parties should only prepare to address the following issues:

- (1) Was appellant/cross-respondent Franchise Tax Board of the State of California (FTB) entitled to dismissal of respondent/cross-appellant Gilbert P. Hyatt's claims under discretionary-function immunity as provided for in Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)?
- (2) Is an exception to discretionary-function immunity, based on intentional torts or bad-faith conduct, still viable after this court's decision in Martinez?
- (3) Can a district court consider subjective intent of the actor when determining the application of the immunity?
- (4) Did Hyatt adequately demonstrate and present to the jury intentional torts or bad-faith conduct by FTB, including whether the jury was instructed or made findings as to bad-faith conduct?
- (5) Did the district court improperly allow consideration of the audit conclusions at trial?

- (6) Did the district court abuse its discretion in excluding evidence offered by FTB to refute the adverse inference from spoliation of evidence?
- (7) Is FTB entitled to statutory caps on damages and immunity from punitive damages under comity principles?
- (8) Are punitive damages available in this case under the common law?

As to the remaining issues raised in this appeal, the court will inform the parties if any further information is required on those issues.

It is so ORDERED.

Wardley, A.C.J.

cc: McDonald Carano Wilson LLP/Reno  
McDonald Carano Wilson LLP/Las Vegas  
Lemons, Grundy & Eisenberg  
Perkins Coie  
Hutchison & Steffen, LLC  
Kaempfer Crowell Renshaw Gronauer & Fiorentino  
Multistate Tax Commission  
Attorney General/Carson City  
Utah Attorney General's Office