

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

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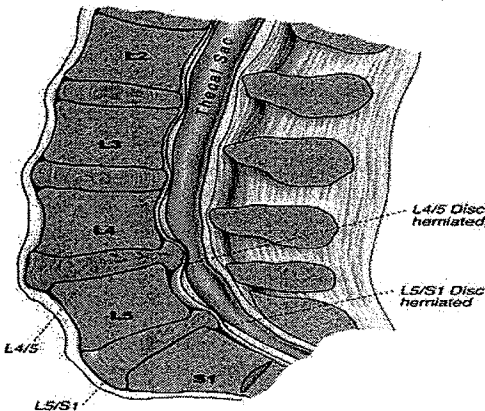
Notable Cases in This Week's Issue...

	Result	TR#
Settlement—Nanny transporting children causes collision	\$1,100,000	29
Settlement—Woman fractures hip in parking lot fall	\$192,515	23
Jury finds for defense on asbestos claim	Defense	1
Attorneys on the hook for uncollectible judgment	\$750,865	26
Man loses vision in right eye after failed surgery	Defense	20
Indian tribe claims breach of agreement to build casino	\$30,000,000	7
Starbucks' employee alleges sexual harassment	\$257,000	18
<u>Autism blamed on exposure to pesticides in utero</u>	<u>Defense</u>	<u>11</u>
Settlement—Steering mechanism recall arrives too late	\$75,000	25

Settlement: Woman suffers disc bulge in vehicle collision

Trial Report No.: 13

Detailed Illustration: Page 4



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COMMENTS

According to plaintiff: The complaint was filed on Feb. 15, 2005.

26 TD 10TH 11

Boy alleges pesticides caused autism**ENVIRONMENTAL**

Toxic Tort

PRODUCTS LIABILITY

Chemicals/Toxins

LOS ANGELES COUNTY SUPERIOR COURT

Roberti v. Andy's Termite & Pest Control, Docket number: YC037356, Torrance. Judge: Robert T. Hight. Trial type: Jury: 3 months. Verdict/Judgment date: 5/22/2007.

VERDICT: DEFENSE

Vote: Not reported. Deliberations: 4 days.

COUNSEL

Plaintiff: Steven D. Archer, Robins, Kaplan, Miller & Cerisi, Los Angeles. David Martinez, Robins, Kaplan, Miller & Cerisi, Los Angeles.

Defendant: Alan H. Lazar, Charlston, Revich & Chamberlin, Los Angeles. Thomas S. Flynn, Charlston, Revich & Chamberlin, Los Angeles.

FACTS/CONTENTIONS

According to defendant: In July 1989, defendant Andy's Termite & Pest Control applied 20 gallons of a 1% solution of an EPA-approved organophosphate termiticide called "Dursban" in the sub-area soil of plaintiff's mother, Mary Roberti's residence, a 5-unit complex in Redondo Beach. A year later, defendant applied one gallon of the 1% Dursban solution in the sub-area soil. In November 1992, during plaintiff's first trimester of pregnancy, Mary Roberti went into the sub-area for about 10 minutes, twice a week. Mary Roberti gave birth to plaintiff Michael Roberti, in August 1993; there were no physical symptoms of pesticide exposure in the mother during pregnancy, and the boy's delivery was normal. At three years of age, plaintiff was diagnosed as high-functioning autistic. Plaintiff attended regular preschool for two years before enrolling in kindergarten at American Martyrs School in Manhattan Beach in 1998. Plaintiff, now 13 and in 7th grade, has remained at the same school, and received all A's and B's, due to numerous accommodations and modifications that allowed him to keep up with his classmates and move on to the next grade. Plaintiff's measured IQ on standardized testing is in the low average range. Early years of intensive professional treatment and therapies for speech and socialization deficits produced significant improvements.

Plaintiff filed suit in April 2000, when he was seven years old. Plaintiff alleged that in 1989 and 1991, defendant negligently misapplied and over-applied Dursban in the sub-area, and failed to give statutory cautionary notice to the family in advance of the applications. Plaintiff claimed theories of strict liability under "ultra-hazardous activity," and strict product liability. Plaintiff claimed that under each of these theories, in-utero injury resulted from his mother inhaling Dursban vapors, which crossed the placenta and caused him to suffer physical in-utero brain damage. Plaintiff alleged that his brain damage was evident in a 1998 CT scan taken when plaintiff was five years old. Plaintiff contended, therefore, that his proper diagnosis is "chronic static encephalopathy," together with the DSM-IV Manual diagnosis, "Pervasive Developmental - Not Otherwise Specified," (PDD-NOS).

Defendant denied it was negligent; that it did not fail to give statutory notices; and that in applying Dursban according to EPA-approved instructions, the activity was not "ultra-hazardous." Defendant contended that even if fault were found under any of plaintiff's theories of liability, defendant's applications of Dursban did not cause plaintiff's condition, because plaintiff's mother had no exposure to Dursban while pregnant, and, therefore, neither did the fetus. Furthermore, defendant contended that the brain images in the 1998 CT scan were normal. Defendant asserted that there was no "causation," because plaintiff's proper diagnosis was "autism," and the cause of autism is presently unknown, but believed to be genetic. Defendant added that plaintiff would be able to finish high school, go to college with accommodations and modifications, live independently, and be gainfully employed in a wide variety of occupations as an adult.

CLAIMED INJURIES

According to defendant: Autism.

CLAIMED DAMAGES

According to defendant: \$2 million past general damages; \$10 million future general damages; \$450,000 past medical expenses; \$6 million future care and support; \$1.6 million lost future income.

SETTLEMENT DISCUSSIONS

Not reported.

EXPERTS

Plaintiff: Peter Formuzis, Ph.D., economist, Formuzis, Pickersgill & Hunt Inc., Santa Ana (714) 542-8853. Ronald S. Gabriel, M.D., neurologist, Los Angeles (310) 277-9533. George K. Henry, Ph.D., neuropsychologist, Los Angeles Neuropsychology Group, Los Angeles (310) 457-0777. Jan Roughan, life care planner, Roughan & Associates, Arcadia (625) 462-9675. Mohamed Abou-Donia, Ph.D., chemist, Duke University, Durham, NC. John Van Hooser, termite consultant, San Jose (408) 536-0558. Jack D. Thrasher, Ph.D., toxicologist/chemist, NM. Edward Ritvo, M.D., psy-

chiatrist, UCLA, Los Angeles (310) 476-5109. Susan Fosnot, Ph.D., speech therapist. Jennifer Harris, Ph.D., education expert.

Defendant: Ira T. Lott, M.D., neurologist, Irvine (714) 456-5784. Edward Faeder, Ph.D., toxicologist/chemist, QEP Environmental and Health Management Inc., Diamond Bar (909) 396-3131. Gideon Koren, M.D., pediatric toxicologist, The Hospital for Sick Children, Toronto, Canada. Susan Schmidt-Lackner, M.D., psychiatrist, Los Angeles (310) 825-0706. Esther Sinclair, Ph.D., education expert.

COMMENTS

According to defendant: This case was filed in April 2000. In 2002, this case was dismissed on the eve of trial on defendant's motion in limine. In 2003, the Court of Appeal reversed and remanded. See *Roberti v. Andy's Termite*, 113 Cal. App. 4th 893.

FAMILY & DOMESTIC RELATIONS

26 TD 10TH 12

Couple signs contract regarding relationship, land in court when romance sours

FAMILY & DOMESTIC RELATIONS

Other

CONTRACTS

Other/Breach

DEFAMATION

Libel

FRAUD & MISREPRESENTATION

Fraud

PERSONAL PROPERTY

Conversion

INTENTIONAL TORTS

Infliction of Emotional Distress

SAN DIEGO COUNTY SUPERIOR COURT

Bennett v. Clark, Docket number: GIC857258, Central.

Judge: Ronald S. Prager. Trial type: Bench.

Verdict/Judgment date: 1/2/2007.

DECISION: \$12,000

\$12,000 damages to plaintiff. \$3,500 damages awarded to defendant. The net judgment was \$8,500 damages to plaintiff. The court ordered defendant to quitclaim her interest in defendant's property to defendant. The court also ordered defendant to sign the BMW over to plaintiff.

COUNSEL

Plaintiff: Beau Bennett, in pro per.

Defendant: Cheryl Lisa Clark, in pro per.

FACTS/CONTENTIONS

According to plaintiff: Plaintiff Beau Bennett purchased a four-bedroom home located at 11145 Forestview Lane in San Diego in May 2003. The market value of the property fluctuated between \$700,000 and \$950,000. In November of 2004, defendant Cheryl Lisa Clark moved in with plaintiff, but she moved back in with an ex-boyfriend in March 2005. On March 20, 2005, defendant moved back into plaintiff's home and entered into a written agreement with plaintiff in April 2005. Plaintiff agreed to give defendant 50% of the equity in his home, 50% of the ownership in a BMW 330Ci, and a Dell laptop and agreed to pay all car and insurance costs, living expenses, and family counseling for defendant and her son. Plaintiff also gave defendant \$500 a week that she was supposed to contribute towards household expenses. In exchange, defendant agreed to live with plaintiff for one year in a "sincere attempt to build a lasting, affectionate, and loving relationship." If defendant did not complete the one-year term, plaintiff would pay for her to move back to Texas and pay her a one-time payment of \$5,000 and defendant would re-convey her interest in the house, take no equity, and repay plaintiff for the car, or sell it and split the proceeds.

After the agreement was signed, defendant did not make any attempt to make a commitment to plaintiff. In June 2005, defendant admitted they were not a match and said she was moving out. Plaintiff asked defendant to quitclaim her interest in his home and make financial arrangements regarding the car. Defendant refused to re-convey her interest in the property unless plaintiff paid her \$100,000 and paid off and signed the car over to her.

Defendant also obtained a temporary restraining order against plaintiff, which ordered him to move out of his home. Defendant claimed plaintiff raped her and physically abused her and her son. While plaintiff was absent, defendant took plaintiff's personal belongings from the residence.

Plaintiff alleged breach of contract and sought specific performance of the agreement for defendant to re-convey her interest in the property to him. Plaintiff also alleged libel, conspiracy, conversion, and intentional infliction of emotional distress.

Defendant denied the allegations.

CLAIMED INJURIES

According to plaintiff: Emotional distress.

CLAIMED DAMAGES

Not reported.

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff offered to sign the car over to defendant if she would re-convey her interest in the home. Defendant refused.