

California Supreme Court Expands Ability of Bystanders to Sue for Emotional Distress

Parents who witness a child's injury have a cause of action for serious emotional distress, even if they don't know the accident's cause. by Alan Barlow, J.D.

PALMDALE, CALIFORNIA, UNITED STATES, July 25, 2024 /EINPresswire.com/ -- Witnessing a car

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Paul Kistler, Palmdale Injury Attorney

accident can be a traumatic event for anyone. When the person injured in the crash happens to be a close relative, the bystander is likely to experience severe emotional distress. Imagine, for instance, a parent who sees her child struck by a speeding car. In cases like these, California courts have long held that the bystander parent can sue the negligent driver for a tort known as Negligent Infliction of Emotional Distress, or NIED.

In an opinion released on July 22, 2024, the California Supreme Court has increased the scope of these cases beyond what had previously been allowed. Parents and

other close relatives will now be able to bring lawsuits for emotional distress that would have been dismissed before the Supreme Court's ruling this week in *Downey v. City of Riverside* (No. S280322).

Mother Hears Daughter's Crash Over the Phone

In this case, the court's opinion describes how a mother was giving driving directions to her daughter over the phone when she heard the sounds of a serious car crash – tires squealing, metal-on-metal colliding, glass shattering -, after which her daughter went silent. Her gut feeling that her daughter was just in a serious crash was confirmed when a stranger who had rushed to the scene to offer assistance had to tell the mother over the phone to be quiet so that he could “find a pulse.”

The mother sued not only the negligent driver but also the City of Riverside and the owners of private property adjacent to the intersection where the accident occurred. The plaintiff alleged that the city was responsible for maintaining a dangerous intersection based on negligent road design, markings, and a history of collisions there. The plaintiff further alleged that the adjacent

property owners contributed to the crash by negligently allowing overgrowth on their property to obstruct driver visibility. The case against these two defendants formed the basis for the court's discussion of bystander NIED.

Court Clarifies Requirements for Bystander NIED Claims

The tort of Negligent Infliction of Emotional Distress is a form of negligence, so a plaintiff alleging NIED must prove all the elements of a typical negligence claim – duty, breach of duty, causation, and damages. But when it comes to bystanders suing for NIED, as opposed to the injury victims themselves, the courts have imposed additional requirements to limit who can recover.

Otherwise, too many people could sue after witnessing a traumatic event.



Paul M. Kistler, Palmdale Personal Injury Lawyer

Since California first recognized claims for Bystander NIED in *Dillon v. Legg*, 68 Cal.2d 728 (1968), the courts have required the following three elements to be present:

- The victim was a close relative of the plaintiff
- The plaintiff was present at the event and aware that the event was causing injury
- The plaintiff suffered serious emotional distress as a result

The second of those three elements is the one that has raised the most perplexing questions in the courts over the last five decades. As the California Supreme Court explained in the *Thing* case (*Thing v. La Chusa*, 48 Cal.3d 644, 1989), plaintiffs do not have a claim for distress when they learn about the event after the fact, such as a parent rushing to the scene of an accident after hearing about it from someone else and finding their child injured.

At the same time, however, the courts have also made it clear that a plaintiff does not have to be physically present to contemporaneously understand that a close relative is being injured; this fact can be otherwise perceived through the senses.

In this case, the mother “witnessed” the accident by hearing it happen over the phone and was therefore “present” for the event. She was also aware the event was causing injury to her child. These facts would seem to satisfy the second prong required for a Bystander NIED claim. However, the complex legal questions to be resolved centered on whether the City and the

property owner could be held liable for the mother's emotional distress.

The lower courts had held that since the mother was not aware at the time that an allegedly dangerous intersection or a property owner's alleged negligence were contributing to the injury, the mother had no "contemporaneous sensory awareness of the causal connection between the defendant's negligent conduct and the resulting injury." Both the trial court and the Court of Appeal held it was necessary to show contemporaneous awareness of a defendant's tortious conduct to hold the defendant liable for Bystander NIED.

In its landmark ruling on Monday, the California Supreme Court concluded that the lower courts' reasoning was in error. "For purposes of clearing the awareness threshold for emotional distress recovery," the court wrote, "it is awareness of an event that is injuring the victim — not awareness of the defendant's role in causing the injury — that matters."

As noted by the court, these two things will often be the same, but not always. The court made it clear that "when a bystander witnesses what any layperson would understand to be an injury-producing event — such as a car accident, explosion, or fire — the bystander may bring a claim for negligent infliction of emotional distress based on the emotional trauma of witnessing injuries inflicted on a close relative. This is true even if the bystander was not aware at the time of the role the defendant played in causing the victim's injury."

Paul Kistler, a Palmdale injury attorney at [Kistler Law Firm, APC](#), who routinely handles car accident claims in Los Angeles and the Antelope Valley, hails the decision as a reasonable and common-sense approach that opens the door to justice for accident victims and their families. "This decision establishes that the emotional distress suffered from witnessing a close relative being injured, even without knowledge of the exact cause, is sufficient for a claim," says Kistler.

Kistler further commented, "The California Supreme Court's decision in *Downey v. City of Riverside* represents a significant expansion of the ability of bystanders to sue for Negligent Infliction of Emotional Distress (NIED). Previously, plaintiffs needed to demonstrate a contemporaneous sensory awareness not only of the injury to their loved one but also of the defendant's role in causing the injury. The high court's ruling clarifies that this second requirement is unnecessary, focusing instead on the emotional impact of witnessing the event itself. This shift will likely open the door for more bystanders, particularly close relatives, to seek compensation for the trauma they experience from witnessing accidents or injuries, even if they do not immediately understand the defendant's contribution to the harm."

The decision of the Supreme Court was unanimous. The judgment of the Court of Appeal was reversed and the case was remanded to the lower courts for further proceedings, giving the mother another chance to press her claims against the City and the private property owner for negligent infliction of emotional distress.

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