

Daily Journal

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TOP VERDICTS OF 2017

The largest and most significant verdicts and appellate reversals in California in 2017

TOP DEFENSE VERDICTS

Morales v. Well-Pict Berries Inc.

Attorney Kevin Place said he's happy to have played a role in preventing the creation of a new cottage industry within toxic torts.

Like the established areas of asbestos and benzene litigation, a plaintiff's victory in the case of a strawberry field worker who alleged pesticides caused her child's birth defect would have led to a rash of similar suits against growers, the Tyson & Mendes LLP attorney said.

This is a novel area that would have had the potential of burgeoning into its own realm of toxic torts, Place said. The case raised the question of whether a worker whose child was in utero during an industrial accident can make a worker's compensation claim.

A Ventura County jury ruled for three company defendants in June. The plaintiff was seeking \$23 million, future medical bills, a life care plan, and other damages. Attorneys with Waters, Kraus & Paul, and Phillips & Paolicelli LLP represented the plaintiffs. *Morales et al. v. Well-Pict Berries Inc. et al.*, 56-2016-00481672-CU-TT-VTA (Ventura Super. Ct., filed April 29, 2016).

"It was a potential litmus case that discouraged opening the floodgates, like talc for uterine cancer," Place said.

Plaintiff's attorneys argued two main theories Place described as "dousing and dosing."

"Dousing" meant that pesticides were being sprayed while workers were present in the fields, plaintiffs' lawyers argued, and "dosing" meant pesticide residues were present on the plants.

But the plaintiffs' arguments were undercut when a judge disallowed into evidence a pesticide use document, detailing which kinds of pesticides were used at which point in the season, as hearsay.

case INFO

Toxic Tort

Ventura County

Superior Court Judge Kent M. Kellegrew

Defense Lawyers: Kevin L. Place, Kathryn Lee, Tyson & Mendes LLP; Paul J. O'Rourke Jr., Law Offices of Paul O'Rourke Jr.; Brian M. Ledger, Glen R. Powell, Gordon Rees Scully Mansukhani LLP; Lanetta D.W. Rinehart (former), Michelle A. Campbell (former), Bremer Whyte Brown & O'Meara LLP; Lane E. Webb, Richard L. Hyde, Morris, Polich & Purdy LLP (now Clark Hill PLC)

Plaintiff's Lawyers: David Bricker, Peter A. Kraus, Michael Connett, Susan M. Ulrich, Waters, Kraus & Paul; Danielle George, Phillips & Paolicelli LLP



KEVIN PLACE

Place said the defense team used a "common sense" argument that dousing workers was clearly not a practice, and argued that the labor contractor took responsibility for worker safety.

"The concept of common sense was, what's the likelihood that a grower who is cognizant of workers' comp claims would send a pesticide applicator in the middle of the day when harvesters are picking?" Place said.

The team coupled this approach with sympathy for the plight of the woman and her child with birth defects, while simultaneously debunking the idea that there was any causal link between the widely used pesticides and those birth defects.

A jury can get bogged down by the science, and there can be a lot of sympathy when a 9-year-old boy with a brain injury is

part of the jury's difficult task, Place said, but defense attorneys were careful to approach the case with sensitivity.

"We were responsible for her safety, and we had a duty to make sure we had a safe workplace," Place said. "We're not saying we didn't do anything. We're saying we're responsible if evidence supports it, but if you weigh the evidence you'll find that the plaintiff hasn't met their burden of proof."

The case is also significant because of the size of California's strawberry industry, which Place noted leads the nation. "If you take all the strawberries in California end to end, they would go around the world three times," he said. "If the plaintiff had prevailed, it would have opened many more doors for suits against strawberry growers."

— L.J. Williamson