

Filed 3/9/17 Haver v. BNSF Railway Co. CA2/5

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REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JOSHUA HAVER et al.,

Plaintiffs and Appellants,

v.

BNSF RAILWAY COMPANY,

Defendant and Respondent.

B246527

(Los Angeles County  
Super. Ct. No. BC435551)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard E. Rico, Judge. Reversed and remanded with directions.

Waters Kraus & Paul, Paul C. Cook, Michael B. Gurien  
for Plaintiffs and Appellants.

Sims Law Firm and Selim Mounedgji for Defendant  
and Respondent.

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Plaintiffs and appellants Joshua Haver, Christopher Haver, Kyle Haver, and Jennifer Morris sued defendant and respondent BNSF Railway Company (BNSF) for the wrongful death of their mother, Lynne Haver, as a result of secondary exposure to asbestos. The trial court entered a judgment of dismissal after sustaining BNSF's demurrer without leave to amend. We affirmed.

The Supreme Court granted review, reversed the judgment of this court, and remanded "for further proceedings not inconsistent with this opinion." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1165.) The remittitur states, "Costs, if any, must be awarded by the Court of Appeal." The parties have not filed any supplemental briefs as permitted by California Rules of Court rule 8.200(b). This matter has now been submitted. (Cal. Rules of Court, rule 8.256(d)(2).) Consistent with the Supreme Court's opinion in *Kesner v. Superior Court, supra*, 1 Cal.5th at page 1165, the judgment and the order sustaining the demurrer are

reversed. The trial court is directed to enter a new and different order overruling the demurrer. Appellants are awarded their costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P.J.

KUMAR, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.