



Historical mine operators claimed county revoked right to mine

Type: Verdict-Plaintiff

Amount: \$106,875,000

State: California

Venue: Federal

Court: United States District Court, Eastern District, Sacramento, CA

Case Type:

- *Civil Rights* - 42 USC 1983
- *Constitutional Law* - Due Process; Fourteenth Amendment

Case Name: Joseph Hardesty and Yvette Hardesty v. Sacramento Metropolitan Air Quality Management District, David Grose, James Goldstene, Office of Mine Reclamation, Dennis O'Bryant, Gay Norris, California State Mining and Geology Board, Steve Testa, Zachary Simmons, California Department of Fish and Game, Liz Gregory, Sacramento County, Robert Sherry, Cindy Storelli, Leighann Moffitt, Bret M. Koehler, Curt Taras, and United States Army Corps of Engineers / Jay L. Schneider, Susan J. Schneider, Jake J. Schneider, Leland A. Schneider, Katherine A. Schneider, Leland H. Schneider and Jared T. Schneider v. County of Sacramento, Roger Dickinson, Robert Sherry, Jeff Gamel, Cindy Storelli, Leighann Moffitt, Tammy Derby, Carl Simpson, and David Bieber, No. 2:10-cv-02414-KJM-KJN; 2:12-cv-02457-KJM

Date: March 21, 2017

Plaintiff(s):

- Joseph Hardesty (Male)
- Yvette Hardesty (Female)
- Jay L. Schneider (Male)
- Jake J. Schneider (Male)
- Jared T. Schneider (Male)
- Susan J. Schneider (Female)
- Leland A. Schneider (Male)
- Leland H. Schneider (Male)
- Katherine A. Schneider (Female)

**Plaintiff
Attorney(s):**

- G. David Robertson; Robertson, Johnson, Miller & Williamson; Reno NV for Joseph Hardesty, Yvette Hardesty
- Glenn W. Peterson; Millstone, Peterson & Watts, LLP; Roseville CA for Jay L. Schneider, Susan J. Schneider, Jake J. Schneider, Leland A. Schneider, Katherine A. Schneider, Leland H. Schneider, Jared T. Schneider
- Collin J. Cox; Yetter Coleman LLP; Houston TX for Joseph Hardesty, Yvette Hardesty
- R. Paul Yetter; Yetter Coleman LLP; Houston TX for Joseph Hardesty, Yvette Hardesty
- Robert K. Ellis; Yetter Coleman LLP; Houston TX for Joseph Hardesty, Yvette Hardesty
- Richard M. Ross; Law Office of Richard M. Ross; Lincoln CA for Jay L. Schneider, Susan J. Schneider, Jake J. Schneider, Leland A. Schneider, Katherine A. Schneider, Leland H. Schneider, Jared T. Schneider

**Plaintiff Expert
(s):**

- Don Olsen P.E., P.G.; Geotechnical Engineering; Chico, CA called by: Glenn W. Peterson, R. Paul Yetter
- Jeff Light P.G.; Geology; Sacramento, CA called by: Glenn W. Peterson, R. Paul Yetter
- Cheryl Bly-Chester Ph.D., P.E.; Environmental; Roseville, CA called by: Glenn W. Peterson, R. Paul Yetter
- Gilbert Coleman Ph.D.; Economics; Reno, NV called by: Glenn W. Peterson, R. Paul Yetter

Defendant(s):

- Curt Taras
- Gay Norris
- Jeff Gamel
- David Grose
- Liz Gregory
- Steve Testa
- Tammy Derby
- Carl Simpson
- David Bieber
- Robert Sherry
- Cindy Storelli
- Bret M. Koehler
- Dennis O'Bryant
- James Goldstene
- Roger Dickinson
- Zachary Simmons
- Leighann Moffitt
- Sacramento County
- Office of Mine Reclamation
- United States Army Corps of Engineers
- California Department of Fish and Game
- California State Mining and Geology Board
- Sacramento Metropolitan Air Quality Management District

**Defense
Attorney(s):**

- Mark P. O'Dea; Longyear, O'Dea & Lavra, LLP; Sacramento, CA for Sacramento County, Robert Sherry, Roger Dickinson, Jeff Gamel
- Richard E. Morton; Haight Brown & Bonesteel LLP; Santa Ana, CA for Sacramento County, Robert Sherry, Roger Dickinson, Jeff Gamel
- Gregory P. O'Dea; Longyear, O'Dea & Lavra, LLP; Sacramento, CA for Sacramento County, Robert Sherry, Roger Dickinson, Jeff Gamel
- None reported for Sacramento Metropolitan Air Quality Management District, David Grose, James Goldstene, Office of Mine Reclamation, Dennis O'Bryant, Gay Norris, California State Mining and Geology Board, Steve Testa, Zachary Simmons, California Department of Fish and Game, Liz Gregory, Cindy Storelli, Leighann Moffitt, Bret M. Koehler, Curt Taras, United States Army Corps of Engineers, Tammy Derby, Carl Simpson, David Bieber

**Defendant
Expert(s):**

- Steven J. Hazel C.P.A.; Valuation; Los Angeles, CA called by: for Mark P. O'Dea, Gregory P. O'Dea

Facts:

In April 2009, and again in April 2010, plaintiffs Joseph Hardesty and Yvette Hardesty, operators of the "Schneider Historic Mine," a sand-and-gravel mine located off of Meiss Road, in the Sloughhouse area of eastern Sacramento County, were ordered to shut down the mine until they could obtain a use permit and rezone.

The Hardestys leased the mine from the Schneider family cattle ranching and mining operation, which had been mining on the land with "vested rights," and with approval from Sacramento County, without controversy since the 1930s. However, in April 2009 and April 2010, the county ordered a shutdown of the Hardestys' mine because their "vested rights" no longer protected the operation. As a result, the mine needed to secure a use permit and rezone. The Hardestys claimed that the county closed their mine because it was unduly influenced by Teichert Construction, a gravel-mining company that mined near the Schneider land in eastern Sacramento County, which allegedly wanted the Schneider Historic Mine taken out as a business competitor.

The Hardestys sued Sacramento County, the Sacramento Metropolitan Air Quality Management District, David Grose, James Goldstene, the Office of Mine Reclamation, Dennis O'Bryant, Gay Norris, the California State Mining and Geology Board, Steve Testa, Zachary Simmons, the California Department of Fish and Game, Liz Gregory, Robert Sherry, Cindy Storelli, Leighann Moffitt, Bret Koehler, Curt Taras, and the United States Army Corps of Engineers. The Hardestys alleged that the defendants' actions constituted violations of their procedural and substantive due process rights under the 14th Amendment.

The Schneider family, which owned the land and consisted of Jay Schneider, Susan Schneider, Jake Schneider, Leland A. Schneider, Katherine Schneider, Leland H. Schneider, and Jared Schneider, also brought a separate action against the county of Sacramento, Sherry, Storelli, and Moffitt. In addition, they sued Roger Dickinson, Jeff Gamel, Tammy Derby, Carl Simpson, and David Bieber. The Schneider family also alleged that the defendants' actions constituted violations of their procedural and substantive due process rights under the 14th Amendment.

The matters were ultimately joined for trial.

Several of the defendants were dismissed either by the court or the plaintiffs prior to trial. In addition, defense counsel for Dennis O'Bryant, a former state employee of the Office of Mine Reclamation, moved for summary judgment, but the motion was denied. As a result, O'Bryant filed an appeal regarding the district court's decision to deny his summary judgment motion, and the district court subsequently stayed the claims against him in light of his interlocutory appeal. Thus, the matter proceeded to trial against only the county, former county supervisor Roger Dickinson, retired county planning director Robert Sherry, and retired county aggregate resource manager Jeff Gamel.

Plaintiffs' counsel contended that county officials routinely inspected the Schneider Historic Mine and found no violations or improprieties until Teichert complained in mid-2007. Counsel contended that, thereafter, county officials met regularly with Teichert to discuss ways to force the mine to secure a costly use permit, amend its county-approved reclamation plan, and post a much larger reclamation deposit. Counsel contended that as a result, planning officials, allegedly acting on complaints from Teichert, found the plaintiffs' operation in violation of zoning ordinances.

Plaintiffs' counsel asserted that the county demanded that the Schneiders obtain a conditional use permit, secure an amended reclamation plan, and post a much greater bond to reclaim the land, jumping from \$164,000 to \$8.8 million. Thus, counsel argued that Teichert's newer mines required expensive permits and was envious that the Schneider Historic Mine enjoyed a vested right and was able to offer better prices to customers of aggregate.

The county's counsel contended that the Schneider plaintiffs twice challenged the board of supervisors' action, which denied the Schneiders' appeal, in Sacramento Superior Court, but that the Schneiders wound up dropping their cases. Counsel also contended that the county never revoked the plaintiffs' vested right to mine, rather, the county required the plaintiffs to apply for a conditional use permit based on the undisputed evidence that the plaintiffs' mining operation had expanded well beyond the parameters covered by the plaintiffs' vested right.

Defense counsel noted that in 1994, the county recognized a vested right to mine on only 300 acres of the plaintiffs' 3500 acres, based on historical evidence provided by the plaintiffs that established limited historical mining occurring on those portions of the property. In 2002, the plaintiffs submitted a reclamation plan for approval by the county, claiming that they were conducting a small mining operation, consisting of three to four acres per year, of limited volume and production. Within four years, the plaintiffs had expanded the mining operation, excavating in excess of 80 acres of deep pits adjacent to the south bank of the Cosumnes River and ramping up production to 20 times the previously stated limited volume of production. Defense counsel contended that as a result, the County Board of Supervisors made a determination that the expansion, enlargement, intensification, and increased volume of production were not covered by the previous recognition of a vested right. Thus, under the authority of the California Supreme Court case Hansen Brothers Enterprises Inc. v. Board of Supervisors (1996), the Board of Supervisors determined that the mining operation required a conditional use permit and a rezone, as the area where the plaintiffs' property is located was not zoned for surface mining under the county's zoning code. However, defense counsel argued that, consistent with the plaintiffs' longstanding practice of avoiding compliance with zoning and other state law and regulations, the plaintiffs refused to apply for a conditional use permit and a rezone. Accordingly, counsel argued that at no time did the county deny the conditional

use permit, as the plaintiffs never applied for one.

Injury:

Plaintiffs' counsel contended that the county ultimately prevented the Hardestys from continuing their mining business on the Schneider land, including selling valuable stockpiles of aggregate. Counsel argued that this deprived the two families of millions of dollars in past and future lost profits and royalties, leaving the aggregate deposits on the land worthless and the mining business devastated and closed down.

Thus, plaintiff's counsel argued that the plaintiffs lost their business and source of mining income in the amount of up to \$80 million for the Hardestys and up to \$40 million for the Schneiders. Defense counsel noted that the damages sought by the plaintiffs arose from the alleged inability to mine over the next 50 to 100 years.

The defense's valuation expert estimated that the plaintiffs' losses were less than \$5 million in total.

Result:

The jury found that the county violated all of the plaintiffs' procedural due process rights and substantive due process rights. It also found that the county violated the Schneiders' rights to petition the government for redress, and that Sherry's conduct harmed the Hardestys and was malicious, oppressive or in reckless disregard of the Hardesty's rights. The jury further found that Sherry, Gamel, and Dickinson's conduct harmed the Schneiders and was malicious, oppressive or in reckless disregard of the Schneiders' rights.

On March 21, 2017, the jury determined that the plaintiffs' damages totaled \$106,875,000, which was comprised of \$105,000,000 in actual damages and \$1,875,000 in punitive damages.

In order to obtain final judgment against the defendants at trial, the plaintiffs moved to sever all adjudicated claims from the remaining claims against O'Bryant. However, since filing the motion, the plaintiffs settled with O'Bryant. As a result, the Ninth Circuit dismissed O'Bryant's appeal. In addition, the trial court dismissed the remaining claims against defendants O'Bryant, Norris, Testa, Koehler and Taras, with prejudice. Thereafter, judgment was entered in accordance with the jury verdict on June 9, 2017.

Trial Information:

Judge: Kimberly J. Mueller

Trial Length: 18 days

Trial Deliberations: 1.5 days

Jury Vote: Unanimous

Jury Composition: 5 male, 4 female

Post Trial: The county contended that the federal court lacked jurisdiction to hear the plaintiffs' claims, as the plaintiffs had failed and refused to exhaust state judicial remedies available under C.C.P. § 1094.5, and because the decision of the Board of Supervisors requiring a conditional use permit was entitled to preclusive and binding effect, and could not be re-litigated or reconsidered by federal courts. Thus, the county will file post-trial motions, seeking a reversal of the verdict.

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel and defense counsel for the county, Gamel, Dickinson and Sherry. Information was also gleaned from court documents. Counsel for the remaining defendants were not asked to contribute.

Writer Priya Idiculla

Developer: Fund manager abandoned joint partnership

Type: Verdict-Defendant

Amount: \$50,356,784

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Central, CA

Case Type:

- *Partnership* - Dissolution; Joint Venture
- *Contracts* - Breach of Joint Venture Agreement

Case Name: CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC, CFRI Hollywood II, LLC v. NCA Argyle LP, NCA Hollywood Argyle LLC, Newport Capital Advisors LLC / Newport Capital Advisors LLC v. Commonfund Realty, Inc., CRI Property Trust, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, NCA-CFRI 1606 Highland, LLC, CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas, LLC, CFR Investors Management, LLC, Commonfund Realty Investors, LLC, No. BC412918

Date: October 14, 2011

Plaintiff(s):

- CFRI Hollywood, LLC
- CFRI Palladium, LLC
- CFRI Hollywood II, LLC
- CFRI Cherokee Las Palmas, LLC
- CFRI-NCA Hollywood Venture, LLC
- CFRI-NCA Palladium Venture, LLC
- CFRI-NCA Hollywood Venture II, LLC
- CFRI-NCA Cherokee Las Palmas Venture, LLC

**Plaintiff
Attorney(s):**

- Roger P. Thomasch; Ballard Spahr, LLP; Denver CO for CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC, CFRI Hollywood II, LLC
- Alan S. Petlak; Ballard Spahr, LLP; Los Angeles CA for CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC, CFRI Hollywood II, LLC
- David M. Stauss; Ballard Spahr, LLP; Denver CO for CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC, CFRI Hollywood II, LLC
- Rosina Hernandez; Ballard Spahr, LLP; Los Angeles CA for CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC, CFRI Hollywood II, LLC

**Plaintiff Expert
(s):**

- Randy Sugarman C.P.A.; Economics; San Francisco, CA called by: Roger P. Thomasch, Alan S. Petlak, David M. Stauss, Rosina Hernandez

Defendant(s):

- NCA Argyle LP
- NCA Hollywood Argyle LLC
- Newport Capital Advisors LLC

**Defense
Attorney(s):**

- Wayne R. Gross; Greenberg Traurig, LLP; Irvine, CA for Newport Capital Advisors LLC, NCA Argyle LP, NCA Hollywood Argyle LLC
- Alan A. Greenberg; Greenberg Traurig, LLP; Irvine, CA for Newport Capital Advisors LLC, NCA Argyle LP, NCA Hollywood Argyle LLC

**Defendant
Expert(s):**

- Steven J. Hazel C.P.A.; Valuation; Denver, CO called by: for Wayne R. Gross, Alan A. Greenberg

Facts:

Plaintiffs CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas Venture, LLC, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, CFRI Palladium, LLC, CFRI Cherokee Las Palmas, LLC, CFRI Hollywood, LLC and CFRI Hollywood II, LLC alleged that they were the owners of four properties in Hollywood, Calif., and that they entered into negotiations with Newport Capital Advisors LLC and its affiliates for the redevelopment of the properties and to admit an NCA affiliate as a member of the limited liability companies that held the title to the properties. The CFRI entities further alleged that none of the parties entered into any written agreement for a joint venture, but, instead, entered into an oral contract whereby NCA rendered services and received payments for those services.

Plaintiffs sued Newport Capital Advisors, NCA Argyle LP and NCA Hollywood Argyle LLC, seeking declaratory relief that they had no written contractual obligations to enter into any ventures with the defendants, that they could terminate their oral contracts without any liability to the defendants, that they were the sole owners of the four properties, and that the defendants had no interest in the properties.

Newport Capital Advisors LLC then cross-complained against Commonfund Realty Inc., CRI Property Trust, CFR Investors Management, LLC, and Commonfund Realty Investors, LLC, for breach of fiduciary duties. It additionally made a cross-claim against Commonfund Realty, Inc., CRI Property Trust, CFRI-NCA Hollywood Venture, LLC, CFRI-NCA Hollywood Venture II, LLC, NCA-CFRI 1606 Highland, LLC, CFRI-NCA Palladium Venture, LLC, CFRI-NCA Cherokee Las Palmas, LLC, CFR Investors Management, LLC and Commonfund Realty Investors, LLC for dissolution of joint ventures, and for recovery of the reasonable value of services.

Shortly before trial, the plaintiffs dropped their entire complaint, and Newport Capital dropped its claims for dissolution of joint ventures. The trial subsequently proceeded on Newport Capital's cross-complaint for breach of fiduciary duties and reasonable value of services.

Newport Capital contended that in 2005, it partnered with Commonfund Realty in a joint venture to acquire, co-own and redevelop a property at 1800 N. Argyle Avenue, in Hollywood. It also contended that, in 2006 and 2007, the same parties partnered in a joint venture to acquire and redevelop three additional properties in Hollywood, including the Hollywood Palladium concert venue. Newport Capital alleged that it was from the joint venture by Commonfund Realty in March 2008, after the four properties had appreciated in value by over \$35 million, and that Commonfund Realty converted the properties to its own sole ownership. Newport Capital alleged that from March 2008 until June 2009, it was treated by Commonfund Realty as a mere contractor and that Commonfund Realty intended to replace it with another developer.

Commonfund Realty denied that its relationship with Newport Capital was a joint venture and denied that it breached any fiduciary duties. Instead, it asserted that it had lost over \$60 million in connection with its ownership of the four properties, and asserted that if Newport Capital had been in a joint venture its interest in the properties would have become worthless due to the downturn in the economy.

Injury: Newport Capital sought the value of its interest in the claimed joint venture as of the date of the alleged repudiation. It asserted that the repudiation was on March 18, 2008, and that the value of its interest in the venture on that date was \$16,375,968. Newport Capital sought recovery of this amount, plus prejudgment interest and punitive damages.

Result: At the request of the cross-defendants, the trial was bifurcated with the amount of any punitive damages to be determined in a second phase of the trial.

On Oct. 13, 2011, the jury returned a verdict for Newport Capital, finding that there was a joint venture, that the cross-defendants breached their fiduciary duties, that the amount of compensatory damages was \$16,375,968, and that the cross-defendants were liable for punitive damages. The court directed verdict in favor of the cross-defendants on Newport Capital's claim for reasonable value of services.

After the second phase of the trial, on Oct. 14, 2011, the jury returned a verdict for punitive damages in favor of Newport Capital, with \$16,823,350 awarded against Commonfund Realty Investors, LLC; \$16,823,350 awarded against CRI Property Trust; \$84,116 awarded against CFR Investors Management, LLC; and \$250,000 awarded against Commonfund Realty, Inc.

Thus, the total amount of punitive damages awarded was \$33,980,816, making the total verdict (consisting of compensatory and punitive damages) \$50,356,784.

Trial Information:

Judge: Mary H. Strobel

Trial Length: 19 days

Trial Deliberations: 6.5 hours

Jury Vote: 12-0 as to liability for compensatory and punitive damages; 9-3 as to amount of compensatory and punitive damages

Jury Composition: 9 male, 3 female

Editor's Comment: This report is based on information that was provided by counsel for Newport Capital Advisors, NCA Argyle LP and NCA Hollywood Argyle LLC. Counsel for the CFRI entities did not respond to the reporter's phone calls.

Writer Priya Idiculla

Plaintiffs disputed amount of gift tax due

Type: Verdict-Plaintiff

Amount: \$0

State: Florida

Venue: Federal

Court: U.S. District Court for the Middle District of Florida, Orlando, FL

Case Type:

- *Taxation - Gift Tax*

Case Name: James P. Lyden and Kristen M. Lyden v. The United States of America, No. 6:07-cv-01879-GAP-GJK

Date: September 02, 2009

Plaintiff(s):

- James P. Lyden (Male)
- Kristen M. Lyden (Female)

Plaintiff Attorney(s):

- Arthur J. Ranson III; Shuffield, Lowman & Wilson, P.A.; Orlando FL for James P. Lyden, Kristen M. Lyden

Plaintiff Expert(s):

- Vincent Shea CPA; Taxation; Jacksonville, FL called by: Arthur J. Ranson III

Defendant(s):

- United States of America

Defense Attorney(s):

- Richard D. Euliss; US Department of Justice - Tax Division; Washington, DC for United States of America

Defendant Expert(s):

- Steven J. Hazel CPA; Taxation; Denver, CO called by: for Richard D. Euliss

Facts: Plaintiffs James and Kristal Lyden disputed the amount of gift tax due as a result of transfers of limited partnership interests in tax years 2000 and 2001.

James and Kristal Lyden sued the United States, challenging the application of the taxes.

Lyden Properties was formed in July 2000 for the buying and selling of real estate holdings in Florida and Colorado. The plaintiffs stated they transferred shares in the limited partnership to various members of their families.

The plaintiffs stated that the transferred shares generated a total of \$659 in taxes. The shares were not valuable as they contained restrictions on transfer. The shares were also minority interests lacking any control of the business activities of the limited partnership.

Defense counsel claimed that the real gift was not the transferred shares, but rather a gift in the real estate owned by the limited partnership. Defense counsel contended that a 34 percent discount was made due to the lack of marketability of the shares.

Injury: The plaintiffs sought a refund of \$294,779.94 in refunded taxes based on a 47.5% valuation discount.

Result: The jury returned plaintiff's verdict, finding their theory of valuation was correct.

Trial Information:

Judge: Gregory Presnell

Trial Length: 2 days

Trial Deliberations: 48 minutes

Editor's Comment: This report is based on information provided by plaintiff's counsel and court documents.

Writer Stephen DiPerte