

# VERDICTS & SETTLEMENTS

FRIDAY, JULY 22, 2016

## TORTS

### PRODUCT LIABILITY

Design Defect

#### VERDICT: Defense

CASE/NUMBER: Pauline Lopez, individually and as successor-in-interest to Decedent, William Lawrence Lopez; Marlene Arroyo; John Lopez; Dionna Hall, individually and as Guardian ad Litem of her minor children, Vincent William Hall, Philip Robert Hall, Matthew Jordan Hall, and Jonathan Thomas Hall v. AGFA Corporation, a Delaware corporation; Allied Litho Products Inc., formerly Allied Litho Supply Inc., a California corporation; Amber Resources LLC dba Sawyer Petroleum, a California limited liability company; Anchor/ Lith-Kem-Ko Inc., a New York corporation; Burnishine Graphic Products LLC, an Illinois limited liability company; Claire-Sprayway Inc. / BC515732.

#### COURT/DATE:

Los Angeles Superior Torrance / June 3, 2016.

JUDGE: Hon. Cary H. Nishimoto.

ATTORNEYS: Plaintiff — Raphael Metzger, Kenneth A. Holdren (Metzger Law Group, Long Beach).

Defendant — Rey S. Yang, Sally Hosn (Yang Professional Law Corp., Pasadena).

MEDICAL EXPERTS: Plaintiff — Robert J. Harrison, M.D., occupational medicine, San Francisco.

Defendant — Kenneth A. Mundt, Ph.D., epidemiology, Amherst, Mass.; Howard Sandler, M.D., occupational medicine, Melville, N.Y.

TECHNICAL EXPERTS: Defendant — Brian Daly, C.I.H., P.E., industrial hygiene, Torrance.

FACTS: William Lopez was employed as an offset printing press operator between 1969 and 1987 at Nu-Art Publishers/Pacific Thermographers in Chatsworth. Plaintiff then operated his own offset printing business, Bill Lopez Printing, between 1989 and 2009. During the course of his 40-year employment history as an offset printer, Lopez used oil-based inks and a deglazing solvent distributed by Van Son.

In December 2009, Lopez, 60, was diagnosed with myelodysplasia syndrome. Despite aggressive treatment, including chemotherapy and a bone marrow transplant, his blood disease evolved into acute myelogenous leukemia, of which he was diagnosed in January 2012 at the age of 62.

Lopez passed away shortly thereafter in March 2012. Plaintiffs brought survival and wrongful death claims. Plaintiffs were Lopez's widow, three adult children, and four minor grandchildren. Plaintiffs originally sued multiple defendants who plaintiffs alleged manufactured or distributed inks and pressroom chemical products used by Lopez throughout his 40-year employment history. All defendants settled prior to trial except for Van Son. At trial, plaintiffs focused solely on Lopez's claimed exposure to Van Son oil-based inks and deglazing solvent.

PLAINTIFF'S CONTENTIONS: Plaintiffs contended that Lopez's cancer was caused by the chemical compound benzene contained in the petroleum-based printing products distributed by Van Son. Benzene is a human carcinogen that is established as capable of causing AML.

Plaintiffs contended that the products were defective because Van Son failed to test the products for the presence of benzene, and failed to warn of the hazards associated with benzene. Plaintiffs claimed that Van Son violated the Hazard Communication Standard by failing to identify benzene in its material safety data sheets, and that the products were defectively designed because the product failed to perform as safely as an ordinary commercial pressman would have expected, and because the inherent risks of the products outweighed any potential benefits of the products.

Plaintiffs contended that Lopez's exposure to benzene originating from the deglazing solvent would have exceeded 0.1 ppm throughout the 3-minute use of the product, and that Lopez likely used the product up to 100 times per day throughout his 40-year work history. Plaintiffs contended that the presence of five benzene-related blood conditions including macrocytosis, pancytopenia, trisomy 8, MDS, and AML, conclusively established that Lopez's illness was caused by occupational exposures to benzene.

DEFENDANT'S CONTENTIONS: Van Son contended that its oil-based inks and the chemical solvent do not use benzene as a component ingredient and that even if there were undetectable levels of trace benzene in petroleum-based products, such levels do not present a substantial danger to persons using the products.

Van Son contended that its products were not defective and adequately warn of known health hazards. Defendant argued that Lopez's exposure to benzene, if any, to Van Son products would not have exceeded ambient levels, Lopez's exposure to Van Son products did not cause his blood disease, and the cause of Lopez's illness was unknown as there were multiple contributing risk factors.

Van Son relied on findings in 1978 by the National

Association of Print Ink Manufacturers and Occupational Safety and Health Administration that printing inks and pressroom chemicals may potentially contain trace levels of benzene contaminants, but that such trace levels did not present a substantial risk of injury to printers. Van Son also relied upon the Monograph, Volume 65 (1996), on Printing Processes and Printing Inks published by the International Agency for Research on Cancer, which determined that there was inadequate evidence showing that printing inks and pressroom chemicals are carcinogenic. Van Son contended that its petroleum-based products are useful and their designs are necessary to achieve product performance during offset printing processes. Van Son genuinely believed that its products did not cause cancer and that providing cancer warnings would distract users from the very important safety and health warning information provided.

Van Son's experts explained that a conservative dose level of at least 40 ppm-years is required to entertain the possibility of benzene-induced AML. As to Lopez's five blood conditions, Van Son's experts noted that such conditions could theoretically be induced by extremely high-level exposures to benzene over an extended period of time but that Lopez was not exposed to high benzene levels for any period of time. Van Son also noted that such blood conditions could appear in persons with no occupational exposures to benzene, and the presence of blood conditions was not indicative of benzene exposure.

DAMAGES: At trial, plaintiffs sought \$5 million in compensatory damages and punitive damages from Van Son for claimed conscious disregard of workers' health in light of the alleged 100-year well-documented history of benzene carcinogenicity. Plaintiffs also sought medical expenses of \$778,874, and funeral expenses of \$4,817.

JURY TRIAL: Length, 12 days; Poll, 12-0 (negligence), 12-0 (negligence per se), 12-0 (design defect - risk benefit), 11-1 (design defect - consumer expectations test), 12-0 (failure-to-warn), 12-0 (concealment claim); Deliberation, four hours.

SETTLEMENT DISCUSSIONS: In February 2016, plaintiffs demanded \$3 million.

RESULT: Defense Verdict.

OTHER INFORMATION: Plaintiffs agreed to pay \$10,000 in costs to defendant as full and final resolution of the matter.

FILING DATE: July 19, 2013.