

Valley Verdicts

VENUE/CASE TYPE	INJURY	RESULT
FRESNO		
Premises Liability	Ankle Fracture	Defense
Premises Liability	Death	Defense
KINGS		
Vehicle Negligence	Leg Fracture	\$1,159,354
MERCED		
Environmental	Stroke	Defense
EASTERN DISTRICT/FRESNO		
Civil Rights	Abrasions	Defense

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TRIALS DIGEST'S CASE OF THE MONTH

40 Trials Digest 9th 4
Electrician alleges illness resulting from exposure to heavy metals

ENVIRONMENTAL
Toxic Tort

MERCED COUNTY SUPERIOR COURT
Powell v. Merck & Co. Inc., No. 145024.
Ronald W. Hansen. Jury trial: 13 days.
Verdict/judgment: 5/5/2006.

VERDICT/JUDGMENT: DEFENSE
Vote: 12-0. Deliberations: 2 hours.

TRIAL COUNSEL

Plaintiff: Gilbert E. Maines, Law Offices of Gilbert E. Maines, Placerville.

Defendant: Douglas A. Kroesch, Gallawa, Brown & Kroesch, Sacramento. Gregory S. Mason, McCormick Barstow LLP, Fresno. Carol J. O'Neil, McCormick Barstow LLP, Fresno.

FACTS/CONTENTIONS

According to defendant: According to defendant: Plaintiff David Powell, a 58-yearold electrician, alleged that he suffered chronic exposure to hexavalent chromium, copper, and arsenic, or chromated copper arsenate, while working at a groundwater remediation site owned by defendant Merck & Co. A Merck contractor hired plaintiff to perform electrical work in a restricted area of the site in 1993-4 and 1996. Plaintiffs alleged that Merck was negligent in controlling the toxic heavy metals at the site during this time frame. Plaintiff performed work at the site for defendant U.S. Filter Corporation (the operations and maintenance contractor for Merck) on a time and materials basis from 1994 to 2000. Plaintiffs alleged that U.S. Filter placed plaintiff in direct contact with the toxic heavy metals on a continuous basis at the site without taking measures to ensure Mr. Powell's safety. Plaintiffs further alleged that U.S. Filter misrepresented that the areas in which plaintiff worked were not contaminated, and, moreover, that U.S. Filter concealed from plaintiff the potential for contamination while working at the site. In April 2000, plaintiff allegedly became ill due to the alleged heavy metal exposure. **Plaintiffs** alleged that blood tests

revealed elevated chromium and copper levels consistent with the alleged exposure.

Defendants contended that the site was constructed, operated, and maintained in conformity with all applicable government regulations and industry standards. Defendants further contended that medical expert testimony established that plaintiff's complaints were not consistent with the known symptomatology of exposure to hexavalent chromium, copper, or arsenic.

CLAIMED INJURIES

According to defendant: David Powell alleged that he suffered a series of transient ischemic attacks, debilitating lifelong abdominal discomfort, left-sided weakness, decreased cognitive abilities, sexual dysfunction, fatigue, and depression. He also claimed that he was completely disabled due to the alleged heavy metal poisoning. Shirley Powell claimed loss of consortium.

CLAIMED DAMAGES

According to defendant: Plaintiffs' economist valued Mr. Powell's wage and medical losses at \$1,200,000. Plaintiffs suggested an award to the jury of \$6.2 million.

SETTLEMENT DISCUSSIONS

According to defendant: Demand: \$5.7 million at settlement conference. Offer: \$25,000 each from defendants Merck and U.S. Filter.

TRIAL EXPERTS

Plaintiff: Kevin S. Merigian, M.D., toxicologist, Cordova, TN (901) 757-4646. Charles K. Holder, industrial hygienist, Sacramento. Melvin C. Fredlund, Ph.D., economist, Walnut Creek.

Defendant: Christopher J. Tennant, Ph.D., industrial hygienist, Fresno (559) 298-8500. Jordan Rinker, M.D., internist, UCSF School of Medicine, Corte Madera (415) 924-1990. Marc B. Schenker, M.D., epidemiologist, UC Davis, Davis (530) 752-5676. Stephen C. Lee, M.D., neurologist, Sonora.

COMMENTS

According to defendant: Douglas A. Kroesch represented defendant Merck. Gregory S. Mason and Carol J. O'Neil (law and motion) represented defendant U.S. Filter. Mr. Mason provided the information for this report.

FEE ARBITRATION TRAINING

Thursday, March 22, 2007
5:30 p.m. - 8:30 pm
(Registration 5:00 pm)

The Downtown Club
2120 Kern Street
Fresno, CA 93721

IF YOU HAVE NOT ALREADY CALLED IN YOUR RESERVATIONS, PLEASE DO SO TO THE BAR OFFICE AT: 264-2619

MCLE CREDIT PROVIDED

SEE INSERT IN THIS ISSUE FOR MORE DETAILS



Superior Court To Close Court Services Window At DMV Pinedale Office On March 5, 2007

The Fresno County Superior Court has operated a Court Services window at the Department of Motor Vehicles Pinedale Office on North Blackstone Avenue since June 1999. The service window, staffed by court employees, enabled persons coming to the DMV office to transact court business at that location without having to travel to the Downtown Courthouse. This cooperative effort enabled the court and DMV to provide enhanced services to the public.

Unfortunately, circumstances beyond the control of both agencies have led to the decision to end this program.

The volume of court customers seeking court assistance has grown substantially over the past several years. The single court employee at this location is no longer able to adequately provide services to so many customers. Although the court considered opening a second window at this location, this was not possible due to DMV's space limitations. The need to provide a printed abstract showing that traffic cases had been cleared at the Court Service Window, which the motorist could immediately present at the DMV office, has been eliminated due to changes in DMV procedures. The court's new computerized abstract transmission system reduced a major customer service benefit of

our co-location at the DMV office because court records are now electronically submitted directly to DMV throughout the day.

Although the Service Window will be closing, there are many other ways the public can transact traffic cases with the court:

- Pay on-line by credit card (American Express, Discover, Master Card or Visa) at www.fresnosuperiorcourt.org
- Pay by credit card using the Automated Telephone System at (559) 488-3379
- Pay by mail with a personal check, cashier's check, or money order made payable to Fresno Superior Court and mail to: Traffic Division, 619 "N" Street, Sanger, CA. 93657
- Pay in person at any Fresno County Superior Court location. These include the Downtown Courthouse, and Court Divisions located in the cities of Clovis, Coalinga, Firebaugh, Fowler, Kerman, Kingsburg, Reedley, Sanger and Selma. Office hours are 8:00 A.M. to 4:00 P.M.

The Downtown Courthouse also provides outside Traffic windows that can be accessed without having to enter the courthouse.

The DMV Court Services Window will close at the end of business on Friday, March 2, 2007.

TOM MATYCHOWIAK

Mediator

28 years Civil Trial & Appellate Practice

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