



Companies denied knowing of asbestos risks to decedent

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *other* - death; loss of society
- *cancer* - mesothelioma

Case Type:

- *Wrongful Death*
- *Toxic Torts* - Asbestos
- *Workplace* - Workplace Safety

Case Name: Shirley Hubbard, Thomas Glenn Hubbard, Jr., and Ann Marie Hensley v. Allied Packing & Supply, Inc., Basco Drywall & Painting Co., Calaveras Asbestos, Ltd., California Water Service Company, Certainteed Corporation, Crane Co., Familian Corporation, Ferguson Enterprises, Inc., Formosa Plastics Corporation USA, GCO, Inc., General Electric Company, Grinnell, LLC, Hajoca Corporation, HD Supply Waterworks, Ltd., Honeywell International, Inc., Hughes Supply, Inc., Industrial Holdings Corporation, J-M Manufacturing Company Inc., Keenan Properties, Inc., Kubota Corporation, Kubota Tractor Corporation, Marden Susco, Inc., Cynthia Marment, McWane, Inc., MS2G, Inc., Mueller Water Product, Inc., San Jose Water Company, Union Carbide Corporation, Westburnesupply, Inc. and Westinghouse Air Brake Technologies Corporation, No. RG12646599

Date: May 19, 2015

Plaintiff(s):

- Cynthia Marment (Female)
- Shirley Hubbard (Female)
- Ann Marie Hensley (Female)
- Thomas Glenn Hubbard, Jr. (Male)
- Estate of Thomas Glenn Hubbard (Male)

**Plaintiff
Attorney(s):**

- William A. Levin; Levin Simes LLP; San Francisco CA for Estate of Thomas Glenn Hubbard, Shirley Hubbard, Thomas Glenn Hubbard, Jr., Ann Marie Hensley
- Timothy F. Pearce; Levin Simes LLP; San Francisco CA for Estate of Thomas Glenn Hubbard, Shirley Hubbard, Thomas Glenn Hubbard, Jr., Ann Marie Hensley
- None reported; ; for Cynthia Marment

**Plaintiff Expert
(s):**

- Barry R. Horn M.D.; Pulmonology; Berkeley, CA called by: William A. Levin, Timothy F. Pearce
- Arnold R. Brody Ph.D.; Cell Biology; Raleigh, NC called by: William A. Levin, Timothy F. Pearce
- William Ewing C.I.H.; Industrial Hygiene; Kennesaw, GA called by: William A. Levin, Timothy F. Pearce

Defendant(s):

- Crane Co.
- GCO, Inc.
- MS2G, Inc.
- McWane, Inc.
- Grinnell, LLC
- Hajoca Corporation
- Kubota Corporation
- Marden Susco, Inc.
- Hughes Supply, Inc.
- Familian Corporation
- Westburnesupply, Inc.
- San Jose Water Company
- Certainteed Corporation
- Keenan Properties, Inc.
- Calaveras Asbestos, Ltd.
- General Electric Company
- Union Carbide Corporation
- Ferguson Enterprises, Inc.
- HD Supply Waterworks, Ltd.
- Kubota Tractor Corporation
- Mueller Water Product, Inc.
- Basco Drywall & Painting Co.
- Allied Packing & Supply, Inc.
- Honeywell International, Inc.
- J-M Manufacturing Company Inc.
- Industrial Holdings Corporation
- California Water Service Company
- Formosa Plastics Corporation USA
- Westinghouse Air Brake Technologies Corporation

**Defense
Attorney(s):**

- Thomas J. LoSavio; Low, Ball & Lynch; San Francisco, CA for San Jose Water Company
- Kevin J. McNaughton; Schaffer Lax McNaughton & Chen APC; Los Angeles, CA for California Water Service Company
- Katrina J. Valencia; Schaffer Lax McNaughton & Chen APC; Los Angeles, CA for California Water Service Company
- Vernice T. Louie; Low, Ball & Lynch; San Francisco, CA for San Jose Water Company
- None reported; San Francisco, CA for Allied Packing & Supply, Inc., Basco Drywall & Painting Co., Calaveras Asbestos, Ltd., Certaineed Corporation, Crane Co., Familian Corporation, Ferguson Enterprises, Inc., Formosa Plastics Corporation USA, GCO, Inc., General Electric Company, Grinnell, LLC, Hajoca Corporation, HD Supply Waterworks, Ltd., Honeywell International, Inc., Hughes Supply, Inc., Industrial Holdings Corporation, J-M Manufacturing Company Inc., Keenan Properties, Inc., Kubota Corporation, Kubota Tractor Corporation, Marden Susco, Inc., McWane, Inc., MS2G, Inc., Mueller Water Product, Inc., Union Carbide Corporation, Westburnesupply, Inc., Westinghouse Air Brake Technologies Corporation

**Defendant
Expert(s):**

- Howard B. Spielman C.I.H.; Industrial Hygiene; Los Alamitos, CA called by: for Kevin J. McNaughton, Katrina J. Valencia
- Sheldon Rabinovitz C.I.H.; Industrial Hygiene; North Potomac, MD called by: for Thomas J. LoSavio, Vernice T. Louie

Facts:

On Aug. 5, 2011, plaintiffs' decedent Thomas Hubbard was diagnosed with mesothelioma, an aggressive, incurable cancer that often stems from exposure to asbestos. Hubbard previously worked with asbestos cement pipes from 1959 through 1989. He passed away on Oct. 6, 2011.

The decedent's second wife, plaintiff Shirley Hubbard, and adult children, plaintiffs Thomas Glenn Hubbard, Jr., Cynthia Marment, and Ann Marie Hensley, sued the water companies that contracted with Hubbard's employers to install underground water pipe, California Water Service Co. and San Jose Water Co., and several other companies. The decedent's family alleged that he was exposed to asbestos while working with the asbestos-containing cement pipes and that the decedent's employers and others should have known about the dangerous condition, but failed to warn him.

Several defendants settled with the decedent's family and/or were let out of the case. At the time of jury selection, the only defendants left were California Water Service Co. and San Jose Water Co. In addition, Marment, who was a descendant of the decedent, refused to join in the litigation and, therefore, under California law, was named as a nominal defendant. However, Marment did not appear at the time of trial, so Judge Brad Seligman ordered Marment to be aligned with the other plaintiffs.

Plaintiffs' counsel noted that both California Water Service and San Jose Water are investor-owned water companies whose activities, including the selection of materials for installation, are regulated by the California Public Utilities Commission. Counsel also noted that the decedent worked for an underground contractor that was hired by California Water Service to install asbestos-containing pipe for it between 1959 and 1974, and worked for an underground contractor that was hired by San Jose Water to install asbestos-containing pipe for it between 1974 and 1989. Thus, plaintiffs' counsel argued that California Water Service and San Jose Water negligently provided defective equipment to install, which caused or contributed to the decedent's injury.

Defense counsel contended that the decedent was an employee of an independent contractor hired by California Water Service and San Jose Water and, therefore, under the Privette doctrine, California Water Service and San Jose Water had no duty to him. Counsel for San Jose Water also argued that the amount of asbestos exposure that allegedly occurred on the jobs post-1974 was trivial, insignificant, and not enough to contribute to the decedent's disease. In addition, counsel for both California Water Service and San Jose Water contended that Hubbard's employer knew of the dangers of asbestos before, or at the same time as, the defendants did and, therefore, California Water Service and San Jose Water could have no liability under the Kinsman case.

Injury: Thomas Hubbard was diagnosed with mesothelioma on Aug. 5, 2011, and he ultimately died on Oct. 6, 2011. He is survived by his second wife, adult son, and two adult daughters.

The decedent's family sought recovery of wrongful death damages. The parties stipulated that if liability were established, economic damages would total \$296,743.29.

Defense counsel claimed that Marment refused to participate in the trial, but was still an indispensable party under the wrongful death statute. Counsel also noted that Hensley testified that she had not seen her father in 15 years, had only joined the lawsuit to support her stepmother and brother, and, thus, sought no damages.

Result: The jury found that California Water Service and San Jose Water owned the asbestos-cement pipe that was installed by the decedent's employer and that it contained an unsafe concealed condition. It also found that California Water Service and San Jose Water knew of the unsafe concealed condition and that the decedent's employer did not know of the unsafe concealed condition before, or at the same time as, California Water Service and San Jose Water did. However, the jury found that the decedent's employer could have known about the unsafe condition before, or at the same time as, the water companies knew. Thus, the jury found in favor of both California Water Service and San Jose Water, and rendered a defense verdict.

Trial Information:

Judge: Brad Seligman

Demand: \$150,000 to California Water Service Co.; \$500,000 to San Jose Water Co.

Offer: \$50,000 from California Water Service Co.; \$10,000 from San Jose Water Co.

Trial Length: 5 weeks

Trial Deliberations: 5 hours

Jury Vote: 9-3 for California Water Service Co.; 10-2 for San Jose Water Co.

Post Trial: Plaintiffs' counsel noted that the court refused to instruct the jury on CACI 1009D, titled "Liability to Employees of Independent Contractors for Unsafe Conditions-Defective Equipment," claiming that the asbestos cement pipe it provided to the decedent's employer was not "equipment." Instead, the court instructed on CACI 1009A, "Liability to Employees of Independent Contractors for Unsafe Concealed Conditions." Thus, plaintiffs' counsel moved for a new trial and plans to appeal.

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel, and counsel for California Water Service Co. and San Jose Water Co. Counsel for the remaining defendants were not asked to contribute.

Writer Priya Idiculla

Asbestos in cigarette filters caused cancer, plaintiff alleged

Type: Verdict-Plaintiff

Amount: \$1,369,680

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):

- *other* - loss of society; loss of consortium
- *cancer* - mesothelioma

Case Type:

- *Products Liability* - Tobacco; Asbestos; Design Defect; Failure to Warn
- *Fraud* - Fraudulent Concealment

Case Name: Donat Lenney and Monica Lenney v. Armstrong International, Inc., Asbestos Corporation, LTD, Bondex International, Inc., Certainteed Corporation, Crown, Cork & Seal, individually and as successor-in-interest to Mundet Cork, Custom Building Products, DAP Inc., Garlock Sealing Technologies, LLC individually and as successor-in-interest to Garlock, Inc., General Electric Company, Hollingsworth & Vose Company, Honeywell International, Inc. formerly known as Allied Signal, Inc., individually and as successor-in-interest to The Bendix Corporation, Lorillard Tobacco Company, Minton's Lumber and Supply Company, San Francisco Gravel Co., Inc., Soco-West, Inc. formerly known as Brenntag West, Inc., formerly known as Soco-Lynch Corporation, individually and as successor-in-interest to Western Chemical & Manufacturing Company, Union Carbide Corporation, Viacom, Incorporated, as successor-by-merger to CBS Corporation, Westinghouse Electric Corporation and Does 1 through 300, inclusive, No. CGC-10-275529

Date: March 03, 2011

Plaintiff(s):

- Donat Lenney (Male)
- Monica Lenney (Female)

**Plaintiff
Attorney(s):**

- William A. Levin; Levin, Simes, Kaiser & Gornick, L.L.P.; San Francisco CA for Donat Lenney, Monica Lenney
- Laurel L. Simes; Levin, Simes, Kaiser & Gornick, L.L.P.; San Francisco CA for Donat Lenney, Monica Lenney
- Timothy F. Pearce; Levin, Simes, Kaiser & Gornick, L.L.P.; San Francisco CA for Donat Lenney, Monica Lenney

Defendant(s):

- DAP Inc.
- Certainteed Corporation
- Custom Building Products
- General Electric Company
- Asbestos Corporation, LTD
- Lorillard Tobacco Company
- Union Carbide Corporation
- Bondex International, Inc.
- Hollingsworth & Vose Company
- Armstrong International, Inc.
- San Francisco Gravel Co., Inc.
- Westinghouse Electric Corporation
- Minton's Lumber and Supply Company
- Viacom, Incorporated, as successor-by-merger to CBS Corporation
- Crown, Cork & Seal, individually and as successor-in-interest to Mundet Cork
- Garlock Sealing Technologies, LLC individually and as successor-in-interest to Garlock, Inc.
- Honeywell International, Inc. formerly known as Allied Signal, Inc., individually and as successor-in-interest to The Bendix Corporation
- Soco-West, Inc. formerly known as Brenntag West, Inc., formerly known as Soco-Lynch Corporation, individually and as successor-in-interest to Western Chemical & Manufacturing Company

**Defense
Attorney(s):**

- Ricardo G. Cedillo; Davis, Cedillo & Mendoza, Inc.; San Antonio, TX for Hollingsworth & Vose Company, Lorillard Tobacco Company
- David B. Thorne; Shook, Hardy & Bacon, L.L.P.; Kansas City, MO for Hollingsworth & Vose Company, Lorillard Tobacco Company
- Pro Se for Minton's Lumber and Supply Company
- Randall D. Haimovici; Shook, Hardy & Bacon, L.L.P.; San Francisco, CA for Hollingsworth & Vose Company, Lorillard Tobacco Company
- Andrew J. McElaney Jr.; Nutter, McClennen & Fish, L.L.P.; Boston, MA for Hollingsworth & Vose Company, Lorillard Tobacco Company
- None reported for Armstrong International, Inc., Asbestos Corporation, LTD, Bondex International, Inc., Certainteed Corporation, Crown, Cork & Seal, individually and as successor-in-interest to Mundet Cork, Custom Building Products, DAP Inc., Garlock Sealing Technologies, LLC individually and as successor-in-interest to Garlock, Inc., General Electric Company, Honeywell International, Inc. formerly known as Allied Signal, Inc., individually and as successor-in-interest to The Bendix Corporation, San Francisco Gravel Co., Inc., Soco-West, Inc. formerly known as Brenntag West, Inc., formerly known as Soco-Lynch Corporation, individually and as successor-in-interest to Western Chemical & Manufacturing Company, Union Carbide Corporation, Viacom, Incorporated, as successor-by-merger to CBS Corporation, Westinghouse Electric Corporation

Facts:

In the 1950s, plaintiff Donat Lenney, now 73, was a smoker of filter-tipped Kent cigarettes. In November 2009, he was diagnosed with mesothelioma. Lenney claimed that his cancer was caused by Kent's use of asbestos in its Micronite filters, which he smoked from March 1952 until May 1956.

Lenney initially sued Armstrong International Inc.; Asbestos Corporation LTD; Bondex International Inc.; Certainteed Corporation; Crown, Cork & Seal, individually and as successor-in-interest to Mundet Cork; Custom Building Products; DAP Inc.; Garlock Sealing Technologies LLC, individually and as successor-in-interest to Garlock Inc.; General Electric Company; Hollingsworth & Vose Company; Honeywell International Inc., formerly known as Allied Signal, Inc., individually and as successor-in-interest to The Bendix Corporation; Lorillard Tobacco Company; Minton's Lumber and Supply Company; San Francisco Gravel Co. Inc.; Soco-West Inc., formerly known as Brenntag West Inc., formerly known as Soco-Lynch Corporation, individually and as successor-in-interest to Western Chemical & Manufacturing Company; Union Carbide Corporation; Viacom Incorporated, as successor-by-merger to CBS Corporation; and Westinghouse Electric Corporation.

Armstrong International, Asbestos Corporation, Custom Building Products, DAP, Honeywell International, formerly known as Allied Signal, Inc., individually and as successor-in-interest to The Bendix Corp. and San Francisco Gravel were dismissed from the case. Certainteed Corp. was dismissed with a mutual waiver of costs.

The case only continued against Lorillard Tobacco, the cigarette's manufacturer; Hollingsworth & Vose, the filters' manufacturer; and Minton's Lumber and Supply, which sold the product. The plaintiffs alleged personal injury, strict liability and fraudulent concealment. The fraudulent concealment claim was dismissed against Lorillard and Hollingsworth & Vose, only.

Companies started selling filtered cigarettes in the early 1950s when concerns were raised about tobacco. Lenney alleged that Kent's ads claimed that their Micronite filters could offer a level of health protection. The company used asbestos in the filters until 1957. Lenney alleged that the filter was defectively designed, and released microscopic asbestos fibers into the lungs, and that the defendants failed to warn consumers about this danger.

Lenney argued that the defendants had scientific data proving the high risk of injury or death resulting from asbestos exposure, including mesothelioma, and that despite this knowledge, the cigarette filters were still made and distributed into the stream of commerce.

The defense argued that the filters were safe and that the evidence failed to show that Lenney smoked Kents when they contained asbestos.

Injury: Lenney stopped smoking in 1965, shortly after the United States surgeon general warned of the dangers of cigarettes. He was diagnosed with mesothelioma in November 2009 and had a lung removed in early 2010.

Lenney sought recovery for general damages, medical expenses, loss of income, pre-judgment interest, loss of care, comfort and society, punitive damages and costs of suit.

His wife, Monica Lenney, sought recovery for loss of consortium.

Result: The jury rendered a plaintiffs' verdict. It found that the product failed to perform safely as an ordinary consumer would have expected against Lorillard, Hollingsworth & Vose and Minton's. It also found that the design of the product was a substantial factor in causing harm to Lenney, also against all three defendants.

However, the jury did not find Lorillard or Hollingsworth & Vose negligent in designing or selling the product. Though the jury found that Minton's sold the product knowing that it had risks, despite scientific evidence, the jury found that it did not fail to adequately warn about the potential risks.

The jury assigned a liability of 35 percent to Lorillard, 25 percent to Hollingsworth & Vose, 25 percent to products sold by Minton's and any other asbestos product used during the remodel not supplied, and 15 percent to Minton's.

The jury awarded Donat Lenney \$969,680 in damages and Monica Lenney \$400,000 for her derivative claim, for a total plaintiffs' verdict of \$1,369,680.

Donat Lenney

\$150,000 Personal Injury: Past Medical Cost

\$100,000 Personal Injury: Future Medical Cost

\$169,680 Personal Injury: lost earnings

\$150,000 Personal Injury: household services

\$400,000 Personal Injury: non-economic damages

Monica Lenney

\$400,000 Personal Injury: loss of love, companionship, comfort, care, protection and affection

Trial Information:

Judge: John K. Stewart

Trial Length: 7 weeks

Editor's Comment: This report is based on court documents. Plaintiffs' counsel and defense counsel for Lorillard and Hollingsworth & Vose did not respond to the reporter's phone calls. Minton's Lumber, which was pro se, and remaining defense counsel were not asked to contribute.

Writer Priya Idiculla

Piece of pipe fell three stories, struck handyman in head

Type: Verdict-Plaintiff

Amount: \$158,000

Actual Award: \$134,300

State: California

Venue: San Francisco County

Court: Superior Court of City and County of San Francisco, San Francisco, CA

Injury Type(s):

- *head* - concussion
- *other* - loss of consortium
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Negligence*
- *Premises Liability*

Case Name: Roberto Riobo and Jocelyne Riobo v. Donetta Stafford CROSS-COMPLAINT: Donetta Stafford v. Don Baker, No. CGC02408589

Date: March 09, 2004

Plaintiff(s):

- Roberto Riobo (Male)
- Jocelyne Riobo (Female)

Plaintiff Attorney(s):

- Berne Reuben; Hersh & Hersh; San Francisco CA for Roberto Riobo, Jocelyne Riobo
- Timothy F. Pearce; Hersh & Hersh; San Francisco CA for Roberto Riobo, Jocelyne Riobo

Plaintiff Expert (s):

- Roger Gordon; Construction; Martinez, CA called by: Berne Reuben, Timothy F. Pearce
- Marilyn M. Robertson M.D.; Neurology; San Francisco, CA called by: Berne Reuben, Timothy F. Pearce

Defendant(s):

- Don Baker
- Donetta Stafford

Defense Attorney(s):

- Edward J. Rodzewich; Valerian, Patterson, Field & McGraw; Alameda, CA for Donetta Stafford
- Stephanie Southwick; Valerian, Patterson, Field & McGraw; Alameda, CA for Donetta Stafford
- Donald Baker; Pro Se for Don Baker

Defendant Expert(s):

- Kevin D. Harrington M.D.; Orthopedics; San Francisco, CA called by: for Edward J. Rodzewich, Stephanie Southwick
- Richard Norman; Construction Estimates; San Francisco, CA called by: for Edward J. Rodzewich, Stephanie Southwick

Insurers:

- Farmers Insurance Exchange

Facts:

Plaintiff Roberto Riobo, a handyman and tango instructor, was installing a toilet and sink in a building owned by defendant Donetta Stafford . He had been hired by Don Baker, a building tenant, to perform the work.

Riobo claimed that during the installation process, a section of steel ventilation pipe, which was located three stories above where he was working, came loose, fell and struck him on the head.

Riobo and his wife, Jocelyne, sued Stafford, alleging premises liability and negligence. Stafford then filed a cross-complaint against Baker, seeking indemnity.

The plaintiffs claimed that the pipe came loose because it was held to the rest of the pipe with duct tape. They argued that this constituted an unsafe condition, which Stafford created and of which she either was aware or should have been aware.

Stafford contended that this was a concealed condition, and that she properly maintained and inspected her building. Stafford further contended that she had not authorized Riobo's work. Stafford also claimed that Riobo was comparatively negligent for his injuries, because he was not wearing a hard hat while working. Lastly, she argued that Baker was liable for Riobo's injuries, because he hired Riobo to do the work without her approval and had failed to supervise this work.

Baker contended that he was not at fault for Riobo's injuries, as he had nothing to do with the section of loose pipe.

Injury: Riobo claimed that he suffered a concussion, post-concussive syndrome, and two bulging discs with nerve impingement as a result of the incident. According to plaintiff's counsel, Riobo claimed \$23,000 in past medical expenses and an unspecified amount in past pain and suffering.

Jocelyne made a claim for loss of consortium.

Stafford claimed that Riobo only sustained a mild concussion in the incident. She further claimed that the bulging discs, which were diagnosed three months after the accident, were not related to this incident.

Result: The jury found for the Riobos and awarded them \$158,000. The jury found Stafford 85% liable and Baker 15% liable. Pursuant to Proposition 51, the Riobos were awarded \$134,300. They also received costs and interest.

Defense counsel reported that a judgment against Baker was never written up, because it was believed that it would be impossible to collect any award amount from him.

Trial Information:

Judge: A. James Robertson

Demand: \$150,000 (per plaintiff's counsel); \$485,000 (per defense counsel)

Offer: None

**Trial
Deliberations:** 2 days

Jury Vote: 10-2 liability; 9-3 causation

Post Trial: Stafford has filed an appeal.

Writer Janelle Foskett

Hit-and-Run Driver Not Present At Trial Wins Case Anyway

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Sonoma County

Court: Superior Court of Sonoma County, Santa Rosa, CA

Injury Type(s):

- *other* - laceration
- *face/nose* - fracture, nose

Case Type:

- *Motor Vehicle* - Pedestrian

Case Name: Aaron A. Lofrano v. Patricia M. Pizzo, No. 223693

Date: November 14, 2002

Plaintiff(s):

- Aaron A. Lofrano (Male, 31 Years)

Plaintiff Attorney(s):

- Mark Burton; Hersh & Hersh; San Francisco CA for Aaron A. Lofrano
- Timothy F. Pearce; Hersh & Hersh; San Francisco CA for Aaron A. Lofrano

Plaintiff Expert(s):

- James Huges; Accident Reconstruction; Sonoma, CA called by: Mark Burton,

Defendant(s):

- Patricia M. Pizzo

Defense Attorney(s):

- Debra F. Bogaards; Pave & Bogaards; San Francisco, CA for Patricia M. Pizzo

Defendant Expert(s):

- Richard N. Stuart; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Danville, CA called by: for Debra F. Bogaards

Insurers:

- State Farm Insurance Company

Facts:

On a Sunday, at 3 p.m., plaintiff Aaron Lofrano, a 31-year-old collision repair manager, was standing in his driveway, near the edge of 7901 Lakeville Highway, a main thoroughfare. The plaintiff was attempting to hold onto his dog, Dexter, which had escaped from the plaintiff's front yard through an opening in the gate. However, the dog got away and bolted into northbound traffic into the path of defendant Patricia Pizzo, a retired emergency room nurse and a 71-year-old widow. The defendant struck the dog, which was thrown over 15 feet and died. The Honda's right-front fender then struck the plaintiff. At the scene, he was bleeding profusely and was taken by helicopter to Santa Rosa Memorial Hospital.

The defendant left the scene of the accident without leaving any identifying information. Witnesses from southbound traffic copied down her license plate number. Sergeant Rozenoff of the Santa Rosa Police Department located the Honda at her home that evening. Sergeant Rozenoff inspected her Honda and discovered that portions of the front bumper had been wiped clean.

The plaintiff alleged that the defendant was inattentive since she saw the dog and the plaintiff running in the driveway, and should have been able to see them from more than 200 feet away. Both accident reconstruction experts agreed that had the defendant slammed on her brakes when she first saw them, she would have been able to avoid the accident. The plaintiff also believed that since the defendant left the scene and removed evidence from her bumper, that these were an inference of her negligence.

The defendant, who was not present at trial, contended that when she perceived the hazard when the dog ran out into her path of travel, and by that time she could not avoid the accident. The defendant further contended that she did not know that her car also hit the plaintiff. She testified that she left the scene 20 minutes after the collision occurred and that she was concerned about her vehicle being stopped in the middle of the highway. She denied wiping her bumper clean afterward.

Injury:

The plaintiff sustained a fractured nose, requiring surgery; headaches; dizziness; loss of consciousness; a 6.5 cm L-shaped laceration across the forehead, requiring stitches and leaving a permanent scar; left wrist pain and neck pain.

The defendant stipulated that \$26,250 in medical bills were reasonable and necessary.

The plaintiff claimed \$3,500 in wage loss for 3 1/2 weeks off work.

Result:

The jury returned a defense verdict.

Defense counsel Debra F. Bogaards noted that the judge allowed two jury instructions that were potentially very difficult for the defense to overcome: (1) The defendant leaving the scene ("hit and run") is an inference of liability; and (2) spoliation of evidence.

Trial Information:

Judge: Knoel L. Owen

Demand: \$14,500 CCP §998

Offer: None

Trial Length: 5 days

**Trial
Deliberations:** 5.75 hours

Post Trial: The defendant has filed a memorandum of costs for over \$7,000.

Writer Mari Pham