

Worker Develops Multiple Myeloma from Benzene in Paints and Lacquer Thinner

Settlement: \$2,146,000
Case Name: Frank and Amy Sundquist v. BP West Coast, et al.
Court: Los Angeles Superior Court
Case No: BC 362023
Judges: Victoria Chaney, Ann Jones and Jane Johnson

Plaintiff Attorneys Raphael Metzger
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Brian Fitzgerald
Metzger Law Group
Long Beach, CA

Defense Attorneys Thomas C. Hurrell
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Hurrell & Cantrall
(PPG Industries, Inc., and The Sherwin-Williams Co.)

Roger M. Mansukhani
Brian M. Ledger
Gordon & Rees
(P.B.E. Warehouse, Inc.)

Deidre Cohen Katz
Tina Van Dam
Walsworth, Franklin, Bevins & McCall (National Oak Distributors, Inc. and International Autobody Marketing Group)

Douglas J. Pahl
Damien A. Decost
Kern and Wooley
(Cumberland Products, Inc.)

Richard A. Dongell
Jason M. Booth
Dongell Lawrence Finney
(Berg Lacquer Company)

Lawrence P. Riff
Colleen O'Brien
Steptoe & Johnson
(Cross-Defendants Ashland, Inc. and Univar USA Inc.)

Facts - From 1988 to 1998 Plaintiff worked for Freeman's Auto Parts & Paint Store, mixing paint and using lacquer thinners to clean his work area and to clean his hands. In late 2006, at the age of 43 he was diagnosed with multiple myeloma, a cancer that is usually diagnosed at about age 70 and is quite rare in patients under age 50.

Plaintiff's Contentions - Plaintiff claimed that exposure to benzene in the paints and lacquer thinners caused his multiple myeloma. Plaintiff contended that Defendants' paints and thinners were defective because they did not warn that they contained benzene and could cause cancer. Plaintiff also contended that the products were defectively designed because Defendants did not remove the benzene from them.

Defendants' Contentions - Defendants contended that they did not need to warn of the presence of benzene in their products, because it was only present in trace amounts. Defendants also contended that the cause of multiple myeloma is unknown, that benzene exposure does not cause multiple myeloma, that the trace amounts of benzene in the paints and thinners were harmless, and that if benzene in their products caused Plaintiff's multiple myeloma, Plaintiff and his employer were responsible because Plaintiff didn't wear gloves and his employer did not provide him ventilation or respiratory protection.

Injuries/Damages - Plaintiff was prescribed chemotherapy and underwent a stem cell transplant. His past medical expenses totaled about \$1.15 million. Plaintiff also claimed general damages.

Pretrial Motions - Judge Jones denied Defendants' motions to exclude the testimony of Plaintiffs' expert witnesses. Judge Johnson denied Plaintiffs' motions to exclude the testimony of Defendants' expert witnesses.

Result. After several mediation sessions and a Mandatory Settlement Conference, the case settled for a total of \$2,146,000. This is believed to be the largest settlement to date of a benzene-multiple myeloma case nationwide.

Mediator Eleanor Barr, ADR

MSC Judge Emilie Elias

Plaintiff's Experts Roger Wabeke, CIH
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