



## Plaintiff: Condo's water systems not maintained

**Type:** Mediated Settlement

**Amount:** \$862,500

**State:** California

**Venue:** statewide

**Court:** ADR Services, Inc., CA

**Injury Type(s):**

- *other* - sepsis; hyponatremia; legionellosis / Legionnaires' disease
- *urological* - kidney
- *pulmonary/respiratory* - respiratory

**Case Type:**

- *Toxic Torts*
- *Intentional Torts* - Private Nuisance
- *Landlord and Tenant* - Constructive Eviction; Warranty of Habitability
- *Premises Liability* - Negligent Repair and/or Maintenance

**Case Name:** Dean Zander v. Ocean Towers Housing Corporation; Donald J. Van Deventer, individually, and as Trustee of the 2004 Van Deventer Family Trust; and Action Property Management, Inc., No. 21STCV23636

**Date:** April 18, 2023

**Plaintiff(s):**

- Dean Zander, (Male, 57 Years)

**Plaintiff Attorney(s):**

- Grant K. Riley; Riley | Ersoff LLP; Beverly Hills CA for Dean Zander
- Victoria L. Ersoff; Riley | Ersoff LLP; Beverly Hills CA for Dean Zander

**Defendant(s):**

- Donald J. Van Deventer
- Action Property Management, Inc.
- Ocean Towers Housing Corporation
- Trustee of the 2004 Van Deventer Family Trust

**Defense  
Attorney(s):**

- Michael E. McCabe; McClaugherty & Associates; Monrovia, CA for Donald J. Van Deventer, Trustee of the 2004 Van Deventer Family Trust
- Jay S. McClaugherty; McClaugherty & Associates; Monrovia, CA for Donald J. Van Deventer, Trustee of the 2004 Van Deventer Family Trust
- Zubin Farinpour; Lagasse Branch Bell + Kinkead LLP; Los Angeles, CA for Ocean Towers Housing Corporation
- Austin R. Wallick; Lagasse Branch Bell + Kinkead LLP; Los Angeles, CA for Ocean Towers Housing Corporation
- Patrick J. Foley; Lewis Brisbois Bisgaard & Smith LLP; Los Angeles, CA for Action Property Management, Inc.

**Insurers:**

- Axa XL

**Facts:**

In March 2021, plaintiff Dean Zander, 57, who worked in real estate, was leasing a luxury high-rise beach-front condominium in Santa Monica from Donald J. Van Deventer, when he developed flu-like symptoms. Zander's symptoms worsened over the course of a few days, and when he finally presented to the emergency room with complaints of wheezing, shortness of breath, diarrhea, chills, fever and a throbbing headache, he was thought to have COVID-19. He was transferred to a COVID quarantine unit and immediately administered supplemental oxygen and an IV. His condition worsened and he was transferred to intensive care where he was isolated from his family. Zander's illness allegedly became so severe that his family was told they should make necessary preparations for his demise.

Zander underwent several tests and was diagnosed with Legionnaires' disease. After learning of his tenant, Zander's hospitalization and diagnosis, Van Deventer hired consultants to perform Legionella water testing in the unit, which confirmed the presence of very high levels of Legionella pneumophila serogroup 1 in 100% of the water samples collected.

Zander sued the owner of the building, Ocean Towers Housing Corporation, the owner of the unit; Van Deventer, both as an individual and in his role as trustee of the 2004 Van Deventer family trust; and the property management company, Action Property Management Inc.

Zander alleged tortious breach of the implied warranty of habitability, negligence, premises liability, private nuisance, and constructive eviction. The plaintiff dismissed claims against Van Deventer both as an individual, and as trustee of the 2004 Van Deventer family trust, prior to mediation.

Plaintiff's counsel noted that Van Deventer provided Ocean Towers Housing Corporation with a copy of the lab report, requesting that they perform a building wide disinfection to ensure the safety of the residents, and repeatedly requested that they perform testing in other units at the property. Despite these requests, no other unit was ever tested and the person most qualified from the environmental company ultimately hired by Ocean Towers to perform limited Legionella water testing at the property, following Zander's hospitalization testified that Ocean Towers never disclosed that high levels of Legionella

bacteria were discovered at the property and/or that a resident contracted Legionnaires' disease.

The plaintiff's counsel contended that the environmental company representative testified that had this crucial information been disclosed, it would have performed a comprehensive investigation with testing consistent with industry standards.

Moreover, despite the fact that industry standards and best practices suggest that water-management plans should be required for buildings containing multiple housing units and are at least 10 stories high and/or have cooling towers, Ocean Towers had no water-management plan to prevent the growth and spread of Legionella bacteria at its property.

The plaintiff's counsel also noted that the cooling tower monthly service provider testified, as documented in his records, that he had repeatedly recommended a cleaning and disinfection of the cooling tower in 2018, 2019, 2020 and 2021 due to very dirty water, sludge and lots of debris in the tower, and despite the fact that industry standards and best practices recommend cooling towers be cleaned no less than once or twice per year, Ocean Towers Housing Corporation did not authorize any of his proposals to clean the cooling tower until April 2021, after being notified that Zander was hospitalized with Legionnaires' disease.

Defendants disputed plaintiff's claims and contended that it complied with industry standards and best practices for the maintenance of building water systems.

**Injury:**

Zander underwent several tests, and was diagnosed with Legionnaires' disease and related complications including, acute hypoxemic respiratory failure, hyponatremia, sepsis, acute kidney injury, leukocytosis, transaminitis, hypoxemia and trace pleural effusion. He was discharged from the hospital 10 days later.

Additionally, Zander claimed he was left with headaches, shortness of breath and wheezing. He also has been diagnosed with adjustment disorder with anxiety and depression. For the most part, Zander believed that his symptoms have since been resolved, though he claimed that he would require future monitoring. Zander can continue to work and his loss of earnings/earning capacity claims were waived in this lawsuit. He sought only assistance in recovery for his past and future pain and suffering.

**Result:**

The parties agreed to accept a mediator's proposal following a mediation with Lance LaBelle for \$862,500, paid by the defendants' insurer to Mr. Zander.

Dean Zander

**Trial Information:**

**Judge:** Lance A. LaBelle, Bruce G. Iwasaki

**Trial Length:** 0

**Trial  
Deliberations:** 0

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Hotel's guest developed fatal pneumonia in pool, lawsuit alleged

**Type:** Settlement

**Amount:** \$3,000,000

**State:** California

**Venue:** San Bernardino County

**Court:** Superior Court of San Bernardino County, San Bernardino, CA

**Injury Type(s):**

- *other - death; legionellosis / Legionnaires' disease*

**Case Type:**

- *Toxic Torts*
- *Wrongful Death*
- *Premises Liability - Swimming Pool; Hotel or Motel; Failure to Warn; Dangerous Condition; Negligent Repair and/or Maintenance*

**Case Name:** Carol S. Winfield, an individual; Walter W. Winfield, an individual; Scott A. Winfield, an individual; William O. Winfield, an individual; Elizabeth A. Schneider, an individual; Tamara Winfield-Pace, an individual; Tamara Winfield-Face, an individual; and The Estate of Walter William Winfield, by and through his Successor-in-Interest, Carol S. Winfield v. YTLife Investements, LLC, a business entity; Hotel D'Lins Ontario Airport formerly known as Best Western Plus Ontario, a business entity; Haiziao Lin, an individual; Tao Yue, an individual; and Does 1 to 50, Inclusive, No. CIVDS1820609

**Date:** April 01, 2021

**Plaintiff(s):**

- Carol Winfield, (, 0 Years)
- Scott A. Winfield, (, 0 Years)
- Walter W. Winfield, (, 0 Years)
- William O. Winfield, (, 0 Years)
- Tamara Winfield-Pace, (, 0 Years)
- Elizabeth A. Schneider, (, 0 Years)
- Estate of Walter William Winfield, (Male, 87 Years)

- Plaintiff Attorney(s):**
- Peter L. Kaufman; Panish Shea & Boyle LLP; Los Angeles CA for Carol Winfield,, Walter W. Winfield,, Scott A. Winfield,, William O. Winfield,, Elizabeth A. Schneider,, Tamara Winfield-Pace,, Estate of Walter William Winfield
  - Brian Panish; Panish Shea & Boyle LLP; Los Angeles CA for Carol Winfield,, Walter W. Winfield,, Scott A. Winfield,, William O. Winfield,, Elizabeth A. Schneider,, Tamara Winfield-Pace,, Estate of Walter William Winfield
  - Whitney T. Smith; Panish Shea & Boyle LLP; Los Angeles CA for Carol Winfield,, Walter W. Winfield,, Scott A. Winfield,, William O. Winfield,, Elizabeth A. Schneider,, Tamara Winfield-Pace,, Estate of Walter William Winfield
- Plaintiff Expert (s):**
- Pat M. Fidopiastis Ph.D.; Bacteria/Bacteriology; San Luis Obispo, CA called by: Peter L. Kaufman, Brian Panish, Whitney T. Smith
- Defendant(s):**
- Tao Yue
  - Haixiao Lin
  - YTLife Investements, LLC
  - Hotel D'Lins Ontario Airport
- Defense Attorney(s):**
- Victoria L. Ersoff; Wood, Smith, Henning & Berman LLP; Los Angeles, CA for YTLife Investements, LLC, Haixiao Lin
  - Ashley B. Beagle; Wood, Smith, Henning & Berman, LLP; Riverside, CA for YTLife Investements, LLC, Haixiao Lin
  - Keith E. Smith; Wood, Smith, Henning & Berman, LLP; Riverside, CA for YTLife Investements, LLC, Haixiao Lin
  - None reported for Tao Yue, Hotel D'Lins Ontario Airport
- Defendant Expert(s):**
- William R. Jarvis M.D.; Infectious Diseases; Port Orford, OR called by: for Victoria L. Ersoff, Ashley B. Beagle, Keith E. Smith

**Facts:**

On April 21, 2018, plaintiffs' decedent Walter William Winfield, 87, a human-resources director, was exposed to legionella bacteria while using the spa at the Hotel d'Lins Ontario Airport, in Ontario, Canada. He developed legionellosis (a form of pneumonia) and died on May 5, 2018.

Winfield's widow, Carol Winfield, who was acting individually and as her husband's successor-in-interest, and five adult children, Walter W. Winfield, Scott Winfield, William Winfield and Elizabeth Schneider, sued the hotel; the hotel's owners, YTLife Investments, LLC and Haixiao Lin; and a person believed to be a co-owner of YTLife Investments, Tao Yue. The lawsuit alleged that the defendants failed to properly repair and/or maintain the spa, creating a dangerous condition, and that the defendants failed to warn of that dangerous condition.

Yue and Hotel D'Lins Ontario Airport were removed from the case, as it was determined that YTLife Investments and its owner, Lin, were the responsible parties.

Plaintiffs' counsel contended that the presence of legionella pneumophila serogroup 1 bacteria in the spa was confirmed by testing performed by the San Bernardino County Department of Public Health. Counsel asserted that, prior to Walter Winfield's stay, the hotel had been repeatedly cited by San Bernardino County for failing to maintain its pool and spa.

The plaintiffs' expert microbiologist contended that legionella persists and grows in a spa. The expert also opined that Lin and YTLife Investments failed in their cleaning and sanitation, based on the fact that the hotel repeatedly failed county inspections of the pool and spa.

Lin and YTLife Investments conceded that the hotel's pool and spa contained the legionella species.

**Injury:**

Winfield died from legionellosis. He was survived by his wife and five adult children.

Winfield's family sought recovery of wrongful-death damages for the loss of the Winfield's love, companionship, comfort, care, assistance, protection, affection, society and moral support.

Defense counsel asserted that the plaintiffs could not show that the legionella species found in the spa was the same bacteria that caused Winfield's legionellosis.

**Result:**

The parties negotiated a pretrial settlement. The insurer for Lin and YTLife Investments agreed to pay \$2 million, and \$1 million will be paid out of pocket by Lin and YTLife Investments. Thus, the settlement totaled \$3 million.

Estate of Walter Winfield

Tamara Winfield-Pace

Elizabeth Schneider

William Winfield

Scott Winfield

Walter Winfield

Carol Winfield

**Trial Information:**

**Judge:** Donald R. Alvarez

**Trial Length:** 0

**Trial  
Deliberations:** 0

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel. Counsel of Lin and YTLife Investments did not respond to the reporter's phone calls, and the remaining defendants' counsel were not asked to contribute.

**Writer** Priya Idiculla



**Plaintiff: Decedent contracted Legionnaires' disease at hotel****Type:** Verdict-Plaintiff**Amount:** \$2,268,575**State:** Illinois**Venue:** Federal**Court:** U.S. District Court, Northern District Illinois, Eastern District, IL**Injury Type(s):**

- *other - death; legionellosis / Legionnaires' disease*

**Case Type:**

- *Hotel/Restaurant*
- *Wrongful Death - Survival Damages*
- *Premises Liability - Hotel or Motel*

**Case Name:** Lucy Acevedo, as personal representative of the Estate of Luis Enrique Acevedo Muro v. Marriott International, Inc., No. 13-cv-06441**Date:** April 08, 2014**Plaintiff(s):**

- Lucy Acevedo (Female)
- Ximena Acevedo
- Maria Elena Acevedo (Female)
- Maria Monica Acevedo (Female)
- Maria Cecilia Acevedo (Female)
- Maria Patricia Acevedo (Female)
- Estate of Enrique Acevedo, M.D. (Male, 80 Years)

**Plaintiff Attorney(s):**

- Steven J. Seidman; Seidman Margulis & Fairman, LLP; Chicago IL for Estate of Enrique Acevedo, M.D.
- Melanie K. Fairman; Monico, Pavich & Spevack; Chicago IL for Estate of Enrique Acevedo, M.D.
- Andrew B. Yaffa; Grossman Roth, P.A.; Coral Gables FL for Estate of Enrique Acevedo, M.D.
- Seth E. Miles; Grossman Roth, P.A.; Coral Gables FL for Estate of Enrique Acevedo, M.D.

- Plaintiff Expert(s):**
- F. Gary Toback M.D.; Internal Medicine; Chicago, IL called by: Steven J. Seidman, Melanie K. Fairman, Andrew B. Yaffa, Seth E. Miles
  - Jason C. Robin M.D.; Cardiovascular Surgery; Chicago, IL called by: Steven J. Seidman, Melanie K. Fairman, Andrew B. Yaffa, Seth E. Miles,
  - Roberto A. Miki M.D.; Cardiology; Miami, FL called by: Steven J. Seidman, Melanie K. Fairman, Andrew B. Yaffa, Seth E. Miles

- Defendant(s):**
- Marriott International, Inc.

- Defense Attorney(s):**
- Michael W. Caspino; The Busch Firm; Irvine, CA for Marriott International, Inc.
  - Christopher S. Hennessy; Meckler Bulger Tilson Marick & Pearson LLP; Chicago, IL for Marriott International, Inc.
  - Anne Lori Blume; Meckler Bulger Tilson Marick & Pearson LLP; Chicago, IL for Marriott International, Inc.

- Defendant Expert(s):**
- Mark A. Swidler M.D.; Nephrology; New York, NY called by: for Michael W. Caspino, Christopher S. Hennessy, Anne Lori Blume
  - Jeffrey Snell M.D.; Interventional Cardiology; Chicago, IL called by: for Michael W. Caspino, Christopher S. Hennessy, Anne Lori Blume

**Facts:** In August 2012, plaintiff's decedent Eugene Acevedo, a doctor in his 80s, allegedly contracted Legionnaires disease while at a J.W. Marriott location in downtown Chicago. Legionnaires disease is a form of pneumonia spread through inhalation. Older adults, smokers, and people with weakened immune systems are susceptible to Legionnaire's disease. Acevedo died on August 14, 2012.

The Estate of Acevedo sued Marriott International, Inc., alleging that the hotel was liable for the plaintiff's decedent's development of Legionnaires, resulting in his wrongful death.

Marriott International admitted liability in the case. The case proceeded on the issue of injuries and damages.

**Injury:**

The estate of Acevedo sought a recovery for the decedent's wrongful death, as well survival damages. According to the plaintiff's counsel, the decedent experienced pain and suffering while enduring Legionnaire's disease. According to plaintiff's counsel, Acevedo's medical expenses totaled \$131,995.30, and his funeral expenses totaled \$2,115. Plaintiff's counsel also contended that Acevedo's lost income totaled \$127,000.

Also sought were recoveries on behalf of Acevedo's wife of 40 years, Lucy Acevedo, as well as their five daughters Ximena, Maria Cecilia, Maria Elena, Maria Patricia, and Maria Monica. The plaintiff sought a recovery for loss of society on behalf of the family members, a recovery for "love, affection, care, attention, companionship, comfort, guidance, and protection." Acevedo also sought a recovery for grief, sorrow, mental suffering, and loss of benefits, goods, and services.

The plaintiff alleged that the children communicated with the plaintiff's decedent via e-mail and received cards from him on each holiday. Maria Elena testified that she relied on her father for advice in raising her own children, calling him "her confidante" in her testimony. The other daughters testified to talking with their father regularly, by phone or visiting each other.

The defense did not completely dispute the injuries and damages claimed by the plaintiff, but contended that the jury should award a "fair and reasonable sum" in damages to the estate and family members. Marriott agreed to pay the decedent's medical expenses.

**Result:**

The jury rendered a verdict in favor of the plaintiffs, awarding a total of \$2,268,575.30. Regarding the total, \$968,575.30 was awarded to the estate of Acevedo, while \$1.3 million was awarded to his surviving family.

**Lucy Acevedo**

\$250,000 Wrongful Death: grief and sorrow

**Maria Cecilia Acevedo**

\$50,000 Wrongful Death: grief and sorrow

**Maria Elena Acevedo**

\$50,000 Wrongful Death: grief and sorrow

**Maria Monica Acevedo**

\$50,000 Wrongful Death: grief and sorrow

**Maria Patricia Acevedo**

\$50,000 Wrongful Death: grief and sorrow

**Ximena Acevedo**

\$50,000 Wrongful Death: grief and sorrow

\$50,000 Wrongful Death: loss of society

**Trial Information:**

**Judge:** Edmond E. Chang

**Demand:** \$18 million

**Offer:** \$1 million

**Trial  
Deliberations:** 1 days

**Post Trial:** Plaintiff's counsel filed a post-trial motion for a new trial on the issue of loss of society damages, contending that the jury erred in not awarding the decedent's family for loss of society.

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer**

Kirk Maltais

## Legionnaires' outbreak at hospital sickened six

**Type:** Settlement

**Amount:** \$5,200,000

**State:** Texas

**Venue:** Bexar County

**Court:** Bexar County District Court, 57th, TX

**Injury Type(s):** • *other - death; legionellosis / Legionnaires' disease*

**Case Type:**

- *Construction*
- *Premises Liability - Hospital*
- *Wrongful Death - Survival Damages*
- *Products Liability - Design Defect; Manufacturing Defect*

**Case Name:** Alfred V. Evans Jr., Individ. and o/b/o the Est. of Coralie Ruth Evans, Deceased; Alfred L. Evans, Individ.; Susan Elizabeth Tripp; Larry Tripp; and John E. Swaney; Frances M. Gomez, Individ. and o/b/o the Est. of John Alonzo Gomez, Deceased, and Philip J. Gomez, Patrick M. Gomez, John Gomez, and Frank G. Gomez, Individ.; and Rudy S. Martinez and Alice P. Martinez, Plaintiffs; and Thomas J. DeChant, Individ. and in his Capacity as Indep. Exec./Admin. of the Est. of Thomas Cullin DeChant, Deceased; and Diane DeChant, Debbie D. Harbison, Dorrine DeChant, and Denise DeChant-Murray, Intervenors v. Dunn Southeast Inc., d/b/a R.J. Griffin & Company General Contracts; Brandt Engineering Inc., a/k/a Brandt Mechanical Services Inc.; Hesco Industries Inc.; Taco Inc.; VHS San Antonio Partners L.P., d/b/a North Central Baptist Hospital; Precision Boilers Inc.; Central Backhoe and Utilities Ltd.; and Underground Services Inc., d/b/a Soft Dig Underground Services Inc., No. 2006-CI-11755

**Date:** October 13, 2008

**Plaintiff(s):**

- John Gomez (Male)
- Larry Tripp (Male)
- Frank G. Gomez (Male)
- John E. Swaney (Male)
- Alfred L. Evans (Male)
- Philip J. Gomez (Male)
- Frances M. Gomez (Female)
- Patrick M. Gomez
- Rudy S. Martinez (Male)
- Alice P. Martinez (Female)
- Alfred V. Evans, Jr. (Male)
- Susan Elizabeth Tripp (Female)
- Diane DeChant (intervenor) (Female)
- estate of John Alonzo Gomez (Male)
- Dorrine DeChant (intervenor) (Female)
- estate of Coralie Ruth Evans (Female)
- Thomas J. DeChant (intervenor)
- Debbie D. Harbison (intervenor) (Female)
- Denise DeChant-Murray (intervenor) (Female)
- estate of Thomas Cullin DeChant (intervenor) (Male, 78 Years)

**Plaintiff  
Attorney(s):**

- L. Brent Farney; Law Offices of L. Brent Farney; San Antonio TX for estate of Thomas Cullin DeChant (intervenor), Thomas J. DeChant (intervenor), Diane DeChant (intervenor), Debbie D. Harbison (intervenor), Dorrine DeChant (intervenor), Denise DeChant-Murray (intervenor)
- Lo An K. Vo; Rhodes & Vela, L.L.P.; San Antonio TX for John E. Swaney, estate of John Alonzo Gomez, Susan Elizabeth Tripp, estate of Coralie Ruth Evans, Rudy S. Martinez, Alfred V. Evans, Jr., Alfred L. Evans, Larry Tripp, Frances M. Gomez, Philip J. Gomez, Patrick M. Gomez, John Gomez, Frank G. Gomez, Alice P. Martinez, Debbie D. Harbison (intervenor)
- Mary I. Wilson; Rhodes & Vela, L.L.P.; San Antonio TX for John E. Swaney, estate of John Alonzo Gomez, Susan Elizabeth Tripp, estate of Coralie Ruth Evans, Rudy S. Martinez, Alfred V. Evans, Jr., Alfred L. Evans, Larry Tripp, Frances M. Gomez, Philip J. Gomez, Patrick M. Gomez, John Gomez, Frank G. Gomez, Alice P. Martinez, Debbie D. Harbison (intervenor)
- Clem Lyons; Rhodes & Vela, L.L.P.; San Antonio TX for John E. Swaney, estate of John Alonzo Gomez, Susan Elizabeth Tripp, estate of Coralie Ruth Evans, Rudy S. Martinez, Alfred V. Evans, Jr., Alfred L. Evans, Larry Tripp, Frances M. Gomez, Philip J. Gomez, Patrick M. Gomez, John Gomez, Frank G. Gomez, Alice P. Martinez, Debbie D. Harbison (intervenor)
- J. Thomas Rhodes III; Rhodes & Vela, L.L.P.; San Antonio TX for John E. Swaney, estate of John Alonzo Gomez, Susan Elizabeth Tripp, estate of Coralie Ruth Evans, Rudy S. Martinez, Alfred V. Evans, Jr., Alfred L. Evans, Larry Tripp, Frances M. Gomez, Philip J. Gomez, Patrick M. Gomez, John Gomez, Frank G. Gomez, Alice P. Martinez, Debbie D. Harbison (intervenor)

**Plaintiff Expert  
(s):**

- Tom Green P.E.; Mechanical; Austin, TX called by: L. Brent Farney, Lo An K. Vo, Mary I. Wilson, Clem Lyons, J. Thomas Rhodes III
- Paul Edelstein M.D.; Infectious Diseases; Gladwyne, PA called by: L. Brent Farney, Lo An K. Vo, Mary I. Wilson, Clem Lyons, J. Thomas Rhodes III
- Linden E. Witherell P.E., MPH, J.D., DEE; Environmental Engineering; Burlington, VT called by: L. Brent Farney, Lo An K. Vo, Mary I. Wilson, Clem Lyons, J. Thomas Rhodes III
- Gilbert Kissling; Water Distribution; San Antonio, TX called by: L. Brent Farney, Lo An K. Vo, Mary I. Wilson, Clem Lyons, J. Thomas Rhodes III
- Jennifer Clancy Ph.D.; Microbiology; St. Albans, VT called by: L. Brent Farney, Lo An K. Vo, Mary I. Wilson, Clem Lyons, J. Thomas Rhodes III

**Defendant(s):**

- Taco Inc.
- Dunn Southeast Inc.
- Hesco Industries Inc.
- Precision Boilers Inc.
- Brandt Engineering Inc.
- Underground Services Inc.
- VHS San Antonio Partners L.P.
- Central Backhoe and Utilities Ltd.

**Defense  
Attorney(s):**

- Judith R. Blakeway; Strasburger & Price; San Antonio, TX for Taco Inc.
- Scott P. Hazen; Gordon & Rees, L.L.P.; Dallas, TX for Underground Services Inc.
- David E. Chamberlain; Chamberlain McHaney; Austin, TX for Precision Boilers Inc.
- Harvey Ferguson Jr.; Gonzales, Hoblit & Ferguson; San Antonio, TX for Hesco Industries Inc.
- Richard N. Francis Jr.; Plunkett & Gibson, Inc.; San Antonio, TX for VHS San Antonio Partners L.P.
- Willie Ben Daw III; Daw & Ray; Houston, TX for Central Backhoe and Utilities Ltd.
- James K. Floyd; Daw & Ray; San Antonio, TX for Central Backhoe and Utilities Ltd.
- Christina L. McCracken; Gordon & Rees, L.L.P.; Dallas, TX for Underground Services Inc.
- George B. Butts; DLA Piper U.S., L.L.P.; Austin, TX for Dunn Southeast Inc.
- Richard Sparr Jr.; Sparr & Brewster; San Antonio, TX for Brandt Engineering Inc.
- Jennifer A. Lloyd; DLA Piper U.S., L.L.P.; Austin, TX for Dunn Southeast Inc.
- Gregory W. Geerdes; Sparr & Brewster; San Antonio, TX for Brandt Engineering Inc.
- W. Richard Ellis III; Chamberlain McHaney; Austin, TX for Precision Boilers Inc.
- Courtney Floyd; Gonzales, Hoblit & Ferguson; San Antonio, TX for Hesco Industries Inc.

**Facts:**

In April and May 2006, the six plaintiffs contracted Legionnaires' disease from a new facility at San Antonio's North Central Baptist Hospital, where recently each plaintiff had either been a patient or had visited. Unknown to anyone at the time, Legionella bacilli had proliferated in the hospital's water system. Three of the plaintiffs died.

Legionnaires' disease is a lung infection, a form of pneumonia. The bacteria that cause it



are common at extremely low levels, but certain factors promote proliferation, which increases the risk of infection. These factors include stagnation of water and warm-water temperatures between 68 and 122 degrees.

Legionella are known to proliferate more in San Antonio than in most cities. Elderly or health-compromised persons are also especially vulnerable to infection.

The plaintiffs argued that stagnation of water can occur during construction projects when water supplies are turned off and on or are otherwise interrupted. North Central Baptist had recently begun an expansion project that more than doubled the size of the hospital. Its main water line was breached twice in early April 2006, which the plaintiffs said contributed to proliferation of the bacteria. The plaintiffs claimed the system was also delivering warm water at temperatures far below 122 degrees, within the range that promotes the growth of Legionella.

R.J. Griffin & Co. was the general contractor for the expansion project and Brandt Engineering Inc. was the plumbing subcontractor that installed the hot water system.

Precision Boilers Inc. manufactured the hot water tanks and TACO Inc. manufactured the pumps for circulating water in the tanks.

Soft Dig Underground Utility Services Inc. was the subcontractor that identified the underground utilities between the street and the hospital, and Central Backhoe and Utilities Ltd. inadvertently breached the water line while preparing the ground for laying a fire line.

The plaintiffs sued the hospital, R.J. Griffin & Co., Brandt, Precision, TACO, Soft Dig and Central for premises liability.

The plaintiffs claimed R.J. Griffin and the hospital failed to provide a safe hot-water system; that the hospital failed to thoroughly evaluate and sample the water system after the breaches and to ensure that the system was free from bacteria like Legionella; that improper tank-installation by Brandt resulted in stagnation and stratification of water within the tanks; that Precision had improperly labeled the tanks' inlet lines for domestic water and recirculating water; that the tanks' drainage line was made with a "dead leg" that provided an ideal location for bacteria growth; that the tanks' heating elements were too short; that the TACO pumps were "frozen" because of a design or manufacturing defect and not working; that Soft Dig negligently misidentified the location of the main water line; and that Central was negligent in transecting the water line on April 4 and again on April 6.

The defendants denied the allegations, including any negligence.

R.J. Griffin argued that its obligations were to construct the addition in accordance with the plans and specifications provided by the hospital's architects and engineers, that it met these obligations, and that certificates of completion were obtained as to all aspects of the construction.

Brandt contended that its job was to install the tanks and that it did so in accordance with the hospital engineer's plans. It argued that the hospital engineer, city and state authorities, and other entities approved its work when complete; that its work was finished in early

December 2005, and the outbreak occurred only after the line breaches about five months later; and that the Bexar Metropolitan Water Supply District (a designated responsible third party and former defendant) was supplying water that was contaminated and did not have proper levels of chlorine. Brandt also maintained that the temperature of the water heater never dropped below 140 degrees.

### **Injury:**

Plaintiff John Gomez had been admitted on April 22 with a diagnosis of gastrointestinal bleed. His condition deteriorated and he was diagnosed with Legionnaires' disease on May 3. He died later that month. He is survived by a wife and four adult sons, who claimed wrongful death. The estate also sought damages.

Plaintiff Thomas D. DeChant, 78, had been admitted with a one-week history of abdominal pain. He was diagnosed with Legionnaires' disease before his discharge, and he died on June 12. He left four survivors who claimed wrongful death. The estate also sought damages.

Plaintiff Susan Tripp had been admitted with a diagnosis of bowel obstruction. She was diagnosed with Legionnaires' disease soon after successful surgery. She claimed that the disease left her severely debilitated. Her husband also sought damages.

Plaintiff Ruth Evans had visited Tripp twice during Tripp's hospitalization for bowel obstruction. Evans was diagnosed with Legionnaires' disease about two weeks after the last visit, and she died on May 22. Her estate sought damages, and she left two survivors who claimed wrongful death.

Plaintiff Rudy Martinez had visited his wife continually when she was in the hospital for breast surgery. He was diagnosed with Legionnaires' disease about one week after her discharge. He claimed that the disease left him completely disabled and unable to care for his wife, who died in September 2008.

Plaintiff John E. Swaney had visited a friend at the hospital on four consecutive days. Swaney was diagnosed with Legionnaires' disease on June 11. He claimed he was left completely disabled, partly as a result of the disease.

All the plaintiffs alleged that the disease was treated appropriately and aggressively.

The defense alleged that the plaintiffs who contracted Legionnaires' disease were in various stages of declining health before their exposure to Legionella.

### **Result:**

Mediation took place in August 2008. With the continued assistance of the mediator, the case settled on Oct. 13, 2008, for a total of \$5.2 million.

The hospital's attorneys said that the hospital's portion of the settlement was less than 7 percent of the total.

The case settled before the defendants' deadline for designating experts.

### **Trial Information:**

**Judge:** Karl Bayer, Joe F. Brown

**Editor's Comment:** This report is based on information that was provided by attorneys for the plaintiffs, R.J. Griffin & Co., Brandt Engineering, North Central Baptist Hospital and Soft Dig Underground Services. Attorneys for the intervenors, TACO and Precision Boilers declined to contribute. Attorneys for Central Backhoe and Hesco did not respond to the reporters' phone calls.

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