

## **Jury's \$785M Verdict in Lockheed Case Reversed**

By Gail Diane Cox  
06-07-2000

A state appeals court in Los Angeles said Tuesday that 29 current and former Lockheed employees exposed to hazardous chemicals can collect no punitive damages -- much less the \$760 million a jury awarded them -- and they must again prove in court they are entitled to compensatory damages.

The 2nd District Court of Appeal's unpublished opinion is the latest of a series of rulings whittling down recoveries against chemical and oil companies that supplied solvents used at Lockheed's "Skunk Works" aircraft factory from the 1950s to the 1980s.

More than 600 workers sued, citing injuries that ranged from rashes to cancer. Their suits are being heard in groups, as coordinated actions in which only the first trial was considered a pilot. The latest 30-page opinion, in *Aguilar v. Ashland*, B128469, and *Arnold v. Ashland*, B121434, written by Justice Paul Turner, applies to Group 5 and closely tracks the reasoning and results of Turner's Group 4 opinion.

Both reversals turned on a misapplication of collateral estoppel, specifically that it was prejudicial error for L.A. County Superior Court Judge Richard Hubbell to rely on the non-pilot trials of Groups 2 and 3 to tell jurors to find for the plaintiffs on the issue of adequacy of hazard warnings.

In ordering a new trial on compensatory damages, Turner noted there was conflicting evidence about when warnings were issued for which types of injuries, and that the Group 5 jury was so divided that out of 88 separate findings, only one was unanimous. "It is reasonably probable a different allocation of fault as among all defendants and Lockheed will result on retrial," he wrote.

Lockheed has settled out of the case, leaving as defendants Exxon Corp., Ashland Chemical Co., Shell Oil Co, E.I. DuPont de Nemours & Co. Inc. and Unocal.

On punitive damages, the appeal panel rejected arguments by the plaintiffs' lead appellate counsel, James Kropff of the Los Angeles office of Girardi and Keese, that any retrial for Group 5 should allow his clients to present evidence of oppression. Turner wrote there has been no evidence of despicable conduct by corporate officers.

The court ordered the plaintiffs to pay the defendants' appellate costs.

The Group 5 verdict -- \$785 million, including compensatories -- was controversial not only for its size, but because of Hubbell's conduct leading up to it. At one point attorneys for the chemical companies persuaded a superior court judge to recuse Hubbell for an appearance of bias after he, among other things, referred to the defendants as "purveyors of ... dangerous chemicals" in front of the jury. The court of appeal, however, ordered Hubbell reinstated.

Then, following closing argument, Hubbell encouraged the jury to "pick a figure" and "say, 'Let's send a notice out to the world. This is the price in Los Angeles County.'"

Hubbell did reduce the \$760 million punitive damage award to \$380 million.

Tuesday's opinion is a victory for Ellis Horvitz of Encino, Calif.'s Horvitz & Levy, representing the defendants -- even though Turner declined Horvitz's invitation to foreclose the issue of punitive damages for future trials in the series.

Subscription Required Password protected

<http://www.law.com/jsp/article.jsp?id=900005517052>