

**EXPERT TESTIMONY**

According to plaintiff: Plaintiff's expert Ben-Zion testified concerning plaintiff's lost income. Plaintiff's expert Horn testified concerning plaintiff's medical expenses.

**COMMENTS**

According to plaintiff: The case was initially filed in March 2002 against 40 separate defendants and was advanced to trial quickly because of plaintiff's terminal condition. Before trial, all defendants except Unocal, Chevron, and Fluor settled. Chevron and Fluor settled during trial. The total verdict will be reduced by the other parties' settlements.

Plaintiff's attorney, Philip Harley, stated: "This is another chapter in the continuing tragedy created by industry's indifference to worker safety and particularly to asbestos hazards. Ms. Gunderson is pleased with the jury's decision. While it will not change her terminal condition, it will provide her with some satisfaction that those who caused this problem are being made to take responsibility."

**CONSTRUCTION DEFECTS****3 TD 6th 2**

### **Gas station owner alleges negligent environmental clean-up**

**CONSTRUCTION DEFECTS**

Defective Workmanship/Soil/Grading/Foundations/Paving/Miscellaneous

**LOS ANGELES COUNTY SUPERIOR COURT**

*Nguyen v. All Environmental, Inc.*, No. NC027118, Long Beach. James L. Wright. Jury trial: 10 days. Verdict/judgment: 6/21/2002.

**VERDICT/JUDGMENT: DEFENSE**

Vote: 12-0 no negligence. Deliberations: 1 hour.

**TRIAL COUNSEL**

Plaintiff: Edward S. Beneville, Nguyen & Associates, Westminster.

Defendant: James R. Rosen, Law Offices of James R. Rosen, Beverly Hills. Steven Renshaw, Chapin, Shea, McNitt & Carter, Los Angeles. Howard Smith, Chapin, Shea, McNitt & Carter, Los Angeles. Kyle A. Cruse, Oppenheimer, Wolff & Donnelly, Newport Beach. Kimberly Columbo, Oppenheimer, Wolff & Donnelly, Newport Beach.

**FACTS/CONTENTIONS**

According to defendant (Rosen): A gas station owner sued three companies for negligent environmental clean-up efforts. The plaintiff was Tam Ngoc Nguyen dba T & T Minimart & Gas. The defendants were All Environmental, Inc. ("AEI"); Charles Kennedy Construction & Maintenance,

Inc. ("Kennedy"); and BioTreatment, Inc. ("BTI"). Plaintiff owned and operated an ARCO service station, mini mart, and mechanic's garage on Long Beach commercial property he bought in 1995. Environmental site assessment and engineering data by several consultants confirmed the presence of groundwater and soil contamination beneath the property. In October 1996, the City of Long Beach ordered the site to be cleaned up. In February 1998, plaintiff contracted with defendant AEI, an environmental consulting and engineering firm, to propose and implement a decontamination plan. In turn, AEI subcontracted the design and installation of an active bioremediation system to defendant BTI. AEI's and BTI's bioremediation project included extraction of contaminated groundwater from beneath plaintiff's business, and the subsequent reintroduction of cleaned groundwater infused with special petroleum-eating microbes back into the soil and groundwater at a predetermined and monitored rate. In order to comply with federal legislation, plaintiff was also required to replace his steel underground storage tanks ("USTs") by December 1998. To do this, he entered into a contract with defendant Kennedy in April 1998, to remove and replace his USTs with new, state of the art, double-walled "plasteel" tanks and to re-pave his station. Plaintiff did not hire a general contractor, but urged defendants AEI and Kennedy to coordinate their work so that AEI could place its piping at the bottom of Kennedy's excavation. During June and July 1998, defendant Kennedy excavated a 35-foot by 35-foot pit, removed plaintiff's USTs, installed new tanks, backfilled the pit and installed new vapor recovery lines. During the same time, defendant AEI installed two galleries of pipes, one in the "deep zone" below the new tanks and one in a "shallow zone" above the new tanks. During the course of construction, a support footing of plaintiff's station canopy was destabilized. On another occasion, a piece of defendant Kennedy's heavy equipment ran into and damaged the canopy. After defendants AEI and Kennedy completed all work, plaintiff's service station re-opened on August 10, 1998. Almost immediately thereafter, plaintiff began noticing cracks, ripples, and sinkage of the concrete slab over the project site and flooding of some monitoring wells. Defendant Kennedy returned to the site several times to make repairs and fix the tank leak detection alarms, which were sounding and flashing. An automatic shut-off function was bypassed on the system to allow plaintiff to continue to dispense gasoline. The infusion of water during the bioremediation process was stopped as the cement slab continued to settle and crack. There was extensive damage to the site, which remains contaminated. Plaintiff alleged that his property damage and the failure of his tank replacement and bioremediation project were due to all defendants' negligence. Specifically, plaintiff claimed that defendants AEI and BTI flooded the soil above the tanks with more than 5,000 gallons of water, which caused and/or contributed to its settlement. Plaintiff also alleged that the bioremediation project was ineffective. Plaintiff also asserted that defendant Kennedy failed to compact the backfilled dirt and damaged his canopy with a

skiploader. Plaintiff (and Kennedy) further alleged that the canopy's unstable footing was caused by the digging of a monitoring well at AEI's request.

Defendant AEI contended that none of the water injected into the lower gallery of pipes had anything to do with the soil settlement above the tanks. AEI also contended that no water was injected into the shallow zones above the tanks until February 1999, after plaintiff's soil settlement and concrete damage had already occurred. Even so, defendant AEI contended that only 800 gallons of water was actually injected into the shallow zones, which amount was insufficient to cause plaintiff's damage. Defendant AEI contended that plaintiff's soil settlement was caused by a broken water main and poor soil compaction by defendant Kennedy. AEI denied causing instability of the canopy, which was attributed to Kennedy digging the tank pit too close to the footing. AEI also contended that the canopy did not need to be replaced, only repaired. Defendant Kennedy admitted that one of his skiploaders collided with the canopy, but denied all other damage. Kennedy also denied that he had backfilled a portion of the pit with native soil, and not approved pea gravel. Kennedy further contended that the soil settlement problems were due to AEI's and BTI's bioremediation project and not his own negligent work. Defendant BTI defended the integrity of its bioremediation system design and function. The court granted a nonsuit to BTI at the conclusion of plaintiff's case because of plaintiff's failure to sufficiently differentiate between defendants AEI and BTI for purposes of establishing any liability by BTI.

According to defendant (Cruse): A gas station owner sued three companies for negligent environmental clean-up. The plaintiff was Tam Ngoc Nguyen dba T & T Minimart & Gas. The defendants were All Environmental, Inc. ("AEI"); Charles Kennedy Construction & Maintenance, Inc. ("Kennedy"); and BioTreatment, Inc. ("BTI"). Plaintiff alleged that the construction work performed by defendants necessitated by requirements for environmental upgrades to underground storage tanks caused property damage and loss of earnings.

Defendants denied any negligence and challenged the amount of damages.

#### CLAIMED INJURIES NA

#### CLAIMED DAMAGES

According to defendant (Rosen): \$242,000 UST replacement and reinstallation costs; \$69,000 removal and replacement of station canopy; \$83,000 lost past and future profits; \$34,000 already incurred repair costs; \$16,500 contract penalties for failure to sell quota of fuel.

Defendants argued that, even assuming liability, plaintiff's damages were limited to \$35,000, the cost for repairing, but not replacing, the concrete paving and canopy.

According to defendant (Cruse): \$600,000 lost profits and property damage.

#### SETTLEMENT DISCUSSIONS

According to defendant (Rosen): Demand: \$605,000 to all defendants, reduced to \$460,000. AEI's offer: \$13,350 (CCP§998), expired. BTI's offer: \$19,999 (CCP§998), expired. Defendants raised their combined offer of settlement to \$160,000 on the day of trial.

According to defendant (Cruse): Demand \$600,000, reduced to \$250,000 prior to trial. Offer by BTI: \$20,000 (CCP§998). Offer by AEI: \$13,000 (CCP§998). Non-statutory offer by Kennedy: \$65,000.

#### TRIAL EXPERTS

Plaintiff: Ami Adini, geotechnical engineer, Ami Adini & Associates Inc., Los Angeles (213) 913-4073. Dale Hinkle, geotechnical engineer, Irvine (949) 458-0498.

Defendant: Matthew McCullough, environmental consultant. Greg Peale, general contractor. L. Peter Petrovsky, safety/structural engineer, Forensics Group, Pasadena (800) 555-5422.

#### COMMENTS

According to defendant (Rosen): Plaintiff was impeached with evidence that he had: 1) personally bypassed the automatic shut-off on the tank leak alarm in order to continue selling gas; and 2) sold over 6.4 million gallons of gasoline underneath the canopy, which he had claimed was dangerous and structurally unsound for the past four years.

Steven Renshaw and Howard Smith represented defendant Charles Kennedy Construction & Maintenance, Inc. Kyle A. Cruse and Kimberly Columbo represented BioTreatment, Inc. James R. Rosen represented defendant All Environmental, Inc. and provided the information for this report.

According to defendant (Cruse): James R. Rosen represented defendant All Environmental, Inc. Steven Renshaw represented defendant Charles Kennedy Construction & Maintenance, Inc. Kyle A. Cruse represented defendant BioTreatment, Inc. and provided the information for this report.

## CONTRACTS

### 3 TD 6th 3

#### Export company sues for value of goods shipped pursuant to contract with another exporter

#### CONTRACTS

Breach/Purchase Agreement/Purchase of Goods:  
Miscellaneous