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Page 1

Court: Admission of Other Spills Evidence in Suit Was Error

By a MetNews Staff Writer

A trial court erred in allowing a jury to consider evidence of two massive oil spills while assessing a defendant's reprehensibility in causing and responding to the underground contamination of a plaintiff's real property, this district's Court of Appeal ruled yesterday.

Reversing a \$5 million dollar punitive damages award against the Unocal Corporation, Div. Six held that the due process proscription against evidence of "dissimilar acts" in punitive damages cases must apply to both the jury's predicate determination of whether a defendant is liable for punitive damages as well as its assessment of the amount of damages to be awarded.

Unocal owned, operated and maintained 850 miles of subterranean oil pipelines, several facilities, wells and a refinery in Central California

from the early 1990's until 1997. Two pipelines ran under Tank Farm Road in San Luis Obispo, and in 1989, Garry and Evelyn Holdgrafer discovered oil contamination on property they owned along the road.

Unocal retained environmental experts to investigate the contamination, and drilled soil borings and monitoring wells along the road. It reported that the contamination did not pose a risk of harm to human health to the California Regional Water Quality Control Board in early 1991, although it subsequently continued to monitor the contamination to ensure that it did not migrate, and proposed continued monitoring and allowing the contamination to naturally attenuate over time.

Unocal negotiated with the Holdgrafers over the course of six year in an attempt to settle

their claim for damages from the contamination, but settlement negotiations broke down and the Holdgrafers filed suit against Unocal in April 2001 for private nuisance, trespass, negligence, and unfair business practices.

Prior to trial, Unocal moved for summary adjudication of the Holdgrafers' punitive damages claims, arguing that they could not produce clear and convincing evidence that Unocal had acted with malice, fraud or oppression in causing or responding to the contamination.

In opposition, the Holdgrafers proffered evidence related to incidents that had occurred at other Unocal facilities to prove the company's "corporate pattern and practice of leaving contamination in place, concealing known contamination, suppressing its public discovery, and intentionally delaying any meaningful investigation or remediation for as long as possible."

Unocal argued that the evidence was inadmissible, but the trial court disagreed and denied Unocal's motion. Unocal renewed its motion following the U.S. Supreme Court's decision

in *State Farm Mutual Automobile Insurance Company v. Campbell* (2003) 538 U.S. 408, but the trial court again denied Unocal's motion for summary adjudication.

Unocal then filed a motion in limine to exclude the evidence, but the trial court denied the motion and the Court of Appeal dismissed Unocal's petition for writ, ordering the trial court to exclude the evidence.

Trial was bifurcated as to the issue of liability for compensatory damages and the Holdgrafers' entitlement to punitive damages and the amount to be awarded, and the jury first found that Unocal's statute of limitations defense was inapplicable.

The jury then found Unocal's contamination of the property constituted a permanent nuisance and trespass, and that Unocal had been negligent, and awarded the Holdgrafers \$564,348 in damages for past economic loss, and \$2 million for the diminished value of their property. Unocal later settled the unfair business practices claim for an undisclosed amount.

The Holdgrafers' punitive damages case centered on the evidence from the other facilities, and the jury found Unocal liable for malice, fraud or oppression on the nuisance and negligence claims, and awarded the Holdgrafers \$10,000,000.76 in punitive damages.

Unocal moved for a new trial and for a judgment notwithstanding the verdict, and again asserted that the Holdgrafers' claims were barred by the statute of limitations and the inadmissibility of the evidence from the other facilities.

San Luis Obispo Superior Court Judge Martin J. Tangeman rejected Unocal's arguments, but conceded that the award was excessive. He remitted the award to \$5 million and ordered interest to run on the judgment from the date of the verdict.

However, on appeal, Justice Steven Z. Perren, writing for the court, agreed with Unocal.

"[T]he punitive damages award does not comport with due process," he wrote, "because the jury was effectively invited to

punish Unocal for injuring persons or entities that are not parties to this litigation, for conduct that had nothing to do with that which harmed the plaintiffs in this case. Accordingly, the jury's findings of liability for punitive damages and the amount of the award are both fatally undermined."

Pointing to the decision in *State Farm*, where the court held that a defendant's "dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages," Perren wrote that, "[w]e discern no legitimate reason why the due process concerns identified in *State Farm* do not apply with equal force when the challenged evidence is offered for both."

Because the trial court did not impose any instructional limitations on the use of the evidence from the other facilities, Perren wrote, the jury had "carte blanche to consider it...as proof that Unocal had a propensity or disposition to, among other things, engage in 'cover ups,' avoid responsibility for leaks, and lie to state authorities about the company's

knowledge of their existence and magnitude.

He continued:

“[T]he error was prejudicial and resulted in a miscarriage of justice because it is reasonably probable that the jury would have reached a different result in its absence.... One need only look to the punitive damages award itself —\$10,000,000.76— for an indication that the jury’s passions were inflamed.”

Justices Arthur Gilbert and Kenneth R. Yegan joined Perren in his opinion.

Unocal’s attorney, Jeremy Rosen of the law firm Horvitz & Levy, told the MetNews that he thought “the court’s analysis of the punitive damages question is in line with recent Supreme Court authority and properly applies that...to California.”

Attorneys for the Holdgrafers could not be reached for comment.

The case is *Holdgrafer v. Unocal Corp.*, B175953.

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